

Act No. 202
Public Acts of 1995
Approved by the Governor
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**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1995**

Introduced by Senators Bouchard, Berryman, Rogers, Bennett, Schuette and Shugars

ENROLLED SENATE BILL No. 518

AN ACT to amend sections 5, 15, 23, 29, 30, 35, 45, 51, 54, 75, 96, 104b, 121, 125, 126, 128, 129, 130, 141, 142, 143, 144, 145, 146, 151, 151h, 161, 169, 171, 174, 181, 181a, 195, 197, and 292 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," sections 5, 171, and 174 as amended by Act No. 90 of the Public Acts of 1993, sections 23, 121, 125, 169, and 181a as amended by Act No. 104 of the Public Acts of 1987, sections 30 and 197 as amended by Act No. 12 of the Public Acts of 1991, sections 51, 181, and 292 as amended and sections 143, 144, 145, and 146 as added by Act No. 250 of the Public Acts of 1984, sections 54 and 195 as added by Act No. 177 of the Public Acts of 1985, section 104b as added by Act No. 311 of the Public Acts of 1988, sections 129, 130, and 151h as amended by Act No. 200 of the Public Acts of 1988, sections 141 and 142 as amended by Act No. 90 of the Public Acts of 1995, and section 151 as amended by Act No. 405 of the Public Acts of 1994, being sections 487.305, 487.315, 487.323, 487.329, 487.330, 487.335, 487.345, 487.351, 487.354, 487.375, 487.396, 487.404b, 487.421, 487.425, 487.426, 487.428, 487.429, 487.430, 487.441, 487.442, 487.443, 487.444, 487.445, 487.446, 487.451, 487.451h, 487.461, 487.469, 487.471, 487.474, 487.481, 487.481a, 487.495, 487.497, and 487.592 of the Michigan Compiled Laws; to add sections 122, 124, and 125a; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Section 1. Sections 5, 15, 23, 29, 30, 35, 45, 51, 54, 75, 96, 104b, 121, 125, 126, 128, 129, 130, 141, 142, 143, 144, 145, 146, 151, 151h, 161, 169, 171, 174, 181, 181a, 195, 197, and 292 of Act No. 319 of the Public Acts of 1969, sections 5, 171, and 174 as amended by Act No. 90 of the Public Acts of 1993, sections 23, 121, 125, 169, and 181a as amended by Act No. 104 of the Public Acts of 1987, sections 30 and 197 as amended by Act No. 12 of the Public Acts of 1991, sections 51, 181, and 292 as amended and sections 143, 144, 145, and 146 as added by Act No. 250 of the Public Acts of 1984, sections 54 and 195 as added by Act No. 177 of the Public Acts of 1985, section 104b as added by Act No. 311 of the Public Acts of 1988, sections 129, 130, and 151h as amended by Act No. 200 of the Public Acts of 1988, sections 141 and 142 as amended by Act No. 90 of the Public Acts of 1995, and section 151 as amended by Act No. 405 of the Public Acts of 1994, being sections 487.305, 487.315, 487.323, 487.329, 487.330, 487.335, 487.345, 487.351, 487.354, 487.375, 487.396, 487.404b, 487.421, 487.425, 487.426, 487.428, 487.429, 487.430, 487.441, 487.442, 487.443, 487.444, 487.445, 487.446, 487.451, 487.451h, 487.461, 487.469, 487.471, 487.474, 487.481, 487.481a, 487.495, 487.497, and 487.592 of the Michigan Compiled Laws, are amended and sections 122, 124, and 125a are added 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 a federal savings association organized under section 5 of the home owners' loan act, chapter 64, 48 Stat. 132, 12 U.S.C. 1464, or a savings and loan association, building and loan association, or homestead association that is organized under the laws of a state or the District of Columbia and whose deposits are insured by the federal deposit insurance corporation.

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

(i) An organization, 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 organization who own or control either a majority of the shares of that organization or more than 50% of the number of shares voted for the election of directors of that organization at the preceding election, or by trustees for the benefit of the shareholders of that organization.

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

(iv) Owns or controls, directly or indirectly, either a majority of the shares of capital stock of an organization or more than 50% of the number of shares voted for the election of directors of an organization at the preceding election, or controls in any manner the election of a majority of the directors of an organization, or for the benefit of whose shareholders or members all or substantially all the capital stock of an organization 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, a branch bank, branch office, branch agency, additional office, or a 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. An electronic funds transfer facility that is made available to 2 or more federal or state chartered financial institutions pursuant to a state statute that 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. Branch does not include an agent acting under section 151(31).

(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" include, respectively, consolidate or merge, consolidated or merged, consolidating or merging, and consolidation or merger.

(j) "Consolidated bank" means a bank that results from a consolidation between a bank and 1 or more banks, out-of-state banks, national banks, associations, or savings banks.

(k) "Consolidated organization" means an out-of-state bank, national bank, association, or savings bank organized under the laws of another state or the United States that results from a consolidation with 1 or more banks, out-of-state banks, national banks, associations, or savings banks.

(l) "Consolidating organizations" means any combination of banks, out-of-state banks, national banks, associations, or savings banks that have consolidated or are in the process of consolidation as provided in section 125 or 125a.

(m) "Depository institution" means a bank, out-of-state bank, national bank, association, savings bank, or credit union organized under the laws of this state, another state, the District of Columbia, the United States, or a territory or protectorate of the United States.

(n) "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.

(o) "Federal branch" means a foreign bank branch established and operating under the international banking act of 1978.

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

(q) "Foreign bank" means an entity organized and recognized as a bank under the laws of a foreign country that lawfully 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.

(r) "Foreign bank agency" means an office or place of business of a foreign bank, established under this act, the international banking act of 1978, or the laws of another state, that does not exercise trust powers and at which deposits of citizens or residents of the United States are not accepted.

(s) "Foreign bank branch" means a place of business of a foreign bank, located in any state, the District of Columbia, or a territory, or protectorate of the United States, that is not a foreign bank agency, bank, or out-of-state bank, at which deposits are received and that is established and operating as a branch of a foreign bank under this act, the international banking act of 1978, or the laws of another state.

(t) "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.

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

(v) "Institution" means a bank, state agency, state foreign bank branch, 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.

(w) "International banking act of 1978" means the international banking act of 1978, Public Law 95-369, 92 Stat. 607.

(x) "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.

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

(z) "National bank" means a bank chartered by the federal government under the national bank act, chapter 106, 13 Stat. 99.

(aa) "Out-of-state bank" means a banking corporation organized under the laws of another state, the District of Columbia, a territory or a protectorate of the United States whose principal office is located in a state other than this state, the District of Columbia, a territory or a protectorate of the United States, and whose deposits are insured by the federal deposit insurance corporation.

(bb) "Publication" and "published" mean publication in a newspaper printed in the English language and published and circulated in the county where the depository institution is located or, if there is no newspaper published and circulated in the county where the depository institution is located, in any newspaper having general circulation in the county.

(cc) "Savings bank" means a savings bank organized under the laws of a state, the District of Columbia, a territory or protectorate of the United States, or of the United States, whose deposits are insured by the federal deposit insurance corporation.

(dd) "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, out-of-state banks, national banks, associations, or savings banks.

