

SUBSTITUTE FOR
SENATE BILL NO. 748

A bill to amend 1999 PA 276, entitled
"Banking code of 1999,"
by amending the title and sections 1202, 1203, 2202, 2203, 2308,
4108, and 4304 (MCL 487.11202, 487.11203, 487.12202, 487.12203,
487.12308, 487.14108, and 487.14304).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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TITLE

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 CREATE THE STATE BANK REGULATORY FUND**; to prescribe
penalties; and to repeal acts and parts of acts.

1 Sec. 1202. As used in this act:

2 (a) "Financial institution" means an organization **THAT IS**
3 licensed, chartered, or regulated by the ~~financial institutions~~
4 ~~bureau~~**DEPARTMENT** under the laws of this state.

5 (b) "Foreign bank" means an entity **THAT IS** organized and
6 recognized as a bank under the laws of a foreign country that
7 lawfully engages in the business of banking and is not directly or
8 indirectly owned or controlled by United States citizens or by a
9 corporation organized under the laws of the United States. Foreign
10 bank includes **A** foreign commercial ~~banks~~**,BANK,** foreign merchant
11 ~~banks~~**,BANK,** and other foreign ~~institutions that engage~~**INSTITUTION**
12 **THAT ENGAGES** in banking activities **THAT ARE** usual in connection
13 with the business of banking in the ~~countries~~**COUNTRY** in which the
14 foreign ~~institutions are~~**INSTITUTION IS** organized.

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

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

27 (e) "Foreign country" means a country other than the United

1 States and includes a colony, dependency, or possession of a
2 country other than the United States.

3 (f) "Incorporator" means a signer of the original articles of
4 incorporation.

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

9 (h) "International banking act of 1978" means the
10 international banking act of 1978, Public Law 95-369, 92 Stat.—**STAT**
11 607.

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

16 (j) "Loan and extension of credit" or "loan or extension of
17 credit" includes all direct or indirect advances of funds to a
18 person made on the basis of any obligation of that person to repay
19 the funds or repayable from specific property pledged by or on
20 behalf of the person, **AND ANY CREDIT EXPOSURE ARISING FROM A**
21 **DERIVATIVE TRANSACTION**. To the extent specified by the
22 ~~commissioner~~, **DIRECTOR**, loan and extension of credit or loan or
23 extension of credit includes any liability of a bank to advance
24 funds to or on behalf of a person under a contractual commitment.
25 The term does not include investment securities held by a bank
26 under section 4301.

27 (k) "Loan production office" means an office of a depository

1 institution or institutions at which activities related to the
2 lending of money are conducted, deposits are not received, and
3 checks are not paid, and which office is not the principal office,
4 a branch, or an agency of an affiliated depository financial
5 institution.

6 (l) "Member" means a person with **AN** ownership interest under
7 the Michigan limited liability company act, 1993 PA 23, MCL
8 450.4101 to 450.5200.

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

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

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

24 (p) "National bank act" means the national bank act, ~~chapter~~
25 ~~106, 13 Stat. 99-12~~ **USC 21 TO 216D.**

26 **(Q) "OPERATING IN THIS STATE" MEANS TRANSACTING BUSINESS IN**
27 **THIS STATE FROM A BRANCH OR OTHER PHYSICAL LOCATION OR BY OTHER**

1 **MEANS, SOLICITING CUSTOMERS IN THIS STATE, OR EMPLOYING RESIDENTS**
 2 **OF THIS STATE.**

3 (R) ~~(q)~~—"Out-of-state bank" means a banking corporation **THAT**
 4 **IS** organized under the laws of another state, the District of
 5 Columbia, or a territory or a protectorate of the United States
 6 whose principal office is located in a state other than this state,
 7 in the District of Columbia, or in a territory or a protectorate of
 8 the United States, and whose deposits are insured by the ~~federal~~
 9 ~~deposit insurance corporation.~~ **FEDERAL DEPOSIT INSURANCE**
 10 **CORPORATION.**

11 (S) ~~(r)~~—"Person" means an individual, partnership,
 12 corporation, limited liability company, governmental entity, or any
 13 other legal entity.

