

Chapter 487

FINANCIAL INSTITUTIONS

THE MICHIGAN FINANCIAL INSTITUTIONS ACT

Act 341 of 1937

487.1-487.292 Repealed. 1962, Act 174, Eff. Jan. 1, 1964;—1969, Act 319, Imd. Eff. Aug. 20, 1969.

BANKING CODE OF 1969

Act 319 of 1969

487.301-487.598 Repealed. 1995, Act 202, Imd. Eff. Nov. 29, 1995;—1988, Act 200, Eff. Aug. 1, 1988 ;—1996, Act 405, Imd. Eff. Oct. 21, 1996;—1999, Act 276, Eff. Mar. 1, 2000.

THE BANK COLLECTION CODE

Act 240 of 1931

487.601-487.617 Repealed. 1962, Act 174, Eff. Jan. 1, 1964.

PAPER PRESENTED ONE YEAR AFTER DATE

Act 390 of 1925

487.621 Repealed. 1962, Act 174, Eff. Jan. 1, 1964.

FORWARDING OF NEGOTIABLE PAPER

Act 386 of 1919

487.641 Repealed. 1962, Act 174, Eff. Jan. 1, 1964.

MARKING COUNTERFEIT, ALTERED, OR WORTHLESS BILLS

Act 165 of 1865

487.651,487.652 Repealed. 2002, Act 323, Imd. Eff. May 23, 2002.

FORGED OR RAISED CHECKS

Act 95 of 1907

487.661 Repealed. 1962, Act 174, Eff. Jan. 1, 1964.

NONPAYMENT OF CHECK

Act 378 of 1919

487.671 Repealed. 1962, Act 174, Eff. Jan. 1, 1964.

REVOCATION, COUNTERMAND, OR STOP-PAYMENT ORDER

Act 348 of 1925

487.681, 487.682 Repealed. 1962, Act 174, Eff. Jan. 1, 1964.

ADVERSE CLAIM TO BANK DEPOSIT

Act 349 of 1925

AN ACT relative to notice of adverse claim to a bank deposit and to prescribe the procedure necessary to make such claim effective to cause recognition of the adverse claimant.

History: 1925, Act 349, Eff. Aug. 27, 1925

The People of the State of Michigan enact:

487.691 Adverse claim to bank deposit; notice; restraining order; exception.

Sec. 1.

Notice to any bank or trust company doing business in this state of an adverse claim to a deposit standing on its books to the credit of any person shall not be effectual to cause said bank to recognize said adverse claimant unless said adverse claimant shall also either procure a restraining order, injunction or other appropriate process against said bank from a court of competent jurisdiction in a cause therein instituted by him wherein the person to whose credit the deposit stands is made a party and served with summons, or shall execute to said bank, in form and with sureties acceptable to it a bond, indemnifying said bank from any and all liability, loss, damage, costs and expenses for and on account of the payment of such adverse claim or the dishonor of the check or other order of the person to whose credit the deposit stands on the books of said bank: Provided, That this law shall not apply in any instance where the person to whose credit the deposit stands is a fiduciary for such adverse claimant, and the facts constituting such relationship, as also the facts showing reasonable cause of belief on the part of the said claimant that the said fiduciary is about to misappropriate said deposit, are made to appear by the affidavit of such claimant.

History: 1925, Act 349, Eff. Aug. 27, 1925 ;-- CL 1929, 12068 ;-- CL 1948, 487.691

PAYMENT OF DEPOSITS

Act 248 of 1909

AN ACT in relation to the payment of deposits of money in banks and trust companies by minors, trust deposits, and deposits in the names of more than 1 person.

History: 1909, Act 248, Eff. Sept. 1, 1909

The People of the State of Michigan enact:

487.701 Minor's deposit; payment; receipt or acquittance sufficient.

Sec. 1.

When any deposit of money shall be made in any bank or trust company by or in the name of any minor, the same shall be held for the exclusive right and benefit of such minor, and shall be paid, together with the dividends and interest thereon to the person in whose name the deposit shall have been made, and the receipt or acquittance of such minor shall be a valid and sufficient release and discharge for such deposit, or any part thereof to the corporation.

History: 1909, Act 248, Eff. Sept. 1, 1909 ;-- CL 1915, 8038 ;-- CL 1929, 12061 ;-- CL 1948, 487.701

487.702 Trust deposit; death of trustees; payment of deposit; receipt or acquittance as release and discharge.

Sec. 2.

(1) If a deposit of money shall be made in a bank or trust company by a person in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the bank, if the trustee dies, or if there is more than 1 trustee, all of the trustees have died, the deposited money, together with the dividends or interest on the money, shall be paid to the person for whom the deposit was made.

(2) If the balance of the deposit exceeds \$5,000.00 and the person to whom the payment is to be made is under the age of 18 years, the deposit shall be paid only to his or her legally appointed guardian.

(3) If the balance of the deposit is less than \$5,000.00 and the person to whom the payment is to be made is under the age of 18 years, the deposit shall be paid to the minor if the minor is married, a parent, or a person having the care and custody of a minor child under a court order and with whom the child resides. If the minor does not meet the requirements of this subsection, then the deposit shall be paid only to his or her legally appointed guardian.

(4) The receipt or acquittance by the beneficiary or guardian to whom the payment is made shall be a valid and sufficient release and discharge to the depository for all payments made.

History: 1909, Act 248, Eff. Sept. 1, 1909 ;-- CL 1915, 8039 ;-- Am. 1929, Act 145, Eff. Aug. 28, 1929 ;-- CL 1929, 12062 ;-- CL 1948, 487.702 ;-- Am. 1991, Act 41, Imd. Eff. June 14, 1991

487.703 Deposit in name of joint beneficiaries; payment; receipt sufficient; deposits made payable to

survivor; prima facie evidence.

Sec. 3.

When a deposit shall be made, in any bank by any person in the name of such depositor or any other person, and in form to be paid to either or the survivor of them, such deposits thereupon and any additions thereto, made by either of such persons, upon the making thereof, shall become the property of such persons as joint tenants, and the same together with all interest thereon, shall be held for the exclusive use of the persons so named and may be paid to either during the lifetime of both, or to the survivor after the death of 1 of them, and such payment and the receipt or acquittance of the same to whom such payment is made shall be a valid and sufficient release and discharge to said banking institution for all payments made on account of such deposits prior to the receipt by said bank of notice in writing not to pay such deposit in accordance with the terms thereof.

When a deposit has been made, or shall hereafter be made, in any banking institution transacting business in this state, in the names of 2 or more persons, payable to either or the survivor or survivors, such deposit or any part thereof or any interest or dividend thereon and any additions thereto, made by any 1 of the said persons, shall become the property of such persons as joint tenants, and the same shall be held for the exclusive use of the persons so named and may be paid to any 1 of said persons during the lifetime of said persons or to the survivor or survivors after the death of 1 of them, and such payment and the receipt or acquittance of the same to whom such payment is made shall be a valid and sufficient release and discharge to said banking institution for all payments made on account of such deposits prior to the receipt by said bank of notice in writing not to pay such deposit in accordance with the terms thereof.

The making of the deposit in such form shall, in the absence of fraud or undue influence, be prima facie evidence, in any action or proceeding, to which either such banking institution or surviving depositor or depositors is a party, of the intention of such depositors to vest title to such deposit and the additions thereto in such survivor or survivors.

History: 1909, Act 248, Eff. Sept. 1, 1909 ;-- CL 1915, 8040 ;-- CL 1929, 12063 ;-- Am. 1937, Act 286, Imd. Eff. July 23, 1937 ;-- CL 1948, 487.703

STATUTORY JOINT ACCOUNT ACT

Act 53 of 1978

AN ACT to define the rights and obligations of parties and financial institutions in connection with funds on deposit therein in which 2 or more persons have an interest by way of right of withdrawal or ownership.

History: 1978, Act 53, Imd. Eff. Mar. 9, 1978

The People of the State of Michigan enact:

487.711 Short title.

Sec. 1.

This act shall be known and may be cited as the "statutory joint account act".

History: 1978, Act 53, Imd. Eff. Mar. 9, 1978

487.712 Meanings of words and phrases.

Sec. 2.

For the purposes of this act, the words and phrases defined in sections 3 and 4 have the meaning ascribed to them in those sections.

History: 1978, Act 53, Imd. Eff. Mar. 9, 1978

487.713 Definitions.

Sec. 3.

- (a) "Deposits" means funds on deposit in a financial institution, including interest.
- (b) "Joint account" means a deposit in a financial institution in which 2 or more persons have an interest, either by way of ownership or right of withdrawal.
- (c) "Statutory joint account" means a joint account as to which a statutory joint account contract, as provided in this act, has been signed by a person having a right of withdrawal on the account.

History: 1978, Act 53, Imd. Eff. Mar. 9, 1978

487.714 Additional definitions.

Sec. 4.

- (a) "Financial institution" means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government and which maintains a principal office or branch office located in this state under the laws of this state or the United States.
- (b) "Person" means an individual, corporation, partnership, association, governmental entity, or any other legal entity.

History: 1978, Act 53, Imd. Eff. Mar. 9, 1978 ;-- Am. 1997, Act 35, Imd. Eff. June 30, 1997

487.715 Statutory joint account; creation; signing contract; form of contract; acknowledging receipt of contract; adding additional parties; modifying form of contract.

Sec. 5.

One or more persons may create a statutory joint account by signing a statutory joint account contract with a financial institution that is agreeable to the contract with indicated insertions in form substantially as follows:

**FORM OF STATUTORY
JOINT ACCOUNT
CONTRACT**

- 1. Name of financial institution:
- 2. Nature of Account:
 - Check _____ Savings Account;
 - _____ Commercial Account;
 - _____ Certificate of Deposit;
 - _____ Other Credits (describe):
- 3. Name and address of person designated as A:

4. Name and address of person designated as B:
5. Who may withdraw funds during lifetime of A and B:
Check _____ A; _____ B; _____ Either A or B;
_____ Signatures of both A and B.
6. Who may revoke this contract by written notice to the financial institution:
Check _____ A; _____ B; _____ Either A or B;
_____ Signatures of both A and B. In the event of revocation, the right to withdraw funds shall be determined by designation of ownership in item 7.
7. Who owns the funds during the lifetime of A and B:
Check _____ A; _____ B; _____ Equally by A and B;
Other proportions (describe): _____
8. Who owns the funds and has the right to withdraw if A dies first:
Check _____ B; _____ A's estate; _____ Equally by B and A's estate;
Other proportions (describe): _____
9. Who owns the funds and has the right to withdraw if B dies first:
Check _____ A; _____ B's estate; _____ Equally by A and B's estate;
Other proportions (describe): _____
10. If A and B should die simultaneously without proof of who survives, which provision shall control:
Check _____ Item 8 above; _____ Item 9 above.
11. Signature of persons having right of withdrawal: _____
12. Date of signature: _____

Note: (1) Each person who signs this contract shall receive a copy of this contract and their signature shall constitute acknowledgement of receipt.

(2) When more than 2 persons are involved, additional parties may be added by designation of "C", etc. and the form of this contract shall be modified to conform therewith.

History: 1978, Act 53, Imd. Eff. Mar. 9, 1978

487.716 Nature and effect of statutory joint accounts; failure to answer question in contract.

Sec. 6.

The creation of a statutory joint account is a contract as to ownership of the deposits and is effective pursuant to its terms without regard to requirements of testamentary dispositions. The rights of persons in joint accounts

which are not statutory joint accounts are not affected by this act. The failure to answer a question in a statutory joint account contract shall not invalidate the contract, but it shall be enforceable pursuant to its terms as to the questions answered and pursuant to the common law as to any unanswered question or ambiguities, with the purpose of effectuating the intent of the parties.

History: 1978, Act 53, Imd. Eff. Mar. 9, 1978

487.717 Withdrawals of funds; liability of financial institution; deposits subject to setoff.

Sec. 7.

(1) Financial institutions shall honor withdrawals of funds pursuant to the withdrawal provisions of the statutory joint account contract. In so doing, they shall be relieved of liability to persons having a claim to ownership of the funds. A financial institution shall not be chargeable with changes in rights of withdrawal due to death or incompetency in absence of actual knowledge thereof.

(2) Deposits in statutory joint accounts shall be subject to setoff for obligations to the financial institution by persons designated in the statutory joint account contract as owners of the funds to the extent of the ownership at the date of setoff.

History: 1978, Act 53, Imd. Eff. Mar. 9, 1978

487.718 Deposits subject to rights of creditors; laws applicable to transfers in fraud of creditors; claims against insolvent estate of deceased owner of statutory joint account.

Sec. 8.

Deposits in a statutory joint account shall be subject to the rights of creditors of the persons designated in the statutory joint account contract as owners of the funds to the extent of the ownership, except that the funds shall remain subject to laws applicable to transfers in fraud of creditors. If in his or her lifetime, a deceased person was an owner of a statutory joint account, the estate, in event of its insolvency, may recover from the surviving owner so much of the deposits as were owned by the deceased person immediately before the deceased person's death to the extent required to satisfy claims against the estate.

History: 1978, Act 53, Imd. Eff. Mar. 9, 1978

487.719 Payment of widow's allowance or allowance for dependent children upon death of person owning deposits in statutory joint account.

Sec. 9.

Upon the death of a person who in his or her lifetime owned the deposits in a statutory joint account, to the extent of the decedent's ownership immediately before his or her death, the rights of the owners of the deposits after the death shall be subject to the right of recovery by the estate of the deceased person to the extent that the assets of the estate are insufficient for the payment of the widow's allowance or allowance for dependent children ordered by a court of competent jurisdiction; or in an intestate estate or where the widow exercised her right to take against the will, the assets of the estate are insufficient for the payment of the widow's share of the estate if the deposits were included as part of the estate.

History: 1978, Act 53, Imd. Eff. Mar. 9, 1978

JOINT SAFE DEPOSIT BOX

Act 330 of 1939

AN ACT to provide for access to, removal of contents from, surrender of, and discharge of liability of lessor of safe deposit boxes or compartments rented to 2 or more persons by either or any 1 of such persons or the survivor or survivors of them, unless otherwise provided in the safe deposit box or compartment rental agreement.

History: 1939, Act 330, Eff. Sept. 29, 1939

The People of the State of Michigan enact:

487.721 Safe deposit box rented to joint holders; rights of various holders and survivors; exceptions.

Sec. 1.

(1) Subject to subsection (3), if 2 or more persons rent a safe deposit box or compartment, any 1 of them, or the survivor or survivors of them, unless it is otherwise provided in the safe deposit box or compartment rental agreement, has a right to all of the following:

- (a) To access to the safe deposit box or compartment for any purpose.
- (b) To remove or exchange any contents of the safe deposit box or compartment.
- (c) To surrender the safe deposit box or compartment, terminate the rental contract, and discharge the lessor of the safe deposit box or compartment from liability arising from its rental.

(2) The safe deposit and collateral company, bank, industrial bank, trust company, or other lessor of the safe deposit box or compartment is protected against all renters of the safe deposit box or compartment, their assigns, heirs, executors, and administrators in recognizing the rights described in subsection (1). However, subsection (1) does not effect a transfer of title to any contents of a box or compartment from 1 renter to another.

(3) The survivor or survivors of a renter who died before October 1, 1993 has no right of access to the safe deposit box or compartment until the provisions of section 9 of the Michigan estate tax act, Act No. 188 of the Public Acts of 1899, as amended, being section 205.209 of the Michigan Compiled Laws, has been complied with.

History: 1939, Act 330, Eff. Sept. 29, 1939 ;-- CL 1948, 487.721 ;-- Am. 1994, Act 370, Imd. Eff. Dec. 27, 1994

Compiler's Notes: For provisions of section 9 of Act 188 of 1899, referred to in this section, see MCL 205.209.

U.S. DEFENSE SAVINGS BONDS

Act 146 of 1941

AN ACT to authorize banks, industrial banks and trust companies to qualify as issuing agents for the sale of United States defense savings bonds, debentures, notes or other similar obligations of the United States of America and, if required, to pledge assets for the purpose of qualifying as such agents.

History: 1941, Act 146, Imd. Eff. May 29, 1941

The People of the State of Michigan enact:

487.731 U.S. defense savings bonds; banks and trust companies authorized as issuing agent for sale of;

deposit or pledge of assets.

Sec. 1.

Any bank, any industrial bank and any trust company is authorized to qualify as issuing agent for the sale of United States defense savings bonds, debentures, notes or other similar obligations of the United States of America and may, subject to the approval of the commissioner of the banking department, deposit and/or pledge assets as may be required for the purpose of qualifying as such agent.

History: 1941, Act 146, Imd. Eff. May 29, 1941 ;-- CL 1948, 487.731

487.732 Pledging of assets; limitation of financial institutions act not otherwise affected.

Sec. 2.

This act shall not affect the limitations and restrictions of Act No. 341 of the Public Acts of 1937, as amended, with respect to the pledge of assets of the institutions herein named, except in so far as provided in this act.

History: 1941, Act 146, Imd. Eff. May 29, 1941 ;-- CL 1948, 487.732

Compiler's Notes: Act 341 of 1937, referred to in this section, was repealed by Act 174 of 1962 and Act 319 of 1969.

LOANS UNDER NATIONAL HOUSING ACT

Act 2 of 1935

AN ACT to authorize loans, advances of credit and purchases in accordance with the provisions of an act of Congress, entitled "National Housing Act," approved by the President on June 27, 1934, and any acts amendatory thereof or supplemental thereto; and prescribing the effect of this act.

History: 1935, Act 2, Imd. Eff. Feb. 20, 1935

The People of the State of Michigan enact:

487.751 National housing act; state financial institutes' authorized transactions; collateral.

Sec. 1.

Subject to such regulations as may be prescribed by the proper state supervising authority, banks, trust companies, building and loan associations, insurance companies, finance companies and other lending agencies, the character, extent or incidents of whose loans are subject to the law of this state, are authorized:

(a) To make such loans and advances of credit and purchases of obligations representing loans and advances of credit as are eligible for insurance by the federal housing administrator, and to obtain such insurance.

(b) To make such loans secured by mortgages on real property as are eligible for insurance by the federal housing administrator, and to obtain such insurance.

(c) To purchase, invest in, and dispose of, bonds or notes secured by mortgage or trust deed insured by the federal housing administrator or debentures issued by the federal housing administrator or securities issued by national mortgage associations.

Wherever, by statute of this state, collateral is required as security for the deposit of public or other funds, or deposits are required to be made with any public official or department, or any investment of capital or surplus, or a reserve or other fund, is required to be maintained consisting of designated securities, notes or bonds secured by mortgage or trust deed insured by the federal housing administrator, debentures issued by the federal housing

administrator, and obligations of national mortgage associations shall be eligible for such purposes.

History: 1935, Act 2, Imd. Eff. Feb. 20, 1935 ;-- Am. 1937, Act 245, Imd. Eff. July 21, 1937 ;-- CL 1948, 487.751

Compiler's Notes: For provisions of National Housing Act, see 12 U.S.C. § 1703 et seq.

487.752 Construction of act as to effect of state laws.

Sec. 2.

No law of this state prescribing the nature, amount or form of security or deposit, or requiring security upon which loans or advances of credit may be made, or prescribing or limiting interest rates upon loans or advances of credit, or prescribing or limiting the period for which loans or advances of credit may be made, or prescribing or limiting the investment in loans or advances of credit, shall be deemed to apply to security given, furnished or accepted, or to loans, advances of credit, or purchases made, pursuant to section 1 of this act: Provided, however, That nothing contained in this act shall, directly or indirectly, authorize or permit any institution subject to its terms to invest in loans or make advances of credit or purchase securities pursuant to section 1 hereof in an amount greater than now authorized by the respective statutes which govern the organization and management of such institutions.

History: 1935, Act 2, Imd. Eff. Feb. 20, 1935 ;-- CL 1948, 487.752

487.753 Declaration of necessity.

Sec. 3.

This act is immediately necessary for the preservation of the public welfare, peace, health and safety.

History: 1935, Act 2, Imd. Eff. Feb. 20, 1935 ;-- CL 1948, 487.753

RECEIVER OF PRIVATE BANK

Act 29 of 1932 (1st Ex. Sess.)

487.761 Repealed. 1964, Act 256, Eff. Aug. 28, 1964.

BROKERS AND EXCHANGE DEALERS

Act 160 of 1859

AN ACT relative to brokers and exchange dealers.

History: 1859, Act 160, Eff. May 18, 1859

The People of the State of Michigan enact:

487.801 Certificate of brokers; necessity; filing with county clerk; contents; public inspection.

Sec. 1.

That no person or persons shall be engaged in the business of a broker, or of buying or selling current or uncurrent money, or bank notes, or in the exchange thereof, or in the buying or selling exchange, or in the exchange of coins, or in the receiving of deposits of money or bank notes, as such broker or exchange dealer, unless such person or persons shall first make and file with the county clerk of the county in which such broker's office is or shall be located, a certificate in writing, to be signed by each, and verified by the affidavit of 1 of the members of said copartnership or company, setting forth the full name of each and every person composing the said firm, and the residence of each, the name and style of the firm, the terms of said partnership, and the length of time for which it is to continue, if limited by the partnership contract, and also the locality of their place of business; which certificate shall be kept in the office of the said county clerk, as a public document, and open to the inspection of any person.

History: 1859, Act 160, Eff. May 18, 1859 ;-- CL 1871, 1625 ;-- How. 3128 ;-- CL 1897, 5271 ;-- CL 1915, 6715 ;-- CL 1929, 9710 ;-- CL 1948, 487.801

487.802 Certificate of brokers; new certificate, cause, prior liability.

Sec. 2.

In case there shall be, at any time after the making and filing of said certificate, any change in the name or style of said firm, or in the terms of their partnership, then a new certificate, verified as before specified, shall in like manner be filed, as required by section 1 of this act, before such change shall take effect; and until such new certificate shall have been made and filed, as above specified, the individual member or members of the firm, as set forth in the certificate on file, shall be held to be the actual members of the firm, and in all respects holden and liable for any obligation, debt or liability, incurred by the said company, as brokers or exchange dealers.

History: 1859, Act 160, Eff. May 18, 1859 ;-- CL 1871, 1626 ;-- How. 3129 ;-- CL 1897, 5272 ;-- CL 1915, 6716 ;-- CL 1929, 9711 ;-- CL 1948, 487.802

487.803 Certificate of brokers; evidence of facts.

Sec. 3.

A certified copy of the said certificate on file in the county clerk's office, signed by the county clerk, and attested by the seal of the circuit court of the county, shall be held to be good and sufficient evidence of any or all the facts in said certificate, stated and set forth.

History: 1859, Act 160, Eff. May 18, 1859 ;-- CL 1871, 1627 ;-- How. 3130 ;-- CL 1897, 5273 ;-- CL 1915, 6717 ;-- CL 1929, 9712 ;-- CL 1948, 487.803

487.804 Violation of act; penalty.

Sec. 4.

If any person shall carry on, or be engaged in carrying on, the business of a broker or exchange dealer, contrary to the provisions of this act, such person shall be deemed guilty of a misdemeanor, and on conviction thereof, shall

be punished by fine not less than 100 dollars, nor more than 1,000 dollars, at the discretion of the court.

History: 1859, Act 160, Eff. May 18, 1859 ;-- CL 1871, 1628 ;-- How. 3131 ;-- CL 1897, 5274 ;-- CL 1915, 6718 ;-- CL 1929, 9713 ;-- CL 1948, 487.804

487.806 Advertisement or representation of nature of business; violation, penalty; exception.

Sec. 6.

No person or firm doing business under this act shall advertise or put up signs, or use any device or contrivance whatever, tending to convey the impression that the place of business of such person or firm is an organized bank; but in all such cases such person or firm, if they advertise at all, must use their individual or firm name, and state in such advertisement the names of every member of such co-partnership or firm; in case any person or persons shall violate any of the provisions of this section, they shall be deemed guilty of a misdemeanor, and shall each, upon conviction, be punished by a fine of not more than 200 dollars and costs, or by imprisonment of not more than 6 months in the county jail: Provided, The words "bank," "banking office," or "exchange office," as a sign over the door or on the building, or used on notes, checks, or drafts, in connection with the individual or firm name, shall not be deemed a violation of the foregoing.

History: Add. 1875, Act 126, Eff. Aug. 3, 1875 ;-- How. 3133 ;-- CL 1897, 5275 ;-- CL 1915, 6720 ;-- CL 1929, 9715 ;-- CL 1948, 487.806

487.807 Violation of act; procedure for collection of penalties.

Sec. 7.

The state treasurer shall, when his attention is called to violations of any of the provisions of this act, refer the same to the attorney general, who shall proceed, when warranted by the evidence, to collect the penalties as herein set forth; and all suits or proceedings for the violation of any of the provisions of this act shall be first commenced in the circuit court of the county in which the business office of said person or firm is located.

History: Add. 1875, Act 126, Eff. Aug. 3, 1875 ;-- How. 3134 ;-- CL 1897, 5276 ;-- CL 1915, 6721 ;-- CL 1929, 9716 ;-- CL 1948, 487.807

DEVELOPMENT CREDIT CORPORATIONS

Act 158 of 1956

487.831-487.848 Repealed. 1963, Act 117, Eff. Sept. 6, 1963.

BUSINESS DEVELOPMENT CORPORATIONS

Act 117 of 1963

487.851-487.867 Repealed. 1986, Act 89, Imd. Eff. May 1, 1986.

MICHIGAN BUSINESS DEVELOPMENT CORPORATION

Act 76 of 1979

487.871-487.891 Expired. 1979, Act 76, Eff. Dec. 31, 1983.

SALE OF CHECKS ACT

Act 136 of 1960

487.901-487.916 Repealed. 1992, Act 73, Imd. Eff. June 2, 1992;--2006, Act 250, Imd. Eff. July 3, 2006.

COSTS OF REGULATION OF FINANCIAL ORGANIZATIONS AND FINANCE COMPANIES

Act 355 of 1976

487.931-487.937 Expired. 1976, Act 355, Eff. Oct. 1, 1977.

SUSPENSION OF BUSINESS OF BANKS AND SAVINGS AND LOAN ASSOCIATIONS

Act 232 of 1978

AN ACT to permit financial institutions to suspend business in the event of an existing or impending emergency; to prescribe the powers and duties of financial institution officers and certain state agencies and officials; and to declare the legal effect of the suspensions of business authorized by this act.

History: 1978, Act 232, Imd. Eff. June 14, 1978 ;-- Am. 2006, Act 134, Imd. Eff. May 12, 2006

The People of the State of Michigan enact:

487.941 Definitions.

Sec. 1.

As used in this act:

(a) "Commissioner" means the commissioner of the office of financial and insurance services in the department of labor and economic growth.

(b) "Emergency" means a condition or occurrence that has or may, directly or indirectly, interfere physically with the conduct of normal business operations of 1 or more offices of a financial institution, or which poses an imminent or existing threat to the safety and security of a person or property, or both. An emergency may arise as a result of a fire, flood, earthquake, hurricane, tornado, wind, rain, snowstorm, labor dispute or strike, power failure, transportation failure, fuel shortage, interruption of a communication facility, shortage of housing or food, robbery or attempted robbery, actual or threatened enemy or terrorist attack, epidemic or other catastrophe, riot, civil

commotion, or any other act of lawlessness or violence.

(c) "Financial institution" means a state chartered bank, savings bank, credit union, or savings and loan association over which the commissioner has regulatory authority for purposes of this act.

(d) "Office" means a place at which a financial institution transacts its business or conducts operations related to its business.

(e) "Officer" means a person designated by the board of directors of a financial institution to carry out this act.

History: 1978, Act 232, Imd. Eff. June 14, 1978 ;-- Am. 2006, Act 134, Imd. Eff. May 12, 2006

487.942 Authorizing or ordering financial institutions to close offices because of existing or impending emergency; duration; advising governor; authorization to close financial institution on day of national mourning, rejoicing, or other special observance.

Sec. 2.

(1) The commissioner may authorize or order a financial institution to close an office or offices if the commissioner determines that the action is required because an emergency exists or may be impending. The office or offices closed shall remain closed until the commissioner determines that the emergency is ended and authorizes or orders the financial institution to open the office or offices. The commissioner shall promptly advise the governor of the issuance of a determination under this subsection.

(2) The commissioner may authorize a financial institution to close on a day designated by proclamation of the president of the United States or the governor of this state as a day of national mourning, rejoicing, or other special observance.

History: 1978, Act 232, Imd. Eff. June 14, 1978 ;-- Am. 2006, Act 134, Imd. Eff. May 12, 2006

487.943 Determination not to open or to close office of financial institution during emergency.

Sec. 3.

If the commissioner has not made a determination under section 2(1) and the chief executive officer of a financial institution or another officer designated by the financial institution for purposes of this act determines that an emergency exists or is impending, the officer may order that an office or offices of the financial institution be closed or not open.

History: 1978, Act 232, Imd. Eff. June 14, 1978 ;-- Am. 2006, Act 134, Imd. Eff. May 12, 2006

487.944 Notice of closing.

Sec. 4.

(1) A financial institution closing or not opening an office or offices under section 3 shall give notice to the commissioner and any other appropriate governmental entity as required by law.

(2) A financial institution that closes or does not open an office or offices under section 3 shall reopen the office or offices as soon as the chief executive officer or other designated officer determines that the emergency is ended or as authorized or ordered by the commissioner.

History: 1978, Act 232, Imd. Eff. June 14, 1978 ;-- Am. 2006, Act 134, Imd. Eff. May 12, 2006

487.945 Period financial institution closed as legal holiday.

Sec. 5.

The period during which a financial institution is closed under this act is a legal holiday.

History: 1978, Act 232, Imd. Eff. June 14, 1978 ;-- Am. 2006, Act 134, Imd. Eff. May 12, 2006

487.946 Obligations to employees not altered.

Sec. 6.

This act does not alter any of the obligations under law of a financial institution to its employees or to the employees of another employer.

History: 1978, Act 232, Imd. Eff. June 14, 1978 ;-- Am. 2006, Act 134, Imd. Eff. May 12, 2006

MONEY TRANSMISSION SERVICES ACT

Act 250 of 2006

AN ACT to regulate the money transmission services business; to require the licensing of persons engaged in providing money transmission services; to prescribe powers and duties of certain state agencies and officials; to prescribe penalties and provide remedies; and to repeal acts and parts of acts.

History: 2006, Act 250, Imd. Eff. July 3, 2006

The People of the State of Michigan enact:

487.1001 Short title.

Sec. 1.

This act shall be known and may be cited as the "money transmission services act".

History: 2006, Act 250, Imd. Eff. July 3, 2006

487.1002 Definitions; A to L.

Sec. 2.

As used in this act:

(a) "Agency" or "department" means the department of insurance and financial services.

- (b) "Agent of a payee" means a person appointed by a payee to collect and process payments as the bona fide agent of the payee.
- (c) "Applicant" means a person that files an application for a license under this act.
- (d) "Authorized delegate" means a person that a licensee designates to provide money transmission services in this state on behalf of the licensee.
- (e) "Closed-loop prepaid access" means access to funds or the value of funds that is paid in advance, may be retrieved or transferred at some time in the future through a device or vehicle, and may be used only to acquire goods or services in transactions that involve 1 or more specific merchants or 1 or more specific locations.
- (f) "Commissioner" or "director" means the director of the department or his or her designee.
- (g) "Control" means any of the following:
 - (i) Ownership of, or the power to vote, directly or indirectly, at least 25% of a class of voting securities or voting interests of a licensee or person in control of a licensee.
 - (ii) Power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority of a licensee or person in control of a licensee.
 - (iii) The power to exercise directly or indirectly a controlling influence over the management or policies of a licensee or person in control of a licensee.
- (h) "Control person" means a director, manager, or executive officer of a licensee or applicant or an individual who has the authority to participate in the direction, directly or indirectly through 1 or more other individuals, of the management or policies of a licensee or applicant.
- (i) "Depository financial institution" means a bank, national bank, savings and loan association, savings bank, or credit union organized under the laws of this state, another state, the District of Columbia, the United States, or a territory or protectorate of the United States whose deposits are insured by an agency of the federal government.
- (j) "Device or vehicle" means an object or information used to provide closed-loop prepaid access or prepaid access, such as a card, code, electronic serial number, mobile identification number, or personal identification number. A device or vehicle may be in either tangible or electronic form.
- (k) "Executive officer" means an officer, member, or partner of a licensee, including, but not limited to, a chief executive officer, president, vice president, chief financial officer, controller, compliance officer, or any other similar position.
- (l) "Financial licensing act" means any of the financial licensing acts, as that term is defined in section 2 of the consumer financial services act, 1988 PA 161, MCL 487.2052.
- (m) "Licensee" means a person that is licensed or required to be licensed under this act.
- (n) "Location" means a place of business at which activities regulated by this act occur.

History: 2006, Act 250, Imd. Eff. July 3, 2006 ;-- Am. 2018, Act 573, Eff. Mar. 28, 2019

487.1003 Definitions; M to T.

Sec. 3.

As used in this act:

- (a) "Material litigation" means litigation that, according to generally accepted accounting principles, is significant to an applicant's or a licensee's financial health and must be disclosed in the applicant's or licensee's audited financial statements, report to shareholders, or similar records.
- (b) "Money" means a medium of exchange authorized or adopted by the United States or a foreign government as a part of its currency that is customarily used and accepted as a medium of exchange in the country of issuance. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between 2 or more governments.
- (c) "Money transmission services" means selling or issuing payment instruments or closed-loop prepaid access or prepaid access devices or vehicles or receiving money or monetary value for transmission. The term does not include the provision solely of delivery, online, or telecommunications services or network access.
- (d) "Outstanding payment instrument" means any check, draft, money order, travelers check, other written instrument, electronic or wire transfer, closed-loop prepaid access or prepaid access device or vehicle, or facsimile issued by a licensee that has been sold in the United States directly by the licensee or any payment instrument issued by the licensee that has been sold by the licensee or an authorized delegate in the United States, that has been reported to the licensee as having been sold, and that has not yet been paid by or for the licensee.
- (e) "Payee" means the provider of goods or services, not including money transmission services, that is owed payment of money or other monetary value from the person that is paying for the goods or services.

(f) "Payment instrument" means any electronic or written check, draft, money order, travelers check, or other wire, electronic, or written instrument or order for the transmission or payment of money, sold or issued to 1 or more persons, whether or not the instrument is negotiable. The term includes any closed-loop prepaid access or prepaid access device or vehicle. The term does not include any credit card voucher, letter of credit, or tangible object redeemable by the issuer in goods or services.

(g) "Person" means an individual, partnership, association, corporation, limited liability company, trust, estate, joint venture, government, governmental subdivision, agency or instrumentality, public corporation, or any other legal entity.

(h) "Prepaid access" means access to funds or the value of funds that have been paid in advance and can be retrieved or transferred at some point in the future through a device or vehicle. The term does not include closed-loop prepaid access.

(i) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(j) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or protectorate of the United States.

(k) "Travelers check" means an instrument for the payment of money or a foreign currency instrument in any denomination that provides for both of the following:

- (i) A specimen signature of the purchaser to be completed at the time of purchase of the instrument.
- (ii) A countersignature of the purchaser to be completed when the instrument is negotiated.

History: 2006, Act 250, Imd. Eff. July 3, 2006 ;-- Am. 2018, Act 573, Eff. Mar. 28, 2019

487.1004 Applicability of act.

Sec. 4.

This act does not apply to any of the following:

- (a) The United States or a department, agency, or instrumentality of the United States.
- (b) The United States Postal Service or a contractor to the extent that it provides money transmission services on behalf of the United States Postal Service.
- (c) A state, county, city, or any other governmental subdivision of a state.
- (d) A depository financial institution, office of an international banking corporation, or branch of a foreign bank; a bank holding company or subsidiary, as those terms are defined in section 2(a)(1) and 2(d) of the bank holding company act of 1956, 12 USC 1841; a bank service company organized under the bank service company act, 12 USC 1861 to 1867; a subsidiary or affiliate of a depository financial institution, or a subsidiary or affiliate of a holding company of a depository financial institution, if the depository financial institution maintains its main office or a branch office in this state; a credit union service organization, as that term is defined in section 102 of the credit union act, 2003 PA 215, MCL 490.102; or a corporation organized under the Edge act, 12 USC 611 to 633.
- (e) A person, to the extent that it provides money transmission services as an agent for an entity described in subdivision (d), if both of the following are met:
 - (i) The agency relationship between the person that is providing the money transmission services and the entity described in subdivision (d) is established through written agreement.
 - (ii) The entity described in subdivision (d) remains responsible for providing the money transmission services to its customers.
- (f) A person to the extent that it issues, sells, or distributes a closed-loop prepaid access device or vehicle, if the funds associated with that device or vehicle do not exceed \$2,000.00 maximum value on any day.
- (g) A person to the extent that it is acting as an agent of a payee, if the person demonstrates to the director that all of the following are met:
 - (i) There exists a written agreement between the payee and agent directing the agent to collect and process payments on the payee's behalf.
 - (ii) The payee holds the agent out to the public as accepting payments on the payee's behalf.
 - (iii) Payment is treated as received by the payee at the time it is received by the agent.
- (h) An electronic funds transfer of governmental benefits for a federal, state, county, or governmental agency by a contractor on behalf of the United States or a department, agency, or instrumentality of the United States or a state or governmental subdivision, agency, or instrumentality of a state.
- (i) A board of trade that is designated as a contract market under the commodity exchange act, 7 USC 1 to 27f, or a person that in the ordinary course of business provides clearance and settlement services for a board of trade,

to the extent of its operation as or for that board.

(j) A registered futures commission merchant under the federal commodities laws, to the extent of its operation as a merchant.

(k) A person that provides clearance or settlement services under a registration as a clearing agency or an exemption from registration granted under the federal securities laws, to the extent of its operation as a provider under this subdivision.

(l) An operator of a payment system, to the extent that it provides processing, clearing, settlement, or other similar services between or among persons excluded under this section in connection with wire transfers, credit card transactions, debit card transactions, prepaid access transactions, closed-loop prepaid access transactions, automated clearinghouse transfers, or other similar funds transfers or transactions.

(m) A person that is registered as a securities broker-dealer under federal or state securities laws, to the extent of its operation as a registered broker-dealer.

History: 2006, Act 250, Imd. Eff. July 3, 2006 ;-- Am. 2018, Act 573, Eff. Mar. 28, 2019

487.1011 Money transmission services; license required; exception.

Sec. 11.

(1) Except as otherwise provided in this section and subject to section 4, a person shall not provide money transmission services in this state after December 31, 2006 without a license under this act or a class I license issued under the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072.

(2) A person licensed under the sale of checks act, 1960 PA 136, MCL 487.901 to 487.916, on the day before the effective date of this act may continue to provide money transmission services under that license until December 31, 2006.

(3) A license under this act is not required for a person to act as an authorized delegate of a person licensed under this act.

History: 2006, Act 250, Imd. Eff. July 3, 2006

487.1012 License application; form; information required.

Sec. 12.

(1) A person applying for a license under this act shall apply on a form and in a medium prescribed by the commissioner. The application shall include all of the following information:

(a) The legal name and residential and business addresses of the applicant and any assumed or trade name used by the applicant in conducting its money transmission services business.

(b) A list of any criminal convictions of the applicant and any material litigation in which the applicant was involved in the 10-year period preceding the submission of the application.

(c) A description of any money transmission services previously provided by the applicant and the money transmission services that the applicant intends to provide in this state.

(d) A list of the applicant's proposed authorized delegates and the locations in this state where the applicant and its authorized delegates propose to engage in providing money transmission services.

(e) A list of all other states in which the applicant is licensed to engage in providing money transmission services and any license revocations, suspensions, or other disciplinary action taken against the applicant in any other state.

(f) Information concerning any bankruptcy or receivership proceedings affecting the applicant.

(g) The name and address of any depository financial institution through which the applicant's payment instrument will be paid.

(h) A description of the source of money and credit to be used by the applicant to provide money transmission services.

(i) Any other information the commissioner reasonably requires with respect to the applicant.

(2) If an applicant is not a natural person, the applicant shall also provide all of the following information with

the application:

- (a) The date of the applicant's incorporation or formation and state or country of incorporation or formation.
- (b) A brief description of the structure or organization of the applicant, including any parent or subsidiary of the applicant, and whether the applicant or a parent or subsidiary of the applicant is publicly traded.
- (c) The name, all assumed or trade names, and all business addresses of the applicant.
- (d) The name, all assumed or trade names, all business and residential addresses, and the employment history for the 10-year period preceding the submission of the application of each control person of the applicant.
- (e) A list of any criminal convictions and material litigation in which any control person of the applicant has been involved in the 10-year period preceding the submission of the application.
- (f) If the applicant is publicly traded, a copy of the most recent report filed with the securities and exchange commission under section 13 of the federal securities exchange act of 1934, 15 USC 78m.
- (g) If the applicant is a wholly owned subsidiary of a corporation publicly traded in the United States, a copy of financial statements for the parent corporation for the most recent fiscal year or a copy of the parent corporation's most recent report filed under section 13 of the federal securities exchange act of 1934, 15 USC 78m.
- (h) If the applicant is a wholly owned subsidiary of a corporation publicly traded outside the United States, a copy of any documentation similar to that described in subdivision (g) that is filed with the regulator of the parent corporation's domicile outside the United States.
- (i) If the applicant has a registered agent in this state, the name and address of that registered agent.
- (j) Any other information the commissioner reasonably requires with respect to the applicant.

History: 2006, Act 250, Imd. Eff. July 3, 2006

487.1013 Financial statements; net worth; qualification to do business; application fee; surety bond; aggregate liability of surety; limitation.

Sec. 13.

(1) At the time of filing an application for a license under this act, an applicant shall provide the commissioner with copies of the applicant's financial statements for the most recent fiscal year and, if available, for the 2-year period preceding the submission of the application. The financial statements shall meet all of the following:

- (a) If subdivision (b) does not apply, show that the applicant's net worth exceeds \$100,000.00.
- (b) If the applicant intends to engage in providing money transmission services in this state at more than 1 location or through authorized delegates, show that the applicant has a net worth that equals or exceeds either the sum of \$100,000.00 plus an additional \$25,000.00 for each location or authorized delegate, as applicable, or \$1,000,000.00, whichever is less.

(c) Are in the form prescribed by the commissioner, except that financial statements prepared by or reviewed by an independent certified public accountant may be in the form prescribed by that accountant.

(d) Are prepared in accordance with generally accepted accounting principles.

(2) A licensee shall at all times maintain a net worth that meets the amounts described in subsection (1) for its money transmission services business.

(3) At the time of the filing of an application and at all times after a license is issued, an applicant shall be registered, if required, or otherwise qualified to do business in this state.

(4) An applicant shall include with an application for a license under this act a nonrefundable application fee established by the commissioner under section 15.

(5) An applicant shall include with an application for a license under this act a surety bond that meets all of the following:

(a) Is issued by a bonding company or insurance company authorized to do business in this state and expires no earlier than the date the license expires.

(b) Is in a principal amount of at least \$500,000.00 and not more than \$1,500,000.00. The commissioner shall determine the principal amount of this bond based on the number of locations and authorized delegates of the applicant in this state.

(c) Is in a form satisfactory to the commissioner, is payable to the commissioner for the benefit of any individuals who are Michigan residents and who are creditors or claimants of the applicant and its authorized delegates through purchase of a payment instrument from the applicant or an authorized delegate located in this state, and secures the faithful performance of the obligations of the applicant and its authorized delegates with respect to the receipt of money in connection with the conduct of its money transmission services business.

(6) The aggregate liability of a surety under a bond issued for purposes of subsection (5) shall not exceed the

principal amount of the bond.

History: 2006, Act 250, Imd. Eff. July 3, 2006

487.1014 Investigation; completed application; time period; issuance of license; fee; extension of time period; denial; request for hearing.

Sec. 14.

(1) When the commissioner receives a completed application for a license under this act, the commissioner shall investigate the financial condition and responsibility, financial and business experience, character, and general fitness of the applicant and may reasonably conduct a similar investigation of each control person of the applicant under this subsection. The commissioner may conduct an on-site investigation of the applicant.

(2) When the commissioner determines that an application for a license under this act is complete, the commissioner shall promptly notify the applicant in writing of the date on which he or she determined that the application was complete and shall approve or deny the application within 120 days after that date. Subject to subsection (5), if the commissioner does not approve or deny an application within that 120-day period, the commissioner shall issue the license.

(3) The commissioner shall issue a license to an applicant under this act if the commissioner determines all of the following:

(a) That the applicant has complied with sections 12, 13, and 16.

(b) That the financial condition and responsibility, financial and business experience, character, and general fitness of the applicant and the experience, character, and general fitness of each control person and any shareholders of the applicant meet the requirements of this act.

(c) That the applicant commands the confidence of the public and warrants the belief that the applicant and its executive officers will comply with the law.

(d) That the applicant has paid the license fee under subsection (4).

(4) If an application for a license is approved under this section, the licensee shall pay a license fee in an amount established by the commissioner under section 15 within 30 days after the date of approval.

(5) The commissioner may for good cause extend the 120-day time period described in subsection (2).

(6) An applicant whose application is denied by the commissioner under this act may appeal within 30 days after the date of the notice of the denial and request a hearing on the denial.

History: 2006, Act 250, Imd. Eff. July 3, 2006

487.1015 Fee schedule; expiration and renewal of license.

Sec. 15.

(1) By December 31 of each year, the commissioner shall establish a schedule of fees to be paid by applicants and licensees during the next calendar year. In establishing license fees, the commissioner shall consider each licensee's business volume and number of locations and any other business factors he or she considers reasonable in order to generate funds sufficient to pay, but not to exceed, the office's reasonably anticipated costs of administering this act.

(2) A license issued under this act expires on December 31 of each year unless earlier suspended, surrendered, or revoked under this act. A licensee may renew a license by filing an application for a license renewal, in the form and medium prescribed by the commissioner, and paying the license fee for the renewal year, on or before the December 1 preceding the renewal year. The commissioner shall not renew a license if the license fee for the renewal term is not paid.

History: 2006, Act 250, Imd. Eff. July 3, 2006

487.1016 Travel expenses; recovery of fees and fines; collection; disposition.

Sec. 16.

(1) In addition to any fees established by the commissioner, a licensee shall pay the actual travel, lodging, and meal expenses incurred by any agency employee who travels outside of this state to examine the records of the licensee or investigate the licensee. An agency employee who incurs expenses under this subsection shall comply with any applicable provisions of the standardized travel regulations issued by the department of management and budget and civil service commission.

(2) If any fees or fines provided for in this act are not paid when required, the commissioner may maintain an action against the licensee for the recovery of the fees or fines, interest, costs, and reasonable legal fees.

(3) The fees and civil and administrative fines collected under this act shall be paid into the state treasury to the credit of the agency and used only for the operation of the agency.

History: 2006, Act 250, Imd. Eff. July 3, 2006

487.1021 Information obtained in examination or investigation; disclosure prohibited.

Sec. 21.

The commissioner may conduct an examination or investigation of a licensee or any of its authorized delegates. Except as provided in section 26, the commissioner and the agency shall not disclose information obtained in an examination or investigation.

History: 2006, Act 250, Imd. Eff. July 3, 2006

487.1022 Joint examination or investigation.

Sec. 22.

(1) The commissioner may conduct an on-site examination or investigation of records maintained under section 25, including a joint examination or investigation conducted with representatives of other departments or agencies of this state, 1 or more agencies of another state, or of the federal government.

(2) The commissioner may accept an examination or investigation report of a department or agency of this state or of another state or of the federal government or a report prepared by a certified public accountant instead of conducting an examination or investigation.

(3) A joint examination or investigation or an acceptance of an examination or investigation report under this section does not preclude the commissioner from conducting his or her own examination or investigation.

(4) The report of a joint investigation or an examination report accepted by the commissioner under this section is an official report of the commissioner for all purposes.

History: 2006, Act 250, Imd. Eff. July 3, 2006

487.1023 Changed information; filing; events requiring filing of report.

Sec. 23.

(1) If there is a change in any information provided in a licensee's initial or renewal application, the licensee shall file the changed information with the commissioner before the change occurs, unless the commissioner prescribes a different deadline for filing the changed information that is not later than 5 business days after the change occurs. The commissioner shall consider whether it is feasible for the licensee to file the changed information before the change occurs in prescribing a different deadline.

(2) A licensee that submits a renewal application to the commissioner shall include with the application a current list of the names and street addresses of each authorized delegate and location in this state where the licensee or authorized delegates of the licensee provide money transmission services.

(3) A licensee shall file a report with the agency within 3 business days after the licensee has reason to know of the occurrence of any of the following events:

(a) The filing of a petition by or against the licensee under the bankruptcy code, 11 USC 101 to 1330, for bankruptcy or reorganization.

(b) The filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for the licensee's dissolution or reorganization, or the making of a general assignment for the benefit of its creditors.

(c) The commencement of a proceeding to revoke or suspend a license of the licensee in this state, another state, or a country in which the licensee engages in business or is licensed.

(d) A charge or conviction of the licensee or of an executive officer, manager, director, or control person of the licensee for a felony.

(e) A charge or conviction of an authorized delegate for a felony.

History: 2006, Act 250, Imd. Eff. July 3, 2006

487.1024 Proposed change of control of licensee; request for approval; additional information; approval by commissioner; determination.

Sec. 24.

(1) If there is a proposed change of control of a licensee, the licensee shall do all of the following:

(a) Give the commissioner written notice of a proposed change of control 30 days or more before the proposed change of control.

(b) Request approval of the proposed change of control.

(c) Pay a nonrefundable fee with the notice, in an amount prescribed by the commissioner.

(2) After review of a request for approval under subsection (1), the commissioner may require the licensee to provide additional information concerning each proposed control person of the licensee. However, the commissioner shall only require that the licensee provide additional information of the same type required of the licensee or any control person of the licensee as part of the licensee's original license or renewal application.

(3) The commissioner shall approve a request for change of control under subsection (1) if, after investigation, the commissioner determines that the person or group of persons requesting approval has the experience, character, and general fitness to operate the licensee in a lawful and proper manner.

(4) Subsection (1) does not apply to a public offering of securities.

History: 2006, Act 250, Imd. Eff. July 3, 2006

487.1025 Records.

Sec. 25.

(1) A licensee or any person subject to this act shall maintain all of the following records for at least 3 years:

(a) A record of each payment instrument from the date it was created.

(b) A general ledger posted at least monthly containing all asset, liability, capital, income, and expense accounts.

(c) Bank statements and bank reconciliation records.

(d) Records of outstanding payment instruments.

- (e) Records of each payment instrument paid within the 3-year period.
 - (f) A list of the last known names and addresses of all of the licensee's authorized delegates.
 - (g) Any other records the commissioner reasonably requires.
- (2) The records described in subsection (1) may be stored on any tangible medium or in any electronic or other medium that is immediately retrievable in perceivable form.
- (3) A licensee or other person may maintain the records described in subsection (1) outside of this state if they are made accessible to the commissioner.

History: 2006, Act 250, Imd. Eff. July 3, 2006

487.1026 Disclosure of information.

Sec. 26.

- (1) The commissioner, each former commissioner, and each current and former deputy, agent, and employee of the agency shall keep secret all facts and information obtained in the course of their duties, unless that person is required under law to report on, take official action concerning, or testify in any proceedings regarding a licensee or the activities of a licensee.
- (2) This section does not apply to, and does not prohibit the furnishing of information or documents to, any federal, foreign, or out-of-state regulatory agency with jurisdiction over a licensee and is not applicable to any disclosure made in the public interest by the commissioner, at his or her discretion.

History: 2006, Act 250, Imd. Eff. July 3, 2006

487.1031 Permissible investments.

Sec. 31.

- (1) A licensee shall maintain at all times permissible investments that have a market value computed in accordance with generally accepted accounting principles of not less than the aggregate amount of all of its outstanding payment instruments issued or sold and money transmitted by the licensee.
- (2) The commissioner may limit the extent to which a type of investment within a class of permissible investments is considered a permissible investment by any licensee, except for money and certificates of deposit issued by a depository financial institution. The commissioner by order or declaratory ruling may allow other types of investments that the commissioner determines to have a safety substantially equivalent to other permissible investments.
- (3) Even if commingled with other assets of a licensee, permissible investments are held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments in the event of bankruptcy or receivership of the licensee.
- (4) As used in this section, "permissible investments" means the investments described in section 32 or allowed by the commissioner under subsection (2).

History: 2006, Act 250, Imd. Eff. July 3, 2006

487.1032 Investments permitted under MCL 487.1031; limitation.

Sec. 32.

- (1) Except to the extent otherwise limited by the commissioner under section 31(2), each of the following

investments is permissible under section 31:

- (a) Cash, a certificate of deposit, or a senior debt obligation of a federally insured depository financial institution.
- (b) A banker's acceptance or bill of exchange that is eligible for purchase upon endorsement by a member bank of the federal reserve system and is eligible for purchase by a federal reserve bank.
- (c) An investment bearing a rating of 1 of the 3 highest grades as defined by a nationally recognized organization that rates securities.
- (d) An investment security that is an obligation of the United States or a department, agency, or instrumentality of the United States; an investment in an obligation that is guaranteed fully as to principal and interest by the United States; or an investment in an obligation of a state or a governmental subdivision, agency, or instrumentality of a state.
- (e) A receivable that is payable to a licensee from its authorized delegate, in the ordinary course of business, pursuant to contracts that are not past due or doubtful of collection, if the aggregate amount of receivables under this subdivision does not exceed 20% of the total permissible investments of a licensee and the licensee does not hold at 1 time receivables under this subdivision in any 1 person aggregating more than 10% of the licensee's total permissible investments.
- (f) A share or a certificate issued by an open-end management investment company that is registered with the United States securities and exchange commission under the investment company act of 1940, 15 USC 80a-1 to 80a-64, and whose portfolio is restricted by the management company's investment policy to investments specified in subdivisions (a) to (d).

(2) Subject to subsection (3), the following investments are permissible under section 31, but only to the extent specified:

- (a) An interest-bearing bill, note, bond, or debenture of a person whose equity shares are traded on a national securities exchange or on a national over-the-counter market, if the aggregate of investments under this subdivision does not exceed 20% of the total permissible investments of a licensee and the licensee does not at 1 time hold investments under this subdivision in any 1 person aggregating more than 10% of the licensee's total permissible investments.
- (b) A share of a person traded on a national securities exchange or a national over-the-counter market or a share or a certificate issued by an open-end management investment company that is registered with the United States securities and exchange commission under the investment company act of 1940, 15 USC 80a-1 to 80a-64, and whose portfolio is restricted by the management company's investment policy to shares of a person traded on a national securities exchange or a national over-the-counter market, if the aggregate of investments under this subdivision does not exceed 20% of the total permissible investments of a licensee and the licensee does not at 1 time hold investments in any 1 person aggregating more than 10% of the licensee's total permissible investments.
- (c) A demand-borrowing agreement made to a corporation or a subsidiary of a corporation whose securities are traded on a national securities exchange, if the aggregate of the amount of principal and interest outstanding under demand-borrowing agreements under this subdivision does not exceed 20% of the total permissible investments of a licensee and the licensee does not at 1 time hold principal and interest outstanding under demand-borrowing agreements under this subdivision with any 1 person aggregating more than 10% of the licensee's total permissible investments.
- (d) Any other investment the commissioner designates by order or declaratory ruling, to the extent specified by the commissioner.

(3) The aggregate of investments under subsection (2) may not exceed 50% of the total permissible investments of a licensee calculated under section 31.

History: 2006, Act 250, Imd. Eff. July 3, 2006

487.1033 Agreement between licensee and authorized delegate.

Sec. 33.

(1) An agreement between a licensee and an authorized delegate shall be in writing and require the authorized delegate to operate in compliance with this act and other applicable law. The licensee shall furnish in writing to each authorized delegate policies and procedures sufficient for compliance with this act and other applicable law.

(2) An authorized delegate shall remit all money owing to the licensee in accordance with the terms of the agreement between the licensee and the authorized delegate.

(3) If a license is suspended or revoked, the commissioner shall notify the licensee and order the licensee to send a notice to its authorized delegates directing them to cease providing money transmission services on behalf of the

licensee, and the authorized delegate shall immediately cease providing money transmission services as an authorized delegate of the licensee.

(4) An authorized delegate shall not provide money transmission services outside the scope of activity permissible under the agreement between the authorized delegate and the licensee, except activity in which the authorized delegate is otherwise authorized to engage. An authorized delegate of a licensee holds all money received from providing money transmission services, reduced by any fees owed to the authorized delegate by the licensee, in escrow for the benefit of the licensee.

(5) As used in this section, "remit" means to make direct payments of money to a licensee or its representative authorized to receive money or to deposit money in a depository financial institution in an account specified by the licensee.

History: 2006, Act 250, Imd. Eff. July 3, 2006

487.1034 Authorized delegate; prohibited conduct; duties.

Sec. 34.

(1) An authorized delegate shall not make any fraudulent or false statement or misrepresentation to a customer or licensee or to the commissioner.

(2) An authorized delegate shall perform money transmission services lawfully and in accordance with the licensee's operating policies and procedures provided to the authorized delegate.

(3) All funds received by an authorized delegate from the sale of a payment instrument, less fees, shall be held in trust for the licensee from the time the funds are received by the authorized delegate until the time the funds are remitted to the licensee.

(4) If an authorized delegate commingles any of the funds received with any other funds or property owned or controlled by the authorized delegate, all commingled funds and other property are impressed with a trust for the licensee in an amount equal to the amount of the funds due the licensee.

(5) An authorized delegate shall report to the licensee the theft or loss of a payment instrument within 24 hours after the theft or loss.

History: 2006, Act 250, Imd. Eff. July 3, 2006

487.1041 Denying, suspending, not renewing, or revoking license; placing license in receivership; revoking designation of authorized delegate; conditions.

Sec. 41.

(1) The commissioner may deny, suspend, not renew, or revoke a license, place a licensee in receivership, or order a licensee to revoke the designation of an authorized delegate if any of the following occur:

(a) The licensee violates this act, a rule promulgated under this act, an order or declaratory ruling issued under this act, or any applicable state or federal law.

(b) The licensee does not grant access to its books and records during the course of an examination or investigation by the commissioner.

(c) The licensee engages in fraud, intentional misrepresentation, or gross negligence.

(d) An authorized delegate of the licensee is convicted of a violation of a state or federal anti-money-laundering statute or violates a rule promulgated or an order or ruling issued under this act, as a result of the licensee's knowing or willful misconduct.

(e) The experience, character, or general fitness of the licensee, authorized delegate, or control person indicates that it is not in the public interest to permit the person to provide money transmission services.

(f) Subject to subsection (2), the licensee engages in an unsafe or unsound practice.

(g) The licensee fails to maintain the minimum net worth required under section 13(1) or is insolvent, suspends payment of its obligations, or makes a general assignment for the benefit of its creditors.

(h) The licensee does not remove an authorized delegate after the commissioner issues and serves upon the

licensee an order that includes a finding that the authorized delegate has violated this act.

(2) In determining whether a licensee is engaging in an unsafe or unsound practice, the commissioner may consider the size and condition of the licensee's money transmission services business, the magnitude of the loss, the gravity of the violation of this act, the previous conduct of the person involved, and other factors the commissioner considers relevant.

History: 2006, Act 250, Imd. Eff. July 3, 2006

487.1042 Violations; penalties; restitution.

Sec. 42.

(1) A person that intentionally makes a false statement, misrepresentation, or false certification in any record or document filed or required to be maintained under this act or that intentionally makes a false entry or omits a material entry in a record is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$100,000.00, or both.

(2) A person that engages in criminal fraud in the conduct of its money transmission services business is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$100,000.00, or both.

(3) A person that knowingly engages in an activity for which a license is required under this act and is not licensed under this act is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$100,000.00, or both. A court shall order a person convicted of violating subsection (1) or (2) to pay restitution as provided in section 1a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1a, and the crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834.

History: 2006, Act 250, Imd. Eff. July 3, 2006

487.1043 Summary suspension order.

Sec. 43.

(1) After conducting an investigation or examination, the commissioner may issue an order summarily suspending a license under section 92 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.292, based on an affidavit by a person familiar with the facts set forth in the affidavit stating that, on information and belief, an imminent threat of financial loss or imminent threat to the public welfare exists.

(2) If the commissioner issues a summary suspension order under section 92 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.292, an administrative law hearings examiner shall grant a request to dissolve a summary suspension order unless the examiner finds that an imminent threat of financial loss or imminent threat to the public welfare exists that requires an emergency action and continuation of the summary suspension order.

(3) The record created at a hearing on a summary suspension is part of the record of the complaint at any subsequent hearing in a contested case.

History: 2006, Act 250, Imd. Eff. July 3, 2006

487.1044 Cease and desist order.

Sec. 44.

(1) If in the opinion of the commissioner a licensee is, has, or is about to engage in a practice that poses a threat of financial loss or threat to the public welfare or is, has, or is about to violate a law, rule, or order, the

commissioner may issue and serve on the licensee a cease and desist order under this section.

(2) A cease and desist order issued under this section shall contain a statement of the facts constituting the alleged practice or violation and shall fix a time and place for a hearing to determine if the commissioner should issue an order to cease and desist against the licensee.

(3) A licensee may consent to issuance of a cease and desist order under this section. A licensee also consents to the issuance of the cease and desist order if the licensee or a duly authorized representative of the licensee fails to appear at a hearing described in subsection (2).

(4) If a licensee consents under subsection (3), or if the commissioner finds based on the record made at the hearing that the practice or violation specified in the order is established, the cease and desist order becomes final. The order may require the licensee and its officers, directors, members, partners, trustees, employees, agents, or control persons to cease and desist from the practice or violation and to take affirmative action to correct the conditions resulting from the practice or violation.

(5) Except as provided in subsection (6) or to the extent it is stayed, modified, terminated, or set aside by the commissioner or a court, a cease and desist order is effective on the date of service.

(6) A cease and desist order issued with a licensee's consent is effective at the time specified in the order and remains effective and enforceable as provided in the order.

History: 2006, Act 250, Imd. Eff. July 3, 2006

487.1045 Rules.

Sec. 45.

The commissioner may promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, that he or she considers necessary to implement and enforce this act.

History: 2006, Act 250, Imd. Eff. July 3, 2006

487.1046 Civil fine.

Sec. 46.

The commissioner may assess a civil fine against a person that violates this act, a rule promulgated or an order or ruling issued by the commissioner under this act, or any other applicable state or federal law in an amount that does not exceed \$10,000.00 per day for each day the violation continues, plus this state's costs and expenses for the investigation and prosecution of the matter, including reasonable attorney fees.

History: 2006, Act 250, Imd. Eff. July 3, 2006

487.1047 Order suspending or prohibiting person from being licensee and from being employed by, agent of, or control person of licensee.

Sec. 47.

(1) If in the opinion of the commissioner a person has engaged in fraud or has been convicted of a criminal violation involving money laundering, the commissioner may serve upon that person a written notice of intention to prohibit that person from being employed by, an agent of, or a control person of a licensee under this act, or a licensee or registrant under a financial licensing act. As used in this subsection, "fraud" includes actionable fraud, actual or constructive fraud, criminal fraud, extrinsic or intrinsic fraud, fraud in the execution, in the inducement, in

fact, or in law, or any other form of fraud.

(2) A notice issued under subsection (1) shall contain a statement of the facts supporting the prohibition and, except as provided under subsection (7), set a time and date for a hearing, within 60 days after the date of the notice. If the person does not appear at the hearing, he or she consents to the issuance of an order in accordance with the notice.

(3) If, after a hearing held under subsection (2), the commissioner finds that any of the grounds specified in the notice have been established, the commissioner may issue an order of suspension or prohibition from being a licensee or registrant or from being employed by, an agent of, or a control person of any licensee under this act or a licensee or registrant under any financial licensing act.

(4) An order issued under subsection (2) or (3) is effective when served on the person subject to the order. The commissioner shall also serve a copy of the order upon the licensee of which the person is an employee, agent, or control person. The order remains in effect until it is stayed, modified, terminated, or set aside by the commissioner or a reviewing court.

(5) After 5 years from the date of an order issued under subsection (2) or (3), the person subject to the order may apply to the commissioner to terminate the order.

(6) If the commissioner considers that a person served a notice under subsection (1) poses an imminent threat of financial loss to purchasers of payment instruments from a licensee, the commissioner may serve upon the person an order of suspension from being employed by, an agent of, or a control person of any licensee. The suspension is effective on the date the order is issued and, unless stayed by a court, remains in effect pending the completion of a review as provided under this section and until the commissioner has dismissed the charges specified in the order.

(7) Unless otherwise agreed to by the commissioner and the person served with an order issued under subsection (6), the commissioner shall hold the hearing required under subsection (2) to review a suspension not earlier than 5 days or later than 20 days after the date of the notice.

(8) If a person is convicted of a felony involving fraud, dishonesty, breach of trust, or money laundering, the commissioner may issue an order suspending or prohibiting that person from being a licensee and from being employed by, an agent of, or a control person of any licensee under this act or a licensee or registrant under a financial licensing act. After 5 years from the date of the order, the person subject to the order may apply to the commissioner to terminate the order.

(9) The commissioner shall mail a copy of any notice or order issued under this section to the licensee of which the person subject to the notice or order is an employee, agent, or control person.

History: 2006, Act 250, Imd. Eff. July 3, 2006

MICHIGAN BIDCO ACT

Act 89 of 1986

AN ACT to promote economic development by providing for the licensing and regulation of business and industrial development corporations; to prescribe the powers and duties of certain public officers and agencies; to provide for the promulgation of rules; to provide remedies and penalties; and to repeal acts and parts of acts.

History: 1986, Act 89, Imd. Eff. May 1, 1986 ;-- Am. 2012, Act 358, Imd. Eff. Dec. 13, 2012

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

The People of the State of Michigan enact:

Article 1

SHORT TITLE, PURPOSES, AND DEFINITIONS

487.1101 Short title.

Sec. 101.

This act shall be known and may be cited as the "Michigan BIDCO act".

History: 1986, Act 89, Imd. Eff. May 1, 1986

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.1102 Purposes of act.

Sec. 102.

The purposes of this act are all of the following:

(a) Promote economic development by encouraging the formation of business and industrial development companies, a new type of private institution, and to help meet the financing assistance and management assistance needs of business firms in this state.

(b) Provide for a system of licensing, regulation, and enforcement that will enable business and industrial development companies to satisfy eligibility requirements to participate, if they so choose, in the program of the small business administration under section 7(a) of the small business act, Public Law 85-536, 15 U.S.C. 636, and other programs for which they may be eligible.

(c) Provide for a system of licensing, regulation, and enforcement designed to prevent fraud, conflict of interest, and mismanagement and to promote competent management, accurate record keeping, and appropriate communication with owners; in order to provide both of the following:

(i) Comfort to prospective owners so as to facilitate equity investments in business and industrial development companies.

(ii) Comfort to prospective debt sources so as to facilitate the borrowing of money by business and industrial development companies.

(d) Safeguard the general reputation of business and industrial development companies as a type of institution in order to increase the confidence of prospective equity investors in and prospective debt sources for those institutions.

(e) Eliminate unnecessary restrictions that have discouraged the formation of business development corporations under former 1963 PA 117, by repealing that act and substituting a more flexible regulatory framework.

History: 1986, Act 89, Imd. Eff. May 1, 1986 ;-- Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997

487.1103 Meanings of words and phrases.

Sec. 103.

For the purposes of this act, unless the context clearly indicates otherwise, the words and phrases defined in sections 104 to 106 have the meaning ascribed to them in those sections.

History: 1986, Act 89, Imd. Eff. May 1, 1986

487.1104 Definitions; A to C.

Sec. 104.

(1) "Affiliate" means, if used with respect to a specified person other than a natural person, a person controlling or controlled by that specified person, or a person controlled by a person that also controls the specified person.

(2) "BIDCO" means a business and industrial development company licensed under this act. The term includes a business development enterprise.

(3) "Business development enterprise" means a business and industrial development company that meets all of

the following:

- (a) Has as part of its business plan the objective of providing public benefit.
- (b) Is licensed under this act.
- (c) Is designated as a qualified business development enterprise by the Michigan strategic fund under section 304.
- (4) "Business firm" means a person that transacts business on a regular and continual basis, or a person that proposes to transact business on a regular and continual basis.
- (5) "Commissioner" means the commissioner of the office of financial and insurance regulation in the department of licensing and regulatory affairs.
- (6) "Control" means, if used with respect to a specified person, the power to direct or cause the direction of, directly or indirectly through 1 or more intermediaries, the management and policies of that specified person, whether by contract, other than a commercial contract for goods or nonmanagement services, or otherwise. A natural person is not considered to control a person solely because he or she is a director, officer, manager, or employee of that person. A person that, directly or indirectly, has the power to vote or direct the voting of 20% or more of the total ownership vote is rebuttably presumed to control that entity.
- (7) "Controlling person" means, if used with respect to a specified person, a person that controls that specified person, directly or indirectly through 1 or more intermediaries.

History: 1986, Act 89, Imd. Eff. May 1, 1986 ;-- Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997 ;-- Am. 2012, Act 358, Imd. Eff. Dec. 13, 2012
Compiler's Notes: For references to office of financial and insurance regulation to be deemed as department of insurance and financial services, and abolishment of office of financial and insurance regulation, see E.R.O. No. 2013-1, compiled at MCL 550.991. For references to commissioner of office of financial and insurance regulation to be deemed as references to director of department of insurance and financial services, and abolishment of office of commissioner of office of financial and insurance regulation, see E.R.O. No. 2013-1, compiled at MCL 550.991.

487.1105 Definitions; I to M.

Sec. 105.

- (1) "Incorporating statute" means the business corporation act, 1972 PA 284, MCL 450.1101 to 450.2098, the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192, or the Michigan limited liability company act, 1993 PA 23, MCL 450.4101 to 450.5200.
- (2) "Insolvent" means a licensee that ceases to pay its debts in the ordinary course of business, that cannot pay its debts as they become due, or whose liabilities exceed its assets.
- (3) "Interests of the licensee" includes the interests of shareholders of a licensee organized as a Michigan corporation and members of a licensee organized as a Michigan limited liability company.
- (4) "License" means a license issued under this act authorizing a Michigan corporation or Michigan limited liability company to transact business as a BIDCO. The term includes a BIDCO license issued to a business development enterprise.
- (5) "Licensee" means a Michigan corporation or Michigan limited liability company that holds a license under this act.
- (6) "Manager" means a person designated by the members of a Michigan limited liability company to manage the limited liability company as provided in its articles of organization or an operating agreement.
- (7) "Member" means a person that has an ownership interest in a BIDCO organized as a Michigan limited liability company.
- (8) "Michigan corporation" means a corporation incorporated under the business corporation act, 1972 PA 284, MCL 450.1101 to 450.2098, or the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192.
- (9) "Michigan limited liability company" means a limited liability company organized under the Michigan limited liability company act, 1993 PA 23, MCL 450.4101 to 450.5200.
- (10) "Michigan nonprofit corporation" means a corporation incorporated under the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192.
- (11) "Michigan strategic fund" means the Michigan strategic fund as described in the Michigan strategic fund act, 1984 PA 270, MCL 125.2001 to 125.2094.

History: 1986, Act 89, Imd. Eff. May 1, 1986 ;-- Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997 ;-- Am. 2012, Act 358, Imd. Eff. Dec. 13, 2012

487.1106 Definitions; O to T.

Sec. 106.

(1) "Officer" means either of the following:

(a) If used with respect to a corporation, an individual who is appointed or designated as an officer of that corporation by or under applicable law or the articles of incorporation or bylaws of that corporation, or an individual who performs functions with respect to that corporation that are usually performed by an officer of a corporation.

(b) If used with respect to a specified person other than an individual or a corporation, an individual who performs functions with respect to that specified person that are usually performed by an officer of a corporation for that corporation.

(2) "Order" means an approval, consent, authorization, exemption, denial, prohibition, or requirement applicable to a specific case issued by the commissioner. Order includes a condition of a license and an agreement made by a person with the commissioner under this act.

(3) "Owner" means a shareholder of a BIDCO organized as a Michigan corporation or a member of a BIDCO organized as a Michigan limited liability company.

(4) "Person" means an individual, proprietorship, joint venture, partnership, limited liability company, trust, business trust, syndicate, association, joint stock company, corporation, cooperative, government, agency of a government, or any other organization. If used with respect to acquiring control of or controlling a specified person, person includes a combination of 2 or more persons acting in concert.

(5) "Principal owner" means a person that owns, directly or indirectly, of record or beneficially, stock or membership interest representing 10% or more of the outstanding stock or membership interest of a corporation or limited liability company.

(6) "Public benefit" means making capital available, or facilitating the availability of capital, to businesses in this state that have 750 or fewer employees, the intent of which is to create or retain employment opportunities for residents of this state, stabilize or increase the tax base of this state, or support the redevelopment of facilities for use by small businesses.

(7) "Subject person" means a controlling person, subsidiary or affiliate of a licensee, a director, officer, manager, or employee of a licensee or of a controlling person, subsidiary or affiliate of a licensee, or any other person that participates in the conduct of the business of a licensee.

(8) "Subsidiary" means, if used with respect to a licensee, a company or business firm that the licensee holds control of as permitted by section 507(1)(b), (c), or (d).

(9) "Total ownership vote" means, if used with respect to a corporation, the total outstanding shares of stock entitled to vote and, if used with respect to a Michigan limited liability company, the total vote of the members entitled to vote.

(10) "This act" includes an order issued or rule promulgated under this act.

History: 1986, Act 89, Imd. Eff. May 1, 1986 ;-- Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997 ;-- Am. 2012, Act 358, Imd. Eff. Dec. 13, 2012

Article 2 REGULATION, REPORTING, AND EXAMINATION

487.1201 Administration of act; orders; rules; imposition of conditions; applications for declaratory rulings; judicial review.

Sec. 201.

(1) The commissioner shall administer this act. The commissioner may issue orders and promulgate rules that, in the opinion of the commissioner, are necessary to execute, enforce, and effectuate the purposes of this act. Any rules promulgated shall be promulgated in accordance with the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(2) Whenever the commissioner issues an order or license under this act, the commissioner may impose conditions that are necessary, in the opinion of the commissioner, to carry out this act and the purposes of this act.

(3) The commissioner may honor applications from interested persons for declaratory rulings regarding any provision of this act.

(4) Every final order, decision, license, or other official act of the commissioner under this act is subject to

judicial review in accordance with law.

History: 1986, Act 89, Imd. Eff. May 1, 1986

487.1203 Application; form; information; business plan.

Sec. 203.

(1) An applicant for a license under this act shall file an application with the commissioner. Subject to subsection (2), the commissioner shall establish the form of the application and the information the applicant must provide on or with the application form.

(2) For purposes of section 303, an application for a license under this act shall include a business plan. If the applicant is applying for a license as a business development enterprise, the business plan must include the objective of providing public benefit.

History: 1986, Act 89, Imd. Eff. May 1, 1986 ;-- Am. 2012, Act 358, Imd. Eff. Dec. 13, 2012

487.1205 Investigations; purposes; oaths and affirmations; witnesses; evidence; documents or records; failure to comply with subpoena.

Sec. 205.

(1) The commissioner may make public or private investigations within or outside this state that the commissioner considers necessary to determine whether to approve an application filed with the commissioner under this act, to determine whether a person has violated or is about to violate this act, to aid in the enforcement of this act, or to aid in issuing an order or promulgating a rule under this act.