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

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

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

(hh) "Stock association" means an association with authority to issue shares of voting capital stock.

Sec. 15. (1) During his or her term of office or employment, the commissioner, a deputy commissioner, or an examiner of the bureau shall not be a shareholder, either directly or indirectly, of an institution subject to this act, of an out-of-state bank, of a national bank, or of any affiliate or subsidiary thereof.

(2) During his or her term of office or employment, the commissioner, a deputy commissioner, or an examiner of the bureau shall not be an officer, director, or employee of an institution subject to this act, of an out-of-state bank, of a

national bank, or of any affiliate or subsidiary thereof or receive, either directly or indirectly, a fee, perquisite, reward, emolument, or other compensation from any such entities.

(3) The commissioner, a deputy commissioner, or examiner shall not borrow money, directly or indirectly, from an institution subject to this act, except for a mortgage loan upon the mortgagor's own home or upon installment debt transferred to an institution in the regular course of business by a seller of consumer goods.

(4) Subsection (3) does not apply to loans made prior to the person's respective term of office.

(5) If the commissioner, a deputy commissioner, or an examiner of the bureau borrows from, or is or becomes indebted to, an institution subject to this act, an out-of-state bank, or a national bank, he or she shall make a written report to the bureau, or to the governor in the case of the commissioner, stating the date and amount of the loan or indebtedness, the security given on the loan, and the purpose for which the proceeds have been or are to be used.

Sec. 23. (1) Each institution together with its subsidiaries and service corporations shall be subject to examination of the commissioner. The commissioner, or the commissioner's authorized agent, shall examine, with or without prior notice, 1 or more times in each calendar year the condition and affairs of each institution. One examination shall be known as the annual examination. The commissioner shall examine an institution under the commissioner's jurisdiction when requested by its board of directors. In connection with an examination, the commissioner, or the commissioner's authorized agent, may examine on oath a director, officer, agent, employee, or shareholder of an institution concerning the affairs and business of the institution. The commissioner shall ascertain whether the institution transacts its business in the manner prescribed by law and the rules promulgated pursuant to law. The commissioner, or the commissioner's authorized agent, may make an examination of an affiliate, subsidiary, or service corporation necessary to disclose fully the relation between an institution and the affiliate, subsidiary, or service corporation and the effect of the relation upon the institution.

(2) The commissioner may examine the branch or branches located in this state of an out-of-state bank as permitted by the federal deposit insurance act, chapter 967, 64 Stat. 873.

(3) In fulfilling the requirements of subsections (1) and (2), the commissioner may use an examination made pursuant to the federal reserve act, chapter 6, 38 Stat. 251, or the federal deposit insurance act, or the law of another state governing the activities of out-of-state banks in that state. The commissioner may require the institution to furnish a copy of any report required by a federal or state bank regulatory agency.

(4) An examination required by this section shall include the fiduciary activities of the institution.

(5) The commissioner may contract with other state bank regulatory agencies to assist in the conduct of examinations of banks with 1 or more branches located in other states and in examinations of out-of-state banks with 1 or more branches located in this state.

Sec. 29. (1) The commissioner and all deputies, agents, and employees of the bureau shall be bound by oath to keep secret all facts and information obtained in the course of their duties, except if the person is required pursuant to law to report upon, take official action, or testify in any proceedings regarding the affairs of an institution.

(2) Notwithstanding subsection (1), the commissioner may make disclosure to persons at such times as is in the public interest within the purposes of this act.

(3) The provisions of this section are not applicable to, and do not prohibit the furnishing of information or documents to, the federal or out-of-state bank, association, or savings bank regulatory agencies, and are not applicable to disclosures made to interested parties by the commissioner, at his or her discretion, with respect to supervisory actions, examinations, or applications.

Sec. 30. (1) Except with respect to rules promulgated under section 19, a cease and desist order made under sections 35 to 46, and an order made on an application seeking approval of the commissioner under section 53, 54, 121, 125, 130b, 141, 142, 144, 151(32), 151h, 157, or 171, an institution or an interested party who is dissatisfied with an order, ruling, or finding issued by the commissioner may request a reconsideration of the order, ruling, or finding within 10 days after the issuance of the order, ruling, or finding. Within 30 days after the receipt of a written request for reconsideration, the commissioner shall set the matter down for a formal hearing unless a formal hearing has been held before the issuance of the order, ruling, or finding. The commissioner may conduct a formal hearing before the issuance of an order, ruling, or finding.

(2) A hearing held under subsection (1) shall be conducted pursuant to 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.

(3) The commissioner shall require an entity making an application under section 53, 54, 121, 125, 130b, 141, 142, 144, 151(32), 151h, 157, or 171 to give notice of the application by publication. The applicant, within 10 days after the acceptance of an application, shall publish notice in a newspaper or newspapers of general circulation in the community or communities in which the bank, branch, state foreign bank branch, state agency, or additional office of a state foreign bank branch or state agency, is to be located and in which the bank, banks, bank holding company, state foreign bank

branch, or state agency involved in the subject application are located. Publication shall be in the form prescribed by the commissioner and be 1 time per week for 2 consecutive weeks with an interval between publications of not less than 5 days. Proof of publication shall be filed with the commissioner within 10 days after the date of the second publication of notice.

(4) An interested party who desires to protest the application shall file a written notice of protest with the commissioner and with the applicant within 10 days after the date of the second publication of notice. Within 30 days after the date of the second publication of notice, an interested party who has filed a written notice of protest shall file with the commissioner and with the applicant, a written statement setting forth all of the following:

(a) A list of specific items in the application which are the basis for the protest and an explanation of the reasons for the protest.

(b) A statement of the facts supporting the reasons for the protest including economic and financial data.

(c) A request for oral argument if desired.

(5) Within 40 days after the date of the second publication of notice, the applicant may file with the commissioner and with the parties that have filed written notice of protest, written material in response to the written statement and may request oral argument before the commissioner if oral argument has not been requested by an interested party who has filed a written notice of protest.

(6) Oral argument may be held at the commissioner's discretion if neither the applicant nor an interested party requests oral argument.

(7) An oral argument, if scheduled as provided in this section, shall be held within 55 days after the date of the second publication of notice.

(8) Only the applicant and those interested parties who have filed written statements under subsection (4) may participate in the oral argument. Oral argument may be made by each party or by an authorized representative. Oral argument shall be limited to issues raised in the materials submitted in connection with the application and the protest. One hour shall be permitted to each participant other than the applicant for oral argument. The applicant shall have as much time as all other participants have been permitted. The commissioner shall have a stenographic record made of the oral argument, with costs to be allocated equally among the parties requesting oral argument unless otherwise provided by rule of the commissioner.

(9) The commissioner shall issue an order within 100 days after the filing of the application. If an application is denied, or if a protested application is approved, the commissioner shall provide a detailed written explanation of the basis of the commissioner's decision. Appeal of an order shall not be made by a party without first requesting a reconsideration of the order under subsection (10).