14 (T) ~~(s)~~—"Professional investor" means an accredited investor
 15 ~~under 15 U.S.C. 77b.~~ **AS DEFINED IN 15 USC 77B.**

16 (U) ~~(t)~~—"Publication", "publish", or "published" means to
 17 appear in a newspaper of general circulation in the community or
 18 communities where the principal office or offices of ~~the~~ **A**
 19 depository institution or institutions are located.

20 Sec. 1203. As used in this act:

21 (a) "Savings bank" means a savings bank **THAT IS** organized
 22 under the savings bank act, 1996 PA 354, MCL 487.3101 to 487.3804,
 23 or the laws of another state, the District of Columbia, a territory
 24 or protectorate of the United States, or of the United States,
 25 whose deposits are insured by the ~~federal deposit insurance~~
 26 ~~corporation.~~ **FEDERAL DEPOSIT INSURANCE CORPORATION.**

27 (b) "Service entity" means a corporation, mutual company,

1 limited liability company, limited liability partnership, or
 2 limited partnership in which a bank has invested under section
 3 4310(1). ~~Upon~~ **WITH THE** written approval of the ~~commissioner,~~
 4 **DIRECTOR**, a service entity may be a general partnership.

5 (C) "SERVICE PROVIDER" MEANS A PERSON THAT PROVIDES ANY OF THE
 6 FOLLOWING TO AN INSTITUTION:

7 (i) DATA PROCESSING SERVICES.

8 (ii) ACTIVITIES THAT SUPPORT FINANCIAL SERVICES, INCLUDING,
 9 BUT NOT LIMITED TO, LENDING, FUNDS TRANSFER, FIDUCIARY ACTIVITIES,
 10 TRADING ACTIVITIES, AND DEPOSIT TAKING.

11 (iii) INTERNET-RELATED SERVICES, INCLUDING, BUT NOT LIMITED
 12 TO, WEB SERVICES AND ELECTRONIC BILL PAYMENTS, MOBILE APPLICATIONS,
 13 SYSTEM AND SOFTWARE DEVELOPMENT AND MAINTENANCE, AND SECURITY
 14 MONITORING.

15 (iv) ACTIVITIES RELATED TO THE BUSINESS OF BANKING.

16 (D) ~~(e)~~ "Shareholder" means the registered owner of any share
 17 or shares of capital stock of an institution.

18 (E) ~~(d)~~ "State agency" means a foreign bank agency **THAT IS**
 19 established and operating under this act.

20 (F) ~~(e)~~ "State foreign bank branch" means a foreign bank
 21 branch **THAT IS** established and operating under this act.

22 (G) ~~(f)~~ "Stock association" means an association ~~with~~ **THAT HAS**
 23 authority to issue shares of voting capital stock.

24 (H) ~~(g)~~ "Subsidiary" means a corporation, mutual company,
 25 limited liability company, limited liability partnership, or
 26 limited partnership, the controlling interests of which are more
 27 than 50% owned by 1 or more depository institutions, and in which a

1 bank has an ownership interest, membership interest, or other
2 legally enforceable interest ~~which~~ **THAT** is the indicia of
3 ownership. ~~Upon~~ **WITH THE** approval of the ~~commissioner,~~ **DIRECTOR,**
4 and subject to the ownership requirements set forth in this
5 ~~subsection,~~ **SUBDIVISION,** a subsidiary may be a general partnership.

6 (I) ~~(h)~~—"Surplus" means the amount paid for issued and
7 outstanding common and preferred stock of ~~the~~ **A** bank in excess of
8 the stated par value, plus any amount of transferred undivided
9 profits and any additional amounts paid in or contributed to
10 increase total capital.

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

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

17 (L) ~~(k)~~—"Uniform commercial code" means the uniform commercial
18 code, 1962 PA 174, MCL 440.1101 to ~~440.11102.~~ **440.9994.**

19 (M) ~~(l)~~—"Venture capital" means equity financing that is
20 provided for starting up or expanding a company, or related
21 purposes such as financing for seed capital, research and
22 development, introduction of a product or process into the
23 marketplace, or similar needs requiring risk capital. A venture
24 capital investment shall not include the purchase of a share of
25 stock in a company if, on the date on which the share of stock is
26 purchased, the company has securities outstanding that are
27 registered on a national securities exchange under section 12(b) of

1 title I of the securities exchange act of 1934, ~~chapter 404, 48~~
 2 ~~Stat. 892, 15 U.S.C. USC 78l~~; that are registered or required to be
 3 registered under section 12(g) of title I of the securities
 4 exchange act of 1934, ~~chapter 404, 48 Stat. 892, 15 U.S.C. USC 78l~~,
 5 or which would be required to be registered except for the
 6 exemptions in section 12(g)(2) of title I of the securities
 7 exchange act of 1934, ~~chapter 404, 48 Stat. 892, 15 U.S.C. USC 78l~~.

