

Act No. 276
Public Acts of 1999
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**STATE OF MICHIGAN
90TH LEGISLATURE
REGULAR SESSION OF 1999**

Introduced by Senators Emmons, Steil, Rogers, Miller, Shugars, V. Smith, Johnson, Hammerstrom, Sikkema, Stille, Bennett, McCotter and Gast

ENROLLED SENATE BILL No. 745

AN ACT 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:

CHAPTER 1

PART 1

SHORT TITLE AND GENERAL PROVISIONS

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

Sec. 1102. It is the policy of this state that the business of all banking organizations shall be supervised and regulated in a manner that insures the safe and sound conduct of business, to conserve their assets, promote competition among banking organizations, to maintain public confidence in the business, and to protect the public interest and the interests of depositors, creditors, and shareholders.

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

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

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

(3) This act shall not be construed to affect the legality of investments made or of transactions conducted, under any provisions of law in force when the investments or transactions were made or conducted, nor to require the change of investments for those named in this act, except to prevent loss, or injury to the institution, or to the borrowers on the securities. Extension of such loan or investment shall not be made by any institution, unless necessary to avoid loss as provided in this subsection.

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

(5) An institution governed by the terms of this act organized and incorporated before the effective date of this act under any law of this state, which if now incorporated would be required to incorporate under and be subject to this act, shall be subject to this act without formal reorganization under this act and shall be considered to exist under this act. This act shall govern all institutions incorporated in this state.

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

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

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

Sec. 1105. (1) A person shall not engage in the business of banking in this state unless authorized by this act, the laws of another state, the national bank act, the international banking act of 1978, or if engaged in the business of banking on the effective date of this act under former 1969 PA 319.

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

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

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

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

(d) A national bank authorized to exercise trust powers under the national bank act. A national bank authorized to exercise trust powers under this subdivision may do so only to the extent that a bank may exercise trust powers under this act.

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

Sec. 1106. The use of the word “bank”, “banker”, or “banking” or any foreign language words of similar meaning as a designation or name, or part of a designation or name under which business is or may be conducted in this state, is restricted to a national bank, a bank subject to this act, an out-of-state bank, a bank holding company registered under the bank holding company act, a foreign bank agency, a foreign bank branch, a savings and loan holding company as defined in 12 C.F.R. 583.20, or a savings bank that is lawfully conducting business in this state, unless that designation or name, taken as a whole, would not imply a banking business. Use of the term “mortgage banker” or “mortgage banking” in the name or assumed name of a licensee or registrant under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, does not violate this section.

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

PART 2 DEFINITIONS

Sec. 1201. As used in this act:

(a) “Administrative expense” means any of the following:

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

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

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

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

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

(b) “Administrative procedures act of 1969” means the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

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

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

(ii) Control of the organization is held, directly or indirectly, through either of the following:

(A) Stock ownership or in any other manner, by the shareholders or members of an organization who own or control a majority of the shares of that organization, a majority ownership interest in the organization, more than 50% of the number of shares voted for the election of directors of that organization at the preceding election, or more than 50% of the ownership vote for election of directors of that organization at the preceding election.

(B) By trustees for the benefit of the shareholders or members of that organization.

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

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

(d) “Applicant” means a person making an application under this act.

(e) “Articles” means articles of incorporation, all amendments to articles of incorporation, and agreements of consolidation and merger.

(f) “Association” means a federal savings association organized under section 5 of the home owners’ loan act, chapter 64, 48 Stat. 132, 12 U.S.C. 1464, or a savings and loan association, building and loan association, or homestead association that is organized under the laws of a state, the District of Columbia, or a territory or protectorate of the United States, and whose deposits are insured by the federal deposit insurance corporation.

(g) “Bank” means a state banking corporation organized or reorganized under this act or organized under any law of this state enacted before the effective date of this act, including a state banking corporation that voluntarily limits its activities.

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

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

(j) “Branch” means, except as otherwise provided in this subdivision, a branch bank, branch office, branch agency, additional office, or a branch place of business at which deposits are received, checks paid, or money lent. The acceptance of deposits in furtherance of a school thrift or savings plan by an officer, employee, or agent of a bank at a school shall not be construed as the establishment or operation of a branch. An electronic funds transfer facility that is made available to 2 or more depository institutions under Michigan law that regulates electronic funds transfer facilities is not a branch. A trust office of a bank is not a branch. A loan production office is not a branch. An additional office of a state agency is not a branch. An international banking facility as defined in 12 C.F.R. 204.8(a)(1), as in effect December 31, 1982, is not a branch. The receipt of deposits by a messenger service or the delivery by a messenger service of items representing deposit account withdrawals or of loan proceeds is not the establishment or operation of a branch, whether or not the messenger service is owned or operated by the bank. Branch does not include an agent acting under section 4101(1)(d).

(k) “Bureau” means the financial institutions bureau of the department of consumer and industry services.

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

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

(n) “Commissioner” means the commissioner of the financial institutions bureau.

(o) “Consolidate”, “consolidated”, “consolidating”, and “consolidation” include, respectively, consolidate or merge, consolidated or merged, consolidating or merging, and consolidation or merger.

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

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

(r) “Consolidating organizations” means any combination of banks, out-of-state banks, national banks, associations, or savings banks that have consolidated or are in the process of consolidation as provided in section 3701 or 3702.

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

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

(u) “Dividend reinvestment plan” means a plan that is offered solely to existing shareholders of the bank and which allows the shareholders to reinvest dividends received under section 3806 in stock of the bank and that may allow additional cash amounts to be contributed by the shareholders participating in the reinvestment plan.

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

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

(x) “Federal deposit insurance act” means the federal deposit insurance act, chapter 967, 64 Stat. 873.

(y) “Federal home loan bank act” means the federal home loan bank act, chapter 522, 47 Stat. 725.

(z) “Federal reserve act” means the federal reserve act, chapter 6, 38 Stat. 251.

Sec. 1202. As used in this act:

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

(b) “Foreign bank” means an entity organized and recognized as a bank under the laws of a foreign country that lawfully engages in the business of banking and is not directly or indirectly owned or controlled by United States citizens or by a corporation organized under the laws of the United States. Foreign bank includes foreign commercial banks, foreign merchant banks, and other foreign institutions that engage in banking activities usual in connection with the business of banking in the countries in which the foreign institutions are organized.

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

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

(e) “Foreign country” means a country other than the United States and includes a colony, dependency, or possession of a country other than the United States.

(f) “Incorporator” means a signer of the original articles of incorporation.

(g) “Institution” means a bank, state agency, or state foreign bank branch operating or organized or reorganized under this act or operating or organized under any law of this state enacted before August 20, 1969.

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

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

(j) “Loan and extension of credit” or “loan or extension of credit” includes all direct or indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of the person. To the extent specified by the commissioner, loan and extension of credit or loan or extension of credit includes any liability of a bank to advance funds to or on behalf of a person under a contractual commitment. The term does not include investment securities held by a bank under section 4301.

(k) "Loan production office" means an office of a depository institution or institutions at which activities related to the lending of money are conducted, deposits are not received, and checks are not paid, and which office is not the principal office, a branch, or an agency of an affiliated depository financial institution.

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

(m) "Messenger service" means a service such as a courier service or an armored car service that picks up from or delivers to customers of 1 or more depository institutions or 1 or more affiliates of a depository institution cash, currency, checks, drafts, securities, or other items relating to transactions between or involving a depository institution or affiliate of a depository institution and those customers, or that transfers cash, currency, checks, drafts, securities, or other items or documents between depository institutions or affiliates of depository institutions. The service may be owned and operated by 1 or more depository institutions or affiliates or by a third party.

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

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

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

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

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

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

(t) "Publication", "publish", or "published" means to appear in a newspaper of general circulation in the community or communities where the principal office or offices of the depository institution or institutions are located.

Sec. 1203. As used in this act:

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

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

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

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

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

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

(g) "Subsidiary" means a corporation, mutual company, limited liability company, limited liability partnership, or limited partnership, the controlling interests of which are more than 50% owned by 1 or more depository institutions, and in which a bank has an ownership interest, membership interest, or other legally enforceable interest which is the indicia of ownership. Upon approval of the commissioner, and subject to the ownership requirements set forth in this subsection, a subsidiary may be a general partnership.

(h) "Surplus" means the amount paid for issued and outstanding common and preferred stock of the bank in excess of the stated par value, plus any amount of transferred undivided profits and any additional amounts paid in or contributed to increase total capital.

(i) "Total capital" means an amount equal to any capital, plus any surplus, undivided profits, and instruments of indebtedness authorized under section 3801.

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

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

(l) "Venture capital" means equity financing that is provided for starting up or expanding a company, or related purposes such as financing for seed capital, research and development, introduction of a product or process into the marketplace, or similar needs requiring risk capital. A venture capital investment shall not include the purchase of a share of stock in a company if, on the date on which the share of stock is purchased, the company has securities outstanding that are registered on a national securities exchange under section 12(b) of title I of the securities exchange act of 1934, chapter 404, 48 Stat. 892, 15 U.S.C. 78l; that are registered or required to be registered under section 12(g) of title I of the securities exchange act of 1934, chapter 404, 48 Stat. 892, 15 U.S.C. 78l, or which would be required to

be registered except for the exemptions in section 12(g)(2) of title I of the securities exchange act of 1934, chapter 404, 48 Stat. 892, 15 U.S.C. 78l.