(10) The applicant or an interested party who filed written statements under subsection (4) and who participated in the oral argument, if held, who is dissatisfied with an order of the commissioner, may within 5 days after the issuance of the order file with the commissioner a written request for reconsideration of the order stating the reasons for the request. The commissioner, within 10 days of receiving the request for reconsideration, shall render a decision on the request for reconsideration. If a petition for reconsideration is granted, the commissioner shall grant the applicant and all interested parties 10 days to file written arguments or briefs. The commissioner may conduct an oral argument after granting a petition for reconsideration. The argument shall be held within 10 days after granting the petition. The commissioner shall issue a final order within 20 days after granting the petition for reconsideration.

(11) The commissioner may promulgate rules pursuant to Act No. 306 of the Public Acts of 1969, to provide the application procedure. The rules shall be consistent with this section.

Sec. 35. (1) If in the opinion of the commissioner any institution is engaging or has engaged, or the commissioner has reasonable cause to believe that the institution is about to engage, in an unsafe or unsound practice in conducting the business of the institution or is violating or has violated, or the commissioner has reasonable cause to believe that the institution is about to violate, a law or rule, the commissioner may issue and serve upon the institution a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged unsafe or unsound practice or violation, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the institution. The hearing shall be not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the commissioner at the request of the institution. Unless the institution appears at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the cease and desist order. In the event of such consent, or if upon the record made at the hearing, the commissioner finds that an unsafe or unsound practice or violation specified in the notice of charges has been established, the commissioner may issue and serve upon the institution an order to cease and desist from the practice or violation. The order may require the institution and its directors, officers, employees, and agents to cease and desist from the practice or violation and to take affirmative action to correct the conditions resulting from any such practice or violation.

(2) A cease and desist order becomes effective at the expiration of 30 days after the service of the order upon the institution, except in the case of an order issued upon consent which shall become effective at the time specified in the order, and shall remain effective and enforceable as provided in the order, except to the extent it is stayed, modified, terminated, or set aside by action of the commissioner or a reviewing court.

(3) Within 10 days after the institution has been served with a temporary cease and desist order, the institution may apply to the circuit court for the county in which the home office of the institution is located for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of the administrative proceedings under the notice of charges served upon the institution under subsection (1).

(4) If the commissioner determines that an out-of-state bank branch located in this state is acting in violation of the laws of this state or that the activities of the branch are being conducted in an unsafe and unsound manner, the commissioner may undertake enforcement actions and proceedings as would be permitted if the branch were a bank. If the commissioner determines that a national bank is acting in violation of the laws of this state, the commissioner shall notify the comptroller of the currency and the Michigan attorney general.

Sec. 45. (1) A service required or authorized to be made by the commissioner under sections 35 to 46 may be made by registered or certified mail, or in any other manner reasonably calculated to give actual notice as the commissioner by rule or otherwise may provide. Copies of a notice or order served by the commissioner upon an institution or any director or officer of an institution or other person participating in the conduct of the institution's affairs, pursuant to the provisions of sections 35 to 46, shall also be sent to the appropriate federal and out-of-state bank, association, and savings bank regulatory agencies.

(2) In connection with the issuance of a cease and desist order under this act, the commissioner shall inform the governor of his or her intent to issue the order. Failure to inform the governor renders the order invalid.

Sec. 51. (1) A person shall not engage in the business of banking in this state unless authorized by this act, the laws of another state, the national bank act, chapter 106, 13 Stat. 99, the international banking act of 1978, or if engaged in the business of banking on the effective date of this act under authority of former Act No. 341 of the Public Acts of 1937.

(2) Except for acting as an escrow agent, only an individual or corporation may act as a fiduciary in this state. A corporation acting as a fiduciary may do so only if the corporation is 1 of the following:

(a) A bank or state foreign bank branch authorized to exercise trust powers under this act, or a national bank authorized to exercise trust powers under the national bank act, chapter 106, 13 Stat. 99, or authorized to conduct trust business in this state prior to the effective date of the act that added section 122.

(b) An out-of-state bank, that is authorized to exercise trust powers under the law of the state where it is organized, to the extent a bank may exercise trust powers under this act.

(c) A nonbanking corporation to the extent that it may be specifically authorized to act as fiduciary in this state by another statute of this state.

Sec. 54. (1) Any number of depository institutions may apply to incorporate a bank exclusively to serve depository institutions or their officers, directors, and employees.

(2) A depository institution shall apply to the commissioner for permission to organize a bank under this act, which application shall be on forms prescribed by the commissioner and set forth the information the commissioner requires.

(3) The commissioner shall examine the information contained in the application and make any other investigation the commissioner considers necessary pertaining to the organization of the new bank. The commissioner shall issue to the applicants, within the time period provided in section 30, written notice of approval or disapproval of the application.

(4) A bank organized pursuant to this section is not subject to the provisions of section 53, but shall comply with all other provisions of the act, except as otherwise specifically provided in rules of the commissioner promulgated under subsection (7).

(5) The shares of stock of a bank organized pursuant to this section shall be owned exclusively by depository institutions.

(6) As used in this section, "applicant" means the depository institutions making an application pursuant to this section.

(7) The commissioner may promulgate rules pursuant to 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, to implement and enforce this section. The rules shall be consistent with this section.

Sec. 75. Whenever a vote of the holders of shares of stock is required in this act, those provisions shall apply only to the voting stock in the bank, out-of-state bank, national bank, association, or savings bank, voting by classes.

Sec. 96. (1) A bank shall be managed by a board of not less than 5 nor more than 25 directors. The first board shall be elected by the incorporators at a meeting held before the bank is authorized to commence business and thereafter at the annual meeting of the shareholders or at any subsequent meeting called for the purpose of which notice is given as provided in the bylaws of the bank. The board of directors may fill any vacancy on the board for the current year. The shareholders may elect not to exceed 2 less than the full board and the unfilled directorships are considered vacancies and may be filled by the board of directors. Directors shall hold office until their successors are elected and have qualified.

(2) The board of directors shall meet not less than 6 times per fiscal year for the purpose of carrying out their duties under this section. The minutes of each meeting shall be kept and signed by the presiding officer and the secretary of the meeting. A majority of the board of directors constitutes a quorum for the transaction of business.

(3) The commissioner may call a meeting of the board of directors of any bank, for any purpose, by giving a notice of the time, place, and purpose of the meeting at least 3 days prior to the meeting date to the directors by personal service, by registered or certified mail, or by publication at least once in each week for 4 consecutive weeks prior to the meeting date.

Sec. 104b. For purposes of sections 100 to 104c, "bank" includes all banks, out-of-state banks, national banks, associations, and savings banks absorbed in a consolidation or merger and the consolidated bank, so that a person who is or was a director, officer, employee, or agent of the bank, out-of-state bank, national bank, association, or saving bank or is or was serving at the request of the bank, out-of-state bank, national bank, association, or saving bank as a director, officer, partner, trustee, employee, or agent of another bank, out-of-state bank, national bank, association, or saving bank, foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, shall hold the same position with respect to the consolidated bank as he or she would if he or she had served the consolidated bank in that capacity.

Sec. 121. (1) With the approval of the commissioner based upon an examination or other appropriate analysis of either the buying or selling organization, or both, and upon the affirmative vote of a majority of the members of its board of directors and of the holders of 2/3 of its stock entitled to vote, a bank may do either or both of the following:

(a) Sell all or substantially all of its assets of every kind, character, and description, including, but not limited to, its goodwill and corporate franchises, to any bank, out-of-state bank, national bank, association, or savings bank.

