

**SENATE BILL NO. 745**

September 28, 1999, Introduced by Senators EMMONS, STEIL,  
ROGERS, MILLER, SHUGARS, V. SMITH, JOHNSON, HAMMERSTROM,  
SIKKEMA, STILLE, BENNETT, MC COTTER and GAST and referred  
to the Committee on Banking and Financial Institutions.

A bill to revise and codify the laws relating to banks,  
out-of-state banks, and foreign banks; to provide for their regu-  
lation and supervision; to prescribe the powers and duties of  
banks; to prescribe the powers and duties of certain state agen-  
cies and officials; to prescribe penalties; and to repeal acts  
and parts of acts.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1 CHAPTER 1

2 PART 1

3 SHORT TITLE AND GENERAL PROVISIONS

4 Sec. 1101. This act shall be known and may be cited as the  
5 "banking code of 1999".

6 Sec. 1102. It is the policy of this state that the business  
7 of all banking organizations shall be supervised and regulated in  
8 a manner that insures the safe and sound conduct of business, to



1 conserve their assets, promote competition among banking  
2 organizations, to maintain public confidence in the business, and  
3 to protect the public interest and the interests of depositors,  
4 creditors, and shareholders.

5       Sec. 1103. The filing of documents under this act does not  
6 provide constructive notice of the contents of the documents  
7 except as to shareholders, directors, and officers of the insti-  
8 tution or depository institution on behalf of which the documents  
9 are filed.

10       Sec. 1104. (1) This act does not impair or affect an act  
11 done, offense committed, or right accruing, accrued, or acquired,  
12 or liability, penalty, forfeiture, or punishment incurred before  
13 the effective date of this act, but may be enjoyed, asserted,  
14 enforced, prosecuted, or inflicted as if this act had not been  
15 enacted.

16       (2) Proceedings to assert, enforce, prosecute, or inflict a  
17 right or obligation by or against a bank may be consummated under  
18 the law in force at the time the proceedings were commenced. All  
19 prosecutions pending on or instituted after the effective date of  
20 this act for offenses committed before the effective date of this  
21 act may be continued or instituted under the law in force at the  
22 time of the commission of the offense.

23       (3) This act shall not be construed to affect the legality  
24 of investments made or of transactions conducted, under any pro-  
25 visions of law in force when the investments or transactions were  
26 made or conducted, nor to require the change of investments for  
27 those named in this act, except to prevent loss, or injury to the

1 institution, or to the borrowers on the securities. Extension of  
2 such loan or investment shall not be made by any institution,  
3 unless necessary to avoid loss as provided in this subsection.

4 (4) An institution that may be incorporated under this act  
5 shall not be incorporated after the effective date of this act  
6 except under this act.

7 (5) An institution governed by the terms of this act orga-  
8 nized and incorporated before the effective date of this act  
9 under any law of this state, which if now incorporated would be  
10 required to incorporate under and be subject to this act, shall  
11 be subject to this act without formal reorganization under this  
12 act and shall be considered to exist under this act. This act  
13 shall govern all institutions incorporated in this state.

14 (6) This act shall not be construed as attempting to deprive  
15 any institution of any constitutional power, right, privilege, or  
16 franchise that the institution now enjoys.

17 (7) Except as provided in section 2402(4), notwithstanding  
18 any other provision of law, a bank shall not be subject to the  
19 provisions of the business corporation act, 1972 PA 284,  
20 MCL 450.1101 to 450.2098.

21 (8) There is no limit upon the amount or share of deposits  
22 held or controlled in this state by a bank, out-of-state bank,  
23 national bank, or bank holding company on a consolidated basis.

24 Sec. 1105. (1) A person shall not engage in the business of  
25 banking in this state unless authorized by this act, the laws of  
26 another state, the national bank act, the international banking

1 act of 1978, or if engaged in the business of banking on the  
2 effective date of this act under former 1969 PA 319.

3 (2) Except for acting as an escrow agent, only an individual  
4 or corporation shall act as a fiduciary in this state. A corpo-  
5 ration acting as a fiduciary shall do so only if the corporation  
6 is 1 of the following:

7 (a) A bank authorized to exercise trust powers under this  
8 act, or authorized to conduct trust business in this state before  
9 November 29, 1995.

10 (b) A state foreign bank branch authorized to exercise trust  
11 powers under this act.

12 (c) An out-of-state bank, that is authorized to exercise  
13 trust powers under the law of the jurisdiction where it is  
14 organized. An out-of-state bank authorized to exercise trust  
15 powers under this subdivision may do so only to the extent a bank  
16 may exercise trust powers under this act.

17 (d) A national bank authorized to exercise trust powers  
18 under the national bank act. A national bank authorized to exer-  
19 cise trust powers under this subdivision may do so only to the  
20 extent that a bank may exercise trust powers under this act.

21 (e) A nonbanking corporation to the extent that it may be  
22 specifically authorized to act as fiduciary in this state by  
23 another statute of this state.

24 Sec. 1106. The use of the word "bank", "banker", or  
25 "banking" or any foreign language words of similar meaning as a  
26 designation or name, or part of a designation or name under which  
27 business is or may be conducted in this state, is restricted to a

1 national bank, a bank subject to this act, an out-of-state bank,  
2 a bank holding company registered under the bank holding company  
3 act, a foreign bank agency, a foreign bank branch, a savings and  
4 loan holding company as defined in 12 C.F.R. 583.20, or a savings  
5 bank that is lawfully conducting business in this state, unless  
6 that designation or name, taken as a whole, would not imply a  
7 banking business. Use of the term "mortgage banker" or "mortgage  
8 banking" in the name or assumed name of a licensee or registrant  
9 under the mortgage brokers, lenders, and servicers licensing act,  
10 1987 PA 173, MCL 445.1651 to 445.1684, does not violate this  
11 section.

12       Sec. 1107. An institution subject to this act shall have  
13 the same tax exemptions as a savings and loan association under  
14 section 458 of 1964 PA 156, MCL 489.858.

15                               PART 2

16                               DEFINITIONS

17       Sec. 1201. As used in this act:

18       (a) "Administrative expense" means any of the following:

19       (i) An expense designated as an administrative expense by  
20 this act or the court.

21       (ii) Court costs and expenses of operation and liquidation  
22 of a bank.

23       (iii) Current wages paid to an employee of a bank whose  
24 services are retained by the receiver for services rendered after  
25 the date the bank is ordered in receivership.

26       (iv) An unpaid expense of supervision or conservatorship of  
27 a bank.

1 (v) Unpaid fees or assessments owed to the bureau.

2 (b) "Administrative procedures act of 1969" means the admin-  
3 istrative procedures act of 1969, 1969 PA 306, MCL 24.201 to  
4 24.328.

5 (c) "Affiliate" means a corporation, business trust, limited  
6 liability company, or similar organization to which any of the  
7 following apply:

8 (i) An organization, directly or indirectly, owns or con-  
9 trols either a majority of its voting shares or more than 50% of  
10 the number of shares voted for the election of its directors,  
11 trustees, or other persons exercising similar functions at the  
12 preceding election, or controls in any manner the election of a  
13 majority of its directors, trustees, or other persons exercising  
14 similar functions.

15 (ii) Control of the organization is held, directly or indi-  
16 rectly, through either of the following:

17 (A) Stock ownership or in any other manner, by the share-  
18 holders or members of an organization who own or control a major-  
19 ity of the shares of that organization, a majority ownership  
20 interest in the organization, more than 50% of the number of  
21 shares voted for the election of directors of that organization  
22 at the preceding election, or more than 50% of the ownership vote  
23 for election of directors of that organization at the preceding  
24 election.

25 (B) By trustees for the benefit of the shareholders or mem-  
26 bers of that organization.

1       (iii) A majority of its directors, trustees, or other  
2 persons exercising similar functions constitute a majority of the  
3 directors, trustees, or other persons exercising similar func-  
4 tions of any 1 organization.

5       (iv) The organization owns or controls, directly or indi-  
6 rectly, either a majority of the shares of capital stock or other  
7 ownership interest of an organization, or more than 50% of the  
8 number of shares voted or of the total ownership vote for the  
9 election of directors of an organization at the preceding elec-  
10 tion, or controls in any manner the election of a majority of the  
11 directors of an organization, or for the benefit of whose share-  
12 holders or members all or substantially all the capital stock of  
13 ownership interest of an organization is held by trustees.

14       (d) "Applicant" means a person making an application under  
15 this act.

16       (e) "Articles" means articles of incorporation, all amend-  
17 ments to articles of incorporation, and agreements of consolida-  
18 tion and merger.

19       (f) "Association" means a federal savings association orga-  
20 nized under section 5 of the home owners' loan act, chapter 64,  
21 48 Stat. 132, 12 U.S.C. 1464, or a savings and loan association,  
22 building and loan association, or homestead association that is  
23 organized under the laws of a state, the District of Columbia, or  
24 a territory or protectorate of the United States, and whose  
25 deposits are insured by the federal deposit insurance  
26 corporation.



1 (g) "Bank" means a state banking corporation organized or  
2 reorganized under this act or organized under any law of this  
3 state enacted before the effective date of this act, including a  
4 state banking corporation that voluntarily limits its  
5 activities.

6 (h) "Bank holding company" means a company as defined in the  
7 bank holding company act that is not a bank or national banking  
8 association and that is a bank holding company approved by the  
9 board of governors of the federal reserve system under the bank  
10 holding company act or that will become an approved bank holding  
11 company before or upon the completion of a consolidation provided  
12 in section 3706.

13 (i) "Banking holding company act" means the federal bank  
14 holding company act of 1956, chapter 240, 70 Stat. 133.

15 (j) "Branch" means, except as otherwise provided in this  
16 subdivision, a branch bank, branch office, branch agency, addi-  
17 tional office, or a branch place of business at which deposits  
18 are received, checks paid, or money lent. The acceptance of  
19 deposits in furtherance of a school thrift or savings plan by an  
20 officer, employee, or agent of a bank at a school shall not be  
21 construed as the establishment or operation of a branch. An  
22 electronic funds transfer facility that is made available to 2 or  
23 more depository institutions under Michigan law that regulates  
24 electronic funds transfer facilities is not a branch. A trust  
25 office of a bank is not a branch. A loan production office is  
26 not a branch. An additional office of a state agency is not a  
27 branch. An international banking facility as defined in 12

1 C.F.R. 204.8(a)(1), as in effect December 31, 1982, is not a  
2 branch. The receipt of deposits by a messenger service or the  
3 delivery by a messenger service of items representing deposit  
4 account withdrawals or of loan proceeds is not the establishment  
5 or operation of a branch, whether or not the messenger service is  
6 owned or operated by the bank. Branch does not include an agent  
7 acting under section 4101(1)(d).

8 (k) "Bureau" means the financial institutions bureau of the  
9 department of consumer and industry services.

10 (l) "Capital" or "capital stock" means the stated par value  
11 of issued and outstanding unimpaired common stock and the stated  
12 par value of issued and outstanding unimpaired preferred stock.  
13 For purposes of sections 4202, 4301, and 4308, "capital" and  
14 "capital stock" shall also include outstanding capital notes,  
15 debentures, and any other instrument of indebtedness issued under  
16 section 3801.

17 (m) "Cease and desist order which has become final" or  
18 "order which has become final" means a cease and desist order or  
19 an order issued by the commissioner with the consent of the  
20 institution or the director or officer or other person concerned,  
21 or with respect to which no petition for review of the action of  
22 the commissioner has been filed and perfected in a circuit court  
23 as specified in section 2310(2), or with respect to which the  
24 action of the court in which the petition is filed is not subject  
25 to further review by the courts of the state.

26 (n) "Commissioner" means the commissioner of the financial  
27 institutions bureau.

1 (o) "Consolidate", "consolidated", "consolidating", and  
2 "consolidation" include, respectively, consolidate or merge, con-  
3 solidated or merged, consolidating or merging, and consolidation  
4 or merger.

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

8 (q) "Consolidated organization" means an out-of-state bank,  
9 national bank, association, or savings bank organized under the  
10 laws of another state of the United States that results from a  
11 consolidation of 1 or more banks, with 1 or more out-of-state  
12 banks, national banks, associations, or savings banks.

13 (r) "Consolidating organizations" means any combination of  
14 banks, out-of-state banks, national banks, associations, or sav-  
15 ings banks that have consolidated or are in the process of con-  
16 solidation as provided in section 3701 or 3702.

17 (s) "Depository institution" means a bank, out-of-state  
18 bank, national bank, foreign bank branch, association, savings  
19 bank, or credit union organized under the laws of this state,  
20 another state, the District of Columbia, the United States, or a  
21 territory or protectorate of the United States.

22 (t) "Dissolution" means the process by which a solvent bank  
23 voluntarily ends its corporate existence by liquidating its  
24 assets and winding up its affairs.

25 (u) "Dividend reinvestment plan" means a plan that is  
26 offered solely to existing shareholders of the bank and which  
27 allows the shareholders to reinvest dividends received under

1 section 3806 in stock of the bank and that may allow additional  
2 cash amounts to be contributed by the shareholders participating  
3 in the reinvestment plan.

4 (v) "Federal agency" means a foreign bank agency established  
5 and operating under the international banking act of 1978.

6 (w) "Federal branch" means a foreign bank branch established  
7 and operating under the international banking act of 1978.

8 (x) "Federal deposit insurance act" means the federal  
9 deposit insurance act, chapter 967, 64 Stat. 873.

10 (y) "Federal home loan bank act" means the federal home loan  
11 bank act, chapter 522, 47 Stat. 725.

12 (z) "Federal reserve act" means the federal reserve act,  
13 chapter 6, 38 Stat. 251.

14 Sec. 1202. As used in this act:

15 (a) "Financial institution" means an organization licensed,  
16 chartered, or regulated by the financial institutions bureau  
17 under the laws of this state.

18 (b) "Foreign bank" means an entity organized and recognized  
19 as a bank under the laws of a foreign country that lawfully  
20 engages in the business of banking and is not directly or indi-  
21 rectly owned or controlled by United States citizens or by a cor-  
22 poration organized under the laws of the United States. Foreign  
23 bank includes foreign commercial banks, foreign merchant banks,  
24 and other foreign institutions that engage in banking activities  
25 usual in connection with the business of banking in the countries  
26 in which the foreign institutions are organized.

1 (c) "Foreign bank agency" means an office or place of  
2 business of a foreign bank, established under this act, the  
3 international banking act of 1978, or the laws of another state,  
4 that does not exercise trust powers and at which deposits of cit-  
5 izens or residents of the United States are not accepted.

6 (d) "Foreign bank branch" means a place business of a for-  
7 eign bank, located in any state, the District of Columbia, or a  
8 territory, or protectorate of the United States, that is not a  
9 foreign bank agency, bank, or out-of-state bank, at which depos-  
10 its are received and that is established and operating as a  
11 branch of a foreign bank under this act, the international bank-  
12 ing act of 1978, or the laws of another state.

13 (e) "Foreign country" means a country other than the United  
14 States and includes a colony, dependency, or possession of a  
15 country other than the United States.

16 (f) "Incorporator" means a signer of the original articles  
17 of incorporation.

18 (g) "Institution" means a bank, state agency, or state for-  
19 eign bank branch operating or organized or reorganized under this  
20 act or operating or organized under any law of this state enacted  
21 before August 20, 1969.

22 (h) "International banking act of 1978" means the interna-  
23 tional banking act of 1978, Public Law 95-369, 92 Stat. 607.