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

CHAPTER 2
FINANCIAL INSTITUTIONS BUREAU
PART 1
ADMINISTRATION

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

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

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

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

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

Sec. 2102. This act shall be implemented by the commissioner to maximize the capacity of banks to offer convenient and efficient financial services, to promote economic development, and to ensure that banks remain competitive with other types of financial service providers.

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

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

Sec. 2104. (1) The commissioner shall appoint a chief deputy who shall perform the duties of the commissioner during the commissioner's absence from the bureau. The commissioner may appoint other deputies as he or she considers appropriate and may delegate general or specific responsibilities under this act to the other deputies. The commissioner may designate that 1 or more of the other deputies perform the duties of the commissioner when both the commissioner and the chief deputy commissioner are absent from the bureau. The chief deputy and other deputies shall take and subscribe the constitutional oath of office and file it with the secretary of state.

(2) The commissioner may, at any time, revoke an appointment, designation, or delegation made under this section.

Sec. 2105. (1) The commissioner may appoint employees to carry out specific functions under this act. The compensation, travel, and other expenses of the commissioner, deputy commissioners, and employees shall be paid in the manner provided by law for other state officers and employees, within the appropriations made by the legislature.

(2) The commissioner may delegate to employees duties authorized to the commissioner under this act.

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

Sec. 2106. (1) During his or her term of office or employment, the commissioner, a deputy commissioner, or an examiner of the bureau shall not be a shareholder, either directly or indirectly, of a financial institution, a national bank, federal savings and loan association, or federal savings bank that maintains a main office or branch office in this state, or of any affiliate or subsidiary thereof. The commissioner, a deputy commissioner, or an examiner of the bureau may be a shareholder of a credit union, a mutual savings and loan association, or a mutual savings bank.

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

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

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

(5) The commissioner shall not borrow from or become indebted to a financial institution except for installment debt transferred to a financial institution in the regular course of business by a seller of consumer goods.

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

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

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

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

(2) This section does not apply to, and does not prohibit the furnishing of information or documents to, the federal, foreign, or out-of-state bank, association, or savings bank regulatory agencies, and is not applicable to disclosures made in the public interest by the commissioner, at his or her discretion.

PART 2 GENERAL POWERS

Sec. 2201. The commissioner may promulgate rules under the administrative procedures act of 1969 as he or she considers necessary to effectuate the purposes and to enforce this act.

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

(2) The commissioner shall examine an institution under the commissioner's jurisdiction when requested by its board of directors. In connection with an examination, the commissioner, or the commissioner's authorized agent, may examine on oath a director, officer, agent, employee, or shareholder of an institution concerning the affairs and business of the institution. The commissioner shall ascertain whether the institution transacts its business in the manner prescribed by law and the rules promulgated under law. The commissioner, or the commissioner's authorized agent, may make an examination of an affiliate, bank holding company, subsidiary, or service entity necessary to disclose fully the relation between an institution and the affiliate, holding company, subsidiary, or service entity and the effect of the relation upon the institution.

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

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

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

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

(7) The contents of a report of examination of a bank and examination-related documents prepared or obtained under this section remain the property of the bureau. Dissemination of all or part of a bank's report of examination for purposes other than the legitimate business purposes of the bank or as otherwise authorized by this act shall be a violation of this act subject to the administrative remedies granted the commissioner under sections 2304 through 2314.

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

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

(3) The commissioner shall provide an invoice of the supervisory fee no later than July 1 of each year. The annual supervisory fee shall be paid by August 15 of that year.

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

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

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

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

(8) The commissioner may charge reasonable fees for furnishing and certifying copies of documents or serving notices required by this act.

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

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

Sec. 2204. (1) The commissioner may issue declaratory rulings in accordance with the administrative procedures act of 1969, or issue orders on applications by 1 or more banks to exercise powers not specifically authorized by this act that will authorize banks to exercise powers appropriate and necessary to compete with other providers of financial services.

(2) In the exercise of the discretion permitted by this section, the commissioner shall consider the ability of banks to exercise any additional power in a safe and sound manner, the authority of depository institutions operating under state or federal law or regulation, the powers of other competing entities providing financial services, and any specific limitations on bank powers contained in this act or in any other law of this state. The commissioner shall give notice, at least quarterly, to all banks of declaratory rulings, orders, or determinations issued during the preceding quarter under this section.

PART 3

ENFORCEMENT POWERS

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

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

(2) The application shall contain information and be accompanied by documents as required by the bureau.

(3) If an application is considered incomplete by the bureau, it will either be returned for completion or the applicant will be requested to submit additional information as necessary to make the application complete.

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

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

(6) If, subsequent to the date of acceptance, the applicant wishes to amend the application or supplement or provide additional material in connection with the application, the commissioner may suspend processing of the application or proceed with the statutory period for the issuance of an order.

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

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

(9) An applicant who is dissatisfied with an order of the commissioner, or an institution that is dissatisfied with an objection issued under section 3711 or 3713, may submit a written request for a reconsideration of the order or objection stating the reasons for the request. The request must be received by the bureau within 5 days after the date of the order or objection. The commissioner, within 10 days of receiving the request for reconsideration, shall render a decision on the request for reconsideration. If a petition for reconsideration is granted, the commissioner shall grant the applicant 10 days to file written arguments or briefs. The commissioner may allow for oral argument after granting a petition for reconsideration. The oral argument shall be held within 10 days after granting the petition. The commissioner shall issue a final order, objection, or withdrawal of an objection within 20 days after granting the petition for reconsideration.

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

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

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

Sec. 2304. (1) If in the opinion of the commissioner an institution is engaging, has engaged, or is about to engage in an unsafe or unsound practice in conducting the business of the institution or is violating, has violated, or is about to violate a law or rule, the commissioner may issue and serve upon the institution a notice of charges. The notice shall contain a statement of the facts constituting the alleged unsafe or unsound practice or violation, and shall fix a time and place for a hearing to determine whether an order to cease and desist should issue. The hearing shall be not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or later date is set by the commissioner at the request of the institution. If the institution does not appear at the hearing by a duly authorized representative, it shall be considered to have consented to the issuance of a cease and desist order.

(2) In the event of consent, or if upon the record made at the hearing the commissioner finds that an unsafe or unsound practice or violation specified in the notice of charges has been established, the commissioner may issue and serve upon the institution an order to cease and desist from the practice or violation. The order may require the institution and its directors, officers, employees, and agents to cease and desist from the practice or violation and to take affirmative action to correct the conditions resulting from the practice or violation.

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

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

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

Sec. 2305. (1) If the commissioner determines that the violation or threatened violation or the unsafe or unsound practice or practices, specified in the notice of charges served upon the institution under section 2304(1), or the continuation of the violation or practice, is likely to cause insolvency or substantial dissipation of assets or earnings of the institution, or is likely to otherwise seriously prejudice the interests of its depositors, the commissioner may issue a temporary order requiring the institution to cease and desist from any violation or practice. The order shall become effective upon service upon the institution and, unless set aside, limited, or suspended by a court in proceedings authorized by subsection (2), shall remain effective and enforceable pending the completion of the proceedings under section 2304.

(2) Within 10 days after the institution has been served with a temporary cease and desist order, the institution may apply to the circuit court for the county in which the principal office of the institution is located for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of the proceedings under section 2304. The court shall have jurisdiction to issue the injunction.

Sec. 2306. (1) If in the opinion of the commissioner any director or officer of an institution has committed any violation of law or rule or of a cease and desist order or other order of the commissioner which has become final, or has engaged or participated in any unsafe or unsound practice in connection with the institution, or has committed or engaged in any act, omission, or practice which constitutes a breach of fiduciary duty as a director or officer and the commissioner determines that the institution has suffered or will probably suffer substantial financial loss or other damage or that the interests of its depositors could be seriously prejudiced by reason of the violation or practice or breach of fiduciary duty, the commissioner may serve upon the director or officer a written notice of intention to remove the person from office.

(2) If in the opinion of the commissioner any director, officer, or any other person participating, or who has participated, in the conduct of the affairs of an institution, by conduct or practice with respect to the institution or other business organization resulted in substantial financial loss or other damage, has evidenced personal unfitness to participate in the conduct of the affairs of the institution, the commissioner may serve upon the director, officer, or other person a written notice of intention to remove the person from office or to prohibit the person's further participation in any manner in the conduct of the affairs of the institution.

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

(4) A notice of intention to remove a person from office or to prohibit participation in the conduct of the affairs of any institution shall contain a statement of the facts constituting grounds for the removal, and fix a time and place for a hearing. Except as otherwise approved by the commissioner, the hearing shall be held not earlier than 30 days nor later than 60 days after the date of service of the notice. If the person does not appear at the hearing in person or by a duly authorized representative, the person shall be considered to have consented to the issuance of an order of removal or prohibition. In the event of consent, or if upon the record made at the hearing the commissioner finds that any grounds specified in the notice have been established, the commissioner may issue an order of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the institution, as appropriate. The order is effective at the expiration of 30 days after service upon the institution and the person concerned except in the case of an order issued upon consent, which is effective at the time specified in the order. The order shall remain effective and enforceable unless it is stayed, modified, terminated, or set aside by the commissioner or a reviewing court.

