

REPRINT

**SUBSTITUTE FOR
SENATE BILL NO. 745**

(As Passed the Senate October 28, 1999)

A bill to revise and codify the laws relating to banks, out-of-state banks, and foreign banks; to provide for their regulation and supervision; to prescribe the powers and duties of banks; to prescribe the powers and duties of certain state agencies and officials; to prescribe penalties; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 CHAPTER 1

2 PART 1

3 SHORT TITLE AND GENERAL PROVISIONS

4 Sec. 1101. This act shall be known and may be cited as the
5 "banking code of 1999".

6 Sec. 1102. It is the policy of this state that the business
7 of all banking organizations shall be supervised and regulated in
8 a manner that insures the safe and sound conduct of business, to

1 conserve their assets, promote competition among banking
2 organizations, to maintain public confidence in the business, and
3 to protect the public interest and the interests of depositors,
4 creditors, and shareholders.

5 Sec. 1103. The filing of documents under this act does not
6 provide constructive notice of the contents of the documents
7 except as to shareholders, directors, and officers of the insti-
8 tution or depository institution on behalf of which the documents
9 are filed.

10 Sec. 1104. (1) This act does not impair or affect an act
11 done, offense committed, or right accruing, accrued, or acquired,
12 or liability, penalty, forfeiture, or punishment incurred before
13 the effective date of this act, but may be enjoyed, asserted,
14 enforced, prosecuted, or inflicted as if this act had not been
15 enacted.

16 (2) Proceedings to assert, enforce, prosecute, or inflict a
17 right or obligation by or against a bank may be consummated under
18 the law in force at the time the proceedings were commenced. All
19 prosecutions pending on or instituted after the effective date of
20 this act for offenses committed before the effective date of this
21 act may be continued or instituted under the law in force at the
22 time of the commission of the offense.

23 (3) This act shall not be construed to affect the legality
24 of investments made or of transactions conducted, under any pro-
25 visions of law in force when the investments or transactions were
26 made or conducted, nor to require the change of investments for
27 those named in this act, except to prevent loss, or injury to the

1 institution, or to the borrowers on the securities. Extension of
2 such loan or investment shall not be made by any institution,
3 unless necessary to avoid loss as provided in this subsection.

4 (4) An institution that may be incorporated under this act
5 shall not be incorporated after the effective date of this act
6 except under this act.

7 (5) An institution governed by the terms of this act orga-
8 nized and incorporated before the effective date of this act
9 under any law of this state, which if now incorporated would be
10 required to incorporate under and be subject to this act, shall
11 be subject to this act without formal reorganization under this
12 act and shall be considered to exist under this act. This act
13 shall govern all institutions incorporated in this state.

14 (6) This act shall not be construed as attempting to deprive
15 any institution of any constitutional power, right, privilege, or
16 franchise that the institution now enjoys.

17 (7) Except as provided in section 2402(4), notwithstanding
18 any other provision of law, a bank shall not be subject to the
19 provisions of the business corporation act, 1972 PA 284,
20 MCL 450.1101 to 450.2098.

21 (8) There is no limit upon the amount or share of deposits
22 held or controlled in this state by a bank, out-of-state bank,
23 national bank, or bank holding company on a consolidated basis.

24 Sec. 1105. (1) A person shall not engage in the business of
25 banking in this state unless authorized by this act, the laws of
26 another state, the national bank act, the international banking

1 act of 1978, or if engaged in the business of banking on the
2 effective date of this act under former 1969 PA 319.

3 (2) Except for acting as an escrow agent, only an individual
4 or corporation shall act as a fiduciary in this state. A corpo-
5 ration acting as a fiduciary shall do so only if the corporation
6 is 1 of the following:

7 (a) A bank authorized to exercise trust powers under this
8 act, or authorized to conduct trust business in this state before
9 November 29, 1995.

10 (b) A state foreign bank branch authorized to exercise trust
11 powers under this act.

12 (c) An out-of-state bank, that is authorized to exercise
13 trust powers under the law of the jurisdiction where it is
14 organized. An out-of-state bank authorized to exercise trust
15 powers under this subdivision may do so only to the extent a bank
16 may exercise trust powers under this act.

17 (d) A national bank authorized to exercise trust powers
18 under the national bank act. A national bank authorized to exer-
19 cise trust powers under this subdivision may do so only to the
20 extent that a bank may exercise trust powers under this act.

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

24 Sec. 1106. The use of the word "bank", "banker", or
25 "banking" or any foreign language words of similar meaning as a
26 designation or name, or part of a designation or name under which
27 business is or may be conducted in this state, is restricted to a

1 national bank, a bank subject to this act, an out-of-state bank,
2 a bank holding company registered under the bank holding company
3 act, a foreign bank agency, a foreign bank branch, a savings and
4 loan holding company as defined in 12 C.F.R. 583.20, or a savings
5 bank that is lawfully conducting business in this state, unless
6 that designation or name, taken as a whole, would not imply a
7 banking business. Use of the term "mortgage banker" or "mortgage
8 banking" in the name or assumed name of a licensee or registrant
9 under the mortgage brokers, lenders, and servicers licensing act,
10 1987 PA 173, MCL 445.1651 to 445.1684, does not violate this
11 section.

12 Sec. 1107. All mortgages or other securities held by banks
13 are exempt from all municipal or other taxes under the laws of
14 this state, and all personal property owned by banks is exempt
from taxation.

15 PART 2

16 DEFINITIONS

17 Sec. 1201. As used in this act:

18 (a) "Administrative expense" means any of the following:

19 (i) An expense designated as an administrative expense by
20 this act or the court.

21 (ii) Court costs and expenses of operation and liquidation
22 of a bank.

23 (iii) Current wages paid to an employee of a bank whose
24 services are retained by the receiver for services rendered after
25 the date the bank is ordered in receivership.

26 (iv) An unpaid expense of supervision or conservatorship of
27 a bank.

1 (v) Unpaid fees or assessments owed to the bureau.

2 (b) "Administrative procedures act of 1969" means the admin-
3 istrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
4 24.328.

5 (c) "Affiliate" means a corporation, business trust, limited
6 liability company, or similar organization to which any of the
7 following apply:

8 (i) An organization, directly or indirectly, owns or con-
9 trols either a majority of its voting shares or more than 50% of
10 the number of shares voted for the election of its directors,
11 trustees, or other persons exercising similar functions at the
12 preceding election, or controls in any manner the election of a
13 majority of its directors, trustees, or other persons exercising
14 similar functions.

15 (ii) Control of the organization is held, directly or indi-
16 rectly, through either of the following:

17 (A) Stock ownership or in any other manner, by the share-
18 holders or members of an organization who own or control a major-
19 ity of the shares of that organization, a majority ownership
20 interest in the organization, more than 50% of the number of
21 shares voted for the election of directors of that organization
22 at the preceding election, or more than 50% of the ownership vote
23 for election of directors of that organization at the preceding
24 election.

25 (B) By trustees for the benefit of the shareholders or mem-
26 bers of that organization.

1 (iii) A majority of its directors, trustees, or other
2 persons exercising similar functions constitute a majority of the
3 directors, trustees, or other persons exercising similar func-
4 tions of any 1 organization.

5 (iv) The organization owns or controls, directly or indi-
6 rectly, either a majority of the shares of capital stock or other
7 ownership interest of an organization, or more than 50% of the
8 number of shares voted of the total ownership vote for the elec-
9 tion of directors of an organization at the preceding election,
10 or controls in any manner the election of a majority of the
11 directors of an organization, or for the benefit of whose share-
12 holders or members all or substantially all the capital stock or
13 ownership interest of an organization is held by trustees.

14 (d) "Applicant" means a person making an application under
15 this act.

16 (e) "Articles" means articles of incorporation, all amend-
17 ments to articles of incorporation, and agreements of consolida-
18 tion and merger.

19 (f) "Association" means a federal savings association orga-
20 nized under section 5 of the home owners' loan act, chapter 64,
21 48 Stat. 132, 12 U.S.C. 1464, or a savings and loan association,
22 building and loan association, or homestead association that is
23 organized under the laws of a state, the District of Columbia, or
24 a territory or protectorate of the United States, and whose
25 deposits are insured by the federal deposit insurance
26 corporation.

1 (g) "Bank" means a state banking corporation organized or
2 reorganized under this act or organized under any law of this
3 state enacted before the effective date of this act, including a
4 state banking corporation that voluntarily limits its
5 activities.

6 (h) "Bank holding company" means a company as defined in the
7 bank holding company act that is not a bank or national banking
8 association and that is a bank holding company approved by the
9 board of governors of the federal reserve system under the bank
10 holding company act or that will become an approved bank holding
11 company before or upon the completion of a consolidation provided
12 in section 3706.

13 (i) "Banking holding company act" means the federal bank
14 holding company act of 1956, chapter 240, 70 Stat. 133.

15 (j) "Branch" means, except as otherwise provided in this
16 subdivision, a branch bank, branch office, branch agency, addi-
17 tional office, or a branch place of business at which deposits
18 are received, checks paid, or money lent. The acceptance of
19 deposits in furtherance of a school thrift or savings plan by an
20 officer, employee, or agent of a bank at a school shall not be
21 construed as the establishment or operation of a branch. An
22 electronic funds transfer facility that is made available to 2 or
23 more depository institutions under Michigan law that regulates
24 electronic funds transfer facilities is not a branch. A trust
25 office of a bank is not a branch. A loan production office is
26 not a branch. An additional office of a state agency is not a
27 branch. An international banking facility as defined in 12

1 C.F.R. 204.8(a)(1), as in effect December 31, 1982, is not a
2 branch. The receipt of deposits by a messenger service or the
3 delivery by a messenger service of items representing deposit
4 account withdrawals or of loan proceeds is not the establishment
5 or operation of a branch, whether or not the messenger service is
6 owned or operated by the bank. Branch does not include an agent
7 acting under section 4101(1)(d).

8 (k) "Bureau" means the financial institutions bureau of the
9 department of consumer and industry services.

10 (l) "Capital" or "capital stock" means the stated par value
11 of issued and outstanding unimpaired common stock and the stated
12 par value of issued and outstanding unimpaired preferred stock.
13 For purposes of sections 4202, 4301, 4307, and 4308, "capital"
14 and "capital stock" shall also include outstanding capital notes,
15 debentures, and any other instrument of indebtedness issued under
16 section 3801.

17 (m) "Cease and desist order which has become final" or
18 "order which has become final" means a cease and desist order or
19 an order issued by the commissioner with the consent of the
20 institution or the director or officer or other person concerned,
21 or with respect to which no petition for review of the action of
22 the commissioner has been filed and perfected in a circuit court
23 as specified in section 2310(2), or with respect to which the
24 action of the court in which the petition is filed is not subject
25 to further review by the courts of the state.

26 (n) "Commissioner" means the commissioner of the financial
27 institutions bureau.

1 (o) "Consolidate", "consolidated", "consolidating", and
2 "consolidation" include, respectively, consolidate or merge, con-
3 solidated or merged, consolidating or merging, and consolidation
4 or merger.

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

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

13 (r) "Consolidating organizations" means any combination of
14 banks, out-of-state banks, national banks, associations, or sav-
15 ings banks that have consolidated or are in the process of con-
16 solidation as provided in section 3701 or 3702.

17 (s) "Depository institution" means a bank, out-of-state
18 bank, national bank, foreign bank branch, association, savings
19 bank, or credit union organized under the laws of this state,
20 another state, the District of Columbia, the United States, or a
21 territory or protectorate of the United States.

22 (t) "Dissolution" means the process by which a solvent bank
23 voluntarily ends its corporate existence by liquidating its
24 assets and winding up its affairs.

25 (u) "Dividend reinvestment plan" means a plan that is
26 offered solely to existing shareholders of the bank and which
27 allows the shareholders to reinvest dividends received under

1 section 3806 in stock of the bank and that may allow additional
2 cash amounts to be contributed by the shareholders participating
3 in the reinvestment plan.

4 (v) "Federal agency" means a foreign bank agency established
5 and operating under the international banking act of 1978.

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

8 (x) "Federal deposit insurance act" means the federal
9 deposit insurance act, chapter 967, 64 Stat. 873.

10 (y) "Federal home loan bank act" means the federal home loan
11 bank act, chapter 522, 47 Stat. 725.

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

14 Sec. 1202. As used in this act:

15 (a) "Financial institution" means an organization licensed,
16 chartered, or regulated by the financial institutions bureau
17 under the laws of this state.

18 (b) "Foreign bank" means an entity organized and recognized
19 as a bank under the laws of a foreign country that lawfully
20 engages in the business of banking and is not directly or indi-
21 rectly owned or controlled by United States citizens or by a cor-
22 poration organized under the laws of the United States. Foreign
23 bank includes foreign commercial banks, foreign merchant banks,
24 and other foreign institutions that engage in banking activities
25 usual in connection with the business of banking in the countries
26 in which the foreign institutions are organized.

1 (c) "Foreign bank agency" means an office or place of
2 business of a foreign bank, established under this act, the
3 international banking act of 1978, or the laws of another state,
4 that does not exercise trust powers and at which deposits of cit-
5 izens or residents of the United States are not accepted.

6 (d) "Foreign bank branch" means a place business of a for-
7 eign bank, located in any state, the District of Columbia, or a
8 territory, or protectorate of the United States, that is not a
9 foreign bank agency, bank, or out-of-state bank, at which depos-
10 its are received and that is established and operating as a
11 branch of a foreign bank under this act, the international bank-
12 ing act of 1978, or the laws of another state.

13 (e) "Foreign country" means a country other than the United
14 States and includes a colony, dependency, or possession of a
15 country other than the United States.

16 (f) "Incorporator" means a signer of the original articles
17 of incorporation.

18 (g) "Institution" means a bank, state agency, or state for-
19 eign bank branch operating or organized or reorganized under this
20 act or operating or organized under any law of this state enacted
21 before August 20, 1969.

22 (h) "International banking act of 1978" means the interna-
23 tional banking act of 1978, Public Law 95-369, 92 Stat. 607.

24 (i) "Investment security" means a marketable obligation in
25 the form of a bond, note, or debenture, commonly regarded as an
26 investment security and that is salable under ordinary
27 circumstances with reasonable promptness at a fair value.

1 (j) "Loan and extension of credit" or "loan or extension of
2 credit" includes all direct or indirect advances of funds to a
3 person made on the basis of any obligation of that person to
4 repay the funds or repayable from specific property pledged by or
5 on behalf of the person. To the extent specified by the commis-
6 sioner, loan and extension of credit or loan or extension of
7 credit includes any liability of a bank to advance funds to or on
8 behalf of a person under a contractual commitment. The term does
9 not include investment securities held by a bank under section
10 4301.

11 (k) "Loan production office" means an office of a depository
12 institution or institutions at which activities related to the
13 lending of money are conducted, deposits are not received, and
14 checks are not paid, and which office is not the principal
15 office, a branch, or an agency of an affiliated depository finan-
16 cial institution.

17 (l) "Member" means a person with ownership interest under
18 the Michigan limited liability company act, 1993 PA 23,
19 MCL 450.4101 to 450.5200.

20 (m) "Messenger service" means a service such as a courier
21 service or an armored car service that picks up from or delivers
22 to customers of 1 or more depository institutions or 1 or more
23 affiliates of a depository institution cash, currency, checks,
24 drafts, securities, or other items relating to transactions
25 between or involving a depository institution or affiliate of a
26 depository institution and those customers, or that transfers
27 cash, currency, checks, drafts, securities, or other items or

1 documents between depository institutions or affiliates of
2 depository institutions. The service may be owned and operated
3 by 1 or more depository institutions or affiliates or by a third
4 party.

5 (n) "Mobile branch" means a branch, the physical structure
6 of which is moved from time to time.

7 (o) "National bank" means a national banking association
8 chartered by the federal government under the national bank act.

9 (p) "National bank act" means the national bank act, chapter
10 106, 13 Stat. 99.

11 (q) "Out-of-state bank" means a banking corporation orga-
12 nized under the laws of another state, the District of Columbia,
13 or a territory or a protectorate of the United States whose prin-
14 cipal office is located in a state other than this state, in the
15 District of Columbia, or in a territory or a protectorate of the
16 United States, and whose deposits are insured by the federal
17 deposit insurance corporation.

18 (r) "Person" means an individual, partnership, corporation,
19 limited liability company, governmental entity, or any other
20 legal entity.

21 (s) "Professional investor" means an accredited investor
22 under 15 U.S.C. 77b.

23 (t) "Publication", "publish", or "published" means to appear
24 in a newspaper of general circulation in the community or commu-
25 nities where the principal office or offices of the depository
26 institution or institutions are located.

1 Sec. 1203. As used in this act:

2 (a) "Savings bank" means a savings bank organized under the
3 savings bank act, 1996 PA 354, MCL 487.3101 to 487.3804, or the
4 laws of another state, the District of Columbia, a territory or
5 protectorate of the United States, or of the United States, whose
6 deposits are insured by the federal deposit insurance
7 corporation.

8 (b) "Service entity" means a corporation, mutual company,
9 limited liability company, limited liability partnership, or
10 limited partnership in which a bank has invested under section
11 4310(1). Upon written approval of the commissioner, a service
12 entity may be a general partnership.

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

15 (d) "State agency" means a foreign bank agency established
16 and operating under this act.

17 (e) "State foreign bank branch" means a foreign bank branch
18 established and operating under this act.

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

21 (g) "Subsidiary" means a corporation, mutual company,
22 limited liability company, limited liability partnership, or
23 limited partnership, the controlling interests of which are more
24 than 50% owned by 1 or more depository institutions, and in which
25 a bank has an ownership interest, membership interest, or other
26 legally enforceable interest which is the indicia of ownership.
27 Upon approval of the commissioner, and subject to the ownership

1 requirements set forth in this subsection, a subsidiary may be a
2 general partnership.

3 (h) "Surplus" means the amount paid for issued and outstand-
4 ing common and preferred stock of the bank in excess of the
5 stated par value, plus any amount of transferred undivided prof-
6 its and any additional amounts paid in or contributed to increase
7 total capital.

8 (i) "Total capital" means an amount equal to any capital,
9 plus any surplus, undivided profits, and instruments of indebted-
10 ness authorized under section 3801.

11 (j) "Trust office" means an office of a bank at which trust
12 services are performed and at which deposits are not accepted,
13 checks are not paid, and money is not lent.

14 (k) "Uniform commercial code" means the uniform commercial
15 code, 1962 PA 174, MCL 440.1101 to 440.11102.

16 (l) "Venture capital" means equity financing that is pro-
17 vided for starting up or expanding a company, or related purposes
18 such as financing for seed capital, research and development,
19 introduction of a product or process into the marketplace, or
20 similar needs requiring risk capital. A venture capital invest-
21 ment shall not include the purchase of a share of stock in a com-
22 pany if, on the date on which the share of stock is purchased,
23 the company has securities outstanding that are registered on a
24 national securities exchange under section 12(b) of title I of
25 the securities exchange act of 1934, chapter 404, 48 Stat. 892,
26 15 U.S.C. 78l; that are registered or required to be registered
27 under section 12(g) of title I of the securities exchange act of

1 1934, chapter 404, 48 Stat. 892, 15 U.S.C. 78 1, or which would
2 be required to be registered except for the exemptions in section
3 12(g)(2) of title I of the securities exchange act of 1934, chap-
4 ter 404, 48 Stat. 892, 15 U.S.C. 781.

5 (m) "Violation", as used in sections 2304, 2305, and 2306,
6 includes without limitation any action, alone or with others, for
7 or toward causing, bringing about, participating in, counseling,
8 or aiding or abetting a violation.

9 CHAPTER 2

10 FINANCIAL INSTITUTIONS BUREAU

11 PART 1

12 ADMINISTRATION

13 Sec. 2101. (1) A financial institutions bureau is created
14 within the department of consumer and industry services, and the
15 bureau shall have jurisdiction over and administer the laws
16 relating to financial institutions transacting business in this
17 state.

18 (2) The head of the financial institutions bureau is the
19 commissioner who shall be appointed by the governor, with the
20 advice and consent of the senate, to serve at the pleasure of the
21 governor.

22 (3) Before assuming the duties of office, the commissioner
23 shall take and subscribe the constitutional oath of office and
24 file it with the secretary of state.

25 (4) The commissioner shall approve a seal for the use of the
26 bureau. A description and impression of the seal shall be filed
27 with the secretary of state.

1 (5) The commissioner is prohibited for a period of 6 months
2 from the date he or she leaves office from accepting employment
3 with a state chartered depository financial institution regulated
4 by the bureau.

5 Sec. 2102. This act shall be implemented by the commis-
6 sioner to maximize the capacity of banks to offer convenient and
7 efficient financial services, to promote economic development,
8 and to ensure that banks remain competitive with other types of
9 financial service providers.

10 Sec. 2103. (1) The powers and duties vested by law in the
11 financial institutions bureau under former 1969 PA 319 are vested
12 in the bureau under this act. Any hearing or other proceeding
13 pending before the bureau before the effective date of this act
14 shall not abate but is transferred to the bureau under this act
15 and shall be conducted and determined by the bureau in accordance
16 with the provisions of the law governing such hearing or
17 proceeding.

18 (2) All property, credits, books, correspondence, funds,
19 appropriations, records, files, and other papers belonging to the
20 financial institutions bureau under former 1969 PA 319 are trans-
21 ferred to the bureau under this act. All orders and rules which
22 have been issued under law by the commissioner under former 1969
23 PA 319, and which are in effect shall continue in effect until
24 modified, suspended, revoked, or repealed by the commissioner.

25 Sec. 2104. (1) The commissioner shall appoint a chief
26 deputy who shall perform the duties of the commissioner during
27 the commissioner's absence from the bureau. The commissioner may

1 appoint other deputies as he or she considers appropriate and may
2 delegate general or specific responsibilities under this act to
3 the other deputies. The commissioner may designate that 1 or
4 more of the other deputies perform the duties of the commissioner
5 when both the commissioner and the chief deputy commissioner are
6 absent from the bureau. The chief deputy and other deputies
7 shall take and subscribe the constitutional oath of office and
8 file it with the secretary of state.

9 (2) The commissioner may, at any time, revoke an appoint-
10 ment, designation, or delegation made under this section.

11 Sec. 2105. (1) The commissioner may appoint employees to
12 carry out specific functions under this act. The compensation,
13 travel, and other expenses of the commissioner, deputy commis-
14 sioners, and employees shall be paid in the manner provided by
15 law for other state officers and employees, within the appropria-
16 tions made by the legislature.

17 (2) The commissioner may delegate to employees duties autho-
18 rized to the commissioner under this act.

19 (3) The commissioner may, at any time, revoke any delegation
20 made under this section.

21 Sec. 2106. (1) During his or her term of office or employ-
22 ment, the commissioner, a deputy commissioner, or an examiner of
23 the bureau shall not be a shareholder, either directly or indi-
24 rectly, of a financial institution, a national bank, federal sav-
25 ings and loan association, or federal savings bank that maintains
26 a main office or branch office in this state, or of any affiliate
27 or subsidiary thereof. The commissioner, a deputy commissioner,

1 or an examiner of the bureau may be a shareholder of a credit
2 union, a mutual savings and loan association, or a mutual savings
3 bank.

4 (2) During his or her term of office or employment, the com-
5 missioner, a deputy commissioner, or an examiner of the bureau
6 shall not be an officer, director, or employee of a financial
7 institution, or of a depository institution, or of any affiliate
8 or subsidiary thereof or receive, either directly or indirectly,
9 anything of value, or other compensation from such entities.

10 (3) If a deputy commissioner or an examiner of the bureau
11 borrows from, or is or becomes indebted to a financial institu-
12 tion, he or she shall make a written report to the bureau stating
13 the name of the lender, the amount and terms of the loan or
14 indebtedness, the security given on the loan, and the purpose for
15 which the proceeds are to be used.