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

12 Sec. 2202. (1) Each institution ~~together with~~ **AND** its
 13 subsidiaries and service entities ~~shall be~~ **ARE** subject to
 14 examination of ~~its~~ **THEIR** condition and affairs by the ~~commissioner~~
 15 ~~or the commissioner's~~ **DIRECTOR OR HIS OR HER** authorized agent ~~not~~
 16 ~~less frequently than~~ **AT LEAST** once every 18 months.

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

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

4 (3) IF AN INSTITUTION UNDER THE DIRECTOR'S JURISDICTION, BY
5 CONTRACT OR OTHERWISE, ENGAGES A SERVICE PROVIDER TO PERFORM ANY
6 SERVICES OF A SERVICE PROVIDER, WHETHER ON OR OFF ITS PREMISES,
7 THAT PERFORMANCE IS SUBJECT TO REGULATION, EXAMINATION, AND
8 ENFORCEMENT BY THE DIRECTOR, OR HIS OR HER AUTHORIZED AGENT, TO THE
9 SAME EXTENT AS IF THOSE SERVICES WERE PERFORMED BY THE INSTITUTION
10 ITSELF ON ITS OWN PREMISES.

11 (4) THE DIRECTOR, OR HIS OR HER AUTHORIZED AGENT, MAY EXAMINE
12 AN AFFILIATE OR BANK HOLDING COMPANY OF AN INSTITUTION THAT IS
13 UNDER THE DIRECTOR'S JURISDICTION.

14 (5) ~~(3)~~ The ~~commissioner~~ DIRECTOR may examine the branch or
15 branches located in this state of an out-of-state bank as permitted
16 by ~~UNDER~~ the federal deposit insurance act.

17 (6) ~~(4)~~ In fulfilling the requirements of subsections (1) and
18 (2) **AND THE AUTHORITY GRANTED UNDER SUBSECTIONS (3) AND (4)**, the
19 ~~commissioner~~ DIRECTOR may use an examination made under the federal
20 ~~reserve act, the federal deposit insurance act, or the law of~~
21 ~~another state governing the activities of out-of-state banks in~~
22 ~~that state.~~ **BY ANY FEDERAL OR STATE BANK REGULATORY AGENCY.** The
23 ~~commissioner~~ DIRECTOR may require the institution to furnish a copy
24 of any report required by a federal or state bank regulatory
25 agency.

26 (7) ~~(5)~~ An examination required by ~~UNDER~~ this section may
27 include the fiduciary activities of the institution.

1 (8) ~~(6)~~—The ~~commissioner~~ **DIRECTOR** may contract with other
2 state bank regulatory agencies to assist in the conduct of
3 examinations of banks with 1 or more branches located in other
4 states and in examinations of out-of-state banks with 1 or more
5 branches located in this state.

6 (9) ~~(7)~~—The contents of a report of examination of a bank and
7 examination-related documents prepared or obtained under this
8 section remain the property of the ~~bureau~~. ~~Dissemination of all or~~
9 ~~part of a bank's report of examination for purposes other than the~~
10 ~~legitimate business purposes of the bank or as otherwise authorized~~
11 ~~by this act shall be a violation of this act subject to the~~
12 ~~administrative remedies granted the commissioner under sections~~
13 ~~2304 through 2314~~. **DIRECTOR. ANY DOCUMENT, MATERIAL, OR INFORMATION**
14 **RELATED TO AN EXAMINATION UNDER THIS ACT IS CONFIDENTIAL BY LAW AND**
15 **PRIVILEGED, IS NOT SUBJECT TO THE FREEDOM OF INFORMATION ACT, 1976**
16 **PA 442, MCL 15.231 TO 15.246, IS NOT SUBJECT TO SUBPOENA, AND IS**
17 **NOT SUBJECT TO DISCOVERY OR ADMISSIBLE IN EVIDENCE IN ANY PRIVATE**
18 **CIVIL ACTION. HOWEVER, THE DIRECTOR IS AUTHORIZED TO USE THE**
19 **DOCUMENTS, MATERIALS, OR INFORMATION IN THE FURTHERANCE OF ANY**
20 **SUPERVISORY ACTIVITY OR LEGAL ACTION BROUGHT AS PART OF THE**
21 **DIRECTOR'S DUTIES.**