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

1 (j) "Loan and extension of credit" or "loan or extension of  
2 credit" includes all direct or indirect advances of funds to a  
3 person made on the basis of any obligation of that person to  
4 repay the funds or repayable from specific property pledged by or  
5 on behalf of the person. To the extent specified by the commis-  
6 sioner, loan and extension of credit or loan or extension of  
7 credit includes any liability of a bank to advance funds to or on  
8 behalf of a person under a contractual commitment. The term does  
9 not include investment securities held by a bank under section  
10 4301.

11 (k) "Loan production office" means an office of a depository  
12 institution or institutions at which activities related to the  
13 lending of money are conducted, deposits are not received, and  
14 checks are not paid, and which office is not the principal  
15 office, a branch, or an agency of an affiliated depository finan-  
16 cial institution.

17 (l) "Member" means a person with ownership interest under  
18 the Michigan limited liability company act, 1993 PA 23,  
19 MCL 450.4101 to 450.5200.

20 (m) "Messenger service" means a service such as a courier  
21 service or an armored car service that picks up from or delivers  
22 to customers of 1 or more depository institutions or 1 or more  
23 affiliates of a depository institution cash, currency, checks,  
24 drafts, securities, or other items relating to transactions  
25 between or involving a depository institution or affiliate of a  
26 depository institution and those customers, or that transfers  
27 cash, currency, checks, drafts, securities, or other items or

1 documents between depository institutions or affiliates of  
2 depository institutions. The service may be owned and operated  
3 by 1 or more depository institutions or affiliates or by a third  
4 party.

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

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

9 (p) "National bank act" means the national bank act, chapter  
10 106, 13 Stat. 99.

11 (q) "Out-of-state bank" means a banking corporation orga-  
12 nized under the laws of another state, the District of Columbia,  
13 or a territory or a protectorate of the United States whose prin-  
14 cipal office is located in a state other than this state, in the  
15 District of Columbia, or in a territory or a protectorate of the  
16 United States, and whose deposits are insured by the federal  
17 deposit insurance corporation.

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

21 (s) "Professional investor" means an accredited investor  
22 under 15 U.S.C. 77b.

23 (t) "Publication", "publish", or "published" means to appear  
24 in a newspaper of general circulation in the community or commu-  
25 nities where the principal office or offices of the depository  
26 institution or institutions are located.

1       Sec. 1203. As used in this act:

2       (a) "Savings bank" means a savings bank organized under the  
3 savings bank act, 1996 PA 354, MCL 487.3101 to 487.3804, or the  
4 laws of the District of Columbia, a territory or protectorate of  
5 the United States, or of the United States, whose deposits are  
6 insured by the federal deposit insurance corporation.

7       (b) "Service entity" means a corporation, mutual company,  
8 limited liability company, limited liability partnership, or  
9 limited partnership in which a bank has invested under section  
10 4310(1). Upon written approval of the commissioner, a service  
11 entity may be a general partnership.

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

14       (d) "State agency" means a foreign bank agency established  
15 and operating under this act.

16       (e) "State foreign bank branch" means a foreign bank branch  
17 established and operating under this act.

18       (f) "Stock association" means an association with authority  
19 to issue shares of voting capital stock.

20       (g) "Subsidiary" means a corporation, mutual company,  
21 limited liability company, limited liability partnership, or  
22 limited partnership, the controlling interests of which are more  
23 than 50% owned by 1 or more depository institutions, and in which  
24 a bank has an ownership interest, membership interest, or other  
25 legally enforceable interest which is the indicia of ownership.  
26 Upon approval of the commissioner, and subject to the ownership



1 requirements set forth in this subsection, a subsidiary may be a  
2 general partnership.

3 (h) "Surplus" means the amount paid for issued and outstand-  
4 ing common and preferred stock of the bank in excess of the  
5 stated par value, plus any amount of transferred undivided prof-  
6 its and any additional amounts paid in or contributed to increase  
7 total capital.

8 (i) "Total capital" means an amount equal to any capital,  
9 plus any surplus, undivided profits, and instruments of indebted-  
10 ness authorized under section 3801.

11 (j) "Trust office" means an office of a bank at which trust  
12 services are performed and at which deposits are not accepted,  
13 checks are not paid, and money is not lent.

14 (k) "Uniform commercial code" means the uniform commercial  
15 code, 1962 PA 174, MCL 440.1101 to 440.11102.

16 (l) "Venture capital" means equity financing that is pro-  
17 vided for starting up or expanding a company, or related purposes  
18 such as financing for seed capital, research and development,  
19 introduction of a product or process into the marketplace, or  
20 similar needs requiring risk capital. A venture capital invest-  
21 ment shall not include the purchase of a share of stock in a com-  
22 pany if, on the date on which the share of stock is purchased,  
23 the company has securities outstanding that are registered on a  
24 national securities exchange under section 12(b) of title I of  
25 the securities exchange act of 1934, chapter 404, 48 Stat. 892,  
26 15 U.S.C. 78l; that are registered or required to be registered  
27 under section 12(g) of title I of the securities exchange act of

1 1934, chapter 404, 48 Stat. 892, 15 U.S.C. 78 1, or which would  
2 be required to be registered except for the exemptions in section  
3 12(g)(2) of title I of the securities exchange act of 1934, chap-  
4 ter 404, 48 Stat. 892, 15 U.S.C. 781.

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

9 CHAPTER 2

10 FINANCIAL INSTITUTIONS BUREAU

11 PART 1

12 ADMINISTRATION

13 Sec. 2101. (1) A financial institutions bureau is created  
14 within the department of consumer and industry services, and the  
15 bureau shall have jurisdiction over and administer the laws  
16 relating to financial institutions transacting business in this  
17 state.

18 (2) The head of the financial institutions bureau is the  
19 commissioner who shall be appointed by the governor, with the  
20 advice and consent of the senate, to serve at the pleasure of the  
21 governor.

22 (3) Before assuming the duties of office, the commissioner  
23 shall take and subscribe the constitutional oath of office and  
24 file it with the secretary of state.

25 (4) The commissioner shall approve a seal for the use of the  
26 bureau. A description and impression of the seal shall be filed  
27 with the secretary of state.

1       Sec. 2102. This act shall be implemented by the  
2 commissioner to maximize the capacity of banks to offer conven-  
3 ient and efficient financial services, to promote economic devel-  
4 opment, and to ensure that banks remain competitive with other  
5 types of financial service providers in this state.

6       Sec. 2103. (1) The powers and duties vested by law in the  
7 financial institutions bureau under former 1969 PA 319 are vested  
8 in the bureau under this act. Any hearing or other proceeding  
9 pending before the bureau before the effective date of this act  
10 shall not abate but is transferred to the bureau under this act  
11 and shall be conducted and determined by the bureau in accordance  
12 with the provisions of the law governing such hearing or  
13 proceeding.

14       (2) All property, credits, books, correspondence, funds,  
15 appropriations, records, files, and other papers belonging to the  
16 financial institutions bureau under former 1969 PA 319 are trans-  
17 ferred to the bureau under this act. All orders and rules which  
18 have been issued under law by the commissioner under the former  
19 banking code of 1969, 1969 PA 319, and which are in effect shall  
20 continue in effect until modified, suspended, revoked, or  
21 repealed by the commissioner.

22       Sec. 2104. (1) The commissioner shall appoint a chief  
23 deputy who shall perform the duties of the commissioner during  
24 the commissioner's absence from the bureau. The commissioner may  
25 appoint other deputies as he or she considers appropriate and may  
26 delegate general or specific responsibilities under this act to  
27 the other deputies. The commissioner may designate that 1 or

1 more of the other deputies perform the duties of the commissioner  
2 when both the commissioner and the chief deputy commissioner are  
3 absent from the bureau. The chief deputy and other deputies  
4 shall take and subscribe the constitutional oath of office and  
5 file it with the secretary of state.

6 (2) The commissioner may, at any time, revoke an appoint-  
7 ment, designation, or delegation made under this section.

8 Sec. 2105. (1) The commissioner may appoint employees to  
9 carry out specific functions under this act. The compensation,  
10 travel, and other expenses of the commissioner, deputy commis-  
11 sioners, and employees shall be paid in the manner provided by  
12 law for other state officers and employees, within the appropria-  
13 tions made by the legislature.

14 (2) The commissioner may delegate to employees duties autho-  
15 rized to the commissioner under this act.

16 (3) The commissioner may, at any time, revoke any delegation  
17 made under this section.

18 Sec. 2106. (1) During his or her term of office or employ-  
19 ment, the commissioner, a deputy commissioner, or an examiner of  
20 the bureau shall not be a shareholder, either directly or indi-  
21 rectly, of a financial institution, a national bank, federal sav-  
22 ings and loan association, or federal savings bank that maintains  
23 a main office or branch office in this state, or of any affiliate  
24 or subsidiary thereof. The commissioner, a deputy commissioner,  
25 or an examiner of the bureau may be a shareholder of a credit  
26 union, a mutual savings and loan association, or a mutual savings  
27 bank.

1       (2) During his or her term of office or employment, the  
2 commissioner, a deputy commissioner, or an examiner of the bureau  
3 shall not be an officer, director, or employee of a financial  
4 institution, or of a depository institution, or of any affiliate  
5 or subsidiary thereof or receive, either directly or indirectly,  
6 anything of value, or other compensation from such entities.

7       (3) If a deputy commissioner or an examiner of the bureau  
8 borrows from, or is or becomes indebted to a financial institu-  
9 tion, he or she shall make a written report to the bureau stating  
10 the name of the lender, the amount and terms of the loan or  
11 indebtedness, the security given on the loan, and the purpose for  
12 which the proceeds are to be used.

13       (4) A deputy commissioner or an examiner of the bureau shall  
14 not borrow from or become indebted to a financial institution for  
15 which the deputy commissioner or examiner has direct supervisory  
16 responsibility, or from a subsidiary or affiliate of such a  
17 financial institution, except for installment debt transferred to  
18 a financial institution in the regular course of business by a  
19 seller of consumer goods. An examiner shall not borrow from or  
20 become indebted to a financial institution if the examiner has  
21 ever participated in an examination of the financial  
22 institution.

23       (5) The commissioner shall not borrow from or become  
24 indebted to a financial institution except for installment debt  
25 transferred to a financial institution in the regular course of  
26 business by a seller of consumer goods.

1       (6) Subsections (4) and (5) do not apply to loans made or  
2 indebtedness incurred before the commissioner's, deputy  
3 commissioner's, or examiner's term of office or made or incurred  
4 lawfully before the effective date of this act. If a loan  
5 received or indebtedness incurred in conformance with this act  
6 subsequently becomes nonconforming due to an event outside the  
7 commissioner's, deputy commissioner's, or examiner's control, the  
8 loan or indebtedness may be retained. Neither the term nor the  
9 amount of a nonconforming loan or indebtedness described in this  
10 subsection shall be increased following the event which made the  
11 loan or indebtedness nonconforming.

12       Sec. 2107. The commissioner or any other employee of the  
13 bureau shall not be liable in any civil action for damages for  
14 any act done or omitted in good faith in performing the functions  
15 of his or her office.

16       Sec. 2108. For each calendar year the commissioner shall  
17 compile and publish an annual report in the form and containing  
18 information the commissioner determines necessary to reasonably  
19 summarize the operations of the bureau during the year.

20       Sec. 2109. (1) The commissioner and all deputies, agents,  
21 and employees of the bureau shall be bound by oath to keep secret  
22 all facts and information obtained in the course of their duties,  
23 except if the person is required under law to report upon, take  
24 official action, or testify in any proceedings regarding the  
25 affairs of an institution.

26       (2) This section does not apply to, and does not prohibit  
27 the furnishing of information or documents to, the federal,

1 foreign, or out-of-state bank, association, or savings bank  
2 regulatory agencies, and is not applicable to disclosures made in  
3 the public interest by the commissioner, at his or her  
4 discretion.

5 PART 2

6 GENERAL POWERS

7 Sec. 2201. The commissioner may promulgate rules under the  
8 administrative procedures act of 1969 as he or she considers nec-  
9 essary to effectuate the purposes and to enforce this act.

10 Sec. 2202. (1) Each institution together with its subsidi-  
11 aries and service entities shall be subject to examination of its  
12 condition and affairs by the commissioner or the commissioner's  
13 authorized agent not less frequently than once ever 18 months.

14 (2) The commissioner shall examine an institution under the  
15 commissioner's jurisdiction when requested by its board of  
16 directors. In connection with an examination, the commissioner,  
17 or the commissioner's authorized agent, may examine on oath a  
18 director, officer, agent, employee, or shareholder of an institu-  
19 tion concerning the affairs and business of the institution. The  
20 commissioner shall ascertain whether the institution transacts  
21 its business in the manner prescribed by law and the rules  
22 promulgated under law. The commissioner, or the commissioner's  
23 authorized agent, may make an examination of an affiliate, bank  
24 holding company, subsidiary, or service entity necessary to dis-  
25 close fully the relation between an institution and the affili-  
26 ate, holding company, subsidiary, or service entity and the  
27 effect of the relation upon the institution.

1       (3) The commissioner may examine the branch or branches  
2 located in this state of an out-of-state bank as permitted by the  
3 federal deposit insurance act.

4       (4) In fulfilling the requirements of subsections (1) and  
5 (2), the commissioner may use an examination made under the fed-  
6 eral reserve act, the federal deposit insurance act, or the law  
7 of another state governing the activities of out-of-state banks  
8 in that state. The commissioner may require the institution to  
9 furnish a copy of any report required by a federal or state bank  
10 regulatory agency.

11       (5) An examination required by this section may include the  
12 fiduciary activities of the institution.

13       (6) The commissioner may contract with other state bank  
14 regulatory agencies to assist in the conduct of examinations of  
15 banks with 1 or more branches located in other states an in exam-  
16 inations of out-of-state banks with 1 or more branches located in  
17 this state.

18       (7) The contents of a report of examination of a bank and  
19 examination-related documents prepared or obtained under this  
20 section remain the property of the bureau. Dissemination of all  
21 or part of a bank's report of examination for purposes other than  
22 the legitimate business purposes of the bank or as otherwise  
23 authorized by this act shall be a violation of this act subject  
24 to the administrative remedies granted the commissioner under  
25 sections 2304 through 2314.

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



1 Except for a minimum fee consistent with subsection (2), the fee  
2 shall not be less than 4 cents or more than 25 cents for each  
3 \$1,000.00 of total assets of the bank as reported by the bank on  
4 its report of condition as of December 31 of the previous year.

5 (2) Each bank shall pay an annual supervisory fee which  
6 shall be not less than \$1,000.00

7 (3) The commissioner shall provide an invoice of the super-  
8 visory fee no later than July 1 of each year. The annual super-  
9 visory fee shall be paid by August 15 of that year.

10 (4) The initial supervisory fee for a bank that obtained a  
11 charter as a result of a conversion shall be based on the total  
12 assets as reported in its report of condition as of December 31  
13 of the previous year.

14 (5) The supervisory fee of a bank which was not engaged in  
15 the business of banking on December 31 of the previous year shall  
16 be the minimum supervisory fee established by the commissioner  
17 consistent with subsection (2).

18 (6) The commissioner shall periodically establish a schedule  
19 of fees, beyond those charged for normal supervision, to be paid  
20 for applications, special evaluations and analyses, and  
21 examinations.

22 (7) The fees established under subsection (6) shall be based  
23 on the estimated cost to the bureau of conducting the activities  
24 for which the fees are imposed.

25 (8) The commissioner may charge reasonable fees for furnish-  
26 ing and certifying copies of documents or serving notices  
27 required by this act.

1       (9) To the extent any fees, penalties, or fines assessed  
2 under this act are unpaid when due, the commissioner may, upon  
3 proper notice, maintain an action for the recovery of the fees,  
4 penalties, or fines plus interest and costs.