16 (4) A deputy commissioner or an examiner of the bureau shall
17 not borrow from or become indebted to a financial institution for
18 which the deputy commissioner or examiner has direct supervisory
19 responsibility, or from a subsidiary or affiliate of such a
20 financial institution, except for installment debt transferred to
21 a financial institution in the regular course of business by a
22 seller of consumer goods. An examiner shall not borrow from or
23 become indebted to a financial institution if the examiner has
24 ever participated in an examination of the financial
25 institution.

26 (5) The commissioner shall not borrow from or become
27 indebted to a financial institution except for installment debt

1 transferred to a financial institution in the regular course of
2 business by a seller of consumer goods.

3 (6) Subsections (4) and (5) do not apply to loans made or
4 indebtedness incurred before the commissioner's, deputy
5 commissioner's, or examiner's term of office or made or incurred
6 lawfully before the effective date of this act. If a loan
7 received or indebtedness incurred in conformance with this act
8 subsequently becomes nonconforming due to an event outside the
9 commissioner's, deputy commissioner's, or examiner's control, the
10 loan or indebtedness may be retained. Neither the term nor the
11 amount of a nonconforming loan or indebtedness described in this
12 subsection shall be increased following the event which made the
13 loan or indebtedness nonconforming.

14 Sec. 2107. The commissioner or any other employee of the
15 bureau shall not be liable in any civil action for damages for
16 any act done or omitted in good faith in performing the functions
17 of his or her office.

18 Sec. 2108. For each calendar year the commissioner shall
19 compile and publish an annual report in the form and containing
20 information the commissioner determines necessary to reasonably
21 summarize the operations of the bureau during the year.

22 Sec. 2109. (1) The commissioner and all deputies, agents,
23 and employees of the bureau shall keep secret all facts and
24 information obtained in the course of their duties, except if the
25 person is required under law to report upon, take official
26 action, or testify in any proceedings regarding the affairs of an

1 institution. This subsection applies to all former
2 commissioners, deputies, agents, and employees of the bureau.

3 (2) This section does not apply to, and does not prohibit
4 the furnishing of information or documents to, the federal, for-
5 eign, or out-of-state bank, association, or savings bank regula-
6 tory agencies, and is not applicable to disclosures made in the
7 public interest by the commissioner, at his or her discretion.

8 PART 2

9 GENERAL POWERS

10 Sec. 2201. The commissioner may promulgate rules under the
11 administrative procedures act of 1969 as he or she considers nec-
12 essary to effectuate the purposes and to enforce this act.

13 Sec. 2202. (1) Each institution together with its subsidi-
14 aries and service entities shall be subject to examination of its
15 condition and affairs by the commissioner or the commissioner's
16 authorized agent not less frequently than once every 18 months.

17 (2) The commissioner shall examine an institution under the
18 commissioner's jurisdiction when requested by its board of
19 directors. In connection with an examination, the commissioner,
20 or the commissioner's authorized agent, may examine on oath a
21 director, officer, agent, employee, or shareholder of an institu-
22 tion concerning the affairs and business of the institution. The
23 commissioner shall ascertain whether the institution transacts
24 its business in the manner prescribed by law and the rules
25 promulgated under law. The commissioner, or the commissioner's
26 authorized agent, may make an examination of an affiliate, bank
27 holding company, subsidiary, or service entity necessary to

1 disclose fully the relation between an institution and the
2 affiliate, holding company, subsidiary, or service entity and the
3 effect of the relation upon the institution.

4 (3) The commissioner may examine the branch or branches
5 located in this state of an out-of-state bank as permitted by the
6 federal deposit insurance act.

7 (4) In fulfilling the requirements of subsections (1) and
8 (2), the commissioner may use an examination made under the fed-
9 eral reserve act, the federal deposit insurance act, or the law
10 of another state governing the activities of out-of-state banks
11 in that state. The commissioner may require the institution to
12 furnish a copy of any report required by a federal or state bank
13 regulatory agency.

14 (5) An examination required by this section may include the
15 fiduciary activities of the institution.

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

21 (7) The contents of a report of examination of a bank and
22 examination-related documents prepared or obtained under this
23 section remain the property of the bureau. Dissemination of all
24 or part of a bank's report of examination for purposes other than
25 the legitimate business purposes of the bank or as otherwise
26 authorized by this act shall be a violation of this act subject

1 to the administrative remedies granted the commissioner under
2 sections 2304 through 2314.

3 Sec. 2203. (1) The commissioner shall periodically estab-
4 lish a schedule of supervisory fees to be paid by banks. Except
5 for a minimum fee consistent with subsection (2), the fee shall
6 not be more than 25 cents for each \$1,000.00 of total assets of
7 the bank as reported by the bank on its report of condition as of
8 December 31 of the previous year.

9 (2) Each bank shall pay an annual supervisory fee which
10 shall be not less than \$1,000.00

11 (3) The commissioner shall provide an invoice of the super-
12 visory fee no later than July 1 of each year. The annual super-
13 visory fee shall be paid by August 15 of that year.

14 (4) The initial supervisory fee for a bank that obtained a
15 charter as a result of a conversion shall be based on the total
16 assets as reported in its report of condition as of December 31
17 of the previous year under its prior charter.

18 (5) The supervisory fee of a bank which was not engaged in
19 the business of banking on December 31 of the previous year shall
20 be the minimum supervisory fee established by the commissioner
21 consistent with subsection (2).

22 (6) The commissioner shall periodically establish a schedule
23 of fees, beyond those charged for normal supervision, to be paid
24 for applications, special evaluations and analyses, and
25 examinations.

1 (7) The fees established under subsection (6) shall be based
2 on the estimated cost to the bureau of conducting the activities
3 for which the fees are imposed.

4 (8) The commissioner may charge reasonable fees for furnish-
5 ing and certifying copies of documents or serving notices
6 required by this act.

7 (9) To the extent any fees, penalties, or fines assessed
8 under this act are unpaid when due, the commissioner may, upon
9 proper notice, maintain an action for the recovery of the fees,
10 penalties, or fines plus interest and costs.

11 (10) The fees, expenses, compensation, penalties, and fines
12 collected under this act are not refundable and shall be paid
13 into the state treasury to the credit of the bureau and used only
14 for the operation of the bureau.

15 Sec. 2204. (1) The commissioner may issue declaratory rul-
16 ings in accordance with the administrative procedures act of
17 1969, or issue orders on applications by 1 or more banks to exer-
18 cise powers not specifically authorized by this act that will
19 authorize banks to exercise powers appropriate and necessary to
20 compete with other providers of financial services.

21 (2) In the exercise of the discretion permitted by this sec-
22 tion, the commissioner shall consider the ability of banks to
23 exercise any additional power in a safe and sound manner, the
24 authority of depository institutions operating under state or
25 federal law or regulation, the powers of other competing entities
26 providing financial services, and any specific limitations on
27 bank powers contained in this act or in any other law of this

1 state. The commissioner shall give notice, at least quarterly,
2 to all banks of declaratory rulings, orders, or determinations
3 issued during the preceding quarter under this section.

4 PART 3

5 ENFORCEMENT POWERS

6 Sec. 2301. The commissioner may petition the circuit court
7 for the county of Ingham or the circuit court in the jurisdiction
8 where an examination is being conducted to issue a subpoena on
9 behalf of the bureau which shall require the person subpoenaed to
10 appear and testify under oath to any matter related to the exami-
11 nation and to produce any relevant documents.

12 Sec. 2302. (1) A bank that seeks the commissioner's
13 approval under section 2204, 3102, 3103, 3701, 3707, 3709, 4106,
14 4310, 4401, 5101, or 5102 shall submit an application to the
15 bureau.

16 (2) The application shall contain information and be accom-
17 panied by documents as required by the bureau.

18 (3) If an application is considered incomplete by the
19 bureau, it will either be returned for completion or the appli-
20 cant will be requested to submit additional information as neces-
21 sary to make the application complete.

22 (4) When the application is considered complete by the
23 bureau, it shall be accepted and the process of reviewing its
24 contents for a decision will begin on that date.

25 (5) The statutory period, as set forth in this section,
26 regarding the issuance of orders by the commissioner shall
27 commence on the date of acceptance of the application.

1 (6) If, subsequent to the date of acceptance, the applicant
2 wishes to amend the application or supplement or provide addi-
3 tional material in connection with the application, the commis-
4 sioner may suspend processing of the application or proceed with
5 the statutory period for the issuance of an order.

6 (7) In connection with an application, the commissioner may
7 consider additional information from any source.

8 (8) The commissioner shall approve or disapprove an applica-
9 tion in writing within 100 days after the date of acceptance of
10 an application, or the last amendment to the application. An
11 order disapproving an application shall state the basis for
12 disapproval.

13 (9) An applicant who is dissatisfied with an order of the
14 commissioner, or an institution that is dissatisfied with an
15 objection issued under section 3711 or 3713, may submit a written
16 request for a reconsideration of the order or objection stating
17 the reasons for the request. The request must be received by the
18 bureau within 5 days after the date of the order or objection.
19 The commissioner, within 10 days of receiving the request for
20 reconsideration, shall render a decision on the request for
21 reconsideration. If a petition for reconsideration is granted,
22 the commissioner shall grant the applicant 10 days to file writ-
23 ten arguments or briefs. The commissioner may allow for oral
24 argument after granting a petition for reconsideration. The oral
25 argument shall be held within 10 days after granting the
26 petition. The commissioner shall issue a final order, objection,

1 or withdrawal of an objection within 20 days after granting the
2 petition for reconsideration.

3 (10) Appeal of an order or objection shall not be made by an
4 applicant without first requesting a reconsideration of the order
5 or objection.

6 Sec. 2303. (1) Except with respect to rules promulgated
7 under section 2201, a cease and desist order made under sections
8 2304 to 2314, an order made on an application seeking approval of
9 the commissioner under section 2302(1), or an objection issued
10 under section 3711 or 3713, an institution that is dissatisfied
11 with an order, ruling, or finding issued by the commissioner may
12 request a reconsideration of the order, ruling, or finding within
13 10 days after the issuance of the order, ruling, or finding. The
14 commissioner may conduct a formal hearing before the issuance of
15 an order, ruling, or finding. Within 30 days after the receipt
16 of a written request for reconsideration, the commissioner shall
17 hold a formal hearing unless a formal hearing has been held
18 before the issuance of the order, ruling, or finding.

19 (2) A hearing held under subsection (1) shall be conducted
20 under the administrative procedures act of 1969.

21 Sec. 2304. (1) If in the opinion of the commissioner an
22 institution is engaging, has engaged, or is about to engage in an
23 unsafe or unsound practice in conducting the business of the
24 institution or is violating, has violated, or is about to violate
25 a law or rule, the commissioner may issue and serve upon the
26 institution a notice of charges. The notice shall contain a
27 statement of the facts constituting the alleged unsafe or unsound

1 practice or violation, and shall fix a time and place for a
2 hearing to determine whether an order to cease and desist should
3 issue. The hearing shall be not earlier than 30 days nor later
4 than 60 days after service of the notice unless an earlier or
5 later date is set by the commissioner at the request of the
6 institution. If the institution does not appear at the hearing
7 by a duly authorized representative, it shall be considered to
8 have consented to the issuance of a cease and desist order.

9 (2) In the event of consent, or if upon the record made at
10 the hearing the commissioner finds that an unsafe or unsound
11 practice or violation specified in the notice of charges has been
12 established, the commissioner may issue and serve upon the insti-
13 tution an order to cease and desist from the practice or
14 violation. The order may require the institution and its direc-
15 tors, officers, employees, and agents to cease and desist from
16 the practice or violation and to take affirmative action to cor-
17 rect the conditions resulting from the practice or violation.

18 (3) A cease and desist order becomes effective 30 days after
19 the service of the order upon the institution, except in the case
20 of an order issued upon consent which shall become effective at
21 the time specified in the order, and shall remain effective and
22 enforceable as provided in the order, except to the extent it is
23 stayed, modified, terminated, or set aside by action of the com-
24 missioner or a reviewing court.

25 (4) If the commissioner determines that an out-of-state bank
26 branch located in this state is acting in violation of the laws
27 of this state or that the activities of the branch are being

1 conducted in an unsafe and unsound manner, the commissioner may
2 undertake enforcement actions and proceedings as would be permit-
3 ted if the branch were a bank.

4 (5) If the commissioner determines that a national bank is
5 acting in violation of the laws of this state, the commissioner
6 shall notify the comptroller of the currency and the attorney
7 general.

8 Sec. 2305. (1) If the commissioner determines that the vio-
9 lation or threatened violation or the unsafe or unsound practice
10 or practices, specified in the notice of charges served upon the
11 institution under section 2304(1), or the continuation of the
12 violation or practice, is likely to cause insolvency or substan-
13 tial dissipation of assets or earnings of the institution, or is
14 likely to otherwise seriously prejudice the interests of its
15 depositors, the commissioner may issue a temporary order requir-
16 ing the institution to cease and desist from any violation or
17 practice. The order shall become effective upon service upon the
18 institution and, unless set aside, limited, or suspended by a
19 court in proceedings authorized by subsection (2), shall remain
20 effective and enforceable pending the completion of the proceed-
21 ings under section 2304.

22 (2) Within 10 days after the institution has been served
23 with a temporary cease and desist order, the institution may
24 apply to the circuit court for the county in which the principal
25 office of the institution is located for an injunction setting
26 aside, limiting, or suspending the enforcement, operation, or
27 effectiveness of the order pending the completion of the

1 proceedings under section 2304. The court shall have
2 jurisdiction to issue the injunction.

3 Sec. 2306. (1) If in the opinion of the commissioner any
4 director or officer of an institution has committed any violation
5 of law or rule or of a cease and desist order or other order of
6 the commissioner which has become final, or has engaged or par-
7 ticipated in any unsafe or unsound practice in connection with
8 the institution, or has committed or engaged in any act, omis-
9 sion, or practice which constitutes a breach of fiduciary duty as
10 a director or officer and the commissioner determines that the
11 institution has suffered or will probably suffer substantial
12 financial loss or other damage or that the interests of its
13 depositors could be seriously prejudiced by reason of the viola-
14 tion or practice or breach of fiduciary duty, the commissioner
15 may serve upon the director or officer a written notice of inten-
16 tion to remove the person from office.

17 (2) If in the opinion of the commissioner any director,
18 officer, or any other person participating, or who has partici-
19 pated, in the conduct of the affairs of an institution, by con-
20 duct or practice with respect to the institution or other busi-
21 ness organization resulted in substantial financial loss or other
22 damage, has evidenced personal unfitness to participate in the
23 conduct of the affairs of the institution, the commissioner may
24 serve upon the director, officer, or other person a written
25 notice of intention to remove the person from office or to pro-
26 hibit the person's further participation in any manner in the
27 conduct of the affairs of the institution.

1 (3) In respect to a person to whom notice is sent under
2 subsection (1) or (2), if the commissioner considers it necessary
3 for the protection of the institution or the interests of its
4 depositors that the person be suspended from office or prohibited
5 from further participation in any manner in the conduct of the
6 affairs of the institution, the commissioner may serve upon the
7 person a written notice suspending him or her from office or pro-
8 hibiting him or her from further participation in any manner in
9 the conduct of affairs of the institution. The suspension or
10 prohibition shall be effective upon service of the notice and,
11 unless stayed by a court in proceedings authorized by section
12 2307, shall remain in effect pending the completion of the admin-
13 istrative proceedings and the commissioner dismisses the charges
14 specified in the notice or, if an order of removal or prohibition
15 is issued, until the effective date of the order. Copies of the
16 notice shall also be served upon the institution of which the
17 person is a director or officer or in the conduct of whose
18 affairs the person has participated.

19 (4) A notice of intention to remove a person from office or
20 to prohibit participation in the conduct of the affairs of any
21 institution shall contain a statement of the facts constituting
22 grounds for the removal, and fix a time and place for a hearing.
23 Except as otherwise approved by the commissioner, the hearing
24 shall be held not earlier than 30 days nor later than 60 days
25 after the date of service of the notice. If the person does not
26 appear at the hearing in person or by a duly authorized
27 representative, the person shall be considered to have consented

1 to the issuance of an order of removal or prohibition. In the
2 event of consent, or if upon the record made at the hearing the
3 commissioner finds that any grounds specified in the notice have
4 been established, the commissioner may issue an order of suspen-
5 sion or removal from office, or prohibition from participation in
6 the conduct of the affairs of the institution, as appropriate.
7 The order is effective at the expiration of 30 days after service
8 upon the institution and the person concerned except in the case
9 of an order issued upon consent, which is effective at the time
10 specified in the order. The order shall remain effective and
11 enforceable unless it is stayed, modified, terminated, or set
12 aside by the commissioner or a reviewing court.

13 Sec. 2307. Within 10 days after the date a person has been
14 suspended from office or prohibited from participation in the
15 conduct of the affairs of any institution under section 2306(3),
16 the person may apply to the Ingham county circuit court or the
17 circuit court for the county in which the principal office of the
18 institution is located for a stay of the suspension or prohibi-
19 tion pending the completion of the administrative proceedings
20 pursuant to the notice served upon the person under section
21 2306(1) or (2) and the court shall have jurisdiction to stay the
22 suspension or prohibition.

23 Sec. 2308. If any person participating in the conduct of
24 the affairs of an institution is charged in any information,
25 indictment, warrant, or complaint by a county, state, or federal
26 authority with the commission of, or participation in, a felony
27 involving dishonesty or breach of trust, the commissioner, by

1 written notice served upon the person may suspend the person from
2 office or prohibit the person from further participation in any
3 manner in the conduct of the affairs of the institution. A copy
4 of the notice shall also be served upon the institution. The
5 suspension or prohibition is in effect until the information,
6 indictment, warrant, or complaint is finally disposed of or until
7 terminated by the commissioner. If a judgment of conviction with
8 respect to the offense is entered against the person, and when
9 the judgment is not subject to further appellate review, the com-
10 missioner may issue an order removing the person from office or
11 prohibiting the person from further participation in the conduct
12 of the affairs of the institution except with the consent of the
13 commissioner. The person shall cease to be a director or officer
14 of the institution when a copy of the order is served upon the
15 institution. A finding of not guilty or other disposition of the
16 charge shall not preclude the commissioner from instituting pro-
17 ceedings to suspend or remove the person from office or to pro-
18 hibit further participation in institution affairs under section
19 2306(1), (2), or (3).

20 Sec. 2309. If at any time, because of the suspension or
21 removal of 1 or more directors under this act, the board of
22 directors of an institution has less than a quorum of directors,
23 all powers and functions vested in or exercisable by the board
24 shall vest in and be exercisable by the directors on the board
25 not suspended or removed, until there is a quorum of the board of
26 directors. If all of the directors of an institution are
27 suspended or removed under this act, the commissioner shall

1 appoint persons to serve temporarily as directors pending the
2 termination of the suspensions or removals, or until their suc-
3 cessors are duly elected and take office.

4 Sec. 2310. (1) An administrative hearing provided for in
5 section 2304, 2305, 2306, or 2307 shall be conducted under the
6 administrative procedures act of 1969. The hearing shall be pri-
7 vate, unless the commissioner, after fully considering the views
8 of the party afforded the hearing, determines that a public hear-
9 ing is necessary to protect the public interest. After the hear-
10 ing and within 90 days after notifying the parties that the case
11 has been submitted for final decision, the commissioner shall
12 render a decision that includes findings of fact upon which the
13 decision is predicated and issue and serve upon each party to the
14 proceeding an order consistent with this section.

15 (2) Except as provided in subsection (3), a party to the
16 proceeding, or any person required by an order issued under sec-
17 tion 2304, 2305, 2306, or 2308 to cease and desist from any of
18 the violations or practices stated in the order or to be sus-
19 pended, removed, or prohibited from participation in the conduct
20 of the affairs of any institution, may request a review by a
21 court of competent jurisdiction of the order served under subsec-
22 tion (1). The petition for review shall be filed within 30 days
23 from the date the order is issued.

24 (3) An order entered as a consent order shall be reviewed as
25 provided in the administrative procedures act of 1969.

26 (4) Unless a petition for review is timely filed under
27 subsection (2), the commissioner may, at any time, upon

1 appropriate notice, modify, terminate, or set aside the order.

2 If a petition is timely filed, the commissioner may modify, ter-
3minate, or set aside the order with the permission of the court.

4 (5) Unless otherwise specifically ordered by the court, a
5 proceeding for review under this section does not stay an order
6 issued by the commissioner.

7 Sec. 2311. (1) The commissioner may apply to the circuit
8 court of the county in which the principal office of the institu-
9tion is located, or to the circuit court for Ingham county, for
10 the enforcement of any effective and outstanding notice or order
11 issued under section 2304, 2305, 2306, 2308, or 2310, including
12 any temporary cease and desist order issued under section
13 2305(1). The court shall have jurisdiction and power to order
14 and require compliance with the notice or order.

15 (2) Except as otherwise provided in this section, a court
16 does not have jurisdiction to affect by injunction or otherwise
17 the issuance or enforcement of any notice or order under section
18 2304, 2305, 2306, 2308, or 2310 or to review, modify, suspend,
19 terminate, or set aside the notice or order.

20 Sec. 2312. A person, against whom there is outstanding and
21 effective any notice or final order under section 2306(1), (2),
22 or (3) or of section 2308, who participates in any manner in the
23 conduct of the affairs of the institution involved, or directly
24 or indirectly solicits or procures, or transfers or attempts to
25 transfer, or votes or attempts to vote, any proxies, consents, or
26 authorizations in respect of any voting rights in the
27 institution, or, without the prior written approval of the

1 commissioner, votes for a director or serves or acts as a
2 director, officer, or employee of any institution shall be fined
3 not more than \$5,000.00 or imprisoned not more than 1 year, or
4 both.

5 Sec. 2313. A service required or authorized to be made by
6 the commissioner under this section or section 2304, 2305, 2306,
7 2308, 2310, or 2314 may be made by registered or certified mail,
8 or in any other manner reasonably calculated to give actual
9 notice. Copies of a notice or order served by the commissioner
10 upon an institution or any person participating in the conduct of
11 the institution's affairs, under section 2304, 2305, 2306, 2308,
12 or 2310 shall also be sent to the appropriate federal and
13 out-of-state bank, association, and savings bank regulatory
14 agencies.

15 Sec. 2314. In connection with a proceeding under section
16 2304, 2305(1), or 2306, the commissioner shall provide the appro-
17 priate federal supervisory authorities with notice of intent to
18 institute a proceeding and the grounds for the proceedings. An
19 institution or other party that is the subject of any notice or
20 order issued by the commissioner under section 2304, 2305, 2306,
21 2308, or 2310 shall not have standing to raise the requirements
22 of section 2313 or this section with respect to notifying federal
23 supervisory authorities as ground for attacking the validity of
24 any notice or order.

25 Sec. 2315. (1) If, in the opinion of the commissioner, a
26 foreign bank is engaging, has engaged, or is about to engage, in
27 an unsafe or unsound practice in conducting the business of a

1 state agency, state foreign bank branch, or foreign bank
2 representative office, or is violating, has violated, or is about
3 to violate, a state or federal law or a state or federal rule or
4 regulation, the commissioner may issue and serve upon the foreign
5 bank a notice of intent to revoke the foreign bank's authority to
6 engage in the business of banking in this state. The notice
7 shall contain a statement of the facts constituting the alleged
8 unsafe or unsound practice or violation and inform the foreign
9 bank of its right to request a hearing within 10 days.

10 (2) If the foreign bank timely requests a hearing, the com-
11 missioner shall hold a hearing in accordance with the administra-
12 tive procedures act of 1969.

13 (3) Within 60 days after the date of the hearing, the com-
14 missioner shall file a written decision containing his or her
15 findings and serve a copy upon the foreign bank.