22 (10) **THE DIRECTOR, OR ANY PERSON THAT RECEIVED DOCUMENTS,**
23 **MATERIALS, OR INFORMATION WHILE ACTING UNDER THE DIRECTOR'S**
24 **AUTHORITY, IS NOT PERMITTED AND MAY NOT BE REQUIRED TO TESTIFY IN**
25 **ANY PRIVATE CIVIL ACTION CONCERNING ANY CONFIDENTIAL DOCUMENTS,**
26 **MATERIALS, OR INFORMATION DESCRIBED IN SUBSECTION (9).**

27 (11) **TO ASSIST IN THE PERFORMANCE OF THE DIRECTOR'S DUTIES**

1 UNDER THIS ACT, THE DIRECTOR MAY DO ANY OF THE FOLLOWING:

2 (A) SHARE DOCUMENTS, MATERIALS, OR INFORMATION, INCLUDING THE
3 CONFIDENTIAL AND PRIVILEGED DOCUMENTS, MATERIALS, OR INFORMATION
4 THAT ARE SUBJECT TO SUBSECTION (9), WITH OTHER STATE, FEDERAL, AND
5 INTERNATIONAL REGULATORY AGENCIES, AND WITH STATE, FEDERAL, AND
6 INTERNATIONAL LAW ENFORCEMENT AUTHORITIES, PROVIDED THAT THE
7 RECIPIENT AGREES TO MAINTAIN THE CONFIDENTIALITY AND PRIVILEGED
8 STATUS OF THE DOCUMENTS, MATERIALS, OR INFORMATION.

9 (B) RECEIVE DOCUMENTS, MATERIALS, OR INFORMATION, INCLUDING
10 OTHERWISE CONFIDENTIAL AND PRIVILEGED DOCUMENTS, MATERIALS, OR
11 INFORMATION, FROM REGULATORY AND LAW ENFORCEMENT OFFICIALS OF OTHER
12 FOREIGN OR DOMESTIC JURISDICTIONS. THE DIRECTOR SHALL MAINTAIN AS
13 CONFIDENTIAL OR PRIVILEGED ANY DOCUMENTS, MATERIALS, OR INFORMATION
14 RECEIVED WITH NOTICE OR THE UNDERSTANDING THAT THE DOCUMENTS,
15 MATERIALS, OR INFORMATION THE DIRECTOR RECEIVES ARE CONFIDENTIAL OR
16 PRIVILEGED UNDER THE LAWS OF THE JURISDICTION THAT IS THE SOURCE OF
17 THE DOCUMENTS, MATERIALS, OR INFORMATION.

18 (C) ENTER INTO AGREEMENTS GOVERNING THE SHARING AND USE OF
19 INFORMATION THAT ARE CONSISTENT WITH THIS SUBSECTION.

20 (12) THE DISCLOSURE OF ANY DOCUMENTS, MATERIALS, OR
21 INFORMATION TO THE DIRECTOR, OR THE SHARING OF DOCUMENTS,
22 MATERIALS, OR INFORMATION UNDER SUBSECTION (11), IS NOT A WAIVER
23 OF, AND SHALL NOT BE CONSTRUED AS A WAIVER OF, ANY PRIVILEGE
24 APPLICABLE TO OR CLAIM OF CONFIDENTIALITY IN THOSE DOCUMENTS,
25 MATERIALS, OR INFORMATION.

