

HOUSE BILL No. 5637

January 17, 2008, Introduced by Rep. Ball and referred to the Committee on Banking and Financial Services.

A bill to amend 1999 PA 276, entitled
"Banking code of 1999,"
by amending sections 1201, 1202, and 3711 (MCL 487.11201,
487.11202, and 487.13711).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1201. As used in this act:

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

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

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

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

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

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

4 (b) "Administrative procedures act of 1969" means the
5 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
6 24.328.

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

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

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

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

27 (B) By trustees for the benefit of the shareholders or members

1 of that organization.

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

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

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

17 (e) "Articles" means articles of incorporation, all amendments
18 to articles of incorporation, and agreements of consolidation and
19 merger.

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

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

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

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

14 (j) "Branch" means, except as otherwise provided in this
15 subdivision, a branch bank, branch office, branch agency,
16 additional office, or a branch place of business at which deposits
17 are received, checks paid, or money lent. The acceptance of
18 deposits in furtherance of a school thrift or savings plan by an
19 officer, employee, or agent of a bank at a school shall not be
20 construed as the establishment or operation of a branch. An
21 electronic funds transfer facility that is made available to 2 or
22 more depository institutions under Michigan law that regulates
23 electronic funds transfer facilities is not a branch. A trust
24 office of a bank is not a branch. A loan production office is not a
25 branch. An additional office of a state agency is not a branch. An
26 international banking facility as defined in 12 ~~C.F.R.~~ **CFR**
27 204.8(a)(1), as in effect December 31, 1982, is not a branch. The

1 receipt of deposits by a messenger service or the delivery by a
2 messenger service of items representing deposit account withdrawals
3 or of loan proceeds is not the establishment or operation of a
4 branch, whether or not the messenger service is owned or operated
5 by the bank. Branch does not include an agent acting under section
6 4101(1)(d).

7 (k) "Bureau" means the ~~financial institutions bureau of the~~
8 ~~department of consumer and industry services~~ **OFFICE OF FINANCIAL**
9 **AND INSURANCE SERVICES OF THE DEPARTMENT OF LABOR AND ECONOMIC**
10 **GROWTH.**

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

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

27 (N) **"COMMERCIAL ACTIVITIES" MEANS ACTIVITIES IN WHICH A BANK**

1 **HOLDING COMPANY, FINANCIAL HOLDING COMPANY, NATIONAL BANK, OR**
2 **SUBSIDIARY OF A NATIONAL BANK MAY NOT ENGAGE UNDER FEDERAL LAW.**

3 (O) ~~(n)~~—"Commissioner" means the commissioner of the ~~financial~~
4 ~~institutions bureau~~ **OFFICE OF FINANCIAL AND INSURANCE SERVICES.**

5 (P) ~~(e)~~—"Consolidate", "consolidated", "consolidating", and
6 "consolidation" include, respectively, consolidate or merge,
7 consolidated or merged, consolidating or merging, and consolidation
8 or merger.

9 (Q) ~~(p)~~—"Consolidated bank" means a bank that results from a
10 consolidation between a bank and 1 or more banks, out-of-state
11 banks, national banks, associations, or savings banks.

12 (R) ~~(q)~~—"Consolidated organization" means an out-of-state
13 bank, national bank, association, or savings bank organized under
14 the laws of another state or the United States that results from a
15 consolidation of 1 or more banks, with 1 or more out-of-state
16 banks, national banks, associations, or savings banks.

17 (S) ~~(r)~~—"Consolidating organizations" means any combination of
18 banks, out-of-state banks, national banks, associations, or savings
19 banks that have consolidated or are in the process of consolidation
20 as provided in section 3701 or 3702.

21 (T) ~~(s)~~—"Depository institution" means a bank, out-of-state
22 bank, national bank, foreign bank branch, association, savings
23 bank, or credit union organized under the laws of this state,
24 another state, the District of Columbia, the United States, or a
25 territory or protectorate of the United States.

26 (U) ~~(t)~~—"Dissolution" means the process by which a solvent
27 bank voluntarily ends its corporate existence by liquidating its

1 assets and winding up its affairs.

2 (V) ~~(u)~~—"Dividend reinvestment plan" means a plan that is
3 offered solely to existing shareholders of the bank and which
4 allows the shareholders to reinvest dividends received under
5 section 3806 in stock of the bank and that may allow additional
6 cash amounts to be contributed by the shareholders participating in
7 the reinvestment plan.

8 (W) ~~(v)~~—"Federal agency" means a foreign bank agency
9 established and operating under the international banking act of
10 1978.

11 (X) ~~(w)~~—"Federal branch" means a foreign bank branch
12 established and operating under the international banking act of
13 1978.

14 (Y) ~~(x)~~—"Federal deposit insurance act" means the federal
15 deposit insurance act, chapter 967, 64 Stat. 873.

16 (Z) ~~(y)~~—"Federal home loan bank act" means the federal home
17 loan bank act, chapter 522, 47 Stat. 725.

18 (AA) ~~(z)~~—"Federal reserve act" means the federal reserve act,
19 chapter 6, 38 Stat. 251.

20 Sec. 1202. As used in this act:

21 (a) "Financial institution" means an organization licensed,
22 chartered, or regulated by the ~~financial institutions bureau~~ **OFFICE**
23 **OF FINANCIAL AND INSURANCE SERVICES** under the laws of this state.