16 PART 4

17 RECEIVERSHIPS AND CONSERVATORSHIPS

18 Sec. 2401. (1) Except as provided in subsection (2), a bank
19 subject to this act shall not be liquidated except as provided by
20 this act. A receiver or other liquidating agent shall not be
21 appointed for a bank or its assets and property except as pro-
22 vided in this act.

23 (2) If the federal deposit insurance corporation is
24 appointed as receiver of a bank, the receivership procedures of
25 the federal deposit insurance corporation shall govern the
26 receivership.

1 Sec. 2402. (1) If a bank has refused to pay its deposits or
2 obligations in accordance with the terms under which the deposits
3 or obligations were incurred, becomes insolvent, refuses to
4 submit its books, papers, and records for inspection by the com-
5 missioner, or if the bank appears to the commissioner that the
6 bank is in an unsafe or unsound condition, the commissioner shall
7 either appoint a conservator under section 2406 or apply to the
8 circuit court for Ingham county or for the county in which the
9 bank is located for the appointment of a receiver for the bank.

10 (2) In any proceeding for the appointment of a receiver, the
11 commissioner shall request that the court appoint the federal
12 deposit insurance corporation as the receiver if the deposits in
13 the bank are insured to any extent by the corporation. The court
14 may act upon the application immediately and without notice to
15 any person. If at any time it appears to the court that the
16 claimed reasons for receivership do not exist, the court shall
17 dissolve the receivership and terminate the proceedings.

18 (3) The federal deposit insurance corporation may act as
19 receiver without bond. All other receivers, with the exception
20 of the bureau employee appointed as receiver in his or her offi-
21 cial capacity, shall post a bond in an amount to be determined by
22 the court.

23 (4) If the deposits of a bank described in subsection (1)
24 are not insured by the federal deposit insurance corporation, the
25 commissioner may elect not to seek appointment of a receiver for
26 the bank. If a receiver is not sought, the business corporation
27 act, 1972 PA 284, MCL 450.1101 to 450.2098, governing insolvent

1 business corporations, title 11 of the United States Code, being
2 section 11 U.S.C. 101, governing bankruptcy, and sections 5201 to
3 5265 of the revised judicature act of 1961, MCL 600.5201 to
4 600.5265, governing assignments for the benefit of creditors,
5 shall apply to the insolvent bank.

6 (5) The receiver shall on a regular basis report to the com-
7 missioner regarding all matters involving the receivership.

8 (6) If any bank has been closed and placed in receivership,
9 and the federal deposit insurance corporation pays or makes
10 available for payment the insured deposit liabilities of the
11 closed bank, the corporation, whether or not it has become
12 receiver of the bank, is subrogated to all of the rights of the
13 owners of the deposits against the closed bank in the same manner
14 and to the same extent as subrogation of the corporation is pro-
15 vided for in the federal deposit insurance act.

16 Sec. 2403. (1) Subject to court approval, a receiver shall
17 do all of the following:

18 (a) Take possession of the books, records, and assets of the
19 bank and collect all debts, dues, and claims belonging to the
20 bank.

21 (b) Sue and defend, compromise, and settle all claims
22 involving the bank.

23 (c) Sell all real and personal property.

24 (d) Exercise all fiduciary functions of the bank as of the
25 date of the commencement of the receivership.

26 (e) Pay all administrative expenses of the receivership
27 which shall be a first charge upon the assets of the bank and

1 shall be fully paid before any final distribution or payment of
2 dividends to creditors or shareholders.

3 (f) Pay ratably any and all debts of the bank, except that
4 debts not exceeding \$500.00 in amount may be paid in full but the
5 holders of such debt shall not be entitled to interest on the
6 debt.

7 (g) Repay ratably any amount which may have been paid in by
8 any shareholder by reason of assessments made upon the stock of
9 the bank by order of the commissioner in accordance with this
10 act.

11 (h) Pay ratably to the shareholders of the bank in propor-
12 tion to the number of shares held and owned by each the balance
13 of the net assets of the bank after payment or provision for pay-
14 ments as provided in subdivisions (e), (f), and (g).

15 (i) Have all the powers of the directors, officers, and
16 shareholders of the bank as necessary to support an action taken
17 on behalf of the bank.

18 (j) Hold title to all the bank's property, contracts, and
19 rights of action beginning on the date the bank is ordered in
20 receivership.

21 (2) Subject to court approval, a receiver may do any of the
22 following:

23 (a) Borrow money as necessary or expedient in aiding the
24 liquidation of the bank and secure these borrowings by the
25 pledge, hypothecation, or mortgage of the assets of the bank.

26 (b) Employ agents, legal counsel, accountants, appraisers,
27 consultants, and other personnel the receiver considers necessary

1 to assist in the performance of the receiver's duties. With the
2 prior written approval of the commissioner, the receiver may
3 employ personnel of the bureau if the receiver considers the
4 employment to be advantageous or desirable. The expense of
5 employing bureau personnel is an administrative expense of the
6 liquidation that is payable to the bureau.

7 (c) Exercise other powers and duties as may be provided by
8 the court under the laws of this state applicable to the appoint-
9 ment of receivers by the circuit court.

10 Sec. 2404. (1) A transfer of or lien on the property or
11 assets of the bank is voidable by the receiver if the transfer or
12 lien was 1 or more of the following:

13 (a) Made or created within 1 year before the date the bank
14 is ordered in receivership if the receiving transferee or lien
15 holder was at the time an affiliate, officer, director, employee,
16 or principal shareholder of the bank or an affiliate of the
17 bank.

18 (b) Made or created on or within 90 days before the date the
19 bank is ordered in receivership with the intent of giving to a
20 creditor or depositor, or enabling a creditor or depositor to
21 obtain, a greater percentage of the claimant's debt than is given
22 or obtained by another claimant of the same class.

23 (c) Accepted after the bank is ordered in receivership by a
24 creditor or depositor having reasonable cause to believe that a
25 preference will occur.

26 (d) Voidable by the bank and the bank may recover the
27 property transferred or its value from the person to whom it was

1 transferred or from a person who has received it, unless the
2 transferee or recipient was a bona fide holder for value before
3 the date the bank was ordered in receivership.

4 (2) For purposes of this section, "preference" means a
5 transfer or grant of an interest in the property or assets of the
6 bank that is either of the following:

7 (a) Made or incurred with the intent to hinder, delay, or
8 defraud an entity to which, on or after the date that the trans-
9 fer or grant of interest was made, the bank was or became
10 indebted.

11 (b) Made or incurred for less than a reasonably equivalent
12 value in exchange for the transfer or grant of interest if the
13 bank was insolvent on the date that the transfer or grant of
14 interest was made or became insolvent as a result of the transfer
15 or grant of interest.

16 (3) A person acting on behalf of the bank, who knowingly has
17 participated in implementing a voidable transfer or lien, and
18 each person receiving property or the benefit of property of the
19 bank as a result of the voidable transfer or lien, is personally
20 liable for the property or benefit received and shall account to
21 the receiver for the benefit of the bank.

22 (4) Notwithstanding any other provisions of this act, an
23 otherwise voidable transfer under this section will not be voided
24 by the receiver, if any of the following apply:

25 (a) The transfer or lien does not exceed the value of
26 \$1,000.00.

1 (b) The transfer or lien was received in good faith by a
2 person, who is not a person described in subsection (1)(a), who
3 gave value.

4 (c) The transfer of lien was intended by the bank and the
5 transferee or lien holder to be, and in fact substantially was, a
6 contemporaneous exchange for new value given to the bank.

7 Sec. 2405. (1) On approval by the court, the receiver may
8 dispose of records of the bank in receivership that are obsolete
9 and unnecessary to the continued administration of the receiver-
10 ship proceeding and retain the remaining records of the bank and
11 the receivership for a period of time as ordered by the court.

12 (2) The receiver may devise a method for the effective,
13 efficient, and economical maintenance of the records of the bank
14 and of the receiver's office, including maintaining those records
15 on any medium approved by the court.

16 (3) The receiver may reserve assets of an estate, deposit
17 them in an account, and use them to maintain the records of a
18 liquidated bank after the closing of the receivership
19 proceeding.

20 Sec. 2406. (1) If any of the grounds under section 2402
21 authorizing the appointment of a receiver exist or if the commis-
22 sioner considers it necessary in order to conserve the assets of
23 a bank for the benefit of the depositors and other creditors of
24 the bank, the commissioner may appoint a conservator for the bank
25 and require of the conservator a bond and security as determined
26 by the commissioner.

1 (2) The commissioner may appoint as conservator an employee
2 of the bureau or any other competent and disinterested person.
3 The bureau shall be reimbursed out of the assets of the conserva-
4 torship for all sums expended by it in connection with the con-
5 servatorship as expenses. All expenses of any conservatorship
6 shall be paid out of the assets of the bank, upon the approval of
7 the commissioner, and shall be a first charge upon the assets and
8 paid in full before any final distribution or payment of divi-
9 dends to creditors or shareholders.

10 Sec. 2407. (1) The conservator, under the direction of the
11 commissioner, shall take possession of the books, records, and
12 assets of the bank, and take any action necessary to conserve the
13 assets of the bank pending further disposition of its business as
14 provided by law. The conservator shall have all the rights,
15 powers, and privileges of receivers of banks appointed under this
16 act and shall be subject to the obligations and penalties to
17 which receivers are subject which are not inconsistent with this
18 act with respect to conservators.

19 (2) During the time that the conservator remains in posses-
20 sion of the bank, the rights of all parties with respect to the
21 bank, subject to the other provisions of this act with respect to
22 conservators, shall be the same as if a receiver had been
23 appointed. The conservator may execute the discharge of any real
24 estate mortgage held as part of the assets of the bank.

25 Sec. 2408. (1) While a bank is in conservatorship, the com-
26 missioner may require the conservator to set aside and make
27 available for withdrawal by depositors and payment to other

1 creditors, on a ratable basis, amounts that in the opinion of the
2 commissioner may be used safely for this purpose.

3 (2) The commissioner may permit the conservator to receive
4 deposits.

5 (3) Deposits received while the bank is in conservatorship
6 shall not be subject to any limitation as to payment or
7 withdrawal. The deposits and any new assets acquired on account
8 of the deposits shall be segregated and held especially for the
9 new deposits and shall not be used to liquidate any indebtedness
10 of the bank existing at the time that a conservator was appointed
11 for it or any subsequent indebtedness incurred for the purpose of
12 liquidating any indebtedness of the bank existing at the time the
13 conservator was appointed.

14 (4) The requirements of subsection (3) shall remain in
15 effect not more than 15 days following the date that the conser-
16 vator returns control of the bank to its board of directors.

17 (5) Deposits received while the bank is in conservatorship
18 shall be kept in cash, invested in the direct obligations of the
19 United States, or deposited in depository institutions designated
20 by the commissioner.

21 (6) Before returning control of the bank to its board of
22 directors, the conservator shall publish a notice in form
23 approved by the commissioner, stating the date on which the
24 affairs of the bank will be returned to its board of directors
25 and that the provisions of subsection (3) will not be in effect
26 after 15 days from that date. The conservator shall send a copy
27 of the notice to every person who deposited money in the bank

1 after the appointment of the conservator and before the time when
2 control of the bank is returned to its directors.

3 Sec. 2409. With the prior approval of the commissioner, the
4 conservator of a bank may borrow money as necessary or expedient
5 in aiding the operation, reorganization, or liquidation of the
6 bank, including the payment of liquidating dividends, and may
7 secure the loans by the pledge, hypothecation, or mortgage of the
8 assets of the bank.

9 Sec. 2410. (1) If satisfied that it may be done safely and
10 that it would be in the public interest, the commissioner may
11 terminate a conservatorship and permit the bank to resume the
12 transaction of its business subject to terms, conditions,
13 restrictions, and limitations as he or she may prescribe.

14 (2) If the commissioner determines that it would be in the
15 public interest, the commissioner may terminate a conservatorship
16 and apply for the appointment of a receiver for the bank as pro-
17 vided in section 2402.

18 CHAPTER 3

19 BANK ORGANIZATION AND STRUCTURE

20 PART 1

21 FORMATION

22 Sec. 3101. Not less than 5 natural persons, a majority of
23 whom are residents of this state and citizens of the United
24 States or its territories or possessions, or a bank holding com-
25 pany, may file an application to organize a bank under this act.

1 Sec. 3102. (1) An application to organize a bank under this
2 act shall be in the form prescribed by the commissioner and shall
3 set forth information as the commissioner may require.

4 (2) The commissioner shall examine the information and
5 statements contained in the application and make any other inves-
6 tigation as to the persons, conditions, and circumstances sur-
7 rounding, affecting, or pertaining to the organization of the
8 bank, as is necessary to satisfy the commissioner as to all of
9 the following:

10 (a) Whether the character, responsibility, and fitness of
11 the incorporators, and of the proposed directors and officers,
12 and their motives in seeking to organize the bank are such as to
13 command the confidence of the community and to warrant the belief
14 that the business of the proposed bank will be honestly and effi-
15 ciently conducted.

16 (b) Whether the convenience and needs of the public will be
17 served by the proposed bank.

18 (c) The likelihood of successful operation of the proposed
19 bank, giving consideration to, but not limited to, both of the
20 following:

21 (i) Economic and demographic characteristics of the area
22 primarily to be served by the bank.

23 (ii) The competition offered by existing banks and other
24 financial services providers.

25 (d) Whether the capital structure of the proposed bank is
26 adequate for the conduct of its business.

1 Sec. 3103. (1) Any number of depository institutions may
2 apply to organize a bank exclusively to serve depository
3 institutions or their officers, directors, employees, and
4 affiliates.

5 (2) Any number of depository institutions may apply to orga-
6 nize a bank to engage exclusively in providing trust services and
7 other services as may be authorized by order or declaratory
8 ruling of the commissioner.

9 (3) A depository institution may apply to the commissioner
10 for permission to organize a bank under this section. The appli-
11 cation shall be in the form prescribed by the commissioner and
12 set forth the information the commissioner requires.

13 (4) The commissioner shall examine the information contained
14 in the application and make any other investigation the commis-
15 sioner considers necessary pertaining to the organization of the
16 new bank. The commissioner shall issue to the applicants, within
17 the time period provided in section 2302, written notice of
18 approval or disapproval of the application.

19 (5) A depository institution organized under this section is
20 not subject to the provisions of section 3102, but shall comply
21 with all other provisions of the act.

22 (6) The shares of stock of a bank organized under this sec-
23 tion shall be owned exclusively by depository institutions.

24 (7) As used in this section, "applicant" means the deposi-
25 tory institutions making an application under this section.

26 Sec. 3104. (1) Following the date authorized by the
27 commissioner for the bank to commence business, a bank and its

1 incorporators may jointly request permission from the
2 commissioner for the bank to reimburse the incorporators for the
3 incorporators' reasonable and necessary organizational expenses.

4 (2) A joint request by a bank and its incorporators shall
5 include an accounting of the funds expended by the incorporators
6 which shall be prepared by an independent certified public
7 accountant in accordance with generally accepted accounting
8 principles.

9 (3) If the commissioner determines that the accounting of
10 funds expended is substantially similar to the amount disclosed
11 in the application as estimated expenses of organization, the
12 commissioner may authorize the bank to reimburse the
13 incorporators.

14 (4) The commissioner may waive the requirements of this sec-
15 tion if the expenses of organizing a bank will be paid by a bank
16 holding company.

17 Sec. 3105. If the commissioner approves the articles of
18 incorporation as required by this act, the bank shall become a
19 body corporate. A bank shall not transact any business, except
20 as is incidental and necessarily preliminary to its organization,
21 until it has been authorized by the commissioner to commence the
22 business of banking.

23 Sec. 3106. (1) Within 30 days after the approval of its
24 articles of incorporation, or a later time not to exceed 1 year
25 as approved by the commissioner, the bank shall notify the com-
26 missioner that all of its capital and surplus has been fully paid
27 in and that it has complied with all of the required provisions

1 of this act necessary to be authorized to commence the business
2 of banking.

3 (2) The commissioner shall make examinations as he or she
4 considers necessary to verify the conditions set forth in subsec-
5 tion (1), and if it appears that the bank is lawfully entitled to
6 commence business, the commissioner, within 30 days after receiv-
7 ing the notice provided for in this section, shall give to the
8 bank a certificate under the official seal of the bureau that the
9 bank has complied with all of the required provisions and is
10 authorized to commence business.

11 (3) The application is considered abandoned and of no fur-
12 ther effect if the bank fails to furnish the notice provided for
13 in this section within the specified time or fails to comply with
14 the required provisions within the period of time determined by
15 the commissioner.

16 Sec. 3107. The organizational meeting of every bank shall
17 be called by a notice designating the time and place of the meet-
18 ing and stating the purpose for which the meeting is called. The
19 notice shall be served personally on all the incorporators at
20 least 5 days before the date set for the meeting. If all the
21 incorporators are present at the meeting or in writing waive
22 notice, then no notice shall be required for the organizational
23 meeting.

24 Sec. 3108. (1) A bank organized under this act shall have
25 capital in an amount the commissioner considers adequate to con-
26 duct its business.

1 (2) A bank shall not be authorized to commence business
2 until it has surplus at least equal to 20% of its capital.

3 (3) After organization, each bank shall maintain an adequate
4 capital structure appropriate to conduct its business and the
5 protection of its depositors. The capital adequacy of a bank
6 shall be analyzed and appraised in relation to the character of
7 its management, the liquidity of assets, history of earnings and
8 of the retention of earnings, the potential volatility of the
9 deposit structure, and its risk management, with due regard to
10 the bank's capacity to furnish the broadest service to the
11 public.

12 (4) At all times a bank shall maintain surplus in an amount
13 equal to at least the amount of its capital, except as provided
14 in subsection (2) and except as provided in section 3806, and
15 shall not reduce surplus without the approval of the
16 commissioner.

17 PART 2

18 ARTICLES OF INCORPORATION

19 Sec. 3201. (1) Upon approval of the application under sec-
20 tion 3103 by the commissioner, at least 2 original articles of
21 incorporation, executed by the incorporators, shall be submitted
22 to the commissioner. The commissioner shall approve the articles
23 if the articles conform to law. One of the original articles
24 will be retained for the bureau's records and 1 of the original
25 articles will be forwarded to the incorporators.

26 (2) Before approving, certifying, and distributing the
27 articles of incorporation, the incorporators shall furnish

1 evidence to the commissioner that a firm commitment to insure
2 deposit accounts up to the maximum permitted by federal law has
3 been issued by the federal deposit insurance corporation, unless
4 the commissioner, for good cause shown, waives this requirement.

5 (3) Approval of articles of incorporation by the commis-
6 sioner under this act does not indemnify the bank against claims
7 for the improper use of the bank name stated in the articles.

8 Sec. 3202. (1) The articles of incorporation shall specify
9 all of the following:

10 (a) The name of the bank.

11 (b) The county and the city, village, or township where the
12 principal office of the bank is to be located.

13 (c) The purpose or purposes of incorporation as provided in
14 this act.

15 (d) The authorized number of shares of its capital stock,
16 and 1 of the following:

17 (i) If the bank is to be authorized to issue only 1 class of
18 stock, the total number of shares of stock that the bank may
19 issue and the par value of each share.

20 (ii) If the bank is to be authorized to issue more than 1
21 class of stock, a statement of the total number of shares of all
22 classes of stock that the bank may issue, the number of shares of
23 each class, the par value of each share of each class, and a
24 statement of all designations, powers, preferences, and rights
25 and the qualifications, limitations, and restrictions of each
26 class.

1 (e) The names of the incorporators.

2 (f) The period for which the bank is organized, which may be
3 in perpetuity.

4 (g) That shareholders of the bank may be assessed a capital
5 deficiency payment and that if such assessment is not paid the
6 directors may sell any or all of the shares owned by the share-
7 holder to satisfy the assessment.

8 (h) Any other provisions consistent with the laws of this
9 state for regulating the business of banking and for the conduct
10 of the affairs of the bank.

11 (2) Articles approved by the commissioner before the effec-
12 tive date of this act are considered to be in compliance with
13 this section.

14 Sec. 3203. (1) With the approval of the commissioner, and
15 by vote of shareholders owning a majority of voting shares of the
16 bank, a bank may amend its articles of incorporation in any
17 manner not inconsistent with this act. An amendment, signed by
18 an authorized officer or officers of the bank, shall be effective
19 when approved by the commissioner.

20 (2) Notwithstanding subsection (1), an amendment that pro-
21 vides solely for a change in the name of the bank is not subject
22 to the approval of the commissioner and shall be effective on the
23 date it is received by the commissioner or at a later date speci-
24 fied by the bank.

25

PART 3

DISSOLUTION

1

2 Sec. 3301. (1) A solvent bank may go into dissolution and
3 be closed upon expiration of its corporate term or by the vote of
4 its shareholders.

5 (2) The proposed dissolution shall be submitted for approval
6 at any meeting of shareholders. Notice shall be given to each
7 shareholder of record within the time and in the manner as pro-
8 vided in this act for the giving of notice of meetings of share-
9 holders, and shall state that a purpose of the meeting is to vote
10 on dissolution of the bank.

11 (3) At the meeting, a vote of shareholders shall be taken on
12 the proposed resolution of dissolution. The dissolution shall be
13 approved upon receiving the affirmative vote of the holders of at
14 least 2/3 of the outstanding shares of the bank entitled to vote
15 on dissolution.

16 (4) The board of directors immediately at expiration of its
17 corporate term or adoption of a resolution of dissolution by the
18 shareholders shall submit to the commissioner in duplicate a cer-
19 tificate of termination. The certificate shall be signed by a
20 majority of the remaining members of the board of directors on a
21 form approved by the commissioner.

22 (5) Within 3 months after the date the certificate of termi-
23 nation is submitted under subsection (4), the shareholders shall
24 designate 1 or more persons to act as a liquidating agent or
25 committee. The liquidating agent or committee shall conduct the
26 dissolution in accordance with this act and other applicable law
27 under the supervision of the commissioner and the board of

1 directors. The agent or committee shall furnish to the bank in
2 dissolution a bond satisfactory to the commissioner.

3 (6) The liquidating agent or committee shall submit to the
4 commissioner reports in the form and at the times the commis-
5 sioner may require. The liquidating agent or committee shall
6 make periodic reports not less frequently than semiannually to
7 the shareholders. A copy of each periodic shareholder report
8 shall be filed with the commissioner.

9 (7) The shareholders may remove the liquidating agent or
10 committee and appoint a new agent or a new committee at a special
11 meeting of shareholders by vote of a majority of the shares enti-
12 tled to vote. Notice shall be given to each shareholder of
13 record within the time and in the manner as provided in this act
14 for the giving of notice of meetings of shareholders and shall
15 state that the purpose of the meeting is to vote on removing the
16 liquidating agent or committee.

17 (8) The commissioner may examine the bank in dissolution at
18 any time for the purpose of determining that the rights of the
19 depositors and creditors are being properly served.

20 (9) If the commissioner finds that a dissolution has been
21 completed in conformity to law and that all fees and charges have
22 been paid as required by law, the commissioner shall file 1 copy
23 of the certificate of termination in the office of the bureau and
24 shall certify and deliver 1 copy to the liquidating agent or
25 committee. Upon the filing of the certificate the existence of
26 the bank is terminated.

1 Sec. 3302. (1) A bank that begins dissolution under section
2 3301 shall continue to be a body corporate until the commissioner
3 certifies and files the certificate of termination under section
4 3301(9) for all of the following:

5 (a) Prosecuting and defending actions for or against the
6 bank.

7 (b) Disposing of and conveying the bank's property.

8 (c) Dividing the bank's assets.

9 (d) Gradually settling and closing its affairs.

10 (2) Subject to section 3401, a bank in dissolution shall not
11 continue to be a body corporate for the purpose of continuing the
12 business for which it was organized.