26 (13) A PERSON TO WHICH CONFIDENTIAL AND PRIVILEGED DOCUMENTS,
27 MATERIALS, OR INFORMATION IS DISCLOSED SHALL NOT FURTHER

1 DISSEMINATE THOSE CONFIDENTIAL AND PRIVILEGED DOCUMENTS, MATERIALS,
2 OR INFORMATION.

3 (14) ANY PERSON ON WHICH A DEMAND FOR PRODUCTION OF
4 CONFIDENTIAL AND PRIVILEGED DOCUMENTS, MATERIALS, OR INFORMATION IS
5 MADE, WHETHER BY SUBPOENA, ORDER, OR OTHER JUDICIAL OR
6 ADMINISTRATIVE PROCESS, MUST WITHHOLD PRODUCTION OF THE
7 CONFIDENTIAL AND PRIVILEGED DOCUMENTS, MATERIALS, OR INFORMATION
8 AND MUST NOTIFY THE DIRECTOR OF THE DEMAND. IF THE DIRECTOR IS
9 NOTIFIED OF A DEMAND UNDER THIS SUBSECTION, THE DIRECTOR MAY
10 INTERVENE FOR THE PURPOSE OF ENFORCING THE LIMITATIONS OF THIS
11 SECTION OR SEEKING THE WITHDRAWAL OR TERMINATION OF THE ATTEMPT TO
12 COMPEL PRODUCTION OF THE CONFIDENTIAL AND PRIVILEGED DOCUMENTS,
13 MATERIALS, OR INFORMATION.

14 (15) ANY REQUEST FOR DISCOVERY OR DISCLOSURE OF CONFIDENTIAL
15 AND PRIVILEGED DOCUMENTS, MATERIALS, OR INFORMATION, WHETHER BY
16 SUBPOENA, ORDER, OR OTHER JUDICIAL OR ADMINISTRATIVE PROCESS, SHALL
17 BE MADE TO THE DIRECTOR, AND THE DIRECTOR SHALL DETERMINE WITHIN 21
18 DAYS WHETHER TO DISCLOSE THE DOCUMENTS, MATERIALS, OR INFORMATION
19 UNDER THIS ACT. IF THE DIRECTOR DETERMINES THAT THE DOCUMENTS,
20 MATERIAL, OR INFORMATION WILL NOT BE DISCLOSED, THE DIRECTOR'S
21 DECISION IS SUBJECT TO JUDICIAL REVIEW.

22 (16) THE JUDICIAL REVIEW OF A DECISION OF THE DIRECTOR UNDER
23 SUBSECTION (15) MAY INCLUDE IN CAMERA JUDICIAL REVIEW OF THE
24 CONFIDENTIAL AND PRIVILEGED DOCUMENTS, MATERIALS, OR INFORMATION.
25 AFTER JUDICIAL REVIEW, A COURT MAY ONLY ORDER DISCLOSURE OF THE
26 PORTIONS OF THE CONFIDENTIAL AND PRIVILEGED DOCUMENTS, MATERIALS,
27 OR INFORMATION THAT ARE RELEVANT AND OTHERWISE UNOBTAINABLE BY THE

1 REQUESTING PARTY.

2 (17) THE DIRECTOR MAY IMMEDIATELY APPEAL ANY COURT ORDER
3 DESCRIBED IN SUBSECTION (16) THAT COMPELS DISCLOSURE OF
4 CONFIDENTIAL AND PRIVILEGED DOCUMENTS, MATERIALS, OR INFORMATION,
5 AND THE ORDER IS AUTOMATICALLY STAYED PENDING THE OUTCOME OF THE
6 APPEAL.

7 (18) IN AN ADDENDUM TO A REPORT OF AN EXAMINATION UNDER THIS
8 SECTION, THE DIRECTOR OR HIS OR HER AUTHORIZED AGENT MAY SUGGEST
9 BEST PRACTICES OR OTHER IMPROVEMENTS IN THE OPERATION OF A BANK
10 THAT ARE NOT REQUIRED BY LAW OR REGULATION OR TO ADDRESS SAFETY AND
11 SOUNDNESS OF THE BANK. THE MANNER IN WHICH A BANK ADDRESSES ISSUES
12 CONCERNING ITS OPERATIONS IS WITHIN THE DISCRETION OF THE BANK IN
13 THE EXERCISE OF ITS BUSINESS JUDGMENT, EXCEPT AS REQUIRED BY LAW OR
14 REGULATION OR TO ADDRESS A CONCERN OVER SAFETY AND SOUNDNESS. THE
15 DIRECTOR SHALL NOT TAKE ACTION AGAINST A BANK UNDER THIS ACT BASED
16 ON A FAILURE OR REFUSAL OF A BANK TO FOLLOW A BEST PRACTICE OR
17 OTHER RECOMMENDED IMPROVEMENT IN THE OPERATION OF THE BANK THAT IS
18 SUGGESTED INFORMALLY BY AN EXAMINER OR THAT IS CONTAINED IN AN
19 ADDENDUM TO A REPORT OF EXAMINATION.