5       (10) The fees, expenses, compensation, penalties, and fines  
6 collected under this act are not refundable and shall be paid  
7 into the state treasury to the credit of the bureau and used only  
8 for the operation of the bureau.

9       Sec. 2204. (1) The commissioner may issue declaratory rul-  
10 ings in accordance with the administrative procedures act of  
11 1969, or issue orders on applications by 1 or more banks to exer-  
12 cise powers not specifically authorized by this act that will  
13 authorize banks to exercise powers appropriate and necessary to  
14 compete with other providers of financial services.

15       (2) In the exercise of the discretion permitted by this sec-  
16 tion, the commissioner shall consider the ability of banks to  
17 exercise any additional power in a safe and sound manner, the  
18 authority of depository institutions operating under state or  
19 federal law or regulation, the powers of other competing entities  
20 providing financial services, and any specific limitations on  
21 bank powers contained in this act or in any other law of this  
22 state. The commissioner shall give notice, at least quarterly,  
23 to all banks of declaratory rulings, orders, or determinations  
24 issued during the preceding quarter under this section.

## PART 3

## ENFORCEMENT POWERS

1           Sec. 2301. The commissioner may petition the circuit court  
2 for the county of Ingham or the circuit court in the jurisdiction  
3 where an examination is being conducted to issue a subpoena on  
4 behalf of the bureau which shall require the person subpoenaed to  
5 appear and testify under oath to any matter related to the exami-  
6 nation and to produce any relevant documents.

7           Sec. 2302. (1) A bank that seeks the commissioner's  
8 approval under section 2204, 3102, 3103, 3701, 3707, 3709, 4106,  
9 4310, 4401, 5101, or 5102 shall submit an application to the  
10 bureau.

11           (2) The application shall contain information and be accom-  
12 panied by documents as required by the bureau.

13           (3) If an application is considered incomplete by the  
14 bureau, it will either be returned for completion or the appli-  
15 cant will be requested to submit additional information as neces-  
16 sary to make the application complete.

17           (4) When the application is considered complete by the  
18 bureau, it shall be accepted and the process of reviewing its  
19 contents for a decision will begin on that date.

20           (5) The statutory period, as set forth in this section,  
21 regarding the issuance of orders by the commissioner shall com-  
22 mence on the date of acceptance of the application.

23           (6) If, subsequent to the date of acceptance, the applicant  
24 wishes to amend the application or supplement or provide  
25 additional material in connection with the application, the  
26  
27

1 bureau may suspend processing of the application or proceed with  
2 the statutory period for the issuance of an order.

3       (7) In connection with an application, the bureau may con-  
4 sider additional information from any source.

5       (8) The commissioner shall approve or disapprove an applica-  
6 tion in writing within 100 days after the date of acceptance of  
7 an application, or the last amendment to the application.

8       (9) An applicant who is dissatisfied with an order of the  
9 commissioner, or an institution that is dissatisfied with an  
10 objection issued under section 3711 or 3713, may submit a written  
11 request for a reconsideration of the order or objection stating  
12 the reasons for the request. The request must be received by the  
13 bureau within 5 days after the date of the order or objection.  
14 The commissioner, within 10 days of receiving the request for  
15 reconsideration, shall render a decision on the request for  
16 reconsideration. If a petition for reconsideration is granted,  
17 the commissioner shall grant the applicant 10 days to file writ-  
18 ten arguments or briefs. The commissioner may allow for oral  
19 argument after granting a petition for reconsideration. The oral  
20 argument shall be held within 10 days after granting the  
21 petition. The commissioner shall issue a final order, objection,  
22 or withdrawal of an objection within 20 days after granting the  
23 petition for reconsideration.

24       (10) Appeal of an order or objection shall not be made by an  
25 applicant without first requesting a reconsideration of the order  
26 or objection.

1       Sec. 2303. (1) Except with respect to rules promulgated  
2 under section 2201, a cease and desist order made under sections  
3 2304 to 2314, an order made on an application seeking approval of  
4 the commissioner under section 2302(1), or an objection issued  
5 under section 3711 or 3713, an institution that is dissatisfied  
6 with an order, ruling, or finding issued by the commissioner may  
7 request a reconsideration of the order, ruling, or finding within  
8 10 days after the issuance of the order, ruling, or finding. The  
9 commissioner may conduct a formal hearing before the issuance of  
10 an order, ruling, or finding. Within 30 days after the receipt  
11 of a written request for reconsideration, the commissioner shall  
12 hold a formal hearing unless a formal hearing has been held  
13 before the issuance of the order, ruling, or finding.

14       (2) A hearing held under subsection (1) shall be conducted  
15 under the administrative procedures act of 1969.

16       Sec. 2304. (1) If in the opinion of the commissioner an  
17 institution is engaging, has engaged, or is about to engage in an  
18 unsafe or unsound practice in conducting the business of the  
19 institution or is violating, has violated, or is about to violate  
20 a law or rule, the commissioner may issue and serve upon the  
21 institution a notice of charges. The notice shall contain a  
22 statement of the facts constituting the alleged unsafe or unsound  
23 practice or violation, and shall fix a time and place for a hear-  
24 ing to determine whether an order to cease and desist should  
25 issue. The hearing shall be not earlier than 30 days nor later  
26 than 60 days after service of the notice unless an earlier or  
27 later date is set by the commissioner at the request of the

1 institution. If the institution does not appear at the hearing  
2 by a duly authorized representative, it shall be considered to  
3 have consented to the issuance of a cease and desist order.

4 (2) In the event of consent, or if upon the record made at  
5 the hearing the commissioner finds that an unsafe or unsound  
6 practice or violation specified in the notice of charges has been  
7 established, the commissioner may issue and serve upon the insti-  
8 tution an order to cease and desist from the practice or  
9 violation. The order may require the institution and its direc-  
10 tors, officers, employees, and agents to cease and desist from  
11 the practice or violation and to take affirmative action to cor-  
12 rect the conditions resulting from the practice or violation.

13 (3) A cease and desist order becomes effective 30 days after  
14 the service of the order upon the institution, except in the case  
15 of an order issued upon consent which shall become effective at  
16 the time specified in the order, and shall remain effective and  
17 enforceable as provided in the order, except to the extent it is  
18 stayed, modified, terminated, or set aside by action of the com-  
19 missioner or a reviewing court.

20 (4) If the commissioner determines that an out-of-state bank  
21 branch located in this state is acting in violation of the laws  
22 of this state or that the activities of the branch are being con-  
23 ducted in an unsafe and unsound manner, the commissioner may  
24 undertake enforcement actions and proceedings as would be permit-  
25 ted if the branch were a bank.

26 (5) If the commissioner determines that a national bank is  
27 acting in violation of the laws of this state, the commissioner

1 shall notify the comptroller of the currency and the attorney  
2 general.

3       Sec. 2305. (1) If the commissioner determines that the vio-  
4 lation or threatened violation or the unsafe or unsound practice  
5 or practices, specified in the notice of charges served upon the  
6 institution under section 2304(1), or the continuation of the  
7 violation or practice, is likely to cause insolvency or substan-  
8 tial dissipation of assets or earnings of the institution, or is  
9 likely to otherwise seriously prejudice the interests of its  
10 depositors, the commissioner may issue a temporary order requir-  
11 ing the institution to cease and desist from any violation or  
12 practice. The order shall become effective upon service upon the  
13 institution and, unless set aside, limited, or suspended by a  
14 court in proceedings authorized by subsection (2), shall remain  
15 effective and enforceable pending the completion of the proceed-  
16 ings under section 2304.

17       (2) Within 10 days after the institution has been served  
18 with a temporary cease and desist order, the institution may  
19 apply to the circuit court for the county in which the principal  
20 office of the institution is located for an injunction setting  
21 aside, limiting, or suspending the enforcement, operation, or  
22 effectiveness of the order pending the completion of the proceed-  
23 ings under section 2304. The court shall have jurisdiction to  
24 issue the injunction.

25       Sec. 2306. (1) If in the opinion of the commissioner any  
26 director or officer of an institution has committed any violation  
27 of law or rule or of a cease and desist order or other order of

1 the commissioner which has become final, or has engaged or  
2 participated in any unsafe or unsound practice in connection with  
3 the institution, or has committed or engaged in any act, omis-  
4 sion, or practice which constitutes a breach of fiduciary duty as  
5 a director or officer and the commissioner determines that the  
6 institution has suffered or will probably suffer substantial  
7 financial loss or other damage or that the interests of its  
8 depositors could be seriously prejudiced by reason of the viola-  
9 tion or practice or breach of fiduciary duty, the commissioner  
10 may serve upon the director or officer a written notice of inten-  
11 tion to remove the person from office.

12       (2) If in the opinion of the commissioner any director,  
13 officer, or any other person participating, or who has partici-  
14 pated, in the conduct of the affairs of an institution, by con-  
15 duct or practice with respect to the institution or other busi-  
16 ness organization resulted in substantial financial loss or other  
17 damage, has evidenced personal unfitness to participate in the  
18 conduct of the affairs of the institution, the commissioner may  
19 serve upon the director, officer, or other person a written  
20 notice of intention to remove the person from office or to pro-  
21 hibit the person's further participation in any manner in the  
22 conduct of the affairs of the institution.

23       (3) In respect to a person to whom notice is sent under sub-  
24 section (1) or (2), if the commissioner considers it necessary  
25 for the protection of the institution or the interests of its  
26 depositors that the person be suspended from office or prohibited  
27 from further participation in any manner in the conduct of the



1 affairs of the institution, the commissioner may serve upon the  
2 person a written notice suspending him or her from office or pro-  
3 hibiting him or her from further participation in any manner in  
4 the conduct of affairs of the institution. The suspension or  
5 prohibition shall be effective upon service of the notice and,  
6 unless stayed by a court in proceedings authorized by section  
7 2307, shall remain in effect pending the completion of the admin-  
8 istrative proceedings and the commissioner dismisses the charges  
9 specified in the notice or, if an order of removal or prohibition  
10 is issued, until the effective date of the order. Copies of the  
11 notice shall also be served upon the institution of which the  
12 person is a director or officer or in the conduct of whose  
13 affairs the person has participated.

14       (4) A notice of intention to remove a person from office or  
15 to prohibit participation in the conduct of the affairs of any  
16 institution shall contain a statement of the facts constituting  
17 grounds for the removal, and fix a time and place for a hearing.  
18 Except as otherwise approved by the commissioner, the hearing shall  
19 be held not earlier than 30 days nor later than 60 days after the  
20 date of service of the notice. If the person does not appear at  
21 the hearing in person or by a duly authorized representative, the  
22 person shall be considered to have consented to the issuance of  
23 an order of removal or prohibition. In the event of consent, or  
24 if upon the record made at the hearing the commissioner finds  
25 that any grounds specified in the notice have been established,  
26 the commissioner may issue an order of suspension or removal from  
27 office, or prohibition from participation in the conduct of the

1 affairs of the institution, as appropriate. The order is  
2 effective at the expiration of 30 days after service upon the  
3 institution and the person concerned except in the case of an  
4 order issued upon consent, which is effective at the time speci-  
5 fied in the order. The order shall remain effective and enforce-  
6 able unless it is stayed, modified, terminated, or set aside by  
7 the commissioner or a reviewing court.

8       Sec. 2307. Within 10 days after the date a person has been  
9 suspended from office or prohibited from participation in the  
10 conduct of the affairs of any institution under section 2306(3),  
11 the person may apply to the circuit court for the county in which  
12 the principal office of the institution is located for a stay of  
13 the suspension or prohibition pending the completion of the  
14 administrative proceedings pursuant to the notice served upon the  
15 person under section 2306(1) or (2) and the court shall have  
16 jurisdiction to stay the suspension or prohibition.

17       Sec. 2308. If any person participating in the conduct of  
18 the affairs of an institution is charged in any information,  
19 indictment, warrant, or complaint by a county, state, or federal  
20 authority with the commission of, or participation in, a felony  
21 involving dishonesty or breach of trust, the commissioner, by  
22 written notice served upon the person may suspend the person from  
23 office or prohibit the person from further participation in any  
24 manner in the conduct of the affairs of the institution. A copy  
25 of the notice shall also be served upon the institution. The  
26 suspension or prohibition is in effect until the information,  
27 indictment, warrant, or complaint is finally disposed of or until

1 terminated by the commissioner. If a judgment of conviction with  
2 respect to the offense is entered against the person, and when  
3 the judgment is not subject to further appellate review, the com-  
4 missioner may issue an order removing the person from office or  
5 prohibiting the person from further participation in the conduct  
6 of the affairs of the institution except with the consent of the  
7 commissioner. The person shall cease to be a director or officer  
8 of the institution when a copy of the order is served upon the  
9 institution. A finding of not guilty or other disposition of the  
10 charge shall not preclude the commissioner from instituting pro-  
11 ceedings to suspend or remove the person from office or to pro-  
12 hibit further participation in institution affairs under section  
13 2306(1), (2), or (3).

14       Sec. 2309. If at any time, because of the suspension or  
15 removal of 1 or more directors under this act, the board of  
16 directors of an institution has less than a quorum of directors,  
17 all powers and functions vested in or exercisable by the board  
18 shall vest in and be exercisable by the directors on the board  
19 not suspended or removed, until there is a quorum of the board of  
20 directors. If all of the directors of an institution are sus-  
21 pended or removed under this act, the commissioner shall appoint  
22 persons to serve temporarily as directors pending the termination  
23 of the suspensions or removals, or until their successors are  
24 duly elected and take office.

25       Sec. 2310. (1) An administrative hearing provided for in  
26 section 2304, 2305, 2306, or 2307 shall be conducted under the  
27 administrative procedures act of 1969. The hearing shall be

1 private, unless the commissioner, after fully considering the  
2 views of the party afforded the hearing, determines that a public  
3 hearing is necessary to protect the public interest. After the  
4 hearing and within 90 days after notifying the parties that the  
5 case has been submitted for final decision, the commissioner  
6 shall render a decision that includes findings of fact upon which  
7 the decision is predicated and issue and serve upon each party to  
8 the proceeding an order consistent with this section.

9       (2) Except as provided in subsection (3), a party to the  
10 proceeding, or any person required by an order issued under sec-  
11 tion 2304, 2305, 2306, or 2308 to cease and desist from any of  
12 the violations or practices stated in the order or to be sus-  
13 pended, removed, or prohibited from participation in the conduct  
14 of the affairs of any institution, may request a review by a  
15 court of competent jurisdiction of the order served under subsec-  
16 tion (1). The petition for review shall be filed within 30 days  
17 from the date the order is issued.

18       (3) An order entered as a consent order shall be reviewed as  
19 provided in the administrative procedures act of 1969.

20       (4) Unless a petition for review is timely filed under sub-  
21 section (2), the commissioner may, at any time, upon appropriate  
22 notice, modify, terminate, or set aside the order. If a petition  
23 is timely filed, the commissioner may modify, terminate, or set  
24 aside the order with the permission of the court.

25       (5) Unless otherwise specifically ordered by the court, a  
26 proceeding for review under this section does not stay an order  
27 issued by the commissioner.

1       Sec. 2311. (1) The commissioner may apply to the circuit  
2 court of the county in which the principal office of the institu-  
3 tion is located, or to the circuit court for Ingham county, for  
4 the enforcement of any effective and outstanding notice or order  
5 issued under section 2304, 2305, 2306, 2308, or 2310, including  
6 any temporary cease and desist order issued under section  
7 2305(1). The court shall have jurisdiction and power to order  
8 and require compliance with the notice or order.

