

Act No. 365
Public Acts of 2000
Approved by the Governor
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**STATE OF MICHIGAN
90TH LEGISLATURE
REGULAR SESSION OF 2000**

Introduced by Senators Steil, Miller and Shugars

ENROLLED SENATE BILL No. 752

AN ACT to amend 1980 PA 307, entitled "An act to revise and codify the laws relating to savings and loan associations; to provide for the incorporation, regulation, supervision, and internal administration of associations; to prescribe the rights, powers, and immunities of associations; to provide for voluntary and involuntary changes in the corporate structure of associations; to prescribe the powers, rights, and duties of certain state agencies in relation to associations; to require certain reports and examinations of associations; to prescribe remedies and penalties for violations of this act; and to repeal certain acts and parts of acts," by amending sections 107, 700, and 800 (MCL 491.107, 491.700, and 491.800), section 107 as added and sections 700 and 800 as amended by 1987 PA 106.

The People of the State of Michigan enact:

Sec. 107. "Bank" means a state banking corporation organized or reorganized under the banking code of 1999, 1999 PA 276, MCL 487.11101 to 487.15105, or organized under any law of this state enacted before March 1, 2000 or a national bank having its principal office in this state.

Sec. 700. (1) Subject to rules promulgated by the commissioner, an association may invest its funds in the following categories of assets:

(a) Obligations or securities of, or fully guaranteed as to principal and interest by, the United States or any of the agencies of the United States, or for which the full faith and credit of the United States is pledged to provide for the payment of principal and interest, or for which annual contributions to be paid under contract by the United States or any of its instrumentalities under the national housing act, 12 U.S.C. 1701 to 1750g, are pledged for payment of principal and interest.

(b) Obligations of a state of the United States, or an agency or authority of a state for which the full faith and credit of the state is pledged to provide payment of principal and interest.

(c) Obligations of this state or an agency or authority of this state for which specific revenues are pledged to provide payment of principal and interest.

(d) Obligations of a school district or political subdivision of this state.

(e) Bankers' acceptances eligible for purchase by federal reserve banks and any corporate obligations approved for investment purposes by the supervisor.

(f) Stock, bonds, or other obligations of a federal home loan bank, the federal savings and loan insurance corporation, the federal deposit insurance corporation, a corporation or agency of the United States or of this state to the extent that the corporation or agency requires the investment as a means of furthering or facilitating an association's purposes, and any service corporation, partnership, or other organization approved by the supervisor that assists in furthering or facilitating an association's purposes.

(g) Demand, time, or savings deposits or accounts or other obligations of a financial institution the accounts of which are insured by a federal agency or instrumentality.

(h) Under a plan approved by the supervisor, savings accounts or certificates of deposit with banks whose deposits are recognized by the federal home loan bank board for liquidity purposes.

(i) Shares or certificates in any open-end management investment company registered with the securities and exchange commission under the investment company act of 1940, chapter 686, 54 Stat. 789, while the portfolio of the company is restricted by its investment policy, changeable only by vote of the shareholders, to investments eligible for liquidity pursuant to federal home loan bank board regulations.

(j) Stock, bonds, or other obligations of any business and industrial development corporation licensed and supervised by this state.

(k) Small business investment companies formed under section 301(d) of the small business investment company act of 1958, 15 U.S.C. 681.

(l) A finance subsidiary wholly owned by 1 or more associations whose sole purpose is to issue debt or equity securities of the type that the association is authorized to issue directly, or, if a mutual association, would be authorized to issue if it converted to stock form, and to remit the net proceeds of such issuance to the association.

(m) Any class of voting securities of a bank organized and chartered under the banking code of 1999, 1999 PA 276, MCL 487.11101 to 487.15105, or the national bank act, chapter 106, 13 Stat. 99, and engaged exclusively in providing services to depository institutions or their officers, directors, and employees, or a bank holding company that owns or controls a bank organized and chartered under the banking code of 1999, 1999 PA 276, MCL 487.11101 to 487.15105, the national bank act, chapter 106, 13 Stat. 99, if the stock of a bank holding company is owned exclusively, except to the extent directors' qualifying shares are required by law, by depository institutions, as defined in the banking code of 1999, 1999 PA 276, MCL 487.11101 to 487.15105, and if all subsidiaries of the company engaged exclusively in serving depository institutions or their officers, directors, and employees. The amount of securities of a bank or bank holding company held by an investing association shall not exceed 20% of the net worth of the investing association.

(2) Subject to the limitations contained in this act, an association may make venture capital investments or may invest in equity securities of a professional investor a majority of whose assets consist of venture capital investments.

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

(4) An association's investment pursuant to subsection (2) in any 1 entity shall not exceed an amount equal to 5% of the net worth of the association, and all investments under subsection (2) shall not exceed an amount equal to 10% of the net worth of the association.