(2) For purposes of an investigation, examination, or other proceeding under this act, the commissioner may administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, take evidence, and require the production of books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner considers relevant or material to the proceeding.

(3) If a person fails to comply with a subpoena issued by the commissioner or to testify with respect to a matter concerning which the person may be lawfully questioned, the circuit court for Ingham county, on application of the commissioner, may issue an order requiring the attendance of the person and the giving of testimony or production of evidence.

History: 1986, Act 89, Imd. Eff. May 1, 1986

487.1207 Service of process.

Sec. 207.

Service of process authorized to be made by the commissioner in connection with a noncriminal proceeding under this act may be made by registered or certified mail.

History: 1986, Act 89, Imd. Eff. May 1, 1986

487.1209 Establishment of annual schedule of fees; payment; action for recovery of fees or penalties; failure to submit report; disposition.

Sec. 209.

(1) The commissioner shall establish annually a schedule of fees sufficient to pay for the bureau's costs of enforcing this act. The fees shall be as follows:

(a) For filing an application for a license, not less than \$2,500.00 or more than \$8,000.00.

(b) For filing an application for approval to acquire control of a licensee, not less than \$1,250.00 or more than \$6,000.00.

(c) For filing an application for approval for a licensee to merge with another corporation, an application for approval for a licensee to purchase all or substantially all of the business of another person, or an application for approval for a licensee to sell all or substantially all of its business or of the business of any of its offices to another licensee, not less than \$1,250.00 or more than \$6,000.00. Two or more applications relating to the same merger, purchase, or sale may be filed, for the same fee as for filing a single application.

(d) For annual license renewal, not less than \$2,500.00 or more than \$8,000.00, payable at a time prescribed by the commissioner. A license renewal fee not paid when due is subject to a penalty of \$25.00 for each day the fee is delinquent or \$1,000.00, whichever is less.

(e) For examination of the licensee, not less than \$40.00 or more than \$70.00 per hour for each examiner involved in the examination. If the commissioner examines a licensee or a subsidiary of a licensee, within 10 days after receiving a statement from the commissioner, the licensee shall pay the fee, plus travel expenses.

(2) A fee for filing an application with the commissioner is nonrefundable and is to be paid at the time the application is filed with the commissioner.

(3) If any fees or penalties provided for in this act are not paid when required, the attorney general may maintain an action against the delinquent licensee to recover the fees or penalties together with interest and costs.

(4) A licensee or an affiliate or subsidiary of a licensee that fails to submit a report as required by section 215 is subject to a penalty of \$25.00 for each day the report is delinquent or \$1,000.00, whichever is less.

(5) Money collected under this section shall be paid into the state treasury to the credit of the financial institutions bureau and used only for the operation of the financial institutions bureau.

History: 1986, Act 89, Imd. Eff. May 1, 1986 ;-- Am. 1992, Act 74, Imd. Eff. June 2, 1992

487.1211 Books, accounts, and other records of licensee; location and preservation; valuation of assets; audit report.

Sec. 211.

(1) A licensee shall make and keep books, accounts, and other records in a form and manner as the commissioner may require. These records shall be kept at a place and be preserved for a length of time as the commissioner may require.

(2) The commissioner may require by order that a licensee write down any asset on its books and records to a valuation that represents its then value.

(3) Not more than 90 days after the close of each calendar year or a longer period if specified by the commissioner, a licensee shall file with the commissioner an audit report containing all of the following:

(a) Financial statements, including balance sheet, statement of income or loss, statement of changes in capital accounts, and statement of changes in financial position or, for a licensee that is a Michigan nonprofit corporation or Michigan limited liability company, comparable financial statements for, or as of the end of, the calendar year, prepared with an audit by an independent certified public accountant or an independent public accountant in accordance with generally accepted accounting principles.

(b) A report, certificate, or opinion of the independent certified public accountant or independent public accountant who performs the audit, stating that the financial statements were prepared in accordance with generally accepted accounting principles.

(c) Other information that the commissioner may require.

History: 1986, Act 89, Imd. Eff. May 1, 1986 ;-- Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997

487.1213 Making or keeping of books, accounts, or other records by person other than licensee; applicability of act; approval of commissioner.

Sec. 213.

(1) If a person other than a licensee makes or keeps the books, accounts, or other records of that licensee, this act applies to that person with respect to the performance of those services and with respect to those books, accounts, and other records to the same extent as if that person were the licensee.

(2) If a person other than an affiliate or subsidiary of a licensee makes or keeps any of the books, accounts, or other records of that affiliate or subsidiary, this act applies to that person with respect to those books, accounts, and other records to the same extent as if that person were the affiliate or subsidiary.

(3) If the commissioner considers it expedient, the commissioner may require any particular licensee to obtain the approval of the commissioner before permitting another person to make or keep any of the books, accounts, or other records of the licensee.

History: 1986, Act 89, Imd. Eff. May 1, 1986

487.1215 Filing reports with commissioner; form; contents.

Sec. 215.

Each licensee, each affiliate of a licensee, and each subsidiary of a licensee shall file with the commissioner such reports as and when the commissioner may require. A report under this section shall be in such a form and shall contain such information as the commissioner may require.

History: 1986, Act 89, Imd. Eff. May 1, 1986

487.1216 Publication and distribution of information on impact of act.

Sec. 216.

(1) The commissioner shall publish annually and provide to the house committee on economic development and energy and senate committee on economic development, trade and tourism information on the impact of this act in promoting economic development in this state. At the minimum, the information shall include aggregate statistics on each of the following:

(a) The number and dollar amount of provisions of financing assistance made by licensees to business firms.

(b) The number and dollar amount of provisions of financing assistance made by licensees to business firms classified in broad categories of industry such as divisions of the standard industrial classification manual.

(c) The number and dollar amount of provisions of financing assistance made by licensees to minority owned business firms and to woman owned business firms.

(d) Estimates of the number of jobs created or retained.

History: 1986, Act 89, Imd. Eff. May 1, 1986

487.1217 Examination of licensee or subsidiary of licensee; exhibiting books, accounts, and other records; facilitating examination; retention of person to assist commissioner.

Sec. 217.

- (1) The commissioner shall examine each licensee not less than once each calendar year.
- (2) The commissioner may at any time examine a licensee or subsidiary of a licensee.
- (3) A director, officer, manager, or employee of a licensee or of a subsidiary of a licensee being examined by the commissioner, or a person having custody of any of the books, accounts, or records of the licensee or of the subsidiary, shall provide the commissioner, on request, any of the books, accounts, and other records of the licensee or of the subsidiary and shall otherwise facilitate the examination so far as it is in their power to do so.
- (4) If in the commissioner's opinion it is necessary in the examination of a licensee or of a subsidiary of a licensee, the commissioner may retain a certified public accountant, attorney, appraiser, or other person to assist the commissioner. Within 10 days after receipt of a statement from the commissioner, the licensee being examined shall pay the fees of a person retained by the commissioner under this subsection.

History: 1986, Act 89, Imd. Eff. May 1, 1986 ;-- Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997

Article 3 LICENSING

487.1301 Licensure; eligibility.

Sec. 301.

A Michigan corporation or Michigan limited liability company may apply to the commissioner for a license under this act. A person that is not a Michigan corporation or Michigan limited liability company shall not apply for, and the commissioner shall not grant, a license under this act.

History: 1986, Act 89, Imd. Eff. May 1, 1986 ;-- Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997 ;-- Am. 2012, Act 358, Imd. Eff. Dec. 13, 2012

487.1303 Review of information; approval of application for license; determinations; net worth; findings; grounds.

Sec. 303.

(1) After a review of information regarding the directors, officers, managers, and controlling persons of the applicant, a review of the applicant's business plan, including at least 3 years of detailed financial projections and other relevant information, and a review of additional information considered relevant by the commissioner, the commissioner shall approve an application for a license if, and only if, the commissioner determines all of the following:

(a) The applicant has a net worth, or firm financing commitments that demonstrate that the applicant will have a net worth when the applicant begins transacting business as a BIDCO, in liquid form available to provide financing assistance, that is adequate for the applicant to transact business as a BIDCO, as determined under subsection (2).

(b) Each director, officer, manager, and controlling person of the applicant is of good character and sound financial standing, is competent to perform his or her functions with respect to the applicant, and that the directors, officers, and managers of the applicant are collectively adequate to manage the business of the applicant as a licensee.

(c) It is reasonable to believe that the applicant, if licensed, will comply with this act.

(d) The applicant has reasonable promise of being a viable, ongoing BIDCO and of satisfying the basic objectives of its business plan.

(e) If the applicant is or will be a Michigan limited liability company, the applicant's operating agreement and business plan are consistent with the objectives of promoting the stability and viability of the applicant and will not impede the ability of the applicant to retain any earnings or increases to fund balances and borrow funds to support the applicant's continued operations. The applicant's operating agreement or articles of organization shall contain provisions as the commissioner considers necessary to satisfy this subsection.

(f) If the applicant is applying for a license as a business development enterprise, the applicant has been designated as a qualified business development enterprise by the Michigan strategic fund under section 304.

(2) In determining if the applicant has a net worth or firm financing commitments adequate to transact business as a BIDCO under subsection (1)(a), the commissioner shall consider the types and variety of financing assistance

that the applicant plans to provide, the experience that the directors, officers, managers, and controlling persons of the applicant have in providing financing assistance and managerial assistance to business firms, the financial projections and other relevant information from the applicant's business plan, and whether the applicant intends to operate as a profit or nonprofit corporation or as a limited liability company. For purposes of subsection (1)(a), the commissioner shall require that the applicant demonstrate that the applicant will have a net worth when it begins transacting business that meets 1 of the following:

(a) Unless subdivision (b) or (c) applies, a minimum net worth of not less than \$1,000,000.00 and not more than \$10,000,000.00.

(b) The commissioner may require a minimum net worth of less than \$1,000,000.00, but not less than \$500,000.00, if, in the context of the applicant's business plan, the initial capitalization amount is adequate for the applicant to transact business as a BIDCO because of special circumstances including, but not limited to, funded overhead, low overhead, or specialized opportunities.

(c) If the applicant is applying for a license as a business development enterprise, a minimum net worth and firm financing commitments of not less than \$25,000,000.00.

(3) For the purposes of subsection (1), the commissioner may find any of the following:

(a) That a director, officer, manager, or controlling person of an applicant is not of good character if the director, officer, manager, or controlling person, or a director, officer, or manager of a controlling person, has been convicted of or has pleaded nolo contendere to a crime involving fraud or dishonesty.

(b) That it is not reasonable to believe that an applicant, if licensed, will comply with this act, if the applicant has been convicted of or has pleaded nolo contendere to a crime involving fraud or dishonesty.

(4) For purposes of subsection (1), subsection (3) shall not be considered to be the only grounds upon which the commissioner may find that a director, officer, manager, or controlling person of an applicant is not of good character or that it is not reasonable to believe that an applicant, if licensed, will comply with this act.

History: 1986, Act 89, Imd. Eff. May 1, 1986 ;-- Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997 ;-- Am. 2012, Act 358, Imd. Eff. Dec. 13, 2012

487.1304 Business development enterprise; designation; application; criteria; notification by board of Michigan strategic fund.

Sec. 304.

(1) Beginning January 1, 2012, the board of the Michigan strategic fund may designate a Michigan corporation or Michigan limited liability company as a qualified business development enterprise under this section. The commissioner shall not grant a license to an applicant for a license as a business development enterprise under this act if the applicant has not applied for and received a designation as a qualified business development enterprise from the board of the Michigan strategic fund.

(2) An application for designation as a qualified business development enterprise shall include all of the following:

(a) A copy of the application and supporting documentation submitted to the commissioner under section 301.

(b) A copy of the applicant's articles of incorporation and bylaws if the applicant is a Michigan corporation, or its articles or organization and operating agreement if the applicant is a Michigan limited liability company.

(c) Documentation satisfactory to the board of the Michigan strategic fund that the applicant meets the net worth requirements of section 303(2)(c).

(d) Information concerning the background and business experience of the directors, officers, managers, and controlling persons of the applicant.

(e) A summary business plan, including at least 3 years of detailed financial projections and other relevant information.

(f) Any other information considered relevant by the board of the Michigan strategic fund.

(3) The board of the Michigan strategic fund shall apply the following criteria in determining whether to designate a Michigan corporation or Michigan limited liability company a qualified business development enterprise:

(a) Whether the size and composition of the board of the applicant meets section 403.

(b) Whether the business plan of the enterprise includes providing a public benefit acceptable to the board of the Michigan strategic fund.

(c) Whether the applicant has demonstrated to the satisfaction of the board of the Michigan strategic fund that it will meet any transparency, reporting, and accountability requirements established by the board by rule with respect to the public policy objective or objectives of the enterprise.

(d) Whether the directors, officers, managers, and controlling persons of the applicant have sufficient experience to demonstrate to the satisfaction of the board of the Michigan strategic fund that they have the ability to implement the proposed business plan of the enterprise.

(4) For purposes of section 303(1)(f), the board of the Michigan strategic fund shall notify the commissioner if it designates a Michigan corporation or Michigan limited liability company a qualified business development enterprise under this section.

History: Add. 2012, Act 358, Imd. Eff. Dec. 13, 2012

487.1304a Reports.

Sec. 304a.

(1) A business development enterprise shall report to the Michigan strategic fund at least annually the following information for each business it supported, by providing or facilitating the securing of capital, in the preceding 5-year period:

(a) The total amount of private capital secured by the business from its support.

(b) The estimated number of jobs the business created or retained.

(c) An estimate of the state and local tax collections attributable to its support of that business.

(2) The commissioner shall provide to the Michigan strategic fund an annual summary report containing its assessment of the financial condition of each business development enterprise. The commissioner shall establish the form and contents of the report. At a minimum, the report shall include an assessment of the business development enterprise's ability to fund its operations in the future.

(3) A business development enterprise shall provide the commissioner any information he or she reasonably requests in connection with his or her assessment of the financial condition of the business development enterprise and the preparation of the report described in subsection (2).

History: Add. 2012, Act 358, Imd. Eff. Dec. 13, 2012

487.1305 Application for preliminary approval of application for license; order; conditions to final approval; fee.

Sec. 305.

(1) A person may apply to the commissioner for preliminary approval of an application for a license. Notwithstanding that commitments to invest in the equity of the applicant have not been obtained and that all directors, officers, and managers of the applicant have not been identified, the commissioner may grant preliminary approval. In issuing an order granting preliminary approval, the commissioner shall indicate that, for the commissioner to determine that the requirements of section 303 are satisfied, final approval is conditioned on review by the commissioner of the applicant's completion of fund-raising, including the controlling persons, and review by the commissioner of the completion of the roster of directors and officers. If an application for preliminary approval has been granted, before granting final approval of the application for a license, the commissioner may request an updated balance sheet and other information considered relevant by the commissioner.

(2) If a person files an application under this section, the fee required by section 209(1)(a) is payable at the time the application is filed with the commissioner.

History: 1986, Act 89, Imd. Eff. May 1, 1986 ;-- Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997

487.1307 Denial of application; written statement of explanation.

Sec. 307.

If the commissioner denies an application under sections 301 to 305, the commissioner shall provide the applicant with a written statement explaining the basis for the denial.

History: 1986, Act 89, Imd. Eff. May 1, 1986

487.1309 License; issuance; posting; nontransferable and nonassignable.

Sec. 309.

If an application for a license is approved and all conditions precedent to the issuance of that license are fulfilled, the commissioner shall issue a license to the applicant. A licensee shall post the license in a conspicuous place in the licensee's principal office. A license is not transferable or assignable.

History: 1986, Act 89, Imd. Eff. May 1, 1986

487.1311 Prohibited representations; permissible acts.

Sec. 311.

(1) Except as otherwise provided in subsection (2), a person transacting business in this state, other than a licensee, shall not use a name or title that indicates that the person is a business and industrial development company including, but not limited to, use of the term "BIDCO", and shall not otherwise represent that the person is a business and industrial development company or a licensee.

(2) Before being issued a license under this act, a Michigan corporation or Michigan limited liability company that proposes to apply for a license or that applies for a license may, under a name that indicates that it is a business and industrial development company, perform the acts necessary to obtain a license and to otherwise prepare to transact business as a licensee. A corporation or limited liability company shall not represent that it is a licensee until after the license has been obtained.

History: 1986, Act 89, Imd. Eff. May 1, 1986 ;-- Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997

487.1313 Misrepresentation of license.

Sec. 313.

A licensee shall not misrepresent the meaning or effect of its license.

History: 1986, Act 89, Imd. Eff. May 1, 1986

487.1315 Michigan corporation or limited liability company licensed under another law.

Sec. 315.

(1) A Michigan corporation or Michigan limited liability company that is licensed under another law of this state or the United States may be issued a license under this act unless the transaction of business as a licensee under the other law of this state or the United States would violate this act or would be contrary to the purposes of this act.

(2) A Michigan corporation or Michigan limited liability company that is licensed under this act may apply for and be issued a license under another law of this state or the United States unless the transaction of business as a licensee under the other law of this state or the United States would violate this act or would be contrary to the purposes of this act.

History: 1986, Act 89, Imd. Eff. May 1, 1986 ;-- Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997

487.1317 Application to commissioner to accept surrender of license; approval; notice to owners and creditors; filing objection; sending copy of objection to commissioner.

Sec. 317.

(1) Upon approval of a 2/3 vote of its board of directors and after complying with subsection (2), a Michigan corporation licensee may apply to the commissioner to have the commissioner accept the surrender of the licensee's license. If a Michigan limited liability company licensee dissolves and after it has provided the notice required under subsection (2), it shall apply to the commissioner to surrender its license. If the commissioner determines that the requirements of this section have been satisfied, the commissioner shall approve the application unless in the opinion of the commissioner the purpose of the application is to evade a current or prospective action by the commissioner under article 7. A Michigan corporation licensee shall not dissolve and a Michigan limited liability company shall not complete winding up of its affairs until the commissioner has accepted the surrender of the licensee's license.

(2) Upon the dissolution of a licensee organized as a Michigan limited liability company or before dissolution of a licensee organized as a Michigan corporation, a licensee shall notify all of its owners and all of its creditors of its dissolution and intention to file the application. Each creditor shall be notified of the right to comment to the commissioner. Each owner shall be notified of the right to file with the licensee for a period of 60 days after the date of the notice an objection to the proposed surrender of the license and shall be advised that, if the owner files an objection, the owner should send a copy of the objection to the commissioner. If owners representing 20% or more of the total ownership vote of the licensee file an objection, the licensee shall not proceed with the application under subsection (1) unless the application is approved by a vote of owners representing 2/3 or more of the total ownership vote.

History: 1986, Act 89, Imd. Eff. May 1, 1986 ;-- Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997

Article 4 CORPORATE MATTERS

487.1401 Name of licensee; inclusion of word "BIDCO."

Sec. 401.

(1) Except as provided in subsection (2), the name of each licensee shall include the word "BIDCO".

(2) A business development enterprise is not required to include the word "BIDCO" in its name.

(3) A licensee shall not transact business under a name other than its name.

History: 1986, Act 89, Imd. Eff. May 1, 1986 ;-- Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997 ;-- Am. 2012, Act 358, Imd. Eff. Dec. 13, 2012

487.1403 Board of directors; number of directors; membership; meetings.

Sec. 403.

- (1) A licensee shall have a board of directors.
- (2) The board of directors of a licensee that is not a business development enterprise shall consist of at least 7 directors. All of the following apply to the board of directors of a licensee that is a business development enterprise:
 - (a) The board shall consist of at least 3 directors.
 - (b) At least 1/3 of the members of the board shall be individuals designated by the board of the Michigan strategic fund.
- (3) If the licensee is a Michigan limited liability company, the board may consist of members who are not managers of the licensee.
- (4) The board of directors of a licensee shall hold a meeting at least once each calendar quarter.

History: 1986, Act 89, Imd. Eff. May 1, 1986 ;-- Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997 ;-- Am. 2012, Act 358, Imd. Eff. Dec. 13, 2012

487.1405 Death, resignation, or removal of director, officer, or manager; election of director; appointment of officer or manager; notice to commissioner; additional information.

Sec. 405.

Within 30 days after the death, resignation, or removal of a director, officer, or manager, the election of a director, or the appointment of an officer or manager, the licensee shall notify the commissioner in writing of the event and shall provide any additional information which the commissioner may require.

History: 1986, Act 89, Imd. Eff. May 1, 1986 ;-- Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997

487.1407 Dividend and distribution policies; buying back share of stock or membership interest.

Sec. 407.

(1) A licensee shall not pay, or obligate itself to pay, a cash dividend or distribution or dividend and distribution in kind to its owners, unless that payment is consistent with a dividend and distribution policy that has been adopted by the licensee and approved by the commissioner. In reviewing dividend and distribution policies under this section, the commissioner shall protect against unsafe or unsound acts which could threaten the viability of the licensee as an ongoing BIDCO but be flexible in recognizing the special characteristics of BIDCOs and the diverse range of potentially appropriate dividend policies for BIDCOs. The commissioner may at any time withdraw any previous approval of a dividend and distribution policy if the commissioner determines that the withdrawal is necessary to prevent unsafe or unsound acts.

(2) Without the prior approval of the commissioner, a licensee shall not buy back, or obligate itself to buy back a share of stock or a membership interest from an owner.

History: 1986, Act 89, Imd. Eff. May 1, 1986 ;-- Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997

Article 5
TRANSACTION OF BUSINESS

487.1501 Offices of licensee; number; location; posting sign bearing corporate name; personnel; establishing, relocating, or closing office.

Sec. 501.

- (1) A licensee shall maintain not less than 1 office in this state.

- (2) A licensee shall not maintain an office at any place outside this state.
- (3) Each office of a licensee shall be located in a place which is reasonably accessible to the public.
- (4) A licensee shall post in a conspicuous place at each of its offices a sign which bears the corporate name of the licensee.
- (5) A licensee shall maintain at each of its offices personnel who are competent to conduct the business of such an office.
- (6) Upon written notice to the commissioner, a licensee may establish, relocate, or close an office.

History: 1986, Act 89, Imd. Eff. May 1, 1986

487.1503 Business of licensee; powers and privileges of licensee.

Sec. 503.

- (1) The business of a licensee shall be providing financing assistance and management assistance to business firms. A licensee shall not engage in a business other than the business of providing financing assistance and management assistance to business firms.
- (2) In addition to the powers and privileges provided to a licensee by this act, a licensee has all powers and privileges conferred by its incorporating statute which are not inconsistent with or limited by this act. The powers of a licensee include, but are not limited to, all of the following:
 - (a) To borrow money and otherwise incur indebtedness for its purposes, including issuance of corporate bonds, debentures, notes, or other evidence of indebtedness. A licensee's indebtedness may be secured or unsecured, and may involve equity features including, but not limited to, provisions for conversion to stock or membership interests and warrants to purchase stock or membership interests.
 - (b) To make contracts.
 - (c) To incur and pay necessary and incidental operating expenses.
 - (d) To purchase, receive, hold, lease, or otherwise acquire or to sell, convey, mortgage, lease, pledge, or otherwise dispose of, real or personal property, together with rights and privileges that are incidental and appurtenant to these transactions of real or personal property, if the real or personal property is for the licensee's use in operating its business or if the real or personal property is acquired by the licensee from time to time in satisfaction of debts or enforcement of obligations.
 - (e) To make donations for charitable, educational, research, or similar purposes.
 - (f) To implement a reasonable and prudent policy for conserving and investing its money before the money is used to provide financing assistance to business firms or to pay the expenses of the licensee.

History: 1986, Act 89, Imd. Eff. May 1, 1986 ;-- Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997

487.1505 Forms, terms, and conditions of financing assistance; participation in program of small business administration; compliance; scope of management assistance; purpose of financing assistance or management assistance; exercise of incidental powers; extension of credit; interest; violation as felony; penalty; "interest" defined.

Sec. 505.

- (1) A licensee may determine the form and the terms and conditions for financing assistance provided by that licensee to a business firm including, but not limited to, forms such as loans, purchase of debt instruments, straight equity investments such as purchase of common stock, preferred stock, or membership interests, debt with equity features such as warrants to purchase stock or membership interests, convertible debentures, or receipt of a percent of net income or sales, royalty based financing, guaranteeing of debt, or leasing of property. A licensee may purchase securities and membership interests of a business firm either directly or indirectly through an underwriter. A licensee may participate in the program of the small business administration under section 7(a) of the small business act, Public Law 85-536, 15 U.S.C. 636, or any other government program for which the licensee is eligible and which has as its function the provision or facilitation of financing assistance or management assistance to business firms. If a licensee participates in a program referred to in this subsection, the licensee shall comply with

the requirements of that program.

(2) Management assistance provided by a licensee to a business firm may encompass both management or technical advice and management or technical services.

(3) Financing assistance or management assistance provided by a licensee to a business firm shall be for the business purposes of that business firm.

(4) A licensee may exercise incidental powers to carry on the business of, or are reasonably related to the business of, providing financing assistance and management assistance to business firms.

(5) Except as provided in subsection (6), in connection with an extension of credit by a person to a licensee or an extension of credit by a licensee to a limited liability company or a business entity as defined in section 1 of 1970 PA 52, MCL 438.61, the parties may agree to any rate of interest, including a rate in excess of the rate set forth in 1968 PA 259, MCL 438.41 to 438.42.

(6) In connection with an extension of credit described in subsection (5), a person shall not knowingly charge, take, or receive money or other property as interest on the loan at a rate exceeding 25% simple interest per annum. A person who violates this subsection is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$10,000.00, or both. As used in this subsection, "interest" does not include anything of value that is contingent on the performance or value of the borrower including, but not limited to, a percentage of net income of the borrower, royalties, stock in the borrower, warrants to purchase stock in the borrower, and convertibility of debentures.

History: 1986, Act 89, Imd. Eff. May 1, 1986 ;-- Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997

487.1507 Holding control of business firm; order approving or denying application; "hold control" defined; plan for acquiring and holding control of business firm; demonstrating necessity to hold control of business firm.

Sec. 507.

(1) Either by itself or in concert with a director, officer, principal owner, manager, or affiliate, another licensee, or a director, officer, principal owner, manager, or affiliate of another licensee, a licensee shall not hold control of a business firm, except as follows:

(a) A licensee that had provided financing assistance to a business firm may acquire and hold control of that business firm to the extent necessary to protect the licensee's interest as creditor of, or investor in, the business firm. Unless the commissioner approves a longer period, a licensee holding control of a business firm under this subdivision shall divest itself of the interest that constitutes holding control as soon as practicable or within 3 years after acquiring that interest, whichever is sooner.

(b) With the approval of the commissioner, a licensee may acquire and hold control of a company that has offices located only in this state and which is licensed as a small business investment company under the small business investment act of 1958, Public Law 85-699, 72 Stat. 689.

(c) With the approval of the commissioner, a licensee may acquire and hold control of a company located in this state that is a local development company in accordance with the small business investment act of 1958, Public Law 85-699, 72 Stat. 689, whether the development company is or may become a qualified state or local development company by the small business administration under section 503 of title V of the small business investment act of 1958, Public Law 85-699, 15 U.S.C. 697.

(d) With the approval of the commissioner, a licensee may acquire and hold control of another business firm with offices only in this state that is engaged only in the business of providing financing assistance and management assistance to business firms.

(e) With the approval of the commissioner, a licensee may acquire and hold control of a business firm not referred to in subdivisions (a) to (d). The commissioner shall not approve an application under this subdivision unless the commissioner determines that the approval will not cause the amount of the licensee's investments in business firms covered by this subdivision to exceed 15% of the amount of the assets of the licensee and that in the commissioner's judgment the approval will promote the purposes of this act. An approval by the commissioner under this subdivision shall be for a period of not more than 3 years, except that in a particular case the commissioner may subsequently extend the period beyond 3 years if the commissioner determines that a longer period is needed and is consistent with the purposes of this act.

(2) If the commissioner fails to issue an order approving or denying an application under subsection (1)(b) or (c), within 45 days from receipt by the commissioner of an application which complies with section 203, the application shall be considered approved by the commissioner.

(3) For the purposes of subsection (1), "hold control" means the power to vote or direct the voting, directly or indirectly, of either of the following:

(a) For a business firm with outstanding voting stock or voting membership interests held by fewer than 50 owners, more than 40% of the total ownership vote.

(b) For a business firm with outstanding voting stock or voting membership interests held by 50 or more owners, more than 25% of the total ownership vote.

(4) If a licensee anticipates acquiring and holding control of a business firm under subsection (1)(a), the licensee shall file with the commissioner a plan for acquiring and holding control of the business firm that shall include at least all of the following:

(a) The reasons it is necessary for the licensee to acquire and hold control of the business firm.

(b) The percentage of outstanding voting stock or voting membership interests of the business firm the licensee plans to own.

(c) The licensee's proposed course of action upon obtaining control of the business firm.

(d) The length of time the licensee anticipates it will be necessary to hold control of the business firm.

(5) The commissioner may require the licensee to demonstrate the necessity for the licensee to hold control of a business firm under subsection (1)(a).

History: 1986, Act 89, Imd. Eff. May 1, 1986 ;-- Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997

487.1509 Transacting business in safe and sound manner; considering risks; authority of commissioner not limited.

Sec. 509.

(1) A licensee shall transact its business in a safe and sound manner and shall maintain itself in a safe and sound condition.

(2) In determining whether a licensee is transacting business in a safe and sound manner or has committed an unsafe or unsound act, the commissioner shall not consider the risk of a provision of financing assistance to a business firm, unless the commissioner determines that the risk is so great compared with the realistically expected return as to demonstrate gross mismanagement.

(3) Subsection (2) does not limit the authority of the commissioner to do any of the following:

(a) Determine that a licensee's financing assistance to a single business firm or a group of affiliated business firms is in violation of subsection (1) or constitutes an unsafe or unsound act, if the amount of that financing assistance is unduly large in relation to the total assets or the total owners equity of the licensee.

(b) Require that a licensee maintain a reserve in the amount of anticipated losses.

(c) Require that a licensee have in effect a written financing assistance policy, approved by its board of directors, including credit evaluation and other matters. The commissioner shall not require that a licensee adopt a financing assistance policy that contains standards that prevent the licensee from exercising needed flexibility in evaluating and structuring financing assistance to business firms on a deal by deal basis.

History: 1986, Act 89, Imd. Eff. May 1, 1986 ;-- Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997

487.1511 Definitions; transactions involving potential conflict of interest; authority of commissioner to determine conflict of interest not limited.

Sec. 511.

(1) For purposes of this section:

(a) "Associate" means that term as defined as in article 8.

(b) "Relative" means parent, child, sibling, spouse, father-in-law, mother-in-law, son-in-law, brother-in-law, daughter-in-law, sister-in-law, grandparent, grandchild, nephew, niece, uncle, or aunt.

(2) If a licensee provides financing assistance to a business firm or engages in another business transaction, and if that financing assistance or transaction involves a potential conflict of interest, the terms and conditions under which the licensee provides the financing assistance or engages in the transaction shall not be less favorable to the

licensee than the terms and conditions that would be required by the licensee in the ordinary course of business if the transaction did not involve a potential conflict of interest. Each person who participates in the decision of the licensee relating to a transaction described in this section and has knowledge of a potential conflict of interest involving that transaction shall take care that the potential conflict of interest is disclosed in the financing documents of the transaction or, for a business transaction not involving financing assistance, in another appropriate document.

(3) For the purposes of subsection (2), transactions engaged in by a licensee that involve a potential conflict of interest include, but are not limited to, the following:

(a) Providing financing assistance to a principal owner of the licensee, to a person controlled by a principal owner of the licensee, or to a director, officer, manager, partner, relative, controlling person, or affiliate of a principal owner of the licensee.

(b) Providing financing assistance to a business firm that a principal owner of the licensee, a director, officer, manager, partner, relative, controlling person, or affiliate of a principal owner of a licensee, or a person controlled by a principal owner of the licensee provides or plans to provide contemporaneous financing assistance.

(c) Providing financing assistance to a business firm that has or is expected to have a substantial business relationship with another business firm that has a director, officer, manager, or controlling person who is also a director, officer, manager, or controlling person of the licensee or who is the spouse of a director, officer, manager, or controlling person of the licensee.

(d) Providing financing assistance to a business firm if that business firm, or a director, officer, manager, or controlling person of that business firm, contemporaneously has lent or will lend money to an associate of the licensee.

(e) Providing financing assistance for the purchase of property of an associate or principal owner of the licensee.

(f) Selling or otherwise transferring any of its assets to an associate or principal owner of the licensee.

(4) Nothing in this act limits the authority of the commissioner to determine that an act involves a conflict of interest and is an unsafe or unsound act.

History: 1986, Act 89, Imd. Eff. May 1, 1986 ;-- Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997

487.1513 Lien on or security interest in property of licensee.

Sec. 513.

Except with the approval of the commissioner, a licensee shall not provide a lien on or security interest in any of its property for the purpose of securing an obligation of, or an obligation incurred for the benefit of, another person.

History: 1986, Act 89, Imd. Eff. May 1, 1986

Article 6 MERGERS AND ACQUISITIONS

487.1601 Acquiring control of licensee; application for approval; determinations by commissioner.

Sec. 601.

(1) Without the prior approval of the commissioner, a person shall not acquire control of a licensee.

(2) With respect to an application for approval to acquire control of a licensee, if the commissioner determines, that the applicant and the directors, officers, and managers of the applicant are of good character and sound financial standing, that it is reasonable to believe that, if the applicant acquires control of the licensee, the applicant will comply with this act, and that the applicant's plans, if any, to make a major change in the business, corporate structure, or management of the licensee are not detrimental to the safety and soundness of the licensee, the commissioner shall approve the application. If, after notice and a hearing, the commissioner determines otherwise, the commissioner shall deny the application.

(3) For purposes of subsection (2), the commissioner may determine any of the following:

(a) That an applicant or a director, officer, or manager of an applicant is not of good character if that person has

been convicted of, or has pleaded nolo contendere to, a crime involving fraud or dishonesty.

(b) That an applicant's plan to make a major change in the management of a licensee is detrimental to the safety and soundness of the licensee if the plan provides for a person to become a director, officer, or manager of the licensee and that person has been convicted of, or has pleaded nolo contendere to, a crime involving fraud or dishonesty.

(4) The conditions described in subsection (3) are not the only conditions upon which the commissioner may determine that an applicant or a director, officer, or manager of an applicant is not of good character or that an applicant's plan to make a major change in the management of a licensee is detrimental to the safety and soundness of the licensee.

History: 1986, Act 89, Imd. Eff. May 1, 1986 ;-- Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997

487.1603 Merger of licensee with another business firm; conditions; purchase by licensee of business of another person; sale of business; application for approval of merger, purchase, or sale; determinations.

Sec. 603.

(1) A licensee shall not merge with another business firm unless 1 of the following applies:

(a) If the licensee is the surviving business firm, the merger is approved by the commissioner.

(b) If the licensee is a disappearing business firm, the surviving business firm is a licensee and the merger is approved by the commissioner.

(2) A licensee shall not purchase all or substantially all of the business of another person unless the purchase is approved by the commissioner.

(3) A licensee shall not sell all or substantially all of its business or of the business of any of its offices to another person unless that other person is a licensee and the sale is approved by the commissioner.

(4) The commissioner shall approve an application for approval of a merger, purchase, or sale, if the commissioner determines all of the following:

(a) That the merger, purchase, or sale will be safe and sound with respect to the acquiring licensee.

(b) That, upon consummation of the merger, purchase, or sale, it is reasonable to believe that the acquiring licensee will comply with this act.

(c) That the merger, purchase, or sale will not have a major detrimental impact on competition in providing financial assistance or management assistance to business firms, or if there will be a detrimental impact, the merger, purchase, or sale is necessary in the interests of the safety and soundness of any of the parties to the merger, purchase, or sale, or is otherwise, on balance, in the public interest.

History: 1986, Act 89, Imd. Eff. May 1, 1986 ;-- Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997

Article 7
ENFORCEMENT

487.1701 Action to enjoin violation or enforce compliance; restraining order, preliminary or permanent injunction, or writ of mandamus; appointment of receiver or conservator; bond.

Sec. 701.

If in the opinion of the commissioner, a person violates, or there is reasonable cause to believe that a person is about to violate this act, the commissioner may bring an action in the name of the people of this state in a circuit court to enjoin the violation or to enforce compliance with this act. Upon a proper showing, a restraining order, preliminary or permanent injunction, or writ of mandamus shall be granted, and a receiver or a conservator may be appointed for the defendant or the defendant's assets. The court shall not require the commissioner to post a bond in an action brought under this act.

History: 1986, Act 89, Imd. Eff. May 1, 1986

487.1703 Violation of MCL 487.1311; cease and desist order; filing application for hearing on order; rescission of order; judicial review.

Sec. 703.

(1) If the commissioner finds that a person has violated or that there is reasonable cause to believe that a person is about to violate section 311, the commissioner may order the person to cease and desist from the violation unless and until the person is issued a license.

(2) Within 30 days after an order is issued under subsection (1), the person to whom the order is directed may file with the commissioner an application for a hearing on the order. If the commissioner fails to commence a hearing within 15 business days after that application is filed or within a longer period to which the person consents, the order shall be considered rescinded. Upon the hearing, the commissioner shall affirm, modify, or rescind the order. The right of a person to whom an order is issued under subsection (1) to petition for judicial review of the order is not affected by the failure of the person to apply to the commissioner for a hearing on the order issued under this subsection.

History: 1986, Act 89, Imd. Eff. May 1, 1986

487.1705 Cease and desist order; affirmative action to correct condition; application for hearing on order; affirming, modifying, or rescinding order; judicial review.

Sec. 705.

(1) If, after notice and a hearing, the commissioner determines that a licensee or a subject person of a licensee has violated or is violating, or that there is reasonable cause to believe that a licensee or subject person of a licensee is about to violate, this act or another applicable law, or that a licensee or subject person of a licensee has engaged or participated or is engaging or participating, or that there is a reasonable cause to believe that a licensee or subject person of a licensee is about to engage or participate, in an unsafe or unsound act with respect to the business of that licensee, the commissioner may order that licensee or subject person to cease and desist from the action or violation. The order may require the licensee or subject person to take affirmative action to correct any condition resulting from the action or violation.

(2) If the commissioner determines that any of the factors set forth in subsection (1) are true with respect to a licensee or subject person of a licensee and that the action or violation is likely to cause the insolvency of or substantial dissipation of the assets or earnings of the licensee; is likely to seriously weaken the condition of the licensee; or is likely to otherwise seriously prejudice the interests of the licensee before the completion of proceedings conducted under subsection (1), the commissioner may order the licensee or subject person to cease and desist from that action or violation. The order may require the licensee or subject person to take affirmative action to correct any condition resulting from the action or violation.

(3) Within 30 days after an order is issued under subsection (2), the licensee or subject person of a licensee to whom the order is directed may file with the commissioner an application for a hearing on the order. If the commissioner fails to commence a hearing within 15 business days after the application is filed or within a longer period to which the licensee or subject person consents, the order shall be considered rescinded. Upon the hearing, the commissioner shall affirm, modify, or rescind the order. The right of a licensee or subject person to whom an order is issued under subsection (2) to petition for judicial review of the order is not affected by the failure of the licensee or subject person to apply to the commissioner for a hearing on the order issued under this subsection.

History: 1986, Act 89, Imd. Eff. May 1, 1986

487.1707 Order removing subject person from office and prohibiting further participation in business of licensee; notice and hearing; determinations; order suspending subject person from office and prohibiting further participation in business of licensee; application for hearing on order; affirming, modifying, or

rescinding order; judicial review; "office" defined.

Sec. 707.

(1) The commissioner may issue an order removing a subject person of a licensee from his or her office, if any, with the licensee and prohibiting the subject person from further participating in any manner in the conduct of the business of the licensee, if, after notice and a hearing, the commissioner determines all of the following are true:

(a) The subject person has violated this act or another applicable law; the subject person has engaged or participated in an unsafe or unsound act with respect to the business of the licensee; or the subject person has engaged or participated in an act which constitutes a breach of the subject person's fiduciary duty.

(b) The act, violation, or breach of fiduciary duty has caused or is likely to cause substantial financial loss or other damage to the licensee or has seriously prejudiced or is likely to seriously prejudice the interests of the licensee, or the subject person has received financial gain by reason of the act, violation, or breach of fiduciary duty.

(c) The act, violation, or breach of fiduciary duty either involves dishonesty on the part of the subject person or demonstrates the subject person's gross negligence with respect to the business of the licensee or a willful disregard for the safety and soundness of the licensee.

(2) The commissioner may issue an order removing the subject person from his or her office with the licensee, if any, and prohibiting the subject person from further participating in any manner in the conduct of the business of the licensee, except with the prior consent of the commissioner, if, after notice and a hearing, the commissioner determines that, by engaging or participating in an act with respect to a financial or other business institution which resulted in substantial financial loss or other damage, the subject person of a licensee has demonstrated both of the following:

(a) Dishonesty or willful or continuing disregard for the safety and soundness of the financial or other business institution.

(b) Unfitness to continue as a subject person of the licensee or to participate in conducting the business of the licensee.

(3) If the commissioner determines that the factors set forth in subsection (1) or (2) are true with respect to a subject person of a licensee, and that it is necessary for the protection of the interests of the licensee or for the protection of the public interest that the commissioner immediately suspend the subject person from his or her office, if any, with the licensee and prohibit the subject person from further participating in any manner in conducting the business of the licensee, the commissioner may issue an order suspending the subject person from his or her office, if any, with the licensee and prohibiting the subject person from further participating in any manner in conducting the business of the licensee, except with the consent of the commissioner.

(4) Within 30 days after an order is issued under subsection (3), the subject person of a licensee to whom the order is directed may file with the commissioner an application for a hearing on the order. If the commissioner fails to begin a hearing within 15 business days after the application is filed or within a longer period to which the subject person consents, the order shall be considered rescinded. Upon the hearing, the commissioner shall affirm, modify, or rescind the order. The right of a subject person of a licensee to whom an order is issued under subsection (3) to petition for judicial review of the order shall not be affected by the failure of the subject person to apply to the commissioner for a hearing on the order issued under this subsection.

(5) A person to whom an order is issued under this section may apply to the commissioner to modify or rescind the order. The commissioner shall not modify or rescind the order unless the commissioner determines that it is in the public interest to do so and that it is reasonable to believe that the person, if and when he or she becomes a subject person of a licensee, will comply with this act.

(6) As used in this section, "office", if used with respect to a licensee, means the position of director, officer, or employee of the licensee or of a subsidiary of the licensee.

History: 1986, Act 89, Imd. Eff. May 1, 1986

487.1709 Crime involving dishonesty or breach of trust; order suspending subject person from office and prohibiting further participation in business of licensee; application for hearing on order; affirming, modifying, or rescinding order; judicial review; conviction not required; "office" defined.

Sec. 709.

(1) If the commissioner determines that a subject person of a licensee has been indicted by a grand jury or has been bound over for trial by a court for a crime involving dishonesty or breach of trust, and that the fact that the person continues to be a subject person of the licensee may threaten the interests of the licensee or may threaten to

impair public confidence in the licensee, the commissioner may issue an order suspending the subject person from his or her office, if any, with the licensee and prohibiting the subject person from further participating in any manner in the conduct of the business of the licensee, except with the consent of the commissioner.

(2) If the commissioner determines that a subject person or former subject person of a licensee to whom an order was issued under subsection (1), or another subject person of a licensee, has been convicted of a crime that is punishable by imprisonment for a term of not less than 1 year and that involves dishonesty or breach of trust, and that the fact that the person continues to be or will resume to be a subject person of the licensee may threaten the interests of the licensee or may threaten to impair public confidence in the licensee, the commissioner may issue an order suspending or removing the subject person or former subject person from his or her office, if any, with the licensee and prohibiting the subject person from further participating in any manner in the conduct of the business of the licensee, except with the prior consent of the commissioner.

(3) Within 30 days after an order is issued under subsection (1) or (2), the subject person of a licensee to whom the order is directed may file with the commissioner an application for a hearing on the order. If the commissioner fails to commence a hearing within 15 business days after the application is filed or within a longer period to which the subject person consents, the order shall be considered rescinded. Upon the hearing, the commissioner shall affirm, modify, or rescind the order. The right of a subject person or former subject person of a licensee to whom an order is issued under subsection (1) or (2) to petition for judicial review of the order is not affected by the failure of the person to apply to the commissioner for a hearing on the order issued under this subsection.

(4) The fact that a subject person of a licensee charged with a crime involving dishonesty or breach of trust is not convicted of the crime shall not preclude the commissioner from issuing an order to the subject person under any other provision of this act.

(5) A person to whom an order is issued under this section may apply to the commissioner to modify or rescind the order. The commissioner shall not modify or rescind the order unless the commissioner determines that it is in the public interest to do so and that it is reasonable to believe that the person, if and when he or she becomes a subject person of a licensee, will comply with this act.

(6) As used in this section, "office", if used with respect to a licensee, means the position of director, officer, manager, or employee of the licensee or of a subsidiary of the licensee.

History: 1986, Act 89, Imd. Eff. May 1, 1986 ;-- Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997

487.1711 Disclosure to owners.

Sec. 711.

If, in the opinion of the commissioner, disclosure to owners regarding a matter is warranted, the commissioner may require a licensee, in a form and manner as the commissioner may specify, to disclose to the owners of a licensee the results of a communication or order from the commissioner addressed to the licensee or to a subject person of the licensee.

History: 1986, Act 89, Imd. Eff. May 1, 1986 ;-- Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997

487.1713 Calling meeting of board of directors of licensee or of owners of licensee; notice; expenses.

Sec. 713.

(1) If the commissioner considers it expedient, the commissioner may call a meeting of the board of directors of a licensee by giving notice of the time, place, and purpose of the meeting not less than 5 days before the meeting to each director either by personal service or by registered or certified mail sent to the director's last known address as shown in the records of the commissioner.

(2) If the commissioner considers it expedient, the commissioner may call a meeting of the owners of a licensee by giving notice of the time, place, and purpose of the meeting not less than 5 days before the meeting to each owner either by personal service or by registered or certified mail sent to the owner's last known address as shown by the books of the licensee. The licensee shall pay the expenses of the notice and of a meeting called under this subsection.

History: 1986, Act 89, Imd. Eff. May 1, 1986 ;-- Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997

487.1715 Order directing licensee to refrain from providing additional financing assistance to business firms; notice and hearing; determinations; request for hearing; affirming, modifying, or rescinding order; resumption of financing assistance; application to modify or rescind order.

Sec. 715.

(1) The commissioner may issue an order directing a licensee to refrain from providing any additional financing assistance to business firms if, in the opinion of the commissioner, the order is necessary to protect the interests of the licensee or the public interest, and if, after notice and a hearing, the commissioner determines that any of the following are true:

(a) The licensee or a controlling person, subsidiary, or affiliate of the licensee has violated this act or another applicable law.

(b) The licensee is conducting its business in an unsafe and unsound manner.

(c) The licensee is in a condition that makes it unsafe or unsound for the licensee to transact business.

(d) The licensee has ceased to transact business as a business and industrial development corporation.

(e) The licensee is insolvent.

(f) The licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due.

(g) The licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under a bankruptcy, reorganization, insolvency, or moratorium law, or that a person has applied for such relief under such a law against a licensee and the licensee has by any affirmative act approved of or consented to the action or such relief has been granted.

(h) A fact or condition exists which would have been grounds for denying the application if the fact or condition had existed at the time the licensee applied for its license.

(2) If the commissioner determines that any of the factors set forth in subsection (1) are true with respect to a licensee and that it is necessary for the protection of the interest of the licensee or the public interest that the commissioner immediately issue an order directing the licensee to refrain from providing any additional financing assistance to business firms, the commissioner may issue such an order without a hearing. Within 30 days after an order is issued under this subsection, the licensee to whom the order is directed may file with the commissioner a request for a hearing on the order. If the commissioner fails to commence a hearing within 15 business days after the request is filed or within a longer period to which the licensee consents, that order shall be considered rescinded. Upon the hearing, the commissioner shall affirm, modify, or rescind the order.

(3) With the consent of the commissioner, a licensee which has been the subject of an order under subsection (1) or (2) may resume providing financing assistance to business firms under such conditions as the commissioner may prescribe.

(4) A person to whom an order is issued under subsection (1) or (2) may apply to the commissioner to modify or rescind the order. The commissioner shall not grant the application unless the commissioner determines that it is in the public interest to do so and that it is reasonable to believe that the person, if and when the order is modified or rescinded, will comply with this act.

History: 1986, Act 89, Imd. Eff. May 1, 1986

487.1717 Appointment of conservator for licensee; reimbursement of expenses of conservatorship; powers and duties of conservator; liquidation of licensee; appointment of receiver; determinations; manner of liquidation.

Sec. 717.

(1) If the commissioner finds that any of the factors set forth in section 715(1) are true with respect to a licensee and that it is necessary for the protection of the interests of the licensee or for the protection of the public interest that the commissioner take immediate possession of the property and business of the licensee, the commissioner

may appoint a conservator for the licensee. The commissioner may appoint as conservator 1 of the employees of the financial institutions bureau of the department of consumer and industry services or some other competent and disinterested person. The financial institutions bureau shall be reimbursed out of the assets of the conservatorship for all sums expended by the bureau in connection with the conservatorship as expenses. Upon the approval of the commissioner, the expenses of the conservatorship shall be paid out of the assets of the licensee. The expenses shall be a first charge upon the assets and shall be fully paid before any final distribution is made.

(2) Under the direction of the commissioner, the conservator shall take possession of the books, records, and assets of the licensee and shall take such action with respect to employees, agents, or representatives of the licensee or any other action as may be necessary to conserve the assets of the licensee or ensure payment of obligations of the licensee pending further disposition of its business as provided by law. At any appropriate time, the commissioner may terminate the conservatorship and permit the licensee to resume the transaction of its business subject to the terms, conditions, restrictions, and limitations the commissioner may prescribe.

(3) If in the opinion of the commissioner it is appropriate that the licensee be liquidated, the commissioner, with the attorney general representing the commissioner, may apply to the circuit court for the county in which the principal office of the licensee is located for the appointment of a receiver for the licensee, if the commissioner determines that any of the following are true:

(a) The licensee is insolvent.

(b) The licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due.

(c) The licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under a bankruptcy, reorganization, insolvency, or moratorium law.

(d) A person has applied for the relief described under subdivision (c) against any licensee and that licensee has by an affirmative act approved of or consented to the action or the relief has been granted.

(e) The licensee is in a condition that makes it unsafe or unsound for the licensee to transact business.

(4) If a receiver is appointed under subsection (3), the receiver shall liquidate the property and business of the licensee in the manner provided for in sections 2401 to 2403 of the banking code of 1999, 1999 PA 276, MCL 487.12401 to 487.12403, as if the licensee were a bank.

History: 1986, Act 89, Imd. Eff. May 1, 1986 ;-- Am. 2000, Act 445, Imd. Eff. Jan. 9, 2001

487.1719 Violation of act; amount and disposition of civil penalty; applicability of section; provisions cumulative; liability for certain violations.

Sec. 719.

(1) If, after notice and a hearing, the commissioner finds that a person has violated this act, the commissioner may order that person to pay to the commissioner a civil penalty in the amount the commissioner specifies. However, the amount of the civil penalty shall not exceed \$1,000.00 for each violation, or in the case of a continuing violation, \$1,000.00 for each day for which the violation continues. Money collected for a civil penalty under this section shall be paid into the state treasury and credited to the general fund of this state.

(2) This section does not apply to any act committed or omitted in good faith in conformity with an order, rule, declaratory ruling, or written interpretative opinion of the commissioner, notwithstanding that the order, rule, declaratory ruling, or written interpretative opinion is later amended, rescinded, or repealed, or determined by judicial or other authority to be invalid for any reason.

(3) The provisions of subsection (1) are additional to, and not alternative to, other provisions of this act which authorize the commissioner to issue orders or to take other action on account of a violation of this act. A person who is convicted under section 819 on account of a violation of article 8 shall not be liable to pay a civil penalty under subsection (1) on account of that violation. A person who pays a civil penalty under subsection (1) on account of a violation of article 8 shall not be liable to prosecution under section 819 on account of that violation.

History: 1986, Act 89, Imd. Eff. May 1, 1986

Article 8 CERTAIN UNLAWFUL ACTIVITIES

487.1801 Definitions.

Sec. 801.

(1) As used in this article, unless the context otherwise requires:

(a) "Advisor", means a person who regularly provides legal, accounting, or management services or advice to a licensee.

(b) "Associate" means, if used with respect to a licensee:

(i) A controlling person, director, officer, manager, agent, or advisor of that licensee.

(ii) A director, officer, manager, or partner of a person referred to in subparagraph (i).

(iii) A person who controls, is controlled by, or is under common control with a person referred to in subparagraph (i), directly or indirectly through 1 or more intermediaries.

(iv) A close relative of a person referred to in subparagraph (i).

(v) A person of which a person referred to in subparagraphs (i) to (iv) is a director, officer, or manager.

(vi) A person in which a person referred to in subparagraphs (i) to (iv), or any combination of those persons acting in concert, owns or controls, directly or indirectly, a 20% or greater equity interest.

(c) "Close relative" means parent, child, sibling, spouse, father-in-law, mother-in-law, son-in-law, brother-in-law, daughter-in-law, or sister-in-law.

(d) "Closing services" means services performed in connection with the providing of financing assistance. Closing services includes, but is not limited to, appraising property and preparing credit reports. Closing services does not include a service performed after the providing of financing assistance.

(e) "Short-term financing assistance" means financing assistance with a term of not more than 5 years.

(2) For the purposes of subsection (1)(b):

(a) A person who is in a relationship referred to in that subdivision within 6 months before or after a licensee provides financing assistance shall be considered to be in that relationship as of the date that licensee provides that financing assistance.

(b) If a licensee, in order to protect its interests, designates a person to serve as a director, officer, manager, or in any capacity in the management of a business firm to which that licensee provides financing assistance, that person shall not, on that account, be considered to have a relationship with that business firm. This subdivision does not apply if the person has, directly or indirectly, any other financial interest in the business firm or if the person, at any time before the licensee provides the financing assistance, served as a director, officer, manager, or in any other capacity in the management of the business firm for a period of 30 days or more.

History: 1986, Act 89, Imd. Eff. May 1, 1986 ;-- Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997

487.1803 Willful untrue statement or omission of material fact in application or report.

Sec. 803.

A person shall not willfully make an untrue statement of a material fact in an application or report filed with the commissioner under this act, or willfully omit to state in such an application or report a material fact required to be stated in the application or report.

History: 1986, Act 89, Imd. Eff. May 1, 1986

487.1805 Willful refusal to allow inspection or making copies of books, accounts, and other records.

Sec. 805.

A person having custody of any of the books, accounts, or other records of a licensee shall not willfully refuse to allow the commissioner, upon request, to inspect or make copies of any of those books, accounts, or other records.

History: 1986, Act 89, Imd. Eff. May 1, 1986

487.1807 Books, accounts, or other records; false entries; omission of required entry; alteration, concealment, or destruction.

Sec. 807.

A person shall not, with intent to deceive a director, officer, manager, employee, auditor, or attorney of a licensee, the commissioner, or a governmental agency, make a false entry in the books, accounts, or other records of that licensee, omit to make an entry in those books, accounts, or other records which that person is required to make, or alter, conceal, or destroy any of those books, accounts, or other records.

History: 1986, Act 89, Imd. Eff. May 1, 1986 ;-- Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997

487.1809 Financing assistance to associate of licensee.

Sec. 809.

A licensee shall not provide, directly or indirectly, financing assistance to an associate of the licensee.

History: 1986, Act 89, Imd. Eff. May 1, 1986

487.1811 Financing assistance to discharge obligation to associate of licensee; transactions to which section inapplicable.

Sec. 811.

A licensee shall not provide, directly or indirectly, financing assistance to discharge, or to free other money for use in discharging, in whole or in part, an obligation to an associate of that licensee. This section does not apply to a transaction effected by an associate of a licensee in the normal course of that associate's business involving a line of credit or short-term financing assistance.

History: 1986, Act 89, Imd. Eff. May 1, 1986

487.1813 Financing assistance to business firm to which associate of licensee provides financing assistance; applicability of section.

Sec. 813.

(1) A licensee shall not provide, directly or indirectly, financing assistance to a business firm to which an associate of that licensee provides financing assistance, either contemporaneously with, or within 1 year before or after, the providing of financing assistance by the licensee, if the terms on which the licensee provides financing assistance are less favorable to the licensee than the terms on which the associate provides financing assistance to the business firm. If the financing assistance provided by the associate of the licensee is of a different kind from the financing assistance provided by the licensee, the burden shall be on the licensee to prove that the terms on which the licensee provided financing assistance were at least as favorable to the licensee as the terms on which the associate provided financing assistance to the business firm.

- (2) This section does not apply to any of the following:
- (a) If the associate is a controlling person of the licensee and is also the only owner of the licensee.
 - (b) If the associate is a subsidiary of the licensee.
 - (c) A transaction effected by an associate of a licensee in the normal course of that associate's business involving a line of credit or short-term financing assistance.

History: 1986, Act 89, Imd. Eff. May 1, 1986 ;-- Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997

487.1815 Compensation of associate of licensee for procuring or influencing licensee's action with respect to providing financing assistance; section inapplicable to fees received for bona fide closing services; criteria.

Sec. 815.

An associate of a licensee shall not receive, directly or indirectly, from a person to whom that licensee provides financing assistance, compensation in connection with the providing of that financing assistance or anything of value for procuring, influencing, or attempting to procure or influence the licensee's action with respect to the providing of the financing assistance. This section does not apply to the receipt of fees by an associate of a licensee for bona fide closing services performed by that associate if all of the following are true:

- (a) The associate, with the consent and knowledge of the person to whom the financing assistance is provided, is designated by the licensee to perform the services.
- (b) The services are appropriate and necessary in the circumstances.
- (c) The fees for the services are approved as reasonable by the licensee.
- (d) The fees for the services are collected by the licensee on behalf of the associate.

History: 1986, Act 89, Imd. Eff. May 1, 1986

487.1817 Exemptions.

Sec. 817.

(1) By such orders or rules the commissioner considers necessary and appropriate, the commissioner may exempt from sections 809 to 815, either unconditionally or upon specified terms and conditions and for specified periods, a person or transaction or class of persons or transactions, if the commissioner finds that the exemption is in the public interest and that the regulation of the person, transaction, or class is not necessary for the purposes of this act.

(2) In exempting a person or transaction or class of persons or transactions, the commissioner shall give consideration, as considered appropriate by the commissioner, to conflict of interest provisions of federal law or regulation that may be applicable to that person or transaction governing participants in federal financing programs.

History: 1986, Act 89, Imd. Eff. May 1, 1986

487.1819 Violation of article; penalty; applicability of section; power of state to punish not limited by act.

Sec. 819.

(1) A person who knowingly commits an act which act violates this article shall be fined not more than \$10,000.00 or shall be imprisoned for not more than 1 year, or both.

(2) This section does not apply to an act committed or omitted in good faith in conformity with an order, rule, declaratory ruling, or written interpretative opinion of the commissioner, notwithstanding that the order, rule, declaratory ruling, or written interpretative opinion is later amended, rescinded, or repealed, or determined by

judicial or other authority to be invalid for any reason.

(3) Nothing in this act limits the power of the state to punish a person for an act which constitutes a crime under any statute.

History: 1986, Act 89, Imd. Eff. May 1, 1986

Article 9 GENERAL PROVISIONS

487.1901 Liberal construction.

Sec. 901.

This act shall be liberally construed to accomplish its purposes.

History: 1986, Act 89, Imd. Eff. May 1, 1986

487.1903 Proceedings subject to administrative procedures act; exemptions.

Sec. 903.

A proceeding to promulgate rules or a proceeding regarding civil penalties under section 719 shall be subject to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. Any other proceedings under this act are exempt from the provisions of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969.

History: 1986, Act 89, Imd. Eff. May 1, 1986

487.1905 Applicability of provisions of licensee's incorporating or organizing statute.

Sec. 905.

Except as otherwise provided in this section, the provisions of a licensee's incorporating or organizing statute apply to the licensee. If a provision of the licensee's incorporating or organizing statute conflicts with any provision of this act, this act controls.

History: 1986, Act 89, Imd. Eff. May 1, 1986 ;-- Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997

Article 10 REPEAL

487.2001 Repeal of MCL 487.851 to 487.867; certain statutory references considered references to BIDCO.

Sec. 1001.

Act No. 117 of the Public Acts of 1963, being sections 487.851 to 487.867 of the Michigan Compiled Laws, is repealed. A reference in another law of this state to a business development corporation under Act No. 117 of the Public Acts of 1963 shall be considered to be a reference to a BIDCO under this act.

History: 1986, Act 89, Imd. Eff. May 1, 1986

CONSUMER FINANCIAL SERVICES ACT

Act 161 of 1988

AN ACT to regulate the providing of certain consumer financial services; to provide for licensing of certain financial institutions; to prescribe powers and duties of certain state departments and agencies; to prohibit certain activities; and to provide for remedies and penalties.

History: 1988, Act 161, Eff. Sept. 1, 1988

The People of the State of Michigan enact:

487.2051 Short title.

Sec. 1.

This act shall be known and may be cited as the "consumer financial services act".

History: 1988, Act 161, Eff. Sept. 1, 1988

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.2052 Definitions.

Sec. 2.

As used in this act:

- (a) "Applicant" means a person that has applied to the commissioner to be licensed under this act.
- (b) "Bureau" means the office of financial and insurance services of the department of labor and economic growth.
- (c) "Business activity" means any activity regulated by any of the financial licensing acts.
- (d) "Class I license" means a license issued under this act that authorizes the licensee to engage in all of the activities permitted under any of the financial licensing acts.
- (e) "Class II license" means a license issued under this act that authorizes all of the activities permitted under a class I license except for activities permitted under the sale of checks act, 1960 PA 136, MCL 487.901 to 487.916, loan servicing activities under the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, or the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684.
- (f) "Commissioner" means the commissioner of the office of financial and insurance services or an authorized representative of the commissioner.
- (g) "Control person" means a director or executive officer of a licensee or a person who has the authority to participate in the direction, directly or indirectly through 1 or more other persons, of the management or policies of a licensee.
- (h) "Depository financial institution" means a bank, savings and loan association, savings bank, or credit union organized under the laws of this state, another state, the District of Columbia, the United States, or a territory or protectorate of the United States, whose deposits are insured by an agency of the federal government.
- (i) "Executive officer" means an officer, member, or partner of a licensee, including chief executive officer, president, vice president, chief financial officer, controller, compliance officer, or any other similar position.

(j) "Financial licensing acts" means this act; the regulatory loan act, 1939 PA 21, MCL 493.1 to 493.24; the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81; the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.101 to 492.141; 1984 PA 379, MCL 493.101 to 493.114; the sale of checks act, 1960 PA 136, MCL 487.901 to 487.916; the money transmission services act, MCL 487.1001 to 487.1048; and the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684.

(k) "Licensee" means a person that is licensed under this act.

(l) "Loan servicing activities" means the collection or remittance for a lender, noteowner, noteholder, or the licensee's own account of 4 or more installment payments of the principal, interest, or an amount placed in escrow under a mortgage servicing agreement or a mortgage loan subject to the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, or a mortgage servicing agreement or secondary mortgage loan subject to the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, or an agreement with the mortgagor.

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

History: 1988, Act 161, Eff. Sept. 1, 1988 ;-- Am. 1999, Act 275, Imd. Eff. Jan. 5, 2000 ;-- Am. 2002, Act 390, Imd. Eff. May 30, 2002 ;-- Am. 2006, Act 252, Imd. Eff. July 3, 2006

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.2053 License required to engage in business activity; exceptions.

Sec. 3.

(1) A person shall not engage in a business activity unless the person is licensed under the appropriate financial licensing act, or by this act.

(2) This act applies to a person who engages in any business activity if the person is not licensed or, as applicable, registered under the applicable financial licensing act or licensed under this act and is not otherwise exempt from applicable licensing or registration requirements. If a person engages in 1 or more business activities without the applicable licenses or registrations, it shall be discretionary with the commissioner to enforce the applicable licensing or registration requirements under either 1 or more of the financial licensing acts or this act, but not both.

(3) This act does not apply to a depository financial institution.

History: 1988, Act 161, Eff. Sept. 1, 1988 ;-- Am. 1999, Act 275, Imd. Eff. Jan. 5, 2000

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.2054 License application.

Sec. 4.

An application for a license under this act shall be made in writing and under oath to the commissioner in the form the commissioner may prescribe. The application shall state the full name, business address, and residence address of the following:

(a) The proprietor, if the applicant is an individual.

(b) Every member, if the applicant is a partnership, limited liability company, or association, except that if the applicant is a joint stock association having 50 or more members, the name and business address need be given only for the association and each of its officers and directors.

(c) If the applicant is a corporation, the name of the corporation and each of its officers, directors, and stockholders. The commissioner may exempt publicly held corporations from the requirement of providing information regarding stockholders.

History: 1988, Act 161, Eff. Sept. 1, 1988 ;-- Am. 1999, Act 275, Imd. Eff. Jan. 5, 2000

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.2055 License fee; investigation fee; financial statements; net worth requirements.

Sec. 5.

(1) An application for a license shall be accompanied by all of the following:

(a) An annual operating fee as established by the commissioner under section 11.

(b) An application fee as provided in section 11. The application fee is not refundable.

(c) Financial statements, reasonably satisfactory to the commissioner, showing that the applicant's net worth exceeds \$100,000.00 for an applicant for a class I license; \$50,000.00 for an applicant for a class II license; \$1,000,000.00 for an applicant that intends to engage in business activity governed by 1984 PA 379, MCL 493.101 to 493.114; or \$100,000.00 plus an additional \$25,000.00 for each location or authorized delegate, as applicable, or \$1,000,000.00, whichever is less, for an applicant that intends to provide money transmission services as defined in section 2 of the money transmission services act. A licensee shall have and continue to maintain the required net worth while engaging in the business activities authorized for licensing under this act. The commissioner may by order establish a higher net worth requirement for new class I licensees to assure safe and sound operation of the activities.

(2) Net worth under subsection (1)(c) shall be determined at the conclusion of the fiscal year of the licensee immediately preceding the date an application for a license is submitted to the commissioner or, for corporations not in existence as of the previous year end, the immediately preceding month end. Net worth shall be disclosed on a form prescribed by the commissioner or on a form prepared or reviewed by a certified public accountant and shall be computed in accordance with generally accepted accounting principles. The following assets shall be excluded in the computation of net worth:

(a) That portion of an applicant's assets pledged to secure obligations of any person other than the applicant.

(b) Receivables from officers or, in the case of a corporate applicant other than a publicly traded company, stockholders of the applicant or persons in which the applicant's officers or stockholders have an interest, except that construction loan receivables secured by mortgages from related companies are not so excluded.

(c) An amount in excess of the lower of the cost or market value of mortgage loans in foreclosure or real property acquired through foreclosure.

(d) An investment shown on the balance sheet in joint ventures, subsidiaries, or affiliates that is greater than the market value of the investment.

(e) Goodwill or value placed on insurance renewals or property management contract renewals or other similar intangible value.

(f) Organization costs.

History: 1988, Act 161, Eff. Sept. 1, 1988 ;-- Am. 1992, Act 76, Imd. Eff. June 2, 1992 ;-- Am. 1999, Act 275, Imd. Eff. Jan. 5, 2000 ;-- Am. 2006, Act 252, Imd. Eff. July 3, 2006

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.2056 Surety bond or letter of credit.

Sec. 6.

(1) An applicant for a license shall furnish a surety bond or letter of credit to secure its obligations under this act to the commissioner. Except as provided in this subsection, the principal amount of a surety bond or letter of credit shall be at least \$500,000.00. If the applicant intends to provide money transmission services as defined in section 2 of the money transmission services act, the applicant shall file a surety bond that is in a principal amount as determined under section 13(5)(b) of the money transmission services act for a licensee under that act.

(2) A surety bond described in subsection (1) shall be payable to the commissioner for the benefit of the people

of the state of Michigan for the use of, and may be sued on by, the state. A surety bond or letter of credit shall remain for the duration of the licensure period.

(3) A surety bond or letter of credit required under subsection (1) shall be in a form satisfactory to the commissioner and payable upon demand by the commissioner if he or she determines that the licensee is not conducting its activities as required by this act and all of the rules promulgated under this act, and has failed to pay all money that becomes due to a person who is an installment buyer under the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.101 to 492.141, Michigan residents who purchase checks under the sale of checks act, 1960 PA 136, MCL 487.901 to 487.916, Michigan residents who purchase money transmission services as defined in section 2 of the money transmission services act, loan applicants, loan servicing customers, and borrowers under the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, or the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, and the commissioner.

(4) The commissioner shall prioritize and pay claims against a bond or letter of credit filed with the commissioner under this section in a manner that, in the commissioner's discretion, best protects the public interest.

(5) Claims described in subsection (4) may only be filed against a licensee's bond or letter of credit by the commissioner on behalf of the bureau and of individuals having claims and who are, as applicable, the licensee's loan applicants, loan servicing customers, and borrowers under the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, or the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, Michigan residents who purchase checks under the sale of checks act, 1960 PA 136, MCL 487.901 to 487.916, Michigan residents who purchase money transmission services as defined in section 2 of the money transmission services act, or persons who are installment buyers under the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.101 to 492.141.

(6) Claims filed with the commissioner against a bond or letter of credit by a loan applicant, loan servicing customer, or borrower under the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, or the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, shall involve, as applicable, only a mortgage loan, mortgage loan application, secondary mortgage loan, or secondary mortgage loan application secured or to be secured by real property used as a dwelling located in this state. The amount of the claim shall not exceed actual fees paid by the claimant to the licensee in connection with a loan application, overcharges of principal and interest, and excess escrow collections by the licensee.

(7) Before payment of any claim filed under this section, unless the commissioner waives, in whole or in part, the right to priority of payment, the commissioner shall be paid in full for fines and fees due to the bureau and for expenses incurred in investigating the licensee and in distributing the proceeds of the bond or letter of credit. In the event that valid claims exceed the amount of the bond or letter of credit, each claimant except the commissioner is entitled only to a pro rata amount of his or her valid claim.

History: 1988, Act 161, Eff. Sept. 1, 1988 ;-- Am. 1999, Act 275, Imd. Eff. Jan. 5, 2000 ;-- Am. 2006, Act 252, Imd. Eff. July 3, 2006
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.2057 Investigation of license applicant by commissioner; issuance and delivery of license; expiration of license; renewal of license; fee; penalty for delinquent payment.

Sec. 7.

(1) Upon the filing of an application and the payment of the required fees by an applicant, the commissioner shall investigate the applicant. If the commissioner finds that the financial responsibility, experience, character, and general fitness of the applicant, and of the applicant's members if the applicant is a partnership, limited liability company, or association, and of the applicant's officers and directors if the applicant is a corporation, are such as to command the confidence of the community and to warrant belief that the business will be operated lawfully, honestly, fairly, and efficiently within the purposes of this act, the commissioner shall issue and deliver to the applicant a license to engage in all of the activities authorized under this act or by rule or order of the commissioner.

(2) A license issued or renewed under this act expires on December 31 each year. To renew an existing license, a licensee shall pay an annual operating fee as provided in section 11 on or before December 15 of the year immediately preceding the year for which the renewal is requested. An annual operating fee paid after December 31 is subject to a penalty of \$25.00 for each day the fee is delinquent or \$1,000.00, whichever is less, and may be grounds for the commissioner's refusal to reissue the license.

History: 1988, Act 161, Eff. Sept. 1, 1988 ;-- Am. 1992, Act 76, Imd. Eff. June 2, 1992 ;-- Am. 1999, Act 275, Imd. Eff. Jan. 5, 2000
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.2058 License certificate; availability of copy; transferability; changing name or place of business; operating one place of business under same license; additional place of business; ceasing business activities.

Sec. 8.

(1) Upon approval by the commissioner of an application for a license, the commissioner shall issue to the applicant a license certificate showing the name of the person authorized to do business and the business address of the licensee. The licensee shall make a copy of the license available at the licensee's place of business for inspection upon request by any natural person.

(2) A license shall not be transferred or assigned without the prior consent of the commissioner. For purposes of this subsection, transfer means the sale, assignment, or conveyance of more than 25% of the outstanding voting stock of a licensee that is a corporation, or more than 25% of the ownership interest in a licensee that is a partnership or other legal entity.

(3) A licensee under this act may change its name or place of business shown on the license. To change its name or the place of business shown on the license, a licensee shall give prior written notice to the commissioner and return the license certificate to the commissioner for amendment. The commissioner shall amend the license certificate to show the new name or the new place of business shown on the license and the date of reissue.

(4) A licensee may engage in activities for which a license is required at more than 1 place of business by providing not less than 30 days' written notice to the commissioner before opening each additional place of business, and otherwise complying with the requirements of this act. An application that identifies the locations at which the applicant, if approved, will conduct business activities that are subject to this act meets the notice requirement of this subsection for those locations.

(5) A licensee that elects to cease engaging in business activities that are subject to this act at a place of business shall provide prior written notice to the commissioner.

History: 1988, Act 161, Eff. Sept. 1, 1988 ;-- Am. 1992, Act 76, Imd. Eff. June 2, 1992 ;-- Am. 1999, Act 275, Imd. Eff. Jan. 5, 2000
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.2059 Compliance; exemption of licensee from certain provisions of financial licensing acts; purchase of certain contracts; loans; employment of individual as loan officer to originate mortgage loans or secondary mortgage loan officer to originate secondary mortgage loans; "employ" defined.

Sec. 9.

(1) Except as otherwise provided in subsection (2), a licensee under this act shall comply with all of the requirements of the financial licensing acts.

(2) A licensee under this act is exempt from provisions of the financial licensing acts regulating any of the following:

- (a) Application procedures.
- (b) Licensing procedures.
- (c) Payment of fees by the licensee.
- (d) Filing of surety bonds.
- (e) Denial, suspension, or revocation of a license.
- (f) Retention of records.
- (g) Filing of reports.

(3) A licensee may purchase a contract made in compliance with the retail installment sales act, 1966 PA 224, MCL 445.851 to 445.873, or the home improvement finance act, 1965 PA 332, MCL 445.1101 to 445.1431.

(4) A licensee may have 1 or more loans outstanding to 1 borrower, but no single loan transaction shall violate

the financial licensing act which regulates the type of loan transaction.

(5) A licensee acting as a mortgage broker or mortgage lender shall not employ or engage an individual as a loan officer to originate mortgage loans unless he or she is a licensed loan officer. As used in this subsection, "licensed loan officer", "loan officer", "originate", "mortgage broker", and "mortgage lender" mean those terms as defined in section 1a of the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651a.

(6) A licensee acting as a broker or lender shall not employ or engage an individual as a secondary mortgage loan officer to originate secondary mortgage loans unless he or she is a licensed secondary mortgage loan officer. As used in this subsection, "broker", "lender", "licensed secondary mortgage loan officer", "originate", and "secondary mortgage loan officer" mean those terms as defined in section 1 of the secondary mortgage loan act, 1981 PA 125, MCL 493.51.

(7) As used in this section, "employ" means an engagement of an individual by a licensee that meets both of the following:

- (a) Is acknowledged by the licensee and individual as an employment relationship.
- (b) The licensee treats the individual as an employee for compliance with federal income tax laws.