9       (2) Except as otherwise provided in this section, a court  
10 does not have jurisdiction to affect by injunction or otherwise  
11 the issuance or enforcement of any notice or order under section  
12 2304, 2305, 2306, 2308, or 2310 or to review, modify, suspend,  
13 terminate, or set aside the notice or order.

14       Sec. 2312. A person, against whom there is outstanding and  
15 effective any notice or final order under section 2306(1), (2),  
16 or (3) or of section 2308, who participates in any manner in the  
17 conduct of the affairs of the institution involved, or directly  
18 or indirectly solicits or procures, or transfers or attempts to  
19 transfer, or votes or attempts to vote, any proxies, consents, or  
20 authorizations in respect of any voting rights in the institu-  
21 tion, or, without the prior written approval of the commissioner,  
22 votes for a director or serves or acts as a director, officer, or  
23 employee of any institution shall be fined not more than  
24 \$5,000.00 or imprisoned not more than 1 year, or both.

25       Sec. 2313. A service required or authorized to be made by  
26 the commissioner under this section or section 2304, 2305, 2306,  
27 2308, 2310, or 2314 may be made by registered or certified mail,

1 or in any other manner reasonably calculated to give actual  
2 notice. Copies of a notice or order served by the commissioner  
3 upon an institution or any person participating in the conduct of  
4 the institution's affairs, under section 2304, 2305, 2306, 2308,  
5 or 2310 shall also be sent to the appropriate federal and  
6 out-of-state bank, association, and savings bank regulatory  
7 agencies.

8       Sec. 2314. In connection with a proceeding under section  
9 2304, 2305(1), or 2306, the commissioner shall provide the appro-  
10 priate federal supervisory authorities with notice of intent to  
11 institute a proceeding and the grounds for the proceedings. An  
12 institution or other party that is the subject of any notice or  
13 order issued by the commissioner under section 2304, 2305, 2306,  
14 2308, or 2310 shall not have standing to raise the requirements  
15 of section 2313 or this section with respect to notifying federal  
16 supervisory authorities as ground for attacking the validity of  
17 any notice or order.

18       Sec. 2315. (1) If, in the opinion of the commissioner, a  
19 foreign bank is engaging, has engaged, or is about to engage, in  
20 an unsafe or unsound practice in conducting the business of a  
21 state agency, state foreign bank branch, or foreign bank repre-  
22 sentative office, or is violating, has violated, or is about to  
23 violate, a state or federal law or a state or federal rule or  
24 regulation, the commissioner may issue and serve upon the foreign  
25 bank a notice of intent to revoke the foreign bank's authority to  
26 engage in the business of banking in this state. The notice  
27 shall contain a statement of the facts constituting the alleged

1 unsafe or unsound practice or violation and inform the foreign  
2 bank of its right to request a hearing within 10 days.

3 (2) If the foreign bank timely requests a hearing, the com-  
4 missioner shall hold a hearing in accordance with the administra-  
5 tive procedures act of 1969.

6 (3) Within 60 days after the date of the hearing, the com-  
7 missioner shall file a written decision containing his or her  
8 findings and serve a copy upon the foreign bank.

9 PART 4

10 RECEIVERSHIPS AND CONSERVATORSHIPS

11 Sec. 2401. (1) Except as provided in subsection (2), a bank  
12 subject to this act shall not be liquidated except as provided by  
13 this act. A receiver or other liquidating agent shall not be  
14 appointed for a bank or its assets and property except as pro-  
15 vided in this act.

16 (2) If the federal deposit insurance corporation is  
17 appointed as receiver of a bank, the receivership procedures of  
18 the federal deposit insurance corporation shall govern the  
19 receivership.

20 Sec. 2402. (1) If a bank has refused to pay its deposits or  
21 obligations in accordance with the terms under which the deposits  
22 or obligations were incurred or if a bank becomes insolvent, of  
23 if a bank refuses to submit its books, papers, and records for  
24 inspection by the commissioner or if it appears to the commis-  
25 sioner that the bank is in an unsafe or unsound condition, the  
26 commissioner shall either appoint a conservator under section  
27 2406 or apply to the circuit court for Ingham county or for the

1 county in which the bank is located for the appointment of a  
2 receiver for the bank.

3       (2) In any proceeding for the appointment of a receiver, the  
4 commissioner shall request that the court appoint the federal  
5 deposit insurance corporation as the receiver if the deposits in  
6 the bank are insured to any extent by the corporation. The court  
7 may act upon the application immediately and without notice to  
8 any person. If at any time it appears to the court that the  
9 claimed reasons for receivership do not exist, the court shall  
10 dissolve the receivership and terminate the proceedings.

11       (3) The federal deposit insurance corporation may act as  
12 receiver without bond. All other receivers, with the exception  
13 of the bureau employee appointed as receiver in his or her offi-  
14 cial capacity, shall post a bond in an amount to be determined by  
15 the commissioner.

16       (4) If the deposits of a bank described in subsection (1)  
17 are not insured by the federal deposit insurance corporation, the  
18 commissioner may elect not to seek appointment of a receiver for  
19 the bank. If a receiver is not sought, the business corporation  
20 act, 1972 PA 284, MCL 450.1101 to 450.2098, governing insolvent  
21 business corporations, title 11 of the United States Code, being  
22 section 11 U.S.C. 101, governing bankruptcy, and sections 5201 to  
23 5265 of the revised judicature act of 1961, MCL 600.5201 to  
24 600.5265, governing assignments for the benefit of creditors,  
25 shall apply to the insolvent bank.

26       (5) The receiver shall on a regular basis report to the  
27 commissioner regarding all matters involving the receivership.



1       (6) If any bank has been closed and placed in receivership,  
2 and the federal deposit insurance corporation pays or makes  
3 available for payment the insured deposit liabilities of the  
4 closed bank, the corporation, whether or not it has become  
5 receiver of the bank, is subrogated to all of the rights of the  
6 owners of the deposits against the closed bank in the same manner  
7 and to the same extent as subrogation of the corporation is pro-  
8 vided for in the federal deposit insurance act.

9       Sec. 2403. (1) Subject to court approval, a receiver shall  
10 do all of the following:

11       (a) Take possession of the books, records, and assets of the  
12 bank and collect all debts, dues, and claims belonging to the  
13 bank.

14       (b) Sue and defend, compromise, and settle all claims  
15 involving the bank.

16       (c) Sell all real and personal property.

17       (d) Exercise all fiduciary functions of the bank as of the  
18 date of the commencement of the receivership.

19       (e) Pay all administrative expenses of the receivership  
20 which shall be a first charge upon the assets of the bank and  
21 shall be fully paid before any final distribution or payment of  
22 dividends to creditors or shareholders.

23       (f) Pay ratably any and all debts of the bank, except that  
24 debts not exceeding \$500.00 in amount may be paid in full but the  
25 holders of such debt shall not be entitled to interest on the  
26 debt.

1 (g) Repay ratably any amount which may have been paid in by  
2 any shareholder by reason of assessments made upon the stock of  
3 the bank by order of the commissioner in accordance with this  
4 act.

5 (h) Pay ratably to the shareholders of the bank in propor-  
6 tion to the number of shares held and owned by each the balance  
7 of the net assets of the bank after payment or provision for pay-  
8 ments as provided in subdivisions (e), (f), and (g).

9 (i) Have all the powers of the directors, officers, and  
10 shareholders of the bank as necessary to support an action taken  
11 on behalf of the bank.

12 (j) Hold title to all the bank's property, contracts, and  
13 rights of action beginning on the date the bank is ordered in  
14 receivership.

15 (2) Subject to court approval, a receiver may do any of the  
16 following:

17 (a) Borrow money as necessary or expedient in aiding the  
18 liquidation of the bank and secure these borrowings by the  
19 pledge, hypothecation, or mortgage of the assets of the bank.

20 (b) Employ agents, legal counsel, accountants, appraisers,  
21 consultants, and other personnel the receiver considers necessary  
22 to assist in the performance of the receiver's duties. With the  
23 prior written approval of the commissioner, the receiver may  
24 employ personnel of the bureau if the receiver considers the  
25 employment to be advantageous or desirable. The expense of  
26 employing bureau personnel is an administrative expense of the  
27 liquidation that is payable to the bureau.

1 (c) Exercise other powers and duties as may be provided by  
2 the court under the laws of this state applicable to the appoint-  
3 ment of receivers by the circuit court.

4 Sec. 2404. (1) A transfer of or lien on the property or  
5 assets of the bank is voidable by the receiver if the transfer or  
6 lien was 1 or more of the following:

7 (a) Made or created within 1 year before the date the bank  
8 is ordered in receivership if the receiving transferee or lien  
9 holder was at the time an affiliate, officer, director, employee,  
10 or principal shareholder of the bank or an affiliate of the  
11 bank.

12 (b) Made or created on or within 90 days before the date the  
13 bank is ordered in receivership with the intent of giving to a  
14 creditor or depositor, or enabling a creditor or depositor to  
15 obtain, a greater percentage of the claimant's debt than is given  
16 or obtained by another claimant of the same class.

17 (c) Accepted after the bank is ordered in receivership by a  
18 creditor or depositor having reasonable cause to believe that a  
19 preference will occur.

20 (d) Voidable by the bank and the bank may recover the prop-  
21 erty transferred or its value from the person to whom it was  
22 transferred or from a person who has received it, unless the  
23 transferee or recipient was a bona fide holder for value before  
24 the date the bank was ordered in receivership.

25 (2) For purposes of this section, "preference" means a  
26 transfer or grant of an interest in the property or assets of the  
27 bank that is either of the following:

1 (a) Made or incurred with the intent to hinder, delay, or  
2 defraud an entity to which, on or after the date that the trans-  
3 fer or grant of interest was made, the bank was or became  
4 indebted.

5 (b) Made or incurred for less than a reasonably equivalent  
6 value in exchange for the transfer or grant of interest if the  
7 bank was insolvent on the date that the transfer or grant of  
8 interest was made or became insolvent as a result of the transfer  
9 or grant of interest.

10 (3) A person acting on behalf of the bank, who knowingly has  
11 participated in implementing a voidable transfer or lien, and  
12 each person receiving property or the benefit of property of the  
13 bank as a result of the voidable transfer or lien, is personally  
14 liable for the property or benefit received and shall account to  
15 the receiver for the benefit of the bank.

16 (4) Notwithstanding any other provisions of this act, an  
17 otherwise voidable transfer under this section will not be voided  
18 by the receiver, if any of the following apply:

19 (a) The transfer or lien does not exceed the value of  
20 \$1,000.00.

21 (b) The transfer or lien was received in good faith by a  
22 person, who is not a person described in subsection (1)(a), who  
23 gave value.

24 (c) The transfer or lien was intended by the bank and the  
25 transferee or lien holder to be, and in fact substantially was, a  
26 contemporaneous exchange for new value given to the bank.

1       Sec. 2405. (1) On approval by the court, the receiver may  
2 dispose of records of the bank in receivership that are obsolete  
3 and unnecessary to the continued administration of the receiver-  
4 ship proceeding and retain the remaining records of the bank and  
5 the receivership for a period of time as ordered by the court.

6       (2) The receiver may devise a method for the effective,  
7 efficient, and economical maintenance of the records of the bank  
8 and of the receiver's office, including maintaining those records  
9 on any medium approved by the court.

10       (3) The receiver may reserve assets of an estate, deposit  
11 them in an account, and use them to maintain the records of a  
12 liquidated bank after the closing of the receivership  
13 proceeding.

14       Sec. 2406. (1) If any of the grounds under section 2402  
15 authorizing the appointment of a receiver exist or if the commis-  
16 sioner considers it necessary in order to conserve the assets of  
17 a bank for the benefit of the depositors and other creditors of  
18 the bank, the commissioner may appoint a conservator for the bank  
19 and require of the conservator a bond and security as determined  
20 by the commissioner.

21       (2) The commissioner may appoint as conservator an employee  
22 of the bureau or any other competent and disinterested person.  
23 The bureau shall be reimbursed out of the assets of the conserva-  
24 torship for all sums expended by it in connection with the con-  
25 servatorship as expenses. All expenses of any conservatorship  
26 shall be paid out of the assets of the bank, upon the approval of  
27 the commissioner, and shall be a first charge upon the assets and

1 paid in full before any final distribution or payment of  
2 dividends to creditors or shareholders.

3       Sec. 2407. (1) The conservator, under the direction of the  
4 commissioner, shall take possession of the books, records, and  
5 assets of the bank, and take any action necessary to conserve the  
6 assets of the bank pending further disposition of its business as  
7 provided by law. The conservator shall have all the rights,  
8 powers, and privileges of receivers of banks appointed under this  
9 act and shall be subject to the obligations and penalties to  
10 which receivers are subject which are not inconsistent with this  
11 act with respect to conservators.

12       (2) During the time that the conservator remains in posses-  
13 sion of the bank, the rights of all parties with respect to the  
14 bank, subject to the other provisions of this act with respect to  
15 conservators, shall be the same as if a receiver had been  
16 appointed. The conservator may execute the discharge of any real  
17 estate mortgage held as part of the assets of the bank.

18       Sec. 2408. (1) While a bank is in conservatorship, the com-  
19 missioner may require the conservator to set aside and make  
20 available for withdrawal by depositors and payment to other cred-  
21 itors, on a ratable basis, amounts that in the opinion of the  
22 commissioner may be used safely for this purpose.

23       (2) The commissioner may permit the conservator to receive  
24 deposits.

25       (3) Deposits received while the bank is in conservatorship  
26 shall not be subject to any limitation as to payment or  
27 withdrawal. The deposits and any new assets acquired on account

1 of the deposits shall be segregated and held especially for the  
2 new deposits and shall not be used to liquidate any indebtedness  
3 of the bank existing at the time that a conservator was appointed  
4 for it or any subsequent indebtedness incurred for the purpose of  
5 liquidating any indebtedness of the bank existing at the time the  
6 conservator was appointed.

7       (4) The requirements of subsection (3) shall remain in  
8 effect not more than 15 days following the date that the conser-  
9 vator returns control of the bank to its board of directors.

10       (5) Deposits received while the bank is in conservatorship  
11 shall be kept in cash, invested in the direct obligations of the  
12 United States, or deposited in depository institutions designated  
13 by the commissioner.

14       (6) Before returning control of the bank to its board of  
15 directors, the conservator shall publish a notice in form  
16 approved by the commissioner, stating the date on which the  
17 affairs of the bank will be returned to its board of directors  
18 and that the provisions of subsection (3) will not be in effect  
19 after 15 days from that date. The conservator shall send a copy  
20 of the notice to every person who deposited money in the bank  
21 after the appointment of the conservator and before the time when  
22 control of the bank is returned to its directors.

23       Sec. 2409. With the prior approval of the commissioner, the  
24 conservator of a bank may borrow money as necessary or expedient  
25 in aiding the operation, reorganization, or liquidation of the  
26 bank, including the payment of liquidating dividends, and may

1 secure the loans by the pledge, hypothecation, or mortgage of the  
2 assets of the bank.

3       Sec. 2410. (1) If satisfied that it may be done safely and  
4 that it would be in the public interest, the commissioner may  
5 terminate a conservatorship and permit the bank to resume the  
6 transaction of its business subject to terms, conditions,  
7 restrictions, and limitations as he or she may prescribe.

8       (2) If the commissioner determines that it would be in the  
9 public interest, the commissioner may terminate a conservatorship  
10 and apply for the appointment of a receiver for the bank as pro-  
11 vided in section 2402.

