

Act No. 90
Public Acts of 1993
Approved by the Governor
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**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1993**

Introduced by Senator Berryman

ENROLLED SENATE BILL No. 643

AN ACT to amend sections 5, 151, 171, and 174 of Act No. 319 of the Public Acts of 1969, entitled as amended "An act to revise and codify the laws relating to banks, industrial banks, foreign banks, trust companies, and safe and collateral deposit companies; to provide for their incorporation, regulation, and supervision; to authorize the granting of trust powers to banks and to regulate the exercise of those powers; to create, within the department of commerce, a financial institutions bureau and to prescribe its powers and duties; to prescribe penalties for violations of this act; and to repeal certain acts and parts of acts," section 5 as amended by Act No. 104 of the Public Acts of 1987, section 151 as amended by Act No. 12 of the Public Acts of 1991, and section 171 as amended by Act No. 200 of the Public Acts of 1988, being sections 487.305, 487.451, 487.471, and 487.474 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Sections 5, 151, 171, and 174 of Act No. 319 of the Public Acts of 1969, section 5 as amended by Act No. 104 of the Public Acts of 1987, section 151 as amended by Act No. 12 of the Public Acts of 1991, and section 171 as amended by Act No. 200 of the Public Acts of 1988, being sections 487.305, 487.451, 487.471, and 487.474 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 5. As used in this act:

(a) "Articles" means articles of incorporation; all amendments to articles of incorporation, and agreements of consolidation and merger.

(b) "Association" means an association as defined in section 108 of the savings and loan act of 1980, Act No. 307 of the Public Acts of 1980, being section 491.108 of the Michigan Compiled Laws.

(c) "Affiliate" means any corporation, business trust, association, or similar organization to which any of the following apply:

(i) An institution, directly or indirectly, owns or controls either a majority of its voting shares or more than 50% of the number of shares voted for the election of its directors, trustees, or other persons exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees, or other persons exercising similar functions.

(ii) Control of the organization is held, directly or indirectly, through stock ownership or in any other manner, by the shareholders of an institution who own or control either a majority of the shares of that institution or more than 50% of the number of shares voted for the election of directors of that institution at the preceding election, or by trustees for the benefit of the shareholders of that institution.

(iii) A majority of its directors, trustees, or other persons exercising similar functions are directors of any 1 institution.

(iv) Owns or controls, directly or indirectly, either a majority of the shares of capital stock of an institution or more than 50% of the number of shares voted for the election of directors of an institution at the preceding election, or controls in any manner the election of a majority of the directors of an institution, or for the benefit of whose shareholders or members all or substantially all the capital stock of an institution is held by trustees.

(d) "Bank" means a state banking corporation organized or reorganized under the provisions of this act or organized under the provisions of any law of this state enacted before August 20, 1969.

(e) "Branch" means, except as otherwise provided in this subdivision, any branch bank, branch office, branch agency, additional office, or any branch place of business at which deposits are received, checks paid, or money lent. The acceptance of deposits in furtherance of a school thrift or savings plan by an officer, employee, or agent of a bank at any school shall not be construed as the establishment or operation of a branch or branch facility if the school is located within the geographical area imposed by section 171 for the operation of a branch or branches by that bank. An electronic funds transfer facility that is made available to 2 or more federal or state chartered financial institutions pursuant to a state statute which regulates electronic funds transfer facilities is not a branch. An additional office of a state agency is not a branch. An international banking facility as defined in 12 C.F.R. 204.8(a)(1), as in effect December 31, 1982, is not a branch. The receipt of deposits by a messenger service or the delivery by a messenger service of items representing deposit account withdrawals or of loan proceeds is not the establishment or operation of a branch, whether or not the messenger service is owned or operated by the bank.

(f) "Bureau" means the financial institutions bureau created by this act.

(g) "Capital" or "capital stock" means the amount of unimpaired common stock issued and outstanding, plus the amount of unimpaired preferred stock issued and outstanding.

(h) "Commissioner" means the commissioner of the financial institutions bureau.

(i) "Consolidate", "consolidated", "consolidating", and "consolidation" shall mean and include, respectively, consolidate or merge, consolidated or merged, consolidating or merging, and consolidation or merger.