(b) Purchase all or substantially all of the assets of every kind, character, and description, including, but not limited to, its goodwill and corporate franchises, and assume the liabilities of any bank, out-of-state bank, national bank, association, or savings bank.

(2) The consideration for a purchase and sale under this section may include shares of stock of the purchasing bank, out-of-state bank, national bank, association, or savings bank. A purchase and sale shall not be made to defeat or defraud any of the creditors of the organizations.

(3) Certified copies of all shareholders' and directors' proceedings under this section shall be filed with the commissioner and shall contain in detail the particulars relating to the sale and purchase, including a copy of the agreement of sale and purchase.

Sec. 122. (1) A bank may sell 1 or more of its branches, without selling all or substantially all of the bank, to a bank, out-of-state bank, national bank, association, or savings bank located in a state whose laws would permit a bank to purchase 1 or more branches in that state of the purchasing depository institution.

(2) A bank may purchase 1 or more branches, without purchasing all or substantially all of the depository institution, from a bank, out-of-state bank, national bank, association, or savings bank.

(3) A bank that purchases 1 or more branches under subsection (2) shall obtain the commissioner's approval under section 171 before operating the purchased branch or branches.

Sec. 124. Notwithstanding the Riegle-Neal interstate banking and branching efficiency act of 1994, Public Law 103-328, 108 Stat. 2338, to the contrary, there shall be no limit upon the amount or share of deposits held or controlled in this state by any bank, out-of-state bank, national bank, or bank holding company on a consolidated basis.

Sec. 125. (1) Subject to approval by the commissioner, a bank may consolidate with any number of consolidating organizations to form a consolidated bank.

(2) The approval of the commissioner shall be based on an examination or other appropriate analysis of each consolidating organization and the agreement of consolidation. A consolidation shall not be made to defeat or defraud any of the creditors of any of the consolidating organizations.

(3) A majority of the directors of each organization proposing to consolidate may enter into an agreement, signed by them, or by their designated representative or representatives, and under the seals of the respective organizations,

prescribing the terms and conditions of consolidation, the mode of carrying the consolidation into effect, and stating other facts required or permitted by the provisions of this act and any laws of the United States that are to be set out in the articles, as can be stated in the case of a consolidation, to be stated in such altered form as the circumstances of the case require, as well as the manner of converting the shares of each of the consolidating organizations, into shares of the consolidated organization, with other details and provisions as are considered necessary.

(4) The proposed consolidation agreement shall be submitted to the shareholders of each consolidating organization, at a separate meeting called by the directors for the sole purpose of considering the agreement. A notice indicating the time, place, and purpose of the meeting shall be given by publication at least once a week for 4 consecutive weeks preceding the date of the meeting. A copy of the notice shall also be mailed to each shareholder of each consolidating organization at his or her last known address as appears from the stock records of the consolidating organizations, by registered or certified mail, at least 10 days prior to the date of the meeting. No notice by publication or otherwise shall be required if it is waived. At the meeting, the proposed consolidating agreement shall be considered and a vote by ballot, in person or by proxy, taken for the adoption or rejection of the agreement. At the meeting, each share of stock shall entitle the holder to 1 vote. If the votes of shareholders of each consolidating organization representing $\frac{2}{3}$ of the total number of shares of each class of each consolidating organization's outstanding capital stock are cast for the adoption of the agreement, that fact shall be certified on the agreement by the cashier or assistant cashier, secretary or assistant secretary of each of the consolidating organizations. If the agreement is adopted and certified, it shall be acknowledged by the president or a vice-president of each of the consolidating organizations, before any officer authorized to take acknowledgment of deeds, to be the respective act, deed, and agreement of each of the consolidating organizations. If an out-of-state bank, national bank, association, or savings bank is a consolidating organization and approval is required by the laws of another state or of the United States, that organization shall furnish a certified copy of consent or approval of the appropriate state or federal regulator of the consolidation to the commissioner. The consolidation agreement required by this section shall be filed with the commissioner who shall certify upon the agreement the date it was filed. The filing with the commissioner shall be the act of consolidation of the consolidating organizations. The consolidation agreement or a copy certified by the commissioner, is evidence of the agreement and act of consolidation of the consolidating organizations and the observance and performance of all necessary acts and conditions precedent to the consolidation. A bank holding company that is the sole shareholder of all of the outstanding issued stock of a bank, out-of-state bank, or national bank that is a consolidating organization in a proposed consolidation may waive the shareholder meeting requirement of this subsection.

(5) In effecting a consolidation, stock of the consolidated bank may be issued in accordance with this act and as provided by the terms of the consolidation agreement free from any preemptive rights of the shareholders of the respective consolidating organizations.

Sec. 125a. (1) A bank may consolidate with any number of consolidating organizations to form a consolidated organization in accordance with the laws under which the consolidated organization is chartered, if the following apply:

(a) Consolidation is permitted by the laws under which each consolidating organization is organized and the appropriate regulator or regulators approve the consolidation.

(b) The consolidating organizations provide notice to the commissioner by filing a copy of the application for consolidation within 10 days after the date the application is filed with the appropriate federal regulator.

(c) The consolidated organization complies with section 126(4) with respect to notice of consolidation, but that notice is limited to a court, public tribunal, agency, or officer of this state.

(2) Subsection (1)(a) does not apply after May 31, 1997.

Sec. 126. (1) When filing and approval of the consolidation agreement as required by section 125 have been completed, the corporate existence of each consolidating organization is merged into and continued in the consolidated bank. To the extent authorized by this act, the consolidating bank possesses all the rights, interests, privileges, powers, and franchises and is subject to all the restrictions, disabilities, liabilities, and duties of each of the consolidating organizations. The title to all property, real, personal, and mixed, is transferred to the consolidated bank, and shall not revert or be in any way impaired by reason of this act.

(2) A consolidated bank holds and enjoys the same and all rights of property, franchises, and interests, including appointments, designations, and nominations and all other rights and interests in any fiduciary capacity, in the same manner and to the same extent as those rights and interests were held or enjoyed by each consolidating organization at the time of the consolidation. If a consolidating organization at the time of consolidation was acting under appointment of any court in a fiduciary capacity, the consolidated bank is subject to removal by a court of competent jurisdiction.

(3) A consolidated bank shall file with each court or other public tribunal, agency, or officer in any state by which any of the consolidating organizations shall have been appointed in the capacity of fiduciary or agent, and in the court file of each estate, suit, or any other proceeding in which any of them has been acting, an affidavit setting forth the fact of consolidation, the name of each consolidating organization, the name of the consolidated bank, the location of its main

office, and the amount of its capital and surplus. This subsection does not require filing of an affidavit related to any consolidating organization that after the consolidation retains the same corporate name, charter, and main office location.

Sec. 128. (1) Whether it maintains a presence in this state, a consolidated organization or any of its successors in interest are subject to service of process in a proceeding in this state for enforcement of any obligation incurred in this state by any consolidating organization that is or was a party to a consolidation.

(2) An action or proceeding by or against any of the consolidating organization in a court or any other public tribunal of this state may be prosecuted to judgment, as if consolidation had not taken place, or the consolidated bank or consolidated organization may be substituted in the place of any consolidating organization whose existence has ceased.