History: 1988, Act 161, Eff. Sept. 1, 1988 ;-- Am. 1999, Act 275, Imd. Eff. Jan. 5, 2000 ;-- Am. 2009, Act 12, Imd. Eff. Apr. 9, 2009 ;-- Am. 2009, Act 78, Eff. July 31, 2010

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.2060 Suspension or revocation of license; notice; hearing; determination; appeal; grounds for suspending, revoking, or refusing to renew license; suspension or revocation of activities; investigations, examinations, and hearings; evidence; failure to comply with subpoena; cease and desist order.

Sec. 10.

(1) A license shall not be suspended or revoked except on not less than 10 days' notice to the licensee setting forth in writing the reasons for the suspension or revocation. Within 5 days after receipt of the notice, the licensee may make written demand for a hearing. The commissioner with reasonable promptness shall hear and determine the matter as provided by the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. If the licensee considers itself aggrieved by the order of the commissioner, the licensee may appeal within 30 days from the date of the order to the circuit court in the manner provided by the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, and shall be entitled to judicial review as provided in that act. If an appeal is taken from an order revoking any license, the effect of the order may be stayed by the court pending the final determination of the appeal.

(2) The commissioner may suspend, revoke, or refuse to renew a license under this act if the commissioner finds 1 or more of the following:

- (a) The licensee has made a material misstatement in the application for license.
- (b) The licensee has violated a provision of this act or a rule promulgated under this act, or an order of the commissioner.
- (c) The licensee has refused to permit the commissioner or the commissioner's designated representative to make examinations authorized by this act.
- (d) The licensee has failed to meet or maintain the requirements of section 6 or any other requirements of this act.
- (e) The licensee has failed to maintain satisfactory records as required by this act.
- (f) The licensee has falsified a record required by this act to be maintained in connection with the business regulated by this act.
- (g) The licensee has, after proper notice, failed to file a report with the commissioner within the time stipulated in this act.
- (h) The licensee has failed to pay the fine required by this act for failure to file reports within the time stipulated.
- (i) The licensee has defrauded a consumer or willfully failed to perform a written agreement with a consumer.
- (j) The licensee has refused or failed, within a reasonable time, to furnish any information or make any report that is required by the commissioner.
- (k) A fact or condition exists that, if it had existed or had been known to exist at the time of filing of the application for a license, would have warranted refusal by the commissioner to issue a license.
- (l) A class I licensee authorized to issue or sell checks, has refused or is unable to pay its obligations generally as they become due.

(m) A licensee engaged in loan servicing activities, intentionally or as a result of gross or wanton negligence, is not servicing loans as required by law or by the terms of the servicing contracts.

(n) The licensee has failed to pay an annual operating fee or any associated late filing fees.

(3) Based on the findings of the commissioner under subsection (2), he or she may suspend or revoke all activities under the license, or only the particular regulated activity for which grounds for revocation or suspension occurred or existed.

(4) The commissioner may make investigations or conduct examinations of any person and conduct hearings as the commissioner considers necessary to determine whether any licensee or any other person has violated any of the provisions of this act, or whether any licensee has conducted business in such a manner as would justify suspension or revocation of its license.

(5) The commissioner may subpoena witnesses and documents, papers, books, records, and other evidence in any matter over which the commissioner has jurisdiction, control, or supervision. The commissioner may administer oaths and affirmations to any person whose testimony is required.

(6) If a person fails to comply with a subpoena issued by the commissioner or to testify with respect to any matter concerning which the person may be lawfully questioned, the circuit court for Ingham county, on application of the commissioner, may issue an order requiring the attendance of the person and the giving of testimony or production of evidence.

(7) If in the opinion of the commissioner a licensee is, has, or is about to engage in a practice that poses a threat of financial loss or threat to the public welfare, or is, has, or is about to violate a law or rule, the commissioner may serve a notice of intention to issue a cease and desist order as provided in subsection (8).

(8) A notice served under this section shall contain a statement of the facts constituting the alleged practice or violation, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should be issued against the licensee.

(9) If the licensee fails to appear at the hearing by a duly authorized representative, the licensee shall have consented to the issuance of the cease and desist order.

(10) In the event of consent under subsection (9), or if upon the record made at the hearing, the commissioner finds that the practice or violation specified in the notice has been established, the commissioner may serve upon the licensee an order to cease and desist from the practice or violation. The order may require the licensee and its officers, directors, members, partners, trustees, employees, agents, and persons exercising control over the business activities of the licensee to cease and desist from the practice or violation and to take affirmative action to correct the conditions resulting from the practice or violation.

(11) Except as provided in subsection (12) or to the extent it is stayed, modified, terminated, or set aside by the commissioner or a court, a cease and desist order shall become effective on the date of service.

(12) A cease and desist order issued upon consent shall become effective at the time specified in the order and remain effective and enforceable as provided in the order.

(13) For purposes of this act, the manner of the service of process shall be in accordance with the Michigan court rules.

History: 1988, Act 161, Eff. Sept. 1, 1988 ;-- Am. 1999, Act 275, Imd. Eff. Jan. 5, 2000

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.2060a Request for reconsideration.

Sec. 10a.

(1) If an applicant for a license is dissatisfied with the order issued under section 10 by the commissioner, the applicant may file with the commissioner, not later than 15 days after the issuance of the order, a notice of request for reconsideration of the order together with a statement in support of the applicant's request for reconsideration and, if desired, a request for oral argument. The notice of request for a reconsideration and supporting statement shall be in writing.

(2) The issues raised in the applicant's statement shall be limited to the commissioner's findings of fact and conclusions of law set forth in the order.

(3) If the commissioner grants the request for reconsideration, not later than 10 days after the commissioner receives the statement, the commissioner shall either provide a written response to the applicant's request for reconsideration or conduct an oral argument. If the commissioner does not grant the request for reconsideration, the order shall stand.

(4) If an oral argument is conducted under subsection (3), the oral argument shall be limited to the issues raised in the applicant's statement. The commissioner shall either affirm the order or revise the order as the commissioner considers appropriate not later than 10 days after the completion of the oral argument.

(5) For purposes of this act, an application for a license and the commissioner's final decisions, findings, rulings, and orders are not contested cases within the meaning of the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(6) If the applicant considers itself aggrieved by an order of the commissioner, the applicant may appeal within 30 days from the date of the order to the Ingham county circuit court in the manner provided by the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

History: Add. 1999, Act 275, Imd. Eff. Jan. 5, 2000

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.2060b Hearing; judicial review.

Sec. 10b.

(1) A hearing provided for in section 10 shall be conducted in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The hearing shall be private, unless the commissioner determines that a public hearing is necessary to protect the public interest. After the hearing and within 90 days after the commissioner has notified the parties that the case has been submitted to him or her for final decision, the commissioner shall render his or her decision, which shall include findings of fact upon which the decision is predicated and shall issue and serve upon each party to the proceeding an order consistent with this section.

(2) Any party to the proceeding, or any person required by an order issued under section 10 to cease and desist from any of the violations or practices stated in the order, may obtain a judicial review of any order served under subsection (1), other than a consent order, which review shall be exclusively as provided in the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Unless a petition for review is timely filed as provided in that act, the commissioner, at any time, upon notice that the commissioner considers proper, may modify, terminate, or set aside the order. Upon the timely filing of a petition for review, the commissioner may modify, terminate, or set aside the order with the permission of the court.

(3) Unless specifically ordered by the court, the commencement of proceedings for judicial review under subsection (2) shall not operate as a stay of any order issued by the commissioner.

History: Add. 1999, Act 275, Imd. Eff. Jan. 5, 2000

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.2060c Enforcement of notice or order.

Sec. 10c.

The commissioner may apply to the circuit court of Ingham county for the enforcement of any effective and outstanding notice or order issued under section 10 or 10a, and the court shall have jurisdiction and power to order and require compliance with the notice. Except as otherwise provided in this act, a court does not have jurisdiction to review, modify, suspend, terminate, or set aside by injunction any notice or order issued under section 10 or 10a.

History: Add. 1999, Act 275, Imd. Eff. Jan. 5, 2000

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.2060d Summary suspension; order; hearing; record.

Sec. 10d.

(1) After a complaint is filed or, as applicable, an investigation or administrative action against a licensee is commenced under section 10, the commissioner may issue an order summarily suspending the license under section 92 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.292, supported by an affidavit from a person familiar with the facts set forth in the affidavit or, if appropriate, based upon an affidavit on information that an imminent threat of financial loss or imminent threat to the public welfare exists. The order to summarily suspend a license shall be served upon the licensee.

(2) A licensee upon which an order to summarily suspend its license has been served shall have 20 days after the date of the order by which to file with the commissioner a request for a hearing.

(3) A hearing shall be held promptly upon receipt of a request for a hearing filed by a licensee under subsection (2).

(4) A summary suspension of a license shall continue until the commissioner finds that the imminent threat of financial loss or imminent threat to the public welfare no longer exists.

(5) The record created at the hearing on the summary suspension shall become part of the record on the complaint at a subsequent hearing in a contested case.

History: Add. 1999, Act 275, Imd. Eff. Jan. 5, 2000

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.2060e Summary suspension order, cease and desist order, or injunctive relief as additional legal action.

Sec. 10e.

A summary suspension order, cease and desist order, or injunctive relief issued or granted in relation to a license shall be in addition to an informal conference, criminal prosecution, or proceeding to deny, revoke, or suspend a license, or any other legal action.

History: Add. 1999, Act 275, Imd. Eff. Jan. 5, 2000

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.2060f Investigation or examination by commissioner; complaint or action; suspension of license; request for hearing; duration of suspension.

Sec. 10f.

(1) As provided in section 10(4), the commissioner may investigate or conduct an examination of any person and conduct hearings as the commissioner considers necessary to determine whether a licensee or any other person has violated this act, or whether a licensee has conducted business in a manner that would justify suspension or revocation of its license.

(2) Upon the filing of a complaint or the taking of action against a licensee under section 10(7), the commissioner may issue and serve upon a licensee an order suspending that person's license. The order shall be supported by an affidavit from a person familiar with the facts set forth in the affidavit and shall contain information that an imminent threat of financial loss or threat to the public welfare exists.

(3) Upon service of the order under subsection (2), the licensee shall have 20 days to file with the commissioner a request for a hearing. The hearing shall be scheduled within 20 days of the receipt of a request filed under this

subsection.

(4) A suspension of a license under this section shall continue until the commissioner finds that the threat of financial loss or threat to the public welfare no longer exists.

History: Add. 2002, Act 390, Imd. Eff. May 30, 2002

487.2060g Fraud or money laundering; definitions.

Sec. 10g.

(1) If in the opinion of the commissioner a person has engaged in fraud or money laundering, the commissioner may serve upon that person a written notice of intention to prohibit that person from being employed by, an agent of, or control person of a licensee under this act or a licensee or registrant under a financial licensing act. (2) A notice issued under subsection (1) shall contain a statement of the facts supporting the prohibition and, except as provided under subsection (7), set a hearing to be held not more than 60 days after the date of the notice. If the person does not appear at the hearing, he or she is considered to have consented to the issuance of an order in accordance with the notice.

(3) If after a hearing held under subsection (2) the commissioner finds that any of the grounds specified in the notice have been established, the commissioner may issue an order of suspension or prohibition from being a licensee or registrant or from being employed by, an agent of, or control person of any licensee under this act or a licensee or registrant under a financial licensing act.

(4) An order issued under subsection (2) or (3) is effective upon service upon the person. The commissioner shall also serve a copy of the order upon the licensee of which the person is an employee, agent, or control person. The order remains in effect until it is stayed, modified, terminated, or set aside by the commissioner or a reviewing court.

(5) After 5 years from the date of an order issued under subsection (2) or (3), the person subject to the order may apply to the commissioner to terminate the order.

(6) If the commissioner considers that a person served a notice under subsection (1) poses an imminent threat of financial loss to applicants for loans, mortgage loans, secondary mortgage loans, credit card arrangements, or installment sales credit, borrowers on loans, obligors on installment sale contracts, loan servicing customers, purchasers of mortgage loans or interests in mortgage loans, or purchasers of money transmission services as defined in section 2 of the money transmission services act, the commissioner may serve upon the person an order of suspension from being employed by, an agent of, or control person of any licensee. The suspension is effective on the date the order is issued and, unless stayed by a court, remains in effect pending the completion of a review as provided under this section and the commissioner has dismissed the charges specified in the order.

(7) Unless otherwise agreed to by the commissioner and the person served with an order issued under subsection (6), the hearing required under subsection (2) to review the suspension shall be held not earlier than 5 days or later than 20 days after the date of the notice.

(8) If a person is convicted of a crime involving fraud, dishonesty, money laundering, or breach of trust, the commissioner may issue an order suspending or prohibiting that person from being a licensee and from being employed by, an agent of, or control person of any licensee under this act or a licensee or registrant under a financial licensing act. After 5 years from the date of the order, the person subject to the order may apply to the commissioner to terminate the order.

(9) The commissioner shall mail a copy of any notice or order issued under this section to the licensee of which the person subject to the notice or order is an employee, agent, or control person.

(10) As used in this section:

(a) "Fraud" includes actionable fraud, actual or constructive fraud, criminal fraud, extrinsic or intrinsic fraud, fraud in the execution, in the inducement, in fact, or in law, or any other form of fraud.

(b) "Money laundering" means conduct by 1 or more persons that conceals the existence, illegal source, or illegal application of income and then disguises that income to make it appear legitimate. Money laundering includes, but is not limited to, conduct that violates any state or federal law that imposes a criminal penalty for money laundering.

History: Add. 2002, Act 390, Imd. Eff. May 30, 2002 ;-- Am. 2006, Act 252, Imd. Eff. July 3, 2006

487.2060h Hearing; decision; findings; judicial review; stay.

Sec. 10h.

(1) A hearing under section 10 or 10g shall be conducted under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Within 30 days after the commissioner has notified the parties that the case has been submitted to him or her for final decision, the commissioner shall render a decision that shall include findings of fact supporting the decision and serve upon each party to the proceeding a copy of the decision and an order consistent with the decision.

(2) Except for a consent order, a party to the proceeding, or a person affected by an order issued under section 10 or section 10g may obtain a judicial review of the order. A consent order may be reviewed as provided under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Except for an order under judicial review, the commissioner may terminate or set aside any order. The commissioner may terminate or set aside an order under judicial review with the permission of the court.

(3) Unless ordered by the court, the commencement of proceedings for judicial review under subsection (2) does not stay the commissioner's order.

History: Add. 2002, Act 390, Imd. Eff. May 30, 2002

487.2060i Enforcement of order; jurisdiction.

Sec. 10i.

The commissioner may apply to the circuit court of Ingham county for the enforcement of any outstanding order issued under section 10, 10f, or 10g.

History: Add. 2002, Act 390, Imd. Eff. May 30, 2002

487.2060j Violation as misdemeanor; penalty.

Sec. 10j.

Any current or former executive officer, director, agent, or control person who violates a final order issued under section 10g is guilty of a misdemeanor punishable by a fine of not more than \$5,000.00 or imprisonment for not more than 1 year, or both.

History: Add. 2002, Act 390, Imd. Eff. May 30, 2002

487.2060k Violation of order; exceptions.

Sec. 10k.

A control person who is subject to an order issued under section 10g(6) and who meets all of the following requirements is not in violation of the order:

(a) The control person shall not in any manner, directly or indirectly, participate in the control of a licensee after the date the order is issued.

(b) The control person shall within 6 months after the date the order is final transfer any interest the control person owns in a licensee to an unrelated third party.

History: Add. 2002, Act 390, Imd. Eff. May 30, 2002

487.2061 Annual schedule of fees; fees nonrefundable; action for recovery of fees or penalties; disposition of money received.

Sec. 11.

(1) The commissioner shall annually establish a schedule of fees sufficient to pay in full the bureau's costs of administering this act. The fees are as follows:

(a) For an application fee, not less than \$500.00 or more than \$2,000.00. However, if an applicant has 1 or more licenses under the financial licensing acts, the application fee shall be not less than \$100.00 or more than \$700.00.

(b) For amending or reissuing a license, not less than \$50.00 or more than \$100.00.

(c) An annual operating fee based upon the volume and types of activities conducted by the licensee during the previous calendar year. The annual operating fee set by the commissioner under this subsection shall be based upon information in reports filed under section 15.

(d) A licensee shall pay the actual travel, lodging, and meal expenses incurred by bureau employees who travel out of state to examine the records of or investigate the licensee.

(2) Fees received under this act are not refundable, except that if an application for license is not approved, the bureau shall refund the prepaid annual operating fee.

(3) If any fees or penalties provided for in this act are not paid when required, the attorney general may maintain an action against the delinquent licensee for the recovery of the fees or penalties, together with interest and costs.

(4) Money received under this act shall be paid into the state treasury and credited to the financial institutions bureau for the operation of the bureau.

History: 1988, Act 161, Eff. Sept. 1, 1988 ;-- Am. 1992, Act 76, Imd. Eff. June 2, 1992 ;-- Am. 1999, Act 275, Imd. Eff. Jan. 5, 2000

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.2062 Investigation of business activities; examination of books, accounts, records, and files; additional reports; audit and management letter.

Sec. 12.

(1) The commissioner at any time may investigate the business activities as the commissioner considers necessary, may examine the books, accounts, records, and files used and maintained by any licensee, and may require the licensee to furnish additional reports relating to the licensee's business.

(2) The commissioner may accept an audit and management letter regarding the affairs of any licensee under this act, if made by a certified public accountant.

History: 1988, Act 161, Eff. Sept. 1, 1988 ;-- Am. 1992, Act 76, Imd. Eff. June 2, 1992 ;-- Am. 1999, Act 275, Imd. Eff. Jan. 5, 2000

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.2063 Repealed. 1999, Act 275, Imd. Eff. Jan. 5, 2000.

Compiler's Notes: The repealed section pertained to disposition and use of money received.

487.2064 Records.

Sec. 14.

(1) A licensee under this act shall maintain records relating to all transactions under this act so that the commissioner may enforce compliance with this act. Records shall be made available to the commissioner during normal business hours upon request.

(2) A licensee shall preserve and keep available for examination by the commissioner each loan document in its possession or control, including the application, credit report, employment verification, loan disclosure statement, and settlement statement, until the loan is transferred or assigned, or the expiration of 2 years after the date the loan is made, whichever occurs first.

(3) If the loan is transferred or assigned, the licensee shall preserve and keep available for examination by the commissioner, as applicable, copies of the promissory note, mortgage, truth-in-lending disclosure statement, and settlement statement in its possession or control for 3 years after the date the loan is transferred or assigned.

(4) Notwithstanding any other provision of this act, each licensee shall preserve and keep available for examination by the commissioner all documents pertaining to a rejected loan application for a period of time required by state or federal law.

(5) A licensee shall preserve all other books, accounts, records, documents, and files pertaining to the licensee's business and keep them available for examination by the commissioner for not less than 2 years after the conclusion of the fiscal year of the licensee in which the book, account, record, document, or file was created.

(6) The requirements of this section shall not be construed to prohibit keeping records by electronic data processing methods.

History: 1988, Act 161, Eff. Sept. 1, 1988 ;-- Am. 1999, Act 275, Imd. Eff. Jan. 5, 2000

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.2065 Annual report; failure to file report; penalty.

Sec. 15.

(1) A licensee shall annually on or before a date established by the commissioner file with the commissioner a report, on a form provided by the commissioner, stating the licensee's volume and types of business activities for the immediately preceding calendar year. The commissioner shall provide at least 30 days' advance notice of the date each report is due.

(2) The fine for failure to file a report required by this act is \$25.00 for each day the report is delinquent or \$1,000.00, whichever is less. Failure to file a report required by this act may result in nonrenewal of the license by the commissioner.

History: 1988, Act 161, Eff. Sept. 1, 1988 ;-- Am. 1992, Act 76, Imd. Eff. June 2, 1992 ;-- Am. 1999, Act 275, Imd. Eff. Jan. 5, 2000

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.2066 Conservatorship or receivership.

Sec. 16.

Notwithstanding licensing under this act, if a licensee engaging in the issue or sale of checks that would otherwise be subject to the sale of checks act, 1960 PA 136, MCL 487.901 to 487.916, has refused to pay its debts

in the ordinary course of business, is unable to pay its obligations generally as they become due, or has liabilities exceeding its assets or whenever it appears to the commissioner that a licensee is in an unsafe or unsound condition, the commissioner may appoint a conservator or, with the attorney general representing the commissioner, may apply to the circuit court for the county in which the licensee is located for the appointment of a receiver for the licensee. The commissioner may require of the conservator a bond and security as the commissioner considers necessary.

History: 1988, Act 161, Eff. Sept. 1, 1988 ;-- Am. 1999, Act 275, Imd. Eff. Jan. 5, 2000

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.2066a Licensee engaged in loan servicing activities; appointment of conservator or receiver.

Sec. 16a.

If the commissioner determines that a licensee engaging in loan servicing activities, intentionally or as a result of gross or wanton negligence, is not servicing, as applicable, mortgage loans or secondary mortgage loans as required by law or by the terms of the servicing contracts, the commissioner may appoint a conservator for the licensee and require the conservator to provide a bond or security as the commissioner considers necessary. Alternatively, the commissioner, through the attorney general, may apply to the circuit court for the county in which the licensee is located for the appointment of a receiver for the licensee.

History: Add. 1999, Act 275, Imd. Eff. Jan. 5, 2000

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.2066b Powers and duties of conservator or receiver.

Sec. 16b.

(1) The conservator, under the direction of the commissioner, or the receiver, subject to the approval of the appointing court, shall take possession of the books, records, and assets of the licensee and shall take action with respect to employees, agents, or representatives of the licensee or any other action as may be necessary to conserve the assets of the licensee, ensure payment of instruments issued by the licensee, or ensure that the mortgage loans and secondary mortgage loans are serviced as required by applicable law and the servicing contracts pending disposition of its business as provided by law. The conservator or receiver shall sue and defend, compromise, and settle all claims involving the licensee, and exercise the powers and duties as may be necessary, consistent with the laws of this state applicable to the appointment of receivers.

(2) The commissioner may appoint as conservator 1 of the employees of the bureau or some other competent and disinterested person. The bureau shall be reimbursed out of the assets of the conservatorship for all sums expended by it in connection with the conservatorship. All expenses of the conservatorship shall be paid out of the assets of the licensee, upon approval of the commissioner. The expenses shall be a first charge upon the assets and shall be fully paid before any final distribution or payment of dividends is made to creditors or shareholders.

(3) The conservator or receiver appointed under section 16 or section 16a from time to time, but in no event less frequently than once each calendar quarter, shall report to the commissioner with respect to all acts and proceedings in connection with the conservatorship or receivership.

(4) The conservator, under the direction of the commissioner, shall take sole control of all of the affairs of the licensee and the possession of the books and records of the licensee. The licensee may transfer or assign the rights to service mortgage loans or secondary mortgage loans to a person approved by the commissioner. The conservator of the licensee shall take action as may be necessary to assure that the mortgage loans and secondary mortgage loans are serviced as required by applicable law and the servicing contracts.

(5) If satisfied that it may be done safely and that it would be in the public interest, the commissioner may terminate the conservatorship established under section 16 or section 16a and permit the licensee to resume the

transaction of its business subject to those terms, conditions, restrictions, and limitations as the commissioner may prescribe. Alternatively, the commissioner, in his or her discretion, may permit, under section 16 or section 16a, the licensee to continue to conduct 1 or more business activities subject to those terms, conditions, restrictions, and limitations as the commissioner may prescribe.

(6) If the commissioner determines that it would be in the public interest, the commissioner may terminate a conservatorship established under section 16 or section 16a and may apply to the circuit court for the county in which the licensee is located for the appointment of a receiver for the licensee as provided in section 16 or section 16a.

(7) Funds received for payment of the bureau's expenses incurred in connection with a conservatorship and all expenses for state supervision of conservatorships under this act shall be deposited in the state treasury and used to reimburse the bureau for expenses incurred in connection with conservatorships of licensees.

History: Add. 1999, Act 275, Imd. Eff. Jan. 5, 2000

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.2067 Prohibited activities or practices.

Sec. 17.

A licensee under this act shall not do any of the following:

(a) Engage in the business of a real estate broker or real estate salesperson licensed under article 25 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518.

(b) Engage in the business of a pawnbroker licensed under 1917 PA 273, MCL 446.201 to 446.219.

(c) Engage in the business of a debt management company licensed under the debt management act, 1975 PA 148, MCL 451.411 to 451.437.

(d) Entering into a tying arrangement through which the licensee conditions the sale of 1 financial service to a consumer on the agreement by the consumer to purchase 1 or more other financial services from the licensee, an affiliate, or subsidiary of the licensee.

(e) Knowingly permit a person to violate an order that has been issued under this act or any other financial licensing act that prohibits that person from being employed by, an agent of, or a control person of the licensee.

History: 1988, Act 161, Eff. Sept. 1, 1988 ;-- Am. 1999, Act 275, Imd. Eff. Jan. 5, 2000 ;-- Am. 2002, Act 390, Imd. Eff. May 30, 2002

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.2068 Rules.

Sec. 18.

The commissioner shall promulgate rules that are necessary for the enforcement of this act in accordance with the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

History: 1988, Act 161, Eff. Sept. 1, 1988

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.2069 Obligation of contract party not impaired or affected.

Sec. 19.

This act shall not be construed to impair or affect the obligation of any party to a contract entered into under a provision of the financial licensing acts.

History: 1988, Act 161, Eff. Sept. 1, 1988 ;-- Am. 1999, Act 275, Imd. Eff. Jan. 5, 2000

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.2070 Action by person, county prosecuting attorney, or attorney general.

Sec. 20.

A person, county prosecuting attorney, or the attorney general may bring an action to:

- (a) Obtain a declaratory judgment that a method, act, or practice is in violation of this act.
- (b) Enjoin a person who is engaging or is about to engage in a method, act, or practice which violates this act.
- (c) Recover actual damages resulting from a violation of this act, or \$250.00, whichever is greater, together with reasonable attorney's fees and the costs of bringing the action.

History: 1988, Act 161, Eff. Sept. 1, 1988

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.2071 Effective date.

Sec. 21.

This act shall take effect September 1, 1988.

History: 1988, Act 161, Eff. Sept. 1, 1988

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.2072 Conditional effective date.

Sec. 22.

This act shall not take effect unless all of the following bills of the 84th Legislature are enacted into law:

- (a) House Bill No. 5209.
- (b) House Bill No. 5210.
- (c) House Bill No. 5211.
- (d) House Bill No. 5212.
- (e) House Bill No. 5213.
- (f) House Bill No. 5364.

History: 1988, Act 161, Eff. Sept. 1, 1988

Compiler's Notes: The following bills, referred to in this section, were enacted into law: House Bill No. 5209 was filed with the Secretary of

State June 14, 1988, and became P.A. 1988, No. 162, Eff. Sept. 1, 1988. House Bill No. 5210 was filed with the Secretary of State June 14, 1988, and became P.A. 1988, No. 163, Eff. Sept. 1, 1988. House Bill No. 5211 was filed with the Secretary of State June 14, 1988, and became P.A. 1988, No. 164, Eff. Sept. 1, 1988. House Bill No. 5212 was filed with the Secretary of State June 14, 1988, and became P.A. 1988, No. 165, Eff. Sept. 1, 1988. House Bill No. 5213 was filed with the Secretary of State June 14, 1988, and became P.A. 1988, No. 166, Eff. Sept. 1, 1988. House Bill No. 5364 was filed with the Secretary of State June 14, 1988, and became P.A. 1988, No. 159, Eff. Sept. 1, 1988. For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

FINANCIAL EXPLOITATION PREVENTION ACT

Act 344 of 2020

AN ACT to require financial institutions to report financial exploitation of their customers or members; to allow financial institutions to freeze customer or member transactions or assets under certain circumstances; to provide immunity from criminal, civil, or administrative liability to financial institutions for actions taken in good faith under this act; and to provide for the powers and duties of certain governmental officers and entities.

History: 2020, Act 344, Eff. Sept. 26, 2021

The People of the State of Michigan enact:

487.2081 Short title.

Sec. 1.

This act shall be known and may be cited as the "financial exploitation prevention act".

History: 2020, Act 344, Eff. Sept. 26, 2021

487.2083 Definitions.

Sec. 3.

As used in this act:

(a) "Adult protective services" means the office, division, or unit under the department of health and human services that is charged with investigation of abuse, neglect, or exploitation of vulnerable persons under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b.

(b) "Caregiver" means a parent or other relative responsible for the health and safety of an individual, or a guardian, conservator, or any other person with legal or fiduciary obligations to an individual.

(c) "Covered financial exploitation" means financial exploitation of an individual through deception, manipulation, coercion, intimidation, or improper leveraging of a caregiver relationship.

(d) "Examination and enforcement authority" means 1 of the following:

(i) For the department of insurance and financial services, any and all applicable authority provided under the credit union act, 2003 PA 215, MCL 490.101 to 490.601 or the banking code of 1999, 1999 PA 276, MCL 487.11101 to 487.15105.

(ii) For the National Credit Union Administration, any and all applicable authority provided under the federal credit union act, 12 USC 1751 to 1795k.

(iii) For the Office of the Comptroller of the Currency, any and all applicable authority provided under 12 USC 1 to 5710.

(iv) For the Federal Deposit Insurance Corporation, any and all applicable authority provided under 12 USC 1811 to 1835a.

(v) For the Federal Reserve System, any and all applicable authority provided under 12 USC 221 to 522.

(e) "Financial exploitation" means either of the following:

(i) A fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual who uses or attempts to use the financial resources of another individual for monetary or personal benefit, profit, or gain.

(ii) A fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual that results or is intended to result in depriving another individual of rightful access to or use of benefits, resources, belongings, or assets.

(f) "Financial institution" means a financial institution as defined in section 4 of the Michigan strategic fund act, 1984 PA 270, MCL 125.2004.

(g) "Law enforcement agency" means a police agency of a city, village, township, or county or the Michigan state police.

(h) "Unauthorized" means without permission, or utilizing permission obtained from a person through deception, manipulation, coercion, intimidation, or improper leveraging of a caregiver relationship.

(i) "Vulnerable adult" means an adult who, because of mental or physical impairment or advanced age, is unable to protect himself or herself from covered financial exploitation.

(j) "Written" means inscribed in a tangible or electronic medium.

History: 2020, Act 344, Eff. Sept. 26, 2021

487.2085 Training for signs of covered financial exploitation of members or customers; requirements; reporting; notification; disclosure and identification of reporting individual.

Sec. 5.

(1) A financial institution shall develop and implement a policy for training relevant employees to recognize signs of covered financial exploitation of members or customers of the financial institution, and for reporting that activity to a law enforcement agency or adult protective services. A policy described in this subsection must, at a minimum, include training on and procedures for reporting covered financial exploitation of vulnerable adults, but may include any other categories of potentially affected members or customers or apply generally to all members or customers of the financial institution and must provide for all of the following:

(a) Employee training, including, but not limited to, instruction on all of the following:

(i) Common types of covered financial exploitation.

(ii) Signs of potential covered financial exploitation.

(iii) Relevant federal advisory opinions or guidance on elder financial exploitation.

(iv) Internal procedures developed under subdivisions (b) to (d).

(v) Reporting procedures under subdivision (f).

(b) Procedures to follow when covered financial exploitation of a member or customer is suspected or detected based on available facts.

(c) Procedures to follow when, after examination or investigation of available facts, covered financial exploitation of a member or customer is no longer suspected.

(d) Procedures to follow for delaying or placing a freeze on transactions or assets relative to a member's or customer's accounts, individually or jointly held, if covered financial exploitation is suspected or detected.

(e) Designation of 1 or more employees to make a report described in subdivision (f).

(f) Except as provided in subsection (2) or as prohibited under federal law, reporting of suspected or detected covered financial exploitation of a member or customer to which the policy created under this act applies to a law enforcement agency or adult protective services. If a financial institution elects to report to adult protective services instead of law enforcement, a report made to adult protective services must be made according to procedures established by adult protective services under applicable law. In determining whether and to what entity to make a report, the policy must, at a minimum, require:

(i) Consideration of relevant federal advisory opinions or guidance on elder financial exploitation and applicable employee training.

(ii) Consideration of the safety of employees, the customer or member that the financial institution believes is the target of covered financial exploitation, or other customers or members.

(iii) Consideration of the need and ability to preserve funds or assets of the customer or member that the financial institution believes is the target of covered financial exploitation.

(iv) Consideration of whether the financial institution can discern, from available facts and knowledge of the member or customer that is the potential victim of covered financial exploitation, that that member or customer is an adult in need of protective services, as that term is defined in section 11(b) of the social welfare act, 1939 PA 280, MCL 400.11.

(g) A citation to this act, indicating the policy was drafted to comply with this act.

(2) A financial institution is not required to make a report of suspected or detected covered financial exploitation under any policy adopted under subsection (1) if, after investigation or examination of available facts, the financial institution makes a determination that covered financial exploitation has not occurred or is not occurring and no action is necessary.

(3) A report of suspected or detected covered financial exploitation made by a financial institution, or by any other person under section 11(3), must include the name of the individual believed to be the victim, a description of the suspected or detected covered financial exploitation, and a designated contact for notices required under subsection (4) if the reporter is a financial institution. If a report under this subsection is made by telephone, the law enforcement agency or adult protective services that receives the report must make a written record of the information provided in the telephonic report.

(4) Within 10 business days after it receives a report of suspected or detected covered financial exploitation from a financial institution under this section, the law enforcement agency or adult protective services that received the report must provide written notification to the designated contact of the financial institution that clearly indicates whether a reported incident is under investigation or has been referred to a law enforcement agency for investigation. As soon as practicable after the investigation, the law enforcement agency or adult protective services shall notify the financial institution of the disposition of the reported incident.

(5) Within 10 business days after it receives a report of suspected or detected covered financial exploitation from a financial institution under this section, a law enforcement agency or adult protective services must notify the office of the county prosecutor. Notification must be made in a manner prescribed by the attorney general and must include, at a minimum, a copy of each report submitted to or committed to written form by the law enforcement agency or adult protective services and the response to, or actions taken based on, the report by the law enforcement agency or adult protective services.

(6) If a financial institution that attempts to make a report of suspected or detected covered financial exploitation under this section is unable to communicate with a law enforcement agency or adult protective services to make the report, or if the law enforcement agency or adult protective services that receives a report under this act fails to provide notification to the financial institution under subsection (4), the financial institution may notify the office of the county prosecutor. Notification under this subsection must be made in a manner prescribed by the attorney general.

(7) A law enforcement agency, adult protective services, or county prosecutor must not disclose the identity of an individual or financial institution that makes a report of suspected or detected covered financial exploitation without the consent of the individual or financial institution. However, this subsection does not prohibit a disclosure that is made by adult protective services to a law enforcement agency or by a law enforcement agency or adult protective services to the county prosecutor as required under subsection (5), or a disclosure required in a civil or criminal proceeding. A law enforcement agency, adult protective services, or county prosecutor shall not disclose the identity, or personal or account information, of an individual that is the subject of a report of suspected or detected covered financial exploitation as a victim without that individual's consent, except as required under subsection (5) or as required in a civil or criminal proceeding.

(8) The identity of an individual or financial institution that makes a report of suspected or detected covered financial exploitation under this section is exempt from disclosure under section 13(1)(b)(iv) or (d) of the freedom of information act, 1976 PA 442, MCL 15.243. The identity of an individual that is the suspected or confirmed victim of covered financial exploitation or his or her personal or account information is exempt from disclosure under section 13(1)(a), (b)(iii), or (d) of the freedom of information act, 1976 PA 442, MCL 15.243. This subsection does not limit the applicability of any other exceptions to disclosure under section 13 of the freedom of information act, 1976 PA 442, MCL 15.243, to all or any part of a report made under this act.

History: 2020, Act 344, Eff. Sept. 26, 2021

487.2087 Investigations; delay or freeze on transactions; exception.

Sec. 7.

(1) Except as otherwise provided in this subsection, and subject to subsection (3), if a financial institution suspects or detects covered financial exploitation of a member or customer, the financial institution may delay the related transaction for further investigation or examination of available facts. Upon investigation or examination of available facts, if the financial institution still suspects or has detected covered financial exploitation of the member or customer, the financial institution may either continue the delay of related transactions under this subsection or place a freeze on any transactions or assets related to that member's or customer's accounts, individually or jointly held, as provided in this subsection. Any delay or freeze placed by the financial institution must be done according to the terms of any account or service agreement between the financial institution and the member or customer. If there is not an applicable account or service agreement between the financial institution and the member or customer, the financial institution may delay an individual transaction or place a freeze on any transactions or assets relative to that member's or customer's accounts, individually or jointly held, under this section for up to 10 business days, or according to the terms of any applicable court order.

(2) If a financial institution is informed by a law enforcement agency or adult protective services under section 5(4) that suspected or detected covered financial exploitation that has been reported is under investigation, the financial institution may extend the term of a transaction delay or freeze until the financial institution is informed of the dismissal of the reported incident or the financial institution reasonably believes there is no continued risk of covered financial exploitation of the targeted individual, whichever is later.

(3) A financial institution may provide for the processing of any transaction necessary to preserve the health, safety, or financial well-being of a member or customer during the period of a transaction delay or freeze, unless those transactions are related to the suspected covered financial exploitation or the financial institution is directed otherwise by court order.

History: 2020, Act 344, Eff. Sept. 26, 2021

487.2089 Examination and enforcement authority.

Sec. 9.

(1) Except as provided in subsections (2) and (3), only the state or federal regulatory agency that authorized the financial institution to organize and commence business in its current form and that has examination and enforcement authority over that financial institution may enforce this act.

(2) If a financial institution is organized under the laws of another state or territory of the United States and maintains 1 or more branch offices in this state, only the state regulatory agency of this state that has or shares examination and enforcement authority over the financial institution's operations in this state may enforce this act.

(3) In addition to the general authority of a federal regulatory agency described in subsection (1), the Federal Deposit Insurance Corporation or Federal Reserve System may refer a suspected violation of this act discovered under their examination and enforcement authority to an appropriate agency described in subsection (1) or (2) or take appropriate action under their examination and enforcement authority.

(4) Except with regard to the examination and enforcement authority of the department of insurance and financial services or a federal regulatory agency described in subsection (1), (2), or (3), a financial institution and any of its employees, officers, directors, or affiliates are immune from any liability or penalty under law or regulation of this state or a local unit of government for an action, determination, omission, or process under this act or under a policy governed by this act.

(5) There is no private right of action against a financial institution, or any of its employees, officers, directors, or affiliates, either in law or in equity, for an action, determination, omission, or practice under this act or under a policy governed by this act.

History: 2020, Act 344, Eff. Sept. 26, 2021

487.2091 Construction of act.

Sec. 11.

(1) This act shall not be construed as limiting the responsibilities of a law enforcement agency to enforce the laws of this state or as precluding a law enforcement agency from reporting and investigating, as appropriate, alleged criminal conduct.

(2) This act shall not be construed as limiting the ability or authority of a financial institution to take otherwise lawful actions under local, state, or federal law or private agreement; or to report or prevent fraud or other illegal activity related to its operations or the assets of a member or customer that are held by the financial institution.

(3) This act shall not be construed as restricting or prohibiting a person, other than an individual who is acting as an employee of a financial institution, that suspects or finds that covered financial exploitation of an individual has occurred or is being attempted by another individual from making a report to a law enforcement agency or adult protective services.

(4) This act shall not be construed as limiting the responsibilities of adult protective services to investigate, as appropriate, alleged abuse of any adult in need of protective services, as that term is defined in section 11(b) of the social welfare act, 1939 PA 280, MCL 400.11.

History: 2020, Act 344, Eff. Sept. 26, 2021

STATE EMPLOYEE PAYROLL DEDUCTION PROGRAM

Act 190 of 1991

AN ACT to provide for the direct deposit of state employee payrolls, state university payments, and state retirement benefit payments into financial institutions; to allow any financial institution to participate in a state employee payroll deduction program; and to prescribe the powers and duties of certain state agencies and officials.

History: 1991, Act 190, Imd. Eff. Dec. 27, 1991

The People of the State of Michigan enact:

487.2101 Definitions.

Sec. 1.

As used in this act:

(a) "College or university" means a state-supported college or university.

(b) "Department" means the department of treasury.

(c) "Financial institution" means a state or nationally chartered bank, a state or federally chartered savings and loan association or savings bank, or a state or federally chartered credit union.

(d) "Person" means an individual, partnership, association, corporation, governmental entity, or any other legal entity.

(e) "State employee" means a classified or unclassified member of the state civil service or an unclassified employee of the executive, legislative, or judicial branch of state government.

History: 1991, Act 190, Imd. Eff. Dec. 27, 1991

487.2102 Enrollment in distribution system for direct deposit of retirement benefit with financial institution; electronic fund transfer of state college and university payments.

Sec. 2.

(1) The bureau of retirement systems in the department of management and budget shall enroll recipients of a state retirement benefit who elect enrollment in a distribution system that directs the entire net amount of the monthly retirement benefit to be directly deposited by the department into 1 or more accounts maintained by the recipient of a state retirement benefit with 1 or more financial institutions.

(2) The department shall maintain a distribution system by which all state college and university monthly state payments will be made by electronic funds transfer on the next business day following the fifteenth of the month during a month a payment is scheduled to be made.

(3) The department shall enroll active state employees who elect enrollment in a distribution system that directly deposits their net payroll amount into 1 or more accounts at 1 or more financial institutions.

History: 1991, Act 190, Imd. Eff. Dec. 27, 1991 ;-- Am. 2000, Act 495, Imd. Eff. Jan. 11, 2001

487.2103 Establishment of criteria and distribution system for participation by financial institution.

Sec. 3.

The department and the department of management and budget shall establish criteria and the distribution system by which a financial institution may participate in a state payroll deduction program.

History: 1991, Act 190, Imd. Eff. Dec. 27, 1991 ;-- Am. 2000, Act 495, Imd. Eff. Jan. 11, 2001

487.2104 Rules; participation prohibited under certain conditions.

Sec. 4.

(1) The department shall promulgate rules to implement this act pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(2) The promulgated rules shall include the terms and conditions of any agreements under this act between the participating financial institutions and the department or between the employee, university, or retirement recipient and the department.

(3) A university shall not participate in the direct deposit program unless the university electronically pays to the state its sales, use, and withholding taxes.

History: 1991, Act 190, Imd. Eff. Dec. 27, 1991 ;-- Am. 1993, Act 100, Imd. Eff. July 13, 1993

487.2105 Fee; limitation; prohibition.

Sec. 5.

(1) Beginning January 1, 1994, the department may charge a participating financial institution a reasonable fee not greater than the actual costs of administering the direct deposit program or a fee of 25 cents, whichever is less, for each transaction and prenotification. The department shall not charge or impose any fee on a participating state employee, state college or university, or state retirement recipient.

(2) A financial institution that electronically pays to the state its sales, use, and withholding taxes shall not be charged a fee to participate in a program under this act.

History: Add. 1993, Act 100, Imd. Eff. July 13, 1993 ;-- Am. 2000, Act 495, Imd. Eff. Jan. 11, 2001

DEFERRED PRESENTMENT SERVICE TRANSACTIONS ACT

Act 244 of 2005

AN ACT to regulate the business of providing deferred presentment service transactions; to require the licensing of providers of deferred presentment service transactions; to prescribe powers and duties of certain state agencies and officials; and to prescribe penalties and provide remedies.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

The People of the State of Michigan enact: **ARTICLE 1**

487.2121 Short title.

Sec. 1.

This act shall be known and may be cited as the "deferred presentment service transactions act".

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2122 Definitions.

Sec. 2.

(1) As used in this act:

(a) "Applicant" means a person that is seeking a license to engage in the business of providing deferred presentment service transactions under this act.

(b) "Check" means a draft that is payable on demand and drawn on a bank, savings bank, savings and loan association, or credit union. Check includes any negotiable instrument that represents evidence of an obligation to pay even if it is described on its face by another term.

(c) "Closed" in connection with a deferred presentment service transaction means that 1 of the following has occurred concerning each of the customer's checks that is the basis of the deferred presentment service transaction:

(i) The check is redeemed by the customer by payment to the licensee of the face amount of the check in cash or payment from a debit card that meets the requirements of section 35(11).

(ii) The check is exchanged by the licensee for a cashier's check or cash from the customer's financial institution.

(iii) The check is deposited by the licensee and the licensee has evidence that the person has satisfied the obligation.

(iv) The check is collected by the licensee or its agent through any civil remedy available under the laws of this state.

(v) The check is collected by means of a repayment plan agreed on by the customer and the licensee or as the result of credit counseling where the licensee is paid the amount agreed upon by the licensee under that plan.

(vi) The check is collected by the licensee under section 35(9) and the licensee has evidence that the person has satisfied the obligation.

- (d) "Commissioner" means the director or his or her authorized representative.
 - (e) "Customer" means an individual who inquires into the availability of or applies for a deferred presentment service transaction or a drawer who enters into a deferred presentment service transaction.
 - (f) "Database provider" means 1 of the following:
 - (i) A third party provider selected by the director under section 22 to operate the statewide database described in that section.
 - (ii) If the director has not selected a third party provider under section 22, the director.
 - (g) Subject to subsection (2), "deferred presentment service transaction" means a transaction between a licensee and a customer under which the licensee agrees to do all of the following:
 - (i) Pay to the customer an agreed-upon amount in exchange for a fee.
 - (ii) Hold a customer's check for a period of time before negotiation, redemption, or presentment of the checks.
 - (h) "Department" means the department of insurance and financial services.
 - (i) "Director" means the director of the department or his or her authorized representative.
 - (j) "Drawee" means a bank, savings bank, savings and loan association, credit union, or other person on which a check is drawn.
 - (k) "Drawer" means a customer who enters into a deferred presentment service transaction with a licensee.
 - (l) "Executive officer" means an officer or director of a licensee or any other individual who has the authority to participate in the direction, directly or indirectly, through 1 or more persons, or the management or policies of a licensee.
 - (m) "Financial licensing act" means this act or any of the financial licensing acts as defined in section 2 of the consumer financial services act, 1988 PA 161, MCL 487.2052.
 - (n) "Licensee" means a person that is licensed to engage in the business of providing deferred presentment service transactions under this act.
 - (o) "Maturity date" means the date on which a drawer's check is to be redeemed, presented for payment, or entered into the check-clearing process in a deferred presentment service transaction.
 - (p) "Office" or "office of financial and insurance services" means the department.
 - (q) "Person" means an individual, partnership, association, corporation, limited liability company, or other legal entity except a governmental entity.
 - (r) "Redeem" means that the customer pays to the licensee an amount equal to the face amount of a check included in a deferred presentment service transaction, on or before the maturity date or after the check is deposited and returned unpaid by the drawee, and the licensee returns the check to the customer.
- (2) Deferred presentment service transaction does not include a delay in presentment of a loan repayment check, at the request of the borrower, by a person that is licensed or registered under the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072, the regulatory loan act, 1939 PA 21, MCL 493.1 to 493.24, the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.101 to 492.141, 1984 PA 379, MCL 493.101 to 493.114, the money transmission services act, 2006 PA 250, MCL 487.1001 to 487.1047, or the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005 ;-- Am. 2016, Act 140, Eff. Aug. 24, 2016

ARTICLE 2

487.2131 Business of providing deferred presentment service transactions; license required; scope of act; application process and timeline; bulletin, order, or rule.

Sec. 11.

- (1) Subject to subsection (2), a person shall not engage in the business of providing deferred presentment service transactions after June 1, 2006 without a license under this act. A separate license is required for each location from which the business of providing deferred presentment service transactions is conducted.
- (2) This act does not apply to a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits or member accounts are insured by an agency of the United States government.
- (3) By January 1, 2006, the commissioner by administrative bulletin, order, or rule shall establish an application process and an application timeline for license applications under this act.
- (4) A person may continue to engage in the business of providing deferred presentment service transactions in

this state after June 1, 2006 and without a license until 1 of the following occurs:

- (a) The person fails to meet its applications deadline.
- (b) The commissioner acts on the person's complete application.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2132 Licensure requirements.

Sec. 12.

To obtain a license, an applicant shall satisfy all of the following requirements:

- (a) Have and maintain net worth of at least \$50,000.00 for each licensed location, subject to a maximum of \$250,000.00 in required net worth for any 1 licensee, determined in accordance with generally accepted accounting principles.
- (b) Demonstrate to the commissioner that the applicant has the financial responsibility, financial condition, business experience, character, and general fitness to reasonably warrant a belief that the applicant will conduct its business lawfully and fairly. In determining whether this subdivision is satisfied, and for the purpose of investigating compliance with this act, the commissioner may review any of the following:
 - (i) The relevant business records and the capital adequacy of the applicant.
 - (ii) The competence, experience, integrity, and financial ability of any person who is a member, partner, executive officer, or a shareholder with 10% or more interest in the applicant.
 - (iii) Any record regarding the applicant, or any person referred to in subparagraph (ii), of any criminal activity, fraud, or other act of personal dishonesty, any act, omission, or practice that constitutes a breach of a fiduciary duty, or any suspension, removal, or administrative action by any agency or department of the United States or any state.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2133 Application; writing; oath; form; information; fee.

Sec. 13.

(1) An applicant shall submit an application for a license to the commissioner. Each application for a license shall be in writing and under oath, in a form prescribed by the commissioner, and shall include all of the following information:

- (a) The name, street address, and telephone number of the business location within this state from which the applicant will offer deferred presentment service transactions, if available.
 - (b) The legal name, residence, street address, and telephone number and business address of the applicant and, if the applicant is not an individual, of each executive officer and each person who directly or indirectly owns or controls 10% or more of the ownership interest in the applicant.
 - (c) If the applicant will not operate a physical business location in this state or if in addition to the location described in subdivision (a) the applicant will make deferred presentment service transactions by other means, a detailed description of the manner in which deferred presentment service transactions will be offered to customers in this state.
 - (d) Any other information the commissioner considers necessary under this act.
- (2) An applicant shall include an application fee in an amount determined by the commissioner with the application described in subsection (1).

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2134 License fees; disposition; surety bond.

Sec. 14.

(1) A licensee shall pay a license fee, in an amount determined by the commissioner under subsection (2), within 60 days of submitting its license application, and then annually.

(2) The commissioner shall annually establish a schedule of license fees based upon each licensee's business volume, number of locations, and any other business factors considered reasonable by the commissioner in order to generate funds sufficient to pay, but not to exceed, the office's reasonably anticipated costs of administering this act. A licensee shall pay the actual travel, lodging, and meal expenses incurred by office employees who travel out of state to examine the records of or investigate the licensee. An office employee who travels under this subsection shall comply with all travel regulations and rate schedules currently in effect for the reimbursement of expenses incurred by classified state employees in connection with official state business.

(3) Money received under this act shall be deposited in an interest bearing account in the state treasury and credited to the office to be used only for the operation of the office.

(4) In addition to the license fee required under subsection (1), except as provided in this subsection, a licensee shall furnish a \$50,000.00 surety bond to secure the performance of its obligations, issued by a bonding company or insurance company authorized to do business in this state and in a form satisfactory to the commissioner. However, if 1 person owns 20% or more of the ownership interest in 2 or more licensees, the group of licensees having that common ownership is only obligated to furnish one \$50,000.00 surety bond.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2135 Issuance of license upon investigation that requirements satisfied; posting copy of license.

Sec. 15.

(1) After the commissioner receives a completed license application, the commissioner shall investigate to determine whether the requirements of this act are satisfied. If the commissioner finds that the requirements of this act are satisfied, the commissioner shall issue to the applicant a license to engage in deferred presentment service transactions.

(2) A licensee shall post a copy of its license in a conspicuous location at the place of business of the licensee.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2136 Denial of application or failure to act within certain time period; hearing.

Sec. 16.

(1) If the commissioner determines that an applicant is not qualified to receive a license, the commissioner shall notify the applicant in writing that the application has been denied, stating the basis for denial.

(2) If the commissioner denies an application, or if the commissioner fails to act on an application within 60 days after the filing of a properly completed application, or within a longer time period agreed to by the commissioner and the applicant, the applicant may submit a written demand to the commissioner for a hearing before the commissioner on the question of whether the commissioner should grant a license. If a hearing is held, the commissioner shall reconsider the application, and issue a written order granting or denying the application after the hearing.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2137 License not transferable or assignable; change in control; duties of licensee; request for information or documentation; "control" defined.

Sec. 17.

(1) A license issued under this article is not transferable or assignable.

(2) The prior written approval of the commissioner is required for the continued operation of a licensee if there is a change in control of that licensee. The commissioner may require information considered necessary to determine whether a new application is required. The person that requests the approval shall pay the cost incurred by the commissioner in investigating the change of control request.

(3) A licensee shall do all of the following:

(a) At least 15 days before providing deferred presentment service transactions at any new location or under section 13(1)(c), provide written notice to the commissioner on a form prescribed by the commissioner of the name, street address, and telephone number of the new location or the detailed description required in section 13(1)(c).

(b) At least 15 days before discontinuing deferred presentment service transactions at any existing location or under section 13(1)(c), provide written notice to the commissioner on a form prescribed by the commissioner of the name, street address, and telephone number of the discontinued location or the detailed description of the services required in section 13(1)(c).

(4) A licensee shall comply with any request for information or documentation made by the commissioner under this act and shall comply with any reasonable written time deadlines imposed by the commissioner on that request.

(5) As used in this section, "control" means 1 of the following:

(a) For a corporation, direct or indirect ownership of, or the right to control, 10% or more of the voting shares of the corporation, or the ability of a person to elect a majority of the directors or otherwise effect a change in policy.

(b) For any entity other than a corporation, the ability to change the principals of the organization, whether active or passive.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2138 Report describing certain event.

Sec. 18.

The commissioner may determine and identify by order or rule events that may occur to a licensee that require the licensee to file a written report with the commissioner describing the event and its expected impact on the activities of the licensee, on a form prescribed by the commissioner for the event.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2139 Expiration and renewal of license.

Sec. 19.

(1) A license issued under this article shall expire on September 30 of each year unless earlier suspended, surrendered, or revoked under this act. A licensee may renew a license for a 12-month period by submitting a complete application that shows continued compliance with this act, in a form prescribed by the commissioner, and paying the license renewal fee to the commissioner. The licensee shall submit a renewal application under this subsection on or before August 1 and the commissioner shall proceed in the manner described in sections 15(1) and 16.

(2) Before October 1, 2006, the commissioner may issue a license to an applicant under this article that is for a period longer than 12 months and that expires on September 30, 2007.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2140 Enforcement and implementation of act; issuance of orders and rules; correction of inaccurate information; duties of licensee if database not operational; examination of business, books, and records.

Sec. 20.

(1) The commissioner may issue orders and rules that he or she considers necessary to enforce and implement this act. The commissioner shall make a copy of any order or rule issued under this subsection available to each licensee within a reasonable time after issuance.

(2) If any information previously submitted to the commissioner by a licensee under this act is no longer accurate, the licensee shall promptly file in writing with the commissioner a correction of the information. If requested by the commissioner, the licensee shall provide a written report of its business operations, including information described in subsection (3), within a reasonable time after the commissioner's request.

(3) If the commissioner has not implemented a database under section 22 or the database described in that section is not fully operational, as determined by the commissioner, a licensee shall do all of the following:

(a) Provide an annual written report of its business operations, including business volume and other information on the business of providing deferred presentment service transactions.

(b) Every February 1, May 1, August 1, and November 1, report to the commissioner on a form prescribed by the commissioner all of the following:

(i) The number of customers who during the preceding calendar quarter notified the licensee of a violation of this act.

(ii) A breakdown of the number of times the licensee agreed that a violation of this act occurred and the number of times that the licensee did not agree that a violation occurred.

(iii) If the licensee agreed that the violation occurred, the amount of restitution that was paid to any customer under this act.

(iv) Any other information the commissioner considers necessary under this act.

(4) To assure compliance with this act, the commissioner may examine the relevant business, books, and records of any licensee.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2141 Books, accounts, and records; preservation.

Sec. 21.

Each licensee shall keep and use in its business any books, accounts, and records the commissioner requires under this act. A licensee shall preserve the books, accounts, and records for at least 3 years, unless applicable state or federal law concerning record retention requires a longer retention period.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2142 Development, implementation, and maintenance of database.

Sec. 22.

(1) On or before December 31, 2006, the commissioner shall develop, implement, and maintain a statewide, common database that has real-time access through an internet connection, is accessible at all time to licensees, and to the commissioner for purposes of subsections (10) and (11), and meets the requirements of this section. Before

the commissioner determines that the database is fully operational for the purposes of this act, for at least 30 days the database provider shall operate a pilot program of the database to test all of the processes of the database. The database provider shall make the pilot program available to all applicants and licensees. During the 30-day period that begins on the date the commissioner determines that the database is fully operational, the commissioner shall not approve the imposition of any database verification fees under section 34(5).

(2) The commissioner may operate the database described in subsection (1) or may select and contract with a single third party provider to operate the database. If the commissioner contracts with a third party provider for the operation of the database, all of the following apply:

(a) The commissioner shall ensure that the third party provider selected as the database provider operates the database pursuant to the provisions of this act.

(b) The commissioner shall consider cost of service and ability to meet all the requirements of this section in selecting a third party provider as the database provider.

(c) In selecting a third party provider to act as the database provider, the commissioner shall give strong consideration to the third party provider's ability to prevent fraud, abuse, and other unlawful activity associated with deferred presentment service transactions and provide additional tools for the administration and enforcement of this act.

(d) The third party provider shall only use the data collected under this act as prescribed in this act and the contract with the office and for no other purpose.

(e) If the third party provider violates this section, the commissioner shall terminate the contract and the third party provider is barred from becoming a party to any other state contracts.

(f) A person injured by the third party provider's violation of this act may maintain a civil cause of action against the third party provider and may recover actual damages plus reasonable attorney fees.

(3) The database described in subsection (1) shall allow a licensee accessing the database to do all of the following:

(a) Verify whether a customer has any open deferred presentment service transactions with any licensee that have not been closed.

(b) Provide information necessary to ensure licensee compliance with any requirements imposed by the federal office of foreign asset control under federal law.

(c) Track and monitor the number of customers who notify a licensee of violations of this act, the number of times a licensee agreed that a violation occurred, the number of times that a licensee did not agree that a violation occurred, the amount of restitution paid, and any other information the commissioner requires by rule.

(d) Determine whether a customer is eligible for repayment of the deferred presentment service transaction in installments as provided in section 35(2) and notify the licensee of that eligibility.

(4) While operating the database, the database provider shall do all of the following:

(a) Establish and maintain a process for responding to transaction verification requests due to technical difficulties occurring with the database that prevent the licensee from accessing the database through the internet.

(b) Comply with any applicable provisions of the social security number privacy act, 2004 PA 454, MCL 445.81 to 445.87.

(c) Comply with any applicable provisions of the identity theft protection act, 2004 PA 452, MCL 445.61 to 445.77.

(d) Provide accurate and secure receipt, transmission, and storage of customer data.

(e) Meet the requirements of this act.

(5) When the database provider receives notification that a deferred presentment service transaction is closed under section 34, the database provider shall designate the transaction as closed in the database immediately, but in no event after 11:59 p.m. on the day the commissioner or database provider receives notification.

(6) The database provider shall automatically designate a deferred presentment service transaction as closed in the database 5 days after the transaction maturity date unless a licensee reports to the database provider before that time that the transaction remains open because of the customer's failure to make payment; that the transaction is open because the customer's check or an electronic redeposit is in the process of clearing the banking system; or that the transaction remains open because the customer's check is being returned to the licensee for insufficient funds, a closed account, or a stop payment order, or any other factors determined by the commissioner. If a licensee reports the status of a transaction as open in a timely manner, the transaction remains an open transaction until it is closed under section 34 and the database provider is notified that the transaction is closed under that section.

(7) If a licensee stops providing deferred presentment service transactions, the database provider shall designate all open transactions with that licensee as closed in the database 60 days after the date the licensee stops offering deferred presentment service transactions, unless the licensee reports to the database provider before the expiration of the 60-day period which of its transactions remain open and the specific reason each transaction remains open. The licensee shall also provide to the commissioner a reasonably acceptable plan that outlines how the licensee will continue to update the database after it stops offering deferred presentment service transactions. The commissioner shall promptly approve or disapprove the plan and immediately notify the licensee of his or her decision. If the plan

is disapproved, the licensee may submit a new plan or may submit a modified plan for the licensee to follow. If at any time the commissioner reasonably determines that a licensee that has stopped offering deferred presentment service transactions is not updating the database in accordance with its approved plan, the commissioner shall immediately close or instruct the database provider to immediately close all remaining open transactions of that licensee.

(8) The response to an inquiry to the database provider by a licensee shall only state that a person is eligible or ineligible for a new deferred presentment service transaction and describe the reason for that determination. Only the person seeking the transaction may make a direct inquiry to the database provider to request a more detailed explanation of a particular transaction that was the basis for the ineligibility determination. Any information regarding any person's transactional history is confidential, is not subject to public inspection, is not a public record subject to the disclosure requirements of the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, is not subject to discovery, subpoena, or other compulsory process except in an action under section 53, and shall not be disclosed to any person other than the commissioner.

(9) The database provider may charge licensees a verification fee for access to the database, in amounts approved by the commissioner under section 34(5).

(10) The commissioner may access the database provided under subsection (1) only for purposes of an investigation of, examination of, or enforcement action concerning an individual database provider, licensee, customer, or other person. The commissioner and any employees of the commissioner, the office, or this state shall not obtain or access a customer's social security number, driver license number, or other state-issued identification number in the database except as provided in this subsection. An individual who violates this subsection is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$1,000.00, or both, and if convicted, an individual who violates this subsection shall be dismissed from office or discharged from employment.

(11) The commissioner shall investigate violations of and enforce this section. The commissioner shall not delegate its responsibilities under this subsection to any third party provider.

(12) The commissioner shall do all of the following:

(a) Require by rule that data are retained in the database only as required to ensure licensee compliance with this act.

(b) Require by rule that data in the database concerning a customer transaction are archived within 365 days after the customer transaction is closed unless needed for a pending enforcement action.

(c) Require by rule that any identifying customer information is deleted from the database when data are archived.

(d) Require by rule that data in the database concerning a customer transaction are deleted from the database 3 years after the customer transaction is closed or any enforcement action pending 3 years after the customer transaction is closed is completed, whichever is later.

(13) The commissioner may maintain access to data archived under subsection (12) for future legislative or policy review.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

ARTICLE 3

487.2151 Notice; posting; form.

Sec. 31.

(1) A licensee shall post prominently in an area designed to be seen by the customer before he or she enters into a deferred presentment service transaction the following notice in at least 36-point type:

"1. A deferred presentment service transaction is not intended to meet long-term financial needs. We can only defer cashing your check for up to 31 days.

2. You should use this service only to meet short-term cash needs.

3. State law prohibits us from entering into a transaction with you if you already have a deferred presentment service agreement in effect with us or have more than one deferred presentment service agreement in effect with any other person who provides this service.

4. If you enter into a transaction with us, we must immediately give you a copy of your signed agreement.

5. We will pay the proceeds of a transaction to you by check, by money order, or in cash, as you request.

6. State law entitles you to the right to cancel an agreement and receive a refund of the fee. To do this, if you

enter into a transaction today, you must notify us and return the money you receive by the time this office closes tomorrow or on our next business day if we are not open tomorrow.

7. State law prohibits us from renewing an agreement for a fee. You have to pay any other agreement in full before obtaining additional money from us.

8. State law prohibits us from using any criminal process to collect on an agreement.

9. State law entitles you to information regarding filing a complaint against us if you believe that we have violated the law. If you feel we are acting unlawfully, you should call the Office of Financial and Insurance Services toll-free at 1-877-999-6442.

10. If you are unable to pay your deferred presentment service transaction and have entered into 8 deferred presentment service transactions with any licensee in any 12-month period, state law entitles you to request a repayment of that transaction in installments. We are required to advise you of this option at the time it is available. If you elect this option, you must notify us, either orally or in writing, within 30 days after the maturity date of the deferred presentment transaction. The notice must be provided to us at our place of business. You may be charged an additional fee when the transaction is rescheduled in installments. You will be ineligible to enter into a deferred presentment service transaction with any licensee during the term of the repayment plan. If we refuse to provide this option under the stipulations above, you should contact the Office of Financial and Insurance Services toll-free at 1-877-999-6442."

(2) A licensee shall post prominently in an area designed to be seen by the customer before he or she enters into a deferred presentment service transaction a schedule of all fees and charges imposed for deferred presentment service transactions in at least 36-point type.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2152 Written deferred presentment service agreement; signatures; provisions; arbitration.

Sec. 32.

(1) A licensee shall document a deferred presentment service transaction by entering into a written deferred presentment service agreement signed by both the customer and the licensee.

(2) A licensee shall include all of the following in the written deferred presentment service agreement:

(a) The name of the customer.

(b) The name, street address, facsimile number, and telephone number of the licensee.

(c) The signature and printed or typed name of the individual who enters into the deferred presentment service agreement on behalf of the licensee.

(d) The date of the transaction.

(e) The transaction number assigned by the database provider, if any.

(f) The amount of the check presented to the licensee by the customer.

(g) An itemization of the fees to be paid by the customer.

(h) A calculation of the cost of the fees and charges to the customer, expressed as a percentage rate per year.

(i) A clear description of the customer's payment obligation under the agreement.

(j) A schedule of all fees associated with the deferred presentment service transaction and an example of the amounts the customer would pay based on the amount of the deferred presentment service transaction.

(k) The maturity date.

(l) A provision that the licensee will defer presentment, defer negotiation, and defer entering a check into the check-clearing process until the maturity date.

(m) A description of the process a drawer may use to file a complaint against the licensee.

(n) The following notice in at least 12-point type:

"1. A deferred presentment service transaction is not intended to meet long-term financial needs. We can only defer cashing your check for up to 31 days.

2. You should use this service only to meet short-term cash needs.

3. State law prohibits us from entering into this transaction with you if you already have a deferred presentment service agreement in effect with us or have more than one deferred presentment service agreement in effect with any other person who provides this service.

4. We must immediately give you a copy of your signed agreement.

5. We will pay the proceeds of this transaction to you by check, by money order, or in cash, as you request.

6. State law entitles you to the right to cancel this agreement and receive a refund of the fee. To do this, you must notify us and return the money you receive today by the time this office closes tomorrow or on our next

business day if we are not open tomorrow.

7. State law prohibits us from renewing this agreement for a fee. You have to pay an agreement in full before obtaining additional money from us.

8. State law prohibits us from using any criminal process to collect on this agreement.

9. State law entitles you to information regarding filing a complaint against us if you believe that we have violated the law. If you feel we are acting unlawfully, you should call the Office of Financial and Insurance Services toll-free at 1-877-999-6442.

10. If you are unable to pay your deferred presentment service transaction and have entered into 8 deferred presentment service transactions with any licensee in any 12-month period, state law entitles you to request a repayment of that transaction in installments. We are required to advise you of this option at the time it is available. If you elect this option, you must notify us, either orally or in writing, within 30 days after the maturity date of the deferred presentment transaction. The notice must be provided to us at our place of business. You may be charged an additional fee when the transaction is rescheduled in installments. You will be ineligible to enter into a deferred presentment service transaction with any licensee during the term of the repayment plan. If we refuse to provide this option under the stipulations above, you should contact the Office of Financial and Insurance Services toll-free at 1-877-999-6442."

(3) A licensee may include an arbitration provision in a deferred presentment service transaction agreement if the arbitration provision meets all of the following:

(a) Provides that the licensee agrees to pay any costs of the arbitration.

(b) Provides that an arbitration proceeding shall be held within 10 miles of the drawer's address contained in the deferred presentment service transaction agreement unless the drawer consents to another location after an arbitrable dispute occurs.

(c) Provides that an arbitration proceeding shall be conducted by a neutral arbitrator who was not and is not currently being paid by the licensee and who has no financial interest in a party to the arbitration.

(d) Requires that the arbitrator shall provide the drawer with all the substantive rights that the drawer would have if the drawer's claim were asserted in a court proceeding and shall not limit any other claim or defense the drawer has concerning the claim.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2153 Transaction; limitation on amount; service fee; conditions prohibiting entering transaction; duties of licensee; prohibited conduct; sign.

Sec. 33.

(1) A licensee may enter into 1 deferred presentment service transaction with a customer for any amount up to \$600.00. A licensee may charge the customer a service fee for each deferred presentment service transaction. A service fee is earned by the licensee on the date of the transaction and is not interest. A licensee may charge both of the following as part of the service fee, as applicable:

(a) An amount that does not exceed the aggregate of the following, as applicable:

(i) Fifteen percent of the first \$100.00 of the deferred presentment service transaction.

(ii) Fourteen percent of the second \$100.00 of the deferred presentment service transaction.

(iii) Thirteen percent of the third \$100.00 of the deferred presentment service transaction.

(iv) Twelve percent of the fourth \$100.00 of the deferred presentment service transaction.

(v) Eleven percent of the fifth \$100.00 of the deferred presentment service transaction.

(vi) Eleven percent of the sixth \$100.00 of the deferred presentment service transaction.

(b) The amount of any database verification fee allowed under section 34(5).

(2) A licensee shall not enter into a deferred presentment service transaction with a customer if the customer has an open deferred presentment service transaction with the licensee or has more than 1 open deferred presentment service transaction with any other licensee, and shall verify whether the customer has an open deferred presentment service transaction with the licensee or has more than 1 open deferred presentment service transaction with any other licensee by complying with section 34.

(3) At the time of entering into a deferred presentment service transaction, a licensee shall do all of the following:

(a) Before the drawer signs the agreement, provide the following notice to the drawer, in a document separate from the agreement and in at least 12-point type:

"1. After signing this agreement, if you believe that we have violated the law, you may do 1 of the following:

a. Before the close of business on the day you sign the agreement, notify us in person of the violation. You must provide supporting documents or other evidence of the violation.

b. At any time before signing a new deferred presentment service agreement with us, notify us in writing of the violation. Your written notice must state the violation and provide supporting documents or other evidence of the violation.

2. We have 3 business days to determine if we agree that we have violated the law and let you know of that determination.

3. If we agree that we have violated the law, we must return your check and you must return the cash received under the agreement. Additionally, for each violation, we must pay you restitution equal to 5 times the amount of the fee we charged you under the agreement but not less than \$15.00 or more than the face amount of your check. You may also pursue an action for your actual damages against us.

4. If we do not agree that we have violated the law, we may present your check for payment or enter your check into the check-clearing process on or after the maturity date. If your check is returned to us unpaid, we may take other legal steps to collect our money.

5. If you still believe we violated the law, you may file a written complaint including supporting documents or other evidence with the Office of Financial and Insurance Services. The Office is required to investigate your complaint and has the authority to order us to pay you restitution if they agree that we violated the law. In addition, the Office can order us to pay civil fines or take away our right to do business. To do so, contact the Office of Financial and Insurance Services toll-free at 1-877-999-6442."

(b) Provide a copy of the signed agreement to the drawer.

(c) Pay the proceeds under the agreement to the drawer by delivering a business check of the licensee, a money order, or cash, as requested by the drawer.

(4) At the time of entering into a deferred presentment service transaction, a licensee shall not do any of the following:

(a) Charge interest under the agreement.

(b) Include a maturity date that is more than 31 days after the date of the transaction.

(c) Charge an additional fee for cashing the licensee's business check or money order if the licensee pays the proceeds to the drawer by business check or money order.

(d) Include a confession of judgment in the agreement.

(e) Except as provided in this act, charge or collect any other fees for a deferred presentment service transaction.

(5) A licensee shall not refuse to provide a deferred presentment service transaction to a customer solely because the customer has exercised his or her rights under this act.

(6) Each licensee shall post a sign, printed in bold faced, 36-point type, in a conspicuous location at each customer service window, station, or desk at each place of business, that states the following:

"Under Michigan law, you are entitled to receive the proceeds of this transaction in cash. If you request the proceeds in a check or money order, you may be charged additional check cashing or other processing fees by others for cashing the check or money order."

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2154 Customer eligibility; verification; use of database; fee; submission of information to database; closure of transaction.

Sec. 34.

(1) A licensee shall verify a customer's eligibility to enter into a deferred presentment service transaction by doing 1 of the following, as applicable:

(a) If the commissioner has not implemented a database under section 22 or the database described in section 22 is not fully operational, as determined by the commissioner, verifying that the customer does not have an open deferred presentment service transaction with the licensee. The licensee shall maintain a database of all of the licensee's transactions at all of its locations and search that database to meet its obligation under this subdivision.

(b) If the commissioner has implemented a database under section 22 and the database described in that section is fully operational, as determined by the commissioner, accessing the database and verifying that the customer does not have an outstanding deferred presentment service transaction with the licensee and does not have more than 1 open deferred presentment service transaction that has not been fully repaid with any other licensee.

(2) If the commissioner has not implemented a database under section 22; the database described in that section is not fully operational, as determined by the commissioner; or the licensee is unable to access the database and the

alternative mechanism for verification described in subsection (3) is also unavailable, as determined by the commissioner, a licensee may rely upon the written verification of the borrower in a statement provided in substantially the following form in at least 12-point type:

"I DO NOT HAVE ANY OUTSTANDING DEFERRED PRESENTMENT SERVICE TRANSACTIONS WITH THIS LICENSEE AND I DO NOT HAVE MORE THAN ONE OUTSTANDING DEFERRED PRESENTMENT SERVICE TRANSACTION WITH ANY OTHER LICENSED DEFERRED PRESENTMENT SERVICE PROVIDER IN THIS STATE."

(3) If a licensee is unable to access the database described in section 22 due to technical difficulties occurring with the database, as determined by the commissioner, the licensee shall utilize the process established in section 22(4) to verify transactions.

(4) The commissioner may use the database to administer and enforce this act.

(5) If approved by the commissioner, the database provider may impose a database verification fee for the actual costs of entering, accessing, and verifying data in the database described in section 22 to verify that a customer does not have any other open deferred presentment service transactions with the licensee and does not have more than 1 open deferred presentment service transaction with any other licensees. A database verification fee is payable to the database provider in a manner prescribed by the commissioner. A licensee may charge a customer all or part of the database verification fee under section 33(1)(b) but may not charge a customer any other fee except as authorized in section 33(1) or 35(2).

(6) A licensee may rely on the information contained in the database described in section 22 as accurate and is not subject to any administrative penalty or civil liability as a result of relying on inaccurate information contained in the database.

(7) Before entering into a deferred presentment service transaction, a licensee shall submit to the database provider the customer's name and address, the customer's social security number, driver license number, or other state-issued identification number, the amount of the transaction, the customer's check number, the date of the transaction, the maturity date of the transaction, and any other information reasonably required by the commissioner or the database provider, in a format reasonably required by the commissioner.

(8) When a deferred presentment service transaction is closed, the licensee shall designate the transaction as closed and immediately notify the database provider, but in no event after 11:59 p.m. on the day the transaction is closed. The commissioner shall assess an administrative fine of \$100.00 for each day that the licensee fails to notify the database provider that the transaction has been closed. It is a defense to the assessment of an administrative fine that notifying the database provider was not possible due to temporary technical problems with the database or to circumstances beyond the licensee's control.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2155 Renewal or extension of agreement; repayment option; conditions; terms; notice; satisfaction of drawer's obligation; deposit of check held in connection with transaction; return of check; payment by debit card; "telephone-initiated entry" defined..

