

Act No. 175  
Public Acts of 2016  
Approved by the Governor  
June 12, 2016  
Filed with the Secretary of State  
June 14, 2016  
EFFECTIVE DATE: September 12, 2016

**STATE OF MICHIGAN  
98TH LEGISLATURE  
REGULAR SESSION OF 2016**

Introduced by Senator Booher

# **ENROLLED SENATE BILL No. 748**

AN ACT to amend 1999 PA 276, entitled “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,” 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:*

## 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.

Sec. 1202. As used in this act:

(a) “Financial institution” means an organization that is licensed, chartered, or regulated by the department under the laws of this state.

(b) “Foreign bank” means an entity that is 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 a foreign commercial bank, foreign merchant bank, and other foreign institution that engages in banking activities that are usual in connection with the business of banking in the country in which the foreign institution is 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, and any credit exposure arising from a derivative transaction. To the extent specified by the director, 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 an 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, 12 USC 21 to 216d.

(q) "Operating in this state" means transacting business in this state from a branch or other physical location or by other means, soliciting customers in this state, or employing residents of this state.

(r) "Out-of-state bank" means a banking corporation that is 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.

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

(t) "Professional investor" means an accredited investor as defined in 15 USC 77b.

(u) "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 a depository institution or institutions are located.

Sec. 1203. As used in this act:

(a) "Savings bank" means a savings bank that is 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). With the written approval of the director, a service entity may be a general partnership.

(c) "Service provider" means a person that provides any of the following to an institution:

(i) Data processing services.

(ii) Activities that support financial services, including, but not limited to, lending, funds transfer, fiduciary activities, trading activities, and deposit taking.

(iii) Internet-related services, including, but not limited to, web services and electronic bill payments, mobile applications, system and software development and maintenance, and security monitoring.

(iv) Activities related to the business of banking.

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

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

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

(g) "Stock association" means an association that has authority to issue shares of voting capital stock.

(h) "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 that is the

indicia of ownership. With the approval of the director, and subject to the ownership requirements set forth in this subdivision, a subsidiary may be a general partnership.

(i) "Surplus" means the amount paid for issued and outstanding common and preferred stock of a 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.

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

(k) "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.

(l) "Uniform commercial code" means the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.9994.

(m) "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, 15 USC 78l; that are registered or required to be registered under section 12(g) of title I of the securities exchange act of 1934, 15 USC 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, 15 USC 78l.

(n) "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.

Sec. 2202. (1) Each institution and its subsidiaries and service entities are subject to examination of their condition and affairs by the director or his or her authorized agent at least once every 18 months.

(2) The director shall examine an institution under the director's jurisdiction when requested by its board of directors. In connection with an examination, the director, or his or her authorized agent, may examine under oath a director, officer, agent, employee, or shareholder of an institution concerning the affairs and business of the institution. The director shall ascertain whether the institution transacts its business in the manner prescribed by law and the rules promulgated under law.

(3) If an institution under the director's jurisdiction, by contract or otherwise, engages a service provider to perform any services of a service provider, whether on or off its premises, that performance is subject to regulation, examination, and enforcement by the director, or his or her authorized agent, to the same extent as if those services were performed by the institution itself on its own premises.

(4) The director, or his or her authorized agent, may examine an affiliate or bank holding company of an institution that is under the director's jurisdiction.

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

(6) In fulfilling the requirements of subsections (1) and (2) and the authority granted under subsections (3) and (4), the director may use an examination made by any federal or state bank regulatory agency. The director may require the institution to furnish a copy of any report required by a federal or state bank regulatory agency.

(7) An examination required under this section may include the fiduciary activities of the institution.

(8) The director 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.

(9) 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 director. Any document, material, or information related to an examination under this act is confidential by law and privileged, is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, is not subject to subpoena, and is not subject to discovery or admissible in evidence in any private civil action. However, the director is authorized to use the documents, materials, or information in the furtherance of any supervisory activity or legal action brought as part of the director's duties.

(10) The director, or any person that received documents, materials, or information while acting under the director's authority, is not permitted and may not be required to testify in any private civil action concerning any confidential documents, materials, or information described in subsection (9).

(11) To assist in the performance of the director's duties under this act, the director may do any of the following:

(a) Share documents, materials, or information, including the confidential and privileged documents, materials, or information that are subject to subsection (9), with other state, federal, and international regulatory agencies, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, or information.

(b) Receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from regulatory and law enforcement officials of other foreign or domestic jurisdictions. The

director shall maintain as confidential or privileged any documents, materials, or information received with notice or the understanding that the documents, materials, or information the director receives are confidential or privileged under the laws of the jurisdiction that is the source of the documents, materials, or information.

(c) Enter into agreements governing the sharing and use of information that are consistent with this subsection.

(12) The disclosure of any documents, materials, or information to the director, or the sharing of documents, materials, or information under subsection (11), is not a waiver of, and shall not be construed as a waiver of, any privilege applicable to or claim of confidentiality in those documents, materials, or information.

(13) A person to which confidential and privileged documents, materials, or information is disclosed shall not further disseminate those confidential and privileged documents, materials, or information.

(14) Any person on which a demand for production of confidential and privileged documents, materials, or information is made, whether by subpoena, order, or other judicial or administrative process, must withhold production of the confidential and privileged documents, materials, or information and must notify the director of the demand. If the director is notified of a demand under this subsection, the director may intervene for the purpose of enforcing the limitations of this section or seeking the withdrawal or termination of the attempt to compel production of the confidential and privileged documents, materials, or information.