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

Sec. 2308. If any person participating in the conduct of the affairs of an institution is charged in any information, indictment, warrant, or complaint by a county, state, or federal authority with the commission of, or participation in, a felony involving dishonesty or breach of trust, the commissioner, by written notice served upon the person may suspend the person from office or prohibit the person from further participation in any manner in the conduct of the affairs of the institution. A copy of the notice shall also be served upon the institution. The suspension or prohibition is in effect until the information, indictment, warrant, or complaint is finally disposed of or until terminated by the commissioner. If a judgment of conviction with respect to the offense is entered against the person, and when the judgment is not subject to further appellate review, the commissioner may issue an order removing the person from office or prohibiting the person from further participation in the conduct of the affairs of the institution except with the consent of the commissioner. The person shall cease to be a director or officer of the institution when a copy of the order is served upon the institution. A finding of not guilty or other disposition of the charge shall not preclude the commissioner from instituting proceedings to suspend or remove the person from office or to prohibit further participation in institution affairs under section 2306(1), (2), or (3).

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

commissioner shall appoint persons to serve temporarily as directors pending the termination of the suspensions or removals, or until their successors are duly elected and take office.

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

(2) Except as provided in subsection (3), a party to the proceeding, or any person required by an order issued under section 2304, 2305, 2306, or 2308 to cease and desist from any of the violations or practices stated in the order or to be suspended, removed, or prohibited from participation in the conduct of the affairs of any institution, may request a review by a court of competent jurisdiction of the order served under subsection (1). The petition for review shall be filed within 30 days from the date the order is issued.

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

(4) Unless a petition for review is timely filed under subsection (2), the commissioner may, at any time, upon appropriate notice, modify, terminate, or set aside the order. If a petition is timely filed, the commissioner may modify, terminate, or set aside the order with the permission of the court.

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

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

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

Sec. 2312. A person, against whom there is outstanding and effective any notice or final order under section 2306(1), (2), or (3) or of section 2308, who participates in any manner in the conduct of the affairs of the institution involved, or directly or indirectly solicits or procures, or transfers or attempts to transfer, or votes or attempts to vote, any proxies, consents, or authorizations in respect of any voting rights in the institution, or, without the prior written approval of the commissioner, votes for a director or serves or acts as a director, officer, or employee of any institution shall be fined not more than \$5,000.00 or imprisoned not more than 1 year, or both.

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

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

Sec. 2315. (1) If, in the opinion of the commissioner, a foreign bank is engaging, has engaged, or is about to engage, in an unsafe or unsound practice in conducting the business of a state agency, state foreign bank branch, or foreign bank representative office, or is violating, has violated, or is about to violate, a state or federal law or a state or federal rule or regulation, the commissioner may issue and serve upon the foreign bank a notice of intent to revoke the foreign bank's authority to engage in the business of banking in this state. The notice shall contain a statement of the facts constituting the alleged unsafe or unsound practice or violation and inform the foreign bank of its right to request a hearing within 10 days.

(2) If the foreign bank timely requests a hearing, the commissioner shall hold a hearing in accordance with the administrative procedures act of 1969.

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

PART 4

RECEIVERSHIPS AND CONSERVATORSHIPS

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

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

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

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

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

(4) If the deposits of a bank described in subsection (1) are not insured by the federal deposit insurance corporation, the commissioner may elect not to seek appointment of a receiver for the bank. If a receiver is not sought, the business corporation act, 1972 PA 284, MCL 450.1101 to 450.2098, governing insolvent business corporations, title 11 of the United States Code, being section 11 U.S.C. 101, governing bankruptcy, and sections 5201 to 5265 of the revised judicature act of 1961, MCL 600.5201 to 600.5265, governing assignments for the benefit of creditors, shall apply to the insolvent bank.

(5) The receiver shall on a regular basis report to the commissioner regarding all matters involving the receivership.

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

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

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

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

(c) Sell all real and personal property.

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

(e) Pay all administrative expenses of the receivership which shall be a first charge upon the assets of the bank and shall be fully paid before any final distribution or payment of dividends to creditors or shareholders.

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

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

(h) Pay ratably to the shareholders of the bank in proportion to the number of shares held and owned by each the balance of the net assets of the bank after payment or provision for payments as provided in subdivisions (e), (f), and (g).

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

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

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

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

(b) Employ agents, legal counsel, accountants, appraisers, consultants, and other personnel the receiver considers necessary to assist in the performance of the receiver's duties. With the prior written approval of the commissioner, the receiver may employ personnel of the bureau if the receiver considers the employment to be advantageous or desirable. The expense of employing bureau personnel is an administrative expense of the liquidation that is payable to the bureau.

(c) Exercise other powers and duties as may be provided by the court under the laws of this state applicable to the appointment of receivers by the circuit court.

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

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

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

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

(d) Voidable by the bank and the bank may recover the property transferred or its value from the person to whom it was transferred or from a person who has received it, unless the transferee or recipient was a bona fide holder for value before the date the bank was ordered in receivership.

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

(a) Made or incurred with the intent to hinder, delay, or defraud an entity to which, on or after the date that the transfer or grant of interest was made, the bank was or became indebted.

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

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

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

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

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

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

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

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

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

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

(2) The commissioner may appoint as conservator an employee of the bureau or any other competent and disinterested person. The bureau shall be reimbursed out of the assets of the conservatorship for all sums expended by it in connection with the conservatorship as expenses. All expenses of any conservatorship shall be paid out of the assets of the bank, upon the approval of the commissioner, and shall be a first charge upon the assets and paid in full before any final distribution or payment of dividends to creditors or shareholders.

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

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

Sec. 2408. (1) While a bank is in conservatorship, the commissioner may require the conservator to set aside and make available for withdrawal by depositors and payment to other creditors, on a ratable basis, amounts that in the opinion of the commissioner may be used safely for this purpose.

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

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

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

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

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

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

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

(2) If the commissioner determines that it would be in the public interest, the commissioner may terminate a conservatorship and apply for the appointment of a receiver for the bank as provided in section 2402.

CHAPTER 3

BANK ORGANIZATION AND STRUCTURE

PART 1

FORMATION

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

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

(2) The commissioner shall examine the information and statements contained in the application and make any other investigation as to the persons, conditions, and circumstances surrounding, affecting, or pertaining to the organization of the bank, as is necessary to satisfy the commissioner as to all of the following:

(a) Whether the character, responsibility, and fitness of the incorporators, and of the proposed directors and officers, and their motives in seeking to organize the bank are such as to command the confidence of the community and to warrant the belief that the business of the proposed bank will be honestly and efficiently conducted.

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

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

- (i) Economic and demographic characteristics of the area primarily to be served by the bank.
- (ii) The competition offered by existing banks and other financial services providers.
- (d) Whether the capital structure of the proposed bank is adequate for the conduct of its business.

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

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

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

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

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

(6) The shares of stock of a bank organized under this section shall be owned exclusively by depository institutions.

(7) As used in this section, "applicant" means the depository institutions making an application under this section.

Sec. 3104. (1) Following the date authorized by the commissioner for the bank to commence business, a bank and its incorporators may jointly request permission from the commissioner for the bank to reimburse the incorporators for the incorporators' reasonable and necessary organizational expenses.

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

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

(4) The commissioner may waive the requirements of this section if the expenses of organizing a bank will be paid by a bank holding company.

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

Sec. 3106. (1) Within 30 days after the approval of its articles of incorporation, or a later time not to exceed 1 year as approved by the commissioner, the bank shall notify the commissioner that all of its capital and surplus has been fully paid in and that it has complied with all of the required provisions of this act necessary to be authorized to commence the business of banking.

(2) The commissioner shall make examinations as he or she considers necessary to verify the conditions set forth in subsection (1), and if it appears that the bank is lawfully entitled to commence business, the commissioner, within 30 days after receiving the notice provided for in this section, shall give to the bank a certificate under the official seal of the bureau that the bank has complied with all of the required provisions and is authorized to commence business.

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

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

Sec. 3108. (1) A bank organized under this act shall have capital in an amount the commissioner considers adequate to conduct its business.

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

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

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

PART 2

ARTICLES OF INCORPORATION

Sec. 3201. (1) Upon approval of the application under section 3103 by the commissioner, at least 2 original articles of incorporation, executed by the incorporators, shall be submitted to the commissioner. The commissioner shall approve the articles if the articles conform to law. One of the original articles will be retained for the bureau's records and 1 of the original articles will be forwarded to the incorporators.

(2) Before approving, certifying, and distributing the articles of incorporation, the incorporators shall furnish evidence to the commissioner that a firm commitment to insure deposit accounts up to the maximum permitted by federal law has been issued by the federal deposit insurance corporation, unless the commissioner, for good cause shown, waives this requirement.

(3) Approval of articles of incorporation by the commissioner under this act does not indemnify the bank against claims for the improper use of the bank name stated in the articles.

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

(a) The name of the bank.

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

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

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

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

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

(e) The names of the incorporators.

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

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

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

(2) Articles approved by the commissioner before the effective date of this act are considered to be in compliance with this section.

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

(2) Notwithstanding subsection (1), an amendment that provides solely for a change in the name of the bank is not subject to the approval of the commissioner and shall be effective on the date it is received by the commissioner or at a later date specified by the bank.

PART 3

DISSOLUTION

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

(2) The proposed dissolution shall be submitted for approval at any meeting of shareholders. Notice shall be given to each shareholder of record within the time and in the manner as provided in this act for the giving of notice of meetings of shareholders, and shall state that a purpose of the meeting is to vote on dissolution of the bank.

(3) At the meeting, a vote of shareholders shall be taken on the proposed resolution of dissolution. The dissolution shall be approved upon receiving the affirmative vote of the holders of at least $\frac{2}{3}$ of the outstanding shares of the bank entitled to vote on dissolution.

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

(5) Within 3 months after the date the certificate of termination is submitted under subsection (4), the shareholders shall designate 1 or more persons to act as a liquidating agent or committee. The liquidating agent or committee shall conduct the dissolution in accordance with this act and other applicable law under the supervision of the commissioner and the board of directors. The agent or committee shall furnish to the bank in dissolution a bond satisfactory to the commissioner.