(j) "Federal agency" means a foreign bank agency established and operating under section 4 of the international banking act of 1978, 12 U.S.C. 3102.

(k) "Federal reserve act" means the federal reserve act, chapter 6, 38 Stat. 251.

(l) "Foreign bank" means a legal entity organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, which engages in the business of banking and is not directly or indirectly owned or controlled by United States citizens or by a corporation organized under the laws of the United States. Foreign bank includes foreign commercial banks, foreign merchant banks, and other foreign institutions that engage in banking activities usual in connection with the business of banking in the countries in which the foreign institutions are organized.

(m) "Foreign bank agency" means an office or place of business of a foreign bank located in this state, established under this act or the international banking act of 1978, Public Law 95-369, 92 Stat. 607 at which deposits of citizens or residents of the United States shall not be accepted.

(n) "Foreign country" means a country other than the United States of America and includes a colony, dependency, or possession of a country other than the United States of America.

(o) "Incorporator" means a signer of the original articles of incorporation.

(p) "Institution" means any bank, industrial bank, trust company, or safe and collateral deposit company operating or organized or reorganized under the provisions of this act or operating or organized under the provisions of any law of this state enacted before August 20, 1969.

(q) "Messenger service" means a service such as a courier service or an armored car service that picks up from or delivers to customers of 1 or more depository institutions or 1 or more affiliates of a depository institution cash, currency, checks, drafts, securities, or other items relating to transactions between or involving a depository institution or affiliate of a depository institution and those customers, or that transfers cash, currency, checks, drafts, securities, or other items or documents between depository institutions or affiliates of depository institutions. The service may be owned and operated by 1 or more depository institutions or affiliates or by a third party. As used in this subdivision, "depository institution" means a state or national chartered bank, a state or federal chartered savings and loan association, a state or federal chartered savings bank, or a state or federal chartered credit union.

(r) "Mobile branch" means a branch in which the location of the physical structure of the branch is moved from time to time.

(s) "Publication" and "published", wherever it is provided in this act that any notice or statement shall be published, means publication in a newspaper printed in the English language and published and circulated in the county where the institution is located or if there is no newspaper published and circulated in the county where the institution is located in any newspaper having general circulation in the county.

(t) "Service corporation" means a corporation organized under the laws of a state that engages in activities determined by the commissioner by order or rule to be incidental to the conduct of a banking business as provided in

this act or activities that further or facilitate the corporate purposes of a bank, or that furnishes services to a bank or subsidiaries of a bank and the voting stock of which is owned directly or indirectly by 1 or more banks or national banking associations.

(u) "Shareholder" means the registered owner of any share or shares of capital stock of an institution.

(v) "State agency" means a foreign bank agency established and operating under chapter 3A.

Sec. 151. Subject to the limitations and restrictions contained in this act or in a bank's articles, the bank may engage in the business of banking and a business related or incidental to banking, and for that purpose, without specific mention thereof in its articles, a bank has the powers conferred by this act and the following additional corporate powers:

(1) To have a corporate seal, which may be altered at pleasure, and to use the corporate seal by causing it, or a facsimile of it, to be impressed, affixed, or reproduced in any manner.

(2) To have succession in perpetuity or for a limited period of time, as fixed by its articles or until its affairs are finally wound up by liquidation, forfeiture, or dissolution as provided by this act.

(3) To make contracts.

(4) To sue and be sued, complain, and defend in its corporate name as fully as a natural person.

(5) To elect or appoint directors who shall appoint from their members a president who shall perform duties as may be designated by the board, and who shall serve as the chairperson of the board, unless the board designates another director to be chairperson in lieu of the president. The board shall appoint 1 or more vice-presidents, a cashier, and other officers as the board considers necessary, who may or may not be members of the board, shall define their duties, shall dismiss the officers or any of them at pleasure, and shall appoint other officers to fill their places.

(6) To make, alter, amend, and repeal bylaws not inconsistent with its articles or with law for the administration and regulation of the affairs of the bank.

(7) To have and exercise the powers and means appropriate to effect the purpose for which the bank is incorporated.