## 12                                   CHAPTER 3

### 13                   BANK ORGANIZATION AND STRUCTURE

#### 14                                   PART 1

#### 15                                   FORMATION

16       Sec. 3101. Not less than 5 natural persons, a majority of  
17 whom are residents of this state and citizens of the United  
18 States or its territories or possessions, or a bank holding com-  
19 pany, may file an application to organize a bank under this act.

20       Sec. 3102. (1) An application to organize a bank under this  
21 act shall be in the form prescribed by the commissioner and shall  
22 set forth information as the commissioner may require.

23       (2) The commissioner shall examine the information and  
24 statements contained in the application and make any other inves-  
25 tigation as to the persons, conditions, and circumstances sur-  
26 rounding, affecting, or pertaining to the organization of the



1 bank, as is necessary to satisfy the commissioner as to all of  
2 the following:

3       (a) Whether the character, responsibility, and fitness of  
4 the incorporators, and of the proposed directors and officers,  
5 and their motives in seeking to organize the bank are such as to  
6 command the confidence of the community and to warrant the belief  
7 that the business of the proposed bank will be honestly and effi-  
8 ciently conducted.

9       (b) Whether the convenience and needs of the public will be  
10 served by the proposed bank.

11       (c) The likelihood of successful operation of the proposed  
12 bank, giving consideration to, but not limited to, both of the  
13 following:

14       (i) Economic and demographic characteristics of the area  
15 primarily to be served by the bank.

16       (ii) The competition offered by existing banks and other  
17 financial services providers.

18       (d) Whether the capital structure of the proposed bank is  
19 adequate for the conduct of its business.

20       Sec. 3103. (1) Any number of depository institutions may  
21 apply to organize a bank exclusively to serve depository institu-  
22 tions or their officers, directors, employees, and affiliates.

23       (2) Any number of depository institutions may apply to orga-  
24 nize a bank to engage exclusively in providing trust services and  
25 other services as may be authorized by order or declaratory  
26 ruling of the commissioner.

1       (3) A depository institution may apply to the commissioner  
2 for permission to organize a bank under this section. The  
3 application shall be in the form prescribed by the commissioner  
4 and set forth the information the commissioner requires.

5       (4) The commissioner shall examine the information contained  
6 in the application and make any other investigation the commis-  
7 sioner considers necessary pertaining to the organization of the  
8 new bank. The commissioner shall issue to the applicants, within  
9 the time period provided in section 2302, written notice of  
10 approval or disapproval of the application.

11       (5) A depository institution organized under this section is  
12 not subject to the provisions of section 3102, but shall comply  
13 with all other provisions of the act.

14       (6) The shares of stock of a bank organized under this sec-  
15 tion shall be owned exclusively by depository institutions.

16       (7) As used in this section, "applicant" means the deposi-  
17 tory institutions making an application under this section.

18       Sec. 3104. (1) Following the date authorized by the commis-  
19 sioner for the bank to commence business, a bank and its incorpo-  
20 rators may jointly request permission from the commissioner for  
21 the bank to reimburse the incorporators for the incorporators'  
22 reasonable and necessary organizational expenses.

23       (2) A joint request by a bank and its incorporators shall  
24 include an accounting of the funds expended by the incorporators  
25 which shall be prepared by an independent certified public  
26 accountant in accordance with generally accepted accounting  
27 principles.

1       (3) If the commissioner determines that the accounting of  
2 funds expended is substantially similar to the amount disclosed  
3 in the application as estimated expenses of organization, the  
4 commissioner may authorize the bank to reimburse the  
5 incorporators.

6       (4) The commissioner may waive the requirements of this sec-  
7 tion if the expenses of organizing a bank will be paid by a bank  
8 holding company.

9       Sec. 3105. If the commissioner approves the articles of  
10 incorporation as required by this act, the bank shall become a  
11 body corporate. A bank shall not transact any business, except  
12 as is incidental and necessarily preliminary to its organization,  
13 until it has been authorized by the commissioner to commence the  
14 business of banking.

15       Sec. 3106. (1) Within 30 days after the approval of its  
16 articles of incorporation, or a later time not to exceed 1 year  
17 as approved by the commissioner, the bank shall notify the com-  
18 missioner that all of its capital and surplus has been fully paid  
19 in and that it has complied with all of the required provisions  
20 of this act necessary to be authorized to commence the business  
21 of banking.

22       (2) The commissioner shall make examinations as he or she  
23 considers necessary to verify the conditions set forth in subsec-  
24 tion (1), and if it appears that the bank is lawfully entitled to  
25 commence business, the commissioner, within 30 days after receiv-  
26 ing the notice provided for in this section, shall give to the  
27 bank a certificate under the official seal of the bureau that the

1 bank has complied with all of the required provisions and is  
2 authorized to commence business.

3 (3) The application is considered abandoned and of no fur-  
4 ther effect if the bank fails to furnish the notice provided for  
5 in this section within the specified time or fails to comply with  
6 the required provisions within the period of time determined by  
7 the commissioner.

8 Sec. 3107. The organizational meeting of every bank shall  
9 be called by a notice designating the time and place of the meet-  
10 ing and stating the purpose for which the meeting is called. The  
11 notice shall be served personally on all the incorporators at  
12 least 5 days before the date set for the meeting. If all the  
13 incorporators are present at the meeting or in writing waive  
14 notice, then no notice shall be required for the organizational  
15 meeting.

16 Sec. 3108. (1) A bank organized under this act shall have  
17 capital in an amount the commissioner considers adequate to con-  
18 duct its business.

19 (2) A bank shall not be authorized to commence business  
20 until it has surplus at least equal to 20% of its capital.

21 (3) After organization, each bank shall maintain an adequate  
22 capital structure appropriate to conduct its business and the  
23 protection of its depositors. The capital adequacy of a bank  
24 shall be analyzed and appraised in relation to the character of  
25 its management, the liquidity of assets, history of earnings and  
26 of the retention of earnings, the potential volatility of the  
27 deposit structure, and its risk management, with due regard to

1 the bank's capacity to furnish the broadest service to the  
2 public.

3 (4) At all times a bank shall maintain surplus in an amount  
4 equal to at least the amount of its capital, except as provided  
5 in subsection (2) and except as provided in section 3806, and  
6 shall not reduce surplus without the approval of the  
7 commissioner.

8 PART 2

9 ARTICLES OF INCORPORATION

10 Sec. 3201. (1) Upon approval of the application under sec-  
11 tion 3103 by the commissioner, at least 2 original articles of  
12 incorporation, executed by the incorporators, shall be submitted  
13 to the commissioner. The commissioner shall approve the articles  
14 if the articles conform to law. One of the original articles  
15 will be retained for the bureau's records and 1 of the original  
16 articles will be forwarded to the incorporators.

17 (2) Before approving, certifying, and distributing the arti-  
18 cles of incorporation, the incorporators shall furnish evidence  
19 to the commissioner that a firm commitment to insure deposit  
20 accounts up to the maximum permitted by federal law has been  
21 issued by the federal deposit insurance corporation, unless the  
22 commissioner, for good cause shown, waives this requirement.

23 (3) Approval of articles of incorporation by the commis-  
24 sioner under this act does not indemnify the bank against claims  
25 for the improper use of the bank name stated in the articles.

26 Sec. 3202. (1) The articles of incorporation shall specify  
27 all of the following:

- 1       (a) The name of the bank.
- 2       (b) The county and the city, village, or township where the  
3 principal office of the bank is to be located.
- 4       (c) The purpose or purposes of incorporation as provided in  
5 this act.
- 6       (d) The authorized number of shares of is capital stock, and  
7 1 of the following:
- 8       (i) If the bank is to be authorized to issue only 1 class of  
9 stock, the total number of shares of stock that the bank may  
10 issue and the par value of each share.
- 11       (ii) If the bank is to be authorized to issue more than 1  
12 class of stock, a statement of the total number of shares of all  
13 classes of stock that the bank may issue, the number of shares of  
14 each class, the par value of each share of each class, and a  
15 statement of all designations, powers, preferences, and rights  
16 and the qualifications, limitations, and restrictions of each  
17 class.
- 18       (e) The names of the incorporators.
- 19       (f) The period for which the bank is organized, which may be  
20 in perpetuity.
- 21       (g) That shareholders of the bank may be assessed a capital  
22 deficiency payment and that if such assessment is not paid the  
23 directors may sell any or all of the shares owned by the share-  
24 holder to satisfy the assessment.
- 25       (h) Any other provisions consistent with the laws of this  
26 state for regulating the business of banking and for the conduct  
27 of the affairs of the bank.

1       (2) Articles approved by the commissioner before the  
2 effective date of this act are considered to be in compliance  
3 with this section.

4       Sec. 3203. (1) With the approval of the commissioner, and  
5 by vote of shareholders owning a majority of voting shares of the  
6 bank, a bank may amend its articles of incorporation in any  
7 manner not inconsistent with this act. An amendment, signed by  
8 an authorized officer or officers of the bank, shall be effective  
9 when approved by the commissioner.

10       (2) Notwithstanding subsection (1), an amendment that pro-  
11 vides solely for a change in the name of the bank is not subject  
12 to the approval of the commissioner and shall be effective on the  
13 date it is received by the commissioner or at a later date speci-  
14 fied by the bank.

15                                   PART 3

16                                   DISSOLUTION

17       Sec. 3301. (1) A solvent bank may go into dissolution and  
18 be closed upon expiration of its corporate term or by the vote of  
19 its shareholders.

20       (2) The proposed dissolution shall be submitted for approval  
21 at any meeting of shareholders. Notice shall be given to each  
22 shareholder of record within the time and in the manner as pro-  
23 vided in this act for the giving of notice of meetings of share-  
24 holders, and shall state that a purpose of the meeting is to vote  
25 on dissolution of the bank.

26       (3) At the meeting, a vote of shareholders shall be taken on  
27 the proposed resolution of dissolution. The dissolution shall be

1 approved upon receiving the affirmative vote of the holders of at  
2 least 2/3 of the outstanding shares of the bank entitled to vote  
3 on dissolution.

4       (4) The board of directors immediately at expiration of its  
5 corporation term or adoption of a resolution of dissolution by  
6 the shareholders shall submit to the commissioner in duplicate a  
7 certificate of termination. The certificate shall be signed by a  
8 majority of the remaining members of the board of directors on a  
9 form approved by the commissioner.

10       (5) Within 3 months after the date of the certificate of  
11 termination is submitted under subsection (4), the shareholders  
12 shall designate 1 or more persons to act as a liquidating agent  
13 or committee. The liquidating agent or committee shall conduct  
14 the dissolution in accordance with this act and other applicable  
15 law under the supervision of the commissioner and the board of  
16 directors. The agent or committee shall furnish to the bank in  
17 dissolution a bond satisfactory to the commissioner.

18       (6) The liquidating agent or committee shall submit to the  
19 commissioner reports in the form and at the times the commis-  
20 sioner may require. The liquidating agent or committee shall  
21 make periodic reports not less frequently than semiannually to  
22 the shareholders. A copy of each periodic shareholder report  
23 shall be filed with the commissioner.

24       (7) The shareholders may remove the liquidating agent or  
25 committee and appoint a new agent or a new committee at a special  
26 meeting or shareholders by vote of a majority of the shares  
27 entitled to vote. Notice shall be given to each shareholder of



1 record within the time and in the manner as provided in this act  
2 and shall state that the purpose of the meeting is to vote on  
3 removing the liquidating agent or committee.

4 (8) The commissioner may examine the bank in dissolution at  
5 any time for the purpose of determining that the rights of the  
6 depositors and creditors are being properly served.

7 (9) If the commissioner finds that a dissolution has been  
8 completed in conformity to law and that all fees and charges have  
9 been paid as required by law, the commissioner shall file 1 copy  
10 of the certificate of termination in the office of the bureau and  
11 shall certify and deliver 1 copy to the liquidating agent or  
12 committee. Upon the filing of the certificate the existence of  
13 the bank is terminated.

14 Sec. 3302. (1) A bank that begins dissolution under section  
15 3301 shall continue to be a body corporate until the commissioner  
16 certifies and files the certificate of termination under section  
17 3301(9) for all of the following:

18 (a) Prosecuting and defending actions for or against the  
19 bank.

20 (b) Disposing of and conveying the bank's property.

21 (c) Dividing the bank's assets.

22 (2) Subject to section 3401, a bank in dissolution shall not  
23 continue to be a body corporate for the purpose of continuing the  
24 business for which it was organized.

25 (3) An action, suit, or proceeding commenced by or against  
26 the bank in dissolution must be commenced before the filing of  
27 the certificate of termination under section 3301(9).

1       (4) If the number of directors of a bank in dissolution is  
2 less than the full number of directors required or authorized by  
3 statute or by the bylaws of the bank, a majority of the remaining  
4 directors or the sole remaining director shall possess the same  
5 powers in acting for the bank in dissolution under this act as  
6 the duly authorized board of directors of the bank possessed  
7 before the commencement of dissolution.

8       Sec. 3303. (1) Subject to section 3302 or as otherwise pro-  
9 vided by the commissioner, a bank in dissolution, its officers,  
10 directors, and shareholders shall continue to function in the  
11 same manner as if dissolution had not occurred.

12       (2) The directors of the bank in dissolution are not consid-  
13 ered to be trustees of its assets and shall be held to no greater  
14 standard of conduct than that prescribed by section 3504.

15       (3) Title to the assets of a bank in dissolution remains in  
16 the bank until transferred.

17       (4) The dissolution of the bank does not change quorum or  
18 voting requirements for the board or shareholders, and does not  
19 alter provisions regarding election, appointment, resignation, or  
20 removal of, or filling vacancies among, directors or officers, or  
21 provisions regarding amendment or repeal of bylaws or adoption of  
22 new bylaws.

23       (5) Shares of the stock of a bank in dissolution may be  
24 transferred.

25       (6) The bank in dissolution may sue and be sued in its cor-  
26 porate name and process may issue by and against the bank in

1 dissolution in the same manner as if dissolution had not  
2 occurred.

3       (7) An action brought against the bank before the commence-  
4 ment of its dissolution is not limited or affected because of the  
5 dissolution.

6       Sec. 3304. (1) As used in this section:

7       (a) "Existing claim" means a claim or right against the bank  
8 in dissolution, liquidated, or unliquidated. It does not include  
9 a contingent liability or a claim based on an event occurring  
10 after the commencement of dissolution.

11       (b) "Existing claimant" means a person holding an existing  
12 claim.

13       (2) The board of directors of a bank in dissolution shall  
14 notify the bank's depositors and creditors in writing of the dis-  
15 solution within 30 days after submitting the certificate of ter-  
16 mination under section 3301(4). The written notice shall include  
17 all of the following:

18       (a) A mailing address where an existing claim can be sent.

19       (b) A statement that the bank in dissolution may demand suf-  
20 ficient information to permit it to make a reasonable judgment  
21 whether the existing claim should be accepted or rejected.

22       (c) The deadline, not less than 3 months from the effective  
23 date of the written notice, by which the existing claim shall be  
24 received.

25       (d) A statement that the existing claim will be barred if  
26 not received by the deadline.

1       (3) The notice under subsection (2) does not constitute an  
2 acceptance that a person to whom the notice is directed has a  
3 valid existing claim against the bank in dissolution.

4       (4) An existing claim against the bank in dissolution is  
5 barred if either of the following applies:

6       (a) The existing claimant who was given written notice under  
7 subsection (2) does not file the claim with the bank by the  
8 deadline.

9       (b) The existing claimant who was given written notice under  
10 subsection (2) and whose existing claim was rejected in writing  
11 by the bank in dissolution does not commence a proceeding to  
12 enforce the existing claim within 90 days from the effective date  
13 of the written notice of rejection.

14       (5) The effective date of the written notice under this sec-  
15 tion is the earliest of the following:

16       (a) The date it is received.