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

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

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

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

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

- (a) Prosecuting and defending actions for or against the bank.
- (b) Disposing of and conveying the bank's property.
- (c) Dividing the bank's assets.
- (d) Gradually settling and closing its affairs.

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

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

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

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

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

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

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

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

(6) The bank in dissolution may sue and be sued in its corporate name and process may issue by and against the bank in dissolution in the same manner as if dissolution had not occurred.

(7) An action brought against the bank before the commencement of its dissolution is not limited or affected because of the dissolution.

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The date it is received.

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

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

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

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

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

(2) The board of directors of a bank in dissolution shall publish notice of dissolution. The first notice shall be published within 30 days after submitting the certificate of termination under section 3301(4) and request that persons with claims against the bank in dissolution present them as required by the notice.

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

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

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

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

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

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

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

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

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

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

Sec. 3306. (1) After a bank has commenced dissolution, the commissioner, the bank in dissolution, a creditor, or a shareholder may apply to an appropriate court for an order that the affairs of the bank in dissolution and the liquidation of its assets continue under supervision of the court. The court shall make orders and judgments as may be required, including, but not limited to, continuance of the liquidation of the assets of the bank in dissolution by its liquidating agent or committee under supervision of the court, or the appointment of a receiver of the bank in dissolution to be vested with powers as the court designates to liquidate the affairs of the bank.

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

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

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

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

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

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

PART 4

TERM EXTENSION

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

(2) A bank whose term has expired, but which has not submitted a certificate of termination under section 3301 and has inadvertently continued its active business beyond the term, may adopt a resolution to amend its articles to renew its corporate existence. Notice shall be given to each shareholder of record in the manner provided in this act for the giving of notice of meetings of shareholders, and shall state that the purpose of the meeting is to vote on the renewal of corporate term. At the meeting a vote of the shareholders shall be taken on the proposed extension, which shall be adopted upon receiving the affirmative vote of holders of at least 2/3 of the outstanding shares.

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

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

PART 5

OFFICERS AND DIRECTORS

Sec. 3501. (1) A bank shall be managed by a board of not less than 5 nor more than 25 directors. The first board shall be elected by the incorporators at the meeting held under section 3107 before the bank is authorized to commence business. All subsequent boards shall be elected by the shareholders at the annual meeting of the shareholders or at a meeting called for that purpose as provided in the bylaws of the bank. The board of directors may fill a vacancy on the board for the remainder of the vacated term. Directors shall hold office until their successors are elected and qualified.

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

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

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

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

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

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

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

(c) At each annual meeting after the classification established under subdivision (b), a number of directors equal to the number of the class whose term expires at the time of the meeting shall be elected to hold office until the second succeeding annual meeting if there are 2 classes, or until the third succeeding annual meeting if there are 3 classes.

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

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

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

(7) The commissioner may call a meeting of the board of directors of any bank, for any purpose, by giving a notice of the time, place, and purpose of the meeting at least 3 days before the meeting date to the directors by personal service, by registered or certified mail, or by other appropriate method reasonably designed to provide adequate notice.

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

Sec. 3503. (1) A bank may contract for, or purchase from, any of its directors, or from any person of which any of the bank's directors is an officer, director, manager, owner, employee, or agent, any securities or other property, only when the purchase is made in the ordinary course of business upon terms not less favorable to the bank than those offered by others, and the purchase is authorized by a majority of the board of directors not interested in the sale of the securities or property evidenced by their affirmative vote or written assent. If a director, or person of which any director is an officer, director, manager, owner, employee, or agent, acting for or on behalf of others, sells securities or other property to a bank, the commissioner may require a full disclosure to be made of all commissions or other considerations received. If a director or person, acting in his, her, or its own behalf, sells securities or other property to the bank, the commissioner may require a full disclosure of all profits realized from the sale.

(2) A bank may sell securities or other property to any of its directors, or to an entity of which any of its directors is an officer, director, manager, owner, employee, or agent in the ordinary course of business on terms not more favorable to the director or person than those offered to others, when the sale is authorized by a majority of the board of directors of a bank evidenced by their affirmative vote or written assent.

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

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

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

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

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

(c) A violation of section 2312.

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

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

(4) If a director or officer of a bank knowingly violates, or knowingly permits any of the agents, officers, directors, or employees of the bank to violate, this act, rules promulgated under this act, or an order or declaratory ruling of the commissioner, every director and officer who participated in or assented to the violation shall be held liable in his or her personal and individual capacity for all damages that the bank, any shareholder, or any other person sustains as a result of the violation. An action to recover damages under this section shall be brought within 3 years from the time of the violation.

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

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

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

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

Sec. 3507. An officer, director, or employee of a bank shall not receive, or consent, or agree to receive from a customer of the bank any consideration or gratuity in return for the procurement of a loan or other service from the bank.

PART 6

SHAREHOLDERS

Sec. 3601. (1) The annual meeting of the shareholders of every bank shall be held on the day in each year that is provided in the bylaws of the bank. Special meetings of shareholders shall be called and held as provided in the bylaws of the bank.

(2) At any meeting, each shareholder entitled to vote shall be entitled to 1 vote for each share held by the shareholder. A shareholder may vote at any meeting of the bank by proxy in writing signed by the shareholder.

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

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

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

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

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

(2) In lieu of the requirements under subsection (1), the board of directors of a bank may designate a corporation authorized by law to act as transfer agent or registrar of shares of corporations, to act as transfer agent or transfer agent and registrar of the shares of the bank, but the same corporation shall not be designed to act in both capacities at the same time.

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

(4) Within 2 calendar weeks of any demand made for a purpose reasonably related to the requestor's interest as a shareholder or as a representative of a group of shareholders by any shareholder being the record owner of at least 5% of the issued shares of the bank or by any person representing any group who are the record owners of at least 5% of the issued shares of the bank, the bank shall prepare and furnish the requestor a list containing the name and address of each shareholder of the bank together with the number of shares held by each according to its records as of the close of business on the date of receipt of the demand.

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

PART 7

CONSOLIDATION AND CONVERSION

Sec. 3701. (1) Subject to approval by the commissioner, a bank may consolidate with any number of consolidating organizations to form a consolidated bank.

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

(3) A majority of the directors of each organization proposing to consolidate may enter into an agreement, signed by them, or by their designated representative or representatives, 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 organization, with other details and provisions as are considered necessary.

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

(5) At the meeting, the proposed consolidation agreement shall be considered and a vote by ballot, in person or by proxy, taken for the adoption or rejection of the agreement. At the meeting, each share of stock shall entitle the holder to 1 vote. If the votes of shareholders of each consolidating organization representing not less than $\frac{2}{3}$ of the total number of shares of each class of each consolidating organization's outstanding capital stock are cast for the adoption of the agreement, the vote shall be certified on the agreement by an officer of each of the consolidating organizations.

(6) If an out-of-state bank, national bank, association, or savings bank is a consolidating organization and approval is required by the laws of another state or of the United States, that organization shall furnish a copy of the approval of the appropriate state or federal regulator of the consolidation to the commissioner.

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

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

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

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

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

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

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

Sec. 3703. (1) If approval and certification of the consolidation agreement as required by section 3701 have been completed, the corporate existence of each consolidating organization is merged into and continued in the consolidated bank. To the extent authorized by this act, the consolidated bank possesses all the rights, interests, privileges, powers, and franchises and is subject to all the restrictions, disabilities, liabilities, and duties of each of the consolidating organizations. The title to all property, real, personal, and mixed, is transferred to the consolidated bank, and shall not revert or be in any way impaired by reason of this act.

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

(3) A consolidated bank shall file with each court or other public tribunal, agency, or officer in any state by which any of the consolidating organizations have been appointed as a fiduciary, and in the court file of each estate, suit, or any other proceeding in which any of them has been acting as a fiduciary, an affidavit setting forth the fact of consolidation, the name of each consolidating organization, the name of the consolidated bank, the location of its principal office, and the amount of its capital and surplus. This subsection does not require filing of an affidavit related to any consolidating organization that after the consolidation retains the same corporate name, charter, and principal office location.

(4) The liability of any consolidating organization or of a shareholder, director, or officer of a consolidating organization, or the rights or remedies of the creditors of, or other persons transacting business with, the consolidating organization shall not be altered or impaired as the result of a consolidation.

Sec. 3704. (1) Whether it maintains a presence in this state, a consolidated organization or any of its successors in interest is subject to service of process in a proceeding in this state for enforcement of any obligation incurred in this state by any consolidating organization that is or was a party to a consolidation.

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

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

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

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

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

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

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

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

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

(a) A new bank may be organized for the sole purpose of effecting its consolidation under section 3701 with an existing bank, existing savings bank, or existing association having its principal office in the same city or village as the

new bank and if upon completion of the consolidation a bank holding company becomes the owner of all of the outstanding voting shares of the consolidated organization. The new bank and existing bank may consolidate under the articles of either bank. The new bank and the existing savings bank or association shall consolidate under the articles of the new bank. Sections 3701, 3703, and 3704 apply to the consolidation, except that the agreement of consolidation may provide that shares of either or both the consolidating organizations will be converted into shares or other securities of the bank holding company.

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

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

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

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

(i) That the existing bank, existing savings bank, or existing association and the new bank will be consolidated or merged.

(ii) That upon consummation of the consolidation or merger, the shares of capital stock of the existing bank, existing savings bank, or existing association will be converted into or exchanged for shares of the capital stock or other securities of the new holding company.