20 (19) WITHIN 1 YEAR AFTER THE EFFECTIVE DATE OF THE AMENDATORY
21 ACT THAT ADDED THIS SUBSECTION, THE DIRECTOR SHALL ISSUE GUIDANCE
22 TO PROMOTE CONSISTENCY AND DUE PROCESS IN THE EXAMINATION PROCESS
23 UNDER THIS SECTION, INCLUDING, BUT NOT LIMITED TO, ESTABLISHING
24 GUIDELINES THAT DEFINE THE SCOPE OF THE EXAMINATION PROCESS AND
25 CLARIFY HOW EXAMINATION ISSUES WILL BE RESOLVED.

26 Sec. 2203. (1) The ~~commissioner~~DIRECTOR shall periodically
27 establish a schedule of supervisory fees to be paid by banks.

1 Except for a minimum fee consistent with subsection (2), the fee
2 shall not be more than ~~25 cents for each \$1,000.00 of~~ **1 OF THE**
3 **FOLLOWING PERCENTAGES, AS APPLICABLE, OF THE** total assets of the
4 bank as reported by the bank on its report of condition as of
5 December 31 of the previous year: -

6 (A) IN 2016, 1/40 OF 1%.

7 (B) IN 2017, 1/20 OF 1%.

8 (C) IN 2018 AND 2019, 3/40 OF 1%.

9 (D) IN 2020 AND IN SUBSEQUENT YEARS, 1/10 OF 1%.

10 (2) ~~Each bank shall pay an~~ **THE** annual supervisory fee which
11 ~~shall be not less than~~ **ESTABLISHED BY THE DIRECTOR UNDER SUBSECTION**
12 **(1) SHALL BE AT LEAST \$1,000.00.**

13 (3) The ~~commissioner~~ **DIRECTOR** shall provide an invoice of the
14 supervisory fee ~~no later than~~ **ON OR BEFORE** July 1 of each year. The
15 **A BANK MUST PAY THE** annual supervisory fee ~~shall be paid by~~ **ON OR**
16 **BEFORE** August 15 of that year.

17 (4) The **DIRECTOR SHALL BASE THE** initial supervisory fee for a
18 bank that obtained a charter as a result of a conversion ~~shall be~~
19 ~~based on~~ the total assets **OF THE BANK** as reported in its report of
20 condition as of December 31 of the previous year under its prior
21 charter.

22 (5) The supervisory fee of a bank ~~which~~ **THAT** was not engaged
23 in the business of banking on December 31 of the previous year
24 shall be the minimum supervisory fee established by the
25 ~~commissioner consistent with subsection~~ **DIRECTOR UNDER SUBSECTIONS**
26 **(1) AND (2).**

27 (6) The ~~commissioner~~ **DIRECTOR** shall periodically establish a

1 schedule of fees, beyond those charged for normal supervision, to
2 be paid for applications, special evaluations and analyses, and
3 examinations.

4 (7) The **DIRECTOR SHALL BASE THE** fees established under
5 subsection (6) ~~shall be based on~~ the estimated cost to the ~~bureau~~
6 **DEPARTMENT** of conducting the activities for which the fees are
7 imposed.

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

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

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

19 (11) **THE STATE BANK REGULATORY FUND IS ESTABLISHED IN THE**
20 **DEPARTMENT OF TREASURY. ALL OF THE FOLLOWING APPLY TO THE STATE**
21 **BANK REGULATORY FUND:**

22 (A) **THE FUND SHALL CONSIST OF THE FOLLOWING:**

23 (i) **FEES, EXPENSES, COMPENSATION, PENALTIES, AND FINES**
24 **RECEIVED OR COLLECTED UNDER THIS ACT.**

25 (ii) **MONEY APPROPRIATED TO THE FUND.**

26 (iii) **DONATIONS OF MONEY MADE TO THE FUND FROM ANY SOURCE.**

27 (iv) **INTEREST AND EARNINGS FROM FUND INVESTMENTS.**

1 (B) MONEY IN THE FUND AT THE CLOSE OF A FISCAL YEAR SHALL
2 REMAIN IN THE FUND AND SHALL NOT REVERT TO THE GENERAL FUND.