Sec. 129. (1) A bank with the commissioner's approval, an out-of-state bank, or national bank that consolidates its operations with, or purchases the assets or 1 or more branches of, another bank, out-of-state bank, national bank, association, or savings bank may operate the consolidated or acquired bank, out-of-state bank, national bank, association, or savings bank branch or branches located in this state as a branch or branches of the consolidated or acquired bank.

(2) A bank, out-of-state bank, national bank, association, or savings bank operating a branch in this state as the result of a consolidation or purchase of assets or a branch or branches under this act shall provide notice of that operation to the commissioner within 30 days after the effective date of the consolidation or purchase.

Sec. 130. (1) As used in this section:

(a) "Bank holding company" means a company as defined in the bank holding company act of 1956, chapter 240, 70 Stat. 133, which is not a bank or national banking association and which is a bank holding company approved by the board of governors of the federal reserve system pursuant to section 3(d) of the bank holding company act of 1956, chapter 240, 70 Stat. 134, 12 U.S.C. 1842, or will become such an approved bank holding company prior to or upon the completion of the consolidation provided in this section.

(b) "Existing bank" means a bank engaged in the business of banking prior to the consolidation provided in this section.

(c) "New bank" means a bank not engaged in the business of banking prior to the consolidation provided in this section.

(d) "Existing association" means a stock association engaged in the savings and loan business prior to the consolidation provided in this section.

(2) Notwithstanding any other section of this act:

(a) Natural persons as provided in section 52 may organize and incorporate as the incorporator or incorporators a new bank having its principal office in the same city or village as the principal office of an existing bank or existing association in the manner specified in section 53, but without regard to section 53(2) and (3)(b), (c), (d), and (e), and section 55, if the new bank is organized for the sole purpose of effecting its consolidation under section 125 with an existing bank or existing association having its principal office in the same city or village as the new bank and if upon completion of the consolidation a bank holding company becomes the owner of all of the outstanding voting shares of the consolidated organization, other than shares necessary to qualify directors. The new bank and the existing bank may consolidate under the charter of either bank. The new bank and the existing association shall consolidate under the charter of the new bank and sections 125, 126, 127, and 128 are applicable with respect to the consolidation except that the agreement of consolidation may provide that shares of either or both the consolidating organizations, in lieu of being converted into shares of the consolidated organization, will be converted into shares or other securities of the bank holding company.

(b) A shareholder of the existing bank or existing association who votes against the consolidation, or who has given notice in writing to that bank or association at or prior to the meeting called for the purpose of considering the agreement of consolidation that he or she dissents from the consolidation, is entitled to receive in cash from the consolidated organization the fair value of all shares held by him or her, if and when the consolidation is consummated, upon written request made to the consolidated organization at any time within 30 days after the date of consummation of the consolidation, accompanied by the surrender of his or her stock certificates. Upon the filing of the written request and the surrender of stock certificates, the shareholder shall cease to have any of the rights of a shareholder except the right to be paid the fair value of his or her shares. The request having been made shall not be withdrawn except with the written consent of the consolidated organization. The fair value of the shares shall be determined, as of the date on which the meeting of shareholders of the existing bank or existing association was held adopting the agreement of consolidation, by a qualified and independent appraiser selected by the commissioner upon written application filed by a dissenting shareholder entitled to receive the fair value of his or her shares or by the consolidated organization. The appraiser selected shall file a written report of his or her appraisal with the commissioner, who in turn shall forward copies to all interested parties. The valuation determined by the appraiser is final and binding on all parties as to the

fair value of the shares. The consolidated organization shall pay to each dissenting shareholder entitled the fair value of his or her shares within 30 days following the receipt of the written report of the appraiser. The fees and expenses of the appraisal, which shall be approved by the commissioner, shall be paid by the consolidated organization. The agreement of consolidation shall provide the manner of disposing of the shares of the existing bank or existing association surrendered by the dissenting shareholders.

(c) The consolidated organization, whether or not it is the new bank, the existing bank, or any national bank resulting from a consolidation or merger of an existing national bank, and a new national bank having its principal office in the same city or village as the principal office of the existing national bank under the provisions of the national bank laws in a situation where the new national bank was organized for the express purpose of effecting its consolidation or merger with the existing national bank and upon the completion of the consolidation or merger a bank holding company becomes the owner of all of the outstanding voting shares of the resulting consolidated national bank, other than shares necessary to qualify directors, shall have the right, notwithstanding any of the requirements, restrictions, and limitations of section 171 or any other provision of law, to retain and continue to operate or to establish and operate as its principal office the principal office of the existing bank, existing association, or existing national bank and as its branches all branches of the existing bank, existing association, or existing national bank which were legally operating immediately prior to the consolidation or merger, whether or not the principal office or the branch or branches could, at the time the consolidation or merger becomes effective, have been established or reestablished consistently with the requirements, restrictions, and limitations of section 171, or any other provision of law.

(3) For the purposes of this section consolidation and merger are interchangeable and each means and includes the consolidation or merger of banks, stock associations, or national banks in any manner provided by this act or by federal banking laws.

Sec. 141. (1) A foreign bank authorized by its charter or articles of incorporation to engage in the business of banking, that has complied with the laws of the foreign country in which it is chartered or incorporated, and that does not operate a federal agency in this state, may submit to the commissioner an application to establish a state agency.

(2) A foreign bank authorized by its charter or articles of incorporation to engage in the business of banking, and that has complied with the laws of the jurisdiction in which it is chartered or incorporated, and that has not previously designated any other state as its home state under provisions of the international banking act of 1978, may submit an application to the commissioner to establish and operate a state foreign bank branch.

(3) Upon written notification to the commissioner, a foreign bank authorized by its charter or articles of incorporation to engage in the business of banking, and that has complied with the applicable laws of the jurisdiction in which it is chartered or incorporated, may establish and operate a foreign bank representative office in this state.

(4) The commissioner shall examine the information and statements contained in the application submitted under subsection (1) or (2) and make any investigation the commissioner considers necessary regarding the financial and managerial resources of the applicant. The commissioner shall also consider whether there exists an opportunity for a bank having its principal place of business in this state to conduct business in the foreign country in which the applicant is chartered or incorporated.

(5) If, after examining the information contained in the application, conducting any investigation considered necessary, and receiving all necessary application and investigation fees from the applicant, the commissioner is satisfied as to the sufficiency of the capital and surplus of the bank and the prospects of successful operation if established, and the commissioner determines approval of the application would be in the public interest, the commissioner shall issue to the applicant a certificate of authority to conduct business in this state at the address specified in the certificate.

Sec. 142. (1) Except as otherwise provided in this act or other law of this state, operations of a foreign bank at a state agency shall be conducted with the same rights and privileges and subject to the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply under this act to a bank doing business at the same location, except that a state agency or an additional office of a state agency shall not accept nor solicit deposits from citizens or residents of the United States or exercise trust powers. Operations of a foreign bank representative office are limited to representational functions.

(2) With the prior approval of the commissioner, a foreign bank that operates a state agency or state foreign bank branch is permitted to establish and operate additional offices subject to section 171. For purposes of section 171, the principal office of a foreign bank operating under this act shall be its first state agency or state foreign bank branch established in this state.