(b) "Existing association" means a stock association that is a party to a consolidation agreement and is engaged in the savings and loan business before the consolidation or merger provided for in the consolidation agreement.

(c) "Existing bank" means a bank or national banking association that is a party to a consolidation agreement and is engaged in the business of banking before the consolidation or merger provided for in the consolidation agreement.

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

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

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

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

(ii) Before its acquisition of an existing bank, existing savings bank, or existing association pursuant to the consolidation agreement, the corporation does not have control of a bank, savings bank, association, or national banking association and has not transacted any business except business incidental to its organization and to the entering into, and performance of, the consolidation agreement.

(iii) Upon consummation of the consolidation or merger provided for in the consolidation agreement, the corporation will become a bank holding company as defined in section 2 of the bank holding company act.

(iv) Immediately after its acquisition of an existing bank, existing savings bank, or existing association under the consolidation agreement, the corporation will not have control of more than 1 bank or 1 national banking association.

(v) Before the acquisition of an existing bank, existing savings bank, or existing association under the consolidation agreement, the corporation is not, and immediately after acquisition of control of the existing bank, existing savings bank, or existing association shall not be, controlled by a bank holding company as defined in section 2(a)(2) of the bank holding company act.

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

(2) A new holding company may apply to the commissioner for approval of the terms and conditions of the issuance of the shares or other securities of the new holding company into which the shares of an existing bank, existing savings bank, or existing association are to be converted, or for which the shares of the existing bank, existing savings bank, or existing association are to be exchanged, under a consolidation agreement, and for approval of the terms and conditions of the conversion or exchange. The application for approval shall be in a form, contain information, and be accompanied by documents as required by the commissioner. Within 30 days after the application is filed, the commissioner shall conduct a hearing upon the fairness of the terms and conditions at which all persons to whom it is proposed to issue the securities in the conversion or exchange shall have the right to appear. Within 20 days after the hearing, the commissioner shall either approve or disapprove the terms and conditions of the issuance and of the conversion or exchange. This subsection does not apply to the terms and conditions of the issuance and conversion or exchange of securities provided for in a consolidation agreement or to make unlawful any transaction that is lawful without regard to this subsection.

Sec. 3708. (1) Upon the affirmative vote of the shareholders representing more than 50% of the total number of shares of each class of its outstanding capital stock, a bank may be converted under the laws of this state into a stock association or stock savings bank or under the laws of the United States into a national banking association. The conversion of a bank into a stock association, stock savings bank, or national banking association shall not release the bank from its obligations to pay and discharge either of the following:

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

(b) Any tax imposed by this state up to the date of its becoming a stock association, stock savings bank, or national banking association in proportion to the time that has elapsed since the last preceding payment or assessment, penalty, or forfeiture imposed or incurred up to the date of its becoming a stock association, stock savings bank, or a national banking association.

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

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

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

(2) A depository institution converting under subsection (1) may submit articles of incorporation executed by a majority of the directors of the national banking association, stock association, or stock savings bank. A majority of the directors, after executing the articles of incorporation, shall have the power to execute all other papers and to do whatever is required to complete its organization as a bank. The shares of the bank may continue to be for the same amount as they were before the conversion, and the directors may continue to be directors of the bank until others have been elected or appointed under the laws of this state.

(3) The approval of the commissioner shall be based on an examination of the national banking association, stock association, or stock savings bank and on the action taken by its directors and shareholders with respect to the conversion. A conversion shall not be made to defeat or defraud any creditors. The commissioner may permit the converted bank to retain and carry assets of the converting national banking association, stock association, or stock savings bank which do not conform to the legal requirements relative to assets acquired and held by banks.

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

(a) The converted organization shall be considered a continuation of the body corporate of the converting organization.

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

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

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

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

(i) All rights, privileges, and obligations of the converting organization shall remain unimpaired and shall continue in the converted organization irrespective of the date when the fiduciary relationship was created.

(ii) If the converting organization had been appointed by a court or governmental tribunal, agency, or officer, the converted organization shall file an affidavit with the appointing authority setting forth the fact of conversion, the name of the converted organization, the location of its principal office, and the amount of its capital and surplus.

(iii) The converted organization acting as a fiduciary by appointment of a court is subject to removal by a court of competent jurisdiction.

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

(g) Any rights or remedies of the depositors, creditors, or other persons transacting business with the converting organization shall not be reduced or impaired as the result of a conversion.

(h) Whether or not it maintains a presence in this state, a converted organization or any of its successors in interest is subject to service of process in a proceeding in this state for enforcement of any obligation incurred in this state by the converting organization.

(i) An action or proceeding against the converting organization in a court or other governmental tribunal may be prosecuted to judgment as if the conversion had not taken place, or the converted organization may be substituted in place of the converting organization. This subsection shall not create any new cause of action against the converting organization as a result of the conversion.

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

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

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

(4) Unless the commissioner objects in writing within 30 days after receipt of written notice from a bank of its intent to contract for branch services, a bank may contract with 1 or more banks, out-of-state banks, national banks, associations, or savings banks for the depository institution or institutions to act as branches to provide services to the customers of the contracting bank. The commissioner may issue a written statement of intent not to object at any time prior to the expiration of the 30 days. This subsection shall not be construed to limit the powers granted to a bank under section 4101(1)(d).

(5) Unless the commissioner objects in writing within 30 days after receipt of written notice from a contracting depository institution of its intent to contract for branch services, 1 or more out-of-state banks, national banks, associations, or savings banks may contract with a bank for the bank to provide services to the customers of the contracting out-of-state bank, national bank, association, or savings bank. The commissioner may issue a written statement of intent not to object at any time prior to the expiration of the 30 days. This subsection shall not be construed to limit the powers granted to a bank under section 4101(1)(d).

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

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

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

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

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

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

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

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

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

Sec. 3712. (1) If a bank or foreign bank permanently discontinues the operations of any branch, foreign bank agency, or foreign bank branch, all functions of the branch, foreign bank agency, or foreign bank branch shall be considered transferable to, and treated as a part of, the principal office of the bank or, in the case of a foreign bank, the principal office in this country.

(2) A bank, out-of-state bank, national bank, or foreign bank shall notify the commissioner in writing before discontinuing operations of a branch, foreign bank agency, or foreign bank branch.

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

(2) Unless the commissioner objects in writing within 60 days after receipt of written notice from the bank of its intent to relocate its principal office, a bank may change the location of its principal office to any other location within this state which is not an existing branch location of the bank. The commissioner may issue a written statement of intent not to object at any time before expiration of the 60 days.

Sec. 3714. Notwithstanding section 1105 of the uniform commercial code, both of the following apply:

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

(b) If by action of a dominant authority that is not recognized by the United States as the de jure government of the foreign territory concerned, any property situated in or any amount to be received in the foreign territory and carried as an asset of a branch office of the bank in the foreign territory is seized, destroyed, or canceled, the liability of the bank for any deposit received and to be repaid by it, and for any contract made and to be performed by it, at any branch office in the foreign territory shall be reduced pro tanto by the proportion that the value, as shown by the books or other records of the bank at the time of the seizure, destruction, or cancellation of the assets bears to the aggregate of all the deposit and contract liabilities of the branch offices of the bank in the foreign territory, as shown at the time by the books or other records of the bank.

PART 8

CAPITAL

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

(2) In connection with the issuance of convertible capital notes, debentures, or any other instrument of indebtedness, the commissioner may grant approval for the bank to reserve a number of authorized and unissued shares of capital stock as shall be 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 are converted into shares of common or preferred stock, a verified certificate executed by the president of the bank stating the amount of the conversion, and other information with respect to the conversion as the commissioner may require, shall be filed in the office of the commissioner.

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

(2) If the shares are divided into 2 or more classes, the shares of each class shall be designated in a manner to distinguish them from the shares of other classes.

(3) Subject to the designations, relative rights, preferences, and limitations applicable to separate series, each share shall be equal to every other share of the same class.

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

(2) Unless the articles of incorporation or bylaws provide otherwise, the board may authorize the issuance of some or all of the shares of any or all of its classes or series of stock without certificates if within a reasonable time after issuance of a share without a certificate the bank provides the shareholder with a written statement of the information required on a certificate under subsection (5). The authorization shall not have any effect on shares already represented by certificates unless they are surrendered to the bank.

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

(4) Except as provided in sections 3807 and 3808, the rights of a bank in its stock in which the shareholder is liable to the bank as principal debtor, surety, or otherwise is subject to any pledge, sale, or other transfer of the stock that is made before the maturity of an indebtedness of the registered holder of the stock to the bank and of which the bank has knowledge before the maturity, whether or not the stock was transferred on the books of the bank. Any stock of a bank that is pledged, sold, or otherwise transferred before the maturity of any indebtedness of the registered holder of the stock to the bank and of which pledge, sale, or other transfer the bank has knowledge before the maturity, may be transferred on the books of the bank after the maturity without the consent of the board of directors of the bank. The rights of a bank in its stock under this section, including the limitation on transferability if the registered holder is liable to the bank for any debt that is due and unpaid, shall not be applicable with respect to any stock duly listed on any stock exchange.

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

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

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

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

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

(e) If the stock is not listed, that no transfer of the stock shall be valid against the bank so long as the registered holder is liable as principal debtor, surety, or otherwise to the bank, except with the approval of the board of directors or as otherwise provided in this act.

(f) The signature of the president or other officer as provided by the bylaws of the bank and, optionally, the seal of the bank.