Sec. 35.

(1) A licensee shall not renew a deferred presentment service agreement. A licensee may extend a deferred presentment service agreement only if the licensee does not charge a fee in connection with the extended transaction. A licensee who extends an agreement under this subsection shall not create a balance owed above the amount owed on the original agreement.

(2) If a drawer enters into 8 deferred presentment service transactions with any licensee in any 12-month period, the licensee shall provide the drawer an option to repay that eighth transaction and each additional transaction in that 12-month period pursuant to a written repayment plan subject to the following terms:

(a) The drawer shall request the repayment plan, either orally or in writing, within 30 days after the maturity date of the deferred presentment service transaction.

(b) The drawer shall repay the transaction in 3 equal installments with 1 installment due on each of the next 3 dates on which the drawer receives regular wages or compensation from an employer or other regular source of income, pursuant to a written repayment plan agreement.

(c) The drawer shall pay a fee to the licensee for administration of the repayment plan. The initial amount of the fee is \$15.00. Beginning March 1, 2011, and by March 1 of every fifth year after March 1, 2011, the licensee may adjust the fee by an amount determined by the director to reflect the cumulative percentage change in the Detroit consumer price index over the preceding 5 calendar years. As used in this subsection, "Detroit consumer price

index" means the most comprehensive index of consumer prices available for the Detroit area from the Bureau of Labor Statistics of the United States Department of Labor.

(d) The drawer shall agree not to enter into any additional deferred presentment transactions during the repayment plan term.

(3) A licensee shall advise a customer of the repayment option described in subsection (2) at the time he or she is eligible. If a customer believes he or she has been illegally denied the repayment option under this section, he or she is entitled to contact the department toll-free at 1-877-999-6442. If a customer has entered into 8 deferred presentment service transactions in any 12-month period, the database provider shall notify the licensee when the licensee submits the required customer information to the database for that customer that the customer is entitled to a repayment plan under this section. The database provider shall instruct the licensee to provide the customer with the following notice, in a document separate from the deferred presentment transaction agreement and in at least 12-point type:

"If you are unable to pay your deferred presentment service transaction and have entered into 8 deferred presentment transactions in any 12-month period, state law entitles you to request a repayment of that transaction in installments. We are required to advise you of this option at the time it is available. If you elect this option, you must notify us, either orally or in writing, within 30 days after the maturity date of the eighth deferred presentment transaction in the 12-month period. The notice must be provided to us at our place of business. You may be charged an additional fee when the transaction is rescheduled in installments. You will be ineligible to enter into a deferred presentment service transaction with any licensee during the term of the repayment plan. If we refuse to provide this option under the stipulations above, you should contact the department of insurance and financial services toll-free at 1-877-999-6442."

(4) During the term of a repayment plan by a drawer under this section, the database provider shall notify the licensee at the time the licensee submits the required customer information to the database for that customer that the customer is presently in a repayment plan under this section with 1 or more other licensees and the licensee shall not enter into a deferred presentment transaction with that individual.

(5) A licensee shall not present a check for payment before the maturity date or during the term of the repayment plan. In addition to the remedies and penalties under this act, a licensee that presents a check for payment before the maturity date or during the term of the repayment plan is liable for all expenses and damages caused to the drawer and the drawee as a result of the violation. If a drawer has not requested a repayment plan on or before the maturity date, the licensee may redeem, present for payment, or enter the check into the check-clearing process under the terms of the original deferred presentment service transaction agreement.

(6) A drawer satisfies his or her obligation under a deferred presentment service agreement when the check the licensee is holding is paid by the drawee or is redeemed by the drawer by paying to the licensee an amount equal to the full amount of the check.

(7) Unless the drawer has entered into a written repayment plan under subsection (2), a licensee shall deposit a check held in connection with a deferred presentment service transaction on the maturity date if the check is not redeemed in the manner described in section 2(1)(c)(i), or exchanged in the manner described in section 2(1)(c)(ii), on or before the maturity date.

(8) A licensee shall deposit a check held in connection with a deferred presentment service transaction on any repayment plan installment date described in subsection (2) if the drawer fails to make the installment payment.

(9) If the drawer has an outstanding deferred presentment service transaction in which a check held in connection with the transaction was deposited and returned unpaid, the licensee may collect the check by means of 1 or more telephone-initiated entries if all of the following are met:

(a) The drawer agrees to each telephone-initiated entry.

(b) Each telephone-initiated entry is a single, date-specific payment and does not authorize more than 1 payment or periodic payments.

(c) The licensee does not charge the drawer a fee in connection with the telephone-initiated entry or entries.

(10) If the payment to satisfy an outstanding deferred presentment transaction obligation is made in person, the licensee shall immediately return the check held in connection with the deferred presentment service transaction to the drawer. If the payment to satisfy the obligation is not made in person, the licensee shall return the check to the drawer by mailing it to the address listed on the deferred presentment transaction service agreement within 1 business day after the licensee obtains evidence that the drawer has satisfied the obligation.

(11) A licensee shall only accept a payment by debit card to redeem a check the licensee is holding if the drawer certifies to the licensee that the debit card draws funds from the same account on which the check is drawn.

(12) As used in this section, "telephone-initiated entry" means a debit transaction to a drawer's account that is processed through an automated clearing house, as that term is defined in section 1 of 2002 PA 738, MCL 124.301, and initiated pursuant to an authorization obtained from the drawer orally by telephone.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005 ;-- Am. 2016, Act 141, Eff. Aug. 24, 2016

487.2156 Violation of act.

Sec. 36.

(1) No later than the close of business on the day he or she signed a deferred presentment service agreement, a drawer who believes that a licensee has violated this act may notify the licensee in person that the licensee has violated the act. The drawer shall identify the nature of the violation and provide documentary or other evidence of the violation at that time.

(2) At any time before signing a new deferred presentment service agreement with a licensee, a drawer who believes that the licensee has violated this act in connection with a deferred presentment service transaction may deliver to the licensee a notice in writing that the licensee has violated the act. The drawer shall identify the nature of the violation and include documentary or other evidence of the violation in the notice.

(3) No later than the close of the third business day after receipt of a notice under subsection (1) or (2), the licensee shall determine if it has violated the law as alleged in the notice.

(4) If the licensee determines that it has violated the law, it shall return to the drawer the check it received in the deferred presentment service transaction and any service fee paid by the drawer to the licensee. The drawer shall deliver to the licensee cash or a cash equivalent in an amount equal to the amount of cash the drawer received in the transaction. In addition, the licensee shall make restitution to the drawer for each violation in an amount equal to 5 times the amount of the fee charged in the deferred presentment service transaction, but not less than \$15.00 or more than the face amount of the drawer's check. A licensee that makes restitution for a violation under this subsection may be subject to a civil action under section 53 with respect to that violation. A licensee that makes restitution for a violation under this subsection shall immediately notify the commissioner of that action. The licensee shall give the commissioner detailed information about the terms of the deferred presentment service transaction and shall provide other information requested by the commissioner.

(5) If the licensee determines that it did not violate the law, the licensee shall immediately notify the commissioner and the drawer of that determination. The licensee shall give the commissioner detailed information about the terms of the deferred presentment service transaction and shall provide other information requested by the commissioner. The licensee shall include in the notification to the drawer that the drawer has the right to file a written complaint with the office if he or she does not agree with the determination that the licensee did not violate the law. The licensee shall include in the notice detailed information on how the drawer can contact the office to obtain a complaint form.

(6) A drawer who receives a notice of determination by the licensee that it did not violate the law may file a written complaint with the office on a form prescribed by the commissioner. The drawer shall include with the complaint documentary or other evidence of the violation.

(7) If the licensee has otherwise complied with this section and has determined that it did not violate the law, the licensee may present the drawer's check for payment on or after the maturity date. If a check presented for payment under this subsection is not honored, and the licensee is not in violation of this act in connection with the deferred presentment service transaction, the licensee may initiate any lawful collection effort.

(8) The commissioner shall promptly investigate a complaint filed by a drawer under this section. If after investigating the drawer's complaint, the commissioner concludes that the licensee violated this act, the commissioner may order the licensee to make restitution to the drawer in an amount equal to 3 times the amount provided for in subsection (4), but not less than \$45.00 or more than 3 times the face amount of the drawer's check. A licensee ordered to pay restitution under this subsection is also subject to any other applicable penalties and remedies available under this act for the violation.

(9) A licensee shall enter information regarding alleged violations and determinations under this section into the database as required by the commissioner.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2157 Rescission of agreement; redemption of check by drawer.

Sec. 37.

(1) A drawer may rescind a deferred presentment service agreement without cost to the drawer and for any reason if the drawer, not later than the close of business on the business day following the date of the deferred

presentment service transaction, either delivers to the licensee cash in an amount equal to the amount the drawer received if the drawer received cash in the transaction or returns to the licensee the licensee's check the drawer received if the drawer received a check from the licensee in the transaction. The licensee shall return to the drawer the check received in the transaction and any service fee paid by the drawer to the licensee. A drawer who rescinds an agreement under this section is not eligible for restitution under section 36 with regard to the rescinded agreement.

(2) A drawer may redeem a check from the licensee holding the check in a deferred presentment service transaction at any time before the maturity date. A licensee shall return the check to the drawer upon receipt of cash or its equivalent in the full amount of the check. A licensee shall not contract for or collect a charge for accepting partial payments from the customer if the full amount is paid by the maturity date.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2158 Endorsement of check; returned check charge; liability for dishonored check.

Sec. 38.

(1) A licensee shall endorse a check given to it by a drawer with the actual name under which the licensee is doing business before the licensee negotiates or presents the check for payment.

(2) A licensee may contract for and collect a returned check charge that does not exceed the maximum returned check charge determined under subsection (3) if the drawer's check that the licensee is holding in a deferred presentment service transaction is returned by the drawee due to insufficient funds, a closed account, or a stop payment order. The licensee may only contract for and collect 1 returned check charge under this subsection in a transaction with a customer. In addition to the charge authorized by this section, a licensee may exercise any other remedy available under any law applicable to the return of a check because of a closed account or a stop payment order.

(3) The initial maximum amount of a returned check charge described in subsection (2) is \$25.00. Beginning March 1, 2011, and by March 1 of every fifth year after March 1, 2011, the licensee may adjust the maximum returned check charge by an amount determined by the commissioner to reflect the cumulative percentage change in the Detroit consumer price index over the preceding 5 calendar years. As used in this subsection, "Detroit consumer price index" means the most comprehensive index of consumer prices available for the Detroit area from the bureau of labor statistics of the United States department of labor.

(4) A drawer is not subject to any criminal penalty for entering into a deferred presentment service transaction and is not subject to any criminal penalty in the event the drawer's check is dishonored.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2159 Agreements; maintenance; availability for examination; rejected applications.

Sec. 39.

(1) A licensee shall maintain each deferred presentment service agreement until the expiration of 3 years after the date the deferred presentment service agreement is satisfied and make available for examination by the commissioner any deferred presentment service agreements and all related documents in its possession or control including, but not limited to, any applications, credit reports, employment verifications, or loan disclosure statements.

(2) A licensee shall preserve and keep available for examination by the commissioner all documents pertaining to a rejected application for a deferred presentment service transaction for any period of time required by law.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2160 Prohibited conduct.

Sec. 40.

A licensee shall not do any of the following:

(a) Enter into a tying arrangement through which the licensee conditions the sale of 1 financial service to a consumer on the agreement by the consumer to purchase 1 or more other financial services from the licensee or an affiliate or subsidiary of the licensee.

(b) Knowingly permit a person to violate an order that has been issued under this act or any other financial licensing act that prohibits that person from being employed by, an agent of, or a control person of the licensee.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

ARTICLE 4

487.2165 Customer complaint; filing; investigation or examination by commissioner; subpoena; noncompliance.

Sec. 45.

(1) A customer may file a written complaint with the office on a form prescribed by the commissioner regarding a licensee. The customer shall include with the complaint documentary or other evidence of the violation or activities of the licensee. The commissioner shall investigate a complaint filed by a customer under this subsection.

(2) The commissioner may investigate or conduct examinations of a licensee and conduct hearings as the commissioner considers necessary to determine whether a licensee or any other person has violated this act, or whether a licensee has conducted business in a manner that justifies suspension or forfeiture of its authority to engage in the business of providing deferred presentment service transactions in this state.

(3) The commissioner may subpoena witnesses and documents, papers, books, records, and other evidence in any manner over which the commissioner has jurisdiction, control, or supervision. The commissioner may administer oaths to any person whose testimony is required. If a person fails to comply with a subpoena issued by the commissioner or to testify with respect to any matter concerning which the person may be lawfully questioned, the commissioner may petition the circuit court for Ingham county to issue an order requiring the person to attend, give testimony, or produce evidence.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2166 Cease and desist order.

Sec. 46.

(1) If in the opinion of the commissioner a licensee is, has, or is about to engage in a practice that poses a threat of financial loss or threat to the public welfare, or is, has, or is about to violate this act, state or federal law, or an applicable rule or regulation, the commissioner may serve a notice of intention to issue a cease and desist order. A notice served under this section shall contain a statement of the facts constituting the alleged practice or violation and shall fix a time and place for a hearing at which the commissioner will determine whether to issue an order to cease and desist against the licensee.

(2) A licensee that fails to appear at a hearing under subsection (1) consents to the issuance of a cease and desist order. If a licensee consents, or upon the record made at the hearing the commissioner finds that the practice or violation specified in the notice has been established, the commissioner may serve upon the licensee an order to cease and desist from the practice or violation. The order may require the licensee and its executive officers, employees, and agents to cease and desist from the practice or violation and to take affirmative action to correct the conditions resulting from the practice or violation.

(3) Except to the extent it is stayed, modified, terminated, or set aside by the commissioner or a court, a cease and desist order is effective on the date of service. A cease and desist order issued with the consent of the licensee is effective at the time specified in the order and remains effective and enforceable as provided in the order.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2167 Suspension, revocation, or termination of license.

Sec. 47.

(1) The commissioner may, after notice and hearing, suspend or revoke a license if the commissioner finds that the licensee has knowingly or through lack of due care done any of the following:

(a) Failed to pay the annual license fee, an examination fee, or any other fee imposed by the commissioner under this act.

(b) Committed any fraud, engaged in any dishonest activities, or made any misrepresentations.

(c) Violated this act or any rule or order issued under this act or violated any other law in the course of the licensee's dealings as a licensee.

(d) Made a false statement in the application for the license, failed to give a true reply to a question in the application, or failed to reply to a request of the commissioner authorized in this act.

(e) Demonstrated incompetency or untrustworthiness to act as a licensee.

(f) Engaged in a pattern or practice that poses a threat of financial loss or threat to the public welfare.

(2) If the reason for revocation or suspension of a licensee's license at any 1 location is of general application to all locations operated by a licensee, the commissioner may revoke or suspend all licenses issued to a licensee.

(3) A notice served under this section shall contain a statement of the facts constituting the violation or pattern of practice and shall fix a time and place at which the commissioner will hold a hearing to determine whether the commissioner should issue an order to suspend or terminate 1 or more licenses of the licensee.

(4) If a licensee fails to appear at a hearing under subsection (1), the licensee consents to the issuance of the order to suspend or terminate 1 or more licenses of the licensee. If a licensee consents, or upon the record made at the hearing the commissioner finds that the pattern of practice or violation specified in the notice has been established, the commissioner may serve upon the licensee an order suspending or terminating 1 or more licenses of the licensee.

(5) Except to the extent it is stayed, modified, terminated, or set aside by the commissioner or a court, an order suspending or terminating 1 or more licenses of the licensee is effective on the date of service. An order suspending or terminating 1 or more licenses of the licensee issued with the consent of the licensee is effective at the time specified in the order and remains effective and enforceable as provided in the order.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2168 Violations; civil fines.

Sec. 48.

(1) If the commissioner finds that a person has violated this act, state or federal law, or an applicable rule or regulation, the commissioner may order the person to pay a civil fine of not less than \$1,000.00 or more than \$10,000.00 for each violation. However, if the commissioner finds that a person has violated this act and that the person knew or reasonably should have known that he or she was in violation of this act, the commissioner may order the person to pay a civil fine of not less than \$5,000.00 or more than \$50,000.00 for each violation. The commissioner may also order the person to pay the costs of the investigation.

(2) A civil fine assessed under subsection (1) may be sued for and recovered by and in the name of the commissioner and may be collected and enforced by summary proceedings by the attorney general. In determining the amount of a fine, the commissioner shall consider the extent to which the violation was a knowing and willful violation, the extent of the injury suffered because of the violation, the corrective action taken by the licensee to ensure that the violation will not be repeated, and the record of the licensee in the complying with this act.

487.2169 Fraud.

Sec. 49.

(1) If in the opinion of the commissioner a person has engaged in fraud, the commissioner may serve upon that person a written notice of intention to prohibit that person from being employed by, an agent of, or an executive officer of a licensee under this act. As used in this subsection, "fraud" includes actionable fraud, actual or constructive fraud, criminal fraud, extrinsic or intrinsic fraud, fraud in the execution, in the inducement, in fact, or in law, or any other form of fraud.

(2) A notice issued under subsection (1) shall contain a statement of the facts supporting the prohibition and, except as provided under subsection (7), set a hearing on a date within 60 days after the date of the notice. If the person does not appear at the hearing, he or she is considered to have consented to the issuance of an order in accordance with the notice.

(3) If after a hearing held under subsection (2) the commissioner finds that any of the grounds specified in the notice have been established, the commissioner may issue an order of suspension or prohibition from being a licensee or from being employed by, an agent of, or an executive officer of any licensee under this act.

(4) An order issued under subsection (2) or (3) is effective when served on a person. The commissioner shall also serve a copy of the order upon the licensee of which the person is an employee, agent, or executive officer. The order remains in effect until it is stayed, modified, terminated, or set aside by the commissioner or a reviewing court.

(5) After 5 years from the date of an order issued under subsection (2) or (3), the person subject to the order may apply to the commissioner to terminate the order.

(6) If the commissioner considers that a person served a notice under subsection (1) poses an imminent threat of financial loss to customers, the commissioner may serve upon the person an order of suspension from being employed by, an agent of, or an executive officer of any licensee. The suspension is effective on the date the order is issued and, unless stayed by a court, remains in effect until the commissioner completes the review required under this section, and the commissioner has dismissed the charges specified in the order.

(7) Unless otherwise agreed to by the commissioner and the person served with an order issued under subsection (6), the commissioner shall hold the hearing required under subsection (2) to review the suspension not earlier than 5 days or later than 20 days after the date of the notice.

(8) If a person is convicted of a felony involving fraud, dishonesty, or breach of trust, the commissioner may issue an order suspending or prohibiting that person from being a licensee and from being employed by, an agent of, or an executive officer of any licensee under this act. After 5 years from the date of the order, the person subject to the order may apply to the commissioner to terminate the order.

(9) The commissioner shall mail a copy of any notice or order issued under this section to the licensee of which the person subject to the notice or order is an employee, agent, or executive officer.

(10) Within 30 days after the commissioner has notified the parties that the case has been submitted to him or her for final decision, the commissioner shall render a decision that includes findings of fact supporting the decision and serve upon each party to the proceeding a copy of the decision and an order consistent with the decision.

(11) Except for a consent order, a party to the proceeding or a person affected by an order issued under this section may obtain a judicial review of the order. A consent order may be reviewed as provided under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Except for an order under judicial review, the commissioner may terminate or set aside any order. The commissioner may terminate or set aside an order under judicial review with the permission of the court.

(12) Unless ordered by the court, the commencement of proceedings for judicial review under subsection (11) does not stay the commissioner's order.

(13) The commissioner may apply to the circuit court of Ingham county for the enforcement of any outstanding order issued under this section.

(14) Any current or former executive officer or agent who violates a final order issued under this section is guilty of a misdemeanor punishable by a fine of not more than \$5,000.00 or imprisonment for not more than 1 year, or both.

(15) An executive officer who is subject to an order issued under this section and who meets all of the following requirements is not in violation of the order:

(a) He or she does not in any manner, directly or indirectly, participate in the control or management of a licensee after the date the order is issued.

(b) He or she transfers any interest he or she owns in the licensee to an unrelated third party within 6 months after the date the order is final.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2170 Hearing.

Sec. 50.

(1) A licensee who is ordered to cease and desist, whose license is suspended or terminated, or who is ordered to pay a fine under this act is entitled to a hearing before the commissioner if a written request for a hearing is filed with the commissioner not more than 30 days after the effective date of the order.

(2) Any administrative proceedings under this act are subject to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2171 Rules; report.

Sec. 51.

(1) The director may promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to enforce and administer this act.

(2) By October 31, 2025, and by each October 31 thereafter through October 31, 2031, the director shall submit a report to the standing committees of the senate and house of representatives concerned with banking and financial services issues that includes the following information:

(a) The number of persons engaged in the business of providing deferred presentment service transactions in this state during the immediately preceding calendar year.

(b) A general report on the business of providing deferred presentment service transactions in this state during the immediately preceding calendar year. The report must include information about the number of licensees, the number of customers, and the number and amount of transactions, reported in the following format:

(i) A summary of the deferred presentment service transaction program fees received by the department.

(ii) Statewide statistics concerning transaction volumes by month, transaction amounts, fees, and averages, active license locations, the total number of customers, and drawer usage of repayment plans.

(iii) Statistics, reported by county or zip code, concerning provider locations, transaction volumes, total amount of advances, total fees for advances, average advance amounts, average advance fees, the total number of repeat drawers, and the total number of licensee locations.

(c) The name and street address of each licensee in this state during the immediately preceding calendar year.

(d) The number of complaints filed with the department against licensees and nonlicensees arising from transactions that took place in this state for the immediately preceding calendar year.

(e) Any additional information that the director considers relevant.

(3) Beginning October 31, 2025, and on October 31 of each year thereafter through October 31, 2031, the department shall publish on its website the report described in subsection (2).

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005 ;-- Am. 2024, Act 46, Eff. Apr. 2, 2025

487.2172 Person providing services before effective date of act; compliance.

Sec. 52.

A person who provided deferred presentment service transactions in this state before the effective date of this act is considered to have complied with applicable state law if the person provided those transactions in substantial conformity with the rulings and interpretive statements then in effect that were issued by the office or its predecessor agency.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

487.2173 Civil cause of action; damages.

Sec. 53.

A person injured by a licensee's violation of this act may maintain a civil cause of action against the licensee and may recover actual damages and an amount equal to the service fee paid in connection with each deferred presentment service transaction that is found to violate this act, plus reasonable attorney fees.

History: 2005, Act 244, Imd. Eff. Nov. 28, 2005

SAVINGS BANK ACT

Act 354 of 1996

AN ACT to codify the laws relating to savings banks; to provide for incorporation, regulation, supervision, and internal administration of savings banks; to prescribe the rights, powers, and immunities of savings banks; to prescribe the powers and duties of certain state agencies and officials; to provide for remedies; and to prescribe penalties.

History: 1996, Act 354, Imd. Eff. July 1, 1996

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

The People of the State of Michigan enact:
Chapter 1
SHORT TITLE AND DEFINITIONS

487.3101 Short title.

Sec. 101.

This act shall be known and may be cited as the "savings bank act".

History: 1996, Act 354, Imd. Eff. July 1, 1996

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.3102 Definitions; A to I.

Sec. 102.

As used in this act:

(a) "Agency office" means a place at which the business of a savings bank is conducted other than by regularly employed personnel of the savings bank, as provided under section 417(6).

(b) "Articles" means articles of incorporation, all amendments to articles of incorporation, and agreements of consolidation and merger.

(c) "Approved by the members", for a mutual savings bank, means approved by a majority of all votes cast at a duly held regular meeting or special meeting.

(d) "Affiliate" means a corporation, business trust, limited liability company, association, or an organization to which 1 or more of the following apply:

(i) A savings bank, directly or indirectly, owns or controls either a majority of its voting shares or more than 50% of the number of shares voted for the election of its directors, trustees, or other persons exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees, or other persons exercising similar functions.

(ii) Control of the organization is held, directly or indirectly, through stock ownership or in any other manner, by the shareholders of a savings bank who own or control either a majority of the shares of that savings bank or more than 50% of the number of shares voted for the election of directors of that savings bank at the preceding election, or by trustees for the benefit of the shareholders of that savings bank, or by members of the savings bank if it is a mutual savings bank.

(iii) A majority of its directors, trustees, or other persons holding similar positions are directors of any 1 savings bank.

(iv) Owns or controls, directly or indirectly, either a majority of the shares of capital stock of any 1 savings bank or more than 50% of the number of shares voted for the election of directors of that savings bank at the preceding election, or controls in any manner the election of a majority of the directors of that savings bank, or for the benefit of whose shareholders all or substantially all the capital stock of that savings bank is held by trustees.

(e) "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, or a savings and loan association, building and loan association, or homestead association, that is organized under the laws of a state or the District of Columbia and whose deposits are insured by the federal deposit insurance corporation.

(f) "Bank" means a state banking corporation organized or reorganized under the provisions of the banking code of 1999, 1999 PA 276, MCL 487.11101 to 487.15101, or organized under a law of this state before March 1, 2000.

(g) "Bank holding company" means a stock or mutual company as defined in the bank holding company act of 1956, chapter 240, 70 Stat. 133, or a company defined as a savings and loan holding company in the home owners' loan act, chapter 64, 48 Stat. 128, that is not a savings bank, national banking association, or association.

(h) "Branch" means a place of business, other than the principal office of a savings bank, at which the savings bank transacts business that may be conducted at its principal office. Branch does not include a subsidiary, service entity, agency office, trust office, loan production office, place where only records are made, posted, or kept, place of business of a financial institution with which the savings bank has an agency relationship under section 401, or an automated teller machine if it is made available to 2 or more federal or state chartered financial institutions under a state statute which regulates electronic funds transfer facilities. The acceptance of deposits in furtherance of a school thrift or savings plan by an officer, employee, or agent of a savings bank at any school is not the establishment or operation of a branch. The receipt of deposits by a messenger service or the delivery by 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 savings bank.

(i) "Bureau" means the office of financial and insurance services in the department of consumer and industry services.

(j) "Capital" means the stated par value of issued and outstanding unimpaired common stock and the stated par value of issued and outstanding unimpaired preferred stock.

(k) "Commissioner" means the commissioner of the office of financial and insurance services.

(l) "Compliance review committee" means both of the following:

(i) One or more persons assigned by management or appointed by the board of directors or other governing body of a depository institution, or of a subsidiary of a depository institution, or of a service corporation or other service entity of a depository institution, for the purposes set forth in section 339.

(ii) Any other person to the extent the person acts in an investigatory capacity at the direction of a compliance review committee.

(m) "Compliance review documents" means documents prepared in connection with a review or evaluation

conducted by or for a compliance review committee.

(n) "Consolidate", "consolidated", "consolidating", and "consolidation" mean the consolidation or merger of 2 or more depository institutions.

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

(p) "Consolidated organization" means an organization that results from a consolidation of consolidating organizations.

(q) "Consolidating organizations" means any combination of banks, out-of-state banks, national banks, associations, savings banks, or state or federal credit unions that have consolidated or are in the process of consolidation as provided in section 701 or 702.

(r) "Depository institution" means a bank, out-of-state bank, national bank, association, savings bank, cooperative bank, industrial bank, or credit union organized under the laws of this state, another state, the District of Columbia, the United States, or a territory or protectorate of the United States.

(s) "Director" means a director, trustee, or other person holding a similar position with respect to an organization whether incorporated or unincorporated. Director does not include an advisory director, honorary director, director emeritus, or similar person, unless the person is otherwise performing functions similar to those of a director.

(t) "Dividend reinvestment plan" means a plan that is offered solely to existing shareholders of the savings bank and which allows the shareholders to reinvest dividends received under section 316 in stock of the savings bank and that may allow additional cash amounts to be contributed by the shareholders participating in the reinvestment plan.

(u) "Federal reserve act" means the federal reserve act, chapter 6, 38 Stat. 251.

(v) "Fiduciary" means a trustee, executor, administrator, guardian, conservator, agent, receiver, trustee in bankruptcy, assignee for creditors, or any holder of a similar position of trust. It also describes the relationship of a director to a savings bank as stipulated in section 323.

(w) "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.

(x) "Impairment" means a condition in which the value of the savings bank's assets is less than the aggregate amount of the savings bank's liabilities to creditors and depositors, less its capital, if the savings bank is a stock savings bank, or a condition in which the value of the savings bank's assets is less than the aggregate amount of the savings bank's liabilities to creditors and members, if the savings bank is a mutual savings bank.

(y) "Incorporator" means a person who signed the original articles of incorporation.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 480, Imd. Eff. Jan. 11, 2001

487.3103 Definitions; L to W.

Sec. 103.

As used in this act:

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

(b) "Loan production office" means an office of the savings bank at which only activities related to money lending are conducted, which is not the principal office or a branch or an agency office or an office of an affiliated depository institution.

(c) "Member" means a person holding a savings account of a mutual savings bank.

(d) "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 messenger service may be owned and operated by 1 or more depository institutions or affiliates or by a third party.

(e) "Mobile branch" means a branch in which the location of the physical structure of the branch is moved from time to time.

(f) "Mutual savings bank" means a savings bank for which the articles of incorporation do not authorize the issuance of common or preferred stock.

(g) "National bank" means a bank chartered by the federal government under the national bank act, chapter 106,

13 Stat. 99.

(h) "Net income" means the remainder of all earnings from operations plus actual recoveries on loans and investments and other assets, after deducting from the total all operating expenses, actual losses, accrued dividends on preferred stock, if any, and all taxes.

(i) "Out-of-state bank" means a banking corporation or savings bank organized under the laws of another state, the District of Columbia, or a territory of the United States whose principal office is located in a state other than this state, the District of Columbia, a territory or a protectorate of the United States, and whose deposits are insured by the federal deposit insurance corporation.

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

(k) "Publication", "published", and "publish" mean publication in a newspaper printed in the English language and published and circulated in the county where the depository institution is located or, if there is no newspaper published and circulated in the county where the depository institution is located, in any newspaper having general circulation in the county.

(l) "Residential real estate" means improved real property that is used or intended to be used as a residence or residences and contains not more than 4 dwelling units.

(m) "Savings bank" means a state banking corporation organized or reorganized under this act.

(n) "Savings liability" or "deposit liability" means the aggregate amount of accounts of depositors, including interest accrued or credited to the accounts, less redemptions and withdrawals.

(o) "Service entity" means a stock corporation, mutual company, limited liability company, limited liability partnership, or limited partnership in which a savings bank has invested under section 410. Upon written approval of the commissioner, a service entity may be a general partnership.

(p) "Shareholder" means the registered owner of any share or shares of capital stock of a savings bank.

(q) "Stock savings bank" means a savings bank for which the articles of incorporation authorize the issuance of capital stock.

(r) "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 federally insured depository institutions, and in which a savings bank has an ownership interest, membership interest, or other legally enforceable interest which has the indicia of ownership. Upon written approval of the commissioner, and subject to the ownership requirements set forth in this subsection, a subsidiary may be a general partnership.

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

(t) "Total capital" means an amount equal to any capital, plus any surplus, undivided profits, and instruments of indebtedness authorized under section 310.

(u) "Trust office" means an office of a savings bank at which trust services are performed and at which deposits are not accepted, checks are not paid, and money is not lent.

(v) "Undivided profits" means the amount of retained earnings and any additional amounts held in capital reserve accounts of the savings bank.

(w) "Uniform commercial code" means the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102.

(x) "Value" means the present worth of all rights to future benefits arising from ownership.

(y) "Withdrawal value of a deposit account" means the amount invested in a deposit account, plus earnings, less lawful deductions.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 480, Imd. Eff. Jan. 11, 2001

Chapter 2 ADMINISTRATION

487.3201 Financial institutions bureau; jurisdiction; duties of commissioner; construction of act.

Sec. 201.

(1) The financial institutions bureau shall have jurisdiction over and execute the laws relating to savings banks transacting business in this state.

(2) The commissioner shall maximize the capacity of savings banks in this state to offer convenient and efficient financial services, to promote home ownership and economic development, and to ensure that savings banks remain

competitive with other types of financial institutions and providers of financial services.

(3) This act shall be liberally construed except for those provisions that relate to safety and soundness of operations, investments, and management.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3202 Prohibited conduct.

Sec. 202.

Unless the person is organized under this act, a person shall not transact business under this act, do business under any name or title, circulate, advertise, make representations or give information that indicates or implies the operation of a business under this act.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3203 Federal insurance of deposits required.

Sec. 203.

Unless the commissioner, for good cause shown, waives the requirement, a savings bank shall secure insurance of its deposit accounts backed by the full faith and credit of the United States government prior to commencing business.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3204 Savings bank; asset tests; loans for domestic residential housing; failure to satisfy asset tests.

Sec. 204.

(1) A savings bank shall satisfy 1 of the following asset tests:

(a) An asset test requiring that not less than 50% of the total assets of the savings bank, as measured by monthly averages calculated at the close of each calendar month, in at least 9 months of the immediately preceding 12-month period, consist of 1 or more of the following:

(i) Loans that were made to purchase, refinance, construct, improve, or repair domestic residential housing, including single and multifamily dwellings, or manufactured housing.

(ii) Home equity loans.

(iii) Real property acquired as a result of foreclosure or deed-in-lieu of foreclosure with respect to loans described in this section.

(iv) Securities backed by or representing an interest in mortgages on domestic residential housing, including single or multifamily dwellings, or manufactured housing.

(v) Shares of stock issued by any federal home loan bank.

(vi) 50% of the dollar amount of the domestic residential housing mortgage loans, including single or multifamily dwellings, originated by the savings bank and sold within 90 days of origination.

(vii) Investments both debt and equity in the capital stock or obligations of and any other security issued by any service entity or subsidiary of the savings bank, if the service entity or subsidiary derives at least 80% of its annual gross revenues from activities directly related to purchasing, financing, refinancing, constructing, improving, or repairing domestic residential housing, including single or multifamily dwellings, or manufactured housing.

(viii) 200% of the dollar amount of loans and investments to purchase, construct, or develop 1 to 4 family residences the purchase price of which is, or is guaranteed to be, not greater than 60% of the median value of

comparable newly-constructed 1 to 4 family residences within the savings bank's local community.

(ix) 200% of the dollar amount of loans for the purchase, construction, development, or improvement of domestic residential housing, churches or other places of worship, schools, nursing homes, hospitals, and facilities serving similar functions within a community, located within a geographic region or neighborhood in which the credit needs of low and moderate income residents are not being adequately met at the time the relevant loan is made.

(x) Loans to small businesses located within a geographic area described in subparagraph (ix).

(xi) Loans for the purchase, construction, development, or improvement of churches or other places of worship, schools, nursing homes, hospitals, and other facilities utilized for similar functions or services within a community.

(xii) Loans for the purchase, construction, development, or improvement of facilities and residential developments dedicated to public use or property used on a nonprofit basis for residents.

(xiii) Loans for personal, family, household, or education purposes.

(xiv) Shares of stock issued by the federal home loan mortgage corporation and the federal national mortgage association.

(xv) Loans secured by an interest in churches or other places of worship, schools, nursing homes, hospitals, educational, health, or welfare institutions or facilities, facilities designed or used primarily for residential purposes for students, residents, and persons under care, employees, or members of the staff of the institutions or facilities, and other facilities utilized for similar functions or services within a community.

(xvi) Cash and other highly liquid assets.

(xvii) Obligations of the United States or of a state or political subdivision thereof, and stock or obligations of a corporation that is an instrumentality of the United States or of a state or political subdivision thereof, but not including obligations the interest on which is excludable from gross income under section 415 of the internal revenue code of 1986, 26 U.S.C. 415.

(xviii) Property acquired through the liquidation of defaulted loans described in this section.

(xix) Loans made for the payment of expenses of college or university education or vocational training, in accordance with order or declaratory ruling of the commissioner.

(xx) Property used by the savings bank in the conduct of its business of acquiring the savings of the public and investing in loans.

(b) An asset test prescribed by order or declaratory ruling of the commissioner.

(2) If a multifamily dwelling securing a loan is used in part for nonresidential purposes, the entire loan is deemed a loan for domestic residential housing if the planned residential use exceeds 80% of the property's planned use, determined as of the time the loan is made. Loans made to finance the acquisition or development of land shall be considered loans for domestic residential housing if there is reasonable assurance that the property will become residential real property within a period of 3 years from the date of acquisition of the land.

(3) In the event a savings bank does not satisfy either of the asset tests of subsection (1), the savings bank shall promptly notify the commissioner in writing of the failure.

(4) A savings bank which fails to satisfy either of the asset tests of subsection (1) may requalify as a savings bank by meeting the percentage of total assets test in subsection (1)(a) for 9 of the 12 months following notice to the commissioner, including the month the notice is given, or a savings bank may requalify as a savings bank by meeting a requalification test prescribed by order or declaratory ruling of the commissioner. The savings bank shall promptly give notice to the commissioner as soon as the savings bank requalifies or fails to requalify as a savings bank under this subsection.

(5) If the savings bank fails to requalify as a savings bank under subsection (4), the savings bank shall make application with the appropriate governmental agency to convert its charter, or liquidate, but may continue to operate as a savings bank under an order of the commissioner for the period of time stated in the order. If the savings bank fails to comply with the order for continued operation, or upon expiration of the time prescribed in the order without conversion of charter or liquidation, the commissioner may appoint a conservator under section 605 or apply to the circuit court for the county in which the savings bank is located for the appointment of a receiver for the savings bank. The activities of the conservator or receiver shall otherwise be governed by the terms of chapter 6.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3205 Appointment of examiners and employees; payment of compensation, travel, and expenses.

Sec. 205.

The commissioner may appoint examiners and other employees for the carrying out of this act. The compensation, travel, and other expenses of the commissioner, deputy commissioners, examiners, and employees shall be paid in the manner provided by law for other state officers and employees, within the appropriations made by the legislature.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3206 Commissioner, deputy commissioner, or examiner; prohibited conduct.

Sec. 206.

(1) During his or her term of office or employment, the commissioner, a deputy commissioner, or an examiner of the bureau shall not be a shareholder, either directly or indirectly, of a savings bank or safe and collateral deposit company, or of any affiliate or subsidiary thereof.

(2) During his or her term of office or employment, the commissioner, a deputy commissioner, or an examiner of the bureau shall not be an officer, director, or employee of a savings bank or safe and collateral deposit company, or of any affiliate or subsidiary thereof, or receive, either directly or indirectly, a fee, perquisite, reward, emolument, or other compensation from those entities.

(3) The commissioner, deputy commissioner, or examiner shall not borrow money, directly or indirectly, from a savings bank, except for a mortgage loan upon the mortgagor's own home or installment debt transferred to a savings bank in the regular course of business by a seller of consumer goods. This subsection does not apply to loans made prior to the person's respective term of office. If the commissioner, a deputy commissioner, or an examiner of the bureau borrows from, or is or becomes indebted to a savings bank, he or she shall make a written report to the bureau, or to the governor in the case of the commissioner, stating the date and amount of the loan or indebtedness, the security given on the loan, and the purpose for which the proceeds have been or are to be used.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3207 Commissioner, deputy commissioner, or examiner; civil liability.

Sec. 207.

The commissioner, deputy commissioner, examiner, or other employee of the bureau shall not be liable in any civil action for damages for any act done or omitted in good faith in performing the functions of his or her office.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3208 Rules, orders, and declaratory rulings.

Sec. 208.

(1) The commissioner may promulgate rules in addition to those specifically provided for by this act as he or she may consider necessary to effectuate and enforce this act in accordance with the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(2) The commissioner may also issue orders and declaratory rulings as he or she considers necessary to effectuate the purposes and to execute and enforce the provisions of this act.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3209 Savings banks and entities subject to examination by commissioner.

Sec. 209.

(1) A savings bank together with its subsidiaries, service entities, and entities the controlling interests of which are more than 50% owned by subsidiaries or service entities or association service corporations, are subject to examination of the commissioner, with or without prior notice, not less frequently than once every 18 months concerning the conditions and affairs of the savings bank. The commissioner shall also examine a savings bank under the commissioner's jurisdiction when requested by its board of directors. In connection with an examination, the commissioner, or the commissioner's authorized agent, may examine on oath a director, officer, agent, employee, or shareholder of a savings bank concerning the affairs and business of the savings bank. The commissioner shall ascertain whether the savings bank transacts its business in the manner prescribed by law and the rules promulgated pursuant to law. The commissioner, or the commissioner's authorized agent, may make an examination of an affiliate, subsidiary, or service entity necessary to disclose fully the relationship between a savings bank and the affiliate, subsidiary, or service entity and the effect of the relationship upon the savings bank.

(2) The commissioner may examine the branch or branches located in this state of an out-of-state bank under the federal deposit insurance act, chapter 967, 64 Stat. 873.

(3) In fulfilling the requirements of subsections (1) and (2), the commissioner may use an examination made under the federal deposit insurance act, or the law of another state governing the activities of out-of-state banks in that state. The commissioner may require the savings bank to furnish a copy of any report required by a federal or state bank regulatory agency.

(4) An examination required by this section shall include the fiduciary activities of the savings bank.

(5) The commissioner may contract with other savings bank regulatory agencies to assist in the conduct of examinations of savings banks with 1 or more branches located in other states and in examination of out-of-state banks with 1 or more branches located in this state.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 481, Imd. Eff. Jan. 11, 2001

487.3210 Schedule of supervisory fees; initial supervisory fee.

Sec. 210.

(1) The commissioner shall periodically establish a schedule of supervisory fees to be paid by savings banks. Except for a minimum fee consistent with subsection (2), the fee shall not be more than 25 cents for each \$1,000.00 of total assets of the savings bank as reported by the savings bank on its report of condition as of December 31 of the previous year.

(2) Each savings bank shall pay an annual supervisory fee which shall be not less than \$1,000.00.

(3) The commissioner shall provide an invoice of the annual supervisory fee to each savings bank by July 1 of each year. The annual supervisory fee shall be paid by August 15 of that year.

(4) The initial supervisory fee for a savings bank that obtained a charter as a result of a conversion shall be based on the total assets as reported in its report of condition as of December 31 of the previous year under the prior charter.

(5) The initial supervisory fee of a savings bank newly organized and chartered under this act, during the initial supervisory year, shall be the minimum supervisory fee established by the commissioner.

(6) The commissioner shall periodically establish a schedule of fees, beyond those charged for normal supervision, to be paid for applications, special evaluations and analyses, and examinations, including examinations of trust services and safe deposit and collateral deposit companies.

(7) The fees established under subsection (6) shall be equal to the estimated cost to the bureau for conducting the activity for which the fee is imposed.

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

(9) To the extent any fees assessed under this act are unpaid when due, the commissioner may, upon proper notice, maintain an action against the savings bank for the recovery of the fees plus interest and costs.

(10) The fees collected under this section are not refundable and shall be paid into the state treasury to the credit of the bureau and used only for the operation of the bureau.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 481, Imd. Eff. Jan. 11, 2001

487.3211 Circuit court subpoena to appear; petition by commissioner; scope; failure to appear as contempt.

Sec. 211.

The commissioner may petition the circuit court for the county in which the examination is being carried on to issue a subpoena on behalf of the bureau requiring a person to appear before the bureau and be examined under oath with reference to any matter within the scope of an examination of a savings bank under this act, and to produce books, records, or papers. A failure to obey the subpoena of the circuit court may be punished by the circuit court as a contempt of the circuit court.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3212 Privilege against self-incrimination; perjury.

Sec. 212.

(1) A person shall not be excused from testifying or from producing any books, papers, records, or memoranda in any examination when ordered to do so by the commissioner, upon the ground that the testimony or evidence, documentary, or otherwise, may tend to incriminate him or her or subject him or her to a criminal penalty. An individual shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she is compelled, after having claimed his or her privilege against self-incrimination, to testify or produce evidence, documentary, or otherwise.

(2) An individual shall not be exempt from prosecution or punishment for perjury committed in testifying.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3213 Confidentiality; exception.

Sec. 213.

(1) The commissioner and all deputies, agents, and employees of the bureau shall keep secret all facts and information obtained in the course of their duties under this act, except if the person is required under law to report upon, take official action, or testify in any proceedings regarding the affairs of a savings bank. This subsection applies to all former commissioners, deputies, agents, and employees of the bureau.

(2) This section does not apply to, and does not prohibit the furnishing of information or documents to, depository institution regulatory agencies, and is not applicable to disclosures made in the public interest by the commissioner, at his or her discretion.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 481, Imd. Eff. Jan. 11, 2001

487.3214 Application for approval; requirements; appeal.

Sec. 214.

(1) A savings bank that seeks the commissioner's approval under section 302, 303, 312, 336, 412, 421, 701, 709, 710, 711, 711a, 712, 712a, or 715 shall submit an application to the bureau.

(2) The application shall contain information and be accompanied by documents as required by the bureau.

(3) If an application is considered incomplete by the bureau, it will either be returned for completion or the applicant will be requested to submit additional information as necessary to make the application complete.

(4) When the application is considered complete by the bureau, it shall be accepted and the process of reviewing its contents for a decision will begin on that date.

(5) The statutory period, as set forth in this section, regarding the issuance of orders by the commissioner shall commence on the date of acceptance of the application.

(6) If, subsequent to the date of acceptance, the applicant wishes to amend the application or supplement or provide additional material in connection with the application, the commissioner may suspend processing of the application or proceed with the statutory period for the issuance of an order.

(7) In connection with an application, the commissioner may consider additional information from any source.

(8) The commissioner shall approve or disapprove an application in writing within 100 days after the date of acceptance of an application, or the last amendment to the application. An order disapproving an application shall state the basis for disapproval.

(9) An applicant who is dissatisfied with an order of the commissioner, or an institution that is dissatisfied with an objection issued under section 417, may submit a written request for a reconsideration of the order or objection stating the reasons for the request. The request must be received by the bureau within 5 days after the date of the order or objection. The commissioner, within 10 days of receiving the request for reconsideration, shall render a decision on the request for reconsideration. If a petition for reconsideration is granted, the commissioner shall grant the applicant 10 days to file written arguments or briefs. The commissioner may allow for oral argument after granting a petition for reconsideration. The oral argument shall be held within 10 days after granting the petition. The commissioner shall issue a final order, objection, or withdrawal of an objection within 20 days after granting the petition for reconsideration.

(10) Appeal of an order or objection shall not be made by an applicant without first requesting a reconsideration of the order or objection.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 481, Imd. Eff. Jan. 11, 2001

487.3215 Unsafe or unsound practice or violation; notice of charges; hearing; order to cease and desist; effect and enforcement; out-of-state bank branch.

Sec. 215.

(1) If in the opinion of the commissioner a savings bank is engaging, has engaged, or is about to engage in an unsafe or unsound practice in conducting the business of the savings bank or is violating, has violated, or is about to violate a law or rule, the commissioner may issue and serve upon the savings bank a notice of charges in respect to the practice or violation. The notice shall contain a statement of the facts constituting the alleged unsafe or unsound practice or violation, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the savings bank.

(2) The hearing shall be not earlier than 30 days or later than 60 days after service of the notice unless another date is set by the commissioner at the request of the savings bank. Unless the savings bank appears at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the cease and desist order.

(3) In the event of a consent, or if upon the record made at the hearing, the commissioner finds that an unsafe or unsound practice or violation specified in the notice of charges has been established, the commissioner may issue and serve upon the savings bank an order to cease and desist from the practice or violation. The order may require the savings bank and its directors, officers, employees, and agents to cease and desist from the practice or violation and to take affirmative action to correct the conditions resulting from the practice or violation.

(4) A cease and desist order becomes effective at the expiration of 30 days after the service of the order upon the savings bank, except in the case of an order issued upon consent which shall become effective at the time specified in the order, and shall remain effective and enforceable as provided in the order, except to the extent it is stayed, modified, terminated, or set aside by action of the commissioner or a reviewing court.

(5) If the commissioner determines that an out-of-state bank branch located in this state is acting in violation of the laws of this state or that the activities of the branch are being conducted in an unsafe and unsound manner, the commissioner may undertake enforcement actions and proceedings as would be permitted if the branch were a

savings bank.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3216 Temporary cease and desist order; effective and enforceable; injunction to set aside, limit, or suspend order.

Sec. 216.

(1) If the commissioner determines that the violation or unsafe or unsound practice specified in the notice of charges served upon the savings bank under section 215 is likely to cause insolvency or substantial dissipation of assets or earnings of the savings bank, or is likely to otherwise seriously prejudice the interests of its depositors, the commissioner may issue a temporary order requiring the savings bank to cease and desist from the violation or practice. The order shall become effective upon service upon the savings bank, unless set aside, limited, or suspended by a court in proceedings authorized by subsection (2), and shall remain effective and enforceable pending the completion of the administrative proceedings under the notice and until such time as the commissioner shall dismiss the charges specified in the notice or if a cease and desist order is issued against the savings bank, until the effective date of such order.

(2) No later than 10 days after the savings bank has been served with a temporary cease and desist order, the savings bank may apply to the circuit court for the county in which the home office of the savings bank is located for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the savings bank under section 215 and the court shall have jurisdiction to issue the injunction.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3217 Intent by commissioner to remove director or officer from office; notice; suspension or prohibition; effective date; service of copies of notice; statement of facts; hearing; issuance of order; effect and enforcement.

Sec. 217.

(1) If in the opinion of the commissioner a director or officer of a savings bank has committed a violation of law or rule or of a cease and desist order that has become final, or has engaged or participated in an unsafe or unsound practice in connection with the savings bank, or has committed or engaged in an act, omission, or practice that constitutes a breach of his or her fiduciary duty as a director or officer and the commissioner determines that the savings bank has suffered or will probably suffer substantial financial loss or other damage or that the interest of its depositors could be seriously prejudiced by reason of the violation, practice, or breach of fiduciary duty, the commissioner may serve upon the director or officer a written notice of his or her intention to remove him or her from office.

(2) If in the opinion of the commissioner a director or officer of a savings bank, by conduct or practice with respect to another savings bank or other business organization which resulted in substantial financial loss or other damage, has evidenced his or her personal unfitness to continue as a director or officer and if in the opinion of the commissioner, any other person participating in the conduct of the affairs of any savings bank, by conduct or practice with respect to such savings bank or other business organization which resulted in substantial financial loss or other damage, has evidenced his or her personal unfitness to participate in the conduct of the affairs of the savings bank, the commissioner may serve upon the director, officer, or other person a written notice of his or her intention to remove him or her from office or to prohibit his or her further participation in any manner in the conduct of the affairs of the savings bank.

(3) In addition to a notice sent under subsection (1) or (2), if the commissioner deems it necessary for the protection of the savings bank or the interests of its depositors that the director, officer, or other person be immediately suspended from office or prohibited from further participation in any manner in the conduct of the affairs of the savings bank, the commissioner may serve upon the director, officer, or other person a written notice suspending him or her from office or prohibiting him or her from further participation in any manner in the conduct

of affairs of the savings bank. The suspension or prohibition shall become effective upon service of the notice and, unless stayed by a court in proceedings authorized by section 218, shall remain in effect pending the completion of the administrative proceedings under the notice served under subsection (1) or (2) and until such time as the commissioner may dismiss the charges specified in the notice or, if an order of removal or prohibition is issued against the director, officer, or other person, until the effective date of the order. Copies of the notice shall also be served upon the savings bank of the director or officer or in the conduct of whose affairs he or she has participated.

(4) A notice of intention to remove a director, officer, or other person from office or to prohibit his or her participation in the conduct of the affairs of any savings bank shall contain a statement of the facts constituting grounds for the notice, and shall fix a time and place at which a hearing will be held. The hearing shall be held not earlier than 30 days nor later than 60 days after the date of service of the notice, unless another date is set by the commissioner at the request of the director, officer, or other person and for good cause shown.

(5) Unless the director, officer, or other person appears at the hearing in person or by a duly authorized representative, he or she shall be considered to have consented to the issuance of an order of removal or prohibition. In the event of consent, or if upon the record made at the hearing the commissioner finds that any of the grounds specified in the notice have been established, the commissioner may issue an order of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the savings bank. The order shall become effective at the expiration of 30 days after service upon the savings bank and the director, officer, or other person, except in the case of an order issued upon consent, which shall become effective at the time specified in the order. The order shall remain effective and enforceable unless it is stayed, modified, terminated, or set aside by action of the commissioner or a reviewing court.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3218 Stay of suspension or prohibition; application to circuit court.

Sec. 218.

No later than 10 days after a director, officer, or other person has been suspended from office or prohibited from participation in the conduct of the affairs of a savings bank under section 217, the director, officer, or other person may apply to the circuit court for the county in which the home office of the savings bank is located for a stay of the suspension or prohibition pending the completion of the administrative proceedings under the notice served upon the director, officer, or other person under section 217.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3219 Felony charge involving dishonesty or breach of trust by director or officer; suspension or prohibition; duration; entry of conviction; order of removal from office or prohibition; service of copy; finding of not guilty or other disposition.

Sec. 219.

(1) If a director or officer of a savings bank or other person participating in the conduct of the affairs of a savings bank is charged in any information, indictment, warrant, or complaint authorized by a county, state, or United States authority with the commission of or participation in a felony involving dishonesty or breach of trust, the commissioner, by written notice served upon the director, officer, or other person, may suspend him or her from office or prohibit him or her from further participation in any manner in the conduct of the affairs of the savings bank. A copy of the notice shall also be served upon the savings bank.

(2) The suspension or prohibition shall remain in effect until the information, indictment, warrant, or complaint is finally disposed of or until terminated by the commissioner. If a judgment of conviction with respect to the offense is entered against the director, officer, or other person, and the judgment is not subject to further appellate review, the commissioner may issue and serve upon the director, officer, or other person an order removing him or her from office or prohibiting him or her from further participation in any manner in the conduct of the affairs of the savings bank.

(3) A copy of the order shall also be served upon the savings bank, whereupon the director or officer shall cease

to be a director or officer of the savings bank.

(4) A finding of not guilty or other disposition of the charge shall not preclude the commissioner from instituting proceedings to suspend or remove the director, officer, or other person from office or to prohibit further participation in savings bank affairs, under section 217.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3220 Board of directors; less than quorum.

Sec. 220.

If, because of the suspension or removal of 1 or more directors under this act, the board of directors of a savings bank has less than a quorum of directors, all powers and functions vested in or exercisable by the board shall vest in and be exercisable by the remaining directors on the board. If all of the directors of a savings bank are suspended or removed under this act, the commissioner shall appoint persons to serve temporarily as directors pending the termination of the suspensions or removals, or until such time as their successors are duly elected and take office.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3221 Hearing; decision; review; modifying, terminating, or setting aside order; commencement of proceedings not as stay of order.

Sec. 221.

(1) A hearing provided for in this chapter shall be conducted in accordance with the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. The hearing shall be private unless the commissioner determines that a public hearing is necessary to protect the public interest.

(2) After the hearing and within 90 days after the commissioner has notified the parties that the case has been submitted for final decision, the commissioner shall render a decision that shall include findings of fact upon which the decision is based and issue and serve upon each party to the proceeding an order consistent with the decision.

(3) A party to the proceeding, or a person required by an order issued under sections 215 to 225 to cease and desist from any of the violations or practices stated in the order or to be suspended, removed, or prohibited from participation in the conduct of the affairs of any savings bank, may obtain a review of an order served under subsection (2), other than a consent order, which shall be reviewed as provided in Act No. 306 of the Public Acts of 1969.

(4) Unless a petition for review is timely filed as provided in that act, the commissioner, at any time, upon notice and in a manner as he or she deems proper, may modify, terminate, or set aside the order. Upon the timely filing of a petition for review, the commissioner may modify, terminate, or set aside the order with the permission of the court.

(5) Unless specifically ordered by the court, the commencement of proceedings for judicial review under subsection (3) shall not operate as a stay of any order issued by the commissioner.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3222 Notice or order; jurisdiction of court.

Sec. 222.

The commissioner may apply to the circuit court of the county in which the home office of the savings bank is located, or in the circuit court for Ingham county, for the enforcement of an effective and outstanding notice or order issued under sections 215 to 225, including any temporary cease and desist order issued under section 216(1), and the court shall have jurisdiction to order and require compliance with the notice or order. Except as otherwise provided in this act, a court shall not have jurisdiction to review, modify, suspend, terminate, or set aside a notice or order under this section.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3223 Prohibited acts; fine; limitation.

Sec. 223.

A director or officer, or former director or officer, of a savings bank or any other person against whom there is outstanding and effective a notice or final order served upon the director, officer, or other person under section 217(1), (2), or (3), or section 219, who participates in any manner in the conduct of the affairs of the savings bank involved, or directly or indirectly solicits or procures, or transfers or attempts to transfer, or votes or attempts to vote, any proxies, consents, or authorizations in respect of the voting rights in the savings bank, or without the prior written approval of the commissioner, votes for a director, serves or acts as a director, officer, or employee of a savings bank, shall be fined not more than \$5,000.00 or imprisoned for not more than 1 year, or both.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3224 Service of notice; intent to issue cease and desist order; notice to governor.

Sec. 224.

(1) A service required or authorized to be made by the commissioner under sections 215 to 225 may be made by registered or certified mail, or in any other manner reasonably calculated to give actual notice as the commissioner may provide. Copies of a notice or order served by the commissioner upon a savings bank, any director or officer, or any other person participating in the conduct of the savings bank's affairs shall also be sent to the appropriate federal supervisory authorities.

(2) In connection with the issuance of a cease and desist order under this act, the commissioner shall inform the governor of his or her intent to issue the order. Failure to inform the governor renders the order invalid.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3225 Proceedings under MCL 487.3215, 487.3216(1), or 487.3217; notice to federal authorities of intent to institute proceedings.

Sec. 225.

In connection with a proceeding under section 215, 216(1), or 217, the commissioner shall provide the appropriate federal supervisory authorities with notice of intent to institute a proceeding and the grounds for the proceeding. An institution or other party who is the subject of a notice or order issued by the commissioner under sections 215 to 225 shall not have standing to raise the requirements of section 224 or this section with respect to notifying federal supervisory authorities as ground for attacking the validity of a notice or order.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3226 Definitions.

Sec. 226.

As used in sections 215 to 225:

(a) "Cease and desist order which has become final" and "order which has become final" mean a cease and desist order or an order issued by the commissioner with the consent of the institution or the director or officer or other person concerned or with respect to which no petition for review of the action of the commissioner has been filed in a circuit court or with respect to which the action of the court in which the petition is filed is not subject to further review by the courts of the state.

(b) "Violation" includes any action, alone or with others, for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation under sections 215 to 225.

History: 1996, Act 354, Imd. Eff. July 1, 1996

Chapter 3 CORPORATE STRUCTURE

487.3301 Corporation; formation; purpose.

Sec. 301.

A corporation may be formed by 1 or more persons in accordance with the laws of this state for the purpose of conducting a savings bank business.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3302 Organization of savings bank; application; forms; notice; publication requirements; waiver; examination of information and statements; approval or disapproval of application.

Sec. 302.

(1) A person shall apply to the commissioner for permission to organize a savings bank under this act. The application shall be on forms prescribed by the commissioner and set forth such information as the commissioner may require.

(2) After making application, the incorporators shall publish notice twice and in consecutive weeks that the application has been made. The notice shall set forth the names and addresses of the incorporators and the proposed name and location of the savings bank to be organized. Proof of the notice shall be furnished to the commissioner within 30 days after the date of the application. The commissioner may waive the publication requirements, if in his or her opinion, the waiver is necessary or appropriate in the public interest.

(3) The commissioner shall examine the information and statements contained in the application as well as make any investigation as to the conditions and circumstances surrounding or in any manner affecting or pertaining to the organization of the savings bank sufficient to satisfy him or her as to all of the following:

(a) Whether the character, responsibility, and fitness of the incorporators and of the proposed directors and officers, and their motives in seeking to organize the savings bank are such as to command the confidence of the community and to warrant the belief that the business of the proposed savings bank will be honestly and efficiently conducted.

(b) Whether the convenience and needs of the public will be served by the proposed savings bank.

(c) The likelihood of successful operation of the proposed savings bank, giving consideration to, but not by way of limitation, all of the following:

(i) Population density.

- (ii) Economic characteristics of the area primarily to be served.
- (iii) The competition offered by existing savings banks, other financial institutions, and other providers of financial services.
- (d) Whether the capital structure of the proposed savings bank meets the requirements of section 307.
- (4) The commissioner shall approve or disapprove the application in writing within 100 days of the receipt of the application or the last amendment or supplement to the application, except that in the case of an application to organize a new bank under section 706 for the sole purpose of consolidating or merging the new bank with or into an existing bank, the commissioner shall approve or disapprove the application in writing within 30 days of the receipt of the application or the last amendment or supplement to the application. If the commissioner disapproves the application, the applicants may appeal in the manner provided in section 214.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3302a Organization of branch by out-of-state savings bank; proof of federal insurance on deposits; determination of compliance; certificate of organization and eligibility to accept deposits and investments of public funds.

Sec. 302a.

- (1) An out-of-state savings bank may apply to organize a branch in this state under this act by providing to the commissioner proof that its deposits are insured by an agency of the United States government.
- (2) If the commissioner determines after receipt of the proof required under subsection (1) that the out-of-state savings bank is safe and sound, that the out-of-state savings bank is subject to regulation, that there exists an agreement for exchange of supervisory information between the bureau and the out-of-state savings bank regulator, and that the out-of-state savings bank has otherwise complied with this act, the commissioner shall provide to the out-of-state savings bank a certificate of organization and eligibility to accept deposits and investments of public funds of the state and local units of government.

History: Add. 1997, Act 50, Imd. Eff. June 30, 1997

487.3303 Organization of savings bank to serve depository institutions; application.

Sec. 303.

- (1) Any number of depository institutions may apply to organize a savings bank exclusively to serve depository institutions or their officers, directors, employees, and affiliates.
- (2) Any number of depository institutions may apply to organize a savings bank to engage exclusively in providing trust services and other services as may be authorized by order or declaratory ruling of the commissioner.
- (3) A depository institution may apply to the commissioner for permission to organize a savings bank under this section. The application shall be in the form prescribed by the commissioner and set forth the information the commissioner requires.
- (4) The commissioner shall examine the information contained in the application and make any other investigation the commissioner considers necessary pertaining to the organization of the new savings bank. The commissioner shall issue to the applicants, within the time period provided in section 214, written notice of approval or disapproval of the application.
- (5) Except as otherwise provided by rule, a savings bank organized under this section is not subject to the provisions of section 302, but shall comply with all other provisions of this act.
- (6) The shares of stock of a stock savings bank organized under this section shall be owned exclusively by depository institutions.
- (7) As used in this section, "applicant" means the depository institutions making an application under this section.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001

487.3304 Organizational expenses; reimbursement; review.

Sec. 304.

(1) Following the date authorized by the commissioner for the savings bank to commence business, the savings bank may reimburse the organizers for reasonable and necessary organizational expenses. Any reimbursement under this section shall be predicated upon an accounting of the organizational expenses by an independent certified public accountant which shall be prepared in accordance with generally accepted accounting principles.

(2) The commissioner may review the accounting of the organizational expenses and may order the organizers to restore any sums that were reimbursed for other than reasonable and necessary expenses.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3305 Articles of incorporation.

Sec. 305.

(1) Upon approval of the application, at least 2 original articles of incorporation executed by a majority of the applicants shall be submitted to the commissioner. If the commissioner finds that the articles conform to law and that all fees and charges have been paid as required by law, he or she shall approve and file 1 of the original articles in his or her office and certify and forward 1 of the original articles to the incorporators.

(2) As a condition for approving, certifying, and distributing the articles of incorporation, the incorporators shall furnish evidence that a firm commitment to insure deposit accounts up to the maximum permitted by federal law has been issued by the federal deposit insurance corporation, unless the commissioner, for good cause shown, waives the requirement to furnish the evidence.

(3) The articles of incorporation shall provide all of the following information:

(a) The name of the savings bank. The name shall not be similar to the name of any other savings bank transacting business in this state that would cause confusion.

(b) The county and the city, incorporated village, or township where the principal office of the savings bank is to be located and conduct its business.

(c) The purpose or purposes of incorporation as provided in this act.

(d) The authorized number of shares of common and preferred stock for a stock savings bank and 1 of the following:

(i) If the savings bank is to be authorized to issue only 1 class of stock, the par value of the shares.

(ii) If the savings bank is to be authorized to issue more than 1 class of stock, the number of shares of each class, the par value of each class, and a statement of all designations, powers, preferences, rights, qualifications, limitations, and restrictions of each class.

(e) The names, places of residence, and addresses of the incorporators and the number of shares subscribed for each incorporator.

(f) The period for which the savings bank is organized, which may be in perpetuity.

(g) Any other provisions consistent with the business of banking and for the conduct of the affairs of the savings bank.

(4) If the commissioner approves and files the articles of incorporation under this act, the savings bank shall become a body corporate. A savings bank shall not transact any business, except as is incidental and necessary to its organization, until it has been authorized by the commissioner to commence business.

(5) Except shareholders, members, officers, and directors of a savings bank, a person dealing with a savings bank organized under this act shall not be charged with constructive notice of the contents of any articles or papers by reason of a filing required under this act.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3306 Authorization to commence business; conditions; verification; certificate with official seal; application deemed abandoned and no effect; first meeting.

Sec. 306.

(1) Within 30 days after the approval and filing of its articles of incorporation, or such later time not to exceed 1 year as approved by the commissioner, the savings bank shall notify the commissioner that all of its capital and surplus has been fully paid in and that it has complied with all the provisions of this act required to be complied with before a savings bank shall be authorized to commence business.

(2) The commissioner shall make such examinations as he or she deems necessary to verify the same and if it appears that the savings bank is lawfully entitled to commence business, the commissioner, within 30 days after receiving the notice under this section, shall give to the savings bank a certificate under the official seal of the bureau that the savings bank has complied with all of the required provisions and is authorized to commence business.

(3) The application shall be deemed abandoned and of no further effect if the savings bank fails to furnish the notice required by this section within the specified time or fails to comply with the required provisions within such period of time as the commissioner determines.

(4) The first meeting of every savings bank shall be called by a notice signed by any incorporator designating the time and place of the meeting and stating the purpose for which the meeting is called. The notice shall be served on all the incorporators at least 5 days before the date set for the meeting. If all the incorporators are present at the meeting or in writing waive notice, then no notice shall be required for the first meeting.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3307 Required capital; applicability of section to consolidated organization; authorization of stock savings bank or mutual savings bank to commence business; total capital; maintenance of surplus amount.

Sec. 307.

(1) A stock savings bank organized under this act shall have capital in an amount as the commissioner considers adequate.

(2) This section does not apply if the new stock savings bank is organized under section 706 for the sole purpose of effecting its consolidation or merger with an existing bank or association having its principal office in the same city or village as the new stock savings bank and if upon completion of the consolidation or merger a bank holding company becomes the owner of all of the outstanding voting shares of the consolidated organization. This section does apply to the consolidated organization.

(3) A stock savings bank shall not be authorized to commence business until it has surplus of at least 20% of its capital.

(4) A mutual savings bank shall not be authorized to commence business until:

(a) An aggregate minimum dollar amount and number of savings accounts shall be subscribed for and paid in cash, as determined by the commissioner.

(b) The commissioner shall have received confirmation from the federal deposit insurance corporation that the accounts of the mutual savings bank will be insured by the federal deposit insurance corporation.

(5) After organization each savings bank shall maintain adequate total capital for the conduct of its business and the protection of its depositors. The total capital of a savings bank shall be analyzed and appraised in relation to the character of its management, the liquidity of assets, history of earnings and of the retention of earnings, the potential volatility of the deposit structure, its risk management, and the savings bank's capacity to furnish the broadest service to the public.

(6) At all times a stock savings bank shall maintain surplus in an amount which is equal to at least the amount of its capital, except as provided in subsection (3) as to the initial surplus and except as provided in section 316 and shall not reduce surplus without the approval of the commissioner.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001

487.3308 Stock savings bank; stock issuance.

Sec. 308.

A stock savings bank may issue shares of common stock and preferred stock that may be divided into classes and the classes into series.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3309 Mutual savings bank; membership.

Sec. 309.

The membership of a mutual savings bank shall consist solely of every depositor or holder of a deposit account issued by the savings bank.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3310 Issuance of capital notes, debentures, and other indebtedness.

Sec. 310.

(1) A savings bank, with the approval of shareholders owning 2/3 of the stock of a stock savings bank who are entitled to vote, or with the approval of 2/3 of the members of a mutual savings bank who are entitled to vote, may issue capital notes, debentures, and any other instrument of indebtedness, with or without warrants for preferred or common stock, convertible and nonconvertible, subordinated on insolvency, liquidation, or dissolution to all obligations except obligations to shareholders or members, in such amounts and under such terms and conditions as are approved by the commissioner on the basis of normal business considerations.

(2) In connection with the issuance of convertible capital notes, debentures, or any other instrument of indebtedness, the commissioner may grant approval for the savings bank to reserve a number of authorized and unissued shares of capital stock as required for issuance in exchange for capital notes and debentures with respect to which conversion privileges exist.

(3) If capital notes, debentures, or any other instrument of indebtedness are converted into shares of common or preferred stock, a verified certificate executed by the president of the savings bank stating the amount of the conversion, and any other information with respect to the conversion as the commissioner may require, shall be filed in the office of the commissioner.

(4) Outstanding capital notes, debentures, and any other instrument of indebtedness issued under this section shall be added to "capital" and "capital stock" as the terms are used in sections 428, 429, and 432 to 434, for the purpose of computing the limitations contained in those sections based on amounts of capital and capital stock.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3311 Applicability of provisions to voting stock.

Sec. 311.

Whenever a vote of the holders of shares of stock is required by this act, those provisions shall apply only to the voting stock of the savings bank, bank, out-of-state bank, national bank, or association.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3312 Issuance of stock by mutual savings bank; conversion.

Sec. 312.

Upon application and approval of the commissioner, a mutual savings bank may amend its articles of incorporation to authorize the issuance of stock and may issue stock. Conversion shall be accomplished in accordance with section 715.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3313 Issuance of certificates of stock by savings bank.

Sec. 313.

(1) Except as provided in subsection (2), the shares of a savings bank shall be represented by certificates of stock that shall be issued to every shareholder and transferable on the books of the savings bank in a manner as may be prescribed in the bylaws or articles of incorporation. A transfer of stock shall not be valid against the savings bank, except with the consent of the board of directors, so long as the registered holder of the stock is liable as principal debtor, surety, or otherwise to the savings bank for any debt which is due and unpaid.

(2) Unless the articles of incorporation or bylaws provide otherwise, the board may authorize the issuance of some or all of the shares of any or all of its classes or series of stock without certificates if within a reasonable time after issuance of a share without a certificate the savings bank provides the shareholder with a written statement of the information required on a certificate under subsection (5). The authorization shall not have any effect on shares already represented by certificates unless they are surrendered to the savings bank.

(3) If the registered holder of stock of a savings bank is liable to the savings bank as principal debtor, surety or otherwise for any debt which is due and unpaid, the directors of the savings bank may sell a sufficient amount of the stock of the delinquent shareholder in the same manner and with the same effect as provided in section 501. This section does not prevent the savings bank from bringing proceedings to recover the entire amount of the indebtedness at any time before the sale or to recover the balance of the debt and costs after the proceeds of sale have been applied against the debt and costs or to recover the balance of the debt after the cancellation of the stock.

(4) Except as provided in section 501, the rights of a savings bank in its stock in which the shareholder is liable to the bank as principal debtor, surety, or otherwise is subject to any pledge, sale, or other transfer of the stock that is made before the maturity of an indebtedness of the registered holder of the stock to the savings bank and of which the savings bank has knowledge before the maturity, whether or not the stock was transferred on the books of the savings bank. Any stock of a savings bank that is pledged, sold, or otherwise transferred before the maturity of any indebtedness of the registered holder of the stock to the savings bank and of which pledge, sale, or other transfer the savings bank has knowledge before the maturity, may be transferred on the books of the savings bank after the maturity without the consent of the board of directors of the savings bank.

(5) The rights of a savings bank in its stock under this section, including the limitation on transferability if the registered holder is liable to the savings bank for any debt that is due and unpaid, shall not be applicable with respect to any stock duly listed on any stock exchange.

(6) Each certificate issued after the effective date of the amendatory act that added subsection (8) shall state all of the following:

- (a) The name and address of the principal office of the savings bank.
- (b) The name of the holder of record of the stock it represents.
- (c) The number, par value, class, and series of shares which the certificate represents.
- (d) The respective voting, distribution, dividend, liquidation, dissolution, and other rights, preferences, and limitations of the stock issued, which information shall be stated in full or in summary upon the front or back of the certificate or shall be incorporated by a reference to the articles of incorporation set forth on the front of the certificate.

(e) If the stock is not listed, that no transfer of the stock shall be valid against the savings bank so long as the registered holder is liable as principal debtor, surety, or otherwise to the savings bank, except with the approval of

the board of directors or as otherwise provided in this act.

(f) The signature of the president or other officer as provided by the bylaws of the savings bank and, optionally, the seal of the savings bank.

(7) All of the following may be a facsimile:

(a) The signature of a transfer agent.

(b) The signature of a registrar.

(c) The signature of an officer of the savings bank.

(d) The seal of the savings bank.

(8) If an officer who has signed a share certificate or whose facsimile signature has been used on a share certificate ceases to be an officer, whether because of death, resignation, or otherwise, before the certificate has been delivered by the savings bank, the certificate, nevertheless, may be adopted by the savings bank and delivered as though the person who signed it or whose facsimile signature has been used on the stock had not ceased to be an officer.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001

487.3314 Increase in capital stock.

Sec. 314.

(1) By a vote of shareholders owning 2/3 of each class of the stock entitled to vote, a savings bank may amend its articles to increase its capital stock to any sum approved by the commissioner, either by an increase in the par value of authorized stock or by the authorization of new stock.

(2) An increase in capital shall not be valid until the whole amount of the increase has been paid in, notice of the payment signed by an officer of the savings bank has been transmitted to the commissioner, and the commissioner's certificate of approval has been obtained specifying the amount of the increase in capital and that it has been duly paid in as a part of the capital of the savings bank. The certificate shall be conclusive evidence that the stock has been duly and validly issued.

(3) In the case of the issuance of new stock, in voting upon the increase of capital stock, 2/3 of the shareholders entitled to vote shall have power to fix the value of, and the price at which the stock shall be subscribed and paid for by the shareholders, but not less than par, as well as the time and manner of the subscription and payment, and to authorize the directors to sell the stock.

(4) Notwithstanding this section, a savings bank, with the approval of the commissioner and by a vote of shareholders owning 2/3 of each class of the stock entitled to vote, for the stated purpose of providing stock options for 1 or more employees or directors, may increase its capital stock in an aggregate par value amount not to exceed at any 1 time 5% of the par value of its then outstanding common stock. The additional stock, when duly authorized, may be issued by the savings bank from time to time for this purpose but for no other purpose, as options are exercised and payment for the stock is received, free from any preemptive rights to subscribe for stock.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001

487.3315 Reduction in capital stock.

Sec. 315.

(1) By a vote of shareholders owning 2/3 of the stock entitled to vote of the savings bank, a savings bank may reduce its capital stock to an amount not less than that required by this act to authorize the formation of the savings bank. The reduction may be accomplished by a reduction in the par value of the existing stock or by a reduction in the number of the shares of the stock. A reduction shall not be made until the amount of the proposed reduction has been reported to and approved by the commissioner.