(3) A state agency or state foreign bank branch shall not be required to become an insured bank, as insured bank is defined in section 3 of the federal deposit insurance act, chapter 967, 64 Stat. 873, 12 U.S.C. 1813, unless the state foreign bank branch accepts deposits described in section 3 of the federal deposit insurance act.

(4) A foreign bank that operates a state agency or state foreign bank branch in this state shall maintain the accounts and conduct the business of the state agency or state foreign bank branch independently of the accounts and business of the parent foreign bank.

(5) The commissioner may, at any time, investigate the accounts and business of a state agency, state foreign bank branch, or foreign bank representative office operating in this state, and for that purpose may require that a foreign bank make available in this state for examination all the books, accounts, records, and files of the foreign bank that contain information regarding the accounts and business of that state agency, state foreign bank branch, or foreign bank representative office.

Sec. 143. A foreign bank operating a state agency or state foreign bank branch in this state shall, at the times and in the form prescribed by the commissioner, file with the commissioner reports written in the English language, showing the amount of its assets and liabilities and containing other information requested by the commissioner. A foreign bank that fails to comply with this section is subject to the penalty provided in section 226.

Sec. 144. (1) A state agency or state foreign bank branch may be converted into a federal agency or federal branch pursuant to the international banking act of 1978.

(2) A federal agency or federal branch may be converted, with the written approval of the commissioner, into a state agency or state foreign bank branch. If the converted state agency or state foreign bank branch succeeds to assets in which it does not have the legal power to invest, or liabilities which it does not have power to incur, those assets or liabilities shall be disposed of within the next 12 calendar months of the date of the conversion, except that the commissioner may extend this period in the interest of an orderly disposition of those assets or liabilities. The disposition period shall not exceed 3 years.

Sec. 145. (1) If, in the opinion of the commissioner, a foreign bank is engaging, or has engaged, or the commissioner has reasonable cause to believe that the foreign bank is about to engage, in an unsafe or unsound practice in conducting the business of a state agency, state foreign bank branch, or foreign bank representative office, or is violating, has violated, or the commissioner has reasonable cause to believe that the foreign bank is about to violate, a state or federal law or a state or federal rule or regulation, the commissioner may issue and serve upon the foreign bank a notice of intent to revoke the foreign bank's certificate of authority. The notice shall inform the foreign bank of its right to request a hearing within 10 days.

(2) If the foreign bank requests a hearing, the commissioner shall hold a hearing which shall be conducted 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.

(3) Within 60 days after the hearing, the commissioner shall file a written decision containing his or her findings and serve a copy upon the foreign bank.

Sec. 146. Authority to operate a state agency, state foreign bank branch, or foreign bank representative office shall terminate upon dissolution of the foreign bank, or the commissioner's revocation of the foreign bank's authority to operate in this state. Upon termination of the authority to operate a state agency or state foreign bank branch, the commissioner shall become agent for the foreign bank for service of process and shall exercise the same powers, including the right to appoint a receiver, over the assets and liabilities of the state agency or state foreign bank branch as are permitted over a state chartered bank in liquidation pursuant to sections 111 and 251 to 268.

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 in its articles, a bank has the powers conferred by this act and the following additional corporate powers:

(1) To have a corporate seal, that 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 the 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, chapter 6, 38 Stat. 251.

(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, 12 U.S.C. 1422, 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. 1087-2.

(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, 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 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 the federal home loan mortgage corporation act, title III of the emergency home finance act of 1970, 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 enter into agency relationships with affiliated depository institutions. A bank or an affiliated depository institution in its capacity as an agent under this subsection may do all of the following:

(a) Receive deposits.

(b) Permit withdrawals of deposits.

(c) Renew time deposits.

(d) Close loans.

(e) Service loans.

(f) Receive loan payments.

(g) Engage in any activity specifically authorized by this act or by order or declaratory ruling of the commissioner.

(32) 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.

(33) As authorized by order or declaratory ruling of the commissioner, to exercise at its branch in another state such powers consistent with the safe and sound conduct of the business of banking and granted by the laws of the state where the branch is located.

(34) As authorized by order or declaratory ruling of the commissioner, to exercise such further powers consistent with the safe and sound conduct of the business of banking as are granted by the laws of the United States to national banks.

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

(36) To engage in any aspect of the insurance and surety business as an agent, broker, solicitor, or insurance counselor as provided under the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.100 to 500.8302 of the Michigan Compiled Laws.

(37) To own an insurance agency in whole or in part as provided under Act No. 218 of the Public Acts of 1956.

Sec. 151h. (1) A bank may invest, in aggregate not more than 5% of the bank's total assets in 1 or more service corporations. An investment under this subsection is subject to limitations and approvals established by rules promulgated by the commissioner.

(2) As used in this section, "service corporation" means a corporation organized under the laws of any 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, out-of-state bank, national bank, association, or savings bank, or subsidiaries or affiliates thereof, the voting stock of which is owned directly or indirectly by 1 or more banks, out-of-state banks, national banks, associations, or savings banks.

(3) To implement this section, the commissioner may promulgate rules pursuant to 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. In the alternative the commissioner may issue orders pursuant to section 30(3) to (10) on applications by 1 or more banks for a determination that a proposed activity is permitted by this section. Notwithstanding subsection (2), the commissioner may not, by order or rule, determine that third party real estate brokerage services are incidental to the conduct of a banking business as provided in this act, except that the commissioner may, by order or rule, determine that real estate brokerage services provided to the bank or an affiliate or subsidiary of the bank for property owned by or in which the bank, subsidiary, or affiliate has an interest are incidental to the conduct of a banking business as provided in this act.

(4) The commissioner, on at least a quarterly basis, shall give notice to all banks of any rules, orders, or determinations issued pursuant to this section.

Sec. 161. (1) A bank possessing a capital and surplus of \$1,000,000.00 or more may file application with the commissioner for permission to exercise, upon conditions and under such regulations as may be prescribed by the commissioner, the following powers:

(a) To establish branches in foreign countries for the furtherance of foreign commerce of the United States and to act, if required to do so, as fiscal agents of the United States.

(b) To invest an amount not exceeding in the aggregate 10% of its paid in capital stock and surplus in the stock of 1 or more banking organizations or corporations chartered or incorporated under the laws of the United States or of any state, territory, or protectorate of the United States, and principally engaged in international or foreign banking, either directly or through the agency, ownership, or control of foreign banks.

(c) To acquire and hold, directly or indirectly, stock or other evidences of ownership in 1 or more foreign banks that are not engaged, directly or indirectly, in any activity in the United States except as, in the judgment of the commissioner, is incidental to the international or foreign business of the foreign bank, and to make loans or extensions of credit to or for the account of the foreign bank in the manner and within the limits prescribed by the commissioner by general or specific rule or ruling.

(2) An application under this section shall specify the name and capital and surplus of the bank filing it, the powers applied for and the places where the banking operations are to be carried on. The commissioner may approve or reject the application in whole or in part if for any reason the granting of the application is considered inexpedient and from time to time may increase or decrease the number of places where the banking operations may be carried on.