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

(a) The signature of a transfer agent.

(b) The signature of a registrar.

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

(d) The seal of the bank.

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

Sec. 3804. (1) By a vote of shareholders owning $\frac{2}{3}$ of each class of the stock entitled to vote, a bank may amend its articles to increase its capital stock to any sum approved by the commissioner, either by an increase in the par value of authorized stock or by the authorization of new stock.

(2) An increase in capital shall not be valid until the whole amount of the increase has been paid in, notice of the payment signed by an officer of the bank has been transmitted to the commissioner, and the commissioner's certificate of approval has been obtained specifying the amount of the increase in capital and that it has been duly paid in as a part of the capital of the bank. The certificate shall be conclusive evidence that the stock has been duly and validly issued.

(3) In the case of the issuance of new stock, in voting upon the increase of capital stock, $\frac{2}{3}$ of the shareholders entitled to vote shall have power to fix the value of, and the price at which the stock shall be subscribed and paid for by the shareholders, but not less than par, as well as the time and manner of the subscription and payment, and to authorize the directors to sell the stock.

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

Sec. 3805. (1) By a vote of shareholders owning $\frac{2}{3}$ of the bank's stock entitled to vote, a bank may reduce its capital stock. The reduction may be accomplished by a reduction in the par value of the existing stock or by a reduction in the number of the shares of stock. A reduction shall not be made until the amount of the proposed reduction has been approved by the commissioner.

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

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

(4) A shareholder shall not be entitled to any distribution of cash or other assets by reason of any reduction of the common capital of any bank unless the distribution has been approved by the commissioner and by the affirmative vote of at least $\frac{2}{3}$ of the shares of each class of stock outstanding, voting as classes.

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

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

(3) A cash dividend or dividend in kind shall not be declared by a bank except out of net income then on hand after deducting its losses and bad debts. Unless the debts due the bank on which interest is past due and unpaid for a period of 6 months are well secured and in process of collection or the debts constitute claims against solvent estates in probate, all debts shall be considered bad debts within the meaning of this section.

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

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

(6) Without regard to the limitations of this section and section 3804, a bank, with the approval of the commissioner, and by vote of shareholders owning $\frac{2}{3}$ of the stock entitled to vote, may amend its articles to increase its capital stock by declaration of a stock dividend on the capital stock. After the increase, the surplus of the bank shall be at least equal to 20% of the capital stock as increased.

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

(8) Dividends paid to shareholders under a dividend reinvestment plan shall be subject to this act relative to payment of dividends.

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

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

(2) Before an assessment may be made by the directors, each shareholder, secured party, and pledgee indicated on the books of the bank as holding an interest in the stock shall be provided with written notice in a manner reasonably calculated to give actual notice of the determination made by the commissioner that the capital of the bank is impaired and the amount of the assessment that each shareholder must pay.

(3) If a shareholder refuses or neglects to pay an assessment levied by the directors within 30 days from the date notice was provided, the directors shall sell all or part of the shareholder's shares to the highest bidder in a manner provided in section 3808. Upon expiration of the 30-day period and refusal or neglect by a shareholder to pay the assessment, a security interest in favor of the bank in the amount of the assessment shall attach to all of the shareholder's shares for the sole purpose of satisfying the assessment levied. The security interest shall have priority over any other security interests perfected by a creditor or otherwise granted by the shareholder in shares issued after the effective date of this act.

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

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

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

Sec. 3808. (1) If, 30 days after notice as provided in section 3807, a shareholder has refused or neglected to pay an assessment levied on the shares held by the shareholder, the directors may sell any or all of the shareholder's shares to satisfy the assessment. The proceeds of the sale shall be distributed in the following order:

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

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

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

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

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

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

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

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

(b) The purchaser does not act in collusion with any shareholders of the bank, a secured party, other bidders, or the bank.

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

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

PART 9

ADMINISTRATION

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

Sec. 3902. (1) An officer or the board of directors of a bank may appoint a compliance review committee to evaluate loan underwriting standards, asset quality, financial reporting to federal or state regulatory agencies, compliance with the bank's policies, compliance with federal or state statutory or regulatory requirements, or other related matters.

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

(3) A document, compilation, analysis, or item of information, data, or material remains compliance review material under this section even if it is delivered or disclosed to employees of the bank who are not members of the compliance review committee or to attorneys, accountants, auditors, consultants, or other professional advisers retained by the bank or to 1 or more other persons retained by the bank to assist the committee in performing its functions or to evaluate the committee.

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

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

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

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

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

(2) Subsection (1) applies to a person who is or was a director, officer, employee, or agent of the bank or is or was serving at the request of the bank as a director, officer, partner, trustee, employee, or agent of another depository institution, foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not.

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

(4) A bank may indemnify a person who was or is a party to or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the bank to procure a judgment in its favor by reason of the fact that he or she is or was a director, officer, employee, or agent of the bank or is or was serving at the request of the bank as a director, officer, partner, trustee, employee, or agent of another bank or national banking association, foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, against expenses, including actual and reasonable attorney fees and amounts paid in settlement actually and reasonably incurred by the person in connection with the action or suit, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the bank or its shareholders. Indemnification shall not be made for a claim, issue, or matter in which the person has been found liable to the bank except as authorized in subsection (5).

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

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

(2) An indemnification under section 3904, unless ordered by the court, shall be made by the bank only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in section 3904 and upon an evaluation of the reasonableness of expenses and amounts paid in settlement. This determination and evaluation shall be made in any of the following ways:

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

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

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

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

(ii) If a quorum of the board cannot be obtained under subdivision (a) and a committee cannot be designated under subdivision (b), by the board.

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

(e) By the shareholders, but shares held by directors, officers, employees, or agents who are parties or threatened to be made parties to the action, suit, or proceeding may not be voted.

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

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

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

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

(b) The person furnishes the bank a written undertaking executed personally or on his or her behalf to repay the advance if it is ultimately determined that he or she did not meet the standard of conduct. The undertaking shall be by unlimited general obligation of the person on whose behalf advances are made but need not be secured.

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

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

Sec. 3908. A bank has the power to purchase and maintain insurance or create a trust fund or other form of funded arrangement on behalf of any person who is or was a director, officer, employee, or agent of the bank or is or was serving at the request of the bank as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, against any liability asserted against him or her and incurred by him or her in that capacity or arising out of his or her status in that capacity, whether or not the bank has the power to indemnify him or her against the liability under sections 3904, 3905, 3906, and 3907.

Sec. 3909. For purposes of this section and sections 3904, 3905, 3906, 3907, 3908, and 3910, a person who is or was a director, officer, employee, or agent of a depository institution absorbed in a consolidation or merger or is or was serving at the request of the depository institution as a director, officer, partner, trustee, employee, or agent of another depository institution, foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, shall hold the same position with respect to the consolidated bank as he or she would if he or she had served the consolidated bank in that capacity.

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

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

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

(c) "Serving at the request of the bank" includes any service as a director, officer, employee, or agent of the bank that imposes duties on, or involves services by, the director, officer, employee, or agent with respect to an employee benefit plan, its participants, or its beneficiaries.

(2) A person who acted in good faith and in a manner he or she reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be considered to have acted in a manner not opposed to the best interests of the bank or its shareholders as referred to in section 3904.

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

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

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

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

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

CHAPTER 4

BANKING POWERS

PART 1

GENERAL PROVISIONS

Sec. 4101. (1) Subject to the limitations and restrictions contained in this act or in a bank's articles, the bank may engage in the business of banking and a business related or incidental to banking, and for that purpose, without specific mention in its articles, shall have and exercise the powers and means appropriate to effect the purpose for which the bank is incorporated, powers conferred by former 1969 PA 319 and by this act, and the following corporate powers:

(a) To make contracts.

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

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

(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:

(i) Receive deposits.

(ii) Permit withdrawals of deposits.

(iii) Renew time deposits.

(iv) Close loans.

(v) Service loans.

(vi) Receive loan payments.

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

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

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

(a) As authorized by order or declaratory ruling of the commissioner, to exercise at a branch such additional powers consistent with the safe and sound conduct of the business of banking as are granted by the laws of the state, territory, protectorate, or foreign country where the branch is located.

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

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

(d) To engage in any aspect of the insurance and surety business as an agent, broker, solicitor, or insurance counselor as provided under the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, and to own an insurance agency in whole or in part as provided under that act.

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

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

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

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

Sec. 4103. (1) A bank may accept drafts or bills of exchange drawn upon it having not more than 6 months' sight to run, exclusive of days of grace, if 1 or more of the following apply:

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

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

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

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

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

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

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

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

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

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

(2) A bank that engages directly in the real estate brokerage business or owns in whole or in part a real estate brokerage business shall provide written notice of its licensure as a real estate broker or its ownership of a real estate

brokerage business to the commissioner within 10 days of licensure or ownership. The notice required by this subsection shall include the name and business address of the real estate brokerage.

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

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

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

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

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

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

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

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

(4) A bank that engages directly in the real estate brokerage business or owns in whole or in part a real estate brokerage business under this section shall clearly disclose in writing to any person who applies for credit related to a real estate transaction or applies for prequalification or preapproval for credit related to a real estate transaction, that the person is not required to contract for or enter into an arrangement for real estate brokerage services with a particular real estate broker. Compliance with the disclosure requirements of this subsection shall not be necessary when a person applies for credit or prequalification for credit solely for the purpose of refinancing an existing indebtedness.