(5) This section does not limit the authority of an association to exercise lending or investment powers that are otherwise authorized by law.

(6) As used in this section:

(a) "Professional investor" means an investment company registered under the investment company act of 1940, 15 U.S.C. 80a-1 to 80a-64, a pension or profit sharing trust or other institutional buyer, or a person, partnership, or other entity a majority of whose resources is dedicated to investing in equity or debt securities and whose net worth exceeds \$500,000.00 prior to the association's investment.

(b) "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 U.S.C. 78l; that are registered or required to be registered under section 12(g) of title I of the securities exchange act of 1934, 15 U.S.C. 78l; or which would be required to be so registered except for the exemptions in section 12(g)(2) of title I of the securities exchange act of 1934.

(7) The commissioner is authorized to approve investments in other categories of assets that the commissioner determines are consistent with this act. Those investments shall be subject to limitations as determined appropriate by rule of the commissioner.

Sec. 800. (1) With the approval of the commissioner, an association or bank may merge with or into, or sell its assets and transfer its liabilities to, or purchase the assets and assume the liabilities of 1 or more federal or domestic associations or federal or domestic savings bank or banks. A plan of merger, sale, or purchase as it relates to an association shall be adopted in the manner provided by this act, and approval of the commissioner shall be based on an examination of the constituent associations or banks and of the plan. A plan of merger, sale, or purchase as it relates to a bank shall be adopted in the manner provided in the banking code of 1999, 1999 PA 276, MCL 487.11101 to 487.15105. A merger, sale, or purchase shall not be made to defeat or defraud a creditor of a constituent association or bank.

(2) The board of each association proposing to participate in a merger, sale, or purchase shall authorize a plan setting forth all of the following:

(a) The name of each constituent association or bank and the name of the resulting association or bank.

(b) As to each constituent association or bank that is a stock association or bank, the designation and number of outstanding shares of each class, specifying the classes entitled to vote and each class entitled to vote as a class. If the number of the shares is subject to change before the effective date of the merger, sale, or purchase, the manner in which the change may occur shall be specified.

(c) The terms and conditions of the proposed merger, sale, or purchase including the manner and basis of converting the shares of each constituent stock association or bank into shares, bonds, or other securities of a resulting stock association or bank, or into cash or other consideration, which may include shares, bonds, rights, or other property or securities of a constituent association or bank that is a party to the merger, sale, or purchase or into any combination of a merger, sale, or purchase.

(d) A statement of any amendment to the articles of incorporation of the resulting association or bank to be effected by the merger, sale, or purchase.

(e) The names of all directors and executive officers of the resulting association or bank.

(f) Other provisions with respect to the proposed merger, sale, or purchase as the board considers necessary or desirable.

(3) A plan of merger, sale, or purchase authorized by the board of each constituent association shall be submitted for adoption at a meeting of the association's members. Notice of the meeting shall be given to each member not less than 20 days before the meeting, in the manner provided in this act for giving notice of meetings to members. The notice shall include or be accompanied by a copy or summary of the plan.

(4) At the meeting, a vote of the members shall be taken on the proposed plan. In the case of a stock association, the plan shall be adopted upon receiving the affirmative vote of members holding more than 50% of the issued and outstanding voting stock of the association. In the case of a mutual association the plan shall be adopted upon receiving the affirmative vote of more than 50% of the votes cast by members at the meeting.

(5) After adoption, a plan shall be signed by the president or vice-president, and by the secretary or treasurer of each constituent association, under the corporate seals of each constituent association and with the acknowledgment that the plan is the respective act, deed, and agreement of the association. The plan shall be filed with the supervisor together with an affidavit by the treasurer or secretary of each constituent association that the plan has been authorized by the board of the association or bank and adopted by the members under this section. If the resulting association is to be a domestic association or domestic savings bank, there shall also be filed with the supervisor, as a condition to his or her approval of the merger, sale, or purchase, a firm commitment for or evidence of insurance of the resulting association's deposits and other accounts of a withdrawable type by the federal savings and loan insurance corporation. A federal association that is a constituent association to a merger, sale, or purchase shall furnish a certified copy of the consent or approval of the federal home loan bank board to the merger, sale, or purchase if the consent or approval is required by applicable law. Upon approval of the merger, sale, or purchase, the supervisor shall execute a certificate of merger, sale, or purchase, a copy of which is to be sent to the constituent associations. After approval, an officer of the resulting association shall provide the supervisor with an affidavit that evidence of the merger, sale, or purchase has been filed in the office of the register of deeds of each county where an office of the association is located. A bank that is a constituent association to a merger shall furnish a certified copy of the consent or approval of the appropriate regulatory agency, if the consent or approval is required by applicable law.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate.

Jay E. Randall

Clerk of the House of Representatives.

Approved

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Governor.