13 (3) An action, suit, or proceeding commenced by or against
14 the bank in dissolution must be commenced before the filing of
15 the certificate of termination under section 3301(9).

16 (4) If the number of directors of a bank in dissolution is
17 less than the full number of directors required or authorized by
18 statute or by the bylaws of the bank, a majority of the remaining
19 directors or the sole remaining director shall possess the same
20 powers in acting for the bank in dissolution under this act as
21 the duly authorized board of directors of the bank possessed
22 before the commencement of dissolution.

23 Sec. 3303. (1) Subject to section 3302 or as otherwise pro-
24 vided by the commissioner, a bank in dissolution, its officers,
25 directors, and shareholders shall continue to function in the
26 same manner as if dissolution had not occurred.

1 (2) The directors of the bank in dissolution are not
2 considered to be trustees of its assets and shall be held to no
3 greater standard of conduct than that prescribed by section
4 3504.

5 (3) Title to the assets of a bank in dissolution remains in
6 the bank until transferred.

7 (4) The dissolution of the bank does not change quorum or
8 voting requirements for the board or shareholders, and does not
9 alter provisions regarding election, appointment, resignation, or
10 removal of, or filling vacancies among, directors or officers, or
11 provisions regarding amendment or repeal of bylaws or adoption of
12 new bylaws.

13 (5) Shares of the stock of a bank in dissolution may be
14 transferred.

15 (6) The bank in dissolution may sue and be sued in its cor-
16 porate name and process may issue by and against the bank in dis-
17 solution in the same manner as if dissolution had not occurred.

18 (7) An action brought against the bank before the commence-
19 ment of its dissolution is not limited or affected because of the
20 dissolution.

21 Sec. 3304. (1) As used in this section:

22 (a) "Existing claim" means a claim or right against the bank
23 in dissolution, liquidated, or unliquidated. It does not include
24 a contingent liability or a claim based on an event occurring
25 after the commencement of dissolution.

26 (b) "Existing claimant" means a person holding an existing
27 claim.

1 (2) The board of directors of a bank in dissolution shall
2 notify the bank's depositors and creditors in writing of the dis-
3 solution within 30 days after submitting the certificate of ter-
4 mination under section 3301(4). The written notice shall include
5 all of the following:

6 (a) A mailing address where an existing claim can be sent.

7 (b) A statement that the bank in dissolution may demand suf-
8 ficient information to permit it to make a reasonable judgment
9 whether the existing claim should be accepted or rejected.

10 (c) The deadline, not less than 3 months from the effective
11 date of the written notice, by which the existing claim shall be
12 received.

13 (d) A statement that the existing claim will be barred if
14 not received by the deadline.

15 (3) The notice under subsection (2) does not constitute an
16 acceptance that a person to whom the notice is directed has a
17 valid existing claim against the bank in dissolution.

18 (4) An existing claim against the bank in dissolution is
19 barred if either of the following applies:

20 (a) The existing claimant who was given written notice under
21 subsection (2) does not file the claim with the bank by the
22 deadline.

23 (b) The existing claimant who was given written notice under
24 subsection (2) and whose existing claim was rejected in writing
25 by the bank in dissolution does not commence a proceeding to
26 enforce the existing claim within 90 days from the effective date
27 of the written notice of rejection.

1 (5) The effective date of the written notice under this
2 section is the earliest of the following:

3 (a) The date it is received.

4 (b) Five days after its deposit in the United States mail as
5 evidenced by the postmark, if it is mailed postpaid and correctly
6 addressed.

7 (c) The date shown on the return receipt, if the notice is
8 sent by registered or certified mail, return receipt requested,
9 and the receipt is signed by or on behalf of the addressee.

10 Sec. 3305. (1) As used in this section:

11 (a) "Claim" means a claim or right against the bank in dis-
12 solution, liquidated or unliquidated, of a claimant that did not
13 receive the written notice required by section 3304.

14 (b) "Claimant" means a person holding a claim.

15 (2) The board of directors of a bank in dissolution shall
16 publish notice of dissolution. The first notice shall be pub-
17 lished within 30 days after submitting the certificate of termi-
18 nation under section 3301(4) and request that persons with claims
19 against the bank in dissolution present them as required by the
20 notice.

21 (3) The notice shall comply with all of the following:

22 (a) Be published once each week for 8 consecutive weeks.

23 (b) Describe the information to be included in a claim and
24 provide a mailing address where the claim is to be sent.

25 (c) Contain a statement that the bank in dissolution may
26 demand sufficient information to permit it to make a reasonable
27 judgment whether the claim should be accepted or rejected.

1 (d) State the deadline, not less than 6 months from the last
2 publication date, by which the claim shall be received.

3 (e) State that a claim against the bank in dissolution will
4 be barred unless a proceeding to enforce the claim is commenced
5 within 6 months after the last publication date of the notice
6 published under this section.

7 (4) A claim against the bank in dissolution is barred if any
8 of the following apply:

9 (a) The claimant does not deliver a claim or commence a pro-
10 ceeding in an appropriate court to enforce the claim against the
11 bank in dissolution within 6 months after the last publication
12 date of the notice published under this section.

13 (b) The claimant whose claim was rejected in writing by the
14 bank in dissolution does not commence a proceeding to enforce the
15 claim within 90 days from the effective date of the written
16 notice of rejection.

17 (c) The claimant, whose claim is contingent or based on an
18 event occurring after the commencement of dissolution, that does
19 not deliver a claim within 6 months after the last publication
20 date of the notice published under this section or file an action
21 in an appropriate court to enforce the claim against the bank in
22 dissolution before the commissioner certifying and filing the
23 certificate of termination under section 3301(9).

24 Sec. 3306. (1) After a bank has commenced dissolution, the
25 commissioner, the bank in dissolution, a creditor, or a share-
26 holder may apply to an appropriate court for an order that the
27 affairs of the bank in dissolution and the liquidation of its

1 assets continue under supervision of the court. The court shall
2 make orders and judgments as may be required, including, but not
3 limited to, continuance of the liquidation of the assets of the
4 bank in dissolution by its liquidating agent or committee under
5 supervision of the court, or the appointment of a receiver of the
6 bank is dissolution to be vested with powers as the court desig-
7 nates to liquidate the affairs of the bank.

8 (2) For good cause shown, and so long as a bank in dissolu-
9 tion has not made complete distribution of its assets, the court
10 may permit a creditor who has not delivered his or her claim or
11 commenced a proceeding to enforce his or her claim within the
12 time limits provided in sections 3304 and 3305 to file the claim
13 or to commence a proceeding within the time as the court
14 directs.

15 Sec. 3307. (1) A bank in dissolution or its liquidating
16 agent or committee shall act on all claims filed and notify all
17 claimants of the action taken or to be taken on their respective
18 claims within 6 months of the last date for filing the claims.

19 (2) Before making a distribution of assets to shareholders,
20 a bank in dissolution shall pay or make provision to satisfy its
21 debts, obligations, and liabilities. Compliance with this sec-
22 tion requires, to the extent a reasonable estimate is possible,
23 that provision be made to satisfy those debts, obligations, and
24 liabilities anticipated to arise after the date the certificate
25 of termination is filed under section 3301(9).

1 (3) Provision need not be made to satisfy any debt,
2 obligation, or liability that is or is reasonably anticipated to
3 be barred under section 3304 or 3305.

4 (4) The fact that the assets provided by the bank in disso-
5 lution for the satisfaction of its debts, obligations, and
6 liabilities are insufficient to satisfy claims arising after a
7 certificate of termination is filed under section 3301(9) shall
8 not create a presumption that the bank in dissolution has failed
9 to comply with this section.

10 (5) After payment of or adequate provision to satisfy the
11 debts, obligations, or liabilities of the bank in dissolution has
12 been made, the remaining assets shall be distributed to share-
13 holders according to their respective rights and interests. The
14 distribution may be made in cash, in kind, or both.

15 PART 4

16 TERM EXTENSION

17 Sec. 3401. (1) A bank whose corporate term will expire by
18 limitation may amend its articles to extend its corporate term
19 for a limited period of time or in perpetuity.

20 (2) A bank whose term has expired, but which has not submit-
21 ted a certificate of termination under section 3301 and has inad-
22 vertently continued its active business beyond the term, may
23 adopt a resolution to amend its articles to renew its corporate
24 existence. Notice shall be given to each shareholder of record
25 in the manner provided in this act for the giving of notice of
26 meetings or shareholders, and shall state that the purpose of the
27 meeting is to vote on the renewal of corporate term. At the

1 meeting a vote of the shareholders shall be taken on the proposed
2 extension, which shall be adopted upon receiving the affirmative
3 vote of holders of at least 2/3 of the outstanding shares.

4 (3) The officers and directors de facto of a bank whose cor-
5 porate term has expired shall do and perform all acts required of
6 officers and directors de jure with regard to calling a special
7 meeting of the shareholders and submitting to them the question
8 of renewing the corporate term. A bank de facto shall not be
9 permitted to renew its corporate term unless the action is taken
10 within 1 year after its corporate term has expired and renewal
11 shall not relieve the bank from any penalties that may have
12 accrued against it under law.

13 (4) A bank whose corporate term has been extended or renewed
14 under this section shall be the same bank and shall have the same
15 shareholders, directors, and officers, and enjoy all the rights,
16 privileges, immunities, and powers and be subject to all the
17 liabilities that it respectively possessed and was subject to
18 before the expiration of its corporate term.

19 PART 5

20 OFFICERS AND DIRECTORS

21 Sec. 3501. (1) A bank shall be managed by a board of not
22 less than 5 nor more than 25 directors. The first board shall be
23 elected by the incorporators at the meeting held under section
24 3107 before the bank is authorized to commence business. All
25 subsequent boards shall be elected by the shareholders at the
26 annual meeting of the shareholders or at a meeting called for
27 that purpose as provided in the bylaws of the bank. The board of

1 directors may fill a vacancy on the board for the remainder of
2 the vacated term. Directors shall hold office until their suc-
3 cessors are elected and qualified.

4 (2) The bylaws of the bank shall provide for the shareholder
5 election of directors in 1 of the following methods:

6 (a) The shareholders annually may elect the full board of
7 directors.

8 (b) The shareholders annually may elect a board of directors
9 with not more than 2 unfilled directorships. The unfilled direc-
10 torships are considered vacancies to be filled by the board of
11 directors.

12 (c) The shareholders may elect directors with staggered
13 terms of office as provided for in subsection (3).

14 (3) The election of directors with staggered terms of office
15 shall be provided for in the bylaws of the bank as follows:

16 (a) That the directors will be divided into 2 or 3 classes,
17 each to be as nearly equal in number as possible.

18 (b) The term of office of directors in the first class shall
19 expire at the first annual meeting of shareholders after their
20 election, that of the second class shall expire at the second
21 annual meeting after their election, and that of the third class,
22 if any, shall expire at the third annual meeting after their
23 election.

24 (c) At each annual meeting after the classification estab-
25 lished under subdivision (b), a number of directors equal to the
26 number of the class whose term expires at the time of the meeting
27 shall be elected to hold office until the second succeeding

1 annual meeting if there are 2 classes, or until the third
2 succeeding annual meeting if there are 3 classes.

3 (4) The board of directors shall appoint a director as chief
4 executive officer who shall be a full-time employee of the bank
5 and perform duties designated by the board, and who shall serve
6 as the chairperson of the board, unless the board designates
7 another director to be chairperson in lieu of the chief executive
8 officer. The board may appoint officers, who need not be members
9 of the board, define their duties, dismiss them at pleasure, and
10 appoint other officers to fill vacancies.

11 (5) Except as otherwise provided by this act, the board of
12 directors may appoint committees of its members to perform its
13 duties.

14 (6) The board of directors shall meet not less than 6 times
15 per fiscal year in person or by means of electronic communication
16 devices that enable all participants in a meeting to communicate
17 with each other. The minutes of each meeting shall be kept and
18 shall be signed by the presiding officer and the secretary of the
19 meeting. A majority of the board of directors constitutes a
20 quorum for the transaction of business.

21 (7) The commissioner may call a meeting of the board of
22 directors of any bank, for any purpose, by giving a notice of the
23 time, place, and purpose of the meeting at least 3 days before
24 the meeting date to the directors by personal service, by regis-
25 tered or certified mail, or by other appropriate method reason-
26 ably designed to provide adequate notice.

1 Sec. 3502. Every director when elected or appointed shall
2 take and subscribe an oath that he or she will diligently and
3 honestly perform the duties of the office and will not knowingly
4 violate, or permit to be violated, any provisions of this act.
5 The oath shall be transmitted to the commissioner for filing.

6 Sec. 3503. (1) A bank may contract for, or purchase from,
7 any of its directors, or from any person of which any of the
8 bank's directors is an officer, director, manager, owner, employ-
9 ee, or agent, any securities or other property, only when the
10 purchase is made in the ordinary course of business upon terms
11 not less favorable to the bank than those offered by others, and
12 the purchase is authorized by a majority of the board of direc-
13 tors not interested in the sale of the securities or property
14 evidenced by their affirmative vote or written assent. If a
15 director, or person of which any director is an officer, direc-
16 tor, manager, owner, employee, or agent, acting for or on behalf
17 of others, sells securities or other property to a bank, the com-
18 missioner may require a full disclosure to be made of all commis-
19 sions or other considerations received. If a director or person,
20 acting in his, her, or its own behalf, sells securities or other
21 property to the bank, the commissioner may require a full disclo-
22 sure of all profits realized from the sale.

23 (2) A bank may sell securities or other property to any of
24 its directors, or to an entity of which any of its directors is
25 an officer, director, manager, owner, employee, or agent in the
26 ordinary course of business on terms not more favorable to the
27 director or person than those offered to others, when the sale is

1 authorized by a majority of the board of directors of a bank
2 evidenced by their affirmative vote or written assent.

3 (3) This section shall not be construed as authorizing banks
4 to purchase or sell securities or other property that banks are
5 not otherwise authorized by law to purchase or sell.

6 Sec. 3504. (1) A director or an officer of a bank shall
7 discharge the duties of his or her position in good faith and
8 with that degree of diligence, care, and skill that an ordinarily
9 prudent person would exercise under similar circumstances in a
10 like position. In discharging his or her duties, a director or
11 an officer, when acting in good faith, may rely upon the opinion
12 of legal counsel for the bank, upon the report of an independent
13 appraiser selected with reasonable care by the board or by an
14 officer of the bank, or upon financial statements of the bank
15 certified to him or her to be correct by an officer of the bank,
16 or as stated in a written report by an independent public or cer-
17 tified public accountant or firm of accountants to reflect fairly
18 the financial condition of the bank.

19 (2) The articles of incorporation of a bank may provide that
20 a director is not personally liable to the bank or its sharehold-
21 ers for monetary damages for a breach of the director's fiduciary
22 duty. The provision does not eliminate or limit the liability of
23 a director for any of the following:

24 (a) A breach of the director's duty of loyalty to the bank
25 or its shareholders.

26 (b) Acts or omissions not in good faith or that involve
27 intentional misconduct or knowing violation of law.

1 (c) A violation of section 2312.

2 (d) A transaction from which the director derived an
3 improper personal benefit.

4 (3) An action against a director or officer for failure to
5 perform the duties imposed by this section shall be commenced
6 within 3 years after the cause of action has accrued, or within 2
7 years after the time when the cause of action is discovered, or
8 should reasonably have been discovered, by the complainant,
9 whichever occurs first.

10 (4) If a director or officer of a bank knowingly violates,
11 or knowingly permits any of the agents, officers, directors, or
12 employees of the bank to violate, this act, rules promulgated
13 under this act, or an order or declaratory ruling of the commis-
14 sioner, every director and officer who participated in or
15 assented to the violation shall be held liable in his or her per-
16 sonal and individual capacity for all damages that the bank, any
17 shareholder, or any other person sustains as a result of the
18 violation. An action to recover damages under this section shall
19 be brought within 3 years from the time of the violation.

20 Sec. 3505. (1) The shareholders may remove 1 or more direc-
21 tors with or without cause unless the articles provide that
22 directors may be removed only for cause. The vote for removal
23 shall be by a majority of shares entitled to vote at an election
24 of directors, except that the articles may require a higher vote
25 for removal without cause. This section shall not invalidate any
26 bylaw adopted before the effective date of this act that applies
27 to removal without cause.

1 (2) In the case of a bank having cumulative voting, if less
2 than the entire board is to be removed, a director shall not be
3 removed if the votes cast against his or her removal would be
4 sufficient to elect him or her if then cumulatively voted at an
5 election of the entire board of directors, or, if there are
6 classes of directors, at an election of the class of directors of
7 which he or she is a part.

8 (3) If holders of a class or series of stock are entitled by
9 the articles to elect 1 or more directors, this section applies,
10 with respect to removal of a director so elected, to the vote of
11 the holders of the outstanding shares of that class or series of
12 stock.

13 Sec. 3506. An officer or employee of any bank, in his or
14 her individual capacity, shall not act as agent in the sale of
15 stock or other securities to any person or receive directly or
16 indirectly any consideration or commission resulting from the
17 sale of stock or other securities by others to the bank by which
18 he or she is employed.

19 Sec. 3507. An officer, director, or employee of a bank
20 shall not receive, or consent, or agree to receive from a cus-
21 tomer of the bank any consideration or gratuity in return for the
22 procurement of a loan or other service from the bank.

23 PART 6

24 SHAREHOLDERS

25 Sec. 3601. (1) The annual meeting of the shareholders of
26 every bank shall be held on the day in each year that is provided

1 in the bylaws of the bank. Special meetings of shareholders
2 shall be called and held as provided in the bylaws of the bank.

3 (2) At any meeting, each shareholder entitled to vote shall
4 be entitled to 1 vote for each share held by the shareholder. A
5 shareholder may vote at any meeting of the bank by proxy in writ-
6 ing signed by the shareholder.

7 (3) A bank may provide in the initial articles of incorpora-
8 tion or by amendment to the articles by a vote of shareholders
9 owning a majority of the total number of shares of each class of
10 its outstanding capital stock, that in an election of directors
11 each shareholder may cast as many votes as the number of shares
12 owned by the shareholder multiplied by the number of directors to
13 be elected. In the shareholder's discretion, the shareholder may
14 distribute his or her total number of votes cumulatively for 1 or
15 more of the candidates.

16 (4) A person holding shares of the capital stock of a bank
17 in a fiduciary capacity shall be entitled to vote the shares
18 unless otherwise provided in the trust instrument. A person
19 whose shares are pledged shall be entitled to vote unless the
20 pledgor has expressly empowered the pledgee to vote the shares
21 and the pledge of the stock and the empowerment to vote are
22 recorded by the issuing bank or its agent, in which case only the
23 pledgee or his or her proxy may vote the shares.

24 (5) A shareholder shall have the right to vote in person or
25 by proxy, except that a bank shall not vote shares it holds under
26 section 3804(4) or 4304(4).

1 Sec. 3602. The commissioner may call a meeting of the
2 shareholders of any bank by giving at least 3 days' notice of the
3 time, place, and purposes of the meeting to the shareholders by
4 registered or certified mail sent to their last known addresses
5 as shown on the records of the bank or by another appropriate
6 method reasonably designed to provide adequate notice.

7 Sec. 3603. (1) A bank shall keep and maintain an accurate
8 record of the name and address of each shareholder of the bank,
9 the number of shares held by each, the date when the shareholders
10 acquired the shares, and the name of the transferor.

11 (2) In lieu of the requirements under subsection (1), the
12 board of directors of a bank may designate a corporation autho-
13 rized by law to act as transfer agent or registrar of shares of
14 corporations, to act as transfer agent or transfer agent and reg-
15 istrar of the shares of the bank, but the same corporation shall
16 not be designed to act in both capacities at the same time.

17 (3) Upon demand by the commissioner, a bank shall submit to
18 the commissioner a list containing the name and address of each
19 shareholder of the bank together with the number of shares held
20 by each according to its records as of the close of business on
21 the date of issuance of the demand.

22 (4) Within 2 calendar weeks of any demand made for a purpose
23 reasonably related to the requester's interest as a shareholder
24 or as a representative of a group of shareholders by any share-
25 holder being the record owner of at least 5% of the issued shares
26 of the bank or by any person representing any group who are the
27 record owners of at least 5% of the issued shares of the bank,

6 Sec. 3604. If a vote of the holders of shares of stock is
7 required in this act, those provisions shall apply only to the
8 voting stock in the bank, out-of-state bank, national bank, asso-
9 ciation, or savings bank, voting by classes.

CONSOLIDATION AND CONVERSION

(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, prescribing the terms and conditions of consolidation, the mode of carrying the consolidation into effect, and stating other terms required or permitted by this act and any laws of the United States, as well as the manner of converting the shares of each of the consolidating organizations into shares of the consolidated

1 organization, with other details and provisions as are considered
2 necessary.

3 (4) The proposed consolidation agreement shall be submitted
4 to the shareholders of each consolidating organization, at sepa-
5 rate meetings of their shareholders. A notice indicating the
6 time, place, and purpose of the meeting shall be mailed to each
7 shareholder of each consolidating organization at his or her last
8 known address as appears from the stock records of the consoli-
9 dating organizations, by registered or certified mail, at least
10 10 days prior to the date of the meeting. Notice shall not be
11 required if it is waived by the commissioner, or, in the case of
12 individual notice to a shareholder, by the shareholder.

13 (5) At the meeting, the proposed consolidation agreement
14 shall be considered and a vote by ballot, in person or by proxy,
15 taken for the adoption or rejection of the agreement. At the
16 meeting, each share of stock shall entitle the holder to 1 vote.
17 If the votes of shareholders of each consolidating organization
18 representing not less than 2/3 of the total number of shares of
19 each class of each consolidating organization's outstanding capi-
20 tal stock are cast for the adoption of the agreement, the vote
21 shall be certified on the agreement by an officer of each of the
22 consolidating organizations.

23 (6) If an out-of-state bank, national bank, association, or
24 savings bank is a consolidating organization and approval is
25 required by the laws of another state or of the United States,
26 that organization shall furnish a copy of the approval of the

1 appropriate state or federal regulator of the consolidation to
2 the commissioner.

3 (7) The consolidation agreement required by this section
4 shall be submitted to the commissioner, who shall, upon approval,
5 certify upon the agreement the effective date of the
6 consolidation. The consolidation agreement or a copy certified
7 by the commissioner is evidence of the agreement and act of con-
8 solidation of the consolidating organizations and the observance
9 and performance of all necessary acts and conditions precedent to
10 the consolidation.

11 (8) A bank holding company that is the sole shareholder of
12 all of the outstanding issued stock of a bank, out-of-state bank,
13 or national bank that is a consolidating organization in a pro-
14 posed consolidation may waive the shareholder meeting requirement
15 of this subsection.

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

21 Sec. 3702. On an interstate basis, a bank may consolidate
22 with any number of consolidating organizations to form a consoli-
23 dated organization in accordance with the laws under which the
24 consolidated organization is chartered, if all of the following
25 apply:

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

4 (b) The consolidating organizations provide notice to the
5 commissioner by filing a copy of the application for consolida-
6 tion within 10 days after the date the application is filed with
7 the appropriate federal regulator.

8 (c) The consolidated organization complies with section
9 3703(3) with respect to notice of consolidation, but that notice
10 is limited to a court, public tribunal, agency, or officer of
11 this state.

12 Sec. 3703. (1) If approval and certification of the consol-
13 idation agreement as required by section 3701 have been com-
14 pleted, the corporate existence of each consolidating organiza-
15 tion is merged into and continued in the consolidated bank. To
16 the extent authorized by this act, the consolidated bank pos-
17 sesses all the rights, interests, privileges, powers, and fran-
18 chises and is subject to all the restrictions, disabilities,
19 liabilities, and duties of each of the consolidating
20 organizations. The title to all property, real, personal, and
21 mixed, is transferred to the consolidated bank, and shall not
22 revert or be in any way impaired by reason of this act.