Sec. 169. (1) An institution may become the owner or lessor of personal property acquired upon the specific request and for the use of a customer and may incur additional obligations as may be incident to becoming an owner or lessor of such property.

(2) The lease transactions shall not constitute obligations for the purpose of sections 196 to 198 and lease payments shall constitute rent rather than interest.

(3) The provisions of this section shall not be considered to exempt from general property taxation any personal property of an institution or national bank that is leased, loaned, or otherwise made available to and used by a private individual, association, or corporation in connection with a business conducted for profit. The personal property shall be subject to taxation in the same amount and to the same extent as though the lessee or user were the owner of the property. Taxes shall be assessed to the lessees or users of the property and collected in the same manner as taxes assessed to owners of personal property, except that the taxes shall not become a lien against the property. When due, the taxes shall constitute a debt due from the lessee or user to the unit of government for which the taxes were assessed.

(4) Notwithstanding the restrictions under subsection (1), an institution may acquire and hold personal property, including equipment, for the purpose of leasing the property or obtaining an assignment of a lessor's interest in a lease of the property. An institution shall not acquire personal property under this section if the acquisition results in an inventory of personal property not leased in excess of 20% of the institution's capital and surplus.

Sec. 171. (1) With the written approval of the commissioner, a bank may establish and operate a branch or branches within any state, the District of Columbia, or a territory or protectorate of the United States. 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 a 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 1 or more banks, out-of-state banks, national banks, associations, or savings banks to act as a branch to provide services to the customers of the contracting bank. The approval of the commissioner is not required for the powers granted to a bank under section 151(31).

(5) With the written approval of the commissioner, 1 or more out-of-state banks, national banks, associations, or savings banks may contract with a bank to provide services to the customers of the contracting out-of-state bank, national bank, association, or savings bank. This subsection shall not be construed to limit the powers granted to a bank under section 151(31).

(6) Subject to the requirements, limitations, and restrictions of subsections (1) to (3), a state agency or state foreign bank branch established and operating pursuant to chapter 3A may establish and operate additional offices in the United States and its territories and protectorates.

(7) An out-of-state bank located in a state, the District of Columbia, or a territory or protectorate of the United States whose laws permit the establishment in that state, district, territory, or protectorate of a branch by a bank may establish and operate 1 or more branches in this state.

(8) A foreign bank branch that has designated a home state other than Michigan may establish and operate 1 or more additional offices in this state.

Sec. 174. If a bank permanently discontinues the operations of any branch, 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 shall discontinue operations shall be posted conspicuously and continuously in the office lobbies of both the branch to be discontinued and the principal office of the bank at least 14 days prior to discontinuance.

Sec. 181. (1) Upon application, the commissioner may grant to any bank or state foreign bank branch full trust powers, as provided in this section, but subject to the conditions, limitations, and restrictions in this section and sections 181a to 186, except that trust powers shall not be granted to a state agency established and operating pursuant to chapter 3A.

(2) Upon approval of the application, the bank or state foreign bank branch has the power to conduct a trust business including, but not by way of limitation, the following:

(a) In and by its corporate name to take, receive, hold, repay, reconvey, and dispose of any effects and property, both real and personal, that may be granted, committed, transferred, or conveyed to it with its consent, upon any terms or upon any trust at any time, by any person, including minors, bodies corporate, or by any court, including the federal courts, in the state, and to administer, fulfill, and discharge the duties of the trust for the remuneration as agreed upon.

(b) To act generally as agent for the transaction of business, the management of estates, the collection of rents, interest, dividends, and money, and the collection of principal and interest on mortgages, bonds, notes, and securities for money and to enforce the payment thereof, and also to act as agent for the purpose of issuing, negotiating, registering, transferring, or countersigning the certificates of stock, bonds, or other obligations of any corporation, association, or municipality and to manage any sinking fund therefor on the terms as agreed upon.

(c) To accept and to execute the offices of personal representative, trustee, receiver, conservator, liquidating agent, assignee, or guardian of any minor, incompetent person, legally incapacitated person, or any person subject to guardianship, subject to the laws of this state applicable to those proceedings. In all cases when application is made to any court in this state for the appointment of any trustee, receiver, personal representative, or guardian of any minor, incompetent person, legally incapacitated, or any other person subject to guardianship, the court may appoint the bank or state foreign bank branch, with its consent, to hold the office. The accounts of the bank or state foreign bank branch as trustee, receiver, conservator, liquidating agent, assignee, personal representative, or guardian shall be regularly settled and adjusted by the proper office or tribunals. All proper, legal, usual, and customary charges, costs, and expenses shall be allowed to the bank or state foreign bank branch for the care and management of the estate so committed to it. In case of appointment by any court, the bank or state foreign bank branch shall not be required to give any security except in the discretion of the court, other than as provided in section 184 for deposit with the state treasurer. If the court orders the bank or state foreign bank branch to give security, the security shall be a bond in an amount fixed by the court and with a surety company authorized to do business in this state as surety on the bond, or with personal surety or sureties on the bond satisfactory to the court. If any bank or state foreign bank branch is

required, in the course of the administration of any trust, to give a bond, whether as additional security, substituted security, or otherwise, the surety on the bond shall not be liable directly or indirectly for any act or default committed by the bank or state foreign bank branch prior to the date of the filing and approval of the bond, or for the failure of the bank or state foreign bank branch to pay over on final settlement if the failure to pay over is due to an act or default committed prior to the filing and approval of the bond, or for the failure of the bank or state foreign bank branch to collect from itself or from any prior surety or sureties the amount of any loss due to any act or default committed by the bank prior to the date of the filing and approval of the bond.

(d) To exercise by its board of directors or authorized officers or agents, subject to law, all incidental powers as are necessary to carry on a trust business.

Sec. 181a. (1) As used in this section:

(a) "Host bank" means a bank, national bank, association, or savings bank for which trust services are provided by any other bank, out-of-state bank, national bank, association, or savings bank.

(b) "Trust service provider" means a bank or national bank providing trust services to any other bank, out-of-state bank, national bank, association, or savings bank.

(c) "Banking office" means a main office or authorized branch of a bank, out-of-state bank, national bank, association, or savings bank.

(2) A bank granted full trust powers may contract by written agreement with any other bank, out-of-state bank, national bank, association, or savings bank to carry on trust services in its name and for its account at 1 or more of the banking offices of the other bank, out-of-state bank, national bank, association, or savings bank.

(3) A bank may contract by written agreement with any other bank, out-of-state bank, national bank, association, or savings bank exercising full trust powers to carry on trust services at 1 or more of its banking offices but in the name and for the account of the other bank, out-of-state bank, national bank, association, or savings bank.

(4) An agreement provided for in this section, including any lease, or a modification or extension of an agreement, is not effective as to any bank until and unless it is approved in writing by the commissioner. The commissioner may approve or disapprove the agreement upon consideration of the sufficiency of the capital and surplus of the banks, out-of-state banks, national banks, associations, or savings banks the need for trust services and other facts or circumstances that the commissioner considers proper.