24 (b) "Foreign bank" means an entity organized and recognized as
25 a bank under the laws of a foreign country that lawfully engages in
26 the business of banking and is not directly or indirectly owned or
27 controlled by United States citizens or by a corporation organized

1 under the laws of the United States. Foreign bank includes foreign
2 commercial banks, foreign merchant banks, and other foreign
3 institutions that engage in banking activities usual in connection
4 with the business of banking in the countries in which the foreign
5 institutions are organized.

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

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

18 (e) "Foreign country" means a country other than the United
19 States and includes a colony, dependency, or possession of a
20 country other than the United States.

21 (f) "Incorporator" means a signer of the original articles of
22 incorporation.

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

27 (h) "International banking act of 1978" means the

1 international banking act of 1978, Public Law 95-369. ~~7-92 Stat.~~
2 ~~607.~~

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

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

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

22 (l) "Member" means a person with ownership interest under the
23 Michigan limited liability company act, 1993 PA 23, MCL 450.4101 to
24 450.5200.

25 (m) "Messenger service" means a service such as a courier
26 service or an armored car service that picks up from or delivers to
27 customers of 1 or more depository institutions or 1 or more

1 affiliates of a depository institution cash, currency, checks,
2 drafts, securities, or other items relating to transactions between
3 or involving a depository institution or affiliate of a depository
4 institution and those customers, or that transfers cash, currency,
5 checks, drafts, securities, or other items or documents between
6 depository institutions or affiliates of depository institutions.
7 The service may be owned and operated by 1 or more depository
8 institutions or affiliates or by a third party.

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

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

13 (p) "National bank act" means the national bank act, chapter
14 106, 13 Stat. 99.

15 (q) "Out-of-state bank" means a banking corporation organized
16 under the laws of another state, the District of Columbia, or a
17 territory or a protectorate of the United States whose principal
18 office is located in a state other than this state, in the District
19 of Columbia, or in a territory or a protectorate of the United
20 States, and whose deposits are insured by the federal deposit
21 insurance corporation. **THE TERM INCLUDES AN INDUSTRIAL LOAN BANK OR**
22 **INDUSTRIAL LOAN COMPANY ORGANIZED OR CHARTERED UNDER THE LAWS OF**
23 **ANOTHER STATE.**

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

27 (s) "Professional investor" means an accredited investor under

1 15 ~~U.S.C.~~ **USC** 77b.

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

6 Sec. 3711. (1) ~~A~~ **SUBJECT TO SUBSECTION (13)**, A bank may
7 establish and operate a branch or branches within any state, the
8 District of Columbia, a territory or protectorate of the United
9 States, or a foreign country, unless the commissioner objects in
10 writing within 30 days after receipt of a written notice from the
11 bank of its intent to establish a branch. The commissioner may
12 issue a written statement of intent not to object at any time
13 before the expiration of the 30 days.

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

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

21 (4) ~~Unless~~ **SUBJECT TO SUBSECTION (13)**, **UNLESS** the commissioner
22 objects in writing within 30 days after receipt of written notice
23 from a bank of its intent to contract for branch services, a bank
24 may contract with 1 or more banks, out-of-state banks, national
25 banks, associations, or savings banks for the depository
26 institution or institutions to act as branches to provide services
27 to the customers of the contracting bank. The commissioner may

1 issue a written statement of intent not to object at any time prior
2 to the expiration of the 30 days. This subsection shall not be
3 construed to limit the powers granted to a bank under section
4 4101(1)(d).

5 (5) ~~Unless~~ **SUBJECT TO SUBSECTION (13), UNLESS** the commissioner
6 objects in writing within 30 days after receipt of written notice
7 from a contracting depository institution of its intent to contract
8 for branch services, 1 or more out-of-state banks, national banks,
9 associations, or savings banks may contract with a bank for the
10 bank to provide services to the customers of the contracting out-
11 of-state bank, national bank, association, or savings bank. The
12 commissioner may issue a written statement of intent not to object
13 at any time prior to the expiration of the 30 days. This subsection
14 shall not be construed to limit the powers granted to a bank under
15 section 4101(1)(d).

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

21 (7) ~~An~~ **SUBJECT TO SUBSECTION (13), AN** out-of-state bank or
22 national bank located in a state, the District of Columbia, or a
23 territory or protectorate of the United States whose laws permit
24 the establishment in that state, district, territory, or
25 protectorate of a branch by a bank may establish and operate 1 or
26 more branches in this state.

27 (8) An out-of-state bank may apply to organize a branch in

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

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

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

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

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

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

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

6 (13) A BANK, OUT-OF-STATE BANK, OR NATIONAL BANK SHALL NOT
7 ESTABLISH OR MAINTAIN A BRANCH OR AN AUTOMATED TELLER MACHINE IN
8 THIS STATE THAT IS ON, IN, OR WITHIN 1.5 MILES OF ANY PREMISES OR
9 PROPERTY OWNED, LEASED, OR CONTROLLED BY AN AFFILIATE IF THE
10 AFFILIATE ENGAGES IN COMMERCIAL ACTIVITIES ON OR IN THAT PROPERTY
11 OR PREMISES.