17       (b) Five days after its deposit in the United States mail as  
18 evidenced by the postmark, if it is mailed postpaid and correctly  
19 addressed.

20       (c) The date shown on the return receipt, if the notice is  
21 sent by registered or certified mail, return receipt requested,  
22 and the receipt is signed by or on behalf of the addressee.

23       Sec. 3305. (1) As used in this section:

24       (a) "Claim" means a claim or right against the bank in dis-  
25 solution, liquidated or unliquidated, of a claimant that did not  
26 receive the written notice required by section 3304.

1 (b) "Claimant" means a person holding a claim.

2 (2) The board of directors of a bank in dissolution shall  
3 publish notice of dissolution. The first notice shall be pub-  
4 lished within 30 days after submitting the certificate of termi-  
5 nation under section 3301(4) and request that persons with claims  
6 against the bank in dissolution present them as required by the  
7 notice.

8 (3) The notice shall comply with all of the following:

9 (a) Be published once each week for 8 consecutive weeks.

10 (b) Describe the information to be included in a claim and  
11 provide a mailing address where the claim is to be sent.

12 (c) Contain a statement that the bank in dissolution may  
13 demand sufficient information to permit it to make a reasonable  
14 judgment whether the claim should be accepted or rejected.

15 (d) State the deadline, not less than 6 months from the last  
16 publication date, by which the claim shall be received.

17 (e) State that a claim against the bank in dissolution will  
18 be barred unless a proceeding to enforce the claim is commenced  
19 within 6 months after the last publication date of the notice  
20 published under this section.

21 (4) A claim against the bank in dissolution is barred if any  
22 of the following apply:

23 (a) The claimant does not deliver a claim or commence a pro-  
24 ceeding in an appropriate court to enforce the claim against the  
25 bank in dissolution within 6 months after the last publication  
26 date of the notice published under this section.

1 (b) The claimant whose claim was rejected in writing by the  
2 bank in dissolution does not commence a proceeding to enforce the  
3 claim within 90 days from the effective date of the written  
4 notice of rejection.

5 (c) The claimant, whose claim is contingent or based on an  
6 event occurring after the commencement of dissolution, that does  
7 not deliver a claim within 6 months after the last publication  
8 date of the notice published under this section or file an action  
9 in an appropriate court to enforce the claim against the bank in  
10 dissolution before the commissioner certifying and filing the  
11 certificate of termination under section 3301(9).

12 Sec. 3306. (1) After a bank has commenced dissolution, the  
13 commissioner, the bank in dissolution, a creditor, or a share-  
14 holder may apply to an appropriate court for an order that the  
15 affairs of the bank in dissolution and the liquidation of its  
16 assets continue under supervision of the court. The court shall  
17 make orders and judgments as may be required, including, but not  
18 limited to, continuance of the liquidation of the assets of the  
19 bank in dissolution by its liquidating agent or committee under  
20 supervision of the court, or the appointment of a receiver of the  
21 bank in dissolution to be vested with powers as the court desig-  
22 nates to liquidate the affairs of the bank.

23 (2) For good cause shown, and so long as a bank in dissolu-  
24 tion has not made complete distribution of its assets, the court  
25 may permit a creditor who has not delivered his or her claim or  
26 commenced a proceeding to enforce his or her claim within the  
27 time limits provided in sections 3304 and 3305 to file the claim

1 or to commence a proceeding within the time as the court  
2 directs.

3       Sec. 3307. (1) A bank in dissolution or its liquidating  
4 agent or committee shall act on all claims filed and notify all  
5 claimants of the action taken or to be taken on their respective  
6 claims within 6 months of the last date for filing the claims.

7       (2) Before making a distribution of assets to shareholders,  
8 a bank in dissolution shall pay or make provision to satisfy its  
9 debts, obligations, and liabilities. Compliance with this sec-  
10 tion requires, to the extent a reasonable estimate is possible,  
11 that provision be made to satisfy those debts, obligations, and  
12 liabilities anticipated to arise after the date the certificate  
13 of termination is filed under section 3301(9).

14       (3) Provision need not be made to satisfy any debt, obliga-  
15 tion, or liability that is or is reasonably anticipated to be  
16 barred under section 3304 or 3305.

17       (4) The fact that the assets provided by the bank in disso-  
18 lution for the satisfaction of its debts, obligations, and  
19 liabilities are insufficient to satisfy claims arising after a  
20 certificate of termination is filed under section 3301(9) shall  
21 not create a presumption that the bank in dissolution has failed  
22 to comply with this section.

23       (5) After payment of or adequate provision to satisfy the  
24 debts, obligations, or liabilities of the bank in dissolution has  
25 been made, the remaining assets shall be distributed to share-  
26 holders according to their respective rights and interests. The  
27 distribution may be made in cash, in kind, or both.

## PART 4

## 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 or 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



1 shareholders, directors, and officers, and enjoy all the rights,  
2 privileges, immunities, and powers and be subject to all the  
3 liabilities that it respectively possessed and was subject to  
4 before the expiration of its corporate term.

5 PART 5

6 OFFICERS AND DIRECTORS

7 Sec. 3501. (1) A bank shall be managed by a board of not  
8 less than 5 nor more than 25 directors. The first board shall be  
9 elected by the incorporators at the meeting held under section  
10 3107 before the bank is authorized to commence business. All  
11 subsequent boards shall be elected by the shareholders at the  
12 annual meeting of the shareholders or at a meeting called for  
13 that purpose as provided in the bylaws of the bank. The board of  
14 directors may fill a vacancy on the board for the remainder of  
15 the vacated term. Directors shall hold office until their suc-  
16 cessors are elected and qualified.

17 (2) The bylaws of the bank shall provide for the shareholder  
18 election of directors in 1 of the following methods:

19 (a) The shareholders annually may elect the full board of  
20 directors.

21 (b) The shareholders annually may elect a board of directors  
22 with not more than 2 unfilled directorships. The unfilled direc-  
23 torships are considered vacancies to be filled by the board of  
24 directors.

25 (c) The shareholders may elect directors with staggered  
26 terms of office as provided for in subsection (3).

1       (3) The election of directors with staggered terms of office  
2 shall be provided for in the bylaws of the bank as follows:

3       (a) That the directors will be divided into 2 or 3 classes,  
4 each to be as nearly equal in number as possible.

5       (b) The term of office of directors in the first class shall  
6 expire at the first annual meeting of shareholders after their  
7 election, that of the second class shall expire at the second  
8 annual meeting after their election, and that of the third class,  
9 if any, shall expire at the third annual meeting after their  
10 election.

11       (c) At each annual meeting after the classification estab-  
12 lished under subdivision (b), a number of directors equal to the  
13 number of the class whose term expires at the time of the meeting  
14 shall be elected to hold office until the second succeeding  
15 annual meeting if there are 2 classes, or until the third suc-  
16 ceeding annual meeting if there are 3 classes.

17       (4) The board of directors shall appoint a director as chief  
18 executive officer who shall be a full-time employee of the bank  
19 and perform duties designated by the board, and who shall serve  
20 as the chairperson of the board, unless the board designates  
21 another director to be chairperson in lieu of the chief executive  
22 officer. The board may appoint officers, who need not be members  
23 of the board, define their duties, dismiss them at pleasure, and  
24 appoint other officers to fill vacancies.

25       (5) Except as otherwise provided by this act, the board of  
26 directors may appoint committees of its members to perform its  
27 duties.

1       (6) The board of directors shall meet not less than 6 times  
2 per fiscal year in person or by means of electronic communication  
3 devices that enable all participants in a meeting to communicate  
4 with each other. The minutes of each meeting shall be kept and  
5 shall be signed by the presiding officer and the secretary of the  
6 meeting. A majority of the board of directors constitutes a  
7 quorum for the transaction of business.

8       (7) The commissioner may call a meeting of the board of  
9 directors of any bank, for any purpose, by giving a notice of the  
10 time, place, and purpose of the meeting at least 3 days before  
11 the meeting date to the directors by personal service, by regis-  
12 tered or certified mail, or by other appropriate method reason-  
13 ably designed to provide adequate notice.

14       Sec. 3502. Every director when elected or appointed shall  
15 take and subscribe an oath that he or she will diligently and  
16 honestly perform the duties of the office and will not knowingly  
17 violate, or permit to be violated, any provisions of this act.  
18 The oath shall be transmitted to the commissioner for filing.

19       Sec. 3503. (1) A bank may contract for, or purchase from,  
20 any of its directors, or from any entity of which any of the  
21 bank's directors is an officer, director, manager, owner, employ-  
22 ee, or agent, any securities or other property, only when the  
23 purchase is made in the ordinary course of business upon terms  
24 not less favorable to the bank than those offered by others, and  
25 the purchase is authorized by a majority of the board of direc-  
26 tors not interested in the sale of the securities or property  
27 evidenced by their affirmative vote or written assent. If a

1 director, or entity of which any director is an officer,  
2 director, manager, owner, employee, or agent, acting for or on  
3 behalf of others, sells securities or other property to a bank,  
4 the commissioner may require a full disclosure to be made of all  
5 commissions or other considerations received. If a director or  
6 entity, acting in his, her, or its own behalf, sells securities  
7 or other property to the bank, the commissioner may require a  
8 full disclosure of all profits realized from the sale.

9       (2) A bank may sell securities or other property to any of  
10 its directors, or to an entity of which any of its directors is  
11 an officer, director, manager, owner, employee, or agent in the  
12 ordinary course of business on terms not more favorable to the  
13 director or entity than those offered to others, when the sale is  
14 authorized by a majority of the board of directors of a bank evi-  
15 denced by their affirmative vote or written assent.

16       (3) This section shall not be construed as authorizing banks  
17 to purchase or sell securities or other property that banks are  
18 not otherwise authorized by law to purchase or sell.

19       Sec. 3504. (1) A director or an officer of a bank shall  
20 discharge the duties of his or her position in good faith and  
21 with that degree of diligence, care, and skill that an ordinarily  
22 prudent person would exercise under similar circumstances in a  
23 like position. In discharging his or her duties, a director or  
24 an officer, when acting in good faith, may rely upon the opinion  
25 of legal counsel for the bank, upon the report of an independent  
26 appraiser selected with reasonable care by the board or by an  
27 officer of the bank, or upon financial statements of the bank

1 certified to him or her to be correct by an officer of the bank,  
2 or as stated in a written report by an independent public or cer-  
3 tified public accountant or firm of accountants to reflect fairly  
4 the financial condition of the bank.

5 (2) The articles of incorporation of a bank may provide that  
6 a director is not personally liable to the bank or its sharehold-  
7 ers for monetary damages for a breach of the director's fiduciary  
8 duty. The provision does not eliminate or limit the liability of  
9 a director for any of the following:

10 (a) A breach of the director's duty of loyalty to the bank  
11 or its shareholders.

12 (b) Acts or omissions not in good faith or that involve  
13 intentional misconduct or knowing violation of law.

14 (c) A violation of section 2312.

15 (d) A transaction from which the director derived an  
16 improper personal benefit.

17 (3) An action against a director or officer for failure to  
18 perform the duties imposed by this section shall be commenced  
19 within 3 years after the cause of action has accrued, or within 2  
20 years after the time when the cause of action is discovered, or  
21 should reasonably have been discovered, by the complainant,  
22 whichever occurs first.

23 (4) If a director or officer of a bank knowingly violates,  
24 or knowingly permits any of the agents, officers, directors, or  
25 employees of the bank to violate, this act, rules promulgated  
26 under this act, or an order or declaratory ruling of the  
27 commissioner, every director and officer who participated in or

1 assented to the violation shall be held liable in his or her  
2 personal and individual capacity for all damages that the bank,  
3 any shareholder, or any other person sustains as a result of the  
4 violation. An action to recover damages under this section shall  
5 be brought within 3 years from the time of the violation.

6       Sec. 3505. (1) The shareholders may remove 1 or more direc-  
7 tors with or without cause unless the articles provide that  
8 directors may be removed only for cause. The vote for removal  
9 shall be by a majority of shares entitled to vote at an election  
10 of directors, except that the articles may require a higher vote  
11 for removal without cause. This section shall not invalidate any  
12 bylaw adopted before the effective date of this act that applies  
13 to removal without cause.

14       (2) In the case of a bank having cumulative voting, if less  
15 than the entire board is to be removed, a director shall not be  
16 removed if the votes cast against his or her removal would be  
17 sufficient to elect him or her if then cumulatively voted at an  
18 election of the entire board of directors, or, if there are  
19 classes of directors, at an election of the class of directors of  
20 which he or she is a part.

21       (3) If holders of a class or series of stock are entitled by  
22 the articles to elect 1 or more directors, this section applies,  
23 with respect to removal of a director so elected, to the vote of  
24 the holders of the outstanding shares of that class or series of  
25 stock.

26       Sec. 3506. An officer or employee of any bank, in his or  
27 her individual capacity, shall not act as agent in the sale of

1 stock or other securities to any person or receive directly or  
2 indirectly any consideration or commission resulting from the  
3 sale of stock or other securities by others to the bank by which  
4 he or she is employed.

5       Sec. 3507. An officer, director, or employee of a bank  
6 shall not receive, or consent, or agree to receive from a cus-  
7 tomer of the bank any consideration or gratuity in return for the  
8 procurement of a loan or other service from the bank.

9                                   PART 6

10                                  SHAREHOLDERS

11       Sec. 3601. (1) The annual meeting of the shareholders of  
12 every bank shall be held on the day in each year that is provided  
13 in the bylaws of the bank. Special meetings of shareholders  
14 shall be called and held as provided in the bylaws of the bank.

15       (2) At any meeting, each shareholder entitled to vote shall  
16 be entitled to 1 vote for each share held by the shareholder. A  
17 shareholder may vote at any meeting of the bank by proxy in writ-  
18 ing signed by the shareholder.

19       (3) A bank may provide in the initial articles of incorpora-  
20 tion or by amendment to the articles by a vote of shareholders  
21 owning a majority of the total number of shares of each class of  
22 its outstanding capital stock, that in an election of directors  
23 each shareholder may cast as many votes as the number of shares  
24 owned by the shareholder multiplied by the number of directors to  
25 be elected. In the shareholder's discretion, the shareholder may  
26 distribute his or her total number of votes cumulatively for 1 or  
27 more of the candidates.

1       (4) A person holding shares of the capital stock of a bank  
2 in a fiduciary capacity shall be entitled to vote the shares  
3 unless otherwise provided in the trust instrument. A person  
4 whose shares are pledged shall be entitled to vote unless the  
5 pledgor has expressly empowered the pledgee to vote the shares  
6 and the pledge of the stock and the empowerment to vote are  
7 recorded by the issuing bank or its agent, in which case only the  
8 pledgee or his or her proxy may vote the shares.

9       (5) A shareholder shall have the right to vote in person or  
10 by proxy, except that a bank shall not vote shares it holds under  
11 section 3804(4) or 4304(4).

12       Sec. 3602. The commissioner may call a meeting of the  
13 shareholders of any bank by giving at least 3 days' notice of the  
14 time, place, and purposes of the meeting to the shareholders by  
15 registered or certified mail sent to their last known addresses  
16 as shown on the records of the bank or by another appropriate  
17 method reasonably designed to provide adequate notice.

18       Sec. 3603. (1) A bank shall keep and maintain an accurate  
19 record of the name and address of each shareholder of the bank,  
20 the number of shares held by each, the date when the shareholders  
21 acquired the shares, and the name of the transferor.