23 (2) A consolidated bank holds and enjoys the same and all
24 rights of property, franchises, and interests, including appoint-
25 ments, designations, and nominations and all other rights and
26 interests as a fiduciary, in the same manner and to the same
27 extent as those rights and interests were held or enjoyed by each

1 consolidating organization at the time of the consolidation. If
2 a consolidating organization at the time of consolidation was
3 acting under appointment of any court as a fiduciary, the consol-
4 idated bank is subject to removal by a court of competent
5 jurisdiction.

6 (3) A consolidated bank shall file with each court or other
7 public tribunal, agency, or officer in any state by which any of
8 the consolidating organizations have been appointed as a fiducia-
9 ry, and in the court file of each estate, suit, or any other pro-
10 ceeding in which any of them has been acting as a fiduciary, an
11 affidavit setting forth the fact of consolidation, the name of
12 each consolidating organization, the name of the consolidated
13 bank, the location of its principal office, and the amount of its
14 capital and surplus. This subsection does not require filing of
15 an affidavit related to any consolidating organization that after
16 the consolidation retains the same corporate name, charter, and
17 principal office location.

18 (4) The liability of any consolidating organization or of a
19 shareholder, director, or officer of a consolidating organiza-
20 tion, or the rights or remedies of the creditors of, or other
21 persons transacting business with, the consolidating organization
22 shall not be altered or impaired as the result of a
23 consolidation.

24 Sec. 3704. (1) Whether it maintains a presence in this
25 state, a consolidated organization or any of its successors in
26 interest is subject to service of process in a proceeding in this
27 state for enforcement of any obligation incurred in this state by

1 any consolidating organization that is or was a party to a
2 consolidation.

3 (2) An action or proceeding by or against any of the consol-
4 idating organizations in a court or any other public tribunal of
5 this state may be prosecuted to judgment, as if consolidation had
6 not taken place, or the consolidated bank or consolidated organi-
7 zation may be substituted in the place of any consolidating
8 organization whose existence has ceased.

9 Sec. 3705. (1) A consolidated bank or consolidated organi-
10 zation may operate all branches and principal offices located in
11 this state of the consolidating organizations without providing
12 the notice required by section 3711(1).

13 (2) A bank, out-of-state bank, national bank, association,
14 or savings bank operating a branch in this state as the result of
15 a consolidation shall provide notice of that operation to the
16 commissioner within 30 days after the effective date of the
17 consolidation.

18 Sec. 3706. (1) As used in this section:

19 (a) "Existing bank" means a bank engaged in the business of
20 banking before the consolidation provided in this section.

21 (b) "New bank" means a bank not engaged in the business of
22 banking before the consolidation provided in this section.

23 (c) "Existing association" means a stock association engaged
24 in the savings and loan business before the consolidation pro-
25 vided in this section.

1 (d) "Existing savings bank" means a stock savings bank
2 engaged in the savings bank business before the consolidation
3 provided in this section.

4 (2) Notwithstanding any other provision of this act, both of
5 the following apply:

6 (a) A new bank may be organized for the sole purpose of
7 effecting its consolidation under section 3701 with an existing
8 bank, existing savings bank, or existing association having its
9 principal office in the same city or village as the new bank and
10 if upon completion of the consolidation a bank holding company
11 becomes the owner of all of the outstanding voting shares of the
12 consolidated organization. The new bank and existing bank may
13 consolidate under the articles of either bank. The new bank and
14 the existing savings bank or association shall consolidate under
15 the articles of the new bank. Sections 3701, 3703, and 3704
16 apply to the consolidation, except that the agreement of consoli-
17 dation may provide that shares of either or both the consolidat-
18 ing organizations will be converted into shares or other securi-
19 ties of the bank holding company.

20 (b) A shareholder of the existing bank, existing savings
21 bank, or existing association who votes against the consolida-
22 tion, or who has given notice in writing to that bank or associa-
23 tion at or before the meeting called for the purpose of consider-
24 ing the agreement of consolidation that the shareholder dissents
25 from the consolidation, is entitled to receive in cash from the
26 consolidated organization the fair value of all shares held by
27 the shareholder, if and when the consolidation is consummated,

1 upon written request made to the consolidated organization at any
2 time within 30 days after the date of consummation of the consol-
3 idation, accompanied by the surrender of the stock voted in dis-
4 sent by the shareholder. Upon the filing of the written request
5 and the surrender of stock certificates, if any, the shareholder
6 shall cease to have any of the rights of a shareholder except the
7 right to be paid the fair value of the shareholder's shares. The
8 request having been made shall not be withdrawn except with the
9 written consent of the consolidated organization. The fair value
10 of the shares shall be determined, as of the date on which the
11 meeting of shareholders of the existing bank, existing savings
12 bank, or existing association was held adopting the agreement of
13 consolidation, by a qualified and independent appraiser selected
14 by the commissioner upon written request submitted by a dissent-
15 ing shareholder entitled to receive the fair value of his or her
16 shares. The appraiser selected shall file a written appraisal
17 with the commissioner, who in turn shall forward copies to all
18 interested parties. The valuation determined by the appraiser is
19 final and binding on all parties as to the fair value of the
20 shares. The consolidated organization shall pay to each dissent-
21 ing shareholder entitled the fair value of his or her shares
22 within 30 days following the receipt of the written appraisal.
23 The fees and expenses of the appraisal, which shall be approved
24 by the commissioner, shall be paid by the consolidated
25 organization. The agreement of consolidation shall provide the
26 manner of disposing of the shares of the existing bank, existing

1 savings bank, or existing association surrendered by the
2 dissenting shareholders.

3 (3) The commissioner shall approve or disapprove an applica-
4 tion submitted under this section in writing within 30 days after
5 acceptance of the application or the last amendment or supplement
6 to the application.

7 Sec. 3707. (1) As used in this section:

8 (a) "Consolidation agreement" means an agreement entered
9 into among an existing bank, existing savings bank, or an exist-
10 ing association, and a new bank, and a new holding company that
11 provides both of the following:

12 (i) That the existing bank, existing savings bank, or exist-
13 ing association and the new bank will be consolidated or merged.

14 (ii) That upon consummation of the consolidation or merger,
15 the shares of capital stock of the existing bank, existing sav-
16 ings bank, or existing association will be converted into or
17 exchanged for shares of the capital stock or other securities of
18 the new holding company.

19 (b) "Existing association" means a stock association that is
20 a party to a consolidation agreement and is engaged in the sav-
21 ings and loan business before the consolidation or merger pro-
22 vided for in the consolidation agreement.

23 (c) "Existing bank" means a bank or national banking associ-
24 ation that is a party to a consolidation agreement and is engaged
25 in the business of banking before the consolidation or merger
26 provided for in the consolidation agreement.

1 (d) "Existing savings bank" means a stock savings bank that
2 is a party to a consolidation agreement and is engaged in the
3 savings bank business before the consolidation or merger provided
4 for in the consolidation agreement.

5 (e) "New bank" means a bank or national banking association
6 that is a party to a consolidation agreement and is not engaged
7 in the business of banking before the consummation of the consol-
8 idation or merger provided for in the consolidation agreement.

9 (f) "New holding company" means a corporation that is not a
10 bank, association, or national banking association and as to
11 which all of the following apply:

12 (i) The corporation is a party to a consolidation
13 agreement.

14 (ii) Before its acquisition of an existing bank, existing
15 savings bank, or existing association pursuant to the consolida-
16 tion agreement, the corporation does not have control of a bank,
17 savings bank, association, or national banking association and
18 has not transacted any business except business incidental to its
19 organization and to the entering into, and performance of, the
20 consolidation agreement.

21 (iii) Upon consummation of the consolidation or merger pro-
22 vided for in the consolidation agreement, the corporation will
23 become a bank holding company as defined in section 2 of the bank
24 holding company act.

25 (iv) Immediately after its acquisition of an existing bank,
26 existing savings bank, or existing association under the

1 consolidation agreement, the corporation will not have control of
2 more than 1 bank or 1 national banking association.

3 (v) Before the acquisition of an existing bank, existing
4 savings bank, or existing association under the consolidation
5 agreement, the corporation is not, and immediately after acquisi-
6 tion of control of the existing bank, existing savings bank, or
7 existing association shall not be, controlled by a bank holding
8 company as defined in section 2(a)(2) of the bank holding company
9 act.

10 (g) "Control" means control as defined in section 2 of the
11 bank holding company act.

12 (2) A new holding company may apply to the commissioner for
13 approval of the terms and conditions of the issuance of the
14 shares or other securities of the new holding company into which
15 the shares of an existing bank, existing savings bank, or exist-
16 ing association are to be converted, or for which the shares of
17 the existing bank, existing savings bank, or existing association
18 are to be exchanged, under a consolidation agreement, and for
19 approval of the terms and conditions of the conversion or
20 exchange. The application for approval shall be in a form, con-
21 tain information, and be accompanied by documents as required by
22 the commissioner. Within 30 days after the application is filed,
23 the commissioner shall conduct a hearing upon the fairness of the
24 terms and conditions at which all persons to whom it is proposed
25 to issue the securities in the conversion or exchange shall have
26 the right to appear. Within 20 days after the hearing, the
27 commissioner shall either approve or disapprove the terms and

1 conditions of the issuance and of the conversion or exchange.

2 This subsection does not apply to the terms and conditions of the
3 issuance and conversion or exchange of securities provided for in
4 a consolidation agreement or to make unlawful any transaction
5 that is lawful without regard to this subsection.

6 Sec. 3708. (1) Upon the affirmative vote of the sharehold-
7 ers representing more than 50% of the total number of shares of
8 each class of its outstanding capital stock, a bank may be con-
9 verted under the laws of this state into a stock association or
10 stock savings bank or under the laws of the United States into a
11 national banking association. The conversion of a bank into a
12 stock association, stock savings bank, or national banking asso-
13 ciation shall not release the bank from its obligations to pay
14 and discharge either of the following:

15 (a) All the liabilities created by law or incurred by the
16 bank before becoming a stock association, stock savings bank, or
17 a national banking association.

18 (b) Any tax imposed by this state up to the date of its
19 becoming a stock association, stock saving bank, or national
20 banking association in proportion to the time that has elapsed
21 since the last preceding payment or assessment, penalty, or for-
22 feiture imposed or incurred up to the date of its becoming a
23 stock association, stock savings bank, or a national banking
24 association.

25 (2) A conversion shall not be made to defeat or defraud any
26 of the creditors of the bank.

1 (3) A certified copy of all resolutions relating to the
2 proposed conversion adopted by the directors and shareholders of
3 the bank shall be submitted to the bureau. If consent or
4 approval is required by federal law, the bank shall provide the
5 bureau with a certified copy of consent or approval of the appro-
6 priate federal regulator to the conversion.

7 Sec. 3709. (1) With the approval of the commissioner and
8 upon the affirmative vote of the shareholders representing more
9 than 50% of the total number of shares of each class of its out-
10 standing capital stock, a national banking association, stock
11 association, or stock savings bank doing business in this state
12 and having capital and surplus sufficient to entitle it to become
13 a bank under this act may be converted into a bank if the conver-
14 sion is not in contravention of any laws of the United States.

15 (2) A depository institution converting under subsection (1)
16 may submit articles of incorporation executed by a majority of
17 the directors of the national banking association, stock associa-
18 tion, or stock savings bank. A majority of the directors, after
19 executing the articles of incorporation, shall have the power to
20 execute all other papers and to do whatever is required to com-
21 plete its organization as a bank. The shares of the bank may
22 continue to be for the same amount as they were before the con-
23 version, and the directors may continue to be directors of the
24 bank until others have been elected or appointed under the laws
25 of this state.

26 (3) The approval of the commissioner shall be based on an
27 examination of the national banking association, stock

1 association, or stock savings bank and on the action taken by its
2 directors and shareholders with respect to the conversion. A
3 conversion shall not be made to defeat or defraud any creditors.
4 The commissioner may permit the converted bank to retain and
5 carry assets of the converting national banking association,
6 stock association, or stock savings bank which do not conform to
7 the legal requirements relative to assets acquired and held by
8 banks.

9 Sec. 3710. If a conversion becomes effective under section
10 3708 or 3709, all of the following shall apply:

11 (a) The converted organization shall be considered a contin-
12 uation of the body corporate of the converting organization.

13 (b) The title to all property, real or personal, including
14 any rights that may be attached to the property, or any thing in
15 action, is immediately transferred and vested in the converted
16 organization to the same extent as it was in the converting
17 organization.

18 (c) All assets, rights, privileges, or interests belonging
19 or attributed to the converting organization are immediately
20 transferred and vested in the converted organization to the same
21 extent as they were in the converting organization.

22 (d) All liabilities, restrictions, and disabilities of the
23 converting organization, its shareholders, or its officers are
24 immediately transferred to the converted organization to the same
25 extent as they were in the converting organization.

1 (e) If the converting organization is acting in any
2 fiduciary capacity under the laws of this state, the following
3 apply:

4 (i) All rights, privileges, and obligations of the convert-
5 ing organization shall remain unimpaired and shall continue in
6 the converted organization irrespective of the date when the
7 fiduciary relationship was created.

8 (ii) If the converting organization had been appointed by a
9 court or governmental tribunal, agency, or officer, the converted
10 organization shall file an affidavit with the appointing author-
11 ity setting forth the fact of conversion, the name of the con-
12 verted organization, the location of its principal office, and
13 the amount of its capital and surplus.

14 (iii) The converted organization acting as a fiduciary by
15 appointment of a court is subject to removal by a court of compe-
16 tent jurisdiction.

17 (f) The converted organization may retain and continue to
18 operate any existing branch, or open any approved branch, of the
19 converting organization.

20 (g) Any rights or remedies of the depositors, creditors, or
21 other persons transacting business with the converting organiza-
22 tion shall not be reduced or impaired as the result of a
23 conversion.

24 (h) Whether or not it maintains a presence in this state, a
25 converted organization or any of its successors in interest is
26 subject to service of process in a proceeding in this state for

1 enforcement of any obligation incurred in this state by the
2 converting organization.

3 (i) An action or proceeding against the converting organiza-
4 tion in a court or other governmental tribunal may be prosecuted
5 to judgment as if the conversion had not taken place, or the con-
6 verted organization may be substituted in place of the converting
7 organization. This subsection shall not create any new cause of
8 action against the converting organization as a result of the
9 conversion.

10 Sec. 3711. (1) A bank may establish and operate a branch or
11 branches within any state, the District of Columbia, a territory
12 or protectorate of the United States, or a foreign country,
13 unless the commissioner objects in writing within 30 days after
14 receipt of a written notice from the bank of its intent to estab-
15 lish a branch. The commissioner may issue a written statement of
16 intent not to object at any time before the expiration of the 30
17 days.

18 (2) The written notice of intent to establish a mobile
19 branch shall contain a statement by the applying bank that it
20 intends to move the location of the physical structure of the
21 branch from time to time.

22 (3) Except for a mobile branch, a branch of a bank shall not
23 be moved from 1 location to another without prior written notice
24 to the commissioner.

25 (4) Unless the commissioner objects in writing within 30
26 days after receipt of written notice from a bank of its intent to
27 contract for branch services, a bank may contract with 1 or more

1 banks, out-of-state banks, national banks, associations, or
2 savings banks for the depository institution or institutions to
3 act as branches to provide services to the customers of the con-
4 tracting bank. The commissioner may issue a written statement of
5 intent not to object at any time prior to the expiration of the
6 30 days. This subsection shall not be construed to limit the
7 powers granted to a bank under section 4101(1)(d).

8 (5) Unless the commissioner objects in writing within 30
9 days after receipt of written notice from a contracting deposi-
10 tory institution of its intent to contract for branch services, 1
11 or more out-of-state banks, national banks, associations, or sav-
12 ings banks may contract with a bank for the bank to provide serv-
13 ices to the customers of the contracting out-of-state bank,
14 national bank, association, or savings bank. The commissioner
15 may issue a written statement of intent not to object at any time
16 prior to the expiration of the 30 days. This subsection shall
17 not be construed to limit the powers granted to a bank under sec-
18 tion 4101(1)(d).

19 (6) Subject to the requirements, limitations, and restric-
20 tions of subsections (1) to (3), a state agency or state foreign
21 bank branch organized under this act may establish and operate
22 additional offices in the United States and its territories and
23 protectorates.

24 (7) An out-of-state bank or national bank located in a
25 state, the District of Columbia, or a territory or protectorate
26 of the United States whose laws permit the establishment in that

1 state, district, territory, or protectorate of a branch by a bank
2 may establish and operate 1 or more branches in this state.

3 (8) An out-of-state bank may apply to organize a branch in
4 this state under this act by providing to the commissioner proof
5 that its deposits are insured by an agency of the United States
6 government. If the commissioner determines that the out-of-state
7 bank is safe and sound, that the out-of-state bank is subject to
8 regulation, and that there exists an agreement for exchange of
9 supervisory information between the bureau and the out-of-state
10 bank's regulator, the commissioner shall provide to the
11 out-of-state bank a certificate of organization and eligibility
12 to accept deposits and investments of public funds of the state
13 and local units of government.

14 (9) A foreign bank branch that has designated a home state
15 other than this state may establish and operate 1 or more addi-
16 tional offices in this state.

17 (10) Prior to commencing operations at a branch in this
18 state, an out-of-state bank, foreign bank, or national bank shall
19 provide written notice to the commissioner of the name of the
20 bank, the street address and mailing address, if different, of
21 the bank's principal office, the street address of the branch
22 office, and the date when the branch is to commence operations in
23 this state.

24 (11) Each bank, out-of-state bank, foreign bank, and
25 national bank operating in this state shall do both of the
26 following:

1 (a) Designate and maintain an agent located in this state
2 upon whom process for judicial and administrative matters may be
3 served and shall provide written notice containing the name and
4 address of its agent to the commissioner before commencing opera-
5 tions in this state.

6 (b) Notify the commissioner in writing of any change in its
7 designated agent or the agent's address within 10 days following
8 the effective date of the change.

9 (12) For purposes of this section, the designated agent of a
10 bank or a national bank is its chief executive officer.

11 Sec. 3712. (1) If a bank or foreign bank permanently dis-
12 continues the operations of any branch, foreign bank agency, or
13 foreign bank branch, all functions of the branch, foreign bank
14 agency, or foreign bank branch shall be considered transferable
15 to, and treated as a part of, the principal office of the bank
16 or, in the case of a foreign bank, the principal office in this
17 country.

18 (2) A bank, out-of-state bank, national bank, or foreign
19 bank shall notify the commissioner in writing before discontinu-
20 ing operations of a branch, foreign bank agency, or foreign bank
21 branch.

22 Sec. 3713. (1) Upon prior written notice to the commission-
23 er, a bank may change the location of its principal office to any
24 existing branch location of the bank within this state.

25 (2) Unless the commissioner objects in writing within 60
26 days after receipt of written notice from the bank of its intent
27 to relocate its principal office, a bank may change the location

1 of its principal office to any other location within this state
2 which is not an existing branch location of the bank. The com-
3 missioner may issue a written statement of intent not to object
4 at any time before expiration of the 60 days.

5 Sec. 3714. Notwithstanding section 1105 of the uniform com-
6 mercial code, both of the following apply:

7 (a) A bank which has 1 or more branch offices in a foreign
8 country shall be liable for contracts to be performed and for
9 deposits to be repaid at any branch office in that foreign coun-
10 try to no greater extent than a bank, banking corporation, or
11 other organization or association for banking purposes organized
12 and existing under the laws of the foreign country would be
13 liable under its laws. The laws of the foreign country for the
14 purpose of this section are considered to include all acts,
15 decrees, regulations, and orders promulgated or enforced by a
16 dominant authority asserting governmental, military, or police
17 power of any kind at the place where the branch office is
18 located, whether or not the dominant authority is recognized as a
19 de facto or de jure government.

20 (b) If by action of a dominant authority that is not recog-
21 nized by the United States as the de jure government of the for-
22 eign territory concerned, any property situated in or any amount
23 to be received in the foreign territory and carried as an asset
24 of a branch office of the bank in the foreign territory is
25 seized, destroyed, or canceled, the liability of the bank for any
26 deposit received and to be repaid by it, and for any contract
27 made and to be performed by it, at any branch office in the

1 foreign territory shall be reduced pro tanto by the proportion
2 that the value, as shown by the books or other records of the
3 bank at the time of the seizure, destruction, or cancellation of
4 the assets bears to the aggregate of all the deposit and contract
5 liabilities of the branch offices of the bank in the foreign ter-
6 ritory, as shown at the time by the books or other records of the
7 bank.

8 PART 8

9 CAPITAL

10 Sec. 3801. (1) A bank, with the approval of shareholders
11 owning 2/3 of the stock of the bank entitled to vote, may issue
12 capital notes, debentures, and any other instrument of indebted-
13 ness, with or without warrants for preferred or common stock,
14 convertible and nonconvertible, subordinated on insolvency,
15 liquidation, or dissolution to all obligations except obligations
16 to shareholders, in amounts and under terms and conditions
17 approved by the commissioner on the basis of normal business
18 considerations.

19 (2) In connection with the issuance of convertible capital
20 notes, debentures, or any other instrument of indebtedness, the
21 commissioner may grant approval for the bank to reserve a number
22 of authorized and unissued shares of capital stock as shall be
23 required for issuance in exchange for capital notes and debentures with respect to which conversion privileges exist. If capital notes, debentures, or any other instruments of indebtedness
24 are converted into shares of common or preferred stock, a
25 verified certificate executed by the president of the bank
26
27

1 stating the amount of the conversion, and other information with
2 respect to the conversion as the commissioner may require, shall
3 be filed in the office of the commissioner.

4 Sec. 3802. (1) A bank may issue the number of shares autho-
5 rized in its articles of incorporation. The shares may be all of
6 1 class or may be divided into 2 or more classes. Each class
7 shall consist of shares having the designations and relative
8 voting, distribution, dividend, liquidation, and other rights,
9 preferences, and limitations, consistent with this act as stated
10 in the articles of incorporation of the issuing bank.

11 (2) If the shares are divided into 2 or more classes, the
12 shares of each class shall be designated in a manner to distin-
13 guish them from the shares of other classes.

14 (3) Subject to the designations, relative rights, prefer-
15 ences, and limitations applicable to separate series, each share
16 shall be equal to every other share of the same class.

17 Sec. 3803. (1) Except as provided in subsection (2), the
18 shares of a bank shall be represented by certificates of stock
19 that shall be issued to every shareholder and transferable on the
20 books of the bank in a manner as may be prescribed in the bylaws
21 or articles of incorporation. A transfer of stock shall not be
22 valid against the bank, except with the consent of the board of
23 directors, so long as the registered holder of the stock is
24 liable as principal debtor, surety, or otherwise to the bank for
25 any debt which is due and unpaid.

26 (2) Unless the articles of incorporation or bylaws provide
27 otherwise, the board may authorize the issuance of some or all of

1 the shares of any or all of its classes or series of stock
2 without certificates if within a reasonable time after issuance
3 of a share without a certificate the bank provides the share-
4 holder with a written statement of the information required on a
5 certificate under subsection (5). The authorization shall not
6 have any effect on shares already represented by certificates
7 unless they are surrendered to the bank.

8 (3) If the registered holder of stock of a bank is liable to
9 the bank as principal debtor, surety or otherwise for any debt
10 which is due and unpaid, the directors of the bank may sell a
11 sufficient amount of the stock of the delinquent shareholder in
12 the same manner and with the same effect as provided in section
13 3808. This section does not prevent the bank from bringing pro-
14 ceedings to recover the entire amount of the indebtedness at any
15 time before the sale or to recover the balance of the debt and
16 costs after the proceeds of sale have been applied against the
17 debt and costs or to recover the balance of the debt after the
18 cancellation of the stock.