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

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

(7) If the commissioner finds that a bank has violated this section, the commissioner may issue an order requiring the bank to cease and desist the activity that violates this section. If the commissioner additionally finds that the violation was knowingly committed, the commissioner may order any of the following:

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

(b) That restitution be made to a customer for actual damages directly attributable to the acts that are found to be a violation of this section.

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

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

(a) Provide life, health, and casualty insurance for officers and employees of financial institutions and operate bonus plans and retirement benefit plans for those officers and employees.

(b) Service mortgages and land contracts.

(c) Originate and service mortgage loans, mortgages, and land contracts, on behalf of financial institutions, corporations, and state or federal agencies or instrumentalities.

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

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

(f) Conduct research, studies, and surveys.

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

(h) Advertise, broker, and conduct other activities to procure and retain both deposits and loans, but not pool deposits or solicit or promote pooled deposits.

- (i) Provide liquidity management, investment, advisory, and consulting services.
- (j) Establish, own, lease, operate, or maintain electronic funds transfer terminals.
- (k) Purchase office supplies, furniture, and equipment.
- (l) Prepare local, state, and federal tax returns.
- (m) Perform data processing services.
- (n) Subject to applicable state or federal law, provide brokerage services for the offer, sale, or purchase of a security or commodity contract.

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

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

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

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

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

(4) Certified copies of all shareholders' and directors' proceedings under this section shall be submitted to the commissioner and shall contain the terms of the sale and purchase, including a copy of the agreement of sale and purchase.

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

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

Sec. 4107. (1) A bank may sell 1 or more of its branches, without selling all or substantially all of the bank, to another depository institution located in this state or in a state whose laws would permit a bank to purchase 1 or more branches in that state of the purchasing depository institution.

(2) A bank may purchase 1 or more branches of another depository institution, without purchasing all or substantially all of the depository institution.

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

Sec. 4108. (1) Except as otherwise provided in this section, a bank or bank officer shall not give preference to a depositor or creditor by pledging the assets of the bank as collateral security or otherwise.

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

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

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

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

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

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

(f) Funds on deposit to the credit of the Michigan employment security commission.

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

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

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

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

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

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

(a) In the case of member banks, liabilities incurred under the federal reserve act. In the case of nonmember banks, liabilities incurred through borrowing under the same conditions as are imposed upon members of the federal reserve system by the federal reserve act.

(b) In the case of federal home loan bank members, liabilities incurred under the federal home loan bank act.

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

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

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

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

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

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

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

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

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

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

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

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

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

PART 2

LOANS

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

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

Sec. 4202. (1) Except as otherwise provided in this section or by order or declaratory ruling of the commissioner, the total loans and extensions of credit and leases by a bank to a person at no time shall exceed 15% of the capital and surplus of the bank, except that upon approval by 2/3 vote of its board of directors the limit may be increased to not to exceed 25% of the capital and surplus of the bank.

(2) If the commissioner determines at any time that the interests of a group of more than 1 person are so interrelated that they should be considered as a unit for the purpose for which credit was extended, the total loans and extensions of credit and leases of persons of that group shall be combined and considered loans and extensions of credit and leases of 1 person under this section. A bank shall not be considered to have violated this section solely by reason of the fact that the indebtedness of a group then held exceeds the limitations of this section at the time of a determination by the commissioner that the indebtedness of that group shall be combined, but if required by the commissioner, the bank shall dispose of indebtedness of the group in the amount in excess of that permitted by this section within a reasonable time determined by the commissioner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Loans or extensions of credit to a customer secured by shipping documents or instruments transferring or securing title covering livestock, or giving a lien on livestock, if the market value of the livestock securing the obligation is not at any time less than 115% of the face amount of the notes covered, shall be subject to a limitation of 30% of capital and surplus. Loans or extensions of credit arising from the discount by dealers in dairy cattle of paper given in payment for dairy cattle, which paper carries a full recourse indorsement or unconditional guarantee of the seller and which are secured by the cattle being sold, shall be subject to a limitation of 30% of capital and surplus.

(c) Loans or extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper, which carries a full recourse indorsement or unconditional guarantee by the person transferring the paper, shall be subject to a limitation of 30% of capital and surplus. If the bank's files or the knowledge of its officers of the financial condition of each maker of the consumer paper is reasonably adequate, and an officer of the bank designated for that purpose by the board of directors of the bank certifies in writing that the bank is relying primarily upon the responsibility of each maker for the payment of the loans or extensions of credit, the limitations of this section as to the loans and extensions of credit of each maker shall be the sole applicable loan limitation. The certification shall be retained as part of the records of the bank.

Sec. 4203. A bank that makes a loan, the proceeds of which are used or may be used by the borrower to finance the purchase, design, manufacture, construction, repair, modification, or improvement of real or personal property, shall not be liable for any defect in the property purchased, designed, manufactured, constructed, repaired, modified, or improved or for any loss or damage resulting from the failure of the borrower or any agent or other person employed by the borrower to use due care in the examination, design, manufacture, construction, repair, modification, or improvement of the property.

Sec. 4204. (1) A bank that requires a mortgagor to maintain hazard insurance as a condition of receiving a mortgage loan shall not require the amount of the hazard insurance to be greater than the replacement cost of the mortgaged building or buildings.

(2) A bank may require an amount of property and casualty insurance that is required of the bank as a condition of sale, transfer, or assignment of all or part of the mortgage to a third party. This subsection does not require that the bank anticipate a sale, transfer, or assignment at the time the mortgage is made.

Sec. 4205. Unless a debt is well secured and in process of collection or the debt constitutes a claim against a solvent estate in probate, a debt due to a bank on which interest is past due and unpaid for a period of 6 months shall be charged off to the allowance for loan and lease losses of the bank.

PART 3 INVESTMENTS

Sec. 4301. (1) A bank may purchase, sell, underwrite, and hold investment securities that are obligations in the form of bonds, notes, or debentures of a type and to the extent permitted by this act.

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

(a) Obligations of the United States, or obligations that are guaranteed fully as to principal and interest by the United States, or any general obligations of any state or of any political subdivision of a state.

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

(c) Obligations issued by banks for cooperatives.

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

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

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

(g) Obligations, participations, or other instruments of or issued by the federal national mortgage association or the government national mortgage association.

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

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

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

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

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

(a) Obligations of the United States or any political subdivision of the United States.

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

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

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

(e) Obligations of the Asian development bank.

(f) Obligations of the Tennessee valley authority.

(g) Obligations issued by any state or political subdivision or agency of a state or political subdivision for housing, university, or dormitory purposes.

(h) Obligations of the African development bank.

(i) Obligations of the international finance corporation.

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

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

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

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

(6) A bank shall not purchase investment securities convertible into stock at the option of the issuer.

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

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

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

Sec. 4303. Notwithstanding any other section of this act, a bank may invest in other assets authorized by order or declaratory ruling of the commissioner.

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

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

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

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

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

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

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

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

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

(b) The Michigan business development corporation.

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

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

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

(f) Agricultural credit business entities organized solely for the purpose of making loans to farmers and ranchers for agricultural purposes, including the breeding, raising, fattening, or marketing of livestock.

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

(h) Any class of voting securities of banks, out-of-state banks, or national banks engaged exclusively in providing services to depository institutions or their officers, directors, employees, and customers, or bank holding companies that own or control such banks, out-of-state banks, or national banks if the stock of the bank holding companies is owned exclusively, except to the extent directors' qualifying shares are required by law, by depository institutions and if all subsidiaries of the bank holding companies engage exclusively in serving depository institutions or their officers, directors, employees, and customers.

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

(j) Foreign banks that are not engaged, directly or indirectly, in any activity in the United States except as, in the judgment of the commissioner, is incidental to the international or foreign business of the foreign banks.

(k) Entities that provide, and entities that reinsure providers of, insurance.

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

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

(b) Adjustable rate preferred stock and money market preferred stock.

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

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

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

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

(3) A bank's investment under subsection (1) in any 1 entity shall not exceed an amount equal to 5% of the capital and surplus of the bank, and all investments under subsection (1) shall not exceed an amount equal to 10% of the capital and surplus of the bank.

(4) This section does not limit the authority of a bank to exercise lending or investment powers which are otherwise authorized by law.

Sec. 4306. A bank may lease, purchase, hold, and convey any of the following real property:

(a) As necessary for the convenient transaction of its business, including space within its banking office buildings to rent as lessor to third parties.

(b) As conveyed to it in satisfaction of debts previously contracted in the course of its business.

(c) As it purchases at sales under judgments, decrees, or mortgages held by the bank or to secure debts due to it.

(d) As it legally owned on the effective date of this act.

(e) As conveyed to it under sections 4401 to 4405.

(f) As it may acquire in connection with the purchase by it of a land contract, but the purchase of the land contract constitutes a loan secured by real property for purposes of section 4202.

(g) For any other purpose as may be permitted by this act or by order or declaratory ruling of the commissioner.

Sec. 4307. A bank may invest not more than 10% of its total assets in the acquisition and development of real property for sale, or for the improvement of real property by construction or rehabilitation of residential or commercial units for sale or rental purposes. For purposes of this section, a bank may purchase, take, lease as lessee, or otherwise acquire, and own, hold, use, sell, lease as lessor, pledge, grant a security interest in, convey, or otherwise dispose of real property. The investment by a bank may be direct, or indirect as a stockholder in a corporation, member of a limited liability company, or limited partner in a partnership or limited liability partnership.

Sec. 4308. (1) A bank may lease, purchase, hold, and convey real property for the use of a customer by lease arrangement with the bank, but the acquisition of real property and leasing to a customer constitutes a loan secured by real property for purposes of section 4202.

