

SUBSTITUTE FOR
SENATE BILL NO. 749

A bill to amend 1999 PA 276, entitled
"Banking code of 1999,"
by amending section 1201 (MCL 487.11201).

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~~
4 **UNDER** this act or **BY** the court.

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

7 (iii) Current wages paid to an employee of a bank whose
8 services are retained by the receiver for services rendered after
9 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~~**DEPARTMENT**.

(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, **PARTNERSHIP, ASSOCIATION**, or similar organization to which any of the following apply:

(i) ~~An organization,~~ **A PERSON**, directly or indirectly, owns or controls either ~~a majority~~ **MORE THAN 25%** of its voting shares or ~~more than 50% of the number of~~ **A MAJORITY OF THE** shares voted **AT THE MOST RECENT ELECTION** for the election of its directors, trustees, or other ~~persons exercising~~ **INDIVIDUALS WHO EXERCISE** similar functions, ~~at the preceding election,~~ or controls in any manner the election of a majority of its directors, trustees, or other ~~persons exercising~~ **INDIVIDUALS WHO EXERCISE** similar functions.

(ii) Control of the organization is held, directly or indirectly, through ~~either~~ **1** of the following:

(A) Stock ownership or in any other manner, by the shareholders or members of an organization ~~who~~ **THAT** own or control ~~a majority~~ **MORE THAN 25%** of the shares of that organization, ~~a majority~~ **MORE THAN 25% OF THE** ownership interest in the organization, ~~more than 50% of the number~~ **A MAJORITY** of **THE** shares voted for the election of directors of that organization at the ~~preceding~~ **MOST RECENT** election, or ~~more than 50%~~ **A MAJORITY** of the

1 ownership vote for election of directors of that organization at
2 the ~~preceding~~ **MOST RECENT** election.

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

5 (C) **BY THE POWER TO EXERCISE, DIRECTLY OR INDIRECTLY, A**
6 **CONTROLLING INFLUENCE OVER THE MANAGEMENT OR POLICIES OF THE**
7 **ORGANIZATION, AS DETERMINED BY THE COMMISSIONER AFTER NOTICE AND AN**
8 **OPPORTUNITY FOR A HEARING.**

9 (iii) A majority of its directors, trustees, or other ~~persons~~
10 ~~exercising~~ **INDIVIDUALS WHO EXERCISE** similar functions constitute a
11 majority of the directors, trustees, or other ~~persons exercising~~
12 **INDIVIDUALS WHO EXERCISE** similar functions of any 1 organization.

13 (iv) The organization owns or controls, directly or
14 indirectly, either ~~a majority~~ **MORE THAN 25%** of the shares of
15 capital stock or other ownership interest of an organization, or
16 ~~more than 50% of the number of~~ **A MAJORITY OF THE** shares voted of
17 the total ownership vote for the election of directors of an
18 organization at the preceding election, or controls in any manner
19 the election of a majority of the directors of an organization, or
20 for the benefit of whose shareholders or members all or
21 substantially all the capital stock or ownership interest of an
22 organization is held by trustees.

23 (d) "Applicant" means a person ~~making~~ **THAT SUBMITS** an
24 application under this act.

25 (e) "Articles" means articles of incorporation, all amendments
26 to articles of incorporation, and agreements of consolidation and
27 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,~~ **12 USC 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.~~ **FEDERAL DEPOSIT INSURANCE CORPORATION.**

(g) "Bank" means a state banking corporation **THAT IS** organized or reorganized under this act or organized under any law of this state enacted before ~~the effective date of this act,~~ **MARCH 1, 2000**, 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~~ **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.~~ **12 USC 1841 TO 1852.**

(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~~ **IS NOT CONSIDERED** 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~~ **ANY LAW OF THIS STATE** 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.~~ **CFR** 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" **OR "DEPARTMENT"** means the ~~financial institutions bureau of the department of consumer and industry services.~~ **DEPARTMENT OF INSURANCE AND FINANCIAL 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

1 which has become final" means a cease and desist order or an order
 2 issued by the ~~commissioner~~**DIRECTOR** with the consent of the
 3 institution or the ~~director~~**BOARD MEMBER** or officer or other person
 4 concerned, or with respect to which ~~no~~**A** petition for review of the
 5 action of the ~~commissioner has been~~**DIRECTOR WAS NOT** filed and
 6 perfected in a circuit court ~~as specified in~~**UNDER** section 2310(2),
 7 or with respect to which the action of the court in which the
 8 petition is filed is not subject to further review by the courts of
 9 the state.

10 (n) "Commissioner" **OR "DIRECTOR"** means the ~~commissioner of the~~
 11 ~~financial institutions bureau~~**DIRECTOR OF THE DEPARTMENT**.

12 (o) "Consolidate", "consolidated", "consolidating", and
 13 "consolidation" include, respectively, consolidate or merge,
 14 consolidated or merged, consolidating or merging, and consolidation
 15 or merger.

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

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

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

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

6 (T) "DERIVATIVE TRANSACTION" MEANS ANY TRANSACTION THAT IS A
7 CONTRACT, AGREEMENT, SWAP, WARRANT, NOTE, OR OPTION THAT IS BASED,
8 IN WHOLE OR IN PART, ON THE VALUE OF, ANY INTEREST IN, OR ANY
9 QUANTITATIVE MEASURE OR THE OCCURRENCE OF ANY EVENT RELATING TO, 1
10 OR MORE COMMODITIES, SECURITIES, CURRENCIES, INTEREST OR OTHER
11 RATES, INDICES, OR OTHER ASSETS.

12 (U) ~~(t)~~—"Dissolution" means the process by which a solvent
13 bank voluntarily ends its corporate existence by liquidating its
14 assets and winding up its affairs.

15 (V) ~~(u)~~—"Dividend reinvestment plan" means a plan that is
16 offered solely to existing shareholders of the bank and ~~which~~ THAT
17 allows the shareholders to reinvest dividends received under
18 section 3806 in stock of the bank and that may allow additional
19 cash amounts to be contributed by the shareholders participating in
20 the reinvestment plan.

21 (W) ~~(v)~~—"Federal agency" means a foreign bank agency
22 established and operating under the international banking act of
23 1978.

24 (X) ~~(w)~~—"Federal branch" means a foreign bank branch
25 established and operating under the international banking act of
26 1978.

27 (Y) ~~(x)~~—"Federal deposit insurance act" means the federal

1 deposit insurance act, ~~chapter 967, 64 Stat. 873.~~ **12 USC 1811 TO**
2 **1835A.**

3 (Z) ~~(y)~~ "Federal home loan bank act" means the federal home
4 loan bank act, ~~chapter 522, 47 Stat. 725.~~ **12 USC 1421 TO 1449.**

5 (AA) ~~(z)~~ "Federal reserve act" means the federal reserve act,
6 ~~chapter 6, 38 Stat. 251.~~ **12 USC 221 TO 522.**

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

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

12 (a) Senate Bill No. 748.

13 (b) Senate Bill No. 750.