(8) To make contributions and donations for the public welfare or for religious, charitable, scientific, or educational purposes, and, in connection with such contributions and donations, to establish and operate charitable trusts.

(9) To purchase, take, lease as lessee, or otherwise acquire and to own, hold, and use, to sell, lease as lessor, mortgage, pledge, grant a security interest in, convey, or otherwise dispose of real or personal property in connection with the exercise of a power granted in this act.

(10) To act as agent of the United States, or of an instrumentality or agency of the United States, for the sale or issue of bonds, notes, or other obligations of the United States, or an instrumentality or agency of the United States and to take other action as may be necessary or proper to enable the bank to act under this subdivision.

(11) To become a member of the federal reserve system, to hold shares of stock in a federal reserve bank, to take all actions incident to maintenance of its membership, and to exercise all powers, not inconsistent with the provisions of this act, conferred on member banks by the federal reserve act.

(12) To become an insured bank pursuant to the federal deposit insurance act, and to take actions incident to the maintenance of an insured status under that act.

(13) To become a member of the federal home loan bank as defined in section 2 of the federal home loan bank act, chapter 522, 47 Stat. 725, and to exercise those powers conferred upon a federal home loan bank member by the federal home loan bank that are consistent with this act.

(14) To purchase the shares of stock of a small business investment company doing business in this state and licensed under, or established pursuant to, the federal small business investment act of 1958, Public Law 85-699, 72 Stat. 689, and to purchase shares of stock of a business and industrial development corporation established pursuant to the provisions of the Michigan BIDCO act, Act No. 89 of the Public Acts of 1986, being sections 487.1101 to 487.2001 of the Michigan Compiled Laws.

(15) To sell mortgage loans to the federal national mortgage association, or a successor of the association, and, in connection with the association, to make payments of capital contributions, required pursuant to law, in the nature of subscriptions for stock of the association or a successor of the association, to receive stock evidencing the capital contributions, and to hold or dispose of the stock.

(16) To conduct its business through subsidiaries, but a bank shall not acquire or hold for its own account shares of a bank or bank holding company, unless the shares are acquired as provided in subdivision (19). The commissioner may promulgate rules as he or she considers necessary to effectuate this subdivision and prevent evasions of this subdivision. For the purpose of this subdivision, subsidiary means a corporation of which at least 80% of the voting stock of the corporation is owned by state and national banks located in Michigan.

(17) To make application for and to obtain insurance of loans, but not to operate an insurance underwriting business.

(18) To give its bond in a proceeding in any court in which it is a party or upon an appeal in a proceeding, and to pledge assets as security for the bond.

(19) To acquire and hold, irrespective of any restriction or limitation of this act, property, or a security interest in property, as protection against loss on an evidence of indebtedness, on an agreement for the payment of money, or on an investment security previously acquired lawfully and in good faith, subject to both of the following:

(a) A determination by a majority vote of its directors, at least once each year, as to the advisability of retaining the property or security interest so acquired.

(b) Disposition within a period of 60 months after the date of acquisition, or a longer period as the commissioner may approve.

(20) To hold property lawfully held on August 20, 1969, subject to the inclusion of the property in any computation of a limitation on the acquisition for holding of property of a like character under this act.

(21) To service loans for others and to receive a fee for the service.

(22) To purchase capital stock, bonds, debentures, or other obligations of a corporation created pursuant to the authority granted by sections 161 to 165, but subject to the limitations and conditions of those sections.

(23) To execute and deliver guarantees as may be incidental or usual in carrying on the business of a bank.

(24) To purchase, hold, and dispose of stock of the student loan marketing association established pursuant to section 439 of part B of title IV of the higher education act of 1965, Public Law 89-329, 20 U.S.C. 1807-2.

(25) To purchase open accounts, with or without recourse against the seller of an open account, which accounts need not represent an evidence of indebtedness, and including open accounts in connection with export transactions, when the accounts are protected by insurance such as that provided by the foreign credit insurance association and the export-import bank.