22       (2) In lieu of the requirements under subsection (1), the  
23 board of directors of a bank may designate a corporation autho-  
24 rized by law to act as transfer agent or registrar of shares of  
25 corporations, to act as transfer agent or transfer agent and reg-  
26 istrar of the shares of the bank, but the same corporation shall  
27 not be designed to act in both capacities at the same time.



1       (3) Upon demand by the commissioner, a bank shall submit to  
2 the commissioner a list containing the name and address of each  
3 shareholder of the bank together with the number of shares held  
4 by each according to its records as of the close of business on  
5 the date of issuance of the demand.

6       (4) Within 2 calendar weeks of any demand made for a purpose  
7 reasonably related to the requester's interest as a shareholder  
8 or as a representative of a group of shareholders by any share-  
9 holder being the record owner of at least 5% of the issued shares  
10 of the bank or by any person representing any group who are the  
11 record owners of at least 5% of the issued shares of the bank,  
12 the bank shall prepare and furnish the requestor a list contain-  
13 ing the name and address of each shareholder of the bank together  
14 with the number of shares held by each according to its records  
15 as of the close of business on the date of receipt of the  
16 demand.

17       Sec. 3604. If a vote of the holders of shares of stock is  
18 required in this act, those provisions shall apply only to the  
19 voting stock in the bank, out-of-state bank, national bank, asso-  
20 ciation, or savings bank, voting by classes.

21                                   PART 7

22                                   CONSOLIDATION AND CONVERSION

23       Sec. 3701. (1) Subject to approval by the commissioner, a  
24 bank may consolidate with any number of consolidating organiza-  
25 tions to form a consolidated bank.

26       (2) The approval of the commissioner shall be based on an  
27 examination or other appropriate analysis of each consolidating

1 organization and the agreement of consolidation. A consolidation  
2 shall not be made to defeat or defraud any of the creditors of  
3 any of the consolidating organizations.

4 (3) A majority of the directors of each organization propos-  
5 ing to consolidate may enter into an agreement, signed by them,  
6 or by their designated representative or representatives, pre-  
7 scribing the terms and conditions of consolidation, the mode of  
8 carrying the consolidation into effect, and stating other terms  
9 required or permitted by this act and any laws of the United  
10 States, as well as the manner of converting the shares of each of  
11 the consolidating organizations into shares of the consolidated  
12 organization, with other details and provisions as are considered  
13 necessary.

14 (4) The proposed consolidation agreement shall be submitted  
15 to the shareholders of each consolidating organization, at sepa-  
16 rate meetings of their shareholders. A notice indicating the  
17 time, place, and purpose of the meeting shall be mailed to each  
18 shareholder of each consolidating organization at his or her last  
19 known address as appears from the stock records of the consoli-  
20 dating organizations, by registered or certified mail, at least  
21 10 days prior to the date of the meeting. Notice shall not be  
22 required if it is waived by the commissioner, or, in the case of  
23 individual notice to a shareholder, by the shareholder.

24 (5) At the meeting, the proposed consolidation agreement  
25 shall be considered and a vote by ballot, in person or by proxy,  
26 taken for the adoption or rejection of the agreement. At the  
27 meeting, each share of stock shall entitle the holder to 1 vote.

1 If the votes of shareholders of each consolidating organization  
2 representing not less than 2/3 of the total number of shares of  
3 each class of each consolidating organization's outstanding capi-  
4 tal stock are cast for the adoption of the agreement, the vote  
5 shall be certified on the agreement by an officer of each of the  
6 consolidating organizations.

7       (6) If an out-of-state bank, national bank, association, or  
8 savings bank is a consolidating organization and approval is  
9 required by the laws of another state or of the United States,  
10 that organization shall furnish a copy of the approval of the  
11 appropriate state or federal regulator of the consolidation to  
12 the commissioner.

13       (7) The consolidation agreement required by this section  
14 shall be submitted to the commissioner, who shall, upon approval,  
15 certify upon the agreement the effective date of the  
16 consolidation. The consolidation agreement or a copy certified  
17 by the commissioner is evidence of the agreement and act of con-  
18 solidation of the consolidating organizations and the observance  
19 and performance of all necessary acts and conditions precedent to  
20 the consolidation.

21       (8) A bank holding company that is the sole shareholder of  
22 all of the outstanding issued stock of a bank, out-of-state bank,  
23 or national bank that is a consolidating organization in a pro-  
24 posed consolidation may waive the shareholder meeting requirement  
25 of this subsection.

26       (9) In effecting a consolidation, stock of the consolidated  
27 bank may be issued in accordance with this act and as provided by

1 the terms of the consolidation agreement free from any preemptive  
2 rights of the shareholders of the respective consolidating  
3 organizations.

4       Sec. 3702. On an interstate basis, a bank may consolidate  
5 with any number of consolidating organizations to form a consoli-  
6 dated organization in accordance with the laws under which the  
7 consolidated organization is chartered, if all of the following  
8 apply:

9       (a) Consolidation is permitted by the laws under which each  
10 consolidating organization is organized and the appropriate regu-  
11 lator or regulators approve the consolidation.

12       (b) The consolidating organizations provide notice to the  
13 commissioner by filing a copy of the application for consolida-  
14 tion within 10 days after the date the application is filed with  
15 the appropriate federal regulator.

16       (c) The consolidated organization complies with section  
17 3703(3) with respect to notice of consolidation, but that notice  
18 is limited to a court, public tribunal, agency, or officer of  
19 this state.

20       Sec. 3703. (1) If approval and certification of the consol-  
21 idation agreement as required by section 3701 have been com-  
22 pleted, the corporate existence of each consolidating organiza-  
23 tion is merged into and continued in the consolidated bank. To  
24 the extent authorized by this act, the consolidated bank pos-  
25 sesses all the rights, interests, privileges, powers, and fran-  
26 chises and is subject to all the restrictions, disabilities,  
27 liabilities, and duties of each of the consolidating

1 organizations. The title to all property, real, personal, and  
2 mixed, is transferred to the consolidated bank, and shall not  
3 revert or be in any way impaired by reason of this act.

4       (2) A consolidated bank holds and enjoys the same and all  
5 rights of property, franchises, and interests, including appoint-  
6 ments, designations, and nominations and all other rights and  
7 interests as a fiduciary, in the same manner and to the same  
8 extent as those rights and interests were held or enjoyed by each  
9 consolidating organization at the time of the consolidation. If  
10 a consolidating organization at the time of consolidation was  
11 acting under appointment of any court as a fiduciary, the consol-  
12 idated bank is subject to removal by a court of competent  
13 jurisdiction.

14       (3) A consolidated bank shall file with each court or other  
15 public tribunal, agency, or officer in any state by which any of  
16 the consolidating organizations have been appointed as a fiducia-  
17 ry, and in the court file of each estate, suit, or any other pro-  
18 ceeding in which any of them has been acting as a fiduciary, an  
19 affidavit setting forth the fact of consolidation, the name of  
20 each consolidating organization, the name of the consolidated  
21 bank, the location of its principal office, and the amount of its  
22 capital and surplus. This subsection does not require filing of  
23 an affidavit related to any consolidating organization that after  
24 the consolidation retains the same corporate name, charter, and  
25 principal office location.

26       (4) The liability of any consolidating organization or of a  
27 shareholder, director, or officer of a consolidating

1 organization, or the rights or remedies of the creditors of, or  
2 other persons transacting business with, the consolidating organ-  
3 ization shall not be altered or impaired as the result of a  
4 consolidation.

5       Sec. 3704. (1) Whether it maintains a presence in this  
6 state, a consolidated organization or any of its successors in  
7 interest is subject to service of process in a proceeding in this  
8 state for enforcement of any obligation incurred in this state by  
9 any consolidating organization that is or was a party to a  
10 consolidation.

11       (2) An action or proceeding by or against any of the consol-  
12 idating organizations in a court or any other public tribunal of  
13 this state may be prosecuted to judgment, as if consolidation had  
14 not taken place, or the consolidated bank or consolidated organi-  
15 zation may be substituted in the place of any consolidating  
16 organization whose existence has ceased.

17       Sec. 3705. (1) A consolidated bank or consolidated organi-  
18 zation may operate all branches and principal offices located in  
19 this state of the consolidating organizations without providing  
20 the notice required by section 3711(1).

21       (2) A bank, out-of-state bank, national bank, association,  
22 or savings bank operating a branch in this state as the result of  
23 a consolidation shall provide notice of that operation to the  
24 commissioner within 30 days after the effective date of the  
25 consolidation.

26       Sec. 3706. (1) As used in this section:

1 (a) "Existing bank" means a bank engaged in the business of  
2 banking before the consolidation provided in this section.

3 (b) "New bank" means a bank not engaged in the business of  
4 banking before the consolidation provided in this section.

5 (c) "Existing association" means a stock association engaged  
6 in the savings and loan business before the consolidation pro-  
7 vided in this section.

8 (d) "Existing savings bank" means a stock savings bank  
9 engaged in the savings bank business before the consolidation  
10 provided in this section.

11 (2) Notwithstanding any other provision of this act, both of  
12 the following apply:

13 (a) A new bank may be organized for the sole purpose of  
14 effecting its consolidation under section 3701 with an existing  
15 bank, existing savings bank, or existing association having its  
16 principal office in the same city or village as the new bank and  
17 if upon completion of the consolidation a bank holding company  
18 becomes the owner of all of the outstanding voting shares of the  
19 consolidated organization. The new bank and existing bank may  
20 consolidate under the articles of either bank. The new bank and  
21 the existing savings bank or association shall consolidate under  
22 the articles of the new bank. Sections 3701, 3703, and 3704  
23 apply to the consolidation, except that the agreement of consoli-  
24 dation may provide that shares of either or both the consolidat-  
25 ing organizations will be converted into shares or other securi-  
26 ties of the bank holding company.

1 (b) A shareholder of the existing bank, existing savings  
2 bank, or existing association who votes against the  
3 consolidation, or who has given notice in writing to that bank or  
4 association at or before the meeting called for the purpose of  
5 considering the agreement of consolidation that the shareholder  
6 dissents from the consolidation, is entitled to receive in cash  
7 from the consolidated organization the fair value of all shares  
8 held by the shareholder, if and when the consolidation is consum-  
9 mated, upon written request made to the consolidated organization  
10 at any time within 30 days after the date of consummation of the  
11 consolidation, accompanied by the surrender of the stock voted in  
12 dissent by the shareholder. Upon the filing of the written  
13 request and the surrender of stock certificates, if any, the  
14 shareholder shall cease to have any of the rights of a share-  
15 holder except the right to be paid the fair value of the  
16 shareholder's shares. The request having been made shall not be  
17 withdrawn except with the written consent of the consolidated  
18 organization. The fair value of the shares shall be determined,  
19 as of the date on which the meeting of shareholders of the exist-  
20 ing bank, existing savings bank, or existing association was held  
21 adopting the agreement of consolidation, by a qualified and inde-  
22 pendent appraiser selected by the commissioner upon written  
23 request submitted by a dissenting shareholder entitled to receive  
24 the fair value of his or her shares. The appraiser selected  
25 shall file a written appraisal with the commissioner, who in turn  
26 shall forward copies to all interested parties. The valuation  
27 determined by the appraiser is final and binding on all parties



1 as to the fair value of the shares. The consolidated  
2 organization shall pay to each dissenting shareholder entitled  
3 the fair value of his or her shares within 30 days following the  
4 receipt of the written appraisal. The fees and expenses of the  
5 appraisal, which shall be approved by the commissioner, shall be  
6 paid by the consolidated organization. The agreement of consoli-  
7 dation shall provide the manner of disposing of the shares of the  
8 existing bank, existing savings bank, or existing association  
9 surrendered by the dissenting shareholders.

10 (3) The commissioner shall approve or disapprove an applica-  
11 tion submitted under this section in writing within 30 days after  
12 acceptance of the application or the last amendment or supplement  
13 to the application.

14 Sec. 3707. (1) As used in this section:

15 (a) "Consolidation agreement" means an agreement entered  
16 into among an existing bank, existing savings bank, or an exist-  
17 ing association, and a new bank, and a new holder company that  
18 provides both of the following:

19 (i) That the existing bank, existing savings bank, or exist-  
20 ing association and the new bank will be consolidated or merged.

21 (ii) That upon consummation of the consolidation or merger,  
22 the shares of capital stock of the existing bank, existing sav-  
23 ings bank, or existing association will be converted into or  
24 exchanged for shares of the capital stock or other securities of  
25 the new holding company.

26 (b) "Existing association" means a stock association that is  
27 a party to a consolidation agreement and is engaged in the

1 savings and loan business before the consolidation or merger  
2 provided for in the consolidation agreement.

3 (c) "Existing bank" means a bank or national banking associ-  
4 ation that is a party to a consolidation agreement and is engaged  
5 in the business of banking before the consolidation or merger  
6 provided for in the consolidation agreement.

7 (d) "Existing savings bank" means a stock savings bank that  
8 is a party to a consolidation agreement and is engaged in the  
9 savings bank business before the consolidation or merger provided  
10 for in the consolidation agreement.

11 (e) "New bank" means a bank or national banking association  
12 that is a party to a consolidation agreement and is not engaged  
13 in the business of banking before the consummation of the consol-  
14 idation or merger provided for in the consolidation agreement.

15 (f) "New holding company" means a corporation that is not a  
16 bank, association, or national banking association and as to  
17 which all of the following apply:

18 (i) The corporation is a party to a consolidation  
19 agreement.

20 (ii) Before its acquisition of an existing bank, existing  
21 savings bank, or existing association pursuant to the consolida-  
22 tion agreement, the corporation does not have control of a bank,  
23 savings bank, association, or national banking association and  
24 has not transacted any business except business incidental to its  
25 organization and to the entering into, and performance of, the  
26 consolidation agreement.

1       (iii) Upon consummation of the consolidation or merger  
2 provided for in the consolidation agreement, the corporation will  
3 become a bank holding company as defined in section 2 of the bank  
4 holding company act.

5       (iv) Immediately after its acquisition of an existing bank,  
6 existing savings bank, or existing association under the consoli-  
7 dation agreement, the corporation will not have control of more  
8 than 1 bank or 1 national banking association.

9       (v) Before the acquisition of an existing bank, existing  
10 savings bank, or existing association under the consolidation  
11 agreement, the corporation is not, and immediately after acquisi-  
12 tion of control of the existing bank, existing savings bank, or  
13 existing association shall not be, controlled by a bank holding  
14 company as defined in section 2(a)(2) of the bank holding company  
15 act.

16       (g) "Control" means control as defined in section 2 of the  
17 bank holding company act.

18       (2) A new holding company may apply to the commissioner for  
19 approval of the terms and conditions of the issuance of the  
20 shares or other securities of the new holding company into which  
21 the shares of an existing bank, existing savings bank, or exist-  
22 ing association are to be converted, or for which the shares of  
23 the existing bank, existing savings bank, or existing association  
24 are to be exchanged, under a consolidation agreement, and for  
25 approval of the terms and conditions of the conversion or  
26 exchange. The application for approval shall be in a form,  
27 contain information, and be accompanied by documents as required

1 by the commissioner. Within 30 days after the application is  
2 filed, the commissioner shall conduct a hearing upon the fairness  
3 of the terms and conditions at which all persons to whom it is  
4 proposed to issue the securities in the conversion or exchange  
5 shall have the right to appear. Within 20 days after the hear-  
6 ing, the commissioner shall either approve or disapprove the  
7 terms and conditions of the issuance and of the conversion or  
8 exchange. This subsection does not apply to the terms and condi-  
9 tions of the issuance and conversion or exchange of securities  
10 provided for in a consolidation agreement or to make unlawful any  
11 transaction that is lawful without regard to this subsection.