19 (4) Except as provided in sections 3807 and 3808, the rights
20 of a bank in its stock in which the shareholder is liable to the
21 bank as principal debtor, surety, or otherwise is subject to any
22 pledge, sale, or other transfer of the stock that is made before
23 the maturity of an indebtedness of the registered holder of the
24 stock to the bank and of which the bank has knowledge before the
25 maturity, whether or not the stock was transferred on the books
26 of the bank. Any stock of a bank that is pledged, sold, or
27 otherwise transferred before the maturity of any indebtedness of

1 the registered holder of the stock to the bank and of which
2 pledge, sale, or other transfer the bank has knowledge before the
3 maturity, may be transferred on the books of the bank after the
4 maturity without the consent of the board of directors of the
5 bank. The rights of a bank in its stock under this section,
6 including the limitation on transferability if the registered
7 holder is liable to the bank for any debt that is due and unpaid,
8 shall not be applicable with respect to any stock duly listed on
9 any stock exchange.

10 (5) Each certificate issued after the effective date of this
11 act shall state all of the following:

12 (a) The name and address of the principal office of the
13 bank.

14 (b) The name of the holder of record of the stock it
15 represents.

16 (c) The number, par value, class, and series of shares which
17 the certificate represents.

18 (d) The respective voting, distribution, dividend, liquida-
19 tion, dissolution, and other rights, preferences, and limitations
20 of the stock issued, which information shall be stated in full or
21 in summary upon the front or back of the certificate or shall be
22 incorporated by a reference to the articles of incorporation set
23 forth on the front of the certificate.

24 (e) If the stock is not listed, that no transfer of the
25 stock shall be valid against the bank so long as the registered
26 holder is liable as principal debtor, surety, or otherwise to the

1 bank, except with the approval of the board of directors or as
2 otherwise provided in this act.

3 (f) The signature of the president or other officer as pro-
4 vided by the bylaws of the bank and, optionally, the seal of the
5 bank.

6 (6) All of the following may be a facsimile:

7 (a) The signature of a transfer agent.

8 (b) The signature of a registrar.

9 (c) The signature of an officer of the bank.

10 (d) The seal of the bank.

11 (7) If an officer who has signed a share certificate or
12 whose facsimile signature has been used on a share certificate
13 ceases to be an officer, whether because of death, resignation,
14 or otherwise, before the certificate has been delivered by the
15 bank, the certificate, nevertheless, may be adopted by the bank
16 and delivered as though the person who signed it or whose facsim-
17 ile signature has been used on the stock had not ceased to be an
18 officer.

19 Sec. 3804. (1) By a vote of shareholders owning 2/3 of each
20 class of the stock entitled to vote, a bank may amend its arti-
21 cles to increase its capital stock to any sum approved by the
22 commissioner, either by an increase in the par value of autho-
23 rized stock or by the authorization of new stock.

24 (2) An increase in capital shall not be valid until the
25 whole amount of the increase has been paid in, notice of the pay-
26 ment signed by an officer of the bank has been transmitted to the
27 commissioner, and the commissioner's certificate of approval has

1 been obtained specifying the amount of the increase in capital
2 and that it has been duly paid in as a part of the capital of the
3 bank. The certificate shall be conclusive evidence that the
4 stock has been duly and validly issued.

5 (3) In the case of the issuance of new stock, in voting upon
6 the increase of capital stock, 2/3 of the shareholders entitled
7 to vote shall have power to fix the value of, and the price at
8 which the stock shall be subscribed and paid for by the share-
9 holders, but not less than par, as well as the time and manner of
10 the subscription and payment, and to authorize the directors to
11 sell the stock.

12 (4) Notwithstanding this section, a bank, with the approval
13 of the commissioner and by a vote of shareholders owning 2/3 of
14 each class of the stock entitled to vote, for the stated purpose
15 of providing stock options for 1 or more employees, may increase
16 its capital stock in an aggregate par value amount not to exceed
17 at any 1 time 5% of the par value of its then outstanding common
18 stock. The additional stock, when duly authorized, may be issued
19 by the bank from time to time for this purpose but for no other
20 purpose, as options are exercised and payment for the stock is
21 received, free from any preemptive rights to subscribe for
22 stock.

23 Sec. 3805. (1) By a vote of shareholders owning 2/3 of the
24 bank's stock entitled to vote, a bank may reduce its capital
25 stock. The reduction may be accomplished by a reduction in the
26 par value of the existing stock or by a reduction in the number
27 of the shares of stock. A reduction shall not be made until the

1 amount of the proposed reduction has been approved by the
2 commissioner.

3 (2) The approval of the commissioner shall be based upon a
4 finding that the security of existing creditors of the bank will
5 not be impaired by the proposed reduction. This section does not
6 discharge any bank from any obligation that may be due from the
7 bank.

8 (3) Retirement of preferred stock in accordance with the
9 articles of incorporation is not considered to be a reduction of
10 capital under this section.

11 (4) A shareholder shall not be entitled to any distribution
12 of cash or other assets by reason of any reduction of the common
13 capital of any bank unless the distribution has been approved by
14 the commissioner and by the affirmative vote of at least 2/3 of
15 the shares of each class of stock outstanding, voting as
16 classes.

17 Sec. 3806. (1) From time to time, the board of directors of
18 a bank may declare and pay dividends on the common stock of the
19 bank consistent with this section.

20 (2) A cash dividend or dividend in kind shall not be
21 declared or paid unless the bank will have a surplus amounting to
22 not less than 20% of its capital after the payment of the
23 dividend.

24 (3) A cash dividend or dividend in kind shall not be
25 declared by a bank except out of net income then on hand after
26 deducting its losses and bad debts. Unless the debts due the
27 bank on which interest is past due and unpaid for a period of 6

1 months are well secured and in process of collection or the debts
2 constitute claims against solvent estates in probate, all debts
3 shall be considered bad debts within the meaning of this
4 section.

5 (4) A cash dividend or dividend in kind shall not be
6 declared or paid until the cumulative dividends on preferred
7 stock, if any, have been paid in full. By their unanimous vote,
8 the preferred shareholders may waive their right to any amount of
9 the accumulated but unpaid dividends.

10 (5) If at any time the surplus of a bank is less than the
11 amount of its capital, before the declaration of a cash dividend
12 or dividend in kind, it shall transfer to surplus not less than
13 10% of its net income of the preceding 6 months in the case of
14 quarterly or semiannual dividends, or not less than 10% of its
15 net income of the preceding 2 consecutive 6-month periods in the
16 case of annual dividends. For the purpose of this section, any
17 amounts transferred to a fund for the retirement of any preferred
18 stock of the bank out of its net income for the periods are con-
19 sidered to be additions to its surplus, if, upon the retirement
20 of the preferred stock, the amounts credited into the retirement
21 fund may then properly be carried to surplus. In this case, the
22 bank shall be obligated to credit to surplus the amounts trans-
23 ferred into the retirement fund on account of the preferred stock
24 as the stock is retired.

25 (6) Without regard to the limitations of this section and
26 section 3804, a bank, with the approval of the commissioner, and
27 by vote of shareholders owning 2/3 of the stock entitled to vote,

1 may amend its articles to increase its capital stock by
2 declaration of a stock dividend on the capital stock. After the
3 increase, the surplus of the bank shall be at least equal to 20%
4 of the capital stock as increased.

5 (7) A bank may pay dividends on its preferred stock at the
6 applicable rate without regard to subsections (1) through (6).

7 (8) Dividends paid to shareholders under a dividend rein-
8 vestment plan shall be subject to this act relative to payment of
9 dividends.

10 (9) A dividend shall not be paid from capital or surplus of
11 the bank.

12 Sec. 3807. (1) If, in the opinion of the commissioner, the
13 capital of a bank has become impaired, the commissioner shall
14 notify the bank of his or her determination and require the
15 directors to meet the deficiency in the capital within a 2-month
16 period. The directors shall meet the deficiency by either making
17 a pro rata assessment upon the stock held by each shareholder, or
18 taking steps to dissolve the bank. The 2-month period may be
19 extended by order of the commissioner, if in his or her discre-
20 tion an extension is necessary to allow the directors to meet the
21 deficiency.

22 (2) Before an assessment may be made by the directors, each
23 shareholder, secured party, and pledgee indicated on the books of
24 the bank as holding an interest in the stock shall be provided
25 with written notice in a manner reasonably calculated to give
26 actual notice of the determination made by the commissioner that

1 the capital of the bank is impaired and the amount of the
2 assessment that each shareholder must pay.

3 (3) If a shareholder refuses or neglects to pay an assess-
4 ment levied by the directors within 30 days from the date notice
5 was provided, the directors shall sell all or part of the
6 shareholder's shares to the highest bidder in a manner provided
7 in section 3808. Upon expiration of the 30-day period and
8 refusal or neglect by a shareholder to pay the assessment, a
9 security interest in favor of the bank in the amount of the
10 assessment shall attach to all of the shareholder's shares for
11 the sole purpose of satisfying the assessment levied. The secur-
12 ity interest shall have priority over any other security inter-
13 ests perfected by a creditor or otherwise granted by the share-
14 holder in shares issued after the effective date of this act.

15 (4) If the directors fail to restore the capital of the bank
16 or take steps to dissolve the bank during the 2-month period fol-
17 lowing notice from the commissioner and any extension granted
18 under subsection (1), the commissioner may appoint a receiver for
19 the bank in accordance with this act.

20 (5) If any part of the capital of a bank consists of pre-
21 ferred stock, the determination of whether the capital of the
22 bank is impaired and the amount of the impairment shall be based
23 upon the par value of its stock even though the amount that the
24 holders of the preferred stock shall be entitled to receive in
25 the event of retirement or dissolution shall be in excess of the
26 par value of the preferred stock.

1 (6) The holders of preferred stock shall not be liable for
2 assessments to restore impairment in the capital of a bank.

3 Sec. 3808. (1) If, 30 days after notice as provided in sec-
4 tion 3807, a shareholder has refused or neglected to pay an
5 assessment levied on the shares held by the shareholder, the
6 directors may sell any or all of the shareholder's shares to sat-
7 isfy the assessment. The proceeds of the sale shall be distrib-
8 uted in the following order:

9 (a) The reasonable expenses of holding for sale and selling
10 the stock in a manner not prohibited by law, including reasonable
11 attorney fees and legal expenses incurred by the bank.

12 (b) The satisfaction of the assessment levied by the
13 directors.

14 (c) The satisfaction of an indebtedness secured by any
15 security interest in the stock if written notification demanding
16 proceeds is received by the bank before distribution of the pro-
17 ceeds is completed. Unless the holder of a security interest
18 provides reasonable proof of the interest, the bank does not have
19 to comply with this subdivision.

20 (d) Any remaining surplus shall be distributed to the
21 shareholder.

22 (2) Disposition of the stock may be at a public or private
23 sale at any time and on any terms, but every aspect of the dispo-
24 sition including the method, manner, time, place, and terms shall
25 be commercially reasonable and reasonably calculated to meet the
26 deficiency.

1 (3) A sale of stock as provided in this section shall effect
2 an absolute cancellation of any outstanding certificates
3 evidencing the stock sold and any security interest granted or
4 pledge made in stock issued after the effective date of this
5 act. Upon full payment of the stock sold, the bank shall issue
6 new certificates to the purchaser.

7 (4) The purchaser takes the stock free of any rights or
8 interests the shareholder may have based on an unintentional
9 failure by the bank to comply with this section or section 3807
10 if all of the following apply:

11 (a) The purchaser has no knowledge of any defect in the
12 proceedings.

13 (b) The purchaser does not act in collusion with any share-
14 holders of the bank, a secured party, other bidders, or the
15 bank.

16 (c) The purchaser makes the purchase in good faith.

17 (5) The ability of a bank to make an assessment under sec-
18 tion 3807 or to sell the stock of a shareholder under this sec-
19 tion is not limited by the uniform commercial code.

20 PART 9

21 ADMINISTRATION

22 Sec. 3901. Deposits shall be repaid to the depositor, or
23 the depositor's lawful representatives, according to the terms of
24 the agreement between the depositor and the bank.

25 Sec. 3902. (1) An officer or the board of directors of a
26 bank may appoint a compliance review committee to evaluate loan
27 underwriting standards, asset quality, financial reporting to

1 federal or state regulatory agencies, compliance with the bank's
2 policies, compliance with federal or state statutory or regula-
3 tory requirements, or other related matters.

4 (2) Any documents, data, compilations, analyses, or other
5 information and material gathered, generated, created, produced,
6 developed, or prepared by or for a compliance review committee by
7 1 or more employees of the bank or by 1 or more other persons
8 retained by the bank to assist the compliance review committee in
9 performing its functions shall be considered compliance review
10 material.

11 (3) A document, compilation, analysis, or item of informa-
12 tion, data, or material remains compliance review material under
13 this section even if it is delivered or disclosed to employees of
14 the bank who are not members of the compliance review committee
15 or to attorneys, accountants, auditors, consultants, or other
16 professional advisers retained by the bank or to 1 or more other
17 persons retained by the bank to assist the committee in perform-
18 ing its functions or to evaluate the committee.

19 (4) Except as provided in subsection (5), compliance review
20 material is confidential and is not discoverable or admissible in
21 evidence in any civil action.

22 (5) Subsection (4) does not apply to any information
23 required by statute or regulation to be maintained by or provided
24 to a governmental entity to the extent that law requires the gov-
25 ernmental entity to disclose the information for discovery or
26 admission into evidence.

1 Sec. 3903. (1) The board of directors shall require every
2 employee involved in the handling of money, accounts, or
3 securities of the bank to be bonded by a surety company autho-
4 rized to do business in this state in an amount determined by the
5 board. The bank shall pay for any surety bonds required of its
6 employees.

7 (2) Every bank shall maintain a financial institution bond
8 sufficient to protect against loss. If a bank refuses to comply
9 with this requirement, the commissioner may contract for the bond
10 and charge the cost to the bank. If the charge is not paid, the
11 commissioner may collect the charge in an action instituted by
12 the attorney general.

13 Sec. 3904. (1) A bank may indemnify a person described in
14 subsection (2) who was or is a party or is threatened to be made
15 a party to any type of threatened, pending, or completed action,
16 suit, or proceeding, other than an action by or in the right of
17 the bank, against expenses, including attorney fees, judgments,
18 penalties, fines, and amounts paid in settlement actually and
19 reasonably incurred by him or her in connection with the action,
20 suit, or proceeding if the person acted in good faith and in a
21 manner he or she reasonably believed to be in or not opposed to
22 the best interests of the bank or its shareholders and with
23 respect to a criminal action or proceeding had no reasonable
24 cause to believe his or her conduct was unlawful.

25 (2) Subsection (1) applies to a person who is or was a
26 director, officer, employee, or agent of the bank or is or was
27 serving at the request of the bank as a director, officer,

1 partner, trustee, employee, or agent of another depository
2 institution, foreign or domestic corporation, partnership, joint
3 venture, trust, or other enterprise, whether for profit or not.

4 (3) The termination of an action, suit, or proceeding by
5 judgment, order, settlement, or conviction, or upon a plea of
6 nolo contendere or its equivalent, does not, of itself, create a
7 presumption that the person did not act in good faith and in a
8 manner that he or she reasonably believed to be in or not opposed
9 to the best interests of the bank or its shareholders and with
10 respect to a criminal action or proceeding had no reasonable
11 cause to believe his or her conduct was unlawful.

12 (4) A bank may indemnify a person who was or is a party to
13 or is threatened to be made a party to any threatened, pending,
14 or completed action or suit by or in the right of the bank to
15 procure a judgment in its favor by reason of the fact that he or
16 she is or was a director, officer, employee, or agent of the bank
17 or is or was serving at the request of the bank as a director,
18 officer, partner, trustee, employee, or agent of another bank or
19 national banking association, foreign or domestic corporation,
20 partnership, joint venture, trust, or other enterprise, whether
21 for profit or not, against expenses, including actual and reason-
22 able attorney fees and amounts paid in settlement actually and
23 reasonably incurred by the person in connection with the action
24 or suit, if the person acted in good faith and in a manner the
25 person reasonably believed to be in or not opposed to the best
26 interests of the bank or its shareholders. Indemnification shall
27 not be made for a claim, issue, or matter in which the person has

1 been found liable to the bank except as authorized in subsection
2 (5).

3 (5) A director, officer, employee, or agent of the bank who
4 is a party or threatened to be made a party to an action, suit,
5 or proceeding may apply for indemnification to the court conduct-
6 ing the proceeding or to another court of competent
7 jurisdiction. On receipt of an application, the court after
8 giving any notice it considers necessary may order indemnifica-
9 tion if it determines that the person is fairly and reasonably
10 entitled to indemnification in view of all the relevant circum-
11 stances, whether or not he or she met the applicable standard of
12 conduct set forth in this section or was adjudged liable, but if
13 he or she was adjudged liable, his or her indemnification is
14 limited to reasonable expenses incurred.

15 Sec. 3905. (1) To the extent that a director, officer,
16 employee, or agent of a bank has been successful on the merits or
17 otherwise in defense of an action, suit, or proceeding described
18 in section 3904, or in defense of a claim, issue, or matter in
19 the action, suit, or proceeding, he or she shall be indemnified
20 against actual and reasonable expenses, including attorney fees,
21 incurred by him or her in connection with the action, suit, or
22 proceeding and an action, suit, or proceeding brought to enforce
23 the mandatory indemnification provided in this subsection.

24 (2) An indemnification under section 3904, unless ordered by
25 the court, shall be made by the bank only as authorized in the
26 specific case upon a determination that indemnification of the
27 director, officer, employee, or agent is proper in the

1 circumstances because he or she has met the applicable standard
2 of conduct set forth in section 3904 and upon an evaluation of
3 the reasonableness of expenses and amounts paid in settlement.
4 This determination and evaluation shall be made in any of the
5 following ways:

6 (a) By a majority vote of a quorum of the board consisting
7 of directors who are not parties or threatened to be made parties
8 to the action, suit, or proceeding.

9 (b) If the quorum described in subdivision (a) is not
10 obtainable, by majority vote of a committee duly designated by
11 the board and consisting solely of 2 or more directors not at the
12 time parties or threatened to be made parties to the action,
13 suit, or proceeding.

14 (c) By independent legal counsel in a written opinion, which
15 counsel shall be selected in 1 of the following ways:

16 (i) By the board or its committee in the manner prescribed
17 in subdivision (a) or (b).

18 (ii) If a quorum of the board cannot be obtained under sub-
19 division (a) and a committee cannot be designated under subdivi-
20 sion (b), by the board.

21 (d) By all independent directors who are not parties or
22 threatened to be made parties to the action, suit, or
23 proceeding.

24 (e) By the shareholders, but shares held by directors, offi-
25 cers, employees, or agents who are parties or threatened to be
26 made parties to the action, suit, or proceeding may not be
27 voted.

1 (3) All directors may participate in the designation of a
2 committee under subsection (2)(b) or in the selection of indepen-
3 dent legal counsel under subsection (2)(c)(ii).

4 (4) If a person is entitled to indemnification under section
5 3904 for a portion of expenses, including reasonable attorney
6 fees, judgments, penalties, fines, and amounts paid in settle-
7 ment, but not for the total amount of the expenses, the bank may
8 indemnify the person for the portion of the expenses, judgments,
9 penalties, fines, or amounts paid in settlement for which the
10 person is entitled to be indemnified.

11 Sec. 3906. A bank may pay or reimburse the reasonable
12 expenses incurred by a director, officer, employee, or agent who
13 is a party or threatened to be made a party to an action, suit,
14 or proceeding described in section 3904 in advance of the final
15 disposition of the action, suit, or proceeding if all of the fol-
16 lowing apply:

17 (a) The person furnishes the bank a written affirmation of
18 his or her good faith belief that he or she has met the applica-
19 ble standard of conduct set forth in section 3904.

20 (b) The person furnishes the bank a written undertaking exe-
21 cuted personally or on his or her behalf to repay the advance if
22 it is ultimately determined that he or she did not meet the stan-
23 dard of conduct. The undertaking shall be by unlimited general
24 obligation of the person on whose behalf advances are made but
25 need not be secured.

1 (c) A determination is made that the facts then known to
2 those making the determination would not preclude indemnification
3 under this act.

4 Sec. 3907. The indemnification or advancement of expenses
5 provided by or granted under sections 3904, 3905, and 3906 are
6 not exclusive of other rights to which a person seeking indemni-
7 fication or advancement of expenses may be entitled under the
8 articles of incorporation, the bylaws, or a contractual
9 agreement. The total amount of expenses advanced or indemnified
10 from all sources combined shall not exceed the amount of actual
11 expenses incurred by the person seeking indemnification or
12 advancement of expenses. The indemnification provided for in
13 sections 3904, 3905, and 3906 continues as to a person who ceases
14 to be a director, officer, employee, or agent and shall inure to
15 the benefit of the heirs, executors, and administrators of the
16 person.

17 Sec. 3908. A bank has the power to purchase and maintain
18 insurance or create a trust fund or other form of funded arrange-
19 ment on behalf of any person who is or was a director, officer,
20 employee, or agent of the bank or is or was serving at the
21 request of the bank as a director, officer, partner, trustee,
22 employee, or agent of another foreign or domestic corporation,
23 partnership, joint venture, trust, or other enterprise, whether
24 for profit or not, against any liability asserted against him or
25 her and incurred by him or her in that capacity or arising out of
26 his or her status in that capacity, whether or not the bank has

1 the power to indemnify him or her against the liability under
2 sections 3904, 3905, 3906, and 3907.

3 Sec. 3909. For purposes of this section and sections 3904,
4 3905, 3906, 3907, 3908, and 3910, a person who is or was a direc-
5 tor, officer, employee, or agent of a depository institution
6 absorbed in a consolidation or merger or is or was serving at the
7 request of the depository institution as a director, officer,
8 partner, trustee, employee, or agent of another depository insti-
9 tution, foreign or domestic corporation, partnership, joint ven-
10 ture, trust, or other enterprise, whether for profit or not,
11 shall hold the same position with respect to the consolidated
12 bank as he or she would if he or she had served the consolidated
13 bank in that capacity.

14 Sec. 3910. (1) For the purposes of sections 3904, 3905,
15 3906, 3907, 3908, and 3909:

16 (a) "Fines" includes any excise taxes assessed on a person
17 with respect to an employee benefit plan.

18 (b) "Other enterprise" includes employee benefit plans.

19 (c) "Serving at the request of the bank" includes any serv-
20 ice as a director, officer, employee, or agent of the bank that
21 imposes duties on, or involves services by, the director, offi-
22 cer, employee, or agent with respect to an employee benefit plan,
23 its participants, or its beneficiaries.

24 (2) A person who acted in good faith and in a manner he or
25 she reasonably believed to be in the interest of the participants
26 and beneficiaries of an employee benefit plan shall be considered

1 to have acted in a manner not opposed to the best interests of
2 the bank or its shareholders as referred to in section 3904.

3 Sec. 3911. (1) The commissioner may require reports from
4 any bank if, in the commissioner's judgment, they are necessary
5 to inform the commissioner fully as to the condition of the
6 bank. The commissioner shall give a bank at least 30 days'
7 notice in writing of the date by which the report is to be sub-
8 mitted to the bureau.

9 (2) A bank that fails to make, and transmit, any report
10 required under this section shall be subject to a penalty estab-
11 lished by the commissioner not to exceed \$1,000.00 for each day
12 after the date for making the report established by the commis-
13 sioner in subsection (1). The commissioner may maintain an
14 action against a bank for the recovery of the penalty.

15 (3) A penalty assessed under this section shall be paid into
16 the state treasury to the credit of the bureau and used only for
17 the operation of the bureau.