3 (C) UPON APPROPRIATION, THE DEPARTMENT SHALL USE THE MONEY IN
4 THE FUND ONLY FOR BANK REGULATORY PURPOSES, AS DETERMINED BY THE
5 DIRECTOR.

6 (D) THE STATE TREASURER SHALL DIRECT THE INVESTMENT OF THE
7 FUND.

8 (E) THE DEPARTMENT IS THE ADMINISTRATOR OF THE FUND FOR
9 AUDITING PURPOSES.

10 Sec. 2308. If any person participating in the conduct of the
11 affairs of an institution is charged in any information,
12 indictment, warrant, or complaint by a county, state, or federal
13 authority with the commission of, or participation in, a felony
14 ~~involving~~ **OR MISDEMEANOR THAT INVOLVES FRAUD**, dishonesty, or breach
15 of trust, the ~~commissioner~~, **DIRECTOR**, by written notice served upon
16 the person may suspend the person from office or prohibit the
17 person from further participation in any manner in the conduct of
18 the affairs of the institution. A copy of the notice shall also be
19 served upon the institution. The suspension or prohibition is in
20 effect until the information, indictment, warrant, or complaint is
21 finally disposed of or until terminated by the ~~commissioner~~.
22 **DIRECTOR**. If a judgment of conviction with respect to the offense
23 is entered against the person, and when the judgment is not subject
24 to further appellate review, the ~~commissioner~~ **DIRECTOR** may issue an
25 order removing the person from office or prohibiting the person
26 from further participation in the conduct of the affairs of the
27 institution except with the consent of the ~~commissioner~~. **DIRECTOR**.

1 The person shall cease to be a director or officer of the
2 institution when a copy of the order is served upon the
3 institution. A finding of not guilty or other disposition of the
4 charge shall not preclude the ~~commissioner~~**DIRECTOR** from
5 instituting proceedings to suspend or remove the person from office
6 or to prohibit further participation in institution affairs under
7 section 2306(1), (2), or (3).

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

12 (2) A bank may pledge its assets in an aggregate amount ~~not in~~
13 ~~excess of~~**THAT DOES NOT EXCEED** 10% of its total assets for the
14 purpose of securing the following:

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

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

22 (c) Funds of the Mackinac ~~bridge authority,~~**BRIDGE AUTHORITY,**
23 which is declared to be a political subdivision of this state,
24 under 1950 (Ex Sess) PA 21, MCL 254.301 to ~~254.304.~~**254.302.**

25 (d) Funds of the international bridge authority, which is
26 declared to be a political subdivision of this state, under 1954 PA
27 99, MCL 254.221 to 254.240.

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

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

5 (g) Funds of the Michigan state housing development authority
6 constituting proceeds of the sale of the authority's notes and
7 bonds and repayments of those notes and bonds, under the state
8 housing development authority act of 1966, 1966 PA 346, MCL
9 125.1401 to 125.1499c.

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

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

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

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

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

26 (a) In the case of member banks, liabilities incurred under
27 the federal reserve act. In the case of nonmember banks,

1 liabilities incurred through borrowing under the same conditions as
2 are imposed upon members of the federal reserve system by the
3 federal reserve act.

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

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

8 (d) Liabilities incurred on account of a loan made with the
9 express approval of the ~~commissioner~~**DIRECTOR** under section
10 4202(3)(c).