(2) The approval of the commissioner shall be based upon a finding by him or her that the security of existing creditors of the savings bank will not be impaired by the proposed reduction. This section does not discharge a savings bank that has decreased its capital stock from an obligation or demand that is due from the savings bank.

(3) Retirement of preferred stock under the articles of incorporation is not considered to be a reduction of capital

under this section.

(4) A shareholder is not entitled to a distribution of cash or other assets by reason of a reduction of the capital of a savings bank unless the distribution has been approved by the commissioner and by the affirmative vote of at least 2/3 of the shares of each class of stock outstanding, voting as classes.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3316 Declaration and payment of dividends.

Sec. 316.

(1) The board of directors of a savings bank may declare and pay dividends on the common stock of the savings bank subject to the following restrictions:

(a) A cash dividend or dividend in kind shall not be declared or paid unless the savings bank will have a surplus amounting to not less than 20% of its capital after the payment of the dividend.

(b) A cash dividend or dividend in kind shall not be declared by any savings bank except out of net income then on hand after deducting all bad debts. Unless the debts are well secured and in process of collection or the debts constitute claims against solvent estates in probate, debts due the savings bank on which interest is past due and unpaid for a period of 6 months shall be considered bad debts under this section.

(c) A cash dividend or dividend in kind shall not be declared or paid until the cumulative dividends on preferred stock, if any, have been paid in full or preferred shareholders have waived their right to receive dividends.

(d) If the surplus of a savings bank is less than the amount of its capital, before the declaration of a cash dividend or dividend in kind, it shall transfer to surplus not less than 10% of its net income of the preceding half-year in the case of quarterly or semiannual dividends, or not less than 10% of its net income of the preceding 2 consecutive half-year periods in the case of annual dividends. For the purpose of this section, an amount transferred to a fund for the retirement of preferred stock of the savings bank out of its net income for the periods is considered to be additions to its surplus, if upon the retirement of the preferred stock the amounts credited into the retirement fund may then properly be carried to surplus. The savings bank is obligated to credit to surplus the amounts transferred into the retirement fund on account of the preferred stock as the stock is retired.

(e) Notwithstanding the limitations of this section, a savings bank with the approval of the commissioner and by vote of shareholders owning 2/3 of the stock entitled to vote may increase its capital stock by declaration of a stock dividend on the capital stock. After the increase the surplus of the bank shall be at least equal to 20% of the capital stock as increased.

(2) A savings bank may pay dividends on its preferred stock at a rate as may be applicable without regard to the limitations of this section.

(3) A holding company that owns common or preferred stock of a savings bank may waive its right to receive dividends and any payment in lieu of dividends.

(4) Dividends paid to shareholders under a dividend reinvestment plan shall be subject to this act regarding the payment of dividends.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001

487.3317 Mutual savings bank; meetings.

Sec. 317.

(1) An annual meeting of the members of a mutual savings bank shall be held at a time and place designated by or in the manner provided in the bylaws.

(2) Special meetings of the members of a mutual savings bank may be called at any time by the president or board of directors or by the president, a vice president, or the secretary upon the written request of members holding of record in the aggregate at least 10% of the savings deposits of the savings bank. The written request shall show the purposes of the meeting and shall be delivered to the principal office of the mutual savings bank addressed to the president.

(3) In the consideration of all questions requiring action by the members of a mutual savings bank, each member

shall be entitled to the number of votes set forth in the savings bank's charter. The savings bank charter may provide between 1 and 1,000 votes per member and may further provide that each member shall be permitted to cast 1 vote for each \$100.00, or fraction thereof, of the withdrawal value of his or her deposit account.

(4) In order that a mutual savings bank may determine the members entitled to notice of any meeting to vote, or entitled to receive a distribution or to exercise any rights in respect of any other lawful action, the board of directors of the savings bank may fix, in advance, a record date that is not more than 9 months or less than 6 months prior to the date of the meeting or more than 9 months prior to any other action.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001

487.3318 Records.

Sec. 318.

(1) Each savings bank shall keep correct and complete books and records of accounts.

(2) Each mutual savings bank shall maintain membership records which shall show the name and address of the member and date of membership.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3319 Savings bank; meetings; voting.

Sec. 319.

(1) The annual meeting of the shareholders of every stock savings bank shall be held at a time and place designated by or in the manner provided in the bylaws. Special meetings of shareholders shall be called and held as provided in the bylaws of the savings bank. At any meeting, each shareholder entitled to vote shall be entitled to 1 vote for each share held by him or her. A shareholder may vote at any meeting of the savings bank by written proxy.

(2) Persons holding shares of stock of a savings bank in a fiduciary capacity are entitled to vote the shares so held, unless the trust instrument contains a provision to the contrary. Persons whose shares are pledged are entitled to vote unless in the transfer by the pledgor on the books of the savings bank he or she has expressly empowered the pledgee to vote the shares, in which case only the pledgee or his or her proxy may vote the shares.

(3) A shareholder shall not vote his or her stock in any manner except in person or by proxy. This prohibition shall not be construed to apply to any voting trust agreement of shareholders with respect to the voting of stock, which agreement has been approved by the commissioner.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3320 Savings bank; meeting notice.

Sec. 320.

The commissioner may call a meeting of the members or shareholders of a savings bank for any purpose by giving a notice of the time, place, and purposes of this meeting at least 3 days prior to the meeting to the members or shareholders either by personal service, registered mail sent to their last known addresses as shown by the books of the savings bank, or by publication at least once a week for 4 consecutive weeks prior to the meeting.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3321 Savings bank; stock ledger; designation of transfer agent or registrar of shares; list to be furnished upon request.

Sec. 321.

(1) A stock savings bank shall keep and maintain a stock ledger in which shall be correctly entered the name and address of each shareholder of the savings bank, the number of shares held by each, the date when the shareholder acquired the shares, and the name of the transferor. The board of directors of a savings bank may designate any corporation authorized by law to act as transfer agent or registrar of shares of corporations, to act as transfer agent or transfer agent and registrar of the shares of the savings bank, but a corporation shall not be designated to act in both capacities at the same time.

(2) Upon demand made by the commissioner, a savings bank shall file with the commissioner a list containing the name and address of each shareholder of the savings bank together with the number of shares held by each according to its records as of the close of business on the date of issuance of the demand.

(3) Within 2 calendar weeks of any demand made for a purpose reasonably related to the requester's interest as a shareholder or as a representative of a group of shareholders by any shareholder being the record owner of at least 5% of the issued shares of the savings bank or by any person representing any group who are the record owners of at least 5% of the issued shares of the savings bank, the savings bank shall prepare and furnish the requester a list containing the name and address of each shareholder of the savings bank together with the number of shares held by each according to its records as of the close of business on the date of receipt of the demand.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001

487.3322 Savings bank; election of directors; vacancy; bylaws; meetings; chief executive officer; minutes; quorum; notice of meeting.

Sec. 322.

(1) A savings bank shall be managed by a board of not less than 5 nor more than 25 directors who shall be elected in the first instance by the incorporators at a meeting held before the savings bank is authorized to commence business and afterwards at the annual meeting of the members or shareholders. If for any reason an election is not held at the annual meeting, then the election shall be held at any subsequent meeting called for that purpose of which notice is given as provided in the bylaws of the savings bank. The board of directors may fill a vacancy that occurs in the board by death, resignation, or otherwise for the unexpired term. Subject to limitations as to numbers, the shareholders or members may elect directors not to exceed 2 less than the full board and the unfilled directorships shall be considered as vacancies and filled by the board of directors. Directors shall hold office until their successors are elected and have qualified.

(2) The bylaws of the savings bank shall provide for the shareholder election of directors in 1 of the following methods:

(a) The shareholders annually may elect the full board of directors.

(b) The shareholders annually may elect a board of directors with not more than 2 unfilled directorships. The unfilled directorships are considered vacancies to be filled by the board of directors.

(c) The shareholders may elect directors with staggered terms of office as provided for in subsection (3).

(3) The election of directors with staggered terms of office shall be provided for in the bylaws of the savings bank as follows:

(a) That the directors will be divided into 2 or 3 classes, each to be as nearly equal in number as possible.

(b) The term of office of directors in the first class shall expire at the first annual meeting of shareholders after their election, that of the second class shall expire at the second annual meeting after their election, and that of the third class, if any, shall expire at the third annual meeting after their election.

(c) At each annual meeting after the classification established under subdivision (b), a number of directors equal to the number of the class whose term expires at the time of the meeting shall be elected to hold office until the second succeeding annual meeting if there are 2 classes, or until the third succeeding annual meeting if there are 3 classes.

(4) The board of directors shall meet not less than 6 times per year, in person or by means of electronic

communication devices that enable all participants in a meeting to communicate with each other, for the purpose of carrying out their duties under this act. The directors shall designate the savings bank's chief executive officer at the first board of directors meeting of each fiscal year. The board shall keep and record minutes of each meeting. The minutes shall be signed by the presiding officer and the secretary of the meeting. A majority of the board of directors constitutes a quorum for the transaction of business.

(5) The commissioner may call a meeting of the board of directors of a savings bank by giving a notice of the time, place, and purpose of the meeting at least 3 days prior to the meeting to the directors either by personal service, registered mail sent to their last known addresses as shown by the books of the savings bank, or publication at least once in each week for 4 consecutive weeks prior to the meeting.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001

487.3323 Oath.

Sec. 323.

Each director prior to taking office shall take and subscribe an oath that he or she will diligently and honestly perform his or her duties and will not knowingly violate, or permit to be violated, any provisions of this act. The signed oath shall be transmitted to the commissioner.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3324 Purchase or sale of securities by director; conditions.

Sec. 324.

(1) A savings bank may contract for, or purchase from, any of its directors, or from any person of which any of the savings bank's directors is an officer, director, manager, owner, employee, or agent, any securities or other property, only when the purchase is made in the ordinary course of business upon terms not less favorable to the savings bank than those offered by others, and the purchase is authorized by a majority of the board of directors not interested in the sale of the securities or property evidenced by their affirmative vote or written assent. If a director, or person of which any director is an officer, director, manager, owner, employee, or agent, acting for or on behalf of others, sells securities or other property to a savings bank, the commissioner may require a full disclosure to be made of all commissions or other considerations received. If a director or person, acting in his, her, or its own behalf, sells securities or other property to the savings bank, the commissioner may require a full disclosure of all profits realized from the sale.

(2) A savings bank may sell securities or other property to any of its directors, or to an entity of which any of its directors is an officer, director, manager, owner, employee, or agent in the ordinary course of business on terms not more favorable to the director or person than those offered to others, when the sale is authorized by a majority of the board of directors of a savings bank evidenced by their affirmative vote or written assent.

(3) This section shall not be construed as authorizing savings banks to purchase or sell securities or other property that savings banks are not otherwise authorized by law to purchase or sell.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001

487.3325 Director or officer of savings bank; discharge of duties; violation; removal; vote.

Sec. 325.

(1) A director or an officer of a savings bank shall discharge the duties of his or her position in good faith and

with that degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position.

(2) In discharging his or her duties, a director or an officer when acting in good faith may rely upon the opinion of legal counsel for the savings bank, upon the report of an independent appraiser selected with reasonable care by the board or by an officer of the savings bank, or upon financial statements of the savings bank represented to him or her to be correct by the president or the officer of the savings bank having charge of its books of account, or as stated in a written report by an independent public or certified public accountant or firm of accountants fairly to reflect the financial condition of the savings bank.

(3) The articles of incorporation of a savings bank may contain a provision providing that a director is not personally liable to the savings bank or its shareholders or members for monetary damages for a breach of the director's fiduciary duty. The provision does not eliminate or limit the liability of a director for any of the following:

- (a) A breach of the director's duty of loyalty to the savings bank or its shareholders or members.
- (b) Acts or omissions not in good faith or that involve intentional misconduct or knowing violation of law.
- (c) A violation of section 223.
- (d) A transaction from which the director derived an improper personal benefit.

(4) An action against a director or officer for failure to perform the duties imposed by this section shall be commenced within 3 years after the cause of action has accrued, or within 2 years after the time when the cause of action is discovered, or should reasonably have been discovered, by the complainant, whichever occurs first.

(5) If a director or officer of a savings bank knowingly violates, or knowingly permits any of the agents, officers, directors, or employees of the savings bank to violate, this act, rules promulgated under this act, or an order or declaratory ruling of the commissioner, every director and officer who participated in or assented to the violation shall be held liable in his or her personal and individual capacity for all damages that the savings bank, any shareholder, or any other person sustains as a result of the violation. An action to recover damages under this section shall be brought within 3 years from the time of the violation.

(6) The shareholders may remove 1 or more directors with or without cause unless the articles provide that directors may be removed only for cause. The vote for removal shall be by a majority of shares entitled to vote at an election of directors, except that the articles may require a higher vote for removal without cause. This subsection shall not invalidate any bylaw adopted before the effective date of the amendatory act that added this subsection that applies to removal without cause.

(7) In the case of a savings bank having cumulative voting, if less than the entire board is to be removed, a director shall not be removed if the votes cast against his or her removal would be sufficient to elect him or her if then cumulatively voted at an election of the entire board of directors, or, if there are classes of directors, at an election of the class of directors of which he or she is a part.

(8) If holders of a class or series of stock are entitled by the articles to elect 1 or more directors, this section applies, with respect to removal of a director so elected, to the vote of the holders of the outstanding shares of that class or series of stock.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001

487.3326 Indemnification of party.

Sec. 326.

(1) A savings bank may indemnify a person who was or is a party or is threatened to be made a party to a threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal, other than an action by or in the right of the savings bank, or by reason of the fact that he or she is or was a director, officer, employee, or agent of the savings bank or is or was serving at the request of the savings bank as a director, officer, partner, trustee, employee, or agent of another financial institution, foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, against expenses, including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with the action, suit, or proceeding if the person acted in good faith and in a manner he or she reasonably believed to be in and not opposed to the best interests of the savings bank or its members or shareholders, and in a criminal action or proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. The termination of an action, suit, or proceeding by judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, does not create a presumption that the person did not act in good faith and in a manner that he or she reasonably believed to be in and not opposed to the best interests of the savings bank or its members or shareholders, and in a

criminal action or proceeding create a presumption that the person had reasonable cause to believe that his or her conduct was unlawful.

(2) A savings bank may indemnify a person who was or is a party to or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the savings bank to procure a judgment in its favor or by reason of the fact that he or she is or was a director, officer, partner, trustee, employee, or agent of the savings bank or is or was serving at the request of the savings bank as a director, officer, partner, trustee, employee, or agent of another financial institution, foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, against expenses, including actual and reasonable attorneys' fees and amounts paid in settlement actually and reasonably incurred by the person in connection with the action or suit if the person acted in good faith and in a manner the person reasonably believed to be in and not opposed to the best interests of the savings bank or its shareholders or members. Indemnification shall not be made for a claim, issue, or matter in which the person has been found liable to the savings bank except as authorized in subsection (3).

(3) A director, officer, employee, or agent of the savings bank who is a party or threatened to be made a party to an action, suit, or proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court after giving any notice it considers necessary may order indemnification if it determines that the person is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he or she met the applicable standard of conduct set forth in this section or was adjudged liable, but if he or she was adjudged liable, his or her indemnification is limited to reasonable expenses incurred.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001

487.3327 Indemnification of director, officer, employee, or agent.

Sec. 327.

(1) To the extent that a director, officer, employee, or agent of a savings bank has been successful on the merits or otherwise in defense of an action, suit, or proceeding described in section 326, or in defense of any claim, issue, or matter in the action, suit, or proceeding, he or she shall be indemnified against expenses, including actual and reasonable attorneys' fees, incurred by him or her in connection with the action, suit, or proceeding and an action, suit, or proceeding brought to enforce the mandatory indemnification provided by this act.

(2) An indemnification under section 326, unless ordered by a court, shall be made by the savings bank only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in section 326. This determination shall be made by any of the following:

(a) A majority vote of a quorum of the board consisting of directors who were not parties to the action, suit, or proceeding.

(b) If the quorum described in subdivision (a) is not obtainable, then by a majority vote of a committee of directors who are not parties to the action. The committee shall consist of not less than 2 disinterested directors.

(c) Independent legal counsel in a written opinion.

(d) The shareholders or members.

(3) If a person is entitled to indemnification under section 326 for a portion of expenses, including actual and reasonable attorneys' fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount of the expenses, the savings bank may indemnify the person for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001

487.3328 Payment or reimbursement of expenses incurred in civil or criminal action, suit, or proceeding.

Sec. 328.

A savings bank may pay or reimburse the reasonable expenses incurred by a director, officer, employee, or agent

who is a party or threatened to be made a party to an action, suit, or proceeding described in this section in advance of the final disposition of the action, suit, or proceeding if all of the following apply:

(a) The person furnishes the savings bank a written affirmation of his or her good faith belief that he or she has met the applicable standard of conduct set forth in this section.

(b) The person furnishes the savings bank a written undertaking executed personally or on his or her behalf to repay the advance if it is ultimately determined that he or she did not meet the standard of conduct. The undertaking shall be by unlimited general obligation of the person on whose behalf advances are made but need not be secured.

(c) A determination is made that the facts then known to those making the determination would not preclude indemnification under this act.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001

487.3329 Rights to indemnification.

Sec. 329.

(1) The indemnification or advancement of expenses provided by or granted under this act is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under the articles of incorporation, the bylaws, or a contractual agreement. The total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses.

(2) The right to indemnification provided for under this act continues for a person who ceases to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of the person.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3330 Insurance; trust fund.

Sec. 330.

(1) A savings bank has the power to purchase and maintain insurance, including insurance issued by an affiliated insurer and insurance for which premiums may be adjusted retroactively, in whole or in part, based upon claims experience, or similar arrangements.

(2) A savings bank may also create a trust fund or other form of funded arrangement on behalf of any person who is or was a director, officer, employee, or agent of the savings bank or is or was serving at the request of the savings bank as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, against any liability asserted against him or her and incurred by him or her in any capacity or arising out of his or her status in that capacity, whether or not the savings bank has the power to indemnify him or her against the liability under sections 326 to 329.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3330a Consolidation or merger; position of director, officer, employee, or agent of depository institution.

Sec. 330a.

For purposes of this section and sections 326, 327, 328, 329, 330, and 332, a person who is or was a director, officer, employee, or agent of a depository institution absorbed in a consolidation or merger or is or was serving at

the request of the depository institution as a director, officer, partner, trustee, employee, or agent of another depository institution, foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, shall hold the same position with respect to the consolidated bank as he or she would if he or she had served the consolidated bank in that capacity.

History: Add. 2000, Act 482, Imd. Eff. Jan. 11, 2001

487.3331 Articles of incorporation; amendment.

Sec. 331.

(1) With the approval of the commissioner and by vote of a majority of members or voting shares of the savings bank, a savings bank may amend its articles of incorporation in any manner not inconsistent with this act.

(2) An amendment is effective when certified copies of the amendment in a form as the commissioner may require signed by the president or a vice president and the cashier or an assistant cashier, have been submitted to the commissioner and have been approved and filed by the commissioner as with the original articles of incorporation.

(3) Notwithstanding subsection (2), an amendment that provides solely for a change in the name of the savings bank is not subject to the approval of the commissioner and shall be effective on the date it is filed with the commissioner or at a later date specified in the amendment.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3332 Definitions; best interests of savings bank, shareholders, or members.

Sec. 332.

(1) As used in sections 325 to 331:

(a) "Fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan.

(b) "Other enterprise" shall include employee benefit plans.

(c) "Savings bank" includes all savings banks, banks, out-of-state banks, national banks, and associations, absorbed in a consolidation or merger and the consolidated savings bank, so that a person who is or was a director, officer, employee, or agent of the savings bank, bank, out-of-state bank, national bank, or association or is or was serving at the request of the savings bank, bank, out-of-state bank, national bank, or association as a director, officer, partner, trustee, employee, or agent of another savings bank, bank, out-of-state bank, national bank, or association, foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, shall hold the same position with respect to the consolidated savings bank as he or she would if he or she had served the consolidated savings bank in that capacity.

(d) "Serving at the request of the savings bank" shall include any service as a director, officer, employee, or agent of the savings bank which imposes duties on, or involves services by, the director, officer, employee, or agent with respect to an employee benefit plan, its participants or beneficiaries.

(2) A person who acted in good faith and in a manner he or she reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be considered to have acted in a manner not opposed to the best interests of the savings bank or its shareholders or members as referred to in section 326.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3333 Liquidation; notice; certificate of termination; designation of liquidating agent or committee; bond; reports; removal; appointment of new agent or committee; examination by commissioner; publication of notice; filing and forwarding certificate of termination.

Sec. 333.

(1) A solvent savings bank may go into liquidation and be closed upon expiration of its corporate charter or by the vote of a 2/3 majority of members or voting shares. In the event of a termination, the last board of directors immediately upon expiration of its corporate charter or adoption of the resolution by the members or shareholders shall notify the commissioner of the action by filing with him or her in quadruplicate a certificate of termination signed by a majority of the remaining members of the board of directors. The certificate shall be in a form as the commissioner may require.

(2) The members or shareholders shall designate 1 or more persons to act as a liquidating agent or committee and the agent or committee shall conduct the liquidation in accordance with the law and under the supervision of the commissioner and the board of directors.

(3) The agent or committee shall furnish to the savings bank a bond satisfactory to the commissioner in form and amount.

(4) The liquidating agent or committee shall render to the commissioner reports in a form and at such times as the commissioner may require. The liquidating agent or committee shall make periodic reports not less frequently than annually to the members or shareholders.

(5) At any lawfully convened meeting, by vote of a majority of members or voting shares, the members or shareholders may remove the liquidating agent or committee and appoint a new agent or a new committee.

(6) The commissioner may examine the affairs of a liquidating savings bank at any time for the purpose of determining that the rights of the depositors and creditors are being properly served. The expenses of the examination shall be paid by the savings bank but shall not exceed \$100.00 per day for each examiner and actual expenses incurred while making the examination, to be credited to the general fund.

(7) The liquidating agent or committee shall publish a notice once each week for 8 consecutive weeks informing depositors and creditors to present their claims against the savings bank for payment. Proof of the publication shall be filed with the commissioner by the liquidating agent or committee. The provisions of this section with respect to publication of notice shall not apply to a savings bank in voluntary liquidation which disposes of sufficient assets to a state or national bank to pay its depositors and creditors in full or if all of its liabilities are assumed by the state or national bank.

(8) If the commissioner finds that a liquidation has been completed in conformity to law and when all fees and charges have been paid as required by law, he or she shall file 1 copy of the certificate of termination in the office of the bureau and shall certify and forward by mail 1 copy to the corporation division, department of treasury, 1 copy to the county clerk in the county in which the bank is located and 1 copy to the liquidating agent or committee, and the existence of the savings bank shall cease, subject to section 334.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3334 Commencement of voluntary liquidation procedures; savings bank as body corporate; actions, suits, or proceedings begun prior to liquidation proceeding; powers of surviving directors.

Sec. 334.

(1) Except as provided in subsection (2), a savings bank that commences voluntary liquidation proceedings under section 333 shall continue to be a body corporate for the further term of the lesser of 3 years from the commencement of the proceedings or the date the certificate is issued under section 333(8) for the purpose of prosecuting and defending actions for or against the savings bank and to enable it gradually to settle and close its affairs, to dispose of and convey its property, and to divide its assets but not for the purpose of continuing the business for which it was organized.

(2) With respect to an action, suit, or proceeding begun or commenced by or against the savings bank prior to the commencement of voluntary liquidation proceedings, and with respect to any action, suit, or proceeding begun or commenced by the savings bank within 3 years after the commencement of voluntary liquidation proceedings, the savings bank shall be continued as a body corporate until any judgments, orders, or decrees are fully executed.

(3) If the number of directors of a savings bank that has commenced voluntary liquidation proceedings is less than the full number of directors required or authorized by statute or by the bylaws of the savings bank for any reason, a majority of the remaining surviving directors or the sole surviving director shall possess the same powers in acting for the savings bank under this section as the duly authorized board of directors of the savings bank possessed before the commencement of voluntary liquidation proceedings.

(4) A savings bank in liquidation under the laws of this state shall not continue to be a body corporate for the purpose of continuing the business for which it was organized.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001

487.3335 Savings bank; expiration of term by limitation; extension; renewal.

Sec. 335.

(1) A savings bank whose term will expire by limitation, at any time preceding the expiration of such term, by amendment of its articles, may extend its corporate term for a limited period of time or in perpetuity.

(2) A savings bank whose term has expired, but which has not been wound up or dissolved and which has nevertheless inadvertently continued its active business beyond such term, may renew its corporate existence by amendment of its articles with the consent of at least 2/3 of its members or the holders of at least 2/3 of the outstanding shares. The officers and directors de facto shall do and perform all things required of officers and directors de jure as respects calling a special meeting of the shareholders and submitting to them the question of renewing the corporate existence.

(3) A savings bank de facto shall not be permitted to renew its corporate life unless the action is taken within 3 years after its term has expired and renewal does not relieve the savings bank from any penalties that may have accrued against it under any law of this state.

(4) A savings bank whose term has been extended or renewed shall be the same savings bank and have the same members, shareholders, directors, and officers, enjoy all the rights, privileges, immunities, and powers, and be subject to all the liabilities that it respectively possessed and was subject to before the extension or renewal of its existence.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001

487.3336 Sale or purchase of assets; consideration; purpose; filing certified copies of proceedings; liability; maintenance of principal office or branches.

Sec. 336.

(1) With the approval of the commissioner, based upon an examination or other appropriate analysis of either the buying or selling organization, or both, and upon the affirmative vote of a majority of the members of its board of directors and 2/3 of its members or the holders of 2/3 of its stock entitled to vote, a savings bank may do either or both of the following:

(a) Sell all or substantially all of its assets of every kind, character, and description and assign its liabilities to any depository institution.

(b) Purchase all or substantially all of the assets of every kind, character, and description and assume the liabilities of another depository institution.

(2) The consideration for a purchase and sale under this section may include shares of stock of the purchasing bank, out-of-state bank, national bank, association, or savings bank.

(3) A purchase and sale shall not be made to defeat or defraud any of the creditors of the depository institutions.

(4) Certified copies of all shareholders' and directors' proceedings under this section shall be submitted to the commissioner and shall contain the terms of the sale and purchase, including a copy of the agreement of sale and purchase.

(5) The liability of a depository institution or of its shareholders, directors, or officers, or the rights of creditors of, or other persons transacting business with, the depository institution shall not be lessened or impaired as the result of a sale of assets under this section.

(6) Notwithstanding any other provision of this act, a savings bank that purchases or assumes all or substantially all of the assets or liabilities of a depository institution may retain, maintain, and operate the principal office or branches of the depository institution as branches of the purchasing savings bank without providing notice to the commissioner provided it assumes the deposit liabilities of the depository institution maintained at the principal office or branches.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001

487.3337 Sale or purchase of branches; notice.

Sec. 337.

(1) A savings bank may sell 1 or more of its branches to a bank, out-of-state bank, national bank, association, or savings bank located in a state whose laws would permit a savings bank to purchase 1 or more branches in that state of the purchasing depository institution.

(2) A savings bank may purchase 1 or more branches, without purchasing all or substantially all of the depository institution, from a bank, out-of-state bank, national bank, association, or savings bank.

(3) A savings bank that purchases 1 or more branches under subsection (2) shall provide notice as required under section 417 before operating the purchased branch or branches.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3338 Unlimited amounts or share of deposits.

Sec. 338.

There shall be no limit upon the amount or share of deposits held or controlled in this state by any savings bank or holding company on a consolidated basis.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3339 Compliance review committee; construction of section.

Sec. 339.

(1) A compliance review committee shall evaluate and seek to improve all of the following:

(a) Loan policies or underwriting standards.

(b) Asset quality.

(c) Financial reporting to federal or state government or regulatory agencies.

(d) Compliance with federal or state statutory or regulatory requirements.

(2) Except as provided in subsection (3), all of the following apply to a compliance review committee:

(a) Compliance review documents are confidential and are not subject to discovery or admissible in evidence in a civil action.

(b) Individuals serving on a compliance review committee or acting under the direction of a compliance review committee shall not be required to testify in a civil action about the contents of a compliance review document or conclusions of a compliance review committee or about the actions taken by a compliance review committee.

(c) Compliance review documents delivered to individuals who are not members of the compliance review committee, or to other entities including state, federal, or foreign governmental or regulatory agencies, shall remain confidential and are not discoverable or admissible in evidence in a civil action.

(3) This section does not apply to any civil action initiated by a federal or state regulatory agency.

(4) This section shall not be construed to limit the testimony that can be required about matters other than the contents of a compliance review document or conclusions or actions of a compliance review committee. This section does not limit the discovery or admissibility in a civil action of any documents other than compliance review documents.

History: 1996, Act 354, Imd. Eff. July 1, 1996

Chapter 4
POWERS

487.3401 Savings bank; powers.

Sec. 401.

(1) Except as otherwise provided by this act, a savings bank may engage in the business of banking and exercise all powers incidental to the business of banking or which further or facilitate the purposes of a savings bank. A savings bank has all the powers conferred by this act and granted by rule, order, or declaratory ruling of the commissioner, including, but not limited to, all of the following powers:

(a) To have a corporate seal, that may be altered, and to use the seal, or a facsimile of it, by having it impressed, affixed, or reproduced in any manner.

(b) To have succession in perpetuity or for a limited period of time, as fixed by its articles or until its affairs are finally wound up by liquidation, forfeiture, or dissolution as provided by this act.

(c) To make contracts.

(d) To sue and be sued, complain, and defend in its corporate name as fully as a natural person.

(e) To elect or appoint directors who shall appoint from their members a president who shall perform duties as may be designated by the board, and who shall serve as the chairperson of the board, unless the board designates another director to be chairperson in lieu of the president. The board may appoint officers as the board considers necessary, who need not be members of the board, define their duties, dismiss at pleasure, and appoint other officers to fill vacancies.

(f) To make, alter, amend, and repeal bylaws not inconsistent with its articles or with law for the administration and regulation of the affairs of the savings bank.

(g) To have and exercise the powers and means appropriate to effect the purpose for which the savings bank is incorporated.

(h) To make investments permitted by this act and those investments permitted by order or declaratory ruling of the commissioner.

(i) To make contributions and donations for the public welfare or for religious, charitable, scientific, or educational purposes, and, in connection with the contributions and donations, establish and operate charitable trusts.

(j) To purchase, take, lease as lessee, or otherwise acquire and to own, hold, and use, to sell, lease as lessor, pledge, grant a security interest in, convey, or otherwise dispose of personal property in connection with the exercise of a power granted by this act.

(k) To act as agent of the United States or of an instrumentality or agency of the United States, or of a state, for the sale or issue of bonds, notes, or other obligations of the United States, or of a state and to act as a fiscal agent of the United States, a state, or as a treasury tax and loan depository and perform all reasonable duties in those capacities as may be prescribed or required by regulation of the secretary of the treasury of the United States, or of the treasurer of a state, and to take other action as may be necessary or proper to enable the savings bank to act under this subdivision.

(l) To become a member of the federal reserve system, to hold shares of stock in a federal reserve bank, to take all actions incident to its membership, and to exercise all powers, not inconsistent with the provisions of this act, conferred on member banks by the federal reserve act.

(m) To become an insured bank under the federal deposit insurance act, and to take actions incident to an insured status under that act.

(n) To become a member and buy and hold stock of the federal home loan bank as defined in section 2 of the federal home loan bank act, chapter 522, 47 Stat. 725, 12 U.S.C. 1422, and to exercise those powers conferred upon a federal home loan bank member by the federal home loan bank that are consistent with this act.

(o) To sell mortgage loans to the federal national mortgage association, the federal home loan mortgage corporation, and the government national mortgage association, or successors of the associations, or any other secondary market loan purchaser and, in connection with these associations, to make payments of capital contributions, required by law, in the nature of subscriptions for stock of an association or successor of the association, to receive stock evidencing the capital contributions, and to hold or dispose of the stock.

(p) To conduct its business through subsidiaries, at the same location or a location different from the savings bank. A subsidiary may engage in all activities and make all investments permitted for a savings bank by this act or by rule, order, or declaratory ruling of the commissioner, except that a subsidiary may not accept deposits or engage in trust activities unless specifically authorized by the commissioner or by another statute of this state. In addition, a subsidiary may engage in activities specifically permitted for subsidiaries by order or declaratory ruling of the commissioner. Except upon written approval of the commissioner, a savings bank shall not be a general

partner in a subsidiary.

(q) To engage in any aspect of the insurance and surety business as an agent, broker, solicitor, or insurance counselor as provided under the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, and to own an insurance agency in whole or in part as provided under the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302.

(r) To give its bond in a proceeding in any court in which it is a party or upon an appeal in a proceeding, and to pledge assets as security for the bond.

(s) Notwithstanding any provision of this act, to acquire and hold property, or a security interest in property, as protection against loss on an evidence of indebtedness, on an agreement for the payment of money, or on an investment security previously acquired lawfully and in good faith, subject to disposition of property within a period of 60 months after the date of acquisition, or a longer period as the commissioner may approve.

(t) To service loans for others and to receive a fee for the service.

(u) To execute and deliver guarantees as may be incidental or usual in carrying on the business of banking.

(v) To make, sell, purchase, arrange, participate in, invest in, or otherwise deal in loans or extensions of credit for consumer purposes, which are unsecured or secured by liens or interests in personal property or real estate.

(w) To make, sell, purchase, arrange, participate in, invest in, or otherwise deal in loans or extensions of credit for agricultural, business, corporate, or commercial purposes, which are unsecured or secured by liens or interests in personal property or real estate.

(x) To borrow money from any source, assign or pledge any of its assets or properties as collateral security subject to limitations stated in section 508, and issue its notes, bonds, and other obligations.

(y) To make deposits in a bank organized solely for the purpose of providing banking services to financial institutions.

(z) To own and operate a messenger service or to own or invest in an entity that operates a messenger service.

(aa) To conduct business using electronic information processing, including the electronic processing and execution of transactions between a savings bank and its customers and a savings bank and other depository institutions.

(bb) To establish and operate a loan production office or loan production offices within this state and outside this state as permitted by section 418.

(cc) To contract with a person or entity to act as an agent in an agency office, as permitted by section 417.

(dd) To enter into principal and agent relationships with affiliated depository institutions. A savings bank or an affiliated depository institution in its capacity as an agent under this subsection may do all of the following:

(i) Receive deposits.

(ii) Permit withdrawals of deposits.

(iii) Renew time deposits.

(iv) Close loans.

(v) Service loans.

(vi) Receive loan payments.

(vii) Engage in any activity specifically authorized by this act or by order or declaratory ruling of the commissioner.

(ee) To sell money orders, travel checks, cashier's checks, and similar instruments drawn by it on its accounts or as agent for any organization empowered to sell the instruments through agents within this state.

(ff) To guarantee the signatures of customers and others.

(gg) To operate a safe and collateral deposit company or department under section 428.

(hh) To engage directly in the real estate brokerage business as provided under article 25 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518, and section 409.

(ii) To own in whole or in part a real estate brokerage business as provided under article 25 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518, and section 409.

(jj) To issue securities in the form of bonds, notes, debentures, and other evidence of indebtedness.

(2) The commissioner may authorize by order or declaratory ruling a savings bank to exercise further powers consistent with the safe and sound conduct of the business of banking or of a business related or incidental to banking as are granted by the laws of the United States or of any state or political subdivision of the United States to financial service providers.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 1996, Act 422, Imd. Eff. Nov. 22, 1996 ;-- Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001

487.3402 Purchase, design, manufacture, construction, repair, modification, or improvement of real

property; use of loan proceeds; liability for defect.

Sec. 402.

A savings bank that makes a loan the proceeds of which are used or may be used by the borrower to finance the purchase, design, manufacture, construction, repair, modification, or improvement of real property shall not be liable for any defect in the real property purchased, designed, manufactured, constructed, repaired, modified, or improved or for any loss or damage resulting from the failure of the borrower or any agent or other person employed by the borrower to use due care in the examination, design, manufacture, construction, repair, modification, or improvement of the real property.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3403 Purchase of corporation stock by savings bank; limitation on aggregate investments.

Sec. 403.

Except as otherwise provided by this act, with the approval of the commissioner, a savings bank may purchase the shares of stock of any corporation whose primary purpose is to provide capital to banks largely owned or controlled by individuals classified as racial minorities. All such investments in the aggregate shall not exceed an amount equal to 2% of the capital and surplus of the savings bank.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3404 Purchase of stock, or loans to, Michigan business development corporation.

Sec. 404.

Except as otherwise provided by this act or in its articles of incorporation, a savings bank may purchase the shares of stock of, or make loans to, the Michigan business development corporation.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3405 Venture capital investments; "professional investor" and "venture capital" defined.

Sec. 405.

(1) Except as otherwise provided by this act and in its articles of incorporation, a savings bank 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.

(2) If a savings bank makes a venture capital investment under subsection (1), an officer or director of the savings bank shall not hold an equity position in the financed company, and the savings bank shall not invest more than 50% of the company.

(3) A savings bank's investment under subsection (1) in any 1 entity shall not exceed an amount equal to 5% of the capital and surplus of the savings bank, and all investments under subsection (1) shall not exceed an amount equal to 10% of the capital and surplus of the savings bank.

(4) This section does not limit the authority of a savings bank to exercise lending or investment powers which are otherwise authorized by law.

(5) As used in this section:

(a) "Professional investor" means an investment company registered under the investment company act of 1940,

title I of chapter 686, 54 Stat. 789, 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 are dedicated to investing in equity or debt securities and whose net worth exceeds \$500,000.00 prior to the savings bank'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, chapter 404, 48 Stat. 892, 15 U.S.C. 78(l), that are registered or required to be registered under section 12(g) of that act, or which would be required to be so registered except for the exemptions in section 12(g)(2) of that act.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3406 "Investment security" and "secretary" defined; purchase of investment securities.

Sec. 406.

(1) As used in this section:

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

(b) "Secretary" means the secretary of the United States department of housing and urban development.

(2) A savings bank may purchase investment securities for its own account when in its prudent banking judgment, which may be based in part upon estimates that it believes to be reliable, it determines that there is adequate evidence that the obligor will be able to perform all it undertakes to perform in connection with the securities, including all debt service requirements, and that the securities may be sold with reasonable promptness at a price which corresponds to their fair value. The purchase of investment securities in which the investment characteristics are considered distinctly or predominantly speculative, or the purchase of investment securities that are in default, whether as to principal or interest, is prohibited.

(3) A savings bank may purchase without limit 1 or more of the following:

(a) Obligations of the United States, or obligations that are guaranteed fully as to principal and interest by the United States, or any general obligations of any state or of any political subdivision of a state.

(b) Obligations issued under authority of the federal farm credit act of 1971, Public Law 92-181, 85 Stat. 583.

(c) Obligations issued by banks for cooperatives.

(d) Obligations issued by the federal home loan banks.

(e) Obligations insured by the secretary under title XI of the national housing act, chapter 847, 80 Stat. 1274, 12 U.S.C. 1749aaa to 1749aaa-5.

(f) Obligations insured by the secretary under section 207 of title II of the national housing act, chapter 847, 48 Stat. 1252, 12 U.S.C. 1713, if the debentures to be issued in payment of the insured obligations are guaranteed as to principal and interest by the United States.

(g) Obligations, participations, or other instruments of or issued by the federal national mortgage association or the government national mortgage association.

(h) Mortgages, obligations, or other securities that are or ever have been sold by the federal home loan mortgage corporation pursuant to section 305 or 306 of the federal home loan mortgage act, title III of the emergency home finance act of 1970, Public Law 91-351, 12 U.S.C. 1454 and 1455.

(i) Obligations of a public housing agency, as defined in the United States housing act of 1937, chapter 896, 88 Stat. 653, secured by any of the following:

(i) An agreement between the public housing agency and the secretary in which the public housing agency agrees to borrow from the secretary, and the secretary agrees to lend to the public housing agency, before the maturity of the obligations, money in an amount which together with any other money irrevocably committed to the payment of interest on such obligations will suffice to pay the principal of the obligations with interest to maturity on the obligations which money under the terms of the agreement is required to be used for the purpose of paying the principal of and the interest on the obligations at their maturity.

(ii) A pledge of annual contributions under an annual contributions contract between the public housing agency and the secretary if the contract contains the covenant by the secretary that is authorized by section 6(g) of title I of the United States housing act of 1937, chapter 896, 88 Stat. 659, 42 U.S.C. 1437d, and if the maximum sum and

the maximum period specified in the contract under section 6(g) of the United States housing act of 1937 is not less than the annual amount and the period for payment that are requisite to provide for the payment when due of all installments of principal and interest on such obligations.

(iii) A pledge of both annual contributions under an annual contributions contract containing the covenant by the secretary that is authorized by section 6(g) of the United States housing act of 1937 and a loan under an agreement between the local public housing agency and the secretary in which the public housing agency agrees to borrow from the secretary and the secretary agrees to lend to the public housing agency, prior to the maturity of the obligations involved, money in an amount which, together with any other money irrevocably committed under the annual contributions contract to the payment of principal and interest on the obligations, will suffice to provide for the payment when due of all installments of principal and interest on the obligations, which money under the terms of the agreement is required to be used for the purpose of paying the principal and interest on the obligations at their maturity.

(j) Obligations of a local public agency, as defined in former section 110(h) of part A of title I of the housing act of 1949, secured by an agreement between the local public agency and the secretary in which the local public agency agrees to borrow from the secretary and the secretary agrees to lend to the local public agency, money in an aggregate amount which, together with any other money irrevocably committed to the payment of interest on the obligations, will suffice to pay, when due, the interest on all installments, including the final installment, of the principal of the obligations, which money under the terms of the agreement is required to be used for the payments.

(k) Any other investment security authorized by order or declaratory ruling of the commissioner.

(4) The total amount of investment securities of any 1 obligor or maker, held by a savings bank for its own account under this subsection, shall not exceed at any time 20% of its capital, surplus, and subordinated notes and debentures. This limitation shall not require a savings bank to dispose of any securities lawfully held by it on the effective date of this act. The statutory limitation on the amount of investment securities of any 1 obligor or maker which may be held by a savings bank shall be determined on the basis of the par or face value of the securities. For purposes of this section, capital notes or debentures shall not include capital notes or debentures issued to or held by the federal deposit insurance corporation.

(5) A savings bank shall maintain in its credit files information adequate to demonstrate that it has exercised prudence in making the determinations and carrying out the transactions described in subsection (2).

(6) If a savings bank purchases investment securities convertible into stock or with stock purchase warrants attached, entries shall be made by the savings bank at the time of purchase to write down the cost of the securities to an amount that represents the investment value of the securities considered independently of the conversion feature or attached stock purchase warrants. A savings bank shall not purchase investment securities that are convertible into stock at the option of the issuer.

(7) Subject to the exercise of prudent banking judgment, a savings bank may engage in the underwriting of any of the following investment securities:

(a) Obligations of the United States.

(b) General obligations of any state of the United States or a political subdivision of the United States.

(c) Obligations of the international bank for reconstruction and development.

(d) Obligations of the inter-American development bank.

(e) Obligations of the Asian development bank.

(f) Obligations of the Tennessee valley authority.

(g) Obligations issued by any state or political subdivision or agency of a state or political subdivision for housing, university, or dormitory purposes.

(h) Obligations of the African development bank.

(i) Obligations of the international finance corporation.

(j) Other obligations listed in subsection (3).

(k) Other obligations authorized by order or declaratory ruling of the commissioner.

(8) For the purposes of underwriting under subsection (7), prudence shall require a consideration of the resources and obligations of the obligor and a determination that the obligor possesses resources sufficient to provide for all required payments in connection with the obligation.

(9) For the purposes of underwriting under subsection (7), a savings bank shall not underwrite any investment securities of a foreign country that has been identified by the United States state department as engaging in or sponsoring terrorism.

(10) The restrictions and limitations of this section do not apply to securities acquired through foreclosure on collateral, or acquired in good faith by way of compromise of a doubtful claim or to avoid a loss in connection with a debt previously contracted. This section does not limit the investment authority of a savings bank granted by any other section of this act.

(11) A savings bank may invest in other assets authorized by order or declaratory ruling of the commissioner.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3407 Acquisition, development, or improvement of real estate; limitation on investment of assets; powers of savings bank.

Sec. 407.

A savings bank may invest not more than 10% of its total assets in the acquisition and development of real estate for sale, or for the improvement of real estate by construction or rehabilitation of residential or commercial units for sale or rental purposes. For purposes of this section, a savings bank may purchase, take, lease as lessee, or otherwise acquire, and own, hold, use, sell, lease as lessor, pledge, grant a security interest in, convey, or otherwise dispose of real estate. The investment by a savings bank may be direct or indirect as a stockholder in a corporation, member of a limited liability company, or limited partner in a partnership or limited liability partnership.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3408 Services performed by savings bank.

Sec. 408.

A savings bank may perform 1 or more of the following services, and any other services permitted by order or declaratory ruling of the commissioner:

- (a) Provide life, health, and casualty insurance for officers and employees of financial institutions and operate bonus plans and retirement benefit plans for those officers and employees.
- (b) Service mortgages and land contracts.
- (c) Originate and service mortgage loans, mortgages, and land contracts, on behalf of financial institutions, corporations, and state or federal agencies or instrumentalities.
- (d) Act as escrow agent or depository for other escrow agents or fiduciaries.
- (e) Credit analysis, appraising, construction loan inspection, and abstracting.
- (f) Research, studies, and surveys.
- (g) Develop and operate storage facilities for microfilm or other duplicate records.
- (h) Advertising, brokerage, and other services to procure and retain both deposits and loans, but not pooling deposits or soliciting or promoting pooled deposits.
- (i) Liquidity management, investment, advisory, and consulting services.
- (j) Establish, own, lease, operate, or maintain electronic funds transfer terminals.
- (k) Purchase office supplies, furniture, and equipment.
- (l) Prepare local, state, and federal tax returns for individuals or organizations that are not corporations operated for profit.
- (m) Data processing services.
- (n) Subject to applicable state or federal law, provide brokerage services for the offer, sale, or purchase of a security or commodity contract.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3409 Savings bank engaged in real estate brokerage business; notice of licensure or ownership; prohibited acts; disclosure to credit applicant; violation of section; orders; limitation.

Sec. 409.

(1) A savings bank that engages directly in the real estate brokerage business or owns in whole or in part a real estate brokerage business shall provide written notice of its licensure as a real estate broker or its ownership of a real estate brokerage business to the commissioner within 10 days of licensure or ownership. The notice required by

this subsection shall include the name and business address of the real estate brokerage.

(2) A savings bank that engages directly in the real estate brokerage business or owns in whole or in part a real estate brokerage business shall not do any of the following:

(a) Impose a requirement, verbally or in writing, that a borrower must contract for or enter into any other arrangement for real estate brokerage services with a particular real estate broker.

(b) Impose a requirement, verbally or in writing, that as a condition of approving a loan a borrower shall contract or enter into any other arrangement for real estate brokerage services.

(c) Impose a requirement, verbally or in writing, that a real estate brokerage customer shall make application for a loan or any other service or services of a particular savings bank or any of its subsidiaries, agencies, or service entities.

(d) Impose a requirement, verbally or in writing, that a condition of providing real estate brokerage services is that the customer shall make an application for a loan or any other arrangement for other services of the savings bank or any of its subsidiaries, agencies, or service entities.

(e) Offer or provide more favorable consideration, terms, or conditions for any financial products or services to induce or attempt to induce a person to enter into any arrangement for real estate brokerage services with any particular real estate broker.

(f) Offer or provide more favorable terms or conditions for any real estate brokerage services to induce or attempt to induce a person to apply for a loan or obtain any other services of a particular savings bank or any of its subsidiaries, agencies, or service entities.

(g) Any other activity prohibited by order or declaratory ruling of the commissioner.

(3) A savings bank that engages directly in the real estate brokerage business or owns in whole or in part a real estate brokerage business under this section shall clearly disclose in writing to any person who applies for credit related to a real estate transaction or applies for prequalification or preapproval for credit related to a real estate transaction, that the person is not required to contract for or enter into an arrangement for real estate brokerage services with a particular real estate broker. Compliance with the disclosure requirements of this subsection shall not be necessary when a person applies for credit or prequalification for credit solely for the purpose of refinancing an existing indebtedness.

(4) A real estate brokerage that is affiliated with a savings bank shall clearly disclose in writing, before the time an agency agreement for real estate brokerage services is executed, that the person is not required to apply, contract for, or enter into any other arrangement for services of a particular savings bank or any of its subsidiaries, agencies, or service entities.

(5) The requirements of subsections (3) and (4) do not apply when the person has been given the affiliated business arrangement disclosure statement required by the real estate settlement procedures act of 1974, Public Law 93-533, 88 Stat. 1724.

(6) If the commissioner finds that a savings bank has violated this section, the commissioner may issue an order requiring the savings bank to cease and desist the activity that violates this section. If the commissioner additionally finds that the violation was knowingly committed, the commissioner may order any of the following:

(a) A civil fine of not more than \$500.00 for each violation but not to exceed an aggregate civil penalty of \$10,000.00.

(b) That restitution be made to a customer for actual damages directly attributable to the acts that are found to be a violation of this section.

(7) An action under this section shall not be brought more than 3 years after the occurrence of the violation that is the basis of the action.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001

487.3410 Investment in service entities.

Sec. 410.

(1) Upon 30 days' notice to the commissioner, a savings bank may invest in service entities that engage in activities described in subsections (4) and (5). The maximum aggregate investment by a savings bank in service entities shall be the lesser of 5% of the savings bank's total assets or 75% of its capital and surplus, if it is a stock savings bank, or the lesser of 5% of the savings bank's total assets or 75% of its total capital, if it is a mutual savings bank.

(2) Except upon written approval of the commissioner, a savings bank shall not invest as a general partner in a service entity. For purposes of this section, investment in a service entity shall include loans by a savings bank or its

subsidiary to a service entity.

(3) Subject to the investment limit in subsection (1), a savings bank or its subsidiary that has made an initial investment in a service entity may make additional investments in that service entity without notice to the commissioner.

(4) A service entity that directly, or through its wholly owned subsidiary, engages in any of the following activities or investments is a service entity in which a savings bank may invest:

- (a) Services primarily for financial institutions that include any of the following:
 - (i) Credit analysis, appraising, construction loan inspection, and abstracting.
 - (ii) Developing and administering personnel benefit programs, including life insurance, health insurance, and pension or retirement plans.
 - (iii) Research, studies, and surveys.
 - (iv) Developing and operating storage facilities for microfilm or other duplicate records.
 - (v) Advertising, brokerage, and other services to procure and retain both savings accounts and loans, but not pooling savings accounts or soliciting or promoting pooled savings accounts.
 - (vi) Serving as escrow agent, including executing and delivering conveyances, reconveyances, and transfers of title.
 - (vii) Providing liquidity management, investment, advisory, and consulting services.
 - (viii) Providing clerical, accounting, and internal auditing services.
 - (ix) Establishing, owning, leasing, operating, or maintaining remote service units.
 - (x) Purchasing office supplies, furniture, and equipment.
- (b) Real estate services that include any of the following:
 - (i) Maintaining and managing real estate, including real estate used for agricultural purposes.
 - (ii) Managing owners' associations for condominium, cooperative, planned unit development, or other rental real estate projects.
 - (iii) Providing home ownership and financial counseling.
 - (iv) Providing relocation services.
 - (v) Providing real estate brokerage services for property owned by a person that owns an interest in the service entity, the service entity or its wholly owned subsidiary, or a joint venture in which the service entity or its wholly owned subsidiary participates.
 - (vi) Acquiring real estate for development or subdivision, for construction of improvements, for resale or leasing to others for construction, or for use as manufactured home sites.
 - (vii) Acquiring improved real estate or manufactured homes to be held for rental or resale, or for remodeling, renovating, or demolishing and rebuilding for sale or rental.
 - (viii) Acquiring, maintaining, and managing real estate, improved or unimproved, to be used for offices and related facilities of a savings bank, subsidiary, or service entity, or of a person that owns an interest in the savings bank, subsidiary, or service entity, or for offices and related facilities and for rental or sale, if the acquisition, maintenance, and management is performed under a prudent program of property acquisition to meet either the present needs or reasonable future needs for office and related facilities of the savings bank, subsidiary, or service entity, or of the person that owns an interest in the savings bank, subsidiary, or service entity.
 - (ix) Real estate brokerage under article 25 of the occupational code, Act No. 299 of the Public Acts of 1980, being sections 339.2501 to 339.2518 of the Michigan Compiled Laws. A savings bank with an investment in a real estate brokerage business must comply with section 409.

(c) Securities brokerage and investment advisory services that include execution of securities transactions on an agency or riskless principal basis, and the provision of standardized and individualized investment advice to individuals or entities.

- (d) Other investments that include any of the following:
 - (i) Investing in adjustable rate preferred stock and money market preferred stock.
 - (ii) Investing in an entity that provides insurance in connection with loans, and investing in an entity which reinsures a provider of the insurance.
 - (iii) Making voting and nonvoting investments in corporations and in partnerships, whether as a general or limited partner, limited liability companies, and limited liability partnerships provided such other corporation or partnership or limited liability company engages only in activities permissible for a savings bank or a service entity.
- (e) Other services that include any of the following:
 - (i) Preparing state and federal tax returns for individuals or organizations that are not corporations operated for profit.
 - (ii) Acting as an insurance broker or agent.
 - (iii) Providing data processing services.
 - (f) Offering credit card programs, debit card programs, and similar arrangements.
 - (g) Offering mutual fund investment products.

(5) A savings bank may also invest in service entities that engage directly or through a wholly owned subsidiary in activities determined by order or declaratory ruling of the commissioner to be incidental to the conduct of the

business of a financial services provider, activities that further or facilitate the purposes of a financial services provider, or which provide services to a financial services provider. The commissioner shall consider the ability of service entities to exercise any additional power in a safe and sound manner. The commissioner shall also consider the ability of service entities to compete with, or offer the same or similar services as offered by, service corporations or service organizations of other providers of financial services. The commissioner shall give notice to all savings banks of rules promulgated, or declaratory rulings or determinations, or orders issued pursuant to this subsection.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3411 Powers granted in MCL 487.3401 and 487.3403 construed.

Sec. 411.

The powers granted in sections 401 and 403 shall not be construed as limiting any grant of authority made elsewhere by this act except as provided in section 401. Except as otherwise provided in this act or in the articles or in the bylaws, such powers shall be exercised by the board of directors of the savings bank.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3412 Change in location of principal office.

Sec. 412.

(1) Upon prior written notice to the commissioner, a savings bank may change the location of its principal office to any existing branch location of the savings bank within this state.

(2) Unless the commissioner objects in writing within 60 days after receipt of written notice from the savings bank of its intent to relocate its principal office, a savings bank may change the location of its principal office to any other location within this state which is not an existing branch location of the savings bank. The commissioner may issue a written statement of intent not to object at any time before expiration of the 60 days.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001

487.3413 Transactions relating to capital stock of corporation; authorization; purchase and sale of securities and stock; loan or discount; purchase or holding of own stock.

Sec. 413.

(1) A savings bank shall not engage in any transaction with respect to shares of the capital stock of any corporation unless specifically authorized by this act or by the commissioner under section 401 or 410.

(2) A savings bank may purchase and sell securities and stock upon the order of and for the account of a customer without recourse.

(3) A savings bank shall not make any loan or discount on the security of the shares of its own capital stock, unless the security is necessary to prevent loss upon a debt previously contracted in good faith.

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

(a) The savings bank is holding shares previously purchased until disposed of in compliance with an existing stock option plan.

(b) The purchase or holding of the shares is necessary to prevent loss upon a debt previously contracted in good faith.

(c) The commissioner gives written approval to the savings bank to purchase or hold shares for its own account.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001

487.3414 Savings bank possessing capital and surplus more than \$1,000,000.00; powers; application; savings bank operating foreign branches; restrictions and limitations; further powers.

Sec. 414.

(1) A savings bank possessing a capital and surplus of \$1,000,000.00 or more may file application with the commissioner for permission to exercise, upon conditions and under such rules, orders, or declaratory rulings as may be prescribed by the commissioner, any of the following powers:

(a) To establish branches in foreign countries for the furtherance of foreign commerce of the United States and to act, if required to do so, as fiscal agents of the United States.

(b) To invest an amount not exceeding in the aggregate 10% of its capital and surplus if it is a stock savings bank, or 10% of its total capital if it is a mutual savings bank in the stock of 1 or more banking organizations or corporations 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, or banking either directly or through the agency, ownership, or control of foreign banks.

(c) To acquire and hold, directly or indirectly, stock or other evidences of ownership in 1 or more foreign banks that are not engaged, directly or indirectly, in any activity in the United States except as, in the judgment of the commissioner, is incidental to the international or foreign business of the foreign bank, and to make loans or extensions of credit to or for the account of the foreign bank in the manner and within the limits prescribed by the commissioner by order or declaratory ruling.

(2) An application under this section shall specify the name and capital and surplus of the bank filing it, the powers applied for and the places where the banking operations are to be carried on. The commissioner may approve or reject the application in whole or in part if for any reason the granting of the application is considered inexpedient and from time to time may increase or decrease the number of places where the banking operations may be carried on.

(3) Every savings bank operating foreign branches under this section shall furnish information concerning the condition of the branches to the commissioner upon demand, and every savings bank investing in capital stock of banking organizations or corporations as provided under this section shall furnish information concerning the condition of the banking organizations or corporations to the commissioner upon demand. The commissioner may order special examinations of the branches, banking organizations, or corporations at such times as he or she deems best.

(4) Before a savings bank is permitted to purchase stock in a banking organization or corporation under this section, the banking organization or corporation shall enter into an agreement or undertaking with the commissioner to restrict their operations or conduct their businesses in a manner or under such limitations and restrictions as the commissioner may prescribe. If at any time the commissioner has ascertained that the orders or rulings prescribed by him or her are not being complied with, the commissioner may institute an investigation of the matter and subpoena witnesses and documents and administer oaths. If the investigation results in establishing the failure of the banking organization or corporation in question, or of the savings bank which is a stockholder, to comply with the rules of the commissioner, the commissioner may order the savings bank to dispose of stockholdings in the banking organization or corporation.

(5) Orders or rulings issued by the commissioner, in addition to regulating powers which a foreign branch may exercise under other provisions of law, may authorize a foreign branch, subject to such conditions and requirements as the orders or rulings prescribe, to exercise any further powers as may be usual in connection with the transaction of the business of banking in the places where the foreign branch transacts business. The orders or rulings shall not authorize a foreign branch to engage in the general business of producing, distributing, buying, or selling goods, wares, or merchandise. Except to such limited extent as the commissioner may deem to be necessary with respect to securities issued by any foreign government or any department, district, province, county, possession, or other similar governmental organization or subdivision of a foreign government, and any agency or instrumentality of any foreign government or of any organization or subdivision, the orders or rulings shall not authorize a foreign branch to engage or participate, directly or indirectly, in the business of underwriting, selling, or distributing securities.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3415 Savings bank with branch offices in foreign country.

Sec. 415.

(1) Notwithstanding section 1105 of the uniform commercial code, Act No. 174 of the Public Acts of 1962, being section 440.1105 of the Michigan Compiled Laws, a savings bank doing business in this state, that has 1 or more branch offices in any foreign country shall be liable for contracts to be performed at any branch offices and for deposits to be repaid at the branch offices to no greater extent than a savings bank, banking corporation, or other organization or association for banking purposes organized and existing under the laws of the foreign country would be liable under its laws. The laws of the foreign country for the purpose of this section shall be considered to include all acts, decrees, regulations, and orders promulgated or enforced by an authority asserting governmental, military, or police power of any kind at the place where any branch office is located, whether or not the dominant authority is recognized as a de facto or de jure government.

(2) Notwithstanding section 1105 of Act No. 174 of the Public Acts of 1962, if by action of a dominant authority that is not recognized by the United States as the de jure government of the foreign territory concerned, any property situated in or any amount to be received in the foreign territory and carried as an asset of any branch office of the savings bank in the foreign territory is seized, destroyed, or canceled, then the liability of the savings bank for any deposit received and to be repaid by it, and for any contract made and to be performed by it, at any branch office in the foreign territory shall be reduced pro tanto by the proportion that the value, as shown by the books or other records of the savings bank at the time of the seizure, destruction, or cancellation of the assets bears to the aggregate of all the deposit and contract liabilities of the branch offices of the savings bank in the foreign territory, as shown at such time by the books or other records of the savings bank.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3416 Savings bank as owner or lessor of personal property; lease payments as rent; taxes; prohibition.

Sec. 416.

(1) A savings bank may become the owner or lessor of personal property for the purpose of leasing the property or obtaining an assignment of a lessor's interest in a lease of the property or permitting the use of the property, and may incur additional obligations as may be incident to becoming an owner or lessor of such property.

(2) Lease payments shall constitute rent rather than interest.

(3) This section shall not exempt from general property taxation any personal property of a savings bank which is leased, loaned, or otherwise made available to and used by a private individual, association, or corporation in connection with a business conducted for profit. The personal property shall be subject to taxation in the same amount and to the same extent as though the lessee or user were the owner of the property. Taxes shall be assessed to the lessees or users of the property and collected in the same manner as taxes assessed to owners of personal property, except that the taxes shall not become a lien against the property. When due, the taxes shall constitute a debt due from the lessee or user to the unit of government for which the taxes were assessed.

(4) A savings bank shall not acquire personal property under this section if the acquisition results in an inventory of personal property not leased in excess of 20% of the savings bank's capital and surplus.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3417 Savings bank with branch in another state.

Sec. 417.

(1) A savings bank may establish and operate a branch or branches within any state, the District of Columbia, a territory or protectorate of the United States, or a foreign country, unless the commissioner objects in writing within 30 days after receipt of a written notice from the bank of its intent to establish a branch. The commissioner

may issue a written statement of intent not to object at any time before the expiration of the 30 days.

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

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

(4) Unless the commissioner objects in writing within 30 days after receipt of written notice from a savings bank of its intent to contract for branch services, a savings bank may contract with 1 or more banks, out-of-state banks, national banks, associations, or savings banks for the depository institution or institutions to act as branches to provide services to the customers of the contracting savings bank. The commissioner may issue a written statement of intent not to object at any time before the expiration of the 30 days. This subsection shall not be construed to limit the powers granted to a savings bank under section 401(cc).

(5) Unless the commissioner objects in writing within 30 days after receipt of written notice from a contracting depository institution of its intent to contract for branch services, 1 or more out-of-state banks, national banks, associations, or savings banks may contract with a savings bank for the savings bank to provide services to the customers of the contracting out-of-state bank, national bank, association, or savings bank. The commissioner may issue a written statement of intent not to object at any time before the expiration of the 30 days. This subsection shall not be construed to limit the powers granted to a savings bank under section 401(cc).

(6) Upon 30 days' advance written notice to the commissioner, a savings bank may contract with a person or entity to act as an agent in an agency office. The written notice shall include the name and address of the person or entity who will act as agent for the savings bank, the location of the agency office, when the agency office will be operational, and the activities in which the agency office will initially be engaged. A savings bank may perform any of the following activities through an agency office:

(a) Accept a deposit to an existing account and record the addition to the account or give other evidence of receipt as prescribed by the savings bank.

(b) Accept a withdrawal form and such other evidence required by the savings bank from an account holder for transmission to the main office or a branch office of the savings bank.

(c) Solicit and accept a new account. Evidence of account ownership shall be issued only by authority of the main office or a branch office of the savings bank. An agent may obtain signature cards from the savings bank for the account holder.

(d) Solicit and accept an application for a loan or for a land contract purchase. The agent shall submit the application to the main office or a branch of the savings bank for processing and approval.

(e) Disburse withdrawn or loaned funds, upon approval of each disbursement by the savings bank.

(f) Accept payment on a loan or on a land contract and issue evidence of receipt as prescribed by the savings bank.

(g) Any other services as approved by order or declaratory ruling of the commissioner.

(7) An out-of-state savings bank or federal savings bank located in a state, the District of Columbia, or a territory or protectorate of the United States whose laws permit the establishment in that state, district, territory, or protectorate of a branch by a savings bank may establish and operate 1 or more branches in this state.

(8) An out-of-state savings bank may apply to organize a branch in this state under this act by providing to the commissioner proof that its deposits are insured by an agency of the United States government. If the commissioner determines that the out-of-state savings bank is safe and sound, that the out-of-state savings bank is subject to regulation, and that there exists an agreement for exchange of supervisory information between the bureau and the out-of-state savings bank's regulator, the commissioner shall provide to the out-of-state savings bank a certificate of organization and eligibility to accept deposits and investments of public funds of the state and local units of government.

(9) Prior to commencing operations at a branch in this state, an out-of-state savings bank or federal savings bank shall provide written notice to the commissioner of the name of the institution, the street address and mailing address, if different, of the institution's principal office, the street address of the branch office, and the date when the branch is to commence operations in this state.

(10) Each savings bank, out-of-state savings bank, and federal savings bank operating in this state shall do both of the following:

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

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

(11) For purposes of this section, the designated agent of a savings bank or a federal savings bank is its chief executive officer.

(12) If a savings bank permanently discontinues the operations of any branch, all functions of the branch shall be considered transferable to, and treated as a part of, the principal office of the savings bank.

(13) A savings bank, out-of-state savings bank, or federal savings bank shall notify the commissioner in writing

before discontinuing operations of a branch.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001

487.3418 Loan production offices.

Sec. 418.

(1) Without notice to or approval of the commissioner, a savings bank may establish and operate a loan production office or loan production offices.

(2) A savings bank may perform any of the following activities through a loan production office:

(a) Receive loan applications.

(b) Process loans.

(c) Assemble information related to the approval of loans.

(d) Close loans.

(e) Disburse loan proceeds approved by the principal office or a branch.

(f) Receive loan payments.

(g) Any other activities as approved by rule, order, or declaratory ruling of the commissioner.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3419 Purchase or assumption of national or state chartered bank, savings bank, or association; operation as new branch.

Sec. 419.

Notwithstanding any other provision of this act, a savings bank that purchases or assumes all or substantially all of the assets or liabilities of an eligible insured national or state chartered bank, savings bank, or association may retain and maintain the main premises, branches, or agency offices of the former national bank, state chartered bank, or association as branches of the purchasing savings bank, provided it assumes the deposit liabilities of the eligible national bank, state chartered bank, savings bank, or association maintained at the main premises, branches, or agency offices. The notice required by section 417(1) shall be given for each main premises, branch, or agency office the purchasing savings bank intends to operate as a new branch.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3420 Discontinuing operations of branch or agency office; transfer of functions.

Sec. 420.

If a savings bank permanently discontinues the operations of any branch or agency office, all bills, checks, and notes otherwise presentable for acceptance or payment, all deposits to be made or withdrawn, all notices to stop payment of checks to be given, and similar functions, shall be deemed transferable to, and treated as a part of, the principal office of the savings bank. The savings bank shall give written notice to the commissioner before discontinuing operations of any branch or agency office.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3421 Trust powers; conditions, limitations, and restrictions.

Sec. 421.

(1) Upon application, the commissioner may grant to a savings bank full trust powers, as provided in this section, but subject to the conditions, limitations, and restrictions in this section and sections 422 to 428.

(2) Upon approval of the application, the savings bank has the power to conduct a trust business including, but not limited to, any of the following:

(a) In and by its corporate name to take, receive, hold, repay, reconvey, and dispose of any effects and property, both real and personal, that may be granted, committed, transferred, or conveyed to it with its consent, upon any terms or upon any trust at any time, by any person, including minors, bodies corporate, or by any court, including the federal courts, in the state, and to administer, fulfill, and discharge the duties of the trust for the remuneration as agreed upon.

(b) To act generally as agent for the transaction of business, the management of estates, the collection of rents, interest, dividends, and money, and the collection of principal and interest on mortgages, bonds, notes, and securities for money and to enforce the payment thereof, and to act as agent for the purpose of issuing, negotiating, registering, transferring, or countersigning the certificates of stock, bonds, or other obligations of any corporation, association, or municipality and to manage any sinking fund on the terms as agreed upon.

(c) To accept and to execute the offices of personal representative, trustee, receiver, conservator, liquidating agent, assignee, or guardian of any minor, incompetent person, legally incapacitated person, or person subject to guardianship, subject to the laws of this state applicable to those proceedings. In all cases when application is made to any court in this state for the appointment of any trustee, receiver, personal representative, conservator, or guardian of any minor, incompetent person, legally incapacitated person, or other person subject to conservatorship or guardianship, the court may appoint the savings bank, with its consent, to hold the office. The accounts of the savings bank as trustee, receiver, conservator, liquidating agent, assignee, personal representative, or guardian shall be regularly settled and adjusted by the proper office or tribunals. All proper, legal, usual, and customary charges, costs, and expenses shall be allowed to the savings bank for the care and management of the estate so committed to it. In case of appointment by any court, the savings bank shall not be required to give any security except in the discretion of the court, other than as provided in section 426 for deposit with the state treasurer. If the court orders the savings bank to give security, the security shall be a bond in an amount fixed by the court and with a surety company authorized to do business in this state as surety on the bond, or with personal surety or sureties on the bond satisfactory to the court. If any savings bank is required, in the course of the administration of any trust, to give a bond, whether as additional security, substituted security, or otherwise, the surety on the bond shall not be liable directly or indirectly for any act or default committed by the savings bank prior to the date of the filing and approval of the bond, or for the failure of the savings bank to pay over on final settlement if the failure to pay over is due to an act or default committed prior to the filing and approval of the bond, or for the failure of the savings bank to collect from itself or from any prior surety or sureties the amount of any loss due any act or default committed by the savings bank prior to the date of the filing and approval of the bond.

(d) To exercise by its board of directors or authorized officers or agents all incidental powers as are necessary to carry on a trust business.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3422 Definitions; trust service agreements.

Sec. 422.

(1) As used in this section:

(a) "Banking office" means a main office or authorized branch of a bank, out-of-state bank, national bank, association, or savings bank.

(b) "Host savings bank" means a bank, national bank, association, or savings bank for which trust services are provided by any other bank, out-of-state bank, national bank, association, or savings bank.

(c) "Trust service provider" means a savings bank providing trust services to any other bank, out-of-state bank, national bank, association, or savings bank.

(2) A savings bank granted full trust powers may contract by written agreement with any other legal entity to carry on trust services in its name and for its account at 1 or more of the offices of the other legal entity.

(3) A savings bank may contract by written agreement with any other legal entity exercising full trust powers to carry on trust services at 1 or more of its banking offices but in the name and for the account of the other legal entity.

(4) An agreement provided for in this section, including a lease, or a modification or extension of an agreement, is not effective until it is filed with the commissioner.

(5) Thirty days after a host savings bank mails a notice of substitution as provided in subsection (6), a trust service provider shall be substituted for a host savings bank as fiduciary or agent and succeed to the title of assets held by a host savings bank in a fiduciary capacity for each account in which the host savings bank, under the terms of a trust service agreement approved by the commissioner, will no longer serve as fiduciary or agent. A trust service provider shall not be substituted for the host savings bank for an account in which the recipient of a notice of substitution with respect to that account objects to the substitution under subsection (6).

(6) For an account in which a trust service provider is substituted for a host savings bank under the terms of a trust service agreement, the host savings bank shall send a written notice of substitution by certified mail. The notice of substitution shall include the date the notice was mailed and explain that the trust service provider will not be substituted for the host savings bank for the account if the recipient of the notice sends a written objection to the host savings bank by first-class mail within 30 days after the date the notice was mailed. The host savings bank shall send the notice of substitution to all of the following:

(a) For employee benefit plans, to the plan sponsors.

(b) For individual retirement accounts and retirement accounts for the self-employed, to the account owners.

(c) For agency and escrow accounts, to the principals.

(d) For securities for which a host savings bank serves as trustee, registrar, transfer agent, or paying agent, to the issuers.

(e) For revocable trusts under agreement, to the settlors.

(f) For irrevocable trusts under agreement, to any co-fiduciary, to the settlor, to each current income beneficiary who is an adult, and, if a current income beneficiary is a minor, to a parent of the minor with whom the minor resides or to the conservator or guardian of the minor. The notice to the settlor shall not grant to the settlor any authority over the trust or trustee that the settlor did not have before the notice, including the authority to object to the substitution of a trust service provider for a host savings bank. For purposes of this subdivision, "current income beneficiary" means a person currently entitled to income or a person to whom the trustee, in the trustee's discretion, may pay principal or income.

(g) For testamentary trusts, to the persons notified under subdivision (f) and to the probate court that appointed the host savings bank as trustee.

(h) For conservatorships, to any co-fiduciary, to the protected person for whom the conservatorship was created or, if the conservatorship was created for a minor, to a parent of the minor with whom the minor resides or to the guardian of the minor, and to the probate court that appointed the host savings bank as conservator.

(i) For guardianships, to any co-fiduciary, to the minor or legally incapacitated person for whom the guardian was appointed if the ward is at least 14 years of age, and to the probate court that appointed the host savings bank as guardian.

(j) For probate estates, to any co-fiduciary, to any interested person as defined by section 1105 of the estates and protected individuals code, 1998 PA 386, MCL 700.1105, and to the probate court that appointed the host savings bank as personal representative.

(7) Subsections (1), (5), and (6) apply to trust service agreements in effect on or after July 1, 1996.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 63, Eff. Apr. 1, 2000 ;-- Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001

487.3423 Separation of trust department business from commercial bank business; commingled and consolidated funds; limitation; lien on securities in event of savings bank failure.

Sec. 423.

(1) A savings bank exercising a trust power under sections 421 to 427 shall segregate all assets held in a fiduciary capacity from the general assets of the bank, keep a separate set of books and records showing in proper detail all transactions engaged under sections 421 to 427, and at all times keep the savings bank's trust department business separate and distinct from the savings bank's commercial banking business.

(2) Funds, at any time and from time to time, held in trust by the savings bank, awaiting investment or other disposition, may be commingled and consolidated, and may be deposited in other financial institutions not affiliated with the savings bank as designated by the board of directors or may be held at any time and from time to time by

the savings bank under a deposit relationship and used by the savings bank in the conduct of the savings bank's individual corporate business but only to the extent and when the savings bank shall set aside for the protection of the owners of the funds obligations of the United States, obligations that are guaranteed fully as to principal and interest by the United States, general obligations of this state or of any political subdivision of this state, or other securities approved by the commissioner equal at face value to the amount of the funds held, less the amounts of the funds which are insured by the federal deposit insurance corporation. If the savings bank fails, the owners of the funds held in trust, awaiting investment or other disposition, shall have a lien on the securities set apart in addition to any other claims against the savings bank.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3424 Fiduciary powers; considerations.

Sec. 424.

(1) In passing upon applications for permission to exercise full fiduciary powers under section 421, the commissioner shall take into consideration the following, and he or she may grant or refuse the application accordingly:

- (a) The sufficiency of the capital and surplus of the applying savings bank.
- (b) Any other facts or circumstances that he or she deems proper.

(2) Without regard to the capital and surplus requirements under subsection (1), the commissioner may grant to a savings bank the limited trust power to act as executor, administrator, custodian, conservator, guardian, or to serve as a testamentary trustee.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3425 Repealed. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

Compiler's Notes: The repealed section pertained to commencement of trust powers.

487.3426 Fund or property held by savings bank as fiduciary; investments; "registered investment company" defined; funds considered as held in fiduciary capacity.