(2) A bank may incur additional obligations incident to becoming an owner or lessor of real property acquired for the use of a customer.

(3) Inventory of real property held under this section and not leased shall not exceed 25% of the bank's capital and surplus.

Sec. 4309. (1) A bank may lease, purchase, hold, and convey personal property for the use of a customer by lease arrangement with the bank, but the acquisition of personal property and leasing to a customer constitutes a loan secured by personal property under section 4202.

(2) A bank may incur additional obligations incident to becoming an owner or lessor of personal property acquired for the use of a customer.

(3) Inventory of personal property held under this section and not leased shall not exceed 25% of the bank's capital and surplus.

(4) Personal property of a bank that is leased, loaned, or otherwise made available to and used by a person in connection with a business conducted for profit shall be subject to taxation in the same amount and to the same extent as though the lessee or user were the owner of the property. When due, the taxes shall constitute a debt due from the lessee or user to the unit of government for which the taxes were assessed.

Sec. 4310. (1) As authorized by order or declaratory ruling of the commissioner, a bank may invest in service entities that engage in activities in which a bank is not authorized to engage.

(2) The maximum aggregate investment by a bank in service entities shall be the lesser of 5% of the bank's total assets or 75% of its capital and surplus.

(3) The commissioner shall give notice to all banks of orders and declaratory rulings issued under this section.

(4) For purposes of subsection (2), investment in a service entity shall include loans by a bank or its subsidiary to a service entity.

(5) Subject to the investment limit in subsection (2), a bank or its subsidiary that has made an initial investment in a service entity may make additional investments in that service entity without notice to the commissioner.

PART 4

TRUSTS

Sec. 4401. (1) Upon application, the commissioner may grant to any bank or state foreign bank branch full trust powers, as provided in this section, but subject to the conditions, limitations, and restrictions in this act, except that trust powers shall not be granted to a state agency.

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

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

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

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

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

(e) A bank or state foreign bank branch acting as a fiduciary may charge a reasonable fee for its services.

Sec. 4402. (1) As used in this section:

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

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

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

(2) A bank granted full trust powers may contract by written agreement with any other legal entity to carry on trust services in its name and for its account at 1 or more of the offices of the other legal entity.

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

(4) An agreement provided for in this section, including any lease, or a modification or extension of an agreement, is not effective until it is filed with the commissioner.

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

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

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

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

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

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

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

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

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

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

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

(j) For probate estates, to any co-fiduciary, to any interested party as defined by section 7 of the revised probate code, 1978 PA 642, MCL 700.7, and to the probate court that appointed the host bank as personal representative.

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

Sec. 4403. (1) A bank exercising a trust power as provided in this section and sections 4401, 4402, 4404, and 4405 shall segregate all assets held in a fiduciary capacity from the general assets of the bank, shall keep a separate set of books and records showing in proper detail all transactions engaged in under the authority of this section and sections 4401, 4402, 4404, and 4405, and at all times shall keep the bank's trust department business separate and distinct from the bank's commercial banking business.

(2) Funds, at any time and from time to time, held in trust by the bank awaiting investment or other disposition, may be commingled and consolidated, and may be deposited in other banks as designated by the board of directors or may be held at any time and from time to time by the bank under a deposit relationship and used by the bank in the conduct of the bank's individual corporate business, but only to the extent and when the bank shall set aside for the protection of the owners of the funds obligations of the United States, obligations that are guaranteed fully as to principal and interest by the United States, general obligations of this state or of any political subdivision of this state, surety bonds, or other securities approved by the commissioner equal at face value to the amount of the funds held and so used less the amount of the funds that are insured by the federal deposit insurance corporation. If the bank fails, the owners of the funds held in trust, awaiting investment or other disposition, shall have a lien on the securities set apart in addition to any other claims against the bank.

Sec. 4404. (1) In acting upon applications for permission to exercise full fiduciary powers as provided in section 4401, the commissioner shall take into consideration the sufficiency of the capital and surplus of the applying bank and any other facts or circumstances the commissioner considers proper.

(2) Without regard to the capital and surplus requirements specified in subsection (1), the commissioner may grant to a bank the limited trust power to act as executor, administrator, or guardian and to serve as a testamentary trustee.

Sec. 4405. (1) Funds or property held by a bank as fiduciary and available for investment shall be invested at the time and in the manner specified by the agreement, instrument, or order creating or defining the trust or other capacity in which the bank is acting or, where the bank holds the funds or property as agent, as directed or permitted by the bank's principal. In the absence of investment specifications or limitations in the agreement, instrument, or order, funds or property held by a bank as fiduciary shall within a reasonable time be invested in real or personal property, of whatever type or nature, as a prudent investor would purchase, taking into account the purposes, terms, and distribution requirements expressed in the governing instrument, in the exercise of reasonable care, skill, and caution under conditions existing at the time of purchase. Compliance with the prudent investor rule shall be determined in light of the facts and circumstances that exist at the time of a fiduciary's decision or action and requires a standard of conduct, not outcome or performance.

(2) Except as otherwise permitted by law, a court order, or the agreement, instrument, or order creating or defining the trust, or other capacity in which the bank is acting or with the consent of all interested parties or their representatives, or where the bank holds the funds or property as agent, as directed or permitted by the bank's principal, funds or property held by a bank as fiduciary shall not be invested in any securities or other properties, real or personal, purchased from the bank in its individual capacity or from any affiliate of the bank.

(3) Notwithstanding any other statutory or common law, except when the agreement, instrument, or order creating or defining the trust or other capacity in which the bank, or the bank and 1 or more cofiduciaries, is acting prohibits the investment, a bank, or a bank and 1 or more cofiduciaries, may invest in a registered investment company any funds or property with respect to which the bank, or the bank and 1 or more cofiduciaries, exercises investment discretion, even though either or both of the following apply:

(a) The bank or 1 or more affiliates of the bank provide services as investment adviser, sponsor, distributor, manager, custodian, transfer agent, registrar, or otherwise, to the investment company and receives reasonable remuneration for those services.

(b) The bank as fiduciary owns or controls a majority of the voting shares of the investment company or a majority of the shares voted for the election of its directors or trustees or the bank as fiduciary otherwise controls the election of a majority of its directors or trustees.

(4) As used in subsection (3), "registered investment company" means an investment company that is registered under the investment company act of 1940, title I of chapter 686, 54 Stat. 789.

(5) For purposes of this section, a bank is considered to be holding funds or property in a fiduciary capacity if it is holding the assets as trustee, personal representative, custodian, conservator, guardian, agent, or in any other fiduciary capacity.

CHAPTER 5 FOREIGN BANKS STRUCTURE

Sec. 5101. (1) With the written approval of the commissioner, a foreign bank may establish and operate a state agency or state foreign bank branch in this state if all of the following apply to the foreign bank:

(a) It is authorized by its charter or articles of incorporation to engage in the business of banking.

(b) It has complied with the laws of the foreign country in which it is chartered or incorporated.

(c) In the case of a state agency, the foreign bank does not operate a federal agency in this state.

(d) In the case of a state foreign bank branch, the foreign bank has not previously designated any other state as its home state under the international banking act of 1978.

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

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

Sec. 5102. (1) A state agency or state foreign bank branch may be converted into a federal agency or federal branch under the international banking act of 1978.

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

except that the commissioner may extend this period in the interest of an orderly disposition of those assets or liabilities. The disposition period shall not exceed 3 years.

Sec. 5103. Authority to operate a state agency, state foreign bank branch, or foreign bank representative office shall terminate upon dissolution of the foreign bank, or the commissioner's revocation of the foreign bank's authority to operate in this state. Upon termination of the authority to operate a state agency or state foreign bank branch, the commissioner shall become agent for the foreign bank for service of process and shall exercise the same powers, including the right to appoint a receiver, over the assets and liabilities of the state agency or state foreign bank branch as are permitted over a state chartered bank in liquidation or dissolution under sections 2401 to 2410 and 3301 to 3307.

Sec. 5104. A foreign bank operating a state agency or state foreign bank branch in this state shall, at the times and in the form prescribed by the commissioner, file with the commissioner reports written in the English language, showing the amount of its assets and liabilities and containing other information requested by the commissioner. A foreign bank that fails to comply with this section is subject to the penalty provided in section 3911.

Sec. 5105. (1) Except as otherwise provided in this act or other law of this state, operations of a foreign bank at a state foreign bank branch or state agency shall be conducted with the same rights and privileges and subject to the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply under this act to a bank doing business at the same location, except that a state agency or an additional office of a state agency shall not accept nor solicit deposits from citizens or residents of the United States or exercise trust powers. Operations of a foreign bank representative office are limited to representational functions.

(2) A foreign bank that operates a state agency or state foreign bank branch is permitted to establish and operate additional offices subject to section 3711. For purposes of section 3711, the principal office of a foreign bank operating under this act shall be its first state agency or state foreign bank branch established in this state.

(3) A state agency or state foreign bank branch shall not be required to become an insured bank, as insured bank is defined in section 3 of the federal deposit insurance act, unless the state foreign bank branch accepts deposits described in section 3 of the federal deposit insurance act.

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

(5) The commissioner may examine the books, accounts, records, and files of the foreign bank that contain information regarding the accounts and business of a state agency, state foreign bank branch, or foreign bank representative office.

Enacting section 1. The banking code of 1969, 1969 PA 319, MCL 487.301 to 487.598, is repealed.

Enacting section 2. This act takes effect March 1, 2000.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate.

Jay E Randall

Clerk of the House of Representatives.

Approved

.....
Governor.