

Legislative Analysis



MODIFY BANK TRUST POWERS

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House Bill 6299

Sponsor: Rep. David Law

Committee: Banking and Financial Services

Complete to 9-19-06

A SUMMARY OF HOUSE BILL 6299 AS INTRODUCED 6-29-06

The bill would amend the Banking Code of 1999 (MCL 487.14401 and 14405) in the following ways to address the trust powers of banks.

Fees

The Code says that a bank or state foreign bank branch acting as a fiduciary can charge a reasonable fee for its services. Under the bill, in any action or proceeding concerning fees, there is *a rebuttable presumption that a fee is reasonable* if the fee or its method of computation is specified in a fee schedule or fee agreement of the bank or state foreign bank branch in effect at the time the service is provided and if the agency or custody principal, the trust grantor, or any person other than the trust grantor who is entitled to be kept reasonably informed of the trust and its administration under the EPIC code (Public Act 396 of 1998) received reasonable notice of that fee schedule or fee agreement before the fee is charged.

Purchase of Bank's or Affiliate's Own Products, etc.

The bill would allow a bank, or the bank and one or more of its co-fiduciaries, to use the money or property over which it exercises investment discretion *to purchase any product, service, or security from or through the bank or an affiliate or the bank*, including an insurance product or a security that is underwritten or distributed by the bank, or an affiliate or a syndicate or selling group that includes the bank or an affiliate, if the price is reasonable.

This would require either (1) the written consent of the revocable trust grantor or agency principal; or, (2) if the trust is irrevocable or the trust grantor is deceased or reasonably believed to be incapacitated, the providing of advance notice—at least 45 days before the use of the money or property—to any person entitled to receive trust accountings under Section 7303 of the EPIC code. Any advance notice required under the bill would have to list the type of products, services, or securities available for purchase from or through the bank and would need to provide the name and address of an individual at the bank to whom a beneficiary receiving the notice could direct any objection.

Objections

If the bank receives a written objection to a notice described above, and the objection is not resolved or withdrawn, the bank could not use the money or property to purchase any

product, service or security from or through the bank, or its affiliate, for at least 60 days after it receives the written objection.

Compensation

Under the bill, a bank or one or more of its affiliates could receive reasonable compensation in connection with the purchase of the product, service, or security.

FISCAL IMPACT:

There is no fiscal impact on the State of Michigan or its local units of government.

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