Sec. 426.

(1) Funds or property held by a savings bank as fiduciary and available for investment shall be invested at the time and in the manner specified by the agreement, instrument, or order creating or defining the trust or other capacity in which the savings bank is acting or, where the savings bank holds the funds or property as agent, as directed or permitted by the savings bank's principal. In the absence of investment specifications or limitations in the agreement, instrument, or order, funds or property held by a savings bank as fiduciary shall within a reasonable time be invested in real or personal property, of whatever type or nature, as an ordinarily prudent person of intelligence and integrity who is a trustee of the money of others would purchase, in the exercise of reasonable care, judgment, and diligence under the conditions existing at the time of purchase, having due regard, in the case of a purchase of securities, for the management, reputation, and stability of the issuer and the character of the particular securities.

(2) Except as otherwise provided by law, a court order, or the agreement, instrument, or order creating or defining the trust, or other capacity in which the savings bank is acting or with the consent of all interested parties or their representatives, or where the savings bank holds the funds or property as agent, as directed or permitted by the savings bank's principal, funds or property held by a savings bank as fiduciary shall not be invested in any securities or other properties, real or personal, purchased from the savings bank in its individual capacity or from

any affiliate of the bank.

(3) Notwithstanding a statutory or common law, except when the agreement, instrument, or order creating or defining the trust or other capacity in which the savings bank, or the savings bank and 1 or more co-fiduciaries, is acting, prohibits the investment, a savings bank, or a savings bank and 1 or more co-fiduciaries, may invest in a registered investment company funds or property with respect to which the savings bank, or the savings bank and 1 or more co-fiduciaries, exercises investment discretion, even though either or both of the following apply:

(a) The savings bank or an affiliate of the savings bank provides services as investment adviser, sponsor, distributor, manager, custodian, transfer agent, registrar, or otherwise to the investment company and receives reasonable remuneration for those services.

(b) The savings bank as fiduciary owns or controls a majority of the voting shares of the investment company or a majority of the shares voted for the election of its directors or trustees or the savings bank as fiduciary otherwise controls the election of a majority of its directors or trustees.

(4) As used in subsection (3), "registered investment company" means an investment company that is registered under the investment company act of 1940, title I of chapter 686, 54 Stat. 789, 15 U.S.C. 80a-1 to 80a-64.

(5) For purposes of this section, a savings bank is considered to be holding funds or property in a fiduciary capacity if it is holding the assets as trustee, personal representative, custodian, conservator, guardian, agent, or in any other fiduciary capacity.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3427 Enforcement of MCL 487.3421 to 487.3426; orders or declaratory rulings.

Sec. 427.

The commissioner may issue orders or declaratory rulings to enforce sections 421 to 426.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3428 Safe deposit and storage department.

Sec. 428.

(1) If a savings bank operates a safe deposit and storage department, the legal liability of the savings bank on account of any loss to a customer shall not exceed the sum of \$10,000.00 for any 1 box or compartment, including all property accepted for storage outside of the box or compartment. The savings bank may contract with the renter to have the renter assume all risks arising from the use of the box, compartment, or storage.

(2) The savings bank shall have a lien for unpaid rental and storage charges on the contents of any box or compartment and any property accepted for storage outside of the box or compartment. If the charges are not paid within 1 year from the date of accrual, then the savings bank may sell the property at public auction upon like notice as is required by law for sales on execution.

(3) After retaining from the proceeds of sale the amount of all charges due and owing at the time of the sale and the reasonable expenses of the sale, the savings bank shall pay any balance to the persons entitled to the proceeds. The savings bank may fairly and in good faith purchase all or part of the property at the sale.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001

487.3429 Lease, purchase, holding, and conveyance of real estate.

Sec. 429.

(1) A savings bank may lease, purchase, hold, and convey real estate for any of the following purposes:

(a) For the convenient transaction of its business, including with its banking offices other space in the same buildings to rent as lessor. Without the approval of the commissioner, a savings bank shall not invest in premises of the savings bank or in the stock, bonds, debentures, or other obligations of any corporation holding the premises of the savings bank or make loans to or upon the security of the stock, bonds, and debentures of any such corporation, if the aggregate of all investments and loans, together with the amount of any indebtedness incurred in connection with a bank premises real estate transaction by any such corporation which is an affiliate of the savings bank, exceeds 2/3 of the capital and surplus of the stock savings bank or 2/3 of the total capital of the mutual savings bank.

(b) As permitted under section 408.

(c) For all purposes with regard to real estate conveyed to it in satisfaction of debts previously contracted in the course of its business.

(d) For all purposes with regard to real estate purchased at sales under judgments, decrees, or mortgages held by the savings bank or purchased to secure debts due to it.

(e) For all purposes with regard to real estate legally owned by the savings bank on the effective date of this act.

(f) For all purposes with regard to real estate conveyed to it under sections 421 through 427.

(g) For all purposes with regard to real estate acquired in connection with the purchase by the savings bank of a land contract. At the termination of a land contract, the savings bank shall divest itself of the real estate within 1 year after termination or such additional period as the commissioner may approve.

(h) For all purposes with regard to real estate acquired upon the specific request and for the use of a customer by lease arrangement with the savings bank. At the termination of a lease, the savings bank shall divest itself of the real estate within 1 year after termination or such additional period as the commissioner may approve.

(i) Any other purposes as may be permitted by order or declaratory ruling of the commissioner.

(2) Real estate shall be conveyed under the corporate seal of the savings bank and the signature of the officers authorized by its board of directors to approve the conveyance.

(3) Real estate acquired under subsection (1)(c) and (d) shall not be held for a period longer than 5 years or such other period as approved by the commissioner.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3430 Interest and charges on loans and credit extensions.

Sec. 430.

(1) Savings banks may collect interest and charges on loans and extensions of credit, including open-end credit to any person, as follows:

(a) As permitted by the credit reform act, 1995 PA 162, MCL 445.1851 to 445.1864.

(b) On obligations purchased by the savings bank, the savings bank may charge a discount.

(c) On a loan not covered by subdivision (a) or (b), a savings bank may charge, collect, and receive interest and other charges in the same manner and at up to maximum rate or amount permitted by law for the same type of loans made by national banking associations authorized to do business in this state.

(d) On a loan not covered by subdivision (a), (b), or (c), as otherwise permitted by law.

(2) A savings bank or any officer or employee of the savings bank shall not, directly or indirectly, take or receive more than the rate of interest allowed by law in advance on its loans and discounts.

(3) Except as otherwise provided by law, an investigation fee or handling charge in connection with any transaction shall not be considered as interest.

(4) A savings bank may pay interest on any deposit that is payable on demand, unless the commissioner by rule, or order, or declaratory ruling restricts the right of the savings bank to pay interest on demand deposits or unless restricted by federal law.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001

487.3431 Drafts or bills of exchange.

Sec. 431.

(1) A savings bank may accept drafts or bills of exchange drawn upon it having not more than 6 months' sight to run, exclusive of days of grace, if 1 or more of the following apply:

- (a) The drafts or bills of exchange grow out of transactions involving the importation or exportation of goods.
- (b) The drafts or bills of exchange grow out of transactions involving the domestic shipment of goods.
- (c) The drafts or bills of exchange are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title covering readily marketable staples.

(2) Except as provided in subsection (3), a savings bank shall not accept bills of exchange, or be obligated for a participation share in such bills, in an amount equal at any time in the aggregate to more than 150% of the capital and surplus of a stock savings bank and more than 150% of the total capital of a mutual savings bank.

(3) Under conditions as the commissioner may prescribe, the commissioner may authorize, by rule, order, or declaratory ruling, a savings bank to accept bills of exchange, or be obligated for a participation share in such bills, in an amount not exceeding at any time in the aggregate 200% of the capital and surplus of a stock savings bank and more than 200% of the total capital of a mutual savings bank.

(4) Notwithstanding subsections (2) and (3), with respect to any savings bank, the aggregate acceptances, including obligations for a participation share in the acceptances, growing out of domestic transactions shall not exceed 50% of the aggregate of all acceptances, including obligations for a participation share in the acceptances, authorized for the savings bank under this section.

(5) A savings bank shall not accept bills of exchange, or be obligated for a participation share in such bills, whether in a foreign or domestic transaction, for any 1 person, partnership, corporation, association, or other entity in an amount equal at any time in the aggregate to more than 10% of the capital and surplus of a stock savings bank and more than 10% of the total capital of a mutual savings bank, unless the savings bank is secured either by attached documents or by some other actual security growing out of the same transaction as the acceptance.

(6) If a savings bank issues an acceptance, the limitations of this section do not apply to that portion of an acceptance that is issued by the savings bank and is covered by a participation agreement sold to a bank, out-of-state bank, national bank, association, or other savings bank.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3432 Loans and extensions of credit and leases; limitations; exceptions; definitions.

Sec. 432.

(1) Except as otherwise provided in this section or by order or declaratory ruling of the commissioner, the total loans and extensions of credit and leases by a stock savings bank to a person at no time shall exceed 15% of the capital and surplus of the stock savings bank, except that upon approval by 2/3 vote of its board of directors the limit may be increased not to exceed 25% of the capital and surplus of the stock savings bank.

(2) Except as otherwise provided in this section or by order or declaratory ruling of the commissioner, the total loans and extensions of credit and leases by a mutual savings bank to a person at no time shall exceed 15% of the total capital of the mutual savings bank, except that upon approval by 2/3 vote of its board of directors the limit may be increased not to exceed 25% of the total capital of the mutual savings bank.

(3) If the commissioner determines that the interests of a group of more than 1 person are so interrelated that they should be considered as a unit for the purpose for which credit was extended, the total loans and extensions of credit and leases of persons of that group shall be combined and considered loans and extensions of credit and leases of 1 person under this section.

(4) A savings bank is not considered to have violated this section through section 434 solely by reason of the fact that the indebtedness of a group then held exceeds the limitations of this section through section 434 at the time of a determination by the commissioner that the indebtedness of that group shall be combined, but if required by the commissioner the savings bank shall make a reasonable attempt to dispose of indebtedness of the group in the amount in excess of that permitted by this section within a reasonable time determined by the commissioner.

(5) The limitations under subsections (1) and (2) shall not apply to loans and extensions of credit described in sections 433 and 434.

(6) As used in this section and sections 433 and 434:

- (a) "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 an obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of the person. To the extent specified by the commissioner, loan and extension of credit or loan or extension of credit includes any liability of a savings bank to advance funds to or on behalf of a

person under a contractual commitment. Such term also includes the cost of purchase of personal property for the purpose of leasing the property to a person. Loan and extension of credit or loan or extension of credit does not include investment securities held by a savings bank under section 411.

(b) "Person" means an individual, partnership, association, corporation, governmental entity, or any other legal entity.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001

487.3433 Loans and extensions of credit; exceptions to limitations.

Sec. 433.

All of the following loans and extensions of credit are not subject to a limitation based upon capital and surplus, or total capital under section 432 or 434:

(a) A loan or extension of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse.

(b) The purchase of banker's acceptances of another bank of the kind described in paragraph 7 of section 13 of the federal reserve act, chapter 6, 38 Stat. 263.

(c) A loan or extension of credit to a financial institution or to a receiver, conservator, or any other agent or supervising authority in charge of the business and property of the financial institution, when the loan or extension of credit is approved by the commissioner.

(d) A loan or extension of credit to a customer, secured or covered by guarantees or by commitments or agreements to take over or to purchase the loan or extension of credit, made by a federal reserve bank or by the United States, or a department, bureau, board, commission, or establishment of the United States, including a corporation wholly owned directly or indirectly by the United States.

(e) A loan or extension of credit from 1 business day to the next to a bank, out-of-state bank, national bank, association, or savings bank of excess reserve balances from time to time maintained under section 19 of the federal reserve act, chapter 6, 38 Stat. 251.

(f) A loan or extension of credit secured by bonds, notes, certificates of indebtedness, or treasury bills of the United States or by other obligations fully guaranteed as to principal and interest by the United States.

(g) A loan or extension of credit secured by a loan agreement between a local public agency or a public housing agency and an instrumentality of the United States pursuant to federal housing legislation under which funds will be provided for payment of the obligation secured by the loan agreement.

(h) A loan or extension of credit arising from securities purchased under an agreement to resell.

(i) A loan or extension of credit to the student loan marketing association.

(j) A loan or extension of credit fully secured by a segregated deposit account in the lending savings bank.

(k) A loan or extension of credit arising from the acceptance by a savings bank of drafts or bills of exchange drawn upon the savings bank, or a savings bank's participation in drafts or bills of exchange drawn upon and accepted by a bank, out-of-state bank, national bank, association, or savings bank under section 431.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3434 Capital and surplus; limitations.

Sec. 434.

All of the following limitations based upon capital and surplus shall apply:

(a) Loans and extensions of credit to a customer secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples shall be subject to a limitation of 30% of capital and surplus of a stock savings bank, or 30% of total capital of a mutual savings bank, if the value of the staples securing the loans or extensions of credit at all times equals or exceeds 115% of the outstanding amount of the loans or extensions of credit. The staples shall be fully covered by insurance if it is customary to insure the staples.

(b) Loans or extensions of credit to a customer secured by shipping documents or instruments transferring or

securing title covering livestock, or giving a lien on livestock, if the value of the livestock securing the obligation is not at any time less than 115% of the face amount of the notes covered, shall be subject to a limitation of 30% of capital and surplus of a stock savings bank, or 30% of total capital of a mutual savings bank. Loans or extensions of credit arising from the discount by dealers in dairy cattle of paper given in payment for dairy cattle, which paper carries a full recourse indorsement or unconditional guarantee of the seller and which are secured by the cattle being sold, shall be subject to a limitation of 30% of capital and surplus.

(c) Loans or extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper which carries a full recourse indorsement or unconditional guarantee by a person transferring the paper, shall be subject to a limitation of 30% of capital and surplus of a stock savings bank, or 30% of total capital of a mutual savings bank. If the savings bank's files or the knowledge of its officers of the financial condition of each maker of the consumer paper is reasonably adequate, and an officer of the savings bank designated for that purpose by the board of directors of the savings bank certifies in writing that the savings bank is relying primarily upon the responsibility of each maker for the payment of the loans or extensions of credit, the limitations of this section as to the loans and extensions of credit of each maker shall be the sole applicable loan limitation. The certification shall be retained as part of the records of the savings bank.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3436 Automatic teller machine located on premises of casino, casino enterprise, liquor store, or adult entertainment establishment; preventing access to cash benefits from Michigan bridge card; definitions.

Sec. 436.

(1) A savings bank that owns, operates, or manages an automated teller machine located on the premises of a casino, casino enterprise, liquor store, or adult entertainment establishment shall work with the department of human services to ensure that the automated teller machine does not allow an individual access to cash benefits from a Michigan bridge card.

(2) As used in this section:

(a) "Adult entertainment establishment" means any of the following:

(i) An on-premises licensee that holds a topless activity permit described in section 916(3) of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1916.

(ii) Any other retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment.

(b) "Alcoholic liquor" means that term as defined in section 105 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1105.

(c) Subject to subsection (3), "casino" means that term as defined in section 2 of the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.202.

(d) Subject to subsection (3), "casino enterprise" means that term as defined in section 2 of the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.202.

(e) "Gaming" means that term as defined in section 2 of the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.202.

(f) "Liquor store" means a retailer, as defined in section 111 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1111, that is exclusively or primarily engaged in the sale of alcoholic liquor. The term does not include a retailer that is a retail food store.

(g) "Michigan bridge card" means the card that is used to distribute cash benefits by the department of human services.

(h) "Retail food store" means that term as defined in 7 USC 2012.

(3) As used in this section, the terms casino and casino enterprise do not include any of the following:

(a) A grocery store that sells groceries, including staple foods, and is located in a casino or a casino enterprise.

(b) Any other business establishment that offers gaming that is incidental to the principal purpose of that establishment.

History: Add. 2013, Act 196, Eff. Feb. 1, 2014

Chapter 5

REGULATION

487.3501 Impairment of capital.

Sec. 501.

(1) If, in the opinion of the commissioner, the capital of a savings bank has become impaired, the commissioner shall notify the savings bank of his or her determination and require the directors to meet the deficiency in the capital within a 2-month period. The directors shall meet the deficiency by either making a pro rata assessment upon the stock held by each shareholder, or taking steps to dissolve the bank. The 2-month period may be extended by order of the commissioner, if in his or her discretion an extension is necessary to allow the directors to meet the deficiency.

(2) Before an assessment may be made by the directors, each shareholder, secured party, and pledgee indicated on the books of the savings bank as holding an interest in the stock shall be provided with written notice in a manner reasonably calculated to give actual notice of the determination made by the commissioner that the capital of the savings bank is impaired and the amount of the assessment that each shareholder must pay.

(3) If a shareholder refuses or neglects to pay an assessment levied by the directors within 30 days from the date notice was provided, the directors shall sell all or part of the shareholder's shares to the highest bidder in a manner provided in this section. Upon expiration of the 30-day period and refusal or neglect by a shareholder to pay the assessment, a security interest in favor of the savings bank in the amount of the assessment shall attach to all of the shareholder's shares for the sole purpose of satisfying the assessment levied. The security interest shall have priority over any other security interests perfected by a creditor or otherwise granted by the shareholder in shares issued after the effective date of this act.

(4) If the directors fail to restore the capital of the savings bank or take steps to dissolve the savings bank during the 2-month period following notice from the commissioner and any extension granted under subsection (1), the commissioner may appoint a receiver for the savings bank in accordance with this act.

(5) If any part of the capital of a savings bank consists of preferred stock, the determination of whether the capital of the savings bank is impaired and the amount of the impairment shall be based upon the par value of its stock even though the amount that the holders of the preferred stock shall be entitled to receive in the event of retirement or dissolution shall be in excess of the par value of the preferred stock.

(6) The holders of preferred stock shall not be liable for assessments to restore impairment in the capital of a savings bank.

(7) If, 30 days after notice as provided in this section, a shareholder has refused or neglected to pay an assessment levied on the shares held by the shareholder, the directors may sell any or all of the shareholder's shares to satisfy the assessment. The proceeds of the sale shall be distributed in the following order:

(a) The reasonable expenses of holding for sale and selling the stock in a manner not prohibited by law, including reasonable attorney fees and legal expenses incurred by the savings bank.

(b) The satisfaction of the assessment levied by the directors.

(c) The satisfaction of an indebtedness secured by any security interest in the stock if written notification demanding proceeds is received by the savings bank before distribution of the proceeds is completed. Unless the holder of a security interest provides reasonable proof of the interest, the savings bank does not have to comply with this subdivision.

(d) Any remaining surplus shall be distributed to the shareholder.

(8) Disposition of the stock may be at a public or private sale at any time and on any terms, but every aspect of the disposition including the method, manner, time, place, and terms shall be commercially reasonable and reasonably calculated to meet the deficiency.

(9) A sale of stock as provided in this section shall effect an absolute cancellation of any outstanding certificates evidencing the stock sold and any security interest granted or pledge made in stock issued after the effective date of this act. Upon full payment of the stock sold, the savings bank shall issue new certificates to the purchaser.

(10) The purchaser takes the stock free of any rights or interests the shareholder may have based on an unintentional failure by the savings bank to comply with this section if all of the following apply:

(a) The purchaser has no knowledge of any defect in the proceedings.

(b) The purchaser does not act in collusion with any shareholders of the savings bank, a secured party, other bidders, or the savings bank.

(c) The purchaser makes the purchase in good faith.

(11) The ability of a savings bank to make an assessment under this section or to sell the stock of a shareholder under this section is not limited by the uniform commercial code.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001

487.3502 Violations; liability of directors or officers.

Sec. 502.

If the directors or officers of a savings bank knowingly violate or knowingly permit any of the agents, officers, or directors of a savings bank to violate this act or rules of the commissioner made under this act, those directors or officers shall be liable in his or her personal and individual capacity for all damages that the savings bank, any shareholder, or any other person sustains in consequence of the violation. Any action to recover damages shall be brought within 3 years from the time of the violation.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3503 Officer or employee as agent in sale of stock or securities; prohibition.

Sec. 503.

An officer or employee of a savings bank, in his or her individual capacity, shall not act as agent in the sale of stock or other securities to another person, or receive directly or indirectly any consideration or commission resulting from the sale of stock or other securities by others to the savings bank of which he or she is employed, unless authorized by order or declaratory ruling of the commissioner.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3504 Receipt of consideration or gratuity prohibited.

Sec. 504.

An officer, director, or employee of a savings bank shall not receive any consideration or gratuity from a borrower for procuring a loan from the savings bank.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3505 Surety bonds; protection against insurable losses.

Sec. 505.

(1) The board of directors shall require every employee concerned in the handling of money, accounts, or securities of the savings bank, who can be bonded, to be bonded by a surety company authorized to do business in this state in an amount determined by the board. A surety bond may cover 1 or more employees. The savings bank shall pay for any surety bonds required of its employees.

(2) The commissioner shall require every savings bank to provide reasonable protection and indemnity against burglary, defalcation, and other reasonably required insurable losses. Whenever a savings bank refuses to comply with the requirements of this section, the commissioner may contract for the protection and indemnity and charge the costs to the savings bank. If the charge is not paid, the commissioner shall collect the costs in an action instituted by the attorney general.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3506 Reports; penalty for failure to report.

Sec. 506.

(1) The commissioner may require reports from a savings bank whenever, in the commissioner's judgment, they are necessary to inform the commissioner fully as to the condition of the savings bank. The commissioner may require publication of reports and proof of publication by a date determined by the commissioner and in the manner and form as the commissioner may prescribe, except that the commissioner shall give a bank at least 30 days written notice of the date required for the publication of reports.

(2) A savings bank that does not make and transmit to the commissioner a report required by this section shall be subject to a penalty of \$100.00 for each day after the date from making the report. All penalties collected shall be paid into the state treasury to the credit of the general fund. If a savings bank delays or refuses to pay the penalty, the commissioner may maintain an action against the delinquent savings bank for the recovery of the penalty.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3507 Regulation and prescription of terms, conditions, bylaws, and rules by board of directors.

Sec. 507.

Notwithstanding any other provision of law, the board of directors of a savings bank, with the approval of the commissioner, may regulate and prescribe the terms, conditions, bylaws, and rules under which deposits, other funds and assets may be received, conserved, paid out, withdrawn, or otherwise disposed of whenever in the opinion of the commissioner an emergency exists in the affairs of a savings bank and the action is advisable to conserve, safeguard, and protect depositors, borrowers, deposits, moneys, funds, assets, and the business of the savings bank and all parties in interest, including the public.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3508 Pledge of assets.

Sec. 508.

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

(2) A savings bank may pledge its assets in an amount not in excess of 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 254.304.

(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 by 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 savings bank may pledge its assets to secure liabilities of all of the following types:

(a) In the case of member banks, liabilities incurred under the federal reserve act, chapter 6, 38 Stat. 251. 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, chapter 6, 38 Stat. 251.

(b) In the case of federal home loan bank members, liabilities incurred under the federal home loan bank act, chapter 522, 47 Stat. 725.

(c) Liabilities incurred under former section 202 of title II of the federal farm loan act.

(d) Liabilities incurred on account of a loan made with the express approval of the commissioner under section 433(c).

(e) Liabilities incurred on account of borrowings from 1 business day to the next under section 19 of the federal reserve act, chapter 6, 38 Stat. 251.

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

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 1997, Act 50, Imd. Eff. June 30, 1997 ;-- Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001

487.3509 Deposit by savings bank; limitation.

Sec. 509.

Except where required or permitted under the federal reserve act, chapter 6, 38 Stat. 251, or the federal home loan bank act, chapter 522, 47 Stat. 725, a savings bank shall not deposit an amount in excess of 10% of the capital and surplus of a stock savings bank, or 10% of the total capital of a mutual savings bank, with any other savings bank, state chartered bank, association, or national bank. A savings bank may deposit an amount not to exceed 15% of the capital and surplus of a stock savings bank, or 15% of the total capital of a mutual savings bank in any legal depository in a reserve city designated by the commissioner.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3510 Insolvency; transfer of assets null and void.

Sec. 510.

A transfer of any assets of a savings bank to its shareholders or members, or to its creditors made after the commission of an act of insolvency or made in contemplation of insolvency, with a view to preventing the application of its assets in the manner prescribed by this act, or with a view to the preference of 1 creditor over another, is null and void.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3511 Property or casualty insurance as condition to mortgage loan.

Sec. 511.

(1) Except as provided in subsection (2), a savings bank that requires a mortgagor to maintain property or casualty insurance as a condition to receiving a mortgage loan shall not require the amount of the property or casualty insurance to be greater than the replacement cost of the mortgaged building or buildings.

(2) A savings bank may require an amount of property or casualty insurance that is required of the savings bank as a condition of a sale, transfer, or assignment of all or part of the mortgage to a third party. This subsection does not require that the savings bank anticipate a sale, transfer, or assignment at the time the mortgage loan is made.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3512 Overdrafts.

Sec. 512.

(1) An overdraft existing for 90 days shall be charged off to the profit and loss account of the savings bank at the expiration of that time.

(2) A director or executive officer of a savings bank shall not knowingly overdraw his or her account.

(3) Unless a debt constitutes a claim against a solvent estate in probate, if the interest on a debt held by a savings bank is past due and unpaid for a period of 12 months, the savings bank shall charge off to its allowance for loan and lease losses the portion of the debt that is not well secured.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2009, Act 58, Imd. Eff. July 2, 2009

487.3514 Repealed. 2005, Act 192, Imd. Eff. Nov. 7, 2005.

Compiler's Notes: The repealed section pertained to filing of a suspicious activity report by a savings bank with a federal government agency.

Chapter 6 RECEIVERSHIPS AND CONSERVATORSHIPS

487.3601 Receiver; appointment.

Sec. 601.

(1) If a savings bank has refused to pay its deposits or obligations in accordance with the terms under which the deposits or obligations were incurred, or whenever a savings bank becomes insolvent, has refused to submit its books, papers, and records for inspection by the commissioner, appears to the commissioner to be in an unsafe or unsound condition, or the appointment of a conservator is required under section 204(5), the commissioner shall either appoint a conservator under section 605 with the attorney general representing the commission, or shall apply to the circuit court for the county in which the savings bank is located for the appointment of a receiver for the savings bank.

(2) In a proceeding for the appointment of a receiver, the commissioner shall request that the court appoint the federal deposit insurance corporation as the receiver if the deposits in the savings bank are insured to any extent by that corporation.

(3) The court may act upon the application without notice to any person but if at any time it appears to the court that none of the claimed reasons for receivership did in fact exist, the receivership shall be dissolved and the proceedings terminated.

- (4) If the federal deposit insurance corporation accepts the appointment as receiver, it may act without bond.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3602 Receiver; powers; report to commissioner.

Sec. 602.

- (1) Subject to court approval, a receiver may do any of the following:
- (a) Take possession of the books, records, and assets of the savings bank and collect all debts, dues, and claims belonging to the savings bank.
 - (b) Sue and defend, compromise, and settle all claims involving the savings bank.
 - (c) Sell any and all real and personal property.
 - (d) Exercise all fiduciary functions of the savings bank as of the date of the commencement of the receivership.
 - (e) Pay all expenses of the receivership, which expenses shall be a first charge upon the assets of the savings bank and be fully paid before any final distribution or payment of dividends to creditors or shareholders.
 - (f) Pay ratably any and all debts of the savings bank, except that debts not exceeding \$50.00 in amount may be paid in full but the holders of such debts shall not be entitled to interest on the debts.
 - (g) Repay, ratably, any amount which may have been paid in by a shareholder by reason of assessments made upon the stock of the savings bank by order of the commissioner in accordance with this act.
 - (h) Pay, ratably, to the shareholders or members of the savings bank in proportion to the number of shares or membership interests held and owned the balance of the net assets of the savings bank after payment or provision for payments as provided under subdivisions (e), (f), and (g).
 - (i) Borrow money as may be necessary or expedient in aiding the liquidation of the savings bank and to secure the borrowings by the pledge, hypothecation, or mortgage of the assets of the savings bank.
 - (j) Exercise other powers and duties as may be provided by the court under the laws of this state applicable to the appointment of receivers.
- (2) The receiver from time to time shall report to the commissioner with respect to all of his or her acts and proceedings in connection with the receivership.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3603 Procedures for liquidation; limitation.

Sec. 603.

The full and exclusive procedures for the liquidation of a savings bank under this act shall be the procedures prescribed in this act and a receiver or other liquidating agent shall not be appointed for such purpose or for any savings bank or its assets and property except as expressly provided in this act.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3604 Rights of depositors and creditors of closed savings bank.

Sec. 604.

- (1) If a savings bank has been closed and placed in receivership, and the federal deposit insurance corporation pays or makes available for payment the insured deposit liabilities of the closed savings bank, the corporation, whether or not it has become receiver of the savings bank, subrogated to all of the rights of the owners of the deposits against the closed savings bank in the same manner and to the same extent as subrogation of the

corporation is provided for in the federal reserve act, in the case of the closing of a national banking association.

(2) The rights of depositors and other creditors of the closed savings bank shall be determined in accordance with the applicable provisions of the laws of this state.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3605 Conservator; appointment; powers; duties.

Sec. 605.

(1) If any of the grounds set forth in section 601 authorizing the appointment of a receiver exist or whenever the commissioner considers it necessary in order to conserve the assets of a savings bank for the benefit of the depositors and other creditors, the commissioner may appoint a conservator for the savings bank and require of him or her a bond and security as the commissioner considers necessary.

(2) The commissioner may appoint as conservator 1 of the bank examiners of the bureau or some other competent and disinterested person. The bureau shall be reimbursed out of the assets of the conservatorship for all sums expended by it in connection with the conservatorship as expenses or otherwise, and the funds shall be paid into the revolving fund provided for in section 607.

(3) A conservator appointed under this section shall become a member of the bureau. All expenses of a conservatorship shall be paid out of the assets of the savings bank, upon the approval of the commissioner. The expenses shall be a first charge upon the assets and shall be fully paid before any final distribution or payment of dividends to creditors, shareholders, or members.

(4) The conservator, under the direction of the commissioner, shall take possession of the books, records, and assets of the savings bank, and take such action as may be necessary to conserve the assets of the savings bank pending further disposition of its business as provided by law. The conservator shall have all the rights, powers, and privileges of receivers of banks appointed under this act and shall be subject to the obligations and penalties, not inconsistent with this act with respect to conservators, to which receivers are subject. During the time that the conservator remains in possession of the savings bank, the rights of all parties with respect to the savings bank, subject to other provisions of this act with respect to conservators, shall be the same as if a receiver had been appointed. The conservator may execute the discharge of any real estate mortgage held as part of the assets of the savings bank.

(5) While a savings bank is in the hands of the conservator appointed by the commissioner, the commissioner may require the conservator to set aside and make available for withdrawal by depositors and payment to other creditors, on a ratable basis, such amounts as in the opinion of the commissioner may be used safely for that purpose. The commissioner may permit the conservator to receive deposits. Deposits received while the savings bank is in the hands of the conservator shall not be subject to any limitation as to payment or withdrawal. The deposits and any new assets acquired on account of the deposits shall be segregated and held especially for the new deposits and not be used to liquidate any indebtedness of the savings bank existing at the time that a conservator was appointed or any subsequent indebtedness incurred for the purpose of liquidating any indebtedness of the savings bank existing at the time the conservator was appointed. Deposits received while the savings bank is in the hands of the conservator shall be kept on hand in cash, invested in the direct obligations of the United States, or deposited in banks designated by the commissioner.

(6) With the prior approval of the commissioner, the conservator of a savings bank may borrow money as necessary or expedient in aiding the operation, reorganization, or liquidation of the savings bank, including the payment of liquidating dividends, and may secure the loans by the pledge, hypothecation, or mortgage of the assets of the savings bank.

(7) If the commissioner is satisfied that it may be done safely and that it would be in the public interest, he or she may terminate the conservatorship and permit the savings bank to resume the transaction of its business subject to such terms, conditions, restrictions, and limitations as he or she may prescribe.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3606 Affairs of savings bank turned back to board of directors; notice.

Sec. 606.

(1) After 15 days from the date upon which the affairs of a savings bank have been turned back to its board of directors by the conservator, either with or without being reorganized, the provisions of section 605(5) with respect to the segregation of deposits shall no longer be effective.

(2) Before the conservator turns back the affairs of the savings bank to its board of directors, he or she shall publish a notice in form approved by the commissioner, stating the date on which the affairs of the savings bank will be returned to its board of directors and that the provisions of section 605(5) will not be effective after 15 days from that date. On the date of the publication of the notice, the conservator shall immediately send to every person who deposited money in the savings bank after the appointment of a conservator, a copy of the notice by mail addressed to the last known address of the person as shown by the records of the savings bank. The conservator shall send similar notice in like manner to every person making deposit in the savings bank under section 605(5) after the date of the newspaper publication and before the time when the affairs of the bank are returned to its directors.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3607 Orders or declaratory rulings as to receivers and conservators; compensation and expenses to reimburse bureau.

Sec. 607.

(1) The commissioner may issue orders or declaratory rulings he or she considers necessary in order to carry out the provisions of this chapter as to receivers and conservators.

(2) All compensation and expenses allowed to reimburse the bureau when a bank examiner acts as receiver or conservator and all expenses for state supervision of receiverships and conservatorships under this act shall be turned over to the state treasurer and credited to a revolving fund to be held for the bureau to reimburse the bureau in connection with the provisions of this act with respect to receivers and conservators of savings banks.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3608 Reorganization of savings bank.

Sec. 608.

(1) In a reorganization of a savings bank under a plan of a kind that requires the consent of depositors and other creditors or of shareholders or members or of both depositors and other creditors and shareholders or members, the reorganization shall become effective when both of the following occur:

(a) The commissioner is satisfied that the plan of reorganization is fair and equitable as to all depositors, other creditors and shareholders or members and is in the public interest and has approved the plan subject to such conditions, restrictions, and limitations as he or she may require.

(b) After reasonable notice of the reorganization as determined by the commissioner, depositors and other creditors of the savings bank representing not less than 75% in amount of the sum of its total deposits and other liabilities as shown by the books of the savings bank, or shareholders owning at least 2/3 of its outstanding capital stock or 2/3 of the eligible voting members if it is a mutual savings bank as shown by the books of the savings bank, shall have consented in writing to the plan of reorganization. Claims of depositors or other creditors which will be satisfied in full under the plan of reorganization shall not be included among the total deposits and other liabilities of the savings bank in determining the 75% of total deposits. The term "reorganization" as used in this section may be construed to include the establishment of a new savings bank in conformity with a plan of reorganization.

(2) When the reorganization becomes effective, all books, records, and assets of the savings bank shall be disposed of in accordance with the plan and the affairs of the savings bank shall be conducted by its board of directors in the manner provided by the plan and under the conditions, restrictions, and limitations that may have been prescribed by the commissioner.

(3) In a reorganization which has been approved and become effective, all depositors and other creditors and

shareholders or members of the savings bank, whether or not they have consented to the plan of reorganization, shall be subject to and bound by its provisions and claims of all depositors and other creditors shall be treated as if they had consented to the plan or reorganization. The state or any department, agency, or political subdivision of the state holding a claim against the savings bank is authorized to participate in a plan of reorganization as any other creditor and shall be subject to and bound by its provisions as any other creditor.

History: 1996, Act 354, Imd. Eff. July 1, 1996

Chapter 7 CONSOLIDATIONS, MERGERS, AND CONVERSIONS

487.3701 Consolidated savings bank.

Sec. 701.

(1) Subject to approval by the commissioner, a savings bank may consolidate with any number of consolidating organizations to form a consolidated savings bank.

(2) The approval of the commissioner shall be based on an examination or other appropriate analysis of each consolidating organization and the agreement of consolidation. A consolidation shall not be made to defeat or defraud any of the creditors of any of the consolidating organizations.

(3) A majority of the directors of each organization proposing to consolidate may enter into an agreement, signed by them, or by their designated representative or representatives prescribing the terms and conditions of consolidation, the mode of carrying the consolidation into effect and stating other facts required or permitted by this act and other applicable law that are to be set out in the articles, as can be stated in the case of a consolidation, to be stated in such altered form as the circumstances of the case require, as well as the manner of converting the shares or membership interest of each of the consolidating organizations, into shares or membership interest of the consolidated organization, with other details and provisions as are considered necessary.

(4) The proposed consolidation agreement shall be submitted to the members or shareholders of each consolidating organization, at a separate meeting called by the directors for the sole purpose of considering the agreement. A copy of the notice shall be provided to each member or shareholder of each consolidating organization at his or her last known address as appears from the records of the consolidating organizations, at least 10 days prior to the date of the meeting. Notice shall not be required if it is waived by the commissioner or, in the case of individual notice to a shareholder, by the shareholder. At the meeting the proposed consolidation agreement shall be considered and a vote by ballot, in person or by proxy, taken for the adoption or rejection of the agreement. If the votes of members or shareholders of each consolidating organization representing not less than 2/3 of the total number of shares of each class of each consolidating organization's outstanding capital stock, or 2/3 of eligible voting members of a mutual organization, are cast for the adoption of the agreement, that fact shall be certified on the agreement by an officer of each of the consolidating organizations. If a bank, out-of-state bank, national bank, association, or savings bank is a consolidating organization and approval is required by the laws of another state or of the United States, that organization shall furnish a certified copy of consent or approval of the appropriate state or federal regulator of the consolidation to the commissioner. The consolidation agreement required by this section shall be filed with the commissioner who shall certify upon the agreement the date it was filed. The filing with the commissioner shall be the act of consolidation of the consolidating organizations. The consolidation agreement or a copy certified by the commissioner is evidence of the agreement and act of consolidation of the organizations and the observance and performance of all necessary acts and conditions precedent to the consolidation. A bank holding company or thrift holding company that is the sole shareholder of all of the outstanding issued stock of a savings bank, bank, out-of-state bank, national bank, or association that is a consolidating organization in a proposed consolidation may waive the shareholder meeting requirement of this subsection.

(5) In effecting a consolidation, stock of the consolidated savings bank may be issued in accordance with this act and as provided by the terms of the consolidation agreement free from any preemptive rights of the shareholders of the respective consolidating organizations.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001

***** 487.3702 SUBDIVISION (a) DOES NOT APPLY AFTER MAY 31, 1997: See subdivision (a) of

487.3702 Consolidated organization.

Sec. 702.

A savings bank may consolidate with any number of consolidating organizations to form a consolidated organization in accordance with the laws under which the consolidated organization is chartered, if all of the following apply:

(a) Consolidation is permitted by the laws under which each consolidating organization is organized and the appropriate regulator or regulators approve the consolidation. This subdivision does not apply after May 31, 1997.

(b) The consolidating organizations provide notice to the commissioner by filing a copy of the application for consolidation within 10 days after the date the application is filed with the appropriate federal regulator.

(c) The consolidated organization complies with section 703(3) with respect to notice of consolidation, but that notice is limited to a court, public tribunal, agency, or officer of this state.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3703 Consolidated savings bank; rights, interests, privileges, powers, restrictions, disabilities, liabilities, and duties.

Sec. 703.

(1) When the approval and certification of the consolidation agreement as required by section 701 have been completed, the corporate existence of each consolidating organization is merged into and continued in the consolidated savings bank. To the extent authorized by this act, the consolidated savings bank possesses all the rights, interests, privileges, powers, and franchises and is subject to all the restrictions, disabilities, liabilities, and duties of each of the consolidating organizations. The title to all property, real, personal, and mixed is transferred to the consolidated savings bank, and shall not revert or be in any way impaired by reason of this act.

(2) A consolidated savings bank holds and enjoys the same and all rights of property, franchises, and interests including appointments, designations, and nominations and all other rights and interests as a fiduciary, in the same manner and to the same extent as those rights and interests were held or enjoyed by each consolidating organization at the time of the consolidation. If a consolidating organization at the time of consolidation was acting under appointment of any court as a fiduciary, the consolidated savings bank is subject to removal by a court of competent jurisdiction.

(3) A consolidated savings bank shall file with each court or other public tribunal, agency, or officer in any state by which any of the consolidating organizations has been appointed as a fiduciary, and in the court file of each estate, suit, or any other proceeding in which any of them has been acting as a fiduciary, an affidavit setting forth the fact of consolidation, the name of each consolidating organization, the name of the consolidated savings bank, the location of its principal office, and the amount of its capital and surplus. This subsection does not require filing of an affidavit related to any consolidating organization that after the consolidation retains the same corporate name, charter, and main principal location.

(4) The liability of any consolidating organization or of a shareholder, director, or officer of a consolidating organization, or the rights or remedies of the creditors of, or other persons transacting business with, the consolidating organization shall not be altered or impaired as the result of a consolidation.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001

487.3704 Consolidated organization; service of process; prosecution.

Sec. 704.

(1) Whether it maintains a presence in this state, a consolidated organization or any of its successors in interest are subject to service of process in a proceeding in this state for enforcement of any obligation incurred in this state by a consolidating organization that is or was a party to a consolidation.

(2) An action or proceeding by or against a consolidating organization in a court or any other public tribunal of this state may be prosecuted to judgment, as if consolidation had not taken place or the consolidated organization may be substituted in the place of any consolidating organization whose existence has ceased.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3705 Operation of branches of consolidated or acquired savings bank.

Sec. 705.

(1) A savings bank, an out-of-state bank, or a national bank that consolidates its operations with 1 or more banks, out-of-state banks, national banks, associations, or savings banks may operate the consolidated or acquired bank, out-of-state bank, national bank, association, or savings bank branch or branches located in this state as a branch or branches of the consolidated or acquired savings bank.

(2) A consolidated bank or consolidated organization may operate any branches and principal offices located in this state of the consolidating organizations without providing the notice required by section 417.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001

487.3706 Definitions; consolidation.

Sec. 706.

(1) As used in this section:

(a) "Existing association" means a stock association engaged in the savings and loan business or federal savings bank business prior to the consolidation under this section.

(b) "Existing bank" means a savings bank, national banking association, or state chartered bank engaged in the business of banking prior to the consolidation under this section.

(c) "New bank" means a savings bank not engaged in the business of banking prior to the consolidation under this section.

(2) Notwithstanding any other section of this act:

(a) Persons as provided in section 301 may organize and incorporate as the incorporator or incorporators a new bank having its principal office in the same city or village as the principal office of an existing bank or existing association in the manner specified in section 302, but without regard to section 302(2) and (3)(b), (c), and (e), and section 304, if the new bank is organized for the sole purpose of effecting its consolidation under section 701 with an existing bank or existing association having its principal office in the same city or village as the new bank and if upon completion of the consolidation a bank holding company becomes the owner of all of the outstanding voting shares of the consolidated organization, other than shares necessary to qualify directors. The new bank and the existing bank may consolidate under the charter of either bank. The new bank and the existing association shall consolidate under the charter of the new bank and sections 701, 703, and 705 are applicable with respect to the consolidation except that the agreement of consolidation may provide that shares of either or both the consolidating organizations, in lieu of being converted into shares of the consolidated organization, will be converted into shares or other securities of the bank holding company.

(b) A shareholder of the existing bank or existing association who votes against the consolidation, or who has given notice in writing to that bank or association at or prior to the meeting called for the purpose of considering the agreement of consolidation that he or she dissents from the consolidation, is entitled to receive in cash from the consolidated organization the fair value of all shares held by him or her, if and when the consolidation is consummated, upon written request made to the consolidated organization at any time within 30 days after the date of consummation of the consolidation, accompanied by the surrender of his or her stock certificates. Upon the filing of the written request and the surrender of stock certificates, the shareholder shall cease to have any of the rights of a shareholder except the right to be paid the fair value of his or her shares. The request having been made, shall not

be withdrawn except with the written consent of the consolidated organization. The fair value of the shares shall be determined, as of the date on which the meeting of shareholders of the existing bank or existing association was held adopting the agreement of consolidation, by a qualified and independent appraiser selected by the commissioner upon written application filed by a dissenting shareholder entitled to receive the fair value of his or her shares, or by the consolidated organization. The appraiser selected shall file a written report of his or her appraisal with the commissioner, who in turn shall forward copies to all interested parties. The valuation determined by the appraiser is final and binding on all parties as to the fair value of the shares. The consolidated organization shall pay to each dissenting shareholder entitled the fair value of his or her shares within 30 days following the receipt of the written report of the appraiser. The fees and expenses of the appraisal, which shall be approved by the commissioner, shall be paid by the consolidated organization. The agreement of consolidation shall provide the manner of disposing of the shares of the existing bank or existing association surrendered by the dissenting shareholders.

(c) The commissioner shall approve or disapprove an application submitted under this section in writing within 30 days after acceptance of the application or the last amendment or supplement to the application.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001

487.3706a Definitions; reorganization of existing mutual savings bank to mutual holding company; requirements; organization and incorporation of new savings bank subsidiary; approval.

Sec. 706a.

(1) As used in this section:

(a) "Existing mutual savings bank" means a mutual savings bank engaged in the savings bank business before reorganization under this section.

(b) "Mutual holding company" means that term as defined in section 10(o) of the home owners' loan act, chapter 64, titles III and IX of Public Law 101-73, 12 U.S.C. 1467a, and OTS regulations governing mutual holding companies.

(c) "New savings bank" means a savings bank not engaged in the savings bank business before the reorganization provided in this section.

(d) "OTS" means the office of thrift supervision, United States department of the treasury.

(2) An existing mutual savings bank may reorganize to establish a mutual holding company, if all of the following requirements are met:

(a) The reorganization plan complies in all respects with OTS mutual holding company laws and receives the approval of the OTS, and the OTS grants a federal charter to the newly created mutual holding company.

(b) The reorganization plan receives the approval of the office of financial and insurance services.

(c) The board of directors of the existing mutual savings bank has approved the plan of reorganization at a meeting called in accordance with the bank's articles of incorporation and bylaws.

(d) A majority of the total votes of the members of the existing mutual savings bank eligible to be cast shall have approved the plan of reorganization after a membership meeting called in accordance with the bank's articles of incorporation and bylaws.

(3) Persons as provided in section 301 may organize and incorporate as the incorporator or incorporators any new savings bank subsidiary of the existing mutual savings bank, having its principal office in the same city or village as the principal office of the existing mutual savings bank, if the new savings bank is organized for the sole purpose of effecting a reorganization plan in accordance with this section.

(4) The assets, liabilities, and banking business of the existing mutual savings bank shall not be transferred to any new savings bank subsidiary or federal savings bank subsidiary under the reorganization plan until the office of financial and insurance services or OTS approves a charter for the subsidiary to operate as a savings bank or federal savings bank.

(5) Unless the office of financial and insurance services determines in writing that the subsidiary charter application does not meet the requirements for a savings bank under this act, the office of financial and insurance services shall approve the subsidiary's charter application if the applicant represents, and the commissioner believes, the subsidiary will conduct substantially the same banking business as the existing mutual savings bank.

History: Add. 2002, Act 263, Imd. Eff. May 1, 2002

487.3707 Definitions; terms and conditions of conversion or exchange.

Sec. 707.

(1) As used in this section:

(a) "Consolidation agreement" means an agreement entered into among an existing bank or an existing association, a new bank, and new holding company that provides both of the following:

(i) That the existing bank or existing association and the new bank will be consolidated or merged.

(ii) That upon consummation of the consolidation or merger, the shares of capital stock of the existing bank or existing association will be converted into or exchanged for shares of the capital stock or other securities of the new holding company.

(b) "Existing association" means a stock association that is a party to a consolidation agreement and is engaged in the savings and loan business prior to the consolidation or merger provided for in the consolidation agreement.

(c) "Existing bank" means a savings bank, national banking association, or state chartered bank that is a party to a consolidation agreement and is engaged in the business of banking prior to the consolidation or merger provided for in the consolidation agreement.

(d) "New bank" means a savings bank that is a party to a consolidation agreement and is not engaged in the business of banking prior to the consummation of the consolidation or merger provided for in the consolidation agreement.

(e) "New holding company" means a corporation that is not a savings bank, association, or national banking association and as to which all of the following apply:

(i) The corporation is a party to a consolidation agreement.

(ii) Prior to its acquisition of an existing bank or existing association under the consolidation agreement, the corporation does not have control of a bank, an association, or national banking association and has not transacted any business except business incidental to its organization and to the entering into, and performance of, the consolidation agreement.

(iii) Upon consummation of the consolidation or merger provided for in the consolidation agreement, the corporation will become a bank holding company.

(iv) Immediately after its acquisition of an existing bank or existing association pursuant to the consolidation agreement, the corporation will not have control of more than 1 savings bank.

(v) Prior to the acquisition of an existing bank or existing association under the consolidation agreement, the corporation is not, and immediately after acquisition of control of the existing bank or existing association will not be, controlled by a bank holding company.

(f) "Control" means control as defined in section 2 of the bank holding company act of 1956, 12 U.S.C. 1841.

(2) A new holding company may apply to the commissioner for approval of the terms and conditions of the issuance of the shares or other securities of the new holding company into which the shares of an existing bank or existing association are to be converted, or for which the shares of the existing bank or existing association are to be exchanged, under a consolidation agreement, and for approval of the terms and conditions of the conversion or exchange. The application for approval shall be in a form, contain information, and be accompanied by documents as shall be required by the commissioner. Within 30 days after the application is filed, the commissioner shall conduct a hearing upon the fairness of the terms and conditions at which all persons to whom it is proposed to issue the securities in the conversion or exchange shall have the right to appear. Within 20 days after the hearing, the commissioner shall either approve or disapprove the terms and conditions of the issuance and of the conversion or exchange. This subsection shall not be construed to require a new holding company to apply for or obtain the approval of the commissioner of the terms and conditions of the issuance and conversion or exchange of securities provided for in a consolidation agreement or to make unlawful any transaction that is lawful without regard to this subsection.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3708 Conversion of savings bank into stock association or national banking association; conversion of mutual savings bank into state or federal mutual savings and loan association.

Sec. 708.

(1) Upon the affirmative vote of the majority of votes cast of each class of its outstanding capital stock, a savings bank may be converted under the laws of this state into a stock association or under the laws of the United States into a national banking association or federal savings bank.

(2) The conversion of a savings bank into a stock association or a national banking association shall not release the savings bank from its obligations to pay and discharge all the liabilities created by law or incurred by it before becoming a stock association or a national banking association or any tax imposed by the laws of this state up to the date of its becoming a stock association or a national banking association in proportion to the time that has elapsed since the last preceding payment or any assessment, penalty, or forfeiture imposed or incurred under the laws of this state up to the date of its becoming a stock association or a national banking association. A conversion shall not be made to defeat or defraud any of the creditors of the savings bank.

(3) Certified copies of all proceedings by the directors and shareholders of the stock association or savings bank shall be filed with the commissioner and in addition, the savings bank shall furnish a certified copy of consent or approval of the comptroller of the currency or office of thrift supervision to the conversion if the consent or approval is required by federal law.

(4) Upon the affirmative vote of the majority of the votes cast of a mutual savings bank, the mutual savings bank may be converted under the laws of this state into a mutual state savings and loan association or under the laws of the United States into a mutual federal savings and loan association or federal savings bank.

(5) The conversion of a mutual savings bank into a state or federal mutual savings and loan association shall not release the mutual savings bank from its obligations to pay and discharge all the liabilities created by law or incurred by it before becoming a state or federal savings and loan association or any tax imposed by the laws of this state up to the date of its becoming a state or federal savings and loan association in proportion to the time that has elapsed since the last preceding payment or any assessment, penalty, or forfeiture imposed or incurred under the laws of this state up to the date of its becoming a state or federal savings and loan association. A conversion shall not be made to defeat or defraud any of the creditors of the mutual savings bank.

(6) Certified copies of all proceedings by the members of the mutual savings bank shall be filed with the commissioner, and in addition the mutual savings bank shall furnish a certified copy of consent or approval of the office of thrift supervision to the conversion if the consent or approval is required by federal law. One copy of the proceedings shall be filed with the bureau.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001

487.3709 Conversion of federally chartered shareholder-owned financial institution into savings bank.

Sec. 709.

(1) With the approval of the commissioner, and upon the affirmative vote of the majority of the votes cast of each class of its outstanding capital stock, a national banking association, federal savings bank, federal savings and loan association, or other federally chartered shareholder-owned financial institution doing business in this state and having an unimpaired capital and surplus sufficient to entitle it to become a savings bank under the provisions of existing laws of this state may be converted into a savings bank if the conversion is not in contravention of any laws of the United States. In such case, the articles of incorporation may be executed by a majority of the directors of the national banking association, federal savings bank, federal savings and loan association, or other federally chartered financial institution. A majority of the directors, after executing the articles of incorporation, shall have the power to execute all other papers and to do whatever may be required to complete the organization of the mutual state savings and loan association, mutual state savings bank, or other member-owned state chartered financial institution as a savings bank.

(2) The shares of the savings bank may continue to be for the same amount each as they were before the conversion, and the directors may continue to be directors of the savings bank until others have been elected or appointed under the laws of this state.

(3) The approval of the commissioner shall be based on an examination of the national banking association, federal savings bank, federal savings and loan association, or other federally chartered financial institutions and of the proceedings had by its directors and shareholders with respect to the conversion.

(4) A conversion shall not be made to defeat or defraud any of the creditors of the national banking association, federal savings bank, federal savings and loan association, or other federally chartered financial institution.

(5) Subject to conditions as he or she may prescribe, the commissioner may permit the converted savings bank to retain and carry, at a value determined by the commissioner, assets of the converting national banking association, federal savings bank, federal savings and loan association, or other federally chartered financial institution as do not

conform to the legal requirements relative to assets acquired and held by savings banks.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001

487.3710 Conversion of state chartered shareholder-owned financial institution into savings bank.

Sec. 710.

(1) With the approval of the commissioner, and upon the affirmative vote of the majority of the votes cast of each class of its outstanding capital stock, a state chartered commercial bank, state chartered savings and loan association, or other state chartered shareholder-owned financial institution having an unimpaired capital and surplus sufficient to entitle it to become a savings bank under the provisions of existing laws of this state may be converted into a savings bank. In such case, the articles of incorporation may be executed by a majority of the directors of the state chartered commercial bank, state chartered savings and loan association, or other state chartered financial institution. A majority of the directors, after executing the articles of incorporation, may execute all other papers and do whatever may be required to complete its organization as a savings bank.

(2) The shares or membership interests of the savings bank may continue to be for the same amount each as they were before the conversion, and the directors may continue to be directors of the savings bank until others have been elected or appointed under the laws of this state.

(3) The approval of the commissioner shall be based on an examination of the state chartered commercial bank, state chartered savings and loan association, or other state chartered financial institution and of the proceedings had by its directors and shareholders with respect to the conversion.

(4) A conversion shall not be made to defeat or defraud any of the creditors of the state chartered commercial bank, state chartered savings and loan association, or other state chartered financial institution.

(5) Subject to conditions as he or she may prescribe, the commissioner may permit the converted savings bank to retain and carry, at a value determined by the commissioner, assets of the converting state chartered commercial bank, state chartered savings and loan association, or other state chartered financial institution which do not conform to the legal requirements relative to assets acquired and held by savings banks.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001

487.3711 Conversion of member-owned federally chartered financial institution into mutual savings bank.

Sec. 711.

(1) With the approval of the commissioner, and upon the affirmative vote of the majority of the votes cast, a mutual federal savings and loan association, mutual federal savings bank, or other member-owned federally chartered financial institution doing business in this state may be converted into a mutual savings bank if the conversion is not in contravention of any laws of the United States. In such case, the articles of incorporation may be executed by a majority of the directors of the federal savings and loan association, federal savings bank, or other member-owned federally chartered financial institution. A majority of the directors, after executing the articles of incorporation, shall have the power to execute all other papers and to do whatever may be required to complete its organization as a savings bank.

(2) The shares or membership interests of the savings bank may continue to be for the same amount each as they were before the conversion, and the directors may continue to be directors of the savings bank until others have been elected or appointed under the laws of this state.

(3) The approval of the commissioner shall be based on an examination of the federal savings and loan association, federal savings bank, or other member-owned federally chartered financial institution and of the proceedings had by its directors and members with respect to the conversion.

(4) A conversion shall not be made to defeat or defraud any of the creditors of the federal savings and loan association, federal savings bank, or other member-owned federally chartered financial institution.

(5) Subject to conditions as he or she may prescribe, the commissioner may permit the converted savings bank to retain and carry, at a value determined by the commissioner, assets of the converting federal savings and loan association, federal savings bank, or other member-owned federally chartered financial institution as do not

conform to the legal requirements relative to assets acquired and held by savings banks.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001

487.3711a Conversion of mutual federal savings and loan association, mutual federal savings bank, or other member-owned federally chartered financial institution into stock savings bank.

Sec. 711a.

(1) With the approval of the commissioner, and upon the affirmative vote of 2/3 of votes cast, a mutual federal savings and loan association, mutual federal savings bank, or other member-owned federally chartered financial institution doing business in this state may be converted into a stock savings bank if the conversion is not in contravention of any laws of the United States. In such case, the articles of incorporation may be executed by a majority of the directors of the federal savings and loan association, federal savings bank, or other member-owned federally chartered financial institution. A majority of the directors, after executing the articles of incorporation, shall have the power to execute all other papers and to do whatever may be required to complete its organization as a savings bank.

(2) The shares or membership interests of the savings bank may continue to be for the same amount each as they were before the conversion, and the directors may continue to be directors of the savings bank until others have been elected or appointed under the laws of this state.

(3) The approval of the commissioner shall be based on an examination of the federal savings and loan association, federal savings bank, or other member-owned federally chartered financial institution and of the proceedings had by its directors and members with respect to the conversion.

(4) A conversion shall not be made to defeat or defraud any of the creditors of the federal savings and loan association, federal savings bank, or other member-owned federally chartered financial institution.

(5) Subject to conditions as he or she may prescribe, the commissioner may permit the converted savings bank to retain and carry, at a value determined by the commissioner, assets of the converting federal savings and loan association, federal savings bank, or other member-owned federally chartered financial institution as do not conform to the legal requirements relative to assets acquired and held by savings banks.

History: Add. 2000, Act 482, Imd. Eff. Jan. 11, 2001

487.3712 Conversion of member-owned state chartered financial institution into mutual savings bank.

Sec. 712.

(1) With the approval of the commissioner, and upon the affirmative vote of 2/3 of the votes cast, a mutual state savings and loan association or other member-owned state chartered financial institution may be converted into a mutual savings bank. In such case, the articles of incorporation may be executed by a majority of the directors of the savings and loan association, or other member-owned state chartered financial institution. A majority of the directors, after executing the articles of incorporation, may execute all other papers and do whatever may be required to complete its organization as a savings bank.

(2) The shares or membership interests of the savings bank may continue to be for the same amount each as they were before the conversion, and the directors may continue to be directors of the savings bank until others have been elected or appointed under the laws of this state.

(3) The approval of the commissioner shall be based on an examination of the savings and loan association, or other member-owned state chartered financial institution and of the proceedings had by its directors and members with respect to the conversion.

(4) A conversion shall not be made to defeat or defraud any of the creditors of the savings and loan association or other member-owned state chartered financial institution.

(5) Subject to conditions as he or she may prescribe, the commissioner may permit the converted savings bank to retain and carry, at a value determined by the commissioner, assets of the converting savings and loan association or other member-owned state chartered financial institution which do not conform to the legal requirements relative to assets acquired and held by savings banks.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001

487.3712a Conversion of mutual state savings and loan association, or mutual state savings bank, or other member-owned state chartered financial institution into stock savings bank.

Sec. 712a.

(1) With the approval of the commissioner, and upon the affirmative vote of 2/3 of the votes cast, a mutual state savings and loan association, or mutual state savings bank, or other member-owned state chartered financial institution may be converted into a stock savings bank. In such case, the articles of incorporation may be executed by a majority of the directors of the savings and loan association, or other member-owned state chartered financial institution. A majority of the directors, after executing the articles of incorporation, may execute all other papers and do whatever may be required to complete its organization as a savings bank.

(2) The shares or membership interests of the savings bank may continue to be for the same amount each as they were before the conversion, and the directors may continue to be directors of the savings bank until others have been elected or appointed under the laws of this state.

(3) The approval of the commissioner shall be based on an examination of the savings and loan association, or other member-owned state chartered financial institution and of the proceedings had by its directors and members with respect to the conversion.

(4) A conversion shall not be made to defeat or defraud any of the creditors of the savings and loan association or other member-owned state chartered financial institution.

(5) Subject to conditions as he or she may prescribe, the commissioner may permit the converted savings bank to retain and carry, at a value determined by the commissioner, assets of the converting savings and loan association or other member-owned state chartered financial institution which do not conform to the legal requirements relative to assets acquired and held by savings banks.

History: Add. 2000, Act 482, Imd. Eff. Jan. 11, 2001

487.3713 Rights, obligations, and relations of converted and converting organization.

Sec. 713.

If a conversion becomes effective under this act, all of the following shall apply:

(a) The converted organization shall be considered a continuation of the body corporate of the converting organization.

(b) The title to all property, real or personal, including any rights that may be attached to the property, or any thing in action, is immediately transferred and vested in the converted organization to the same extent as it was in the converting organization.

(c) All assets, rights, privileges, or interests belonging or attributed to the converting organization are immediately transferred and vested in the converted organization to the same extent as they were in the converting organization.

(d) All liabilities, restrictions, and disabilities of the converting organization, its shareholders, or its officers are immediately transferred to the converted organization to the same extent as they were in the converting organization.

(e) If the converting organization is acting in any fiduciary capacity under the laws of this state, the following apply:

(i) All rights, privileges, and obligations of the converting organization shall remain unimpaired and shall continue in the converted organization irrespective of the date when the fiduciary relationship was created.

(ii) If the converting organization had been appointed by a court or governmental tribunal, agency, or officer, the converted organization shall file an affidavit with the appointing authority setting forth the fact of conversion, the name of the converted organization, the location of its principal office, and the amount of its capital and surplus.

(iii) The converted organization acting as a fiduciary by appointment of a court is subject to removal by a court of competent jurisdiction.

(f) The converted organization may retain and continue to operate any existing branch, or open any approved branch, of the converting organization.

(g) Any rights or remedies of the depositors, creditors, or other persons transacting business with the converting organization shall not be reduced or impaired as the result of a conversion.

(h) Whether or not it maintains a presence in this state, a converted organization or any of its successors in interest is subject to service of process in a proceeding in this state for enforcement of any obligation incurred in this state by the converting organization.

(i) An action or proceeding against the converting organization in a court or other governmental tribunal may be prosecuted to judgment as if the conversion had not taken place, or the converted organization may be substituted in place of the converting organization. This subsection shall not create any new cause of action against the converting organization as a result of the conversion.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001

487.3714 Liability not impaired by sale of assets, consolidation, or conversion.

Sec. 714.

The liability of any savings bank, national banking association, stock association, or federal savings bank or of the shareholders, directors, or officers thereof, or the rights or remedies of the creditors thereof, or of persons transacting business with such entities, shall not be lessened or impaired by virtue of the sale of all or substantially all of the assets of such entities or by the consolidation of 2 or more organizations or the conversion of an organization.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3715 Conversion of mutual savings bank to stock savings bank.

Sec. 715.

(1) A mutual savings bank may apply to convert to a stock savings bank. The application shall include a resolution of the board of directors authorizing the application, proposed amendments to the articles of incorporation of the mutual savings bank to authorize the issuance and sale of stock, a plan of conversion, and any other information as the commissioner may require. Within 100 days of receipt of a completed application, the commissioner shall issue his or her approval or denial of the proposed amendments to the articles of incorporation and the plan of conversion, along with his or her preliminary approval or denial of the conversion.

(2) Upon receipt of a preliminary approval to convert, a mutual savings bank shall obtain the affirmative vote of 2/3 of the votes cast.

(3) Following the approval of its membership, the mutual savings bank may request authorization of the commissioner to convert to a stock savings bank. The request shall include a certified copy of the election results of the membership along with a resolution of the board of directors requesting approval to convert to a stock savings bank. Within 30 days of receipt of a request to convert, the commissioner shall issue his or her approval or denial.

(4) The conversion of a mutual savings bank to a stock savings bank shall not release the mutual savings bank from its obligations to pay and discharge all the liabilities created by law or incurred by the mutual savings bank before becoming a stock savings bank or any tax imposed by the laws of this state up to the date of the mutual savings bank becoming a stock savings bank in proportion to the time which has elapsed since the last preceding payment or any assessment, penalty, or forfeiture imposed or incurred under the laws of this state up to the date of the mutual savings bank becoming a stock savings bank. A conversion shall not be made to defeat or defraud any of the members or creditors of the mutual savings bank.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001

Chapter 8
GENERAL PROVISIONS, EXEMPTION FROM TAXATION

487.3801 Use of “bank,” “banker,” or “banking.”

Sec. 801.

(1) The use of the word "bank", "banker", or "banking", or words in any foreign language of similar meaning, as a designation or name or part of a designation or name under which business is conducted in this state, is restricted to a national bank, a savings bank subject to this act, a bank, out-of-state bank, a bank holding company, a foreign bank agency, or a foreign bank branch, that is lawfully conducting business in this state, except if the designation or name, taken as a whole, would not imply a banking business.

(2) A savings bank subject to this act may use the phrase "state savings bank" or "savings bank" as part of a designation or name.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3802 Construction of act.

Sec. 802.

(1) The powers, privileges, duties, and restrictions conferred and imposed upon any institution existing and doing business under the laws of this state to which this act is applicable are abridged, enlarged, or modified as each particular case may require to conform to this act.

(2) This act shall not be construed to affect the legality of investments or of transactions made under any law in effect when the investments or transactions were made or to require the change of investments for those named in this act, except by the sale or redemption of the securities to prevent loss or embarrassment in the business of the institution, or unnecessary loss or injury to the borrowers on the securities.

(3) An extension of any loan or investment shall not be made by any institution, unless necessary to avoid loss or embarrassment as provided in subsection (2).

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3803 Effect of MCL 450.1 to 450.192.

Sec. 803.

Notwithstanding any other law, a savings bank subject to the provisions of this act shall not be governed by Act No. 327 of the Public Acts of 1931, being sections 450.1 to 450.192 of the Michigan Compiled Laws.

History: 1996, Act 354, Imd. Eff. July 1, 1996

487.3804 Tax exemptions.

Sec. 804.

A savings bank subject to this act shall have the following tax exemptions:

(a) All mortgages or other securities held by savings banks are exempt from all municipal or other taxes under the laws of this state.

(b) All personal property owned by savings banks is exempt from taxation.

History: 1996, Act 354, Imd. Eff. July 1, 1996 ;-- Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001

BANKING CODE OF 1999

Act 276 of 1999

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.

History: 1999, Act 276, Eff. Mar. 1, 2000 ;-- Am. 2016, Act 175, Eff. Sept. 12, 2016

The People of the State of Michigan enact: Chapter 1

Part 1 SHORT TITLE AND GENERAL PROVISIONS

487.11101 Short title.

Sec. 1101.

This act shall be known and may be cited as the "banking code of 1999".

History: 1999, Act 276, Eff. Mar. 1, 2000

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.11102 Supervision and regulation of banking organizations; state policy.

Sec. 1102.

It is the policy of this state that the business of all banking organizations shall be supervised and regulated in a manner that insures the safe and sound conduct of business, to conserve their assets, promote competition among banking organizations, to maintain public confidence in the business, and to protect the public interest and the interests of depositors, creditors, and shareholders.

History: 1999, Act 276, Eff. Mar. 1, 2000

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.11103 Filing of documents as constructive notice of contents; limitation.

Sec. 1103.

The filing of documents under this act does not provide constructive notice of the contents of the documents except as to shareholders, directors, and officers of the institution or depository institution on behalf of which the documents are filed.

History: 1999, Act 276, Eff. Mar. 1, 2000

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.11104 Remedies; construction of act.

Sec. 1104.

(1) This act does not impair or affect an act done, offense committed, or right accruing, accrued, or acquired, or liability, penalty, forfeiture, or punishment incurred before the effective date of this act, but may be enjoyed, asserted, enforced, prosecuted, or inflicted as if this act had not been enacted.

(2) Proceedings to assert, enforce, prosecute, or inflict a right or obligation by or against a bank may be consummated under the law in force at the time the proceedings were commenced. All prosecutions pending on or instituted after the effective date of this act for offenses committed before the effective date of this act may be continued or instituted under the law in force at the time of the commission of the offense.

(3) This act shall not be construed to affect the legality of investments made or of transactions conducted, under any provisions of law in force when the investments or transactions were made or conducted, nor to require the change of investments for those named in this act, except to prevent loss, or injury to the institution, or to the borrowers on the securities. Extension of such loan or investment shall not be made by any institution, unless necessary to avoid loss as provided in this subsection.

(4) An institution that may be incorporated under this act shall not be incorporated after the effective date of this act except under this act.

(5) An institution governed by the terms of this act organized and incorporated before the effective date of this act under any law of this state, which if now incorporated would be required to incorporate under and be subject to this act, shall be subject to this act without formal reorganization under this act and shall be considered to exist under this act. This act shall govern all institutions incorporated in this state.

(6) This act shall not be construed as attempting to deprive any institution of any constitutional power, right, privilege, or franchise that the institution now enjoys.

(7) Except as provided in section 2402(4), notwithstanding any other provision of law, a bank shall not be subject to the provisions of the business corporation act, 1972 PA 284, MCL 450.1101 to 450.2098.

(8) There is no limit upon the amount or share of deposits held or controlled in this state by a bank, out-of-state bank, national bank, or bank holding company on a consolidated basis.

History: 1999, Act 276, Eff. Mar. 1, 2000

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.11105 Person engaged in business of banking; corporation as fiduciary.

Sec. 1105.

(1) A person shall not engage in the business of banking in this state unless authorized by this act, the laws of another state, the national bank act, the international banking act of 1978, or if engaged in the business of banking on the effective date of this act under former 1969 PA 319.

(2) Except for acting as an escrow agent, only an individual or corporation shall act as a fiduciary in this state. A corporation acting as a fiduciary shall do so only if the corporation is 1 of the following:

(a) A bank authorized to exercise trust powers under this act, or authorized to conduct trust business in this state

before November 29, 1995.

(b) A state foreign bank branch authorized to exercise trust powers under this act.

(c) An out-of-state bank, that is authorized to exercise trust powers under the law of the jurisdiction where it is organized. An out-of-state bank authorized to exercise trust powers under this subdivision may do so only to the extent a bank may exercise trust powers under this act.

(d) A national bank authorized to exercise trust powers under the national bank act. A national bank authorized to exercise trust powers under this subdivision may do so only to the extent that a bank may exercise trust powers under this act.

(e) A nonbanking corporation to the extent that it may be specifically authorized to act as fiduciary in this state by another statute of this state.

History: 1999, Act 276, Eff. Mar. 1, 2000

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.11106 Use of designation or name.

Sec. 1106.

The use of the word "bank", "banker", or "banking" or any foreign language words of similar meaning as a designation or name, or part of a designation or name under which business is or may be conducted in this state, is restricted to a national bank, a bank subject to this act, an out-of-state bank, a bank holding company registered under the bank holding company act, a foreign bank agency, a foreign bank branch, a savings and loan holding company as defined in 12 C.F.R. 583.20, or a savings bank that is lawfully conducting business in this state, unless that designation or name, taken as a whole, would not imply a banking business. Use of the term "mortgage banker" or "mortgage banking" in the name or assumed name of a licensee or registrant under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, does not violate this section.

History: 1999, Act 276, Eff. Mar. 1, 2000

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.11107 Tax exemptions.

Sec. 1107.

All mortgages or other securities held by banks are exempt from all municipal or other taxes under the laws of this state, and all personal property owned by banks is exempt from taxation.

History: 1999, Act 276, Eff. Mar. 1, 2000

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Part 2 DEFINITIONS

487.11201 Definitions; A to F.

Sec. 1201.

As used in this act:

- (a) "Administrative expense" means any of the following:
 - (i) An expense designated as an administrative expense under this act or by the court.
 - (ii) Court costs and expenses of operation and liquidation of a bank.
 - (iii) Current wages paid to an employee of a bank whose services are retained by the receiver for services rendered after 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 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) A person, directly or indirectly, owns or controls either more than 25% of its voting shares or a majority of the shares voted at the most recent election for the election of its directors, trustees, or other individuals who exercise similar functions, or controls in any manner the election of a majority of its directors, trustees, or other individuals who exercise similar functions.
 - (ii) Control of the organization is held, directly or indirectly, through 1 of the following:
 - (A) Stock ownership or in any other manner, by the shareholders or members of an organization that own or control more than 25% of the shares of that organization, more than 25% of the ownership interest in the organization, a majority of the shares voted for the election of directors of that organization at the most recent election, or a majority of the ownership vote for election of directors of that organization at the most recent election.
 - (B) By trustees for the benefit of the shareholders or members of that organization.
 - (C) By the power to exercise, directly or indirectly, a controlling influence over the management or policies of the organization, as determined by the commissioner after notice and an opportunity for a hearing.
 - (iii) A majority of its directors, trustees, or other individuals who exercise similar functions constitute a majority of the directors, trustees, or other individuals who exercise similar functions of any 1 organization.
 - (iv) The organization owns or controls, directly or indirectly, either more than 25% of the shares of capital stock or other ownership interest of an organization, or a majority of the shares voted of the total ownership vote for the election of directors of an organization at the preceding election, or controls in any manner the election of a majority of the directors of an organization, or for the benefit of whose shareholders or members all or substantially all the capital stock or ownership interest of an organization is held by trustees.
- (d) "Applicant" means a person that submits an application under this act.
- (e) "Articles" means articles of incorporation, all amendments to articles of incorporation, and agreements of consolidation and merger.
- (f) "Association" means a federal savings association organized under section 5 of the home owners' loan act, 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.
- (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 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 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, 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 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 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 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 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" 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 which has become final" means a cease and desist order or an order issued by the director with the consent of the institution or the board member or officer or other person concerned, or with respect to which a petition for review of the action of the director was not filed and perfected in a circuit court under section 2310(2), or with respect to which the action of the court in which the petition is filed is not subject to further review by the courts of the state.

(n) "Commissioner" or "director" means the director of the department.

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

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

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

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

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

(t) "Derivative transaction" means any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, 1 or more commodities, securities, currencies, interest or other rates, indices, or other assets.

(u) "Dissolution" means the process by which a solvent bank voluntarily ends its corporate existence by liquidating its assets and winding up its affairs.

(v) "Dividend reinvestment plan" means a plan that is offered solely to existing shareholders of the bank and that allows the shareholders to reinvest dividends received under section 3806 in stock of the bank and that may allow additional cash amounts to be contributed by the shareholders participating in the reinvestment plan.

(w) "Federal agency" means a foreign bank agency established and operating under the international banking act of 1978.

(x) "Federal branch" means a foreign bank branch established and operating under the international banking act of 1978.

(y) "Federal deposit insurance act" means the federal deposit insurance act, 12 USC 1811 to 1835a.

(z) "Federal home loan bank act" means the federal home loan bank act, 12 USC 1421 to 1449.

(aa) "Federal reserve act" means the federal reserve act, 12 USC 221 to 522.

History: 1999, Act 276, Eff. Mar. 1, 2000 ;-- Am. 2016, Act 176, Eff. Sept. 12, 2016

487.11202 Definitions; F to P.

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.