18 Sec. 3912. Attachment or execution shall not be issued
19 against a bank or its property before final judgment in any suit,
20 action, or proceeding involving the bank in any court.

21 Sec. 3913. A written agreement entered into under section
22 130b of former 1969 PA 319 shall remain in effect with regard to
23 actions taken and events occurring on or before November 29,
24 1995. A cause of action shall not accrue under an agreement for
25 an action taken or event occurring after November 29, 1995.

CHAPTER 4

BANKING POWERS

PART 1

GENERAL PROVISIONS

5 Sec. 4101. (1) Subject to the limitations and restrictions
6 contained in this act or in a bank's articles, the bank may
7 engage in the business of banking and a business related or inci-
8 dental to banking, and for that purpose, without specific mention
9 in its articles, shall have and exercise the powers and means
10 appropriate to effect the purpose for which the bank is incorpo-
11 rated, powers conferred by former 1969 PA 319 and by this act,
12 and the following corporate powers:

13 (a) To make contracts.

14 (b) To sue and be sued, complain, and defend in its corpo-
15 rate name as fully as a natural person.

16 (c) To make, alter, amend, and repeal bylaws not inconsis-
17 tent with its articles or with law for the administration and
18 regulation of the affairs of the bank.

(d) To enter into agency relationships with affiliated depository institutions. A bank or an affiliated depository institution in its capacity as an agent under this subdivision may do any or all of the following:

23 (i) Receive deposits.

24 (ii) Permit withdrawals of deposits.

25 (iii) Renew time deposits.

26 (iv) Close loans.

1 (v) Service loans.

2 (vi) Receive loan payments.

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

5 (e) To contract, upon 30 days' advance written notice to the
6 commissioner, unless the commissioner objects in writing within
7 30 days after receipt of the written notice, with a person for
8 the person to act as an agent of the bank in an agency office and
9 engage in any of the activities set forth in section 4109.

10 (2) A bank has and may exercise the following additional
11 powers:

12 (a) As authorized by order or declaratory ruling of the com-
13 missioner, to exercise at a branch such additional powers consis-
14 tent with the safe and sound conduct of the business of banking
15 as are granted by the laws of the state, territory, protectorate,
16 or foreign country where the branch is located.

17 (b) As authorized by order or declaratory ruling of the com-
18 missioner, to exercise further powers consistent with the safe
19 and sound conduct of the business of banking or of a business
20 related or incidental to banking as are granted by the laws of
21 the United States or of any state or political subdivision of the
22 United States to financial service providers.

23 (c) To own and operate a messenger service or to own or
24 invest in an entity that operates a messenger service.

25 (d) To engage in any aspect of the insurance and surety
26 business as an agent, broker, solicitor, or insurance counselor
27 as provided under the insurance code of 1956, 1956 PA 218,

1 MCL 500.100 to 500.8302, and to own an insurance agency in whole
2 or in part as provided under that act.

3 (e) To provide brokerage services for the offer, sale, or
4 purchase of a security or commodity contract.

5 (3) In addition, a bank has the powers granted by order or
6 declaratory ruling of the commissioner.

7 Sec. 4102. (1) If a bank operates a safe deposit and stor-
8 age department, the legal liability of the bank on account of any
9 loss to a customer shall not exceed the sum of \$10,000.00 for any
10 1 box or compartment, including all property accepted for storage
11 outside of the box or compartment. The bank may contract with
12 the renter to have the renter assume all risks arising from the
13 use of the box, compartment, or storage.

14 (2) The bank shall have a lien for unpaid rental and storage
15 charges on the contents of any box or compartment and any prop-
16 erty accepted for storage outside of the box or compartment. If
17 the charges are not paid within 1 year from the date of accrual,
18 the bank may sell the property at public auction upon like notice
19 as is required by law for sales on execution. After retaining
20 from the proceeds of sale the amount of all charges due and owing
21 at the time of the sale, and the reasonable expenses of the sale,
22 the bank shall pay the balance, if any, upon proper showing to
23 the persons entitled to the balance. The bank may fairly and in
24 good faith purchase all or any part of the property at the sale.

25 Sec. 4103. (1) A bank may accept drafts or bills of
26 exchange drawn upon it having not more than 6 months' sight to

1 run, exclusive of days of grace, if 1 or more of the following
2 apply:

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

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

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

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

14 (3) The commissioner, under conditions as the commissioner
15 may prescribe, may authorize by order or declaratory ruling any
16 bank to accept bills of exchange, or be obligated for a partici-
17 pation share in bills of exchange, in an amount not exceeding at
18 any time in the aggregate 200% of its capital and surplus.

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

25 (5) A bank shall not accept bills, or be obligated for a
26 participation share in bills of exchange, whether in a foreign or
27 domestic transaction, for any 1 person, partnership, corporation,

1 association, or other entity in an amount equal at any time in
2 the aggregate to more than 10% of its capital and surplus, unless
3 the bank is secured either by attached documents or by some other
4 actual security growing out of the same transaction as the
5 acceptance.

6 (6) With respect to a bank that issues an acceptance, the
7 limitations contained in this section do not apply to that por-
8 tion of an acceptance that is issued by the bank and that is cov-
9 ered by a participation agreement sold to another bank,
10 out-of-state bank, or national bank.

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

13 Sec. 4104. (1) A bank may engage directly in, or own in
14 whole or in part, a real estate brokerage business as provided
15 under article 25 of the occupational code, 1980 PA 299,
16 MCL 339.2501 to 339.2518.

17 (2) A bank that engages directly in the real estate broker-
18 age business or owns in whole or in part a real estate brokerage
19 business shall provide written notice of its licensure as a real
20 estate broker or its ownership of a real estate brokerage busi-
21 ness to the commissioner within 10 days of licensure or
22 ownership. The notice required by this subsection shall include
23 the name and business address of the real estate brokerage.

24 (3) A bank that engages directly in the real estate broker-
25 age business or owns in whole or in part a real estate brokerage
26 business shall not do any of the following:

1 (a) Impose a requirement, verbally or in writing, that a
2 borrower must contract for or enter into any other arrangement
3 for real estate brokerage services with a particular real estate
4 broker.

5 (b) Impose a requirement, verbally or in writing, that as a
6 condition of approving a loan a borrower must contract or enter
7 into any other arrangement for real estate brokerage services.

8 (c) Impose a requirement, verbally or in writing, that a
9 real estate brokerage customer shall make application for a loan
10 or any other service or services of a particular bank or any of
11 its subsidiaries, agencies, or service entities.

12 (d) Impose a requirement, verbally or in writing, that a
13 condition of providing real estate brokerage services is that the
14 customer shall make an application for a loan or any other
15 arrangement for other services of the bank or any of its subsidi-
16 aries, agencies, or service entities.

17 (e) Offer or provide more favorable consideration, terms, or
18 conditions for any financial products or services to induce or
19 attempt to induce a person to enter into any arrangement for real
20 estate brokerage services with any particular real estate
21 broker.

22 (f) Offer or provide more favorable terms or conditions for
23 any real estate brokerage services to induce or attempt to induce
24 a person to apply for a loan or obtain any other services of a
25 particular bank or any of its subsidiaries, agencies, or service
26 entities.

1 (g) Any other activity prohibited by order or declaratory
2 ruling of the commissioner.

3 (4) A bank that engages directly in the real estate broker-
4 age business or owns in whole or in part a real estate brokerage
5 business under this section shall clearly disclose in writing to
6 any person who applies for credit related to a real estate trans-
7 action or applies for prequalification or preapproval for credit
8 related to a real estate transaction, that the person is not
9 required to contract for or enter into an arrangement for real
10 estate brokerage services with a particular real estate broker.
11 Compliance with the disclosure requirements of this subsection
12 shall not be necessary when a person applies for credit or pre-
13 qualification for credit solely for the purpose of refinancing an
14 existing indebtedness.

15 (5) A real estate brokerage that is affiliated with a bank
16 shall clearly disclose in writing, before the time an agency
17 agreement for real estate brokerage services is executed, that
18 the person is not required to apply, contract for, or enter into
19 any other arrangement for services of a particular bank or any of
20 its subsidiaries, agencies, or service entities.

21 (6) The requirements of subsections (4) and (5) do not apply
22 when the person has been given the affiliated business arrange-
23 ment disclosure statement required by the real estate settlement
24 procedures act of 1974, Public Law 93-533, 88 Stat. 1724.

25 (7) If the commissioner finds that a bank has violated this
26 section, the commissioner may issue an order requiring the bank
27 to cease and desist the activity that violates this section. If

1 the commissioner additionally finds that the violation was
2 knowingly committed, the commissioner may order any of the
3 following:

4 (a) A civil fine of not more than \$500.00 for each violation
5 but not to exceed an aggregate civil penalty of \$10,000.00.

6 (b) That restitution be made to a customer for actual dam-
7 ages directly attributable to the acts that are found to be a
8 violation of this section.

9 (8) An action under this section shall not be brought more
10 than 3 years after the date of the violation that is the basis of
11 the action.

12 Sec. 4105. A bank may perform for others 1 or more of the
13 following services or activities, and any other services or
14 activities permitted by order or declaratory ruling of the
15 commissioner:

16 (a) Provide life, health, and casualty insurance for offi-
17 cers and employees of financial institutions and operate bonus
18 plans and retirement benefit plans for those officers and
19 employees.

20 (b) Service mortgages and land contracts.

21 (c) Originate and service mortgage loans, mortgages, and
22 land contracts, on behalf of financial institutions, corpora-
23 tions, and state or federal agencies or instrumentalities.

24 (d) Act as escrow agent or depository for other escrow
25 agents or fiduciaries.

26 (e) Conduct credit analysis, appraising, construction loan
27 inspection, and abstracting.

1 (f) Conduct research, studies, and surveys.

2 (g) Develop and operate storage facilities for microfilm or
3 other duplicate records.

4 (h) Advertise, broker, and conduct other activities to pro-
5 cure and retain both deposits and loans, but not pool deposits or
6 solicit or promote pooled deposits.

7 (i) Provide liquidity management, investment, advisory, and
8 consulting services.

9 (j) Establish, own, lease, operate, or maintain electronic
10 funds transfer terminals.

11 (k) Purchase office supplies, furniture, and equipment.

12 (l) Prepare local, state, and federal tax returns.

13 (m) Perform data processing services.

14 (n) Subject to applicable state or federal law, provide bro-
15 kerage services for the offer, sale, or purchase of a security or
16 commodity contract.

17 Sec. 4106. (1) With the approval of the commissioner, based
18 upon an examination or other appropriate analysis of either the
19 buying or selling organization, or both, and upon the affirmative
20 vote of a majority of the members of its board of directors and
21 of the holders of 2/3 of its stock entitled to vote, a bank may
22 do either or both of the following:

23 (a) Sell all or substantially all of its assets of every
24 kind, character, and description and assign its liabilities to
25 any depository institution.

1 (b) Purchase all or substantially all of the assets of every
2 kind, character, and description and assume the liabilities of
3 another depository institution.

4 (2) The consideration for a purchase and sale under this
5 section may include shares of stock of the purchasing bank,
6 out-of-state bank, national bank, association, or savings bank.

7 (3) A purchase and sale shall not be made to defeat or
8 defraud any of the creditors of the depository institutions.

9 (4) Certified copies of all shareholders' and directors'
10 proceedings under this section shall be submitted to the commis-
11 sioner and shall contain the terms of the sale and purchase,
12 including a copy of the agreement of sale and purchase.

13 (5) The liability of a depository institution or of its
14 shareholders, directors, or officers, or the rights of creditors
15 of, or other persons transacting business with, the depository
16 institution shall not be lessened or impaired as the result of a
17 sale of assets under this section.

18 (6) Notwithstanding any other provision of this act, a bank
19 that purchases or assumes all or substantially all of the assets
20 or liabilities of a depository institution may retain, maintain,
21 and operate the principal office or branches of the depository
22 institution as branches of the purchasing bank without providing
23 notice to the commissioner under section 3711(1) provided it
24 assumes the deposit liabilities of the depository institution
25 maintained at the principal office or branches.

26 Sec. 4107. (1) A bank may sell 1 or more of its branches,
27 without selling all or substantially all of the bank, to another

1 depository institution located in this state or in a state whose
2 laws would permit a bank to purchase 1 or more branches in that
3 state of the purchasing depository institution.

4 (2) A bank may purchase 1 or more branches of another depos-
5 itory institution, without purchasing all or substantially all of
6 the depository institution.

7 (3) A bank that proposes to purchase 1 or more branches
8 under subsection (2) shall provide notice to the commissioner
9 under section 3711 before operating the purchased branch or
10 branches.

11 Sec. 4108. (1) Except as otherwise provided in this sec-
12 tion, a bank or bank officer shall not give preference to a
13 depositor or creditor by pledging the assets of the bank as col-
14 lateral security or otherwise.

15 (2) A bank may pledge its assets in an aggregate amount not
16 in excess of 10% of its total assets for the purpose of securing
17 the following:

18 (a) Funds belonging to the United States or belonging to or
19 being administered by an officer, instrumentality, or agent of
20 the United States, funds of estates being administered by a fed-
21 eral court under a federal bankruptcy law, and other funds when
22 required or permitted to do so under the laws of the United
23 States or an order of a federal court.

24 (b) Surplus funds of the state held by the state treasurer.

25 (c) Funds of the Mackinac bridge authority, which is
26 declared to be a political subdivision of this state, under 1950
27 (Ex Sess) PA 21, MCL 254.301 to 254.304.

1 (d) Funds of the international bridge authority, which is
2 declared to be a political subdivision of this state, under 1954
3 PA 99, MCL 254.221 to 254.240.

4 (e) Funds on deposit under 1941 PA 205, MCL 252.51 to
5 252.64, providing for limited access highways.

6 (f) Funds on deposit to the credit of the Michigan employ-
7 ment security commission.

8 (g) Funds of the Michigan state housing development author-
9 ity constituting proceeds of the sale of the authority's notes
10 and bonds and repayments of those notes and bonds, under the
11 state housing development authority act of 1966, 1966 PA 346,
12 MCL 125.1401 to 125.1499c.

13 (h) Funds belonging to any political subdivision of this
14 state.

15 (i) Funds belonging to any federally recognized Indian
16 tribe.

17 (j) Funds representing the proceeds of a grant or loan from
18 a department or agency of the United States, the award of which
19 is conditioned upon the recipient depositing the proceeds in an
20 account secured by a pledge of assets of the depository
21 institution.

22 (3) The requirements, restrictions, and limitations imposed
23 by this section shall not apply to the pledging of an obligation
24 of the United States, direct or fully guaranteed, or both, for
25 the purpose of securing a deposit of the United States when the
26 deposit is established coincidentally with the purchase of an
27 obligation of the United States by or through an institution.

1 (4) A bank may pledge its assets to secure liabilities of
2 any of the following types:

3 (a) In the case of member banks, liabilities incurred under
4 the federal reserve act. In the case of nonmember banks, liabil-
5 ities incurred through borrowing under the same conditions as are
6 imposed upon members of the federal reserve system by the federal
7 reserve act.

8 (b) In the case of federal home loan bank members, liabili-
9 ties incurred under the federal home loan bank act.

10 (c) Liabilities incurred under former section 202 of title
11 II of the federal farm loan act, chapter 245, 39 Stat. 360.

12 (d) Liabilities incurred on account of a loan made with the
13 express approval of the commissioner under section 4202(3)(c).

14 (e) Liabilities incurred on account of borrowings from 1
15 business day to the next from a bank or national banking associa-
16 tion of excess reserve balances from time to time maintained by
17 the bank or national banking association under section 19 of the
18 federal reserve act, chapter 6, 38 Stat. 270.

19 (f) Liabilities incurred on account of securities sold under
20 a repurchase agreement.

21 (g) Liabilities incurred in connection with administration
22 of treasury tax and loan accounts.

23 Sec. 4109. An agent of a bank described in section
24 4101(1)(e) may engage in any of the following activities:

25 (a) Accept a deposit to an existing account and record the
26 addition to the account or give other evidence of receipt as
27 prescribed by the bank.

1 (b) Accept a withdrawal form and other evidence required by
2 the bank from an account holder for transmission to the bank.

3 (c) Solicit and accept a new account. Evidence of account
4 ownership shall be issued only by authority of the bank. An
5 agent may obtain signature cards from the bank for the account
6 holder. An agent of a bank shall not possess an unissued or
7 blank authenticated savings account passbook or certificate or
8 other evidence of account ownership.

9 (d) Solicit and accept an application for a loan or for a
10 land contract purchase. The agent shall submit the application
11 to the bank for processing and approval.

12 (e) Disburse withdrawn or loaned funds, upon approval of
13 each disbursement by the bank.

14 (f) Accept payment on a loan or on a land contract and issue
15 evidence of receipt as prescribed by the bank.

16 (g) Any other services as approved by order or declaratory
17 ruling of the commissioner.

18 PART 2

19 LOANS

20 Sec. 4201. (1) A bank may collect interest and charges on
21 loans and extensions of credit as permitted by the laws of this
22 state or of the United States to any person.

23 (2) A bank may charge a discount on obligations purchased by
24 the bank.

25 Sec. 4202. (1) Except as otherwise provided in this section
26 or by order or declaratory ruling of the commissioner, the total
27 loans and extensions of credit and leases by a bank to a person

1 at no time shall exceed 15% of the capital and surplus of the
2 bank, except that upon approval by 2/3 vote of its board of
3 directors the limit may be increased to not to exceed 25% of the
4 capital and surplus of the bank.

5 (2) If the commissioner determines at any time that the
6 interests of a group of more than 1 person are so interrelated
7 that they should be considered as a unit for the purpose for
8 which credit was extended, the total loans and extensions of
9 credit and leases of persons of that group shall be combined and
10 considered loans and extensions of credit and leases of 1 person
11 under this section. A bank shall not be considered to have vio-
12 lated this section solely by reason of the fact that the indebt-
13 edness of a group then held exceeds the limitations of this sec-
14 tion at the time of a determination by the commissioner that the
15 indebtedness of that group shall be combined, but if required by
16 the commissioner, the bank shall dispose of indebtedness of the
17 group in the amount in excess of that permitted by this section
18 within a reasonable time determined by the commissioner.

19 (3) The following loans and extensions of credit shall not
20 be subject to subsection (1):

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

24 (b) The purchase of banker's acceptances of another bank of
25 the kind described in paragraph 7 of section 13 of the federal
26 reserve act, chapter 6, 38 Stat. 263-264.

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

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

13 (e) A loan or extension of credit from 1 business day to the
14 next to a depository institution of excess reserve balances from
15 time to time maintained under section 19 of the federal reserve
16 act, chapter 6, 38 Stat. 270.

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

21 (g) A loan or extension of credit secured by a loan agree-
22 ment between a local public agency or a public housing agency and
23 an instrumentality of the United States pursuant to federal hous-
24 ing legislation under which funds will be provided for payment of
25 the obligation secured by the loan agreement.

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

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

3 (j) A loan or extension of credit fully secured by a segre-
4 gated deposit account in the lending bank.

5 (k) A loan or extension of credit arising from the accep-
6 tance by a bank of drafts or bills of exchange drawn upon the
7 bank, or a bank's participation in drafts or bills of exchange
8 drawn upon and accepted by another bank, out-of-state bank, or
9 national bank in conformity with section 4103.

10 (l) Other loans or extensions of credit as determined by the
11 commissioner by order or declaratory ruling.

12 (4) The following limitations based upon capital and surplus
13 apply to all of the following:

14 (a) Loans and extensions of credit to a customer secured by
15 bills of lading, warehouse receipts, or similar documents trans-
16 ferring or securing title to readily marketable staples shall be
17 subject to a limitation of 30% of capital and surplus, if the
18 market value of the staples securing the loans or extensions of
19 credit at all times equals or exceeds 115% of the outstanding
20 amount of the loans or extensions of credit. The staples shall
21 be fully covered by insurance if it is customary to insure the
22 staples.

23 (b) Loans or extensions of credit to a customer secured by
24 shipping documents or instruments transferring or securing title
25 covering livestock, or giving a lien on livestock, if the market
26 value of the livestock securing the obligation is not at any time
27 less than 115% of the face amount of the notes covered, shall be

1 subject to a limitation of 30% of capital and surplus. Loans or
2 extensions of credit arising from the discount by dealers in
3 dairy cattle of paper given in payment for dairy cattle, which
4 paper carries a full recourse indorsement or unconditional guar-
5 antee of the seller and which are secured by the cattle being
6 sold, shall be subject to a limitation of 30% of capital and
7 surplus.

8 (c) Loans or extensions of credit arising from the discount
9 of negotiable or nonnegotiable installment consumer paper, which
10 carries a full recourse indorsement or unconditional guarantee by
11 the person transferring the paper, shall be subject to a limita-
12 tion of 30% of capital and surplus. If the bank's files or the
13 knowledge of its officers of the financial condition of each
14 maker of the consumer paper is reasonably adequate, and an offi-
15 cer of the bank designated for that purpose by the board of
16 directors of the bank certifies in writing that the bank is rely-
17 ing primarily upon the responsibility of each maker for the pay-
18 ment of the loans or extensions of credit, the limitations of
19 this section as to the loans and extensions of credit of each
20 maker shall be the sole applicable loan limitation. The certifi-
21 cation shall be retained as part of the records of the bank.

22 Sec. 4203. A bank that makes a loan, the proceeds of which
23 are used or may be used by the borrower to finance the purchase,
24 design, manufacture, construction, repair, modification, or
25 improvement of real or personal property, shall not be liable for
26 any defect in the property purchased, designed, manufactured,
27 constructed, repaired, modified, or improved or for any loss or

1 (2) A bank may hold, without limit, any of the following:

2 (a) Obligations of the United States, or obligations that
3 are guaranteed fully as to principal and interest by the United
4 States, or any general obligations of any state or of any politi-
5 cal subdivision of a state.

6 (b) Obligations issued under authority of the farm credit
7 act of 1971, Public Law 92-181, 85 Stat. 583.

8 (c) Obligations issued by banks for cooperatives.

9 (d) Obligations issued by the federal home loan banks.

10 (e) Obligations insured by the secretary under title IX of
11 the national housing act, chapter 847, 65 Stat. 295, 12
12 U.S.C. 1750, 1750b to 1750c, and 1750e to 1750g.

13 (f) Obligations insured by the secretary under section 207
14 of title II of the national housing act, chapter 847, 48
15 Stat. 1252, 12 U.S.C. 1713, if the debentures to be issued in
16 payment of the insured obligations are guaranteed as to principal
17 and interest by the United States.

18 (g) Obligations, participations, or other instruments of or
19 issued by the federal national mortgage association or the gov-
20 ernment national mortgage association.

21 (h) Mortgages, obligations, or other securities that are or
22 ever have been sold by the federal home loan mortgage corporation
23 under 12 U.S.C. 1454 or 1455.

24 (i) Obligations of a public housing agency, as defined in
25 section 1437a of the United States housing act of 1937, chapter
26 896, 88 Stat. 654, 42 U.S.C. 1437a.

1 (j) Obligations of a local public agency, as defined in
2 former 42 U.S.C. 1460(H), secured by a loan agreement between the
3 local public agency and the secretary of the United States
4 department of housing and urban development.

5 (k) Any other investment security authorized by order or
6 declaratory ruling of the commissioner.

7 (3) Subject to the exercise of prudent banking judgment, a
8 bank may engage in the underwriting of any of the following
9 investment securities:

10 (a) Obligations of the United States or any political subdi-
11 vision of the United States.

12 (b) Obligations of any state or any political subdivision
13 thereof.

14 (c) Obligations of the international bank for reconstruction
15 and development.

16 (d) Obligations of the inter-American development bank.

17 (e) Obligations of the Asian development bank.

18 (f) Obligations of the Tennessee valley authority.