(26) To purchase for its own account shares of stock issued by an agricultural credit corporation or a corporation organized solely for the purpose of making loans to farmers and ranchers for agricultural purposes, including the breeding, raising, fattening or marketing of livestock. Unless a bank owns at least 80% of the stock of the corporation, the amount invested by the bank at any 1 time in the stock of the corporation shall not exceed 20% of the unimpaired capital and surplus of the bank.

(27) To make, arrange, participate in, purchase, or sell loans or extensions of credit secured by liens or interests in real estate or leaseholds.

(28) To purchase and hold for its own account any class of voting securities of a bank organized and chartered pursuant to section 54 or the national bank act, chapter 106, 13 Stat. 99, and engaged exclusively in providing services to depository institutions or their officers, directors, and employees, or a bank holding company that owns or controls a bank organized and chartered pursuant to section 54 or the national bank act, chapter 106, 13 Stat. 99, if the stock of a bank holding company is owned exclusively, except to the extent directors' qualifying shares are required by law, by depository institutions, as defined in section 54, and if all subsidiaries of the company engage exclusively in serving depository institutions or their officers, directors, and employees. The amount of securities of a bank or bank holding company held by an investing bank shall not exceed 20% of the capital and surplus of the investing bank.

(29) To purchase, hold, and dispose of mortgages, obligations, or other securities that are or ever have been sold by the federal home loan mortgage corporation pursuant to sections 305 and 306 of title III of Public Law 91-351, 12 U.S.C. 1454 and 1455.

(30) To incur liabilities, borrow money, and issue its notes, bonds, and other obligations.

(31) To exercise all incidental powers as shall be necessary to carry on the business of banking. In order to implement the provisions of this subdivision, the commissioner may promulgate rules pursuant to section 19, or issue declaratory rulings in accordance with the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, or issue orders on applications by 1 or more banks to exercise powers not specifically authorized by this act. It is intended that this subdivision shall vest in the commissioner the discretion and authority to authorize banks to exercise the powers appropriate and necessary to compete with other depository financial institutions and other providers of financial services. In the exercise of the discretion permitted by this subdivision the commissioner shall consider the ability of banks to exercise any additional power in a safe and sound manner, the authority of national banks operating pursuant to federal law or regulation, the powers of other competing entities providing financial services in the banks' service area, and any specific limitations on bank powers contained in this act or in any other state law. On a quarterly basis, the commissioner shall give notice to all banks of rules promulgated or declaratory rulings or determinations issued pursuant to this subdivision.

(32) To own and operate a messenger service or to own or invest in a corporation that operates a messenger service.

Sec. 171. (1) With the written approval of the commissioner, a bank may establish and operate a branch or branches within this state. The commissioner shall not grant approval unless the commissioner is satisfied as to the sufficiency of the capital and surplus of the bank and the prospects of successful operation if established.

(2) An application to establish a mobile branch shall contain a statement by the applying bank that it intends to move the location of the physical structure of the branch from time to time. A branch established pursuant to this subsection shall be considered a mobile branch from the date the branch is approved by the commissioner.

(3) A branch of any bank, except for a mobile branch, shall not be moved from 1 location to another without the written approval of the commissioner. The commissioner shall not require advance notice of or a schedule showing the location of a mobile branch.

(4) With the written approval of the commissioner, a bank may contract with another bank or banks to act as a branch to provide services to the customers of the contracting bank.

(5) Subject to the requirements, limitations, and restrictions of subsections (1) to (3), a state agency established and operating pursuant to chapter 3A may establish and operate additional offices in this state.

Sec. 174. Whenever any bank permanently discontinues the operations of any branch or branch facility, all bills, checks and notes otherwise presentable for acceptance or payment, all deposits to be made or withdrawn, all notices to stop payment of checks to be given and similar functions, shall be deemed transferable to, and treated as a part of, the principal office of the bank. Unless the branch to be discontinued is a mobile branch, notice of the date upon which the branch or branch facility shall discontinue operations shall be posted conspicuously and continuously in the office lobbies of both the branch facility or branch to be discontinued and the principal office of the bank at least 14 days prior to discontinuance.

This act is ordered to take immediate effect.

Secretary of the Senate.

Co-Clerk of the House of Representatives.

Approved -----

Governor.