History: 1999, Act 276, Eff. Mar. 1, 2000 ;-- Am. 2016, Act 175, Eff. Sept. 12, 2016

487.11203 Definitions; S to V.

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.

History: 1999, Act 276, Eff. Mar. 1, 2000 ;-- Am. 2016, Act 175, Eff. Sept. 12, 2016

Chapter 2 FINANCIAL INSTITUTIONS BUREAU Part 1 ADMINISTRATION

487.12101 Financial institutions bureau; creation; jurisdiction; commissioner; appointment; duties; seal; other employment.

Sec. 2101.

(1) A financial institutions bureau is created within the department of consumer and industry services, and the bureau shall have jurisdiction over and administer the laws relating to financial institutions transacting business in this state.

(2) The head of the financial institutions bureau is the commissioner who shall be appointed by the governor, with the advice and consent of the senate, to serve at the pleasure of the governor.

(3) Before assuming the duties of office, the commissioner shall take and subscribe the constitutional oath of office and file it with the secretary of state.

(4) The commissioner shall approve a seal for the use of the bureau. A description and impression of the seal shall be filed with the secretary of state.

(5) The commissioner is prohibited for a period of 6 months from the date he or she leaves office from accepting employment with a state chartered depository financial institution regulated by the bureau.

History: 1999, Act 276, Eff. Mar. 1, 2000

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities of the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.12102 Purpose of act.

Sec. 2102.

This act shall be implemented by the commissioner to maximize the capacity of banks to offer convenient and efficient financial services, to promote economic development, and to ensure that banks remain competitive with other types of financial service providers.

History: 1999, Act 276, Eff. Mar. 1, 2000

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities of the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.12103 Powers and duties vested under former act; transfer of property, books, and other papers; effect of orders and rules.

Sec. 2103.

(1) The powers and duties vested by law in the financial institutions bureau under former 1969 PA 319 are vested in the bureau under this act. Any hearing or other proceeding pending before the bureau before the effective date of this act shall not abate but is transferred to the bureau under this act and shall be conducted and determined by the bureau in accordance with the provisions of the law governing such hearing or proceeding.

(2) All property, credits, books, correspondence, funds, appropriations, records, files, and other papers belonging to the financial institutions bureau under former 1969 PA 319 are transferred to the bureau under this act. All orders and rules which have been issued under law by the commissioner under former 1969 PA 319, and which are in effect shall continue in effect until modified, suspended, revoked, or repealed by the commissioner.

History: 1999, Act 276, Eff. Mar. 1, 2000

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities of the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.12104 Deputies; appointment by commissioner; duties; revocation.

Sec. 2104.

(1) The commissioner shall appoint a chief deputy who shall perform the duties of the commissioner during the commissioner's absence from the bureau. The commissioner may appoint other deputies as he or she considers appropriate and may delegate general or specific responsibilities under this act to the other deputies. The commissioner may designate that 1 or more of the other deputies perform the duties of the commissioner when both the commissioner and the chief deputy commissioner are absent from the bureau. The chief deputy and other

deputies shall take and subscribe the constitutional oath of office and file it with the secretary of state.

(2) The commissioner may, at any time, revoke an appointment, designation, or delegation made under this section.

History: 1999, Act 276, Eff. Mar. 1, 2000

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities of the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.12105 Employees; appointment by commissioner; compensation; duties; revocation.

Sec. 2105.

(1) The commissioner may appoint employees to carry out specific functions under this act. The compensation, travel, and other expenses of the commissioner, deputy commissioners, and employees shall be paid in the manner provided by law for other state officers and employees, within the appropriations made by the legislature.

(2) The commissioner may delegate to employees duties authorized to the commissioner under this act.

(3) The commissioner may, at any time, revoke any delegation made under this section.

History: 1999, Act 276, Eff. Mar. 1, 2000

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities of the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.12106 Commissioner, deputy commissioner, or examiner; prohibited conduct.

Sec. 2106.

(1) During his or her term of office or employment, the commissioner, a deputy commissioner, or an examiner of the bureau shall not be a shareholder, either directly or indirectly, of a financial institution, a national bank, federal savings and loan association, or federal savings bank that maintains a main office or branch office in this state, or of any affiliate or subsidiary thereof. The commissioner, a deputy commissioner, or an examiner of the bureau may be a shareholder of a credit union, a mutual savings and loan association, or a mutual savings bank.

(2) During his or her term of office or employment, the commissioner, a deputy commissioner, or an examiner of the bureau shall not be an officer, director, or employee of a financial institution, or of a depository institution, or of any affiliate or subsidiary thereof or receive, either directly or indirectly, anything of value, or other compensation from such entities.

(3) If a deputy commissioner or an examiner of the bureau borrows from, or is or becomes indebted to a financial institution, he or she shall make a written report to the bureau stating the name of the lender, the amount and terms of the loan or indebtedness, the security given on the loan, and the purpose for which the proceeds are to be used.

(4) A deputy commissioner or an examiner of the bureau shall not borrow from or become indebted to a financial institution for which the deputy commissioner or examiner has direct supervisory responsibility, or from a subsidiary or affiliate of such a financial institution, except for installment debt transferred to a financial institution in the regular course of business by a seller of consumer goods. An examiner shall not borrow from or become indebted to a financial institution if the examiner has ever participated in an examination of the financial institution.

(5) The commissioner shall not borrow from or become indebted to a financial institution except for installment debt transferred to a financial institution in the regular course of business by a seller of consumer goods.

(6) Subsections (4) and (5) do not apply to loans made or indebtedness incurred before the commissioner's, deputy commissioner's, or examiner's term of office or made or incurred lawfully before the effective date of this act. If a loan received or indebtedness incurred in conformance with this act subsequently becomes nonconforming due to an event outside the commissioner's, deputy commissioner's, or examiner's control, the loan or indebtedness may be retained. Neither the term nor the amount of a nonconforming loan or indebtedness described in this subsection shall be increased following the event which made the loan or indebtedness nonconforming.

History: 1999, Act 276, Eff. Mar. 1, 2000

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities of the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.12107 Liability; immunity.

Sec. 2107.

The commissioner or any other employee of the bureau shall not be liable in any civil action for damages for any act done or omitted in good faith in performing the functions of his or her office.

History: 1999, Act 276, Eff. Mar. 1, 2000

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities of the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.12108 Annual report.

Sec. 2108.

For each calendar year the commissioner shall compile and publish an annual report in the form and containing information the commissioner determines necessary to reasonably summarize the operations of the bureau during the year.

History: 1999, Act 276, Eff. Mar. 1, 2000

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities of the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

487.12109 Confidentiality; disclosures.

Sec. 2109.

(1) The commissioner and all deputies, agents, and employees of the bureau shall keep secret all facts and information obtained in the course of their duties, except if the person is required under law to report upon, take official action, or testify in any proceedings regarding the affairs of an institution. This subsection applies to all former commissioners, deputies, agents, and employees of the bureau.

(2) This section does not apply to, and does not prohibit the furnishing of information or documents to, the federal, foreign, or out-of-state bank, association, or savings bank regulatory agencies, and is not applicable to disclosures made in the public interest by the commissioner, at his or her discretion.

History: 1999, Act 276, Eff. Mar. 1, 2000

Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities of the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Part 2 GENERAL POWERS

487.12201 Rules.

Sec. 2201.

The commissioner may promulgate rules under the administrative procedures act of 1969 as he or she considers necessary to effectuate the purposes and to enforce this act.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.12202 Examination of institution, its subsidiaries, and service entities.

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.

History: 1999, Act 276, Eff. Mar. 1, 2000 ;-- Am. 2016, Act 175, Eff. Sept. 12, 2016

487.12203 Fees; state bank regulatory fund.

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.

History: 1999, Act 276, Eff. Mar. 1, 2000 ;-- Am. 2016, Act 175, Eff. Sept. 12, 2016

487.12204 Declaratory rulings, orders, or determinations.

Sec. 2204.

(1) The commissioner may issue declaratory rulings in accordance with the administrative procedures act of 1969, or issue orders on applications by 1 or more banks to exercise powers not specifically authorized by this act that will authorize banks to exercise powers appropriate and necessary to compete with other providers of financial services.

(2) In the exercise of the discretion permitted by this section, the commissioner shall consider the ability of banks to exercise any additional power in a safe and sound manner, the authority of depository institutions operating under state or federal law or regulation, the powers of other competing entities providing financial services, and any specific limitations on bank powers contained in this act or in any other law of this state. The commissioner shall give notice, at least quarterly, to all banks of declaratory rulings, orders, or determinations issued during the preceding quarter under this section.

History: 1999, Act 276, Eff. Mar. 1, 2000

Part 3 ENFORCEMENT POWERS

487.12301 Subpoena powers.

Sec. 2301.

The commissioner may petition the circuit court for the county of Ingham or the circuit court in the jurisdiction where an examination is being conducted to issue a subpoena on behalf of the bureau which shall require the person subpoenaed to appear and testify under oath to any matter related to the examination and to produce any relevant documents.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.12302 Application.

Sec. 2302.

(1) A bank that seeks the commissioner's approval under section 2204, 3102, 3103, 3701, 3707, 3709, 4106, 4310, 4401, 5101, or 5102 shall submit an application to the bureau.

(2) The application shall contain information and be accompanied by documents as required by the bureau.

(3) If an application is considered incomplete by the bureau, it will either be returned for completion or the applicant will be requested to submit additional information as necessary to make the application complete.

(4) When the application is considered complete by the bureau, it shall be accepted and the process of reviewing its contents for a decision will begin on that date.

(5) The statutory period, as set forth in this section, regarding the issuance of orders by the commissioner shall commence on the date of acceptance of the application.

(6) If, subsequent to the date of acceptance, the applicant wishes to amend the application or supplement or provide additional material in connection with the application, the commissioner may suspend processing of the application or proceed with the statutory period for the issuance of an order.

(7) In connection with an application, the commissioner may consider additional information from any source.

(8) The commissioner shall approve or disapprove an application in writing within 100 days after the date of acceptance of an application, or the last amendment to the application. An order disapproving an application shall state the basis for disapproval.

(9) An applicant who is dissatisfied with an order of the commissioner, or an institution that is dissatisfied with an objection issued under section 3711 or 3713, may submit a written request for a reconsideration of the order or objection stating the reasons for the request. The request must be received by the bureau within 5 days after the date of the order or objection. The commissioner, within 10 days of receiving the request for reconsideration, shall render a decision on the request for reconsideration. If a petition for reconsideration is granted, the commissioner shall grant the applicant 10 days to file written arguments or briefs. The commissioner may allow for oral argument after granting a petition for reconsideration. The oral argument shall be held within 10 days after granting the petition. The commissioner shall issue a final order, objection, or withdrawal of an objection within 20 days after granting the petition for reconsideration.

(10) Appeal of an order or objection shall not be made by an applicant without first requesting a reconsideration of the order or objection.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.12303 Reconsideration of order, ruling, or finding; hearing.

Sec. 2303.

(1) Except with respect to rules promulgated under section 2201, a cease and desist order made under sections 2304 to 2314, an order made on an application seeking approval of the commissioner under section 2302(1), or an objection issued under section 3711 or 3713, an institution that is dissatisfied with an order, ruling, or finding issued by the commissioner may request a reconsideration of the order, ruling, or finding within 10 days after the issuance of the order, ruling, or finding. The commissioner may conduct a formal hearing before the issuance of an order, ruling, or finding. Within 30 days after the receipt of a written request for reconsideration, the commissioner shall hold a formal hearing unless a formal hearing has been held before the issuance of the order, ruling, or finding.

(2) A hearing held under subsection (1) shall be conducted under the administrative procedures act of 1969.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.12304 Notice of charges; hearing; issuance of order to cease and desist; enforcement; notice to

comptroller of currency and attorney general.

Sec. 2304.

(1) If in the opinion of the commissioner an institution is engaging, has engaged, or is about to engage in an unsafe or unsound practice in conducting the business of the institution or is violating, has violated, or is about to violate a law or rule, the commissioner may issue and serve upon the institution a notice of charges. The notice shall contain a statement of the facts constituting the alleged unsafe or unsound practice or violation, and shall fix a time and place for a hearing to determine whether an order to cease and desist should issue. The hearing shall be not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or later date is set by the commissioner at the request of the institution. If the institution does not appear at the hearing by a duly authorized representative, it shall be considered to have consented to the issuance of a cease and desist order.

(2) In the event of consent, or if upon the record made at the hearing the commissioner finds that an unsafe or unsound practice or violation specified in the notice of charges has been established, the commissioner may issue and serve upon the institution an order to cease and desist from the practice or violation. The order may require the institution and its directors, officers, employees, and agents to cease and desist from the practice or violation and to take affirmative action to correct the conditions resulting from the practice or violation.

(3) A cease and desist order becomes effective 30 days after the service of the order upon the institution, except in the case of an order issued upon consent which shall become effective at the time specified in the order, and shall remain effective and enforceable as provided in the order, except to the extent it is stayed, modified, terminated, or set aside by action of the commissioner or a reviewing court.

(4) If the commissioner determines that an out-of-state bank branch located in this state is acting in violation of the laws of this state or that the activities of the branch are being conducted in an unsafe and unsound manner, the commissioner may undertake enforcement actions and proceedings as would be permitted if the branch were a bank.

(5) If the commissioner determines that a national bank is acting in violation of the laws of this state, the commissioner shall notify the comptroller of the currency and the attorney general.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.12305 Temporary cease and desist order.

Sec. 2305.

(1) If the commissioner determines that the violation or threatened violation or the unsafe or unsound practice or practices, specified in the notice of charges served upon the institution under section 2304(1), or the continuation of the violation or practice, is likely to cause insolvency or substantial dissipation of assets or earnings of the institution, or is likely to otherwise seriously prejudice the interests of its depositors, the commissioner may issue a temporary order requiring the institution to cease and desist from any violation or practice. The order shall become effective upon service upon the institution and, unless set aside, limited, or suspended by a court in proceedings authorized by subsection (2), shall remain effective and enforceable pending the completion of the proceedings under section 2304.

(2) Within 10 days after the institution has been served with a temporary cease and desist order, the institution may apply to the circuit court for the county in which the principal office of the institution is located for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of the proceedings under section 2304. The court shall have jurisdiction to issue the injunction.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.12306 Conduct constituting breach of fiduciary duty; order of removal or prohibition.

Sec. 2306.

(1) If in the opinion of the commissioner any director or officer of an institution has committed any violation of

law or rule or of a cease and desist order or other order of the commissioner which has become final, or has engaged or participated in any unsafe or unsound practice in connection with the institution, or has committed or engaged in any act, omission, or practice which constitutes a breach of fiduciary duty as a director or officer and the commissioner determines that the institution has suffered or will probably suffer substantial financial loss or other damage or that the interests of its depositors could be seriously prejudiced by reason of the violation or practice or breach of fiduciary duty, the commissioner may serve upon the director or officer a written notice of intention to remove the person from office.

(2) If in the opinion of the commissioner any director, officer, or any other person participating, or who has participated, in the conduct of the affairs of an institution, by conduct or practice with respect to the institution or other business organization resulted in substantial financial loss or other damage, has evidenced personal unfitness to participate in the conduct of the affairs of the institution, the commissioner may serve upon the director, officer, or other person a written notice of intention to remove the person from office or to prohibit the person's further participation in any manner in the conduct of the affairs of the institution.

(3) In respect to a person to whom notice is sent under subsection (1) or (2), if the commissioner considers it necessary for the protection of the institution or the interests of its depositors that the person be suspended from office or prohibited from further participation in any manner in the conduct of the affairs of the institution, the commissioner may serve upon the person a written notice suspending him or her from office or prohibiting him or her from further participation in any manner in the conduct of affairs of the institution. The suspension or prohibition shall be effective upon service of the notice and, unless stayed by a court in proceedings authorized by section 2307, shall remain in effect pending the completion of the administrative proceedings and the commissioner dismisses the charges specified in the notice or, if an order of removal or prohibition is issued, until the effective date of the order. Copies of the notice shall also be served upon the institution of which the person is a director or officer or in the conduct of whose affairs the person has participated.

(4) A notice of intention to remove a person from office or to prohibit participation in the conduct of the affairs of any institution shall contain a statement of the facts constituting grounds for the removal, and fix a time and place for a hearing. Except as otherwise approved by the commissioner, the hearing shall be held not earlier than 30 days nor later than 60 days after the date of service of the notice. If the person does not appear at the hearing in person or by a duly authorized representative, the person shall be considered to have consented to the issuance of an order of removal or prohibition. In the event of consent, or if upon the record made at the hearing the commissioner finds that any grounds specified in the notice have been established, the commissioner may issue an order of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the institution, as appropriate. The order is effective at the expiration of 30 days after service upon the institution and the person concerned except in the case of an order issued upon consent, which is effective at the time specified in the order. The order shall remain effective and enforceable unless it is stayed, modified, terminated, or set aside by the commissioner or a reviewing court.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.12307 Stay of suspension or prohibition; issuance by court.

Sec. 2307.

Within 10 days after the date a person has been suspended from office or prohibited from participation in the conduct of the affairs of any institution under section 2306(3), the person may apply to the Ingham county circuit court or the circuit court for the county in which the principal office of the institution is located for a stay of the suspension or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon the person under section 2306(1) or (2) and the court shall have jurisdiction to stay the suspension or prohibition.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.12308 Conduct involving felony or misdemeanor charge; order of removal or prohibition.

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).

History: 1999, Act 276, Eff. Mar. 1, 2000 ;-- Am. 2016, Act 175, Eff. Sept. 12, 2016

487.12309 Quorum of board of directors.

Sec. 2309.

If at any time, because of the suspension or removal of 1 or more directors under this act, the board of directors of an institution has less than a quorum of directors, all powers and functions vested in or exercisable by the board shall vest in and be exercisable by the directors on the board not suspended or removed, until there is a quorum of the board of directors. If all of the directors of an institution are suspended or removed under this act, the commissioner shall appoint persons to serve temporarily as directors pending the termination of the suspensions or removals, or until their successors are duly elected and take office.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.12310 Hearing; decision; review; consent order; modification, termination, or setting aside order.

Sec. 2310.

(1) An administrative hearing provided for in section 2304, 2305, 2306, or 2307 shall be conducted under the administrative procedures act of 1969. The hearing shall be private, unless the commissioner, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest. After the hearing and within 90 days after notifying the parties that the case has been submitted for final decision, the commissioner shall render a decision that includes findings of fact upon which the decision is predicated and issue and serve upon each party to the proceeding an order consistent with this section.

(2) Except as provided in subsection (3), a party to the proceeding, or any person required by an order issued under section 2304, 2305, 2306, or 2308 to cease and desist from any of the violations or practices stated in the order or to be suspended, removed, or prohibited from participation in the conduct of the affairs of any institution, may request a review by a court of competent jurisdiction of the order served under subsection (1). The petition for review shall be filed within 30 days from the date the order is issued.

(3) An order entered as a consent order shall be reviewed as provided in the administrative procedures act of 1969.

(4) Unless a petition for review is timely filed under subsection (2), the commissioner may, at any time, upon appropriate notice, modify, terminate, or set aside the order. If a petition is timely filed, the commissioner may modify, terminate, or set aside the order with the permission of the court.

(5) Unless otherwise specifically ordered by the court, a proceeding for review under this section does not stay an order issued by the commissioner.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.12311 Enforcement powers; jurisdiction of court.

Sec. 2311.

(1) The commissioner may apply to the circuit court of the county in which the principal office of the institution is located, or to the circuit court for Ingham county, for the enforcement of any effective and outstanding notice or order issued under section 2304, 2305, 2306, 2308, or 2310, including any temporary cease and desist order issued under section 2305(1). The court shall have jurisdiction and power to order and require compliance with the notice or order.

(2) Except as otherwise provided in this section, a court does not have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under section 2304, 2305, 2306, 2308, or 2310 or to review, modify, suspend, terminate, or set aside the notice or order.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.12312 Prohibited conduct; fine.

Sec. 2312.

A person, against whom there is outstanding and effective any notice or final order under section 2306(1), (2), or (3) or of section 2308, who participates in any manner in the conduct of the affairs of the institution involved, or directly or indirectly solicits or procures, or transfers or attempts to transfer, or votes or attempts to vote, any proxies, consents, or authorizations in respect of any voting rights in the institution, or, without the prior written approval of the commissioner, votes for a director or serves or acts as a director, officer, or employee of any institution shall be fined not more than \$5,000.00 or imprisoned not more than 1 year, or both.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.12313 Service of notice or order.

Sec. 2313.

A service required or authorized to be made by the commissioner under this section or section 2304, 2305, 2306, 2308, 2310, or 2314 may be made by registered or certified mail, or in any other manner reasonably calculated to give actual notice. Copies of a notice or order served by the commissioner upon an institution or any person participating in the conduct of the institution's affairs, under section 2304, 2305, 2306, 2308, or 2310 shall also be sent to the appropriate federal and out-of-state bank, association, and savings bank regulatory agencies.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.12314 Notice to federal supervisory authorities.

Sec. 2314.

In connection with a proceeding under section 2304, 2305(1), or 2306, the commissioner shall provide the appropriate federal supervisory authorities with notice of intent to institute a proceeding and the grounds for the

proceedings. An institution or other party that is the subject of any notice or order issued by the commissioner under section 2304, 2305, 2306, 2308, or 2310 shall not have standing to raise the requirements of section 2313 or this section with respect to notifying federal supervisory authorities as ground for attacking the validity of any notice or order.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.12315 Foreign bank; prohibited conduct.

Sec. 2315.

(1) If, in the opinion of the commissioner, a foreign bank is engaging, has engaged, or is about to engage, in an unsafe or unsound practice in conducting the business of a state agency, state foreign bank branch, or foreign bank representative office, or is violating, has violated, or is about to violate, a state or federal law or a state or federal rule or regulation, the commissioner may issue and serve upon the foreign bank a notice of intent to revoke the foreign bank's authority to engage in the business of banking in this state. The notice shall contain a statement of the facts constituting the alleged unsafe or unsound practice or violation and inform the foreign bank of its right to request a hearing within 10 days.

(2) If the foreign bank timely requests a hearing, the commissioner shall hold a hearing in accordance with the administrative procedures act of 1969.

(3) Within 60 days after the date of the hearing, the commissioner shall file a written decision containing his or her findings and serve a copy upon the foreign bank.

History: 1999, Act 276, Eff. Mar. 1, 2000

Part 4 RECEIVERSHIPS AND CONSERVATORSHIPS

487.12401 Liquidation; receiver or other liquidating agent.

Sec. 2401.

(1) Except as provided in subsection (2), a bank subject to this act shall not be liquidated except as provided by this act. A receiver or other liquidating agent shall not be appointed for a bank or its assets and property except as provided in this act.

(2) If the federal deposit insurance corporation is appointed as receiver of a bank, the receivership procedures of the federal deposit insurance corporation shall govern the receivership.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.12402 Appointment of receiver; conditions; procedures.

Sec. 2402.

(1) If a bank has refused to pay its deposits or obligations in accordance with the terms under which the deposits or obligations were incurred, becomes insolvent, refuses to submit its books, papers, and records for inspection by the commissioner, or if the bank appears to the commissioner that the bank is in an unsafe or unsound condition, the commissioner shall either appoint a conservator under section 2406 or apply to the circuit court for Ingham county or for the county in which the bank is located for the appointment of a receiver for the bank.

(2) In any proceeding for the appointment of a receiver, the commissioner shall request that the court appoint the federal deposit insurance corporation as the receiver if the deposits in the bank are insured to any extent by the

corporation. The court may act upon the application immediately and without notice to any person. If at any time it appears to the court that the claimed reasons for receivership do not exist, the court shall dissolve the receivership and terminate the proceedings.

(3) The federal deposit insurance corporation may act as receiver without bond. All other receivers, with the exception of the bureau employee appointed as receiver in his or her official capacity, shall post a bond in an amount to be determined by the court.

(4) If the deposits of a bank described in subsection (1) are not insured by the federal deposit insurance corporation, the commissioner may elect not to seek appointment of a receiver for the bank. If a receiver is not sought, the business corporation act, 1972 PA 284, MCL 450.1101 to 450.2098, governing insolvent business corporations, title 11 of the United States Code, being section 11 U.S.C. 101, governing bankruptcy, and sections 5201 to 5265 of the revised judicature act of 1961, MCL 600.5201 to 600.5265, governing assignments for the benefit of creditors, shall apply to the insolvent bank.

(5) The receiver shall on a regular basis report to the commissioner regarding all matters involving the receivership.

(6) If any bank has been closed and placed in receivership, and the federal deposit insurance corporation pays or makes available for payment the insured deposit liabilities of the closed bank, the corporation, whether or not it has become receiver of the bank, is subrogated to all of the rights of the owners of the deposits against the closed bank in the same manner and to the same extent as subrogation of the corporation is provided for in the federal deposit insurance act.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.12403 Receiver; duties; powers.

Sec. 2403.

(1) Subject to court approval, a receiver shall do all of the following:

(a) Take possession of the books, records, and assets of the bank and collect all debts, dues, and claims belonging to the bank.

(b) Sue and defend, compromise, and settle all claims involving the bank.

(c) Sell all real and personal property.

(d) Exercise all fiduciary functions of the bank as of the date of the commencement of the receivership.

(e) Pay all administrative expenses of the receivership which shall be a first charge upon the assets of the bank and shall be fully paid before any final distribution or payment of dividends to creditors or shareholders.

(f) Pay ratably any and all debts of the bank, except that debts not exceeding \$500.00 in amount may be paid in full but the holders of such debt shall not be entitled to interest on the debt.

(g) Repay ratably any amount which may have been paid in by any shareholder by reason of assessments made upon the stock of the bank by order of the commissioner in accordance with this act.

(h) Pay ratably to the shareholders of the bank in proportion to the number of shares held and owned by each the balance of the net assets of the bank after payment or provision for payments as provided in subdivisions (e), (f), and (g).

(i) Have all the powers of the directors, officers, and shareholders of the bank as necessary to support an action taken on behalf of the bank.

(j) Hold title to all the bank's property, contracts, and rights of action beginning on the date the bank is ordered in receivership.

(2) Subject to court approval, a receiver may do any of the following:

(a) Borrow money as necessary or expedient in aiding the liquidation of the bank and secure these borrowings by the pledge, hypothecation, or mortgage of the assets of the bank.

(b) Employ agents, legal counsel, accountants, appraisers, consultants, and other personnel the receiver considers necessary to assist in the performance of the receiver's duties. With the prior written approval of the commissioner, the receiver may employ personnel of the bureau if the receiver considers the employment to be advantageous or desirable. The expense of employing bureau personnel is an administrative expense of the liquidation that is payable to the bureau.

(c) Exercise other powers and duties as may be provided by the court under the laws of this state applicable to the appointment of receivers by the circuit court.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.12404 Lien on property or assets; voidable transfer.

Sec. 2404.

(1) A transfer of or lien on the property or assets of the bank is voidable by the receiver if the transfer or lien was 1 or more of the following:

(a) Made or created within 1 year before the date the bank is ordered in receivership if the receiving transferee or lien holder was at the time an affiliate, officer, director, employee, or principal shareholder of the bank or an affiliate of the bank.

(b) Made or created on or within 90 days before the date the bank is ordered in receivership with the intent of giving to a creditor or depositor, or enabling a creditor or depositor to obtain, a greater percentage of the claimant's debt than is given or obtained by another claimant of the same class.

(c) Accepted after the bank is ordered in receivership by a creditor or depositor having reasonable cause to believe that a preference will occur.

(d) Voidable by the bank and the bank may recover the property transferred or its value from the person to whom it was transferred or from a person who has received it, unless the transferee or recipient was a bona fide holder for value before the date the bank was ordered in receivership.

(2) For purposes of this section, "preference" means a transfer or grant of an interest in the property or assets of the bank that is either of the following:

(a) Made or incurred with the intent to hinder, delay, or defraud an entity to which, on or after the date that the transfer or grant of interest was made, the bank was or became indebted.

(b) Made or incurred for less than a reasonably equivalent value in exchange for the transfer or grant of interest if the bank was insolvent on the date that the transfer or grant of interest was made or became insolvent as a result of the transfer or grant of interest.

(3) A person acting on behalf of the bank, who knowingly has participated in implementing a voidable transfer or lien, and each person receiving property or the benefit of property of the bank as a result of the voidable transfer or lien, is personally liable for the property or benefit received and shall account to the receiver for the benefit of the bank.

(4) Notwithstanding any other provisions of this act, an otherwise voidable transfer under this section will not be voided by the receiver, if any of the following apply:

(a) The transfer or lien does not exceed the value of \$1,000.00.

(b) The transfer or lien was received in good faith by a person, who is not a person described in subsection (1) (a), who gave value.

(c) The transfer of lien was intended by the bank and the transferee or lien holder to be, and in fact substantially was, a contemporaneous exchange for new value given to the bank.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.12405 Records.

Sec. 2405.

(1) On approval by the court, the receiver may dispose of records of the bank in receivership that are obsolete and unnecessary to the continued administration of the receivership proceeding and retain the remaining records of the bank and the receivership for a period of time as ordered by the court.

(2) The receiver may devise a method for the effective, efficient, and economical maintenance of the records of the bank and of the receiver's office, including maintaining those records on any medium approved by the court.

(3) The receiver may reserve assets of an estate, deposit them in an account, and use them to maintain the records of a liquidated bank after the closing of the receivership proceeding.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.12406 Conservator; appointment; bond and security; qualifications; expenses.

Sec. 2406.

(1) If any of the grounds under section 2402 authorizing the appointment of a receiver exist or if the commissioner considers it necessary in order to conserve the assets of a bank for the benefit of the depositors and other creditors of the bank, the commissioner may appoint a conservator for the bank and require of the conservator a bond and security as determined by the commissioner.

(2) The commissioner may appoint as conservator an employee of the bureau or any other competent and disinterested person. The bureau shall be reimbursed out of the assets of the conservatorship for all sums expended by it in connection with the conservatorship as expenses. All expenses of any conservatorship shall be paid out of the assets of the bank, upon the approval of the commissioner, and shall be a first charge upon the assets and paid in full before any final distribution or payment of dividends to creditors or shareholders.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.12407 Conservator; rights, powers, and privileges.

Sec. 2407.

(1) The conservator, under the direction of the commissioner, shall take possession of the books, records, and assets of the bank, and take any action necessary to conserve the assets of the bank pending further disposition of its business as provided by law. The conservator shall have all the rights, powers, and privileges of receivers of banks appointed under this act and shall be subject to the obligations and penalties to which receivers are subject which are not inconsistent with this act with respect to conservators.

(2) During the time that the conservator remains in possession of the bank, the rights of all parties with respect to the bank, subject to the other provisions of this act with respect to conservators, shall be the same as if a receiver had been appointed. The conservator may execute the discharge of any real estate mortgage held as part of the assets of the bank.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.12408 Deposits received while bank in conservatorship.

Sec. 2408.

(1) While a bank is in conservatorship, the commissioner may require the conservator to set aside and make available for withdrawal by depositors and payment to other creditors, on a ratable basis, amounts that in the opinion of the commissioner may be used safely for this purpose.

(2) The commissioner may permit the conservator to receive deposits.

(3) Deposits received while the bank is in conservatorship shall not be subject to any limitation as to payment or withdrawal. The deposits and any new assets acquired on account of the deposits shall be segregated and held especially for the new deposits and shall not be used to liquidate any indebtedness of the bank existing at the time that a conservator was appointed for it or any subsequent indebtedness incurred for the purpose of liquidating any indebtedness of the bank existing at the time the conservator was appointed.

(4) The requirements of subsection (3) shall remain in effect not more than 15 days following the date that the conservator returns control of the bank to its board of directors.

(5) Deposits received while the bank is in conservatorship shall be kept in cash, invested in the direct obligations of the United States, or deposited in depository institutions designated by the commissioner.

(6) Before returning control of the bank to its board of directors, the conservator shall publish a notice in form approved by the commissioner, stating the date on which the affairs of the bank will be returned to its board of directors and that the provisions of subsection (3) will not be in effect after 15 days from that date. The conservator

shall send a copy of the notice to every person who deposited money in the bank after the appointment of the conservator and before the time when control of the bank is returned to its directors.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.12409 Authority of conservator to borrow money; purpose.

Sec. 2409.

With the prior approval of the commissioner, the conservator of a bank may borrow money as necessary or expedient in aiding the operation, reorganization, or liquidation of the bank, including the payment of liquidating dividends, and may secure the loans by the pledge, hypothecation, or mortgage of the assets of the bank.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.12410 Termination of conservatorship.

Sec. 2410.

(1) If satisfied that it may be done safely and that it would be in the public interest, the commissioner may terminate a conservatorship and permit the bank to resume the transaction of its business subject to terms, conditions, restrictions, and limitations as he or she may prescribe.

(2) If the commissioner determines that it would be in the public interest, the commissioner may terminate a conservatorship and apply for the appointment of a receiver for the bank as provided in section 2402.

History: 1999, Act 276, Eff. Mar. 1, 2000

Chapter 3
BANK ORGANIZATION AND STRUCTURE
Part 1
FORMATION

487.13101 Bank organization generally.

Sec. 3101.

Not less than 5 natural persons, a majority of whom are residents of this state and citizens of the United States or its territories or possessions, or a bank holding company, may file an application to organize a bank under this act.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13102 Bank organization; application.

Sec. 3102.

(1) An application to organize a bank under this act shall be in the form prescribed by the commissioner and shall

set forth information as the commissioner may require.

(2) The commissioner shall examine the information and statements contained in the application and make any other investigation as to the persons, conditions, and circumstances surrounding, affecting, or pertaining to the organization of the bank, as is necessary to satisfy the commissioner as to all of the following:

(a) Whether the character, responsibility, and fitness of the incorporators, and of the proposed directors and officers, and their motives in seeking to organize the bank are such as to command the confidence of the community and to warrant the belief that the business of the proposed bank will be honestly and efficiently conducted.

(b) Whether the convenience and needs of the public will be served by the proposed bank.

(c) The likelihood of successful operation of the proposed bank, giving consideration to, but not limited to, both of the following:

(i) Economic and demographic characteristics of the area primarily to be served by the bank.

(ii) The competition offered by existing banks and other financial services providers.

(d) Whether the capital structure of the proposed bank is adequate for the conduct of its business.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13103 Organization of depository institutions generally.

Sec. 3103.

(1) Any number of depository institutions may apply to organize a bank exclusively to serve depository institutions or their officers, directors, employees, and affiliates.

(2) Any number of depository institutions may apply to organize a bank to engage exclusively in providing trust services and other services as may be authorized by order or declaratory ruling of the commissioner.

(3) A depository institution may apply to the commissioner for permission to organize a bank under this section. The application shall be in the form prescribed by the commissioner and set forth the information the commissioner requires.

(4) The commissioner shall examine the information contained in the application and make any other investigation the commissioner considers necessary pertaining to the organization of the new bank. The commissioner shall issue to the applicants, within the time period provided in section 2302, written notice of approval or disapproval of the application.

(5) A depository institution organized under this section is not subject to the provisions of section 3102, but shall comply with all other provisions of the act.

(6) The shares of stock of a bank organized under this section shall be owned exclusively by depository institutions.

(7) As used in this section, "applicant" means the depository institutions making an application under this section.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13104 Expenses of incorporators; reimbursement.

Sec. 3104.

(1) Following the date authorized by the commissioner for the bank to commence business, a bank and its incorporators may jointly request permission from the commissioner for the bank to reimburse the incorporators for the incorporators' reasonable and necessary organizational expenses.

(2) A joint request by a bank and its incorporators shall include an accounting of the funds expended by the incorporators which shall be prepared by an independent certified public accountant in accordance with generally accepted accounting principles.

(3) If the commissioner determines that the accounting of funds expended is substantially similar to the amount disclosed in the application as estimated expenses of organization, the commissioner may authorize the bank to reimburse the incorporators.

(4) The commissioner may waive the requirements of this section if the expenses of organizing a bank will be paid by a bank holding company.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13105 Bank as body corporate; authorization.

Sec. 3105.

If the commissioner approves the articles of incorporation as required by this act, the bank shall become a body corporate. A bank shall not transact any business, except as is incidental and necessarily preliminary to its organization, until it has been authorized by the commissioner to commence the business of banking.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13106 Commencement of business.

Sec. 3106.

(1) Within 30 days after the approval of its articles of incorporation, or a later time not to exceed 1 year as approved by the commissioner, the bank shall notify the commissioner that all of its capital and surplus has been fully paid in and that it has complied with all of the required provisions of this act necessary to be authorized to commence the business of banking.

(2) The commissioner shall make examinations as he or she considers necessary to verify the conditions set forth in subsection (1), and if it appears that the bank is lawfully entitled to commence business, the commissioner, within 30 days after receiving the notice provided for in this section, shall give to the bank a certificate under the official seal of the bureau that the bank has complied with all of the required provisions and is authorized to commence business.

(3) The application is considered abandoned and of no further effect if the bank fails to furnish the notice provided for in this section within the specified time or fails to comply with the required provisions within the period of time determined by the commissioner.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13107 Organization meeting; notice.

Sec. 3107.

The organizational meeting of every bank shall be called by a notice designating the time and place of the meeting and stating the purpose for which the meeting is called. The notice shall be served personally on all the incorporators at least 5 days before the date set for the meeting. If all the incorporators are present at the meeting or in writing waive notice, then no notice shall be required for the organizational meeting.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13108 Capital adequacy; requirements.

Sec. 3108.

(1) A bank organized under this act shall have capital in an amount the commissioner considers adequate to conduct its business.

(2) A bank shall not be authorized to commence business until it has surplus at least equal to 20% of its capital.

(3) After organization, each bank shall maintain an adequate capital structure appropriate to conduct its business and the protection of its depositors. The capital adequacy of a bank shall be analyzed and appraised in relation to the character of its management, the liquidity of assets, history of earnings and of the retention of earnings, the potential volatility of the deposit structure, and its risk management, with due regard to the bank's capacity to furnish the broadest service to the public.

(4) At all times a bank shall maintain surplus in an amount equal to at least the amount of its capital, except as provided in subsection (2) and except as provided in section 3806, and shall not reduce surplus without the approval of the commissioner.

History: 1999, Act 276, Eff. Mar. 1, 2000

Part 2 ARTICLES OF INCORPORATION

487.13201 Articles of incorporation; approval generally.

Sec. 3201.

(1) Upon approval of the application under section 3103 by the commissioner, at least 2 original articles of incorporation, executed by the incorporators, shall be submitted to the commissioner. The commissioner shall approve the articles if the articles conform to law. One of the original articles will be retained for the bureau's records and 1 of the original articles will be forwarded to the incorporators.

(2) Before approving, certifying, and distributing the articles of incorporation, the incorporators shall furnish evidence to the commissioner that a firm commitment to insure deposit accounts up to the maximum permitted by federal law has been issued by the federal deposit insurance corporation, unless the commissioner, for good cause shown, waives this requirement.

(3) Approval of articles of incorporation by the commissioner under this act does not indemnify the bank against claims for the improper use of the bank name stated in the articles.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13202 Articles of incorporation; contents.

Sec. 3202.

(1) The articles of incorporation shall specify all of the following:

(a) The name of the bank.

(b) The county and the city, village, or township where the principal office of the bank is to be located.

(c) The purpose or purposes of incorporation as provided in this act.

(d) The authorized number of shares of its capital stock, and 1 of the following:

(i) If the bank is to be authorized to issue only 1 class of stock, the total number of shares of stock that the bank may issue and the par value of each share.

(ii) If the bank is to be authorized to issue more than 1 class of stock, a statement of the total number of shares of all classes of stock that the bank may issue, the number of shares of each class, the par value of each share of each class, and a statement of all designations, powers, preferences, and rights and the qualifications, limitations, and restrictions of each class.

(e) The names of the incorporators.

(f) The period for which the bank is organized, which may be in perpetuity.

(g) That shareholders of the bank may be assessed a capital deficiency payment and that if such assessment is not paid the directors may sell any or all of the shares owned by the shareholder to satisfy the assessment.

(h) Any other provisions consistent with the laws of this state for regulating the business of banking and for the conduct of the affairs of the bank.

(2) Articles approved by the commissioner before the effective date of this act are considered to be in compliance with this section.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13203 Articles of incorporation; amendments.

Sec. 3203.

(1) With the approval of the commissioner, and by vote of shareholders owning a majority of voting shares of the bank, a bank may amend its articles of incorporation in any manner not inconsistent with this act. An amendment, signed by an authorized officer or officers of the bank, shall be effective when approved by the commissioner.

(2) Notwithstanding subsection (1), an amendment that provides solely for a change in the name of the bank is not subject to the approval of the commissioner and shall be effective on the date it is received by the commissioner or at a later date specified by the bank.

History: 1999, Act 276, Eff. Mar. 1, 2000

Part 3 DISSOLUTION

487.13301 Proposed resolution of dissolution; certificate of termination; designation of liquidating agent or committee; reports; examination by commissioner; filing of certificate; termination.

Sec. 3301.

(1) A solvent bank may go into dissolution and be closed upon expiration of its corporate term or by the vote of its shareholders.

(2) The proposed dissolution shall be submitted for approval at any meeting of shareholders. Notice shall be given to each shareholder of record within the time and in the manner as provided in this act for the giving of notice of meetings of shareholders, and shall state that a purpose of the meeting is to vote on dissolution of the bank.

(3) At the meeting, a vote of shareholders shall be taken on the proposed resolution of dissolution. The dissolution shall be approved upon receiving the affirmative vote of the holders of at least 2/3 of the outstanding shares of the bank entitled to vote on dissolution.

(4) The board of directors immediately at expiration of its corporate term or adoption of a resolution of dissolution by the shareholders shall submit to the commissioner in duplicate a certificate of termination. The certificate shall be signed by a majority of the remaining members of the board of directors on a form approved by the commissioner.

(5) Within 3 months after the date the certificate of termination is submitted under subsection (4), the shareholders shall designate 1 or more persons to act as a liquidating agent or committee. The liquidating agent or committee shall conduct the dissolution in accordance with this act and other applicable law under the supervision of the commissioner and the board of directors. The agent or committee shall furnish to the bank in dissolution a bond satisfactory to the commissioner.

(6) The liquidating agent or committee shall submit to the commissioner reports in the form and at the times the commissioner may require. The liquidating agent or committee shall make periodic reports not less frequently than semiannually to the shareholders. A copy of each periodic shareholder report shall be filed with the commissioner.

(7) The shareholders may remove the liquidating agent or committee and appoint a new agent or a new committee at a special meeting of shareholders by vote of a majority of the shares entitled to vote. Notice shall be given to each shareholder of record within the time and in the manner as provided in this act for the giving of notice of meetings of shareholders and shall state that the purpose of the meeting is to vote on removing the liquidating agent or committee.

(8) The commissioner may examine the bank in dissolution at any time for the purpose of determining that the rights of the depositors and creditors are being properly served.

(9) If the commissioner finds that a dissolution has been completed in conformity to law and that all fees and charges have been paid as required by law, the commissioner shall file 1 copy of the certificate of termination in the office of the bureau and shall certify and deliver 1 copy to the liquidating agent or committee. Upon the filing of the certificate the existence of the bank is terminated.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13302 Bank in dissolution as body corporate.

Sec. 3302.

(1) A bank that begins dissolution under section 3301 shall continue to be a body corporate until the commissioner certifies and files the certificate of termination under section 3301(9) for all of the following:

- (a) Prosecuting and defending actions for or against the bank.
- (b) Disposing of and conveying the bank's property.
- (c) Dividing the bank's assets.
- (d) Gradually settling and closing its affairs.

(2) Subject to section 3401, a bank in dissolution shall not continue to be a body corporate for the purpose of continuing the business for which it was organized.

(3) An action, suit, or proceeding commenced by or against the bank in dissolution must be commenced before the filing of the certificate of termination under section 3301(9).

(4) If the number of directors of a bank in dissolution is less than the full number of directors required or authorized by statute or by the bylaws of the bank, a majority of the remaining directors or the sole remaining director shall possess the same powers in acting for the bank in dissolution under this act as the duly authorized board of directors of the bank possessed before the commencement of dissolution.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13303 Bank in dissolution; function of officers, directors, and shareholders.

Sec. 3303.

(1) Subject to section 3302 or as otherwise provided by the commissioner, a bank in dissolution, its officers, directors, and shareholders shall continue to function in the same manner as if dissolution had not occurred.

(2) The directors of the bank in dissolution are not considered to be trustees of its assets and shall be held to no greater standard of conduct than that prescribed by section 3504.

(3) Title to the assets of a bank in dissolution remains in the bank until transferred.

(4) The dissolution of the bank does not change quorum or voting requirements for the board or shareholders, and does not alter provisions regarding election, appointment, resignation, or removal of, or filling vacancies among, directors or officers, or provisions regarding amendment or repeal of bylaws or adoption of new bylaws.

(5) Shares of the stock of a bank in dissolution may be transferred.

(6) The bank in dissolution may sue and be sued in its corporate name and process may issue by and against the bank in dissolution in the same manner as if dissolution had not occurred.

(7) An action brought against the bank before the commencement of its dissolution is not limited or affected because of the dissolution.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13304 "Existing claim" and "existing claimant" defined; notice to depositors and creditors; existing claims; effective date of written notice.

Sec. 3304.

- (1) As used in this section:
 - (a) "Existing claim" means a claim or right against the bank in dissolution, liquidated, or unliquidated. It does not include a contingent liability or a claim based on an event occurring after the commencement of dissolution.
 - (b) "Existing claimant" means a person holding an existing claim.
- (2) The board of directors of a bank in dissolution shall notify the bank's depositors and creditors in writing of the dissolution within 30 days after submitting the certificate of termination under section 3301(4). The written notice shall include all of the following:
 - (a) A mailing address where an existing claim can be sent.
 - (b) A statement that the bank in dissolution may demand sufficient information to permit it to make a reasonable judgment whether the existing claim should be accepted or rejected.
 - (c) The deadline, not less than 3 months from the effective date of the written notice, by which the existing claim shall be received.
 - (d) A statement that the existing claim will be barred if not received by the deadline.
- (3) The notice under subsection (2) does not constitute an acceptance that a person to whom the notice is directed has a valid existing claim against the bank in dissolution.
- (4) An existing claim against the bank in dissolution is barred if either of the following applies:
 - (a) The existing claimant who was given written notice under subsection (2) does not file the claim with the bank by the deadline.
 - (b) The existing claimant who was given written notice under subsection (2) and whose existing claim was rejected in writing by the bank in dissolution does not commence a proceeding to enforce the existing claim within 90 days from the effective date of the written notice of rejection.
- (5) The effective date of the written notice under this section is the earliest of the following:
 - (a) The date it is received.
 - (b) Five days after its deposit in the United States mail as evidenced by the postmark, if it is mailed postpaid and correctly addressed.
 - (c) The date shown on the return receipt, if the notice is sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13305 "Claim" and "claimant" defined; notice of dissolution; publication; requirements.

Sec. 3305.

- (1) As used in this section:
 - (a) "Claim" means a claim or right against the bank in dissolution, liquidated or unliquidated, of a claimant that did not receive the written notice required by section 3304.
 - (b) "Claimant" means a person holding a claim.
- (2) The board of directors of a bank in dissolution shall publish notice of dissolution. The first notice shall be published within 30 days after submitting the certificate of termination under section 3301(4) and request that persons with claims against the bank in dissolution present them as required by the notice.
- (3) The notice shall comply with all of the following:
 - (a) Be published once each week for 8 consecutive weeks.
 - (b) Describe the information to be included in a claim and provide a mailing address where the claim is to be sent.
 - (c) Contain a statement that the bank in dissolution may demand sufficient information to permit it to make a reasonable judgment whether the claim should be accepted or rejected.
 - (d) State the deadline, not less than 6 months from the last publication date, by which the claim shall be received.
 - (e) State that a claim against the bank in dissolution will be barred unless a proceeding to enforce the claim is commenced within 6 months after the last publication date of the notice published under this section.
- (4) A claim against the bank in dissolution is barred if any of the following apply:
 - (a) The claimant does not deliver a claim or commence a proceeding in an appropriate court to enforce the claim against the bank in dissolution within 6 months after the last publication date of the notice published under this section.
 - (b) The claimant whose claim was rejected in writing by the bank in dissolution does not commence a proceeding to enforce the claim within 90 days from the effective date of the written notice of rejection.

(c) The claimant, whose claim is contingent or based on an event occurring after the commencement of dissolution, that does not deliver a claim within 6 months after the last publication date of the notice published under this section or file an action in an appropriate court to enforce the claim against the bank in dissolution before the commissioner certifying and filing the certificate of termination under section 3301(9).

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13306 Court supervision of bank in dissolution.

Sec. 3306.

(1) After a bank has commenced dissolution, the commissioner, the bank in dissolution, a creditor, or a shareholder may apply to an appropriate court for an order that the affairs of the bank in dissolution and the liquidation of its assets continue under supervision of the court. The court shall make orders and judgments as may be required, including, but not limited to, continuance of the liquidation of the assets of the bank in dissolution by its liquidating agent or committee under supervision of the court, or the appointment of a receiver of the bank in dissolution to be vested with powers as the court designates to liquidate the affairs of the bank.

(2) For good cause shown, and so long as a bank in dissolution has not made complete distribution of its assets, the court may permit a creditor who has not delivered his or her claim or commenced a proceeding to enforce his or her claim within the time limits provided in sections 3304 and 3305 to file the claim or to commence a proceeding within the time as the court directs.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13307 Debts, obligations, and liabilities.

Sec. 3307.

(1) A bank in dissolution or its liquidating agent or committee shall act on all claims filed and notify all claimants of the action taken or to be taken on their respective claims within 6 months of the last date for filing the claims.

(2) Before making a distribution of assets to shareholders, a bank in dissolution shall pay or make provision to satisfy its debts, obligations, and liabilities. Compliance with this section requires, to the extent a reasonable estimate is possible, that provision be made to satisfy those debts, obligations, and liabilities anticipated to arise after the date the certificate of termination is filed under section 3301(9).

(3) Provision need not be made to satisfy any debt, obligation, or liability that is or is reasonably anticipated to be barred under section 3304 or 3305.

(4) The fact that the assets provided by the bank in dissolution for the satisfaction of its debts, obligations, and liabilities are insufficient to satisfy claims arising after a certificate of termination is filed under section 3301(9) shall not create a presumption that the bank in dissolution has failed to comply with this section.

(5) After payment of or adequate provision to satisfy the debts, obligations, or liabilities of the bank in dissolution has been made, the remaining assets shall be distributed to shareholders according to their respective rights and interests. The distribution may be made in cash, in kind, or both.

History: 1999, Act 276, Eff. Mar. 1, 2000

Part 4 TERM EXTENSION

487.13401 Expiration of corporate term; extension.

Sec. 3401.

(1) A bank whose corporate term will expire by limitation may amend its articles to extend its corporate term for a limited period of time or in perpetuity.

(2) A bank whose term has expired, but which has not submitted a certificate of termination under section 3301 and has inadvertently continued its active business beyond the term, may adopt a resolution to amend its articles to renew its corporate existence. Notice shall be given to each shareholder of record in the manner provided in this act for the giving of notice of meetings of shareholders, and shall state that the purpose of the meeting is to vote on the renewal of corporate term. At the meeting a vote of the shareholders shall be taken on the proposed extension, which shall be adopted upon receiving the affirmative vote of holders of at least 2/3 of the outstanding shares.

(3) The officers and directors de facto of a bank whose corporate term has expired shall do and perform all acts required of officers and directors de jure with regard to calling a special meeting of the shareholders and submitting to them the question of renewing the corporate term. A bank de facto shall not be permitted to renew its corporate term unless the action is taken within 1 year after its corporate term has expired and renewal shall not relieve the bank from any penalties that may have accrued against it under law.

(4) A bank whose corporate term has been extended or renewed under this section shall be the same bank and shall have the same shareholders, directors, and officers, and enjoy all the rights, privileges, immunities, and powers and be subject to all the liabilities that it respectively possessed and was subject to before the expiration of its corporate term.

History: 1999, Act 276, Eff. Mar. 1, 2000

Part 5 OFFICERS AND DIRECTORS

487.13501 Board of directors; election; appointment of officers; meetings.

Sec. 3501.

(1) A bank shall be managed by a board of not less than 5 nor more than 25 directors. The first board shall be elected by the incorporators at the meeting held under section 3107 before the bank is authorized to commence business. All subsequent boards shall be elected by the shareholders at the annual meeting of the shareholders or at a meeting called for that purpose as provided in the bylaws of the bank. The board of directors may fill a vacancy on the board for the remainder of the vacated term. Directors shall hold office until their successors are elected and qualified.

(2) The bylaws of the bank shall provide for the shareholder election of directors in 1 of the following methods:

(a) The shareholders annually may elect the full board of directors.

(b) The shareholders annually may elect a board of directors with not more than 2 unfilled directorships. The unfilled directorships are considered vacancies to be filled by the board of directors.

(c) The shareholders may elect directors with staggered terms of office as provided for in subsection (3).

(3) The election of directors with staggered terms of office shall be provided for in the bylaws of the bank as follows:

(a) That the directors will be divided into 2 or 3 classes, each to be as nearly equal in number as possible.

(b) The term of office of directors in the first class shall expire at the first annual meeting of shareholders after their election, that of the second class shall expire at the second annual meeting after their election, and that of the third class, if any, shall expire at the third annual meeting after their election.

(c) At each annual meeting after the classification established under subdivision (b), a number of directors equal to the number of the class whose term expires at the time of the meeting shall be elected to hold office until the second succeeding annual meeting if there are 2 classes, or until the third succeeding annual meeting if there are 3 classes.

(4) The board of directors shall appoint a director as chief executive officer who shall be a full-time employee of the bank and perform duties designated by the board, and who shall serve as the chairperson of the board, unless the board designates another director to be chairperson in lieu of the chief executive officer. The board may appoint officers, who need not be members of the board, define their duties, dismiss them at pleasure, and appoint other officers to fill vacancies.

(5) Except as otherwise provided by this act, the board of directors may appoint committees of its members to perform its duties.

(6) The board of directors shall meet not less than 6 times per fiscal year in person or by means of electronic communication devices that enable all participants in a meeting to communicate with each other. The minutes of each meeting shall be kept and shall be signed by the presiding officer and the secretary of the meeting. A majority

of the board of directors constitutes a quorum for the transaction of business.

(7) The commissioner may call a meeting of the board of directors of any bank, for any purpose, by giving a notice of the time, place, and purpose of the meeting at least 3 days before the meeting date to the directors by personal service, by registered or certified mail, or by other appropriate method reasonably designed to provide adequate notice.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13502 Board of directors; oath.

Sec. 3502.

Every director when elected or appointed shall take and subscribe an oath that he or she will diligently and honestly perform the duties of the office and will not knowingly violate, or permit to be violated, any provisions of this act. The oath shall be transmitted to the commissioner for filing.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13503 Sale or purchase of securities or property.

Sec. 3503.

(1) A bank may contract for, or purchase from, any of its directors, or from any person of which any of the bank's directors is an officer, director, manager, owner, employee, or agent, any securities or other property, only when the purchase is made in the ordinary course of business upon terms not less favorable to the bank than those offered by others, and the purchase is authorized by a majority of the board of directors not interested in the sale of the securities or property evidenced by their affirmative vote or written assent. If a director, or person of which any director is an officer, director, manager, owner, employee, or agent, acting for or on behalf of others, sells securities or other property to a bank, the commissioner may require a full disclosure to be made of all commissions or other considerations received. If a director or person, acting in his, her, or its own behalf, sells securities or other property to the bank, the commissioner may require a full disclosure of all profits realized from the sale.

(2) A bank may sell securities or other property to any of its directors, or to an entity of which any of its directors is an officer, director, manager, owner, employee, or agent in the ordinary course of business on terms not more favorable to the director or person than those offered to others, when the sale is authorized by a majority of the board of directors of a bank evidenced by their affirmative vote or written assent.

(3) This section shall not be construed as authorizing banks to purchase or sell securities or other property that banks are not otherwise authorized by law to purchase or sell.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13504 Discharge of duties; liability; commencement of action; violation; statute of limitations.

Sec. 3504.

(1) A director or an officer of a bank shall discharge the duties of his or her position in good faith and with that degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position. In discharging his or her duties, a director or an officer, when acting in good faith, may rely upon the opinion of legal counsel for the bank, upon the report of an independent appraiser selected with reasonable care by the board or by an officer of the bank, or upon financial statements of the bank certified to him or her to be correct by an officer of the bank, or as stated in a written report by an independent public or certified public accountant or

firm of accountants to reflect fairly the financial condition of the bank.

(2) The articles of incorporation of a bank may provide that a director is not personally liable to the bank or its shareholders for monetary damages for a breach of the director's fiduciary duty. The provision does not eliminate or limit the liability of a director for any of the following:

- (a) A breach of the director's duty of loyalty to the bank or its shareholders.
- (b) Acts or omissions not in good faith or that involve intentional misconduct or knowing violation of law.
- (c) A violation of section 2312.
- (d) A transaction from which the director derived an improper personal benefit.

(3) An action against a director or officer for failure to perform the duties imposed by this section shall be commenced within 3 years after the cause of action has accrued, or within 2 years after the time when the cause of action is discovered, or should reasonably have been discovered, by the complainant, whichever occurs first.

(4) If a director or officer of a bank knowingly violates, or knowingly permits any of the agents, officers, directors, or employees of the bank to violate, this act, rules promulgated under this act, or an order or declaratory ruling of the commissioner, every director and officer who participated in or assented to the violation shall be held liable in his or her personal and individual capacity for all damages that the bank, any shareholder, or any other person sustains as a result of the violation. An action to recover damages under this section shall be brought within 3 years from the time of the violation.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13505 Removal of director.

Sec. 3505.

(1) The shareholders may remove 1 or more directors with or without cause unless the articles provide that directors may be removed only for cause. The vote for removal shall be by a majority of shares entitled to vote at an election of directors, except that the articles may require a higher vote for removal without cause. This section shall not invalidate any bylaw adopted before the effective date of this act that applies to removal without cause.

(2) In the case of a bank having cumulative voting, if less than the entire board is to be removed, a director shall not be removed if the votes cast against his or her removal would be sufficient to elect him or her if then cumulatively voted at an election of the entire board of directors, or, if there are classes of directors, at an election of the class of directors of which he or she is a part.

(3) If holders of a class or series of stock are entitled by the articles to elect 1 or more directors, this section applies, with respect to removal of a director so elected, to the vote of the holders of the outstanding shares of that class or series of stock.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13506 Sale of stock or securities; officer or employee as agent prohibited.

Sec. 3506.

An officer or employee of any bank, in his or her individual capacity, shall not act as agent in the sale of stock or other securities to any person or receive directly or indirectly any consideration or commission resulting from the sale of stock or other securities by others to the bank by which he or she is employed.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13507 Procurement of loan; receipt of gratuity or consideration prohibited.

Sec. 3507.

An officer, director, or employee of a bank shall not receive, or consent, or agree to receive from a customer of the bank any consideration or gratuity in return for the procurement of a loan or other service from the bank.

History: 1999, Act 276, Eff. Mar. 1, 2000

Part 6 SHAREHOLDERS

487.13601 Meeting of shareholders.

Sec. 3601.

(1) The annual meeting of the shareholders of every bank shall be held on the day in each year that is provided in the bylaws of the bank. Special meetings of shareholders shall be called and held as provided in the bylaws of the bank.

(2) At any meeting, each shareholder entitled to vote shall be entitled to 1 vote for each share held by the shareholder. A shareholder may vote at any meeting of the bank by proxy in writing signed by the shareholder.

(3) A bank may provide in the initial articles of incorporation or by amendment to the articles by a vote of shareholders owning a majority of the total number of shares of each class of its outstanding capital stock, that in an election of directors each shareholder may cast as many votes as the number of shares owned by the shareholder multiplied by the number of directors to be elected. In the shareholder's discretion, the shareholder may distribute his or her total number of votes cumulatively for 1 or more of the candidates.

(4) A person holding shares of the capital stock of a bank in a fiduciary capacity shall be entitled to vote the shares unless otherwise provided in the trust instrument. A person whose shares are pledged shall be entitled to vote unless the pledgor has expressly empowered the pledgee to vote the shares and the pledge of the stock and the empowerment to vote are recorded by the issuing bank or its agent, in which case only the pledgee or his or her proxy may vote the shares.

(5) A shareholder shall have the right to vote in person or by proxy, except that a bank shall not vote shares it holds under section 3804(4) or 4304(4).

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13602 Meeting called by commissioner.

Sec. 3602.

The commissioner may call a meeting of the shareholders of any bank by giving at least 3 days' notice of the time, place, and purposes of the meeting to the shareholders by registered or certified mail sent to their last known addresses as shown on the records of the bank or by another appropriate method reasonably designed to provide adequate notice.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13603 Names and addresses of shareholders; record.

Sec. 3603.

(1) A bank shall keep and maintain an accurate record of the name and address of each shareholder of the bank, the number of shares held by each, the date when the shareholders acquired the shares, and the name of the

transferor.

(2) In lieu of the requirements under subsection (1), the board of directors of a bank may designate a corporation authorized by law to act as transfer agent or registrar of shares of corporations, to act as transfer agent or transfer agent and registrar of the shares of the bank, but the same corporation shall not be designed to act in both capacities at the same time.

(3) Upon demand by the commissioner, a bank shall submit to the commissioner a list containing the name and address of each shareholder of the bank together with the number of shares held by each according to its records as of the close of business on the date of issuance of the demand.

(4) Within 2 calendar weeks of any demand made for a purpose reasonably related to the requestor's interest as a shareholder or as a representative of a group of shareholders by any shareholder being the record owner of at least 5% of the issued shares of the bank or by any person representing any group who are the record owners of at least 5% of the issued shares of the bank, the bank shall prepare and furnish the requestor a list containing the name and address of each shareholder of the bank together with the number of shares held by each according to its records as of the close of business on the date of receipt of the demand.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13604 Provisions applicable to voting stock.

Sec. 3604.

If a vote of the holders of shares of stock is required in this act, those provisions shall apply only to the voting stock in the bank, out-of-state bank, national bank, association, or savings bank, voting by classes.

History: 1999, Act 276, Eff. Mar. 1, 2000

Part 7 CONSOLIDATION AND CONVERSION

487.13701 Consolidated bank; formation.

Sec. 3701.

(1) Subject to approval by the commissioner, a bank may consolidate with any number of consolidating organizations to form a consolidated bank.

(2) The approval of the commissioner shall be based on an examination or other appropriate analysis of each consolidating organization and the agreement of consolidation. A consolidation shall not be made to defeat or defraud any of the creditors of any of the consolidating organizations.

(3) A majority of the directors of each organization proposing to consolidate may enter into an agreement, signed by them, or by their designated representative or representatives, prescribing the terms and conditions of consolidation, the mode of carrying the consolidation into effect, and stating other terms required or permitted by this act and any laws of the United States, as well as the manner of converting the shares of each of the consolidating organizations into shares of the consolidated organization, with other details and provisions as are considered necessary.

(4) The proposed consolidation agreement shall be submitted to the shareholders of each consolidating organization, at separate meetings of their shareholders. A notice indicating the time, place, and purpose of the meeting shall be mailed to each shareholder of each consolidating organization at his or her last known address as appears from the stock records of the consolidating organizations, by registered or certified mail, at least 10 days prior to the date of the meeting. Notice shall not be required if it is waived by the commissioner, or, in the case of individual notice to a shareholder, by the shareholder.

(5) At the meeting, the proposed consolidation agreement shall be considered and a vote by ballot, in person or by proxy, taken for the adoption or rejection of the agreement. At the meeting, each share of stock shall entitle the holder to 1 vote. If the votes of shareholders of each consolidating organization representing not less than 2/3 of the total number of shares of each class of each consolidating organization's outstanding capital stock are cast for the adoption of the agreement, the vote shall be certified on the agreement by an officer of each of the consolidating

organizations.

(6) If an out-of-state bank, national bank, association, or savings bank is a consolidating organization and approval is required by the laws of another state or of the United States, that organization shall furnish a copy of the approval of the appropriate state or federal regulator of the consolidation to the commissioner.

(7) The consolidation agreement required by this section shall be submitted to the commissioner, who shall, upon approval, certify upon the agreement the effective date of the consolidation. The consolidation agreement or a copy certified by the commissioner is evidence of the agreement and act of consolidation of the consolidating organizations and the observance and performance of all necessary acts and conditions precedent to the consolidation.

(8) A bank holding company that is the sole shareholder of all of the outstanding issued stock of a bank, out-of-state bank, or national bank that is a consolidating organization in a proposed consolidation may waive the shareholder meeting requirement of this subsection.

(9) In effecting a consolidation, stock of the consolidated bank may be issued in accordance with this act and as provided by the terms of the consolidation agreement free from any preemptive rights of the shareholders of the respective consolidating organizations.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13702 Consolidated organization.

Sec. 3702.

On an interstate basis, a bank may consolidate with any number of consolidating organizations to form a consolidated organization in accordance with the laws under which the consolidated organization is chartered, if all of the following apply:

(a) Consolidation is permitted by the laws under which each consolidating organization is organized and the appropriate regulator or regulators approve the consolidation.

(b) The consolidating organizations provide notice to the commissioner by filing a copy of the application for consolidation within 10 days after the date the application is filed with the appropriate federal regulator.

(c) The consolidated organization complies with section 3703(3) with respect to notice of consolidation, but that notice is limited to a court, public tribunal, agency, or officer of this state.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13703 Consolidated bank; rights, privileges, and powers.

Sec. 3703.

(1) If approval and certification of the consolidation agreement as required by section 3701 have been completed, the corporate existence of each consolidating organization is merged into and continued in the consolidated bank. To the extent authorized by this act, the consolidated bank possesses all the rights, interests, privileges, powers, and franchises and is subject to all the restrictions, disabilities, liabilities, and duties of each of the consolidating organizations. The title to all property, real, personal, and mixed, is transferred to the consolidated bank, and shall not revert or be in any way impaired by reason of this act.

(2) A consolidated bank holds and enjoys the same and all rights of property, franchises, and interests, including appointments, designations, and nominations and all other rights and interests as a fiduciary, in the same manner and to the same extent as those rights and interests were held or enjoyed by each consolidating organization at the time of the consolidation. If a consolidating organization at the time of consolidation was acting under appointment of any court as a fiduciary, the consolidated bank is subject to removal by a court of competent jurisdiction.

(3) A consolidated bank shall file with each court or other public tribunal, agency, or officer in any state by which any of the consolidating organizations have been appointed as a fiduciary, and in the court file of each estate, suit, or any other proceeding in which any of them has been acting as a fiduciary, an affidavit setting forth the fact of consolidation, the name of each consolidating organization, the name of the consolidated bank, the location of its principal office, and the amount of its capital and surplus. This subsection does not require filing of an affidavit

related to any consolidating organization that after the consolidation retains the same corporate name, charter, and principal office location.

(4) The liability of any consolidating organization or of a shareholder, director, or officer of a consolidating organization, or the rights or remedies of the creditors of, or other persons transacting business with, the consolidating organization shall not be altered or impaired as the result of a consolidation.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13704 Service of process.

Sec. 3704.

(1) Whether it maintains a presence in this state, a consolidated organization or any of its successors in interest is subject to service of process in a proceeding in this state for enforcement of any obligation incurred in this state by any consolidating organization that is or was a party to a consolidation.

(2) An action or proceeding by or against any of the consolidating organizations in a court or any other public tribunal of this state may be prosecuted to judgment, as if consolidation had not taken place, or the consolidated bank or consolidated organization may be substituted in the place of any consolidating organization whose existence has ceased.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13705 Notice of operation.

Sec. 3705.

(1) A consolidated bank or consolidated organization may operate all branches and principal offices located in this state of the consolidating organizations without providing the notice required by section 3711(1).

(2) A bank, out-of-state bank, national bank, association, or savings bank operating a branch in this state as the result of a consolidation shall provide notice of that operation to the commissioner within 30 days after the effective date of the consolidation.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13706 Definitions; applicable provisions.

Sec. 3706.

(1) As used in this section:

(a) "Existing bank" means a bank engaged in the business of banking before the consolidation provided in this section.

(b) "New bank" means a bank not engaged in the business of banking before the consolidation provided in this section.

(c) "Existing association" means a stock association engaged in the savings and loan business before the consolidation provided in this section.

(d) "Existing savings bank" means a stock savings bank engaged in the savings bank business before the consolidation provided in this section.

(2) Notwithstanding any other provision of this act, both of the following apply:

(a) A new bank may be organized for the sole purpose of effecting its consolidation under section 3701 with an existing bank, existing savings bank, or existing association having its principal office in the same city or village as

the new bank and if upon completion of the consolidation a bank holding company becomes the owner of all of the outstanding voting shares of the consolidated organization. The new bank and existing bank may consolidate under the articles of either bank. The new bank and the existing savings bank or association shall consolidate under the articles of the new bank. Sections 3701, 3703, and 3704 apply to the consolidation, except that the agreement of consolidation may provide that shares of either or both the consolidating organizations will be converted into shares or other securities of the bank holding company.

(b) A shareholder of the existing bank, existing savings bank, or existing association who votes against the consolidation, or who has given notice in writing to that bank or association at or before the meeting called for the purpose of considering the agreement of consolidation that the shareholder dissents from the consolidation, is entitled to receive in cash from the consolidated organization the fair value of all shares held by the shareholder, if and when the consolidation is consummated, upon written request made to the consolidated organization at any time within 30 days after the date of consummation of the consolidation, accompanied by the surrender of the stock voted in dissent by the shareholder. Upon the filing of the written request and the surrender of stock certificates, if any, the shareholder shall cease to have any of the rights of a shareholder except the right to be paid the fair value of the shareholder's shares. The request having been made shall not be withdrawn except with the written consent of the consolidated organization. The fair value of the shares shall be determined, as of the date on which the meeting of shareholders of the existing bank, existing savings bank, or existing association was held adopting the agreement of consolidation, by a qualified and independent appraiser selected by the commissioner upon written request submitted by a dissenting shareholder entitled to receive the fair value of his or her shares. The appraiser selected shall file a written appraisal with the commissioner, who in turn shall forward copies to all interested parties. The valuation determined by the appraiser is final and binding on all parties as to the fair value of the shares. The consolidated organization shall pay to each dissenting shareholder entitled the fair value of his or her shares within 30 days following the receipt of the written appraisal. The fees and expenses of the appraisal, which shall be approved by the commissioner, shall be paid by the consolidated organization. The agreement of consolidation shall provide the manner of disposing of the shares of the existing bank, existing savings bank, or existing association surrendered by the dissenting shareholders.

(3) The commissioner shall approve or disapprove an application submitted under this section in writing within 30 days after acceptance of the application or the last amendment or supplement to the application.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13707 Definitions; consolidation agreement; approval of terms and conditions.

Sec. 3707.

(1) As used in this section:

(a) "Consolidation agreement" means an agreement entered into among an existing bank, existing savings bank, or an existing association, and a new bank, and a new holding company that provides both of the following:

(i) That the existing bank, existing savings bank, or existing association and the new bank will be consolidated or merged.

(ii) That upon consummation of the consolidation or merger, the shares of capital stock of the existing bank, existing savings bank, or existing association will be converted into or exchanged for shares of the capital stock or other securities of the new holding company.

(b) "Existing association" means a stock association that is a party to a consolidation agreement and is engaged in the savings and loan business before the consolidation or merger provided for in the consolidation agreement.

(c) "Existing bank" means a bank or national banking association that is a party to a consolidation agreement and is engaged in the business of banking before the consolidation or merger provided for in the consolidation agreement.

(d) "Existing savings bank" means a stock savings bank that is a party to a consolidation agreement and is engaged in the savings bank business before the consolidation or merger provided for in the consolidation agreement.

(e) "New bank" means a bank or national banking association that is a party to a consolidation agreement and is not engaged in the business of banking before the consummation of the consolidation or merger provided for in the consolidation agreement.

(f) "New holding company" means a corporation that is not a bank, association, or national banking association and as to which all of the following apply:

(i) The corporation is a party to a consolidation agreement.

(ii) Before its acquisition of an existing bank, existing savings bank, or existing association pursuant to the consolidation agreement, the corporation does not have control of a bank, savings bank, association, or national banking association and has not transacted any business except business incidental to its organization and to the entering into, and performance of, the consolidation agreement.

(iii) Upon consummation of the consolidation or merger provided for in the consolidation agreement, the corporation will become a bank holding company as defined in section 2 of the bank holding company act.

(iv) Immediately after its acquisition of an existing bank, existing savings bank, or existing association under the consolidation agreement, the corporation will not have control of more than 1 bank or 1 national banking association.

(v) Before the acquisition of an existing bank, existing savings bank, or existing association under the consolidation agreement, the corporation is not, and immediately after acquisition of control of the existing bank, existing savings bank, or existing association shall not be, controlled by a bank holding company as defined in section 2(a)(2) of the bank holding company act.

(g) "Control" means control as defined in section 2 of the bank holding company act.

(2) A new holding company may apply to the commissioner for approval of the terms and conditions of the issuance of the shares or other securities of the new holding company into which the shares of an existing bank, existing savings bank, or existing association are to be converted, or for which the shares of the existing bank, existing savings bank, or existing association are to be exchanged, under a consolidation agreement, and for approval of the terms and conditions of the conversion or exchange. The application for approval shall be in a form, contain information, and be accompanied by documents as required by the commissioner. Within 30 days after the application is filed, the commissioner shall conduct a hearing upon the fairness of the terms and conditions at which all persons to whom it is proposed to issue the securities in the conversion or exchange shall have the right to appear. Within 20 days after the hearing, the commissioner shall either approve or disapprove the terms and conditions of the issuance and of the conversion or exchange. This subsection does not apply to the terms and conditions of the issuance and conversion or exchange of securities provided for in a consolidation agreement or to make unlawful any transaction that is lawful without regard to this subsection.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13708 Conversion of bank into stock association, stock savings bank, or national banking association.

Sec. 3708.

(1) Upon the affirmative vote of the shareholders representing more than 50% of the total number of shares of each class of its outstanding capital stock, a bank may be converted under the laws of this state into a stock association or stock savings bank or under the laws of the United States into a national banking association. The conversion of a bank into a stock association, stock savings bank, or national banking association shall not release the bank from its obligations to pay and discharge either of the following:

(a) All the liabilities created by law or incurred by the bank before becoming a stock association, stock savings bank, or a national banking association.

(b) Any tax imposed by this state up to the date of its becoming a stock association, stock savings bank, or national banking association in proportion to the time that has elapsed since the last preceding payment or assessment, penalty, or forfeiture imposed or incurred up to the date of its becoming a stock association, stock savings bank, or a national banking association.

(2) A conversion shall not be made to defeat or defraud any of the creditors of the bank.

(3) A certified copy of all resolutions relating to the proposed conversion adopted by the directors and shareholders of the bank shall be submitted to the bureau. If consent or approval is required by federal law, the bank shall provide the bureau with a certified copy of consent or approval of the appropriate federal regulator to the conversion.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13709 Conversion of depository institution.

Sec. 3709.

(1) With the approval of the commissioner and upon the affirmative vote of the shareholders representing more than 50% of the total number of shares of each class of its outstanding capital stock, a national banking association, stock association, or stock savings bank doing business in this state and having capital and surplus sufficient to entitle it to become a bank under this act may be converted into a bank if the conversion is not in contravention of any laws of the United States.