(5) Thirty days after a host bank mails a notice of substitution as provided in subsection (6), a trust service provider shall be substituted for a host bank as fiduciary or agent and succeed to the title of assets held by a host bank in a fiduciary capacity for each account in which the host bank, under the terms of a trust service agreement approved by the commissioner, will no longer serve as fiduciary or agent. A trust service provider shall not be substituted for the host bank for any account in which the recipient of a notice of substitution with respect to that account objects to the substitution in the manner provided in subsection (6).

(6) For each account in which a trust service provider is substituted for a host bank under the terms of a trust service agreement, a written notice of substitution shall be sent by the host bank by certified mail. The notice of substitution shall include the date the notice was mailed and explain that the trust service provider will not be substituted for the host bank for the account if the recipient of the notice sends a written objection to the host bank by first-class mail within 30 days after the date the notice was mailed. The notice of substitution shall be sent to the following:

(a) For employee benefit plans, to the plan sponsors.

(b) For individual retirement accounts and retirement accounts for the self-employed, to the account owners.

(c) For agency and escrow accounts, to the principals.

(d) For securities for which a host bank serves as trustee, registrar, transfer agent, or paying agent, to the issuers.

(e) For revocable trusts under agreement, to the settlors.

(f) For irrevocable trusts under agreement, to any co-fiduciary, to the settlor, to each current income beneficiary who is an adult, and, if a current income beneficiary is a minor, to a parent of the minor with whom the minor resides or to the conservator or guardian of the minor. The notice to the settlor shall not grant to the settlor any authority over the trust or trustee that the settlor does not already have, including the authority to object to the substitution of a trust service provider for a host bank. For purposes of this subdivision, "current income beneficiary" means a person currently entitled to income or a person to whom the trustee, in the trustee's discretion, may pay principal or income.

(g) For testamentary trusts, to the persons notified under subdivision (f) and to the probate court that appointed the host bank as trustee.

(h) For conservatorships, to any co-fiduciary, to the protected person for whom the conservatorship was created or, if the conservatorship was created for a minor, to a parent of the minor with whom the minor resides or to the guardian of the minor, and to the probate court that appointed the host bank as conservator.

(i) For guardianships, to any co-fiduciary, to the minor or legally incapacitated person for whom the guardian was appointed if the ward is at least 14 years of age, and to the probate court that appointed the host bank as guardian.

(j) For probate estates, to any co-fiduciary, to any interested party as defined by section 7 of the revised probate code, Act No. 642 of the Public Acts of 1978, being section 700.7 of the Michigan Compiled Laws, and to the probate court that appointed the host bank as personal representative.

(7) Subsections (1), (5), and (6) apply to trust service agreements in effect on or after December 6, 1985

Sec. 195. (1) A bank may accept drafts or bills of exchange drawn upon it having not more than 6 months' sight to run, exclusive of days of grace, if 1 or more of the following applies:

(a) The drafts or bills of exchange grow out of transactions involving the importation or exportation of goods.

(b) The drafts or bills of exchange grow out of transactions involving the domestic shipment or goods.

(c) The drafts or bills of exchange are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title covering readily marketable staples.

(2) Except as provided in subsection (3), a bank shall not accept such bills, or be obligated for a participation share in such bills, in an amount equal at any time in the aggregate to more than 150% of its paid up and unimpaired capital stock and surplus.

(3) The commissioner, under conditions as the commissioner may prescribe, may authorize by regulation or order any bank to accept such bills, or be obligated for a participation share in such bills, in an amount not exceeding at any time in the aggregate 200% of its paid up and unimpaired capital stock and surplus.

(4) Notwithstanding subsections (2) and (3), with respect to any bank, the aggregate acceptances, including obligations for a participation share in such acceptances, growing out of domestic transactions shall not exceed 50% of the aggregate of all acceptances, including obligations for a participation share in such acceptances, authorized for the bank under this section.

(5) A bank shall not accept bills, or be obligated for a participation share in such bills, whether in a foreign or domestic transaction, for any 1 person, partnership, corporation, association, or other entity in an amount equal at any time in the aggregate to more than 10% of its paid up and unimpaired capital stock and surplus, unless the bank is secured either by attached documents or by some other actual security growing out of the same transaction as the acceptance.

(6) With respect to a bank that issues an acceptance, the limitations contained in this section shall not apply to that portion of an acceptance that is issued by the bank and that is covered by a participation agreement sold to another bank, out-of-state bank, or national bank.

(7) In order to carry out the purposes of this section, the commissioner may define any of the terms used in this section.

Sec. 197. The following loans and extensions of credit shall not be subject under sections 196 to 198 to a limitation based upon the capital and surplus:

(a) A loan or extension of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse.

(b) The purchase of banker's acceptances of another bank of the kind described in paragraph 7 of section 13 of the federal reserve act, chapter 6, 38 Stat. 251.

(c) A loan or extension of credit to a financial institution or to a receiver, conservator, or any other agent or supervising authority in charge of the business and property of the financial institution, when the loan or extension of credit is approved by the commissioner.

(d) A loan or extension of credit to a customer, secured or covered by guarantees or by commitments or agreements to take over or to purchase the loan or extension of credit, made by a federal reserve bank or by the United States, or a department, bureau, board, commission, or establishment of the United States, including a corporation wholly owned directly or indirectly by the United States.

(e) A loan or extension of credit from 1 business day to the next to a bank, out-of-state bank, national bank, association, or savings bank of excess reserve balances from time to time maintained under section 19 of the federal reserve act, chapter 6, 38 Stat. 251.

(f) A loan or extension of credit secured by bonds, notes, certificates of indebtedness, or treasury bills of the United States or by other obligations fully guaranteed as to principal and interest by the United States.

(g) A loan or extension of credit secured by a loan agreement between a local public agency or a public housing agency and an instrumentality of the United States pursuant to federal housing legislation under which funds will be provided for payment of the obligation secured by the loan agreement.

(h) A loan or extension of credit arising from securities purchased under an agreement to resell.

(i) A loan or extension of credit to the student loan marketing association.

(j) A loan or extension of credit fully secured by a segregated deposit account in the lending bank.

(k) A loan or extension of credit arising from the acceptance by a bank of drafts or bills of exchange drawn upon the bank, or a bank's participation in drafts or bills of exchange drawn upon and accepted by another bank, out-of-state bank, or national bank in conformity with section 195.

Sec. 292. The use of the word "bank", "banker", or "banking" or in any foreign language words of similar meaning as a designation or name, or part of a designation or name under which business is or may be conducted in this state, is restricted to a national bank, a bank subject to the provisions of this act, out-of-state bank, a bank holding company registered as such under the provisions of the federal bank holding company act of 1956, chapter 240, 70 Stat. 133, a foreign bank agency, a foreign bank branch, a savings and loan holding company as defined in 12 C.F.R. 583.20, or a savings bank that is lawfully conducting business in this state, unless that designation or name, taken as a whole, would not imply a banking business.

Section 2. Sections 127, 172, and 173 of Act No. 319 of the Public Acts of 1969, being sections 487.427, 487.472, and 487.473 of the Michigan Compiled Laws, are repealed.

Section 3. Section 130b of Act No. 319 of the Public Acts of 1969, being section 487.430b of the Michigan Compiled Laws, is repealed.

This act is ordered to take immediate effect.

Secretary of the Senate.

Clerk of the House of Representatives.

Approved -----

Governor.