19 (g) Obligations issued by any state or political subdivision
20 or agency of a state or political subdivision for housing, uni-
21 versity, or dormitory purposes.

22 (h) Obligations of the African development bank.

23 (i) Obligations of the international finance corporation.

24 (j) Other obligations listed in subsection (2).

25 (k) Other obligations authorized by order or declaratory
26 ruling of the commissioner.

1 (4) A bank may purchase for its own account other investment
2 securities, but the total amount of investment securities of any
3 1 obligor or maker, held by a bank under this subsection, shall
4 not exceed at any time 25% of its capital and surplus.

5 (5) The statutory limitation on the amount of investment
6 securities of any 1 obligor or maker that may be held by a bank
7 shall be determined on the basis of the par or face value of the
8 securities.

9 (6) A bank shall not purchase investment securities convert-
10 ible into stock at the option of the issuer.

11 (7) The restrictions and limitations of this section with
12 respect to a bank acquiring and holding securities for its own
13 account do not apply to securities acquired through foreclosure
14 on collateral, or acquired in good faith by way of compromise of
15 a doubtful claim or to avoid a loss in connection with a debt
16 previously contracted. This section does not limit the invest-
17 ment authority of a bank granted by any other section of this
18 act.

19 Sec. 4302. (1) A bank may purchase investment securities
20 for its own account when in its prudent banking judgment, which
21 may be based in part upon estimates that it believes to be reli-
22 able, it determines that there is adequate evidence that the
23 obligor will be able to perform all it undertakes to perform in
24 connection with the securities, including all debt service
25 requirements, and that the securities may be sold with reasonable
26 promptness at a price that corresponds to their fair value.

1 (2) A bank shall not purchase investment securities in which
2 the investment characteristics are considered distinctly or
3 predominantly speculative, or purchase investment securities that
4 are in default, whether as to principal or interest.

5 Sec. 4303. Notwithstanding any other section of this act, a
6 bank may invest in other assets authorized by order or declara-
7 tory ruling of the commissioner.

8 Sec. 4304. (1) A bank shall not engage in a transaction
9 with respect to shares of the capital stock of a corporation
10 unless specifically authorized by this act or by order or declar-
11 atory ruling of the commissioner under this act.

12 (2) A bank may purchase and sell securities and stock upon
13 the order of and for the account of a customer without recourse.

14 (3) A bank shall not make a loan on or discount the security
15 of the shares of its own capital stock unless the security is
16 necessary to prevent loss upon a debt previously contracted in
17 good faith.

18 (4) A bank may purchase or hold shares of its own stock if
19 any of the following apply:

20 (a) The bank is holding shares amounting to not more than 5%
21 of its common stock until disposed of in compliance with an
22 existing stock option plan.

23 (b) The purchase or holding of the shares is necessary to
24 prevent loss upon a debt previously contracted in good faith.

25 (c) The commissioner gives written approval to the bank to
26 purchase or hold shares for its own account.

1 (5) A bank may purchase and hold shares of stock or other
2 equity interests, having an aggregate purchase price not more
3 than 10% of its capital and surplus, of each of the following:

4 (a) Small business investment companies doing business in
5 this state and licensed under, or established under, the small
6 business investment act of 1958, Public Law 85-699, 72
7 Stat. 689.

8 (b) The Michigan business development corporation.

9 (c) Corporations or partnerships authorized by title IX of
10 the housing and urban development act of 1968, Public Law 90-448,
11 82 Stat. 547.

12 (d) Business entities whose primary purpose is to provide
13 capital to banks, which banks are largely owned or controlled by
14 individuals classified as racial minorities.

15 (e) Open-end management investment companies registered with
16 the securities and exchange commission under the investment com-
17 pany act of 1940, title I of chapter 686, 54 Stat. 789, 15
18 U.S.C. 80a-1 to 80a-64, while the portfolios of the companies are
19 restricted by their investment policies, changeable only by vote
20 of the shareholders, to investments permitted to banks by order
21 or declaratory ruling of the commissioner.

22 (f) Agricultural credit business entities organized solely
23 for the purpose of making loans to farmers and ranchers for agri-
24 cultural purposes, including the breeding, raising, fattening, or
25 marketing of livestock.

1 (g) The student loan marketing association established under
2 section 439 of part B of title IV of the higher education act of
3 1965, Public Law 89-329, 20 U.S.C. 1087-2.

4 (h) Any class of voting securities of banks, out-of-state
5 banks, or national banks engaged exclusively in providing serv-
6 ices to depository institutions or their officers, directors,
7 employees, and customers, or bank holding companies that own or
8 control such banks, out-of-state banks, or national banks if the
9 stock of the bank holding companies is owned exclusively, except
10 to the extent directors' qualifying shares are required by law,
11 by depository institutions and if all subsidiaries of the bank
12 holding companies engage exclusively in serving depository insti-
13 tutions or their officers, directors, employees, and customers.

14 (i) Banking organizations or corporations chartered or
15 incorporated under the laws of the United States or of any state,
16 territory, or protectorate of the United States, and principally
17 engaged in international or foreign banking, either directly or
18 through the agency, ownership, or control of foreign banks.

19 (j) Foreign banks that are not engaged, directly or indi-
20 rectly, in any activity in the United States except as, in the
21 judgment of the commissioner, is incidental to the international
22 or foreign business of the foreign banks.

23 (k) Entities that provide, and entities that reinsure pro-
24 viders of, insurance.

25 (6) Subject to the limitation based upon capital and surplus
26 set forth in subsection (5), a bank may purchase for its own
27 account any of the following:

1 (a) Securities authorized by title IX of the housing and
2 urban development act of 1968, Public Law 90-448, 82 Stat. 547.

3 (b) Adjustable rate preferred stock and money market pre-
4 ferred stock.

5 (c) Stock, bonds, or other obligations of a business and
6 industrial development company established under the provisions
7 of the Michigan BIDCO act, 1986 PA 89, MCL 487.1101 to 487.2001.

8 (7) This section does not limit or expand the investment
9 authority of a bank granted by any other section of this act.

10 Sec. 4305. (1) Except as otherwise provided by this act, a
11 bank may make venture capital investments, and may invest in
12 equity securities of a professional investor a majority of whose
13 assets consists of venture capital investments.

14 (2) If a bank makes a venture capital investment under sub-
15 section (1), an officer or director of the bank shall not hold an
16 equity position in the financed company, and the bank shall own
17 less than 50% of the company.

18 (3) A bank's investment under subsection (1) in any 1 entity
19 shall not exceed an amount equal to 5% of the capital and surplus
20 of the bank, and all investments under subsection (1) shall not
21 exceed an amount equal to 10% of the capital and surplus of the
22 bank.

23 (4) This section does not limit the authority of a bank to
24 exercise lending or investment powers which are otherwise autho-
25 rized by law.

26 Sec. 4306. A bank may lease, purchase, hold, and convey any
27 of the following real property:

1 (a) As necessary for the convenient transaction of its
2 business, including space within its banking office buildings to
3 rent as lessor to third parties.

4 (b) As conveyed to it in satisfaction of debts previously
5 contracted in the course of its business.

6 (c) As it purchases at sales under judgments, decrees, or
7 mortgages held by the bank or to secure debts due to it.

8 (d) As it legally owned on the effective date of this act.

9 (e) As conveyed to it under sections 4401 to 4405.

10 (f) As it may acquire in connection with the purchase by it
11 of a land contract, but the purchase of the land contract consti-
12 tutes a loan secured by real property for purposes of section
13 4202.

14 (g) For any other purpose as may be permitted by this act or
15 by order or declaratory ruling of the commissioner.

16 Sec. 4307. A bank may invest not more than 10% of its total
17 assets in the acquisition and development of real property for
18 sale, or for the improvement of real property by construction or
19 rehabilitation of residential or commercial units for sale or
20 rental purposes. For purposes of this section, a bank may pur-
21 chase, take, lease as lessee, or otherwise acquire, and own,
22 hold, use, sell, lease as lessor, pledge, grant a security inter-
23 est in, convey, or otherwise dispose of real property. The
24 investment by a bank may be direct, or indirect as a stockholder
25 in a corporation, member of a limited liability company, or
26 limited partner in a partnership or limited liability
27 partnership.

1 Sec. 4308. (1) A bank may lease, purchase, hold, and convey
2 real property for the use of a customer by lease arrangement with
3 the bank, but the acquisition of real property and leasing to a
4 customer constitutes a loan secured by real property for purposes
5 of section 4202.

6 (2) A bank may incur additional obligations incident to
7 becoming an owner or lessor of real property acquired for the use
8 of a customer.

9 (3) Inventory of real property held under this section and
10 not leased shall not exceed 25% of the bank's capital and
11 surplus.

12 Sec. 4309. (1) A bank may lease, purchase, hold, and convey
13 personal property for the use of a customer by lease arrangement
14 with the bank, but the acquisition of personal property and leas-
15 ing to a customer constitutes a loan secured by personal property
16 under section 4202.

17 (2) A bank may incur additional obligations incident to
18 becoming an owner or lessor of personal property acquired for the
19 use of a customer.

20 (3) Inventory of personal property held under this section
21 and not leased shall not exceed 25% of the bank's capital and
22 surplus.

23 (4) Personal property of a bank that is leased, loaned, or
24 otherwise made available to and used by a person in connection
25 with a business conducted for profit shall be subject to taxation
26 in the same amount and to the same extent as though the lessee or
27 user were the owner of the property. When due, the taxes shall

1 constitute a debt due from the lessee or user to the unit of
2 government for which the taxes were assessed.

3 Sec. 4310. (1) As authorized by order or declaratory ruling
4 of the commissioner, a bank may invest in service entities that
5 engage in activities in which a bank is not authorized to
6 engage.

7 (2) The maximum aggregate investment by a bank in service
8 entities shall be the lesser of 5% of the bank's total assets or
9 75% of its capital and surplus.

10 (3) The commissioner shall give notice to all banks of
11 orders and declaratory rulings issued under this section.

12 (4) For purposes of subsection (2), investment in a service
13 entity shall include loans by a bank or its subsidiary to a serv-
14 ice entity.

15 (5) Subject to the investment limit in subsection (2), a
16 bank or its subsidiary that has made an initial investment in a
17 service entity may make additional investments in that service
18 entity without notice to the commissioner.

19 PART 4

20 TRUSTS

21 Sec. 4401. (1) Upon application, the commissioner may grant
22 to any bank or state foreign bank branch full trust powers, as
23 provided in this section, but subject to the conditions, limita-
24 tions, and restrictions in this act, except that trust powers
25 shall not be granted to a state agency.

26 (2) Upon approval of the application, the bank or state
27 foreign bank branch shall have the power to conduct a trust

1 business including, but not by way of limitation, all of the
2 following:

3 (a) In and by its corporate name to take, receive, hold,
4 repay, reconvey, and dispose of any effects and property, both
5 real and personal, that may be granted, committed, transferred,
6 or conveyed to it with its consent, upon any terms or upon any
7 trust at any time, by any person, including minors, bodies corpo-
8 rate, or by any court, and to administer, fulfill, and discharge
9 the duties of the trust for the remuneration as agreed upon.

10 (b) To act as agent for the transaction of business, the
11 management of estates, the collection of rents, interest, divi-
12 dends, and money, and the collection of principal and interest on
13 mortgages, bonds, notes, and securities for money and to enforce
14 the payment thereof, and also to act as agent for the purpose of
15 issuing, negotiating, registering, transferring, or countersign-
16 ing the certificates of stock, bonds, or other obligations of any
17 corporation, association, or municipality and to manage any sink-
18 ing fund of any corporation, association, or municipality on the
19 terms as agreed upon.

20 (c) To accept and to execute the offices of personal repre-
21 sentative, trustee, receiver, conservator, liquidating agent,
22 assignee, or guardian of any minor, incompetent person, legally
23 incapacitated person, or any person subject to guardianship. In
24 all cases when application is made to a court for the appointment
25 of a trustee, receiver, personal representative, or guardian of
26 any minor, incompetent person, legally incapacitated person, or
27 any other person subject to guardianship, the court may appoint

1 the bank or state foreign bank branch, with its consent, to hold
2 the office. The accounts of the bank or state foreign bank
3 branch as trustee, receiver, conservator, liquidating agent,
4 assignee, personal representative, or guardian shall be regularly
5 settled and adjusted by the proper office or tribunals. All
6 proper, legal, usual, and customary charges, costs, and expenses
7 shall be allowed to the bank or state foreign bank branch for the
8 care and management of the estate so committed to it. In case of
9 appointment by any court, the bank or state foreign bank branch
10 shall not be required to give any security except in the discre-
11 tion of the court. If the court orders the bank or state foreign
12 bank branch to give security, the security shall be a bond in an
13 amount fixed by the court and with a surety company authorized to
14 do business in this state, or with personal surety or sureties on
15 the bond satisfactory to the court.

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

19 (e) A bank or state foreign bank branch acting as a fidu-
20 ciary may charge a reasonable fee for its services.

21 Sec. 4402. (1) As used in this section:

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

26 (b) "Trust service provider" means a bank, national bank,
27 association, or savings bank providing trust services to any

1 other bank, out-of-state bank, national bank, association,
2 savings bank, or other legal entity.

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

6 (2) A bank granted full trust powers may contract by written
7 agreement with any other legal entity to carry on trust services
8 in its name and for its account at 1 or more of the offices of
9 the other legal entity.

10 (3) A bank may contract by written agreement with any other
11 legal entity exercising full trust powers to carry on trust serv-
12 ices at 1 or more of its banking offices but in the name and for
13 the account of the other legal entity.

14 (4) An agreement provided for in this section, including any
15 lease, or a modification or extension of an agreement, is not
16 effective until it is filed with the commissioner.

17 (5) Thirty days after a host bank mails a notice of substi-
18 tution as provided in subsection (6), a trust service provider
19 shall be substituted for a host bank as fiduciary or agent and
20 succeed to the title of assets held by a host bank in a fiduciary
21 capacity for each account in which the host bank, under the terms
22 of a trust service agreement, will no longer serve as fiduciary
23 or agent. A trust service provider shall not be substituted for
24 the host bank for an account in which the recipient of a notice
25 of substitution objects to the substitution in the manner pro-
26 vided in subsection (6).

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

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

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

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

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

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

18 (f) For irrevocable trusts under agreement, to any
19 co-fiduciary, to the settlor, to each current income beneficiary
20 who is an adult, and, if a current income beneficiary is a minor,
21 to a parent of the minor with whom the minor resides or to the
22 conservator or guardian of the minor. The notice to the settlor
23 shall not grant to the settlor any authority over the trust or
24 trustee that the settlor does not already have, including the
25 authority to object to the substitution of a trust service pro-
26 vider for a host bank. For purposes of this subdivision,
27 "current income beneficiary" means a person currently entitled to

1 income or a person to whom the trustee, in the trustee's
2 discretion, may pay principal or income.

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

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

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

16 (j) For probate estates, to any co-fiduciary, to any inter-
17 ested party as defined by section 7 of the revised probate code,
18 1978 PA 642, MCL 700.7, and to the probate court that appointed
19 the host bank as personal representative.

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

22 Sec. 4403. (1) A bank exercising a trust power as provided
23 in this section and sections 4401, 4402, 4404, and 4405 shall
24 segregate all assets held in a fiduciary capacity from the gen-
25 eral assets of the bank, shall keep a separate set of books and
26 records showing in proper detail all transactions engaged in
27 under the authority of this section and sections 4401, 4402,

1 4404, and 4405, and at all times shall keep the bank's trust
2 department business separate and distinct from the bank's commer-
3 cial banking business.

4 (2) Funds, at any time and from time to time, held in trust
5 by the bank awaiting investment or other disposition, may be com-
6 mingled and consolidated, and may be deposited in other banks as
7 designated by the board of directors or may be held at any time
8 and from time to time by the bank under a deposit relationship
9 and used by the bank in the conduct of the bank's individual cor-
10 porate business, but only to the extent and when the bank shall
11 set aside for the protection of the owners of the funds obliga-
12 tions of the United States, obligations that are guaranteed fully
13 as to principal and interest by the United States, general obli-
14 gations of this state or of any political subdivision of this
15 state, surety bonds, or other securities approved by the commis-
16 sioner equal at face value to the amount of the funds held and so
17 used less the amount of the funds that are insured by the federal
18 deposit insurance corporation. If the bank fails, the owners of
19 the funds held in trust, awaiting investment or other disposi-
20 tion, shall have a lien on the securities set apart in addition
21 to any other claims against the bank.

22 Sec. 4404. (1) In acting upon applications for permission
23 to exercise full fiduciary powers as provided in section 4401,
24 the commissioner shall take into consideration the sufficiency of
25 the capital and surplus of the applying bank and any other facts
26 or circumstances the commissioner considers proper.

1 (2) Without regard to the capital and surplus requirements
2 specified in subsection (1), the commissioner may grant to a bank
3 the limited trust power to act as executor, administrator, or
4 guardian and to serve as a testamentary trustee.

5 Sec. 4405. (1) Funds or property held by a bank as fidu-
6 ciary and available for investment shall be invested at the time
7 and in the manner specified by the agreement, instrument, or
8 order creating or defining the trust or other capacity in which
9 the bank is acting or, where the bank holds the funds or property
10 as agent, as directed or permitted by the bank's principal. In
11 the absence of investment specifications or limitations in the
12 agreement, instrument, or order, funds or property held by a bank
13 as fiduciary shall within a reasonable time be invested in real
14 or personal property, of whatever type or nature, as a prudent
15 investor would purchase, taking into account the purposes, terms,
16 and distribution requirements expressed in the governing instru-
17 ment, in the exercise of reasonable care, skill, and caution
18 under conditions existing at the time of purchase. Compliance
19 with the prudent investor rule shall be determined in light of
20 the facts and circumstances that exist at the time of a
21 fiduciary's decision or action and requires a standard of con-
22 duct, not outcome or performance.

23 (2) Except as otherwise permitted by law, a court order, or
24 the agreement, instrument, or order creating or defining the
25 trust, or other capacity in which the bank is acting or with the
26 consent of all interested parties or their representatives, or
27 where the bank holds the funds or property as agent, as directed

1 or permitted by the bank's principal, funds or property held by a
2 bank as fiduciary shall not be invested in any securities or
3 other properties, real or personal, purchased from the bank in
4 its individual capacity or from any affiliate of the bank.

5 (3) Notwithstanding any other statutory or common law,
6 except when the agreement, instrument, or order creating or
7 defining the trust or other capacity in which the bank, or the
8 bank and 1 or more cofiduciaries, is acting prohibits the invest-
9 ment, a bank, or a bank and 1 or more cofiduciaries, may invest
10 in a registered investment company any funds or property with
11 respect to which the bank, or the bank and 1 or more cofiduci-
12 aries, exercises investment discretion, even though either or
13 both of the following apply:

14 (a) The bank or 1 or more affiliates of the bank provide
15 services as investment adviser, sponsor, distributor, manager,
16 custodian, transfer agent, registrar, or otherwise, to the
17 investment company and receives reasonable remuneration for those
18 services.

19 (b) The bank as fiduciary owns or controls a majority of the
20 voting shares of the investment company or a majority of the
21 shares voted for the election of its directors or trustees or the
22 bank as fiduciary otherwise controls the election of a majority
23 of its directors or trustees.

24 (4) As used in subsection (3), "registered investment
25 company" means an investment company that is registered under the
26 investment company act of 1940, title I of chapter 686, 54
27 Stat. 789.

1 (5) For purposes of this section, a bank is considered to be
2 holding funds or property in a fiduciary capacity if it is hold-
3 ing the assets as trustee, personal representative, custodian,
4 conservator, guardian, agent, or in any other fiduciary
5 capacity.

6 CHAPTER 5

7 FOREIGN BANKS

8 STRUCTURE

9 Sec. 5101. (1) With the written approval of the commission-
10 er, a foreign bank may establish and operate a state agency or
11 state foreign bank branch in this state if all of the following
12 apply to the foreign bank:

13 (a) It is authorized by its charter or articles of incorpo-
14 ration to engage in the business of banking.

15 (b) It has complied with the laws of the foreign country in
16 which it is chartered or incorporated.

17 (c) In the case of a state agency, the foreign bank does not
18 operate a federal agency in this state.

19 (d) In the case of a state foreign bank branch, the foreign
20 bank has not previously designated any other state as its home
21 state under the international banking act of 1978.

22 (2) The commissioner shall examine the information and
23 statements contained in the application submitted under subsec-
24 tion (1) and make any investigation considered necessary regard-
25 ing the financial and managerial resources of the applicant. The
26 commissioner shall also consider whether there exists an
27 opportunity for a bank having its principal place of business in

1 this state to conduct business in the foreign country in which
2 the applicant is chartered or incorporated.

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

9 Sec. 5102. (1) A state agency or state foreign bank branch
10 may be converted into a federal agency or federal branch under
11 the international banking act of 1978.

12 (2) A federal agency or federal branch located in this state
13 may be converted, with the written approval of the commissioner,
14 into a state agency or state foreign bank branch. If the con-
15 verted state agency or state foreign bank branch succeeds to
16 assets in which it does not have the legal power to invest, or
17 liabilities that it does not have power to incur, those assets or
18 liabilities shall be disposed of within the next 12 calendar
19 months of the date of the conversion, except that the commis-
20 sioner may extend this period in the interest of an orderly dis-
21 position of those assets or liabilities. The disposition period
22 shall not exceed 3 years.

23 Sec. 5103. Authority to operate a state agency, state for-
24 eign bank branch, or foreign bank representative office shall
25 terminate upon dissolution of the foreign bank, or the
26 commissioner's revocation of the foreign bank's authority to
27 operate in this state. Upon termination of the authority to

1 operate a state agency or state foreign bank branch, the
2 commissioner shall become agent for the foreign bank for service
3 of process and shall exercise the same powers, including the
4 right to appoint a receiver, over the assets and liabilities of
5 the state agency or state foreign bank branch as are permitted
6 over a state chartered bank in liquidation or dissolution under
7 sections 2401 to 2410 and 3301 to 3307.

8 Sec. 5104. A foreign bank operating a state agency or state
9 foreign bank branch in this state shall, at the times and in the
10 form prescribed by the commissioner, file with the commissioner
11 reports written in the English language, showing the amount of
12 its assets and liabilities and containing other information
13 requested by the commissioner. A foreign bank that fails to
14 comply with this section is subject to the penalty provided in
15 section 3911.

16 Sec. 5105. (1) Except as otherwise provided in this act or
17 other law of this state, operations of a foreign bank at a state
18 foreign bank branch or state agency shall be conducted with the
19 same rights and privileges and subject to the same duties,
20 restrictions, penalties, liabilities, conditions, and limitations
21 that would apply under this act to a bank doing business at the
22 same location, except that a state agency or an additional office
23 of a state agency shall not accept nor solicit deposits from cit-
24 izens or residents of the United States or exercise trust
25 powers. Operations of a foreign bank representative office are
26 limited to representational functions.

1 (2) A foreign bank that operates a state agency or state
2 foreign bank branch is permitted to establish and operate
3 additional offices subject to section 3711. For purposes of sec-
4 tion 3711, the principal office of a foreign bank operating under
5 this act shall be its first state agency or state foreign bank
6 branch established in this state.

7 (3) A state agency or state foreign bank branch shall not be
8 required to become an insured bank, as insured bank is defined in
9 section 3 of the federal deposit insurance act, unless the state
10 foreign bank branch accepts deposits described in section 3 of
11 the federal deposit insurance act.

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

17 (5) The commissioner may examine the books, accounts,
18 records, and files of the foreign bank that contain information
19 regarding the accounts and business of a state agency, state for-
20 eign bank branch, or foreign bank representative office.

21 Enacting section 1. The banking code of 1969, 1969 PA 319,
22 MCL 487.301 to 487.598, is repealed.

[Enacting section 2. This act takes effect March 1, 2000.]