(2) A depository institution converting under subsection (1) may submit articles of incorporation executed by a majority of the directors of the national banking association, stock association, or stock savings bank. A majority of the directors, after executing the articles of incorporation, shall have the power to execute all other papers and to do whatever is required to complete its organization as a bank. The shares of the bank may continue to be for the same amount as they were before the conversion, and the directors may continue to be directors of the bank until others have been elected or appointed under the laws of this state.

(3) The approval of the commissioner shall be based on an examination of the national banking association, stock association, or stock savings bank and on the action taken by its directors and shareholders with respect to the conversion. A conversion shall not be made to defeat or defraud any creditors. The commissioner may permit the converted bank to retain and carry assets of the converting national banking association, stock association, or stock savings bank which do not conform to the legal requirements relative to assets acquired and held by banks.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13710 Effect of conversion.

Sec. 3710.

If a conversion becomes effective under section 3708 or 3709, all of the following shall apply:

(a) The converted organization shall be considered a continuation of the body corporate of the converting organization.

(b) The title to all property, real or personal, including any rights that may be attached to the property, or any thing in action, is immediately transferred and vested in the converted organization to the same extent as it was in the converting organization.

(c) All assets, rights, privileges, or interests belonging or attributed to the converting organization are immediately transferred and vested in the converted organization to the same extent as they were in the converting organization.

(d) All liabilities, restrictions, and disabilities of the converting organization, its shareholders, or its officers are immediately transferred to the converted organization to the same extent as they were in the converting organization.

(e) If the converting organization is acting in any fiduciary capacity under the laws of this state, the following apply:

(i) All rights, privileges, and obligations of the converting organization shall remain unimpaired and shall continue in the converted organization irrespective of the date when the fiduciary relationship was created.

(ii) If the converting organization had been appointed by a court or governmental tribunal, agency, or officer, the converted organization shall file an affidavit with the appointing authority setting forth the fact of conversion, the name of the converted organization, the location of its principal office, and the amount of its capital and surplus.

(iii) The converted organization acting as a fiduciary by appointment of a court is subject to removal by a court of competent jurisdiction.

(f) The converted organization may retain and continue to operate any existing branch, or open any approved branch, of the converting organization.

(g) Any rights or remedies of the depositors, creditors, or other persons transacting business with the converting organization shall not be reduced or impaired as the result of a conversion.

(h) Whether or not it maintains a presence in this state, a converted organization or any of its successors in interest is subject to service of process in a proceeding in this state for enforcement of any obligation incurred in this state by the converting organization.

(i) An action or proceeding against the converting organization in a court or other governmental tribunal may be prosecuted to judgment as if the conversion had not taken place, or the converted organization may be substituted in place of the converting organization. This subsection shall not create any new cause of action against the converting organization as a result of the conversion.

487.13711 Branch services.

Sec. 3711.

(1) A bank may establish and operate a branch or branches within any state, the District of Columbia, a territory or protectorate of the United States, or a foreign country, unless the commissioner objects in writing within 30 days after receipt of a written notice from the bank of its intent to establish a branch. The commissioner may issue a written statement of intent not to object at any time before the expiration of the 30 days.

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

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

(4) Unless the commissioner objects in writing within 30 days after receipt of written notice from a bank of its intent to contract for branch services, a bank may contract with 1 or more banks, out-of-state banks, national banks, associations, or savings banks for the depository institution or institutions to act as branches to provide services to the customers of the contracting bank. The commissioner may issue a written statement of intent not to object at any time prior to the expiration of the 30 days. This subsection shall not be construed to limit the powers granted to a bank under section 4101(1)(d).

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

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

(7) An out-of-state bank or national bank located in a state, the District of Columbia, or a territory or protectorate of the United States whose laws permit the establishment in that state, district, territory, or protectorate of a branch by a bank may establish and operate 1 or more branches in this state.

(8) An out-of-state bank may apply to organize a branch in this state under this act by providing to the commissioner proof that its deposits are insured by an agency of the United States government. If the commissioner determines that the out-of-state bank is safe and sound, that the out-of-state bank is subject to regulation, and that there exists an agreement for exchange of supervisory information between the bureau and the out-of-state bank's regulator, the commissioner shall provide to the out-of-state bank a certificate of organization and eligibility to accept deposits and investments of public funds of the state and local units of government.

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

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

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

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

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

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

487.13712 Discontinuing branch operations; transfer of functions to principal office.

Sec. 3712.

(1) If a bank or foreign bank permanently discontinues the operations of any branch, foreign bank agency, or foreign bank branch, all functions of the branch, foreign bank agency, or foreign bank branch shall be considered transferable to, and treated as a part of, the principal office of the bank or, in the case of a foreign bank, the principal office in this country.

(2) A bank, out-of-state bank, national bank, or foreign bank shall notify the commissioner in writing before discontinuing operations of a branch, foreign bank agency, or foreign bank branch.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13713 Principal office; relocation.

Sec. 3713.

(1) Upon prior written notice to the commissioner, a bank may change the location of its principal office to any existing branch location of the bank within this state.

(2) Unless the commissioner objects in writing within 60 days after receipt of written notice from the bank of its intent to relocate its principal office, a bank may change the location of its principal office to any other location within this state which is not an existing branch location of the bank. The commissioner may issue a written statement of intent not to object at any time before expiration of the 60 days.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13714 Branch office in foreign country; applicable provisions.

Sec. 3714.

Notwithstanding section 1105 of the uniform commercial code, both of the following apply:

(a) A bank which has 1 or more branch offices in a foreign country shall be liable for contracts to be performed and for deposits to be repaid at any branch office in that foreign country to no greater extent than a bank, banking corporation, or other organization or association for banking purposes organized and existing under the laws of the foreign country would be liable under its laws. The laws of the foreign country for the purpose of this section are considered to include all acts, decrees, regulations, and orders promulgated or enforced by a dominant authority asserting governmental, military, or police power of any kind at the place where the branch office is located, whether or not the dominant authority is recognized as a de facto or de jure government.

(b) If by action of a dominant authority that is not recognized by the United States as the de jure government of the foreign territory concerned, any property situated in or any amount to be received in the foreign territory and carried as an asset of a branch office of the bank in the foreign territory is seized, destroyed, or canceled, the liability of the bank for any deposit received and to be repaid by it, and for any contract made and to be performed by it, at any branch office in the foreign territory shall be reduced pro tanto by the proportion that the value, as shown by the books or other records of the bank at the time of the seizure, destruction, or cancellation of the assets bears to the aggregate of all the deposit and contract liabilities of the branch offices of the bank in the foreign territory, as shown at the time by the books or other records of the bank.

History: 1999, Act 276, Eff. Mar. 1, 2000

CAPITAL

487.13801 Issuance of capital notes, debentures, or other instrument of indebtedness.

Sec. 3801.

(1) A bank, with the approval of shareholders owning 2/3 of the stock of the bank entitled to vote, may issue capital notes, debentures, and any other instrument of indebtedness, with or without warrants for preferred or common stock, convertible and nonconvertible, subordinated on insolvency, liquidation, or dissolution to all obligations except obligations to shareholders, in amounts and under terms and conditions approved by the commissioner on the basis of normal business considerations.

(2) In connection with the issuance of convertible capital notes, debentures, or any other instrument of indebtedness, the commissioner may grant approval for the bank to reserve a number of authorized and unissued shares of capital stock as shall be required for issuance in exchange for capital notes and debentures with respect to which conversion privileges exist. If capital notes, debentures, or any other instruments of indebtedness are converted into shares of common or preferred stock, a verified certificate executed by the president of the bank stating the amount of the conversion, and other information with respect to the conversion as the commissioner may require, shall be filed in the office of the commissioner.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13802 Issuance of shares; number; classes; designations.

Sec. 3802.

(1) A bank may issue the number of shares authorized in its articles of incorporation. The shares may be all of 1 class or may be divided into 2 or more classes. Each class shall consist of shares having the designations and relative voting, distribution, dividend, liquidation, and other rights, preferences, and limitations, consistent with this act as stated in the articles of incorporation of the issuing bank.

(2) If the shares are divided into 2 or more classes, the shares of each class shall be designated in a manner to distinguish them from the shares of other classes.

(3) Subject to the designations, relative rights, preferences, and limitations applicable to separate series, each share shall be equal to every other share of the same class.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13803 Stock certificates.

Sec. 3803.

(1) Except as provided in subsection (2), the shares of a bank shall be represented by certificates of stock that shall be issued to every shareholder and transferable on the books of the bank in a manner as may be prescribed in the bylaws or articles of incorporation. A transfer of stock shall not be valid against the bank, except with the consent of the board of directors, so long as the registered holder of the stock is liable as principal debtor, surety, or otherwise to the bank for any debt which is due and unpaid.

(2) Unless the articles of incorporation or bylaws provide otherwise, the board may authorize the issuance of some or all of the shares of any or all of its classes or series of stock without certificates if within a reasonable time after issuance of a share without a certificate the bank provides the shareholder with a written statement of the information required on a certificate under subsection (5). The authorization shall not have any effect on shares already represented by certificates unless they are surrendered to the bank.

(3) If the registered holder of stock of a bank is liable to the bank as principal debtor, surety or otherwise for any debt which is due and unpaid, the directors of the bank may sell a sufficient amount of the stock of the delinquent shareholder in the same manner and with the same effect as provided in section 3808. This section does not prevent

the bank from bringing proceedings to recover the entire amount of the indebtedness at any time before the sale or to recover the balance of the debt and costs after the proceeds of sale have been applied against the debt and costs or to recover the balance of the debt after the cancellation of the stock.

(4) Except as provided in sections 3807 and 3808, the rights of a bank in its stock in which the shareholder is liable to the bank as principal debtor, surety, or otherwise is subject to any pledge, sale, or other transfer of the stock that is made before the maturity of an indebtedness of the registered holder of the stock to the bank and of which the bank has knowledge before the maturity, whether or not the stock was transferred on the books of the bank. Any stock of a bank that is pledged, sold, or otherwise transferred before the maturity of any indebtedness of the registered holder of the stock to the bank and of which pledge, sale, or other transfer the bank has knowledge before the maturity, may be transferred on the books of the bank after the maturity without the consent of the board of directors of the bank. The rights of a bank in its stock under this section, including the limitation on transferability if the registered holder is liable to the bank for any debt that is due and unpaid, shall not be applicable with respect to any stock duly listed on any stock exchange.

(5) Each certificate issued after the effective date of this act shall state all of the following:

- (a) The name and address of the principal office of the bank.
- (b) The name of the holder of record of the stock it represents.
- (c) The number, par value, class, and series of shares which the certificate represents.
- (d) The respective voting, distribution, dividend, liquidation, dissolution, and other rights, preferences, and limitations of the stock issued, which information shall be stated in full or in summary upon the front or back of the certificate or shall be incorporated by a reference to the articles of incorporation set forth on the front of the certificate.

(e) If the stock is not listed, that no transfer of the stock shall be valid against the bank so long as the registered holder is liable as principal debtor, surety, or otherwise to the bank, except with the approval of the board of directors or as otherwise provided in this act.

(f) The signature of the president or other officer as provided by the bylaws of the bank and, optionally, the seal of the bank.

(6) All of the following may be a facsimile:

- (a) The signature of a transfer agent.
- (b) The signature of a registrar.
- (c) The signature of an officer of the bank.
- (d) The seal of the bank.

(7) If an officer who has signed a share certificate or whose facsimile signature has been used on a share certificate ceases to be an officer, whether because of death, resignation, or otherwise, before the certificate has been delivered by the bank, the certificate, nevertheless, may be adopted by the bank and delivered as though the person who signed it or whose facsimile signature has been used on the stock had not ceased to be an officer.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13804 Capital stock; increase.

Sec. 3804.

(1) By a vote of shareholders owning $\frac{2}{3}$ of each class of the stock entitled to vote, a bank may amend its articles to increase its capital stock to any sum approved by the commissioner, either by an increase in the par value of authorized stock or by the authorization of new stock.

(2) An increase in capital shall not be valid until the whole amount of the increase has been paid in, notice of the payment signed by an officer of the bank has been transmitted to the commissioner, and the commissioner's certificate of approval has been obtained specifying the amount of the increase in capital and that it has been duly paid in as a part of the capital of the bank. The certificate shall be conclusive evidence that the stock has been duly and validly issued.

(3) In the case of the issuance of new stock, in voting upon the increase of capital stock, $\frac{2}{3}$ of the shareholders entitled to vote shall have power to fix the value of, and the price at which the stock shall be subscribed and paid for by the shareholders, but not less than par, as well as the time and manner of the subscription and payment, and to authorize the directors to sell the stock.

(4) Notwithstanding this section, a bank, with the approval of the commissioner and by a vote of shareholders owning $\frac{2}{3}$ of each class of the stock entitled to vote, for the stated purpose of providing stock options for 1 or more employees, may increase its capital stock in an aggregate par value amount not to exceed at any 1 time 5% of

the par value of its then outstanding common stock. The additional stock, when duly authorized, may be issued by the bank from time to time for this purpose but for no other purpose, as options are exercised and payment for the stock is received, free from any preemptive rights to subscribe for stock.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13805 Capital stock; reduction.

Sec. 3805.

(1) By a vote of shareholders owning $\frac{2}{3}$ of the bank's stock entitled to vote, a bank may reduce its capital stock. The reduction may be accomplished by a reduction in the par value of the existing stock or by a reduction in the number of the shares of stock. A reduction shall not be made until the amount of the proposed reduction has been approved by the commissioner.

(2) The approval of the commissioner shall be based upon a finding that the security of existing creditors of the bank will not be impaired by the proposed reduction. This section does not discharge any bank from any obligation that may be due from the bank.

(3) Retirement of preferred stock in accordance with the articles of incorporation is not considered to be a reduction of capital under this section.

(4) A shareholder shall not be entitled to any distribution of cash or other assets by reason of any reduction of the common capital of any bank unless the distribution has been approved by the commissioner and by the affirmative vote of at least $\frac{2}{3}$ of the shares of each class of stock outstanding, voting as classes.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13806 Dividends.

Sec. 3806.

(1) From time to time, the board of directors of a bank may declare and pay dividends on the common stock of the bank consistent with this section.

(2) A cash dividend or dividend in kind shall not be declared or paid unless the bank will have a surplus amounting to not less than 20% of its capital after the payment of the dividend.

(3) A cash dividend or dividend in kind shall not be declared by a bank except out of net income then on hand after deducting its losses and bad debts. Unless the debts due the bank on which interest is past due and unpaid for a period of 6 months are well secured and in process of collection or the debts constitute claims against solvent estates in probate, all debts shall be considered bad debts within the meaning of this section.

(4) A cash dividend or dividend in kind shall not be declared or paid until the cumulative dividends on preferred stock, if any, have been paid in full. By their unanimous vote, the preferred shareholders may waive their right to any amount of the accumulated but unpaid dividends.

(5) If at any time the surplus of a bank is less than the amount of its capital, before the declaration of a cash dividend or dividend in kind, it shall transfer to surplus not less than 10% of its net income of the preceding 6 months in the case of quarterly or semiannual dividends, or not less than 10% of its net income of the preceding 2 consecutive 6-month periods in the case of annual dividends. For the purpose of this section, any amounts transferred to a fund for the retirement of any preferred stock of the bank out of its net income for the periods are considered to be additions to its surplus, if, upon the retirement of the preferred stock, the amounts credited into the retirement fund may then properly be carried to surplus. In this case, the bank shall be obligated to credit to surplus the amounts transferred into the retirement fund on account of the preferred stock as the stock is retired.

(6) Without regard to the limitations of this section and section 3804, a bank, with the approval of the commissioner, and by vote of shareholders owning $\frac{2}{3}$ of the stock entitled to vote, may amend its articles to increase its capital stock by declaration of a stock dividend on the capital stock. After the increase, the surplus of the bank shall be at least equal to 20% of the capital stock as increased.

(7) A bank may pay dividends on its preferred stock at the applicable rate without regard to subsections (1) through (6).

(8) Dividends paid to shareholders under a dividend reinvestment plan shall be subject to this act relative to payment of dividends.

(9) A dividend shall not be paid from capital or surplus of the bank.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13807 Deficiency; steps to make assessment or dissolution; extension.

Sec. 3807.

(1) If, in the opinion of the commissioner, the capital of a bank has become impaired, the commissioner shall notify the bank of his or her determination and require the directors to meet the deficiency in the capital within a 2-month period. The directors shall meet the deficiency by either making a pro rata assessment upon the stock held by each shareholder, or taking steps to dissolve the bank. The 2-month period may be extended by order of the commissioner, if in his or her discretion an extension is necessary to allow the directors to meet the deficiency.

(2) Before an assessment may be made by the directors, each shareholder, secured party, and pledgee indicated on the books of the bank as holding an interest in the stock shall be provided with written notice in a manner reasonably calculated to give actual notice of the determination made by the commissioner that the capital of the bank is impaired and the amount of the assessment that each shareholder must pay.

(3) If a shareholder refuses or neglects to pay an assessment levied by the directors within 30 days from the date notice was provided, the directors shall sell all or part of the shareholder's shares to the highest bidder in a manner provided in section 3808. Upon expiration of the 30-day period and refusal or neglect by a shareholder to pay the assessment, a security interest in favor of the bank in the amount of the assessment shall attach to all of the shareholder's shares for the sole purpose of satisfying the assessment levied. The security interest shall have priority over any other security interests perfected by a creditor or otherwise granted by the shareholder in shares issued after the effective date of this act.

(4) If the directors fail to restore the capital of the bank or take steps to dissolve the bank during the 2-month period following notice from the commissioner and any extension granted under subsection (1), the commissioner may appoint a receiver for the bank in accordance with this act.

(5) If any part of the capital of a bank consists of preferred stock, the determination of whether the capital of the bank is impaired and the amount of the impairment shall be based upon the par value of its stock even though the amount that the holders of the preferred stock shall be entitled to receive in the event of retirement or dissolution shall be in excess of the par value of the preferred stock.

(6) The holders of preferred stock shall not be liable for assessments to restore impairment in the capital of a bank.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13808 Distribution of sale proceeds; issuance of new certificates; effect of uniform commercial code.

Sec. 3808.

(1) If, 30 days after notice as provided in section 3807, a shareholder has refused or neglected to pay an assessment levied on the shares held by the shareholder, the directors may sell any or all of the shareholder's shares to satisfy the assessment. The proceeds of the sale shall be distributed in the following order:

(a) The reasonable expenses of holding for sale and selling the stock in a manner not prohibited by law, including reasonable attorney fees and legal expenses incurred by the bank.

(b) The satisfaction of the assessment levied by the directors.

(c) The satisfaction of an indebtedness secured by any security interest in the stock if written notification demanding proceeds is received by the bank before distribution of the proceeds is completed. Unless the holder of a security interest provides reasonable proof of the interest, the bank does not have to comply with this subdivision.

(d) Any remaining surplus shall be distributed to the shareholder.

(2) Disposition of the stock may be at a public or private sale at any time and on any terms, but every aspect of the disposition including the method, manner, time, place, and terms shall be commercially reasonable and

reasonably calculated to meet the deficiency.

(3) A sale of stock as provided in this section shall effect an absolute cancellation of any outstanding certificates evidencing the stock sold and any security interest granted or pledge made in stock issued after the effective date of this act. Upon full payment of the stock sold, the bank shall issue new certificates to the purchaser.

(4) The purchaser takes the stock free of any rights or interests the shareholder may have based on an unintentional failure by the bank to comply with this section or section 3807 if all of the following apply:

(a) The purchaser has no knowledge of any defect in the proceedings.

(b) The purchaser does not act in collusion with any shareholders of the bank, a secured party, other bidders, or the bank.

(c) The purchaser makes the purchase in good faith.

(5) The ability of a bank to make an assessment under section 3807 or to sell the stock of a shareholder under this section is not limited by the uniform commercial code.

History: 1999, Act 276, Eff. Mar. 1, 2000

Part 9 ADMINISTRATION

487.13901 Repayment of deposits.

Sec. 3901.

Deposits shall be repaid to the depositor, or the depositor's lawful representatives, according to the terms of the agreement between the depositor and the bank.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13902 Compliance review committee.

Sec. 3902.

(1) An officer or the board of directors of a bank may appoint a compliance review committee to evaluate loan underwriting standards, asset quality, financial reporting to federal or state regulatory agencies, compliance with the bank's policies, compliance with federal or state statutory or regulatory requirements, or other related matters.

(2) Any documents, data, compilations, analyses, or other information and material gathered, generated, created, produced, developed, or prepared by or for a compliance review committee by 1 or more employees of the bank or by 1 or more other persons retained by the bank to assist the compliance review committee in performing its functions shall be considered compliance review material.

(3) A document, compilation, analysis, or item of information, data, or material remains compliance review material under this section even if it is delivered or disclosed to employees of the bank who are not members of the compliance review committee or to attorneys, accountants, auditors, consultants, or other professional advisers retained by the bank or to 1 or more other persons retained by the bank to assist the committee in performing its functions or to evaluate the committee.

(4) Except as provided in subsection (5), compliance review material is confidential and is not discoverable or admissible in evidence in any civil action.

(5) Subsection (4) does not apply to any information required by statute or regulation to be maintained by or provided to a governmental entity to the extent that law requires the governmental entity to disclose the information for discovery or admission into evidence.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13903 Surety bond.

Sec. 3903.

(1) The board of directors shall require every employee involved in the handling of money, accounts, or securities of the bank to be bonded by a surety company authorized to do business in this state in an amount determined by the board. The bank shall pay for any surety bonds required of its employees.

(2) Every bank shall maintain a financial institution bond sufficient to protect against loss. If a bank refuses to comply with this requirement, the commissioner may contract for the bond and charge the cost to the bank. If the charge is not paid, the commissioner may collect the charge in an action instituted by the attorney general.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13904 Indemnification.

Sec. 3904.

(1) A bank may indemnify a person described in subsection (2) who was or is a party or is threatened to be made a party to any type of threatened, pending, or completed action, suit, or proceeding, other than an action by or in the right of the bank, against expenses, including attorney fees, judgments, penalties, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with the action, suit, or proceeding if the person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the bank or its shareholders and with respect to a criminal action or proceeding had no reasonable cause to believe his or her conduct was unlawful.

(2) Subsection (1) applies to a person who is or was a director, officer, employee, or agent of the bank or is or was serving at the request of the bank as a director, officer, partner, trustee, employee, or agent of another depository institution, foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not.

(3) The termination of an action, suit, or proceeding by judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, does not, of itself, create a presumption that the person did not act in good faith and in a manner that he or she reasonably believed to be in or not opposed to the best interests of the bank or its shareholders and with respect to a criminal action or proceeding had no reasonable cause to believe his or her conduct was unlawful.

(4) A bank may indemnify a person who was or is a party to or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the bank to procure a judgment in its favor by reason of the fact that he or she is or was a director, officer, employee, or agent of the bank or is or was serving at the request of the bank as a director, officer, partner, trustee, employee, or agent of another bank or national banking association, foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, against expenses, including actual and reasonable attorney fees and amounts paid in settlement actually and reasonably incurred by the person in connection with the action or suit, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the bank or its shareholders. Indemnification shall not be made for a claim, issue, or matter in which the person has been found liable to the bank except as authorized in subsection (5).

(5) A director, officer, employee, or agent of the bank who is a party or threatened to be made a party to an action, suit, or proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court after giving any notice it considers necessary may order indemnification if it determines that the person is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he or she met the applicable standard of conduct set forth in this section or was adjudged liable, but if he or she was adjudged liable, his or her indemnification is limited to reasonable expenses incurred.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13905 Indemnification; expenses and amounts.

Sec. 3905.

(1) To the extent that a director, officer, employee, or agent of a bank has been successful on the merits or otherwise in defense of an action, suit, or proceeding described in section 3904, or in defense of a claim, issue, or matter in the action, suit, or proceeding, he or she shall be indemnified against actual and reasonable expenses, including attorney fees, incurred by him or her in connection with the action, suit, or proceeding and an action, suit, or proceeding brought to enforce the mandatory indemnification provided in this subsection.

(2) An indemnification under section 3904, unless ordered by the court, shall be made by the bank only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in section 3904 and upon an evaluation of the reasonableness of expenses and amounts paid in settlement. This determination and evaluation shall be made in any of the following ways:

(a) By a majority vote of a quorum of the board consisting of directors who are not parties or threatened to be made parties to the action, suit, or proceeding.

(b) If the quorum described in subdivision (a) is not obtainable, by majority vote of a committee duly designated by the board and consisting solely of 2 or more directors not at the time parties or threatened to be made parties to the action, suit, or proceeding.

(c) By independent legal counsel in a written opinion, which counsel shall be selected in 1 of the following ways:

(i) By the board or its committee in the manner prescribed in subdivision (a) or (b).

(ii) If a quorum of the board cannot be obtained under subdivision (a) and a committee cannot be designated under subdivision (b), by the board.

(d) By all independent directors who are not parties or threatened to be made parties to the action, suit, or proceeding.

(e) By the shareholders, but shares held by directors, officers, employees, or agents who are parties or threatened to be made parties to the action, suit, or proceeding may not be voted.

(3) All directors may participate in the designation of a committee under subsection (2)(b) or in the selection of independent legal counsel under subsection (2)(c)(ii).

(4) If a person is entitled to indemnification under section 3904 for a portion of expenses, including reasonable attorney fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount of the expenses, the bank may indemnify the person for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13906 Director, officer, employee, or agent as party to action; reimbursement.

Sec. 3906.

A bank may pay or reimburse the reasonable expenses incurred by a director, officer, employee, or agent who is a party or threatened to be made a party to an action, suit, or proceeding described in section 3904 in advance of the final disposition of the action, suit, or proceeding if all of the following apply:

(a) The person furnishes the bank a written affirmation of his or her good faith belief that he or she has met the applicable standard of conduct set forth in section 3904.

(b) The person furnishes the bank a written undertaking executed personally or on his or her behalf to repay the advance if it is ultimately determined that he or she did not meet the standard of conduct. The undertaking shall be by unlimited general obligation of the person on whose behalf advances are made but need not be secured.

(c) A determination is made that the facts then known to those making the determination would not preclude indemnification under this act.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13907 Other rights to indemnification or advancement; limitation.

Sec. 3907.

The indemnification or advancement of expenses provided by or granted under sections 3904, 3905, and 3906 are not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under the articles of incorporation, the bylaws, or a contractual agreement. The total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses. The indemnification provided for in sections 3904, 3905, and 3906 continues as to a person who ceases to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of the person.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13908 Liability insurance or trust fund.

Sec. 3908.

A bank has the power to purchase and maintain insurance or create a trust fund or other form of funded arrangement on behalf of any person who is or was a director, officer, employee, or agent of the bank or is or was serving at the request of the bank as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, against any liability asserted against him or her and incurred by him or her in that capacity or arising out of his or her status in that capacity, whether or not the bank has the power to indemnify him or her against the liability under sections 3904, 3905, 3906, and 3907.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13909 Consolidation or merger; position of director, officer, employee, or agent of absorbed depository institution.

Sec. 3909.

For purposes of this section and sections 3904, 3905, 3906, 3907, 3908, and 3910, a person who is or was a director, officer, employee, or agent of a depository institution absorbed in a consolidation or merger or is or was serving at the request of the depository institution as a director, officer, partner, trustee, employee, or agent of another depository institution, foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, shall hold the same position with respect to the consolidated bank as he or she would if he or she had served the consolidated bank in that capacity.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13910 Definitions; person acting in best interests of bank or shareholders.

Sec. 3910.

(1) For the purposes of sections 3904, 3905, 3906, 3907, 3908, and 3909:

(a) "Fines" includes any excise taxes assessed on a person with respect to an employee benefit plan.

(b) "Other enterprise" includes employee benefit plans.

(c) "Serving at the request of the bank" includes any service as a director, officer, employee, or agent of the bank that imposes duties on, or involves services by, the director, officer, employee, or agent with respect to an employee benefit plan, its participants, or its beneficiaries.

(2) A person who acted in good faith and in a manner he or she reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be considered to have acted in a manner not opposed

to the best interests of the bank or its shareholders as referred to in section 3904.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13911 Reports.

Sec. 3911.

(1) The commissioner may require reports from any bank if, in the commissioner's judgment, they are necessary to inform the commissioner fully as to the condition of the bank. The commissioner shall give a bank at least 30 days' notice in writing of the date by which the report is to be submitted to the bureau.

(2) A bank that fails to make, and transmit, any report required under this section shall be subject to a penalty established by the commissioner not to exceed \$1,000.00 for each day after the date for making the report established by the commissioner in subsection (1). The commissioner may maintain an action against a bank for the recovery of the penalty.

(3) A penalty assessed under this section shall be paid into the state treasury to the credit of the bureau and used only for the operation of the bureau.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13912 Attachment or execution.

Sec. 3912.

Attachment or execution shall not be issued against a bank or its property before final judgment in any suit, action, or proceeding involving the bank in any court.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.13913 Action taken or event occurring on or before November 29, 1995.

Sec. 3913.

A written agreement entered into under section 130b of former 1969 PA 319 shall remain in effect with regard to actions taken and events occurring on or before November 29, 1995. A cause of action shall not accrue under an agreement for an action taken or event occurring after November 29, 1995.

History: 1999, Act 276, Eff. Mar. 1, 2000

Chapter 4 BANKING POWERS Part 1 GENERAL PROVISIONS

487.14101 Banking powers generally.

Sec. 4101.

(1) Subject to the limitations and restrictions contained in this act or in a bank's articles, the bank may engage in the business of banking and a business related or incidental to banking, and for that purpose, without specific mention in its articles, shall have and exercise the powers and means appropriate to effect the purpose for which the bank is incorporated, powers conferred by former 1969 PA 319 and by this act, and the following corporate powers:

- (a) To make contracts.
- (b) To sue and be sued, complain, and defend in its corporate name as fully as a natural person.
- (c) To make, alter, amend, and repeal bylaws not inconsistent with its articles or with law for the administration and regulation of the affairs of the bank.

(d) To enter into agency relationships with affiliated depository institutions. A bank or an affiliated depository institution in its capacity as an agent under this subdivision may do any or all of the following:

- (i) Receive deposits.
- (ii) Permit withdrawals of deposits.
- (iii) Renew time deposits.
- (iv) Close loans.
- (v) Service loans.
- (vi) Receive loan payments.
- (vii) Engage in any activity specifically authorized by this act or by order or declaratory ruling of the commissioner.

(e) To contract, upon 30 days' advance written notice to the commissioner, unless the commissioner objects in writing within 30 days after receipt of the written notice, with a person for the person to act as an agent of the bank in an agency office and engage in any of the activities set forth in section 4109.

(2) A bank has and may exercise the following additional powers:

(a) As authorized by order or declaratory ruling of the commissioner, to exercise at a branch such additional powers consistent with the safe and sound conduct of the business of banking as are granted by the laws of the state, territory, protectorate, or foreign country where the branch is located.

(b) As authorized by order or declaratory ruling of the commissioner, to exercise further powers consistent with the safe and sound conduct of the business of banking or of a business related or incidental to banking as are granted by the laws of the United States or of any state or political subdivision of the United States to financial service providers.

(c) To own and operate a messenger service or to own or invest in an entity that operates a messenger service.

(d) To engage in any aspect of the insurance and surety business as an agent, broker, solicitor, or insurance counselor as provided under the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, and to own an insurance agency in whole or in part as provided under that act.

(e) To provide brokerage services for the offer, sale, or purchase of a security or commodity contract.

(3) In addition, a bank has the powers granted by order or declaratory ruling of the commissioner.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.14102 Safe deposit and storage department; lien for unpaid rental and storage charges.

Sec. 4102.

(1) If a bank operates a safe deposit and storage department, the legal liability of the bank on account of any loss to a customer shall not exceed the sum of \$10,000.00 for any 1 box or compartment, including all property accepted for storage outside of the box or compartment. The bank may contract with the renter to have the renter assume all risks arising from the use of the box, compartment, or storage.

(2) The bank shall have a lien for unpaid rental and storage charges on the contents of any box or compartment and any property accepted for storage outside of the box or compartment. If the charges are not paid within 1 year from the date of accrual, the bank may sell the property at public auction upon like notice as is required by law for sales on execution. After retaining from the proceeds of sale the amount of all charges due and owing at the time of the sale, and the reasonable expenses of the sale, the bank shall pay the balance, if any, upon proper showing to the persons entitled to the balance. The bank may fairly and in good faith purchase all or any part of the property at the sale.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.14103 Drafts or bills of exchange.

Sec. 4103.

(1) A bank may accept drafts or bills of exchange drawn upon it having not more than 6 months' sight to run, exclusive of days of grace, if 1 or more of the following apply:

- (a) The drafts or bills of exchange grow out of transactions involving the importation or exportation of goods.
- (b) The drafts or bills of exchange grow out of transactions involving the domestic shipment of goods.
- (c) The drafts or bills of exchange are secured at the time of acceptance by a warehouse receipt or other document conveying or securing title covering readily marketable staples.

(2) Except as provided in subsection (3), a bank shall not accept bills of exchange, or be obligated for a participation share in bills of exchange, in an amount equal at any time in the aggregate to more than 150% of its capital and surplus.

(3) The commissioner, under conditions as the commissioner may prescribe, may authorize by order or declaratory ruling any bank to accept bills of exchange, or be obligated for a participation share in bills of exchange, in an amount not exceeding at any time in the aggregate 200% of its capital and surplus.

(4) Notwithstanding subsections (2) and (3), with respect to any bank, the aggregate acceptances, including obligations for a participation share in acceptances, growing out of domestic transactions shall not exceed 50% of the aggregate of all acceptances, including obligations for a participation share in acceptances, authorized for the bank under this section.

(5) A bank shall not accept bills, or be obligated for a participation share in bills of exchange, whether in a foreign or domestic transaction, for any 1 person, partnership, corporation, association, or other entity in an amount equal at any time in the aggregate to more than 10% of its capital and surplus, unless the bank is secured either by attached documents or by some other actual security growing out of the same transaction as the acceptance.

(6) With respect to a bank that issues an acceptance, the limitations contained in this section do not apply to that portion of an acceptance that is issued by the bank and that is covered by a participation agreement sold to another bank, out-of-state bank, or national bank.

(7) In order to carry out the purposes of this section, the commissioner may define any of the terms used in this section.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.14104 Real estate brokerage.

Sec. 4104.

(1) A bank may engage directly in, or own in whole or in part, a real estate brokerage business as provided under article 25 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518.

(2) A bank that engages directly in the real estate brokerage business or owns in whole or in part a real estate brokerage business shall provide written notice of its licensure as a real estate broker or its ownership of a real estate brokerage business to the commissioner within 10 days of licensure or ownership. The notice required by this subsection shall include the name and business address of the real estate brokerage.

(3) A bank that engages directly in the real estate brokerage business or owns in whole or in part a real estate brokerage business shall not do any of the following:

(a) Impose a requirement, verbally or in writing, that a borrower must contract for or enter into any other arrangement for real estate brokerage services with a particular real estate broker.

(b) Impose a requirement, verbally or in writing, that as a condition of approving a loan a borrower must contract or enter into any other arrangement for real estate brokerage services.

(c) Impose a requirement, verbally or in writing, that a real estate brokerage customer shall make application for a loan or any other service or services of a particular bank or any of its subsidiaries, agencies, or service entities.

(d) Impose a requirement, verbally or in writing, that a condition of providing real estate brokerage services is that the customer shall make an application for a loan or any other arrangement for other services of the bank or any of its subsidiaries, agencies, or service entities.

(e) Offer or provide more favorable consideration, terms, or conditions for any financial products or services to induce or attempt to induce a person to enter into any arrangement for real estate brokerage services with any particular real estate broker.

(f) Offer or provide more favorable terms or conditions for any real estate brokerage services to induce or attempt to induce a person to apply for a loan or obtain any other services of a particular bank or any of its subsidiaries, agencies, or service entities.

(g) Any other activity prohibited by order or declaratory ruling of the commissioner.

(4) A bank that engages directly in the real estate brokerage business or owns in whole or in part a real estate brokerage business under this section shall clearly disclose in writing to any person who applies for credit related to a real estate transaction or applies for prequalification or preapproval for credit related to a real estate transaction, that the person is not required to contract for or enter into an arrangement for real estate brokerage services with a particular real estate broker. Compliance with the disclosure requirements of this subsection shall not be necessary when a person applies for credit or prequalification for credit solely for the purpose of refinancing an existing indebtedness.

(5) A real estate brokerage that is affiliated with a bank shall clearly disclose in writing, before the time an agency agreement for real estate brokerage services is executed, that the person is not required to apply, contract for, or enter into any other arrangement for services of a particular bank or any of its subsidiaries, agencies, or service entities.

(6) The requirements of subsections (4) and (5) do not apply when the person has been given the affiliated business arrangement disclosure statement required by the real estate settlement procedures act of 1974, Public Law 93-533, 88 Stat. 1724.

(7) If the commissioner finds that a bank has violated this section, the commissioner may issue an order requiring the bank to cease and desist the activity that violates this section. If the commissioner additionally finds that the violation was knowingly committed, the commissioner may order any of the following:

(a) A civil fine of not more than \$500.00 for each violation but not to exceed an aggregate civil penalty of \$10,000.00.

(b) That restitution be made to a customer for actual damages directly attributable to the acts that are found to be a violation of this section.

(8) An action under this section shall not be brought more than 3 years after the date of the violation that is the basis of the action.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.14105 Permitted services or activities.

Sec. 4105.

A bank may perform for others 1 or more of the following services or activities, and any other services or activities permitted by order or declaratory ruling of the commissioner:

(a) Provide life, health, and casualty insurance for officers and employees of financial institutions and operate bonus plans and retirement benefit plans for those officers and employees.

(b) Service mortgages and land contracts.

(c) Originate and service mortgage loans, mortgages, and land contracts, on behalf of financial institutions, corporations, and state or federal agencies or instrumentalities.

(d) Act as escrow agent or depository for other escrow agents or fiduciaries.

(e) Conduct credit analysis, appraising, construction loan inspection, and abstracting.

(f) Conduct research, studies, and surveys.

(g) Develop and operate storage facilities for microfilm or other duplicate records.

(h) Advertise, broker, and conduct other activities to procure and retain both deposits and loans, but not pool deposits or solicit or promote pooled deposits.

(i) Provide liquidity management, investment, advisory, and consulting services.

(j) Establish, own, lease, operate, or maintain electronic funds transfer terminals.

(k) Purchase office supplies, furniture, and equipment.

(l) Prepare local, state, and federal tax returns.

(m) Perform data processing services.

(n) Subject to applicable state or federal law, provide brokerage services for the offer, sale, or purchase of a security or commodity contract.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.14106 Purchase or sale of assets; powers of bank.

Sec. 4106.

(1) With the approval of the commissioner, based upon an examination or other appropriate analysis of either the buying or selling organization, or both, and upon the affirmative vote of a majority of the members of its board of directors and of the holders of 2/3 of its stock entitled to vote, a bank may do either or both of the following:

(a) Sell all or substantially all of its assets of every kind, character, and description and assign its liabilities to any depository institution.

(b) Purchase all or substantially all of the assets of every kind, character, and description and assume the liabilities of another depository institution.

(2) The consideration for a purchase and sale under this section may include shares of stock of the purchasing bank, out-of-state bank, national bank, association, or savings bank.

(3) A purchase and sale shall not be made to defeat or defraud any of the creditors of the depository institutions.

(4) Certified copies of all shareholders' and directors' proceedings under this section shall be submitted to the commissioner and shall contain the terms of the sale and purchase, including a copy of the agreement of sale and purchase.

(5) The liability of a depository institution or of its shareholders, directors, or officers, or the rights of creditors of, or other persons transacting business with, the depository institution shall not be lessened or impaired as the result of a sale of assets under this section.

(6) Notwithstanding any other provision of this act, a bank that purchases or assumes all or substantially all of the assets or liabilities of a depository institution may retain, maintain, and operate the principal office or branches of the depository institution as branches of the purchasing bank without providing notice to the commissioner under section 3711(1) provided it assumes the deposit liabilities of the depository institution maintained at the principal office or branches.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.14107 Sale or purchase of bank branch.

Sec. 4107.

(1) A bank may sell 1 or more of its branches, without selling all or substantially all of the bank, to another depository institution located in this state or in a state whose laws would permit a bank to purchase 1 or more branches in that state of the purchasing depository institution.

(2) A bank may purchase 1 or more branches of another depository institution, without purchasing all or substantially all of the depository institution.

(3) A bank that proposes to purchase 1 or more branches under subsection (2) shall provide notice to the commissioner under section 3711 before operating the purchased branch or branches.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.14108 Pledging bank assets as collateral security.

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.

History: 1999, Act 276, Eff. Mar. 1, 2000 ;-- Am. 2016, Act 175, Eff. Sept. 12, 2016

487.14109 Bank agent; activities.

Sec. 4109.

An agent of a bank described in section 4101(1)(e) may engage in any of the following activities:

(a) Accept a deposit to an existing account and record the addition to the account or give other evidence of receipt as prescribed by the bank.

(b) Accept a withdrawal form and other evidence required by the bank from an account holder for transmission to the bank.

(c) Solicit and accept a new account. Evidence of account ownership shall be issued only by authority of the bank. An agent may obtain signature cards from the bank for the account holder. An agent of a bank shall not possess an unissued or blank authenticated savings account passbook or certificate or other evidence of account ownership.

(d) Solicit and accept an application for a loan or for a land contract purchase. The agent shall submit the

application to the bank for processing and approval.

- (e) Disburse withdrawn or loaned funds, upon approval of each disbursement by the bank.
- (f) Accept payment on a loan or on a land contract and issue evidence of receipt as prescribed by the bank.
- (g) Any other services as approved by order or declaratory ruling of the commissioner.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.14110 Automatic teller machine located on premises of casino, casino enterprise, liquor store, or adult entertainment establishment; preventing access to cash benefits from Michigan bridge card; definitions.

Sec. 4110.

(1) A bank that owns, operates, or manages an automated teller machine located on the premises of a casino, casino enterprise, liquor store, or adult entertainment establishment shall work with the department of human services to ensure that the automated teller machine does not allow an individual access to cash benefits from a Michigan bridge card.

(2) As used in this section:

(a) "Adult entertainment establishment" means any of the following:

(i) An on-premises licensee that holds a topless activity permit described in section 916(3) of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1916.

(ii) Any other retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment.

(b) "Alcoholic liquor" means that term as defined in section 105 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1105.

(c) Subject to subsection (3), "casino" means that term as defined in section 2 of the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.202.

(d) Subject to subsection (3), "casino enterprise" means that term as defined in section 2 of the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.202.

(e) "Gaming" means that term as defined in section 2 of the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.202.

(f) "Liquor store" means a retailer, as defined in section 111 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1111, that is exclusively or primarily engaged in the sale of alcoholic liquor. The term does not include a retailer that is a retail food store.

(g) "Michigan bridge card" means the card that is used to distribute cash benefits by the department of human services.

(h) "Retail food store" means that term as defined in 7 USC 2012.

(3) As used in this section, the terms casino and casino enterprise do not include any of the following:

(a) A grocery store that sells groceries, including staple foods, and is located in a casino or a casino enterprise.

(b) Any other business establishment that offers gaming that is incidental to the principal purpose of that establishment.

History: Add. 2013, Act 195, Eff. Feb. 1, 2014

487.14111 Loan promotion raffle or savings promotion raffle.

Sec. 4111.

(1) If authorized by its board of directors, a bank may conduct a loan promotion raffle or savings promotion raffle. The bank shall conduct a loan promotion raffle or savings promotion raffle so that each token or ticket representing an entry in the raffle has an equal chance of being drawn. A bank shall not conduct a loan promotion raffle or savings promotion raffle in a manner that jeopardizes the bank's safety and soundness, misleads its customers, or violates federal law.

(2) A bank shall maintain records sufficient to facilitate an examination of a loan promotion raffle or savings promotion raffle.

(3) As used in this section:

(a) "Loan promotion raffle" means a raffle conducted by a bank where the sole consideration required for a chance of winning designated prizes is the closing on a loan with the bank of at least a specified amount.

(b) "Savings promotion raffle" means a raffle conducted by a bank where the sole consideration required for a chance of winning designated prizes is the deposit of at least a specified amount of money in a savings account or other savings program offered by the bank.

History: Add. 2014, Act 399, Imd. Eff. Dec. 29, 2014 ;-- Am. 2016, Act 162, Eff. Sept. 7, 2016

Part 2 LOANS

487.14201 Loans and credit extensions; interest and charges.

Sec. 4201.

(1) A bank may collect interest and charges on loans and extensions of credit as permitted by the laws of this state or of the United States to any person.

(2) A bank may charge a discount on obligations purchased by the bank.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.14202 Total loans and credit extensions; limitation; exceptions; limitations based upon capital and surplus.

Sec. 4202.

(1) Except as otherwise provided in this section or by order or declaratory ruling of the commissioner, the total loans and extensions of credit and leases by a bank to a person at no time shall exceed 15% of the capital and surplus of the bank, except that upon approval by 2/3 vote of its board of directors the limit may be increased to not to exceed 25% of the capital and surplus of the bank.

(2) If the commissioner determines at any time that the interests of a group of more than 1 person are so interrelated that they should be considered as a unit for the purpose for which credit was extended, the total loans and extensions of credit and leases of persons of that group shall be combined and considered loans and extensions of credit and leases of 1 person under this section. A bank shall not be considered to have violated this section solely by reason of the fact that the indebtedness of a group then held exceeds the limitations of this section at the time of a determination by the commissioner that the indebtedness of that group shall be combined, but if required by the commissioner, the bank shall dispose of indebtedness of the group in the amount in excess of that permitted by this section within a reasonable time determined by the commissioner.

(3) The following loans and extensions of credit shall not be subject to subsection (1):

(a) A loan or extension of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse.

(b) The purchase of banker's acceptances of another bank of the kind described in paragraph 7 of section 13 of the federal reserve act, chapter 6, 38 Stat. 263-264.

(c) A loan or extension of credit to a financial institution or to a receiver, conservator, or any other agent or supervising authority in charge of the business and property of the financial institution, when the loan or extension of credit is approved by the commissioner.

(d) A loan or extension of credit to a customer, secured or covered by guarantees or by commitments or agreements to take over or to purchase the loan or extension of credit, made by a federal reserve bank or by the United States, or a department, bureau, board, commission, or establishment of the United States, including a corporation wholly owned directly or indirectly by the United States.

(e) A loan or extension of credit from 1 business day to the next to a depository institution of excess reserve balances from time to time maintained under section 19 of the federal reserve act, chapter 6, 38 Stat. 270.

(f) A loan or extension of credit secured by bonds, notes, certificates of indebtedness, or treasury bills of the United States or by other obligations fully guaranteed as to principal and interest by the United States.

(g) A loan or extension of credit secured by a loan agreement between a local public agency or a public housing agency and an instrumentality of the United States pursuant to federal housing legislation under which funds will be provided for payment of the obligation secured by the loan agreement.

(h) A loan or extension of credit arising from securities purchased under an agreement to resell.

(i) A loan or extension of credit to the student loan marketing association.

(j) A loan or extension of credit fully secured by a segregated deposit account in the lending bank.

(k) A loan or extension of credit arising from the acceptance by a bank of drafts or bills of exchange drawn upon the bank, or a bank's participation in drafts or bills of exchange drawn upon and accepted by another bank, out-of-state bank, or national bank in conformity with section 4103.

(l) Other loans or extensions of credit as determined by the commissioner by order or declaratory ruling.

(4) The following limitations based upon capital and surplus apply to all of the following:

(a) Loans and extensions of credit to a customer secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples shall be subject to a limitation of 30% of capital and surplus, if the market value of the staples securing the loans or extensions of credit at all times equals or exceeds 115% of the outstanding amount of the loans or extensions of credit. The staples shall be fully covered by insurance if it is customary to insure the staples.

(b) Loans or extensions of credit to a customer secured by shipping documents or instruments transferring or securing title covering livestock, or giving a lien on livestock, if the market value of the livestock securing the obligation is not at any time less than 115% of the face amount of the notes covered, shall be subject to a limitation of 30% of capital and surplus. Loans or extensions of credit arising from the discount by dealers in dairy cattle of paper given in payment for dairy cattle, which paper carries a full recourse indorsement or unconditional guarantee of the seller and which are secured by the cattle being sold, shall be subject to a limitation of 30% of capital and surplus.

(c) Loans or extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper, which carries a full recourse indorsement or unconditional guarantee by the person transferring the paper, shall be subject to a limitation of 30% of capital and surplus. If the bank's files or the knowledge of its officers of the financial condition of each maker of the consumer paper is reasonably adequate, and an officer of the bank designated for that purpose by the board of directors of the bank certifies in writing that the bank is relying primarily upon the responsibility of each maker for the payment of the loans or extensions of credit, the limitations of this section as to the loans and extensions of credit of each maker shall be the sole applicable loan limitation. The certification shall be retained as part of the records of the bank.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.14203 Financing real or personal property; use of proceeds for purchase, design, manufacture, construction, repair, modification, or improvement; liability for defect.

Sec. 4203.

A bank that makes a loan, the proceeds of which are used or may be used by the borrower to finance the purchase, design, manufacture, construction, repair, modification, or improvement of real or personal property, shall not be liable for any defect in the property purchased, designed, manufactured, constructed, repaired, modified, or improved or for any loss or damage resulting from the failure of the borrower or any agent or other person employed by the borrower to use due care in the examination, design, manufacture, construction, repair, modification, or improvement of the property.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.14204 Insurance; hazard; property and casualty.

Sec. 4204.

(1) A bank that requires a mortgagor to maintain hazard insurance as a condition of receiving a mortgage loan shall not require the amount of the hazard insurance to be greater than the replacement cost of the mortgaged

building or buildings.

(2) A bank may require an amount of property and casualty insurance that is required of the bank as a condition of sale, transfer, or assignment of all or part of the mortgage to a third party. This subsection does not require that the bank anticipate a sale, transfer, or assignment at the time the mortgage is made.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.14205 Allowance for bank loan and lease losses; charge off of debt.

Sec. 4205.

Unless a debt constitutes a claim against a solvent estate in probate, if the interest on a debt held by a bank is past due and unpaid for a period of 12 months, the bank shall charge off to its allowance for loan and lease losses the portion of the debt that is not well secured.

History: 1999, Act 276, Eff. Mar. 1, 2000 ;-- Am. 2009, Act 59, Imd. Eff. July 2, 2009

Part 3 INVESTMENTS

487.14301 Purchasing, selling, underwriting, and holding investment securities.

Sec. 4301.

(1) A bank may purchase, sell, underwrite, and hold investment securities that are obligations in the form of bonds, notes, or debentures of a type and to the extent permitted by this act.

(2) A bank may hold, without limit, any of the following:

(a) Obligations of the United States, obligations that are guaranteed fully as to principal and interest by the United States, or any general obligations of any state or of any political subdivision of a state.

(b) Obligations issued by an entity of the federally chartered Farm Credit System.

(c) Obligations issued by banks for cooperatives.

(d) Obligations issued by the federal home loan banks.

(e) Obligations insured by the secretary under title IX of the national housing act, 12 USC 1750 to 1750g.

(f) Obligations insured by the secretary under section 207 of title II of the national housing act, 12 USC 1713, if the debentures to be issued in payment of the insured obligations are guaranteed as to principal and interest by the United States.

(g) Obligations, participations, or other instruments of or issued by the Federal National Mortgage Association or the Government National Mortgage Association.

(h) Mortgages, obligations, or other securities that are or ever have been sold by the Federal Home Loan Mortgage Corporation under 12 USC 1454 or 1455.

(i) Obligations of a public housing agency, as defined in section 1437a of the United States housing act of 1937, 42 USC 1437a.

(j) Obligations of a local public agency, as defined in former 42 USC 1460(h), secured by a loan agreement between the local public agency and the secretary of the United States Department of Housing and Urban Development.

(k) Any other investment security authorized by order or declaratory ruling of the director.

(3) Subject to the exercise of prudent banking judgment, a bank may engage in the underwriting of any of the following investment securities:

(a) Obligations of the United States or any political subdivision of the United States.

(b) Obligations of any state or a political subdivision of any state.

(c) Obligations of the International Bank for Reconstruction and Development.

(d) Obligations of the Inter-American Development Bank.

(e) Obligations of the Asian Development Bank.

(f) Obligations of the Tennessee Valley Authority.

(g) Obligations issued by any state or political subdivision or agency of a state or political subdivision for

housing, university, or dormitory purposes.

(h) Obligations of the African Development Bank.

(i) Obligations of the International Finance Corporation.

(j) Other obligations listed in subsection (2).

(k) Other obligations authorized by order or declaratory ruling of the director.

(4) A bank may purchase for its own account other investment securities, but the total amount of investment securities of any 1 obligor or maker, held by a bank under this subsection, shall not exceed at any time 25% of its capital and surplus.

(5) The statutory limitation on the amount of investment securities of any 1 obligor or maker that may be held by a bank is determined on the basis of generally accepted accounting principles unless otherwise directed or permitted in writing by the director for safety and soundness reasons.

(6) A bank shall not purchase investment securities convertible into stock at the option of the issuer.

(7) The restrictions and limitations of this section with respect to a bank acquiring and holding securities for its own account do not apply to securities acquired through foreclosure on collateral, or acquired in good faith by way of compromise of a doubtful claim or to avoid a loss in connection with a debt previously contracted. This section does not limit the investment authority of a bank granted by any other section of this act.

(8) If a bank invests funds in a security, obligation, or other instrument that at the time is permitted under this part, the investment subsequently becomes impermissible because of a change in circumstances or law, and the director finds that continuing to hold the investment will have an adverse effect on the safety and soundness of the bank, the director may require that the bank develop a reasonable plan for the divestiture of the investment.

History: 1999, Act 276, Eff. Mar. 1, 2000 ;-- Am. 2016, Act 177, Eff. Sept. 12, 2016

487.14302 Purchase of investment securities.

Sec. 4302.

(1) A bank may purchase investment securities for its own account when in its prudent banking judgment, which may be based in part upon estimates that it believes to be reliable, it determines that there is adequate evidence that the obligor will be able to perform all it undertakes to perform in connection with the securities, including all debt service requirements, and that the securities may be sold with reasonable promptness at a price that corresponds to their fair value.

(2) A bank shall not purchase investment securities in which the investment characteristics are considered distinctly or predominantly speculative, or purchase investment securities that are in default, whether as to principal or interest.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.14303 Investment in other assets.

Sec. 4303.

Notwithstanding any other section of this act, a bank may invest in other assets authorized by order or declaratory ruling of the commissioner.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.14304 Bank investment authority; purchasing or holding shares of stock or other equity interests.

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.

History: 1999, Act 276, Eff. Mar. 1, 2000 ;-- Am. 2016, Act 175, Eff. Sept. 12, 2016

487.14305 Venture capital investments.

Sec. 4305.

(1) Except as otherwise provided by this act, a bank may make venture capital investments, and may invest in equity securities of a professional investor a majority of whose assets consists of venture capital investments.

(2) If a bank makes a venture capital investment under subsection (1), an officer or director of the bank shall not hold an equity position in the financed company, and the bank shall own less than 50% of the company.

(3) A bank's investment under subsection (1) in any 1 entity shall not exceed an amount equal to 5% of the capital and surplus of the bank, and all investments under subsection (1) shall not exceed an amount equal to 10% of the capital and surplus of the bank.

(4) This section does not limit the authority of a bank to exercise lending or investment powers which are otherwise authorized by law.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.14306 Lease, purchase, holding, and conveyance of real property.

Sec. 4306.

A bank may lease, purchase, hold, and convey any of the following real property:

(a) As necessary for the convenient transaction of its business, including space within its banking office buildings to rent as lessor to third parties.

(b) As conveyed to it in satisfaction of debts previously contracted in the course of its business.

(c) As it purchases at sales under judgments, decrees, or mortgages held by the bank or to secure debts due to it.

(d) As it legally owned on the effective date of this act.

(e) As conveyed to it under sections 4401 to 4405.

(f) As it may acquire in connection with the purchase by it of a land contract, but the purchase of the land contract constitutes a loan secured by real property for purposes of section 4202.

(g) For any other purpose as may be permitted by this act or by order or declaratory ruling of the commissioner.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.14307 Acquisition, development, or improvement of real property for sale.

Sec. 4307.

A bank may invest not more than 10% of its total assets in the acquisition and development of real property for sale, or for the improvement of real property by construction or rehabilitation of residential or commercial units for sale or rental purposes. For purposes of this section, a bank may purchase, take, lease as lessee, or otherwise acquire, and own, hold, use, sell, lease as lessor, pledge, grant a security interest in, convey, or otherwise dispose of real property. The investment by a bank may be direct, or indirect as a stockholder in a corporation, member of a limited liability company, or limited partner in a partnership or limited liability partnership.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.14308 Acquisition of real property for use of customer; loan secured by real property.

Sec. 4308.

(1) A bank may lease, purchase, hold, and convey real property for the use of a customer by lease arrangement with the bank, but the acquisition of real property and leasing to a customer constitutes a loan secured by real property for purposes of section 4202.

(2) A bank may incur additional obligations incident to becoming an owner or lessor of real property acquired for the use of a customer.

(3) Inventory of real property held under this section and not leased shall not exceed 25% of the bank's capital and surplus.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.14309 Acquisition of personal property for use of customer; loan secured by personal property.

Sec. 4309.

(1) A bank may lease, purchase, hold, and convey personal property for the use of a customer by lease arrangement with the bank, but the acquisition of personal property and leasing to a customer constitutes a loan secured by personal property under section 4202.

(2) A bank may incur additional obligations incident to becoming an owner or lessor of personal property acquired for the use of a customer.

(3) Inventory of personal property held under this section and not leased shall not exceed 25% of the bank's capital and surplus.

(4) Personal property of a bank that is leased, loaned, or otherwise made available to and used by a person in connection with a business conducted for profit shall be subject to taxation in the same amount and to the same extent as though the lessee or user were the owner of the property. When due, the taxes shall constitute a debt due from the lessee or user to the unit of government for which the taxes were assessed.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.14310 Investment in service entity.

Sec. 4310.

(1) As authorized by order or declaratory ruling of the commissioner, a bank may invest in service entities that engage in activities in which a bank is not authorized to engage.

(2) The maximum aggregate investment by a bank in service entities shall be the lesser of 5% of the bank's total assets or 75% of its capital and surplus.

(3) The commissioner shall give notice to all banks of orders and declaratory rulings issued under this section.

(4) For purposes of subsection (2), investment in a service entity shall include loans by a bank or its subsidiary to a service entity.

(5) Subject to the investment limit in subsection (2), a bank or its subsidiary that has made an initial investment in a service entity may make additional investments in that service entity without notice to the commissioner.

History: 1999, Act 276, Eff. Mar. 1, 2000

Part 4 TRUSTS

487.14401 Trust powers; conditions, limitations, and restrictions.

Sec. 4401.

(1) Upon application, the commissioner may grant to any bank or state foreign bank branch trust powers as provided in this section, subject to the conditions, limitations, and restrictions in this act.

(2) The commissioner shall not grant trust powers to a state agency.

(3) If the commissioner approves an application described in subsection (1), the bank or state foreign bank branch has the power to conduct a trust business. This power includes, but is not limited to, all of the following:

(a) In its corporate name, to take, receive, hold, repay, reconvey, and dispose of any effects and property, both real and personal, that are granted, committed, transferred, or conveyed to it with its consent, according to the terms of any agreement or trust, at any time, by any individual, minor, corporate body, court, or any other person and to administer, fulfill, and discharge the duties of the trust.

(b) To act as agent for the transaction of business, the management of estates, the collection of rents, interest, dividends, and money, and the collection of principal and interest on mortgages, bonds, notes, and securities for money; to enforce the payment of any of these obligations; to act as agent for the purpose of issuing, negotiating, registering, transferring, or countersigning the certificates of stock, bonds, or other obligations of any corporation, association, or municipality; and to manage any sinking fund of any corporation, association, or municipality on the terms to which the parties have agreed.

(c) To accept and to execute the office of personal representative, trustee, receiver, conservator, liquidating agent, assignee, or guardian of any minor, incompetent person, legally incapacitated person, or any other person subject to guardianship. If an application is made to a court for the appointment of a trustee, receiver, personal representative, or guardian of any minor, incompetent person, legally incapacitated person, or any other person subject to guardianship, the court may appoint the bank or state foreign bank branch, with its consent, to hold that office. The accounts of a bank or state foreign bank branch as trustee, receiver, conservator, liquidating agent, assignee, personal representative, or guardian shall be regularly settled and adjusted by the proper office or tribunals. All proper, legal, usual, and customary charges, costs, and expenses shall be allowed to the bank or state foreign bank branch for the care and management of an estate committed to it under this section. If appointed by any court, a bank or state foreign bank branch is not required to give any security except in the discretion of the court. If the court orders the bank or state foreign bank branch to give security, the security shall be a bond in an amount fixed by the court and with a surety company authorized to do business in this state, or with personal surety or sureties on the bond satisfactory to the court.

(d) Subject to law, to exercise by its board of directors or authorized officers or agents all incidental powers necessary to carry on a trust business.

(e) A bank or state foreign bank branch acting as a fiduciary may charge a reasonable fee for its services. In any action or proceeding concerning fees, there is a rebuttable presumption that a fee is reasonable if the fee or its method of computation is specified in a fee schedule or fee agreement of the bank or state foreign bank branch in effect at the time the service is provided and if the agency or custody principal, the trust grantor, or any other person who is entitled to be kept reasonably informed of the fiduciary account and its administration under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102, received reasonable notice of that fee schedule or fee agreement before the fee is charged.

History: 1999, Act 276, Eff. Mar. 1, 2000 ;-- Am. 2006, Act 581, Imd. Eff. Jan. 3, 2007

487.14402 Definitions; trust service agreement.

Sec. 4402.

(1) As used in this section:

(a) "Host bank" means a bank, national bank, association, savings bank, or other legal entity for which trust services are provided by any other bank, out-of-state bank, national bank, association, or savings bank.

(b) "Trust service provider" means a bank, national bank, association, or savings bank providing trust services to any other bank, out-of-state bank, national bank, association, savings bank, or other legal entity.

(c) "Banking office" means a principal office or authorized branch of a bank, out-of-state bank, national bank, association, or savings bank.

(2) A bank granted full trust powers may contract by written agreement with any other legal entity to carry on trust services in its name and for its account at 1 or more of the offices of the other legal entity.

(3) A bank may contract by written agreement with any other legal entity exercising full trust powers to carry on trust services at 1 or more of its banking offices but in the name and for the account of the other legal entity.

(4) An agreement provided for in this section, including any lease, or a modification or extension of an agreement, is not effective until it is filed with the commissioner.

(5) Thirty days after a host bank mails a notice of substitution as provided in subsection (6), a trust service provider shall be substituted for a host bank as fiduciary or agent and succeed to the title of assets held by a host bank in a fiduciary capacity for each account in which the host bank, under the terms of a trust service agreement, will no longer serve as fiduciary or agent. A trust service provider shall not be substituted for the host bank for an account in which the recipient of a notice of substitution objects to the substitution in the manner provided in subsection (6).

(6) For each account in which a trust service provider is substituted for a host bank under the terms of a trust service agreement, a written notice of substitution shall be sent by the host bank by certified mail. The notice of substitution shall include the date the notice was mailed and explain that the trust service provider will not be substituted for the host bank for the account if the recipient of the notice sends a written objection to the host bank by first-class mail within 30 days after the date the notice was mailed. The notice of substitution shall be sent to the following as appropriate:

(a) For employee benefit plans, to the plan sponsors.

(b) For individual retirement accounts and retirement accounts for the self-employed, to the account owners.

(c) For agency and escrow accounts, to the principals.

(d) For securities for which a host bank serves as trustee, registrar, transfer agent, or paying agent, to the issuers.

(e) For revocable trusts under agreement, to the settlors.

(f) For irrevocable trusts under agreement, to any co-fiduciary, to the settlor, to each current income beneficiary who is an adult, and, if a current income beneficiary is a minor, to a parent of the minor with whom the minor resides or to the conservator or guardian of the minor. The notice to the settlor shall not grant to the settlor any authority over the trust or trustee that the settlor does not already have, including the authority to object to the substitution of a trust service provider for a host bank. For purposes of this subdivision, "current income beneficiary" means a person currently entitled to income or a person to whom the trustee, in the trustee's discretion, may pay principal or income.

(g) For testamentary trusts, to the persons notified under subdivision (f) and to the probate court that appointed the host bank as trustee.

(h) For conservatorships, to any co-fiduciary, to the protected person for whom the conservatorship was created or, if the conservatorship was created for a minor, to a parent of the minor with whom the minor resides or to the guardian of the minor, and to the probate court that appointed the host bank as conservator.

(i) For guardianships, to any co-fiduciary, to the minor or legally incapacitated person for whom the guardian was appointed if the ward is at least 14 years of age, and to the probate court that appointed the host bank as guardian.

(j) For probate estates, to any co-fiduciary, to any interested person as defined by section 1105 of the estates and protected individuals code, 1998 PA 386, MCL 700.1105, and to the probate court that appointed the host bank as personal representative.

(7) Subsections (1), (5), and (6) apply to trust service agreements in effect on or after December 6, 1985.

History: 1999, Act 276, Eff. Mar. 1, 2000 ;-- Am. 2000, Act 62, Eff. Apr. 1, 2000

487.14403 Trust powers; segregation of assets held in fiduciary capacity; separate books and records; commingling and consolidation.

Sec. 4403.

(1) A bank exercising a trust power as provided in this section and sections 4401, 4402, 4404, and 4405 shall segregate all assets held in a fiduciary capacity from the general assets of the bank, shall keep a separate set of books and records showing in proper detail all transactions engaged in under the authority of this section and sections 4401, 4402, 4404, and 4405, and at all times shall keep the bank's trust department business separate and distinct from the bank's commercial banking business.

(2) Funds, at any time and from time to time, held in trust by the bank awaiting investment or other disposition, may be commingled and consolidated, and may be deposited in other banks as designated by the board of directors or may be held at any time and from time to time by the bank under a deposit relationship and used by the bank in the conduct of the bank's individual corporate business, but only to the extent and when the bank shall set aside for the protection of the owners of the funds obligations of the United States, obligations that are guaranteed fully as to principal and interest by the United States, general obligations of this state or of any political subdivision of this

state, surety bonds, or other securities approved by the commissioner equal at face value to the amount of the funds held and so used less the amount of the funds that are insured by the federal deposit insurance corporation. If the bank fails, the owners of the funds held in trust, awaiting investment or other disposition, shall have a lien on the securities set apart in addition to any other claims against the bank.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.14404 Application for full fiduciary powers; considerations; limited trust power.

Sec. 4404.

(1) In acting upon applications for permission to exercise full fiduciary powers as provided in section 4401, the commissioner shall take into consideration the sufficiency of the capital and surplus of the applying bank and any other facts or circumstances the commissioner considers proper.

(2) Without regard to the capital and surplus requirements specified in subsection (1), the commissioner may grant to a bank the limited trust power to act as executor, administrator, or guardian and to serve as a testamentary trustee.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.14405 Investment of trust funds or property; "registered investment company" defined; bank considered as fiduciary.

Sec. 4405.

(1) A bank shall invest any money or property held by the bank as fiduciary and available for investment at the time and in the manner specified in the agreement, instrument, or order creating or defining the trust or other capacity in which the bank is acting or, if the bank holds the money or property as agent, as directed or permitted by the bank's principal. In the absence of investment specifications or limitations in the agreement, instrument, or order, the bank shall invest any money or property held by the bank as fiduciary within a reasonable time in real or personal property, of whatever type or nature, that a prudent investor would purchase, taking into account the purposes, terms, and distribution requirements expressed in the governing instrument, in the exercise of reasonable care, skill, and caution under conditions existing at the time of purchase. A bank's compliance with the prudent investor rule described in this subsection is determined in light of the facts and circumstances that exist at the time of the bank's decision or action as a fiduciary and requires a standard of conduct, not outcome or performance.

(2) A bank shall not invest any money or property held as fiduciary in any securities or other properties, real or personal, purchased from the bank in its individual capacity or from any affiliate of the bank unless 1 of the following applies:

(a) The investment is otherwise permitted by law, a court order, or the agreement, instrument, or order that creates or defines the trust or other fiduciary capacity in which the bank is acting.

(b) All interested parties or their representatives consent to the investment.

(c) The bank holds the money or property as an agent and the bank's principal directs or permits the investment.

(3) Except when the agreement, instrument, or order creating or defining the trust or other capacity in which the bank, or the bank and 1 or more cofiduciaries, is acting prohibits the investment or transaction, a bank or a bank and 1 or more cofiduciaries may do any of the following with any money or property over which the bank or the bank and 1 or more cofiduciaries exercises investment discretion:

(a) Invest the money or property in a registered investment company even though either or both of the following apply:

(i) The bank or 1 or more affiliates of the bank provide services as investment adviser, sponsor, distributor, manager, custodian, transfer agent, registrar, or otherwise, to the investment company and receives reasonable remuneration for those services.

(ii) The bank as fiduciary owns or controls a majority of the voting shares of the investment company or a majority of the shares voted for the election of its directors or trustees or the bank as fiduciary otherwise controls the election of a majority of the investment company's directors or trustees.

(b) With the written consent of the revocable trust grantor or agency principal, or if the trust is irrevocable or the trust grantor is deceased or reasonably believed by the trustee to be incapacitated, after providing advance notice at least 45 days before the use of the money or property to any person then entitled to be kept reasonably informed of the fiduciary account and its administration under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102, use the money or property to purchase any product, service, or security from or through the bank or an affiliate of the bank, including, but not limited to, an insurance product or a security that is underwritten or distributed by the bank or an affiliate of the bank or by a syndicate or selling group that includes the bank or an affiliate of the bank, if the purchase price is reasonable. Any advance notice required under this subdivision shall list the type of products, services, or securities available for purchase from or through the bank or an affiliate of the bank and shall provide the name and address of an individual at the bank to whom a beneficiary receiving the notice may direct any objection. If the bank receives a written objection to a notice provided under this subdivision, and the objection is not resolved or withdrawn, the bank shall not use the money or property to purchase any product, service, or security from or through the bank or an affiliate of the bank for at least 60 days after the bank receives the written objection. A bank or 1 or more affiliates of the bank may receive reasonable compensation in connection with the purchase of the product, service, or security under this subdivision.

(4) As used in subsection (3), "registered investment company" means an investment company that is registered under the investment company act of 1940, 15 USC 80a-1 to 80a-64.

(5) For purposes of this section, a bank is considered to hold funds or property in a fiduciary capacity if it is holding the assets as trustee, personal representative, custodian, conservator, guardian, agent, or in any other fiduciary capacity.

History: 1999, Act 276, Eff. Mar. 1, 2000 ;-- Am. 2006, Act 581, Imd. Eff. Jan. 3, 2007

487.14406 Repealed. 2005, Act 195, Imd. Eff. Nov. 7, 2005.

Compiler's Notes: The repealed section pertained to filing suspicious activity report by bank with federal agency.

Chapter 5 FOREIGN BANKS STRUCTURE

487.15101 State agency or state foreign bank branch; establishment and operation by state foreign bank branch.

Sec. 5101.

(1) With the written approval of the commissioner, a foreign bank may establish and operate a state agency or state foreign bank branch in this state if all of the following apply to the foreign bank:

- (a) It is authorized by its charter or articles of incorporation to engage in the business of banking.
- (b) It has complied with the laws of the foreign country in which it is chartered or incorporated.
- (c) In the case of a state agency, the foreign bank does not operate a federal agency in this state.
- (d) In the case of a state foreign bank branch, the foreign bank has not previously designated any other state as its home state under the international banking act of 1978.

(2) The commissioner shall examine the information and statements contained in the application submitted under subsection (1) and make any investigation considered necessary regarding the financial and managerial resources of the applicant. The commissioner shall also consider whether there exists an opportunity for a bank having its principal place of business in this state to conduct business in the foreign country in which the applicant is chartered or incorporated.

(3) Upon written notification to the commissioner, a foreign bank authorized by its charter or articles of incorporation to engage in the business of banking, and that has complied with the applicable laws of the jurisdiction in which it is chartered or incorporated, may establish and operate a foreign bank representative office in this state.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.15102 Conversion of state agency or state foreign bank branch into federal agency or federal branch.

Sec. 5102.

(1) A state agency or state foreign bank branch may be converted into a federal agency or federal branch under the international banking act of 1978.

(2) A federal agency or federal branch located in this state may be converted, with the written approval of the commissioner, into a state agency or state foreign bank branch. If the converted state agency or state foreign bank branch succeeds to assets in which it does not have the legal power to invest, or liabilities that it does not have power to incur, those assets or liabilities shall be disposed of within the next 12 calendar months of the date of the conversion, except that the commissioner may extend this period in the interest of an orderly disposition of those assets or liabilities. The disposition period shall not exceed 3 years.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.15103 Termination of authority to operate state agency or state foreign bank branch.

Sec. 5103.

Authority to operate a state agency, state foreign bank branch, or foreign bank representative office shall terminate upon dissolution of the foreign bank, or the commissioner's revocation of the foreign bank's authority to operate in this state. Upon termination of the authority to operate a state agency or state foreign bank branch, the commissioner shall become agent for the foreign bank for service of process and shall exercise the same powers, including the right to appoint a receiver, over the assets and liabilities of the state agency or state foreign bank branch as are permitted over a state chartered bank in liquidation or dissolution under sections 2401 to 2410 and 3301 to 3307.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.15104 Reports.

Sec. 5104.

A foreign bank operating a state agency or state foreign bank branch in this state shall, at the times and in the form prescribed by the commissioner, file with the commissioner reports written in the English language, showing the amount of its assets and liabilities and containing other information requested by the commissioner. A foreign bank that fails to comply with this section is subject to the penalty provided in section 3911.

History: 1999, Act 276, Eff. Mar. 1, 2000

487.15105 Operations of foreign bank at state foreign bank branch or state agency.

Sec. 5105.

(1) Except as otherwise provided in this act or other law of this state, operations of a foreign bank at a state foreign bank branch or state agency shall be conducted with the same rights and privileges and subject to the same

duties, restrictions, penalties, liabilities, conditions, and limitations that would apply under this act to a bank doing business at the same location, except that a state agency or an additional office of a state agency shall not accept nor solicit deposits from citizens or residents of the United States or exercise trust powers. Operations of a foreign bank representative office are limited to representational functions.

(2) A foreign bank that operates a state agency or state foreign bank branch is permitted to establish and operate additional offices subject to section 3711. For purposes of section 3711, the principal office of a foreign bank operating under this act shall be its first state agency or state foreign bank branch established in this state.

(3) A state agency or state foreign bank branch shall not be required to become an insured bank, as insured bank is defined in section 3 of the federal deposit insurance act, unless the state foreign bank branch accepts deposits described in section 3 of the federal deposit insurance act.

(4) A foreign bank that operates a state agency or state foreign bank branch in this state shall maintain the accounts and conduct the business of the state agency or state foreign bank branch independently of the accounts and business of the parent foreign bank.

(5) The commissioner may examine the books, accounts, records, and files of the foreign bank that contain information regarding the accounts and business of a state agency, state foreign bank branch, or foreign bank representative office.

History: 1999, Act 276, Eff. Mar. 1, 2000