11 (e) Liabilities incurred on account of borrowings from 1
12 business day to the next from a bank or national banking
13 association of excess reserve balances from time to time maintained
14 by the bank or national banking association under section 19 of the
15 federal reserve act, ~~chapter 6, 38 Stat. 270.~~**12 USC 461.**

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

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

20 **(5) A BANK MAY PLEDGE ITS ASSETS TO COUNTERPARTIES TO SECURE**
21 **THE COUNTERPARTIES' EXPOSURE IN INTEREST RATE SWAP TRANSACTIONS.**

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

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

1 (3) A bank shall not make a loan on or discount the security
2 of the shares of its own capital stock, **OR THE CAPITAL STOCK OF ITS**
3 **HOLDING COMPANY, IF ANY**, unless the security is necessary to
4 prevent loss ~~upon~~**ON** a debt previously contracted in good faith.

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

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

10 (b) The purchase or holding of the shares is necessary to
11 prevent loss ~~upon~~**ON** a debt **THAT IS** previously contracted in good
12 faith.

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

15 (5) A bank may purchase and hold shares of stock or other
16 equity interests, ~~having~~**THAT HAVE** an aggregate purchase price **THAT**
17 **IS** not more than 10% of its capital and surplus, of each of the
18 following:

19 (a) Small business investment companies **THAT ARE** doing
20 business in this state and licensed under, or established under,
21 the small business investment act of 1958, Public Law 85-699, 72
22 ~~Stat.~~**STAT** 689.

23 (b) The Michigan business development corporation.

24 (c) Corporations or partnerships **THAT ARE** authorized by title
25 IX of the housing and urban development act of 1968, Public Law 90-
26 448, 82 ~~Stat.~~**STAT** 547.

27 (d) Business entities whose primary purpose is to provide

1 capital to banks, which banks are largely owned or controlled by
2 individuals classified as racial minorities.

3 (e) Open-end management investment companies **THAT ARE**
4 registered with the securities and exchange commission under the
5 investment company act of 1940, ~~title I of chapter 686, 54 Stat.~~
6 ~~789, 15 U.S.C. USC~~ 80a-1 to 80a-64, while the portfolios of the
7 companies are restricted by their investment policies, changeable
8 only by vote of the shareholders, to investments permitted to banks
9 by order or declaratory ruling of the ~~commissioner.~~**DIRECTOR.**

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

14 (g) The student loan marketing association established under
15 section 439 of part B of title IV of the higher education act of
16 1965, ~~Public Law 89-329, 20 U.S.C. USC~~ 1087-2.

17 (h) Any class of voting securities of banks, out-of-state
18 banks, or national banks **THAT ARE** engaged exclusively in providing
19 services to depository institutions or their officers, directors,
20 employees, and customers, or bank holding companies that own or
21 control ~~such~~**THOSE** banks, out-of-state banks, or national banks if
22 the stock of the bank holding companies is owned exclusively,
23 except to the extent directors' qualifying shares are required by
24 law, by depository institutions and if all subsidiaries of the bank
25 holding companies engage exclusively in serving depository
26 institutions or their officers, directors, employees, and
27 customers.

1 (i) Banking organizations or corporations **THAT ARE** chartered
2 or incorporated under the laws of the United States or of any
3 state, territory, or protectorate of the United States, and
4 principally engaged in international or foreign banking, either
5 directly or through the agency, ownership, or control of foreign
6 banks.

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

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

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

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

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

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

23 **(D) STOCK, BONDS, OR OTHER OBLIGATIONS OF COMMUNITY AND**
24 **ECONOMIC DEVELOPMENT ENTITIES, COMMUNITY DEVELOPMENT PROJECTS, AND**
25 **OTHER PUBLIC WELFARE INVESTMENTS THAT ARE CONSIDERED UNDER FEDERAL**
26 **LAW, FEDERAL REGULATION, OR A WRITTEN INTERPRETATION BY A FEDERAL**
27 **BANK REGULATORY AGENCY TO BE A QUALIFIED INVESTMENT FOR PURPOSES OF**

1 THE COMMUNITY REINVESTMENT ACT OF 1977, 12 USC 2901 TO 2908,
2 UTILIZING THE INVESTMENT TEST DESCRIBED IN 12 CFR 25.23, 12 CFR
3 228.23, OR 12 USC 345.23.

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

6 Enacting section 1. This amendatory act takes effect 90 days
7 after the date it is enacted into law.

8 Enacting section 2. This amendatory act does not take effect
9 unless all of the following bills of the 98th Legislature are
10 enacted into law:

11 (a) Senate Bill No. 749.

12 (b) Senate Bill No. 750.