(15) Any request for discovery or disclosure of confidential and privileged documents, materials, or information, whether by subpoena, order, or other judicial or administrative process, shall be made to the director, and the director shall determine within 21 days whether to disclose the documents, materials, or information under this act. If the director determines that the documents, material, or information will not be disclosed, the director's decision is subject to judicial review.

(16) The judicial review of a decision of the director under subsection (15) may include in camera judicial review of the confidential and privileged documents, materials, or information. After judicial review, a court may only order disclosure of the portions of the confidential and privileged documents, materials, or information that are relevant and otherwise unobtainable by the requesting party.

(17) The director may immediately appeal any court order described in subsection (16) that compels disclosure of confidential and privileged documents, materials, or information, and the order is automatically stayed pending the outcome of the appeal.

(18) In an addendum to a report of an examination under this section, the director or his or her authorized agent may suggest best practices or other improvements in the operation of a bank that are not required by law or regulation or to address safety and soundness of the bank. The manner in which a bank addresses issues concerning its operations is within the discretion of the bank in the exercise of its business judgment, except as required by law or regulation or to address a concern over safety and soundness. The director shall not take action against a bank under this act based on a failure or refusal of a bank to follow a best practice or other recommended improvement in the operation of the bank that is suggested informally by an examiner or that is contained in an addendum to a report of examination.

(19) Within 1 year after the effective date of the amendatory act that added this subsection, the director shall issue guidance to promote consistency and due process in the examination process under this section, including, but not limited to, establishing guidelines that define the scope of the examination process and clarify how examination issues will be resolved.

Sec. 2203. (1) The director 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 1 of the following percentages, as applicable, of the total assets of the bank as reported by the bank on its report of condition as of December 31 of the previous year:

(a) In 2016, 1/40 of 1%.

(b) In 2017, 1/20 of 1%.

(c) In 2018 and 2019, 3/40 of 1%.

(d) In 2020 and in subsequent years, 1/10 of 1%.

(2) The annual supervisory fee established by the director under subsection (1) shall be at least \$1,000.00.

(3) The director shall provide an invoice of the supervisory fee on or before July 1 of each year. A bank must pay the annual supervisory fee on or before August 15 of that year.

(4) The director shall base the initial supervisory fee for a bank that obtained a charter as a result of a conversion on the total assets of the bank 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 that was not engaged in the business of banking on December 31 of the previous year shall be the minimum supervisory fee established by the director under subsections (1) and (2).

(6) The director 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 director shall base the fees established under subsection (6) on the estimated cost to the department of conducting the activities for which the fees are imposed.

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

(9) To the extent any fees, penalties, or fines assessed under this act are unpaid when due, the director may, after providing 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.

(11) The state bank regulatory fund is established in the department of treasury. All of the following apply to the state bank regulatory fund:

(a) The fund shall consist of the following:

(i) Fees, expenses, compensation, penalties, and fines received or collected under this act.

(ii) Money appropriated to the fund.

(iii) Donations of money made to the fund from any source.

(iv) Interest and earnings from fund investments.

(b) Money in the fund at the close of a fiscal year shall remain in the fund and shall not revert to the general fund.

(c) Upon appropriation, the department shall use the money in the fund only for bank regulatory purposes, as determined by the director.

(d) The state treasurer shall direct the investment of the fund.

(e) The department is the administrator of the fund for auditing purposes.

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 or misdemeanor that involves fraud, dishonesty, or breach of trust, the director, 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 director. 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 director 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 director. 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 director 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. 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 that does not exceed 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 254.302.

(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 under 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 director 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, 12 USC 461.

(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.

(5) A bank may pledge its assets to counterparties to secure the counterparties' exposure in interest rate swap transactions.

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 under this act or by order or declaratory ruling of the director under this act.

(2) A bank may purchase and sell securities and stock on 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, or the capital stock of its holding company, if any, unless the security is necessary to prevent loss on 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 that amount 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 on a debt that is previously contracted in good faith.

(c) The director 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, that have an aggregate purchase price that is not more than 10% of its capital and surplus, of each of the following:

(a) Small business investment companies that are 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 that are 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 that are registered with the securities and exchange commission under the investment company act of 1940, 15 USC 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 director.

(f) Agricultural credit business entities that are 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, 20 USC 1087-2.

(h) Any class of voting securities of banks, out-of-state banks, or national banks that are engaged exclusively in providing services to depository institutions or their officers, directors, employees, and customers, or bank holding companies that own or control those 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 that are 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 director, 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 on capital and surplus under 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.

(d) Stock, bonds, or other obligations of community and economic development entities, community development projects, and other public welfare investments that are considered under federal law, federal regulation, or a written interpretation by a federal bank regulatory agency to be a qualified investment for purposes of the community reinvestment act of 1977, 12 USC 2901 to 2908, utilizing the investment test described in 12 CFR 25.23, 12 CFR 228.23, or 12 USC 345.23.

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

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

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

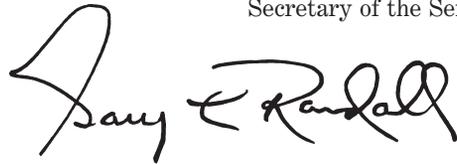
(a) Senate Bill No. 749.

(b) Senate Bill No. 750.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved .....

.....  
Governor