12       Sec. 3708. (1) Upon the affirmative votes of the sharehold-  
13 ers representing more than 50% of the total number of shares of  
14 each class of its outstanding capital stock, a bank may be con-  
15 verted under the laws of this state into a stock association or  
16 stock savings bank or under the laws of the United States into a  
17 national banking association. The conversion of a bank into a  
18 stock association, stock savings bank, or national banking asso-  
19 ciation shall not release the bank from its obligations to pay  
20 and discharge either of the following:

21       (a) All the liabilities created by law or incurred by the  
22 bank before becoming a stock association, stock savings bank, or  
23 a national banking association.

24       (b) Any tax imposed by this state up to the date of its  
25 becoming a stock association, stock saving bank, or national  
26 banking association in proportion to the time that has elapsed  
27 since the last preceding payment or assessment, penalty, or

1 forfeiture imposed or incurred up to the date of its becoming a  
2 stock association, stock savings bank, or a national banking  
3 association.

4 (2) A conversion shall not be made to defeat or defraud any  
5 of the creditors of the bank.

6 (3) A certified copy of all resolutions relating to the pro-  
7 posed conversion adopted by the directors and shareholders of the  
8 bank shall be submitted to the bureau. If consent or approval is  
9 required by federal law, the bank shall provide the bureau with a  
10 certified copy of consent or approval of the appropriate federal  
11 regulator to the conversion.

12 Sec. 3709. (1) With the approval of the commissioner and  
13 upon the affirmative vote of the shareholders representing more  
14 than 50% of the total number of shares of each class of its out-  
15 standing capital stock, a national banking association, stock  
16 association, or stock savings bank doing business in this state  
17 and having capital and surplus sufficient to entitle it to become  
18 a bank under this act may be converted into a bank if the conver-  
19 sion is not in contravention of any laws of the United States.

20 (2) The articles of incorporation may be executed by a  
21 majority of the directors of the national banking association,  
22 stock association, or stock savings bank. A majority of the  
23 directors, after executing the articles of incorporation, shall  
24 have the power to execute all other papers and to do whatever is  
25 required to complete its organization as a bank. The shares of  
26 the bank may continue to be for the same amount as they were  
27 before the conversion, and the directors may continue to be

1 directors of the bank until others have been elected or appointed  
2 under the laws of this state.

3       (3) The approval of the commissioner shall be based on an  
4 examination of the national banking association, stock associa-  
5 tion, or stock savings bank and on the action taken by its direc-  
6 tors and shareholders with respect to the conversion. A conver-  
7 sion shall not be made to defeat or defraud any creditors. The  
8 commissioner may permit the converted bank to retain and carry  
9 assets of the converting national banking association, stock  
10 association, or stock savings bank which do not conform to the  
11 legal requirements relative to assets acquired and held by  
12 banks.

13       Sec. 3710. If a conversion becomes effective under section  
14 3708 or 3709, all of the following shall apply:

15       (a) The converted organization shall be considered a contin-  
16 uation of the body corporate of the converting organization.

17       (b) The title to all property, real or personal, including  
18 any rights that may be attached to the property, or any thing in  
19 action, is immediately transferred and vested in the converted  
20 organization to the same extent as it was in the converting  
21 organization.

22       (c) All assets, rights, privileges, or interests belonging  
23 or attributed to the converting organization are immediately  
24 transferred and vested in the converted organization to the same  
25 extent as they were in the converting organization.

26       (d) All liabilities, restrictions, and disabilities of the  
27 converting organization, its shareholders, or its officers are

1 immediately transferred to the converted organization to the same  
2 extent as they were in the converting organization.

3 (e) If the converting organization is acting in any fidu-  
4 ciary capacity under the laws of this state, the following  
5 apply:

6 (i) All rights, privileges, and obligations of the convert-  
7 ing organization shall remain unimpaired and shall continue in  
8 the converted organization irrespective of the date when the  
9 fiduciary relationship was created.

10 (ii) If the converting organization had been appointed by a  
11 court or tribunal, agency, or officer, the converted organization  
12 shall file an affidavit with the appointing authority setting  
13 forth the fact of conversion, the name of the converted organiza-  
14 tion, the location of its principal office, and the amount of its  
15 capital and surplus.

16 (iii) The converted organization acting as a fiduciary by  
17 appointment of a court is subject to removal by a court of compe-  
18 tent jurisdiction.

19 (f) The converted organization may retain and continue to  
20 operate any existing branch, or open any approved branch, of the  
21 converting organization.

22 (g) Any rights or remedies of the depositors, creditors, or  
23 other persons transacting business with the converting organiza-  
24 tion shall not be reduced or impaired as the result of a  
25 conversion.

26 (h) Whether or not it maintains a presence in this state, a  
27 converted organization or any of its successors in interest is

1 subject to service of process in a proceeding in this state for  
2 enforcement of any obligation incurred in this state by the con-  
3 verting organization.

4       (i) An action or proceeding against the converting organiza-  
5 tion in a court or other tribunal may be prosecuted to judgment  
6 as if the conversion had not taken place, or the converted organ-  
7 ization may be substituted in place of the converting  
8 organization. This subsection shall not create any new cause of  
9 action against the converting organization as a result of the  
10 conversion.

11       Sec. 3711. (1) A bank may establish and operate a branch or  
12 branches within any state, the District of Columbia, a territory  
13 or protectorate of the United States, or a foreign country,  
14 unless the commissioner objects in writing within 30 days after  
15 receipt of a written notice from the bank of its intent to estab-  
16 lish a branch. The commissioner may issue a written statement of  
17 intent not to object at any time before the expiration of the 30  
18 days.

19       (2) The written notice of intent to establish a mobile  
20 branch shall contain a statement by the applying bank that it  
21 intends to move the location of the physical structure of the  
22 branch from time to time.

23       (3) Except for a mobile branch, a branch of a bank shall not  
24 be moved from 1 location to another without prior written notice  
25 to the commissioner.

26       (4) Unless the commissioner objects in writing within 30  
27 days after receipt of written notice from a bank of its intent to



1 contract for branch services, a bank may contract with 1 or more  
2 banks, out-of-state banks, national banks, associations, or sav-  
3 ings banks for the depository institution or institutions to act  
4 as branches to provide services to the customers of the contract-  
5 ing bank. The commissioner may issue a written statement of  
6 intent not to object at any time prior to the expiration of the  
7 30 days. This subsection shall not be construed to limit the  
8 powers granted to a bank under section 4101(1)(d).

9 (5) Unless the commissioner objects in writing within 30  
10 days after receipt of written notice from a contracting deposi-  
11 tory institution of its intent to contract for branch services, 1  
12 or more out-of-state banks, national banks, associations, or sav-  
13 ings banks may contract with a bank for the bank to provide serv-  
14 ices to the customers of the contracting out-of-state bank,  
15 national bank, association, or savings bank. The commissioner  
16 may issue a written statement of intent not to object at any time  
17 prior to the expiration of the 30 days. This subsection shall  
18 not be construed to limit the powers granted to a bank under sec-  
19 tion 4101(1)(d).

20 (6) Subject to the requirements, limitations, and restric-  
21 tions of subsections (1) to (3), a state agency or state foreign  
22 bank branch organized under this act may establish and operate  
23 additional offices in the United States and its territories and  
24 protectorates.

25 (7) An out-of-state bank or national bank located in a  
26 state, the District of Columbia, or a territory or protectorate  
27 of the United States whose laws permit the establishment in that

1 state, district, territory, or protectorate of a branch by a bank  
2 may establish and operate 1 or more branches in this state.

3       (8) An out-of-state bank may apply to organize a branch in  
4 this state under this act by providing to the commissioner proof  
5 that its deposits are insured by an agency of the United States  
6 government. If the commissioner determines that the out-of-state  
7 bank is safe and sound, that the out-of-state bank is subject to  
8 regulation and has complied with this act, and that there exists  
9 an agreement for exchange of supervisory information between the  
10 bureau and the out-of-state bank's regulator, the commissioner  
11 shall provide to the out-of-state bank a certificate of organiza-  
12 tion and eligibility to accept deposits and investments of public  
13 funds of the state and local units of government.

14       (9) A foreign bank branch that has designated a home state  
15 other than this state may establish and operate 1 or more addi-  
16 tional offices in this state.

17       (10) Prior to commencing operations at a branch in this  
18 state, an out-of-state bank, foreign bank, or national bank shall  
19 provide written notice to the commissioner of the name of the  
20 bank, the street address and mailing address, if different, of  
21 the bank's principal office, the street address of the branch  
22 office, and the date when the branch is to commence operations in  
23 this state.

24       (11) Each bank, out-of-state bank, foreign bank, and  
25 national bank operating in this state shall do both of the  
26 following:

1 (a) Designate and maintain an agent located in this state  
2 upon whom process for judicial and administrative matters may be  
3 served and shall provide written notice containing the name and  
4 address of its agent to the commissioner before commencing opera-  
5 tions in this state.

6 (b) Notify the commissioner in writing of any change in its  
7 designated agent or the agent's address within 10 days following  
8 the effective date of the change.

9 Sec. 3712. (1) If a bank or foreign bank permanently dis-  
10 continues the operations of any branch, foreign bank agency, or  
11 foreign bank branch, all functions of the branch, foreign bank  
12 agency, or foreign bank branch shall be considered transferable  
13 to, and treated as a part of, the principal office of the bank  
14 or, in the case of a foreign bank, the principal office in this  
15 country.

16 (2) A bank, out-of-state bank, national bank, or foreign  
17 bank shall notify the commissioner in writing before discontinu-  
18 ing operations of a branch, foreign bank agency, or foreign bank  
19 branch.

20 Sec. 3713. (1) Upon prior written notice to the commission-  
21 er, a bank may change the location of its principal office to any  
22 existing branch location of the bank within this state.

23 (2) Unless the commissioner objects in writing within 60  
24 days after receipt of written notice from the bank of its intent  
25 to relocate its principal office, a bank may change the location  
26 of its principal office to any other location within this state  
27 which is not an existing branch location of the bank. The

1 commissioner may issue a written statement of intent not to  
2 object at any time before expiration of the 60 days.

3       Sec. 3714. Notwithstanding section 1105 of the uniform com-  
4 mercial code, both of the following apply:

5       (a) A bank which has 1 or more branch offices in a foreign  
6 country shall be liable for contracts to be performed and for  
7 deposits to be repaid at any branch office in that foreign coun-  
8 try to no greater extent than a bank, banking corporation, or  
9 other organization or association for banking purposes organized  
10 and existing under the laws of the foreign country would be  
11 liable under its laws. The laws of the foreign country for the  
12 purpose of this section are considered to include all acts,  
13 decrees, regulations, and orders promulgated or enforced by a  
14 dominant authority asserting governmental, military, or police  
15 power of any kind at the place where the branch office is  
16 located, whether or not the dominant authority is recognized as a  
17 de facto or de jure government.

18       (b) If by action of a dominant authority that is not recog-  
19 nized by the United States as the de jure government of the for-  
20 eign territory concerned, any property situated in or any amount  
21 to be received in the foreign territory and carried as an asset  
22 of a branch office of the bank in the foreign territory is  
23 seized, destroyed, or canceled, the liability of the bank for any  
24 deposit received and to be repaid by it, and for any contract  
25 made and to be performed by it, at any branch office in the for-  
26 eign territory shall be reduced pro tanto by the proportion that  
27 the value, as shown by the books or other records of the bank at

1 the time of the seizure, destruction, or cancellation of the  
2 assets bears to the aggregate of all the deposit and contract  
3 liabilities of the branch offices of the bank in the foreign ter-  
4 ritory, as shown at the time by the books or other records of the  
5 bank.

6 PART 8

7 CAPITAL

8 Sec. 3801. (1) A bank, with the approval of shareholders  
9 owning  $\frac{2}{3}$  of the stock of the bank entitled to vote, may issue  
10 capital notes, debentures, and any other instrument of indebted-  
11 ness, with or without warrants for preferred or common stock,  
12 convertible and nonconvertible, subordinated on insolvency,  
13 liquidation, or dissolution to all obligations except obligations  
14 to shareholders, in amounts and under terms and conditions  
15 approved by the commissioner on the basis of normal business  
16 considerations.

17 (2) In connection with the issuance of convertible capital  
18 notes, debentures, or any other instrument of indebtedness, the  
19 commissioner may grant approval for the bank to reserve a number  
20 of authorized and unissued shares of capital stock as shall be  
21 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  
22 are converted into shares of common or preferred stock, a veri-  
23 fied certificate executed by the president of the bank stating  
24 the amount of the conversion, and other information with respect

1 to the conversion as the commissioner may require, shall be filed  
2 in the office of the commissioner.

3       Sec. 3802. (1) A bank may issue the number of shares autho-  
4 rized in its articles of incorporation. The shares may be all of  
5 1 class or may be divided into 2 or more classes. Each class  
6 shall consist of shares having the designations and relative  
7 voting, distribution, dividend, liquidation, and other rights,  
8 preferences, and limitations, consistent with this act as stated  
9 in the articles of incorporation of the issuing bank.

10       (2) If the shares are divided into 2 or more classes, the  
11 shares of each class shall be designated in a manner to distin-  
12 guish them from the shares of other classes.

13       (3) Subject to the designations, relative rights, prefer-  
14 ences, and limitations applicable to separate series, each share  
15 shall be equal to every other share of the same class.

16       Sec. 3803. (1) Except as provided in subsection (2), the  
17 shares of a bank shall be represented by certificates of stock  
18 that shall be issued to every shareholder and transferable on the  
19 books of the bank in a manner as may be prescribed in the bylaws  
20 or articles of incorporation. A transfer of stock shall not be  
21 valid against the bank, except with the consent of the board of  
22 directors, so long as the registered holder of the stock is  
23 liable as principal debtor, surety, or otherwise to the bank for  
24 any debt which is due and unpaid.

25       (2) Unless the articles of incorporation or bylaws provide  
26 otherwise, the board may authorize the issuance of some or all of  
27 the shares of any or all of its classes or series of stock

1 without certificates if within a reasonable time after issuance  
2 of a share without a certificate the bank provides the share-  
3 holder with a written statement of the information required on a  
4 certificate under subsection (5). The authorization shall not  
5 have any effect on shares already represented by certificates  
6 unless they are surrendered to the bank.

7       (3) If the registered holder of stock of a bank is liable to  
8 the bank as principal debtor, surety or otherwise for any debt  
9 which is due and unpaid, the directors of the bank may sell a  
10 sufficient amount of the stock of the delinquent shareholder in  
11 the same manner and with the same effect as provided in section  
12 3808. This section does not prevent the bank from bringing pro-  
13 ceedings to recover the entire amount of the indebtedness at any  
14 time before the sale or to recover the balance of the debt and  
15 costs after the proceeds of sale have been applied against the  
16 debt and costs or to recover the balance of the debt after the  
17 cancellation of the stock.

18       (4) Except as provided in sections 3807 and 3808, the rights  
19 of a bank in its stock in which the shareholder is liable to the  
20 bank as principal debtor, surety, or otherwise is subject to any  
21 pledge, sale, or other transfer of the stock that is made before  
22 the maturity of an indebtedness of the registered holder of the  
23 stock to the bank and of which the bank has knowledge before the  
24 maturity, whether or not the stock was transferred on the books  
25 of the bank. Any stock of a bank that is pledged, sold, or oth-  
26 erwise transferred before the maturity of any indebtedness of the  
27 registered holder of the stock to the bank and of which pledge,

1 sale, or other transfer the bank has knowledge before the  
2 maturity, may be transferred on the books of the bank after the  
3 maturity without the consent of the board of directors of the  
4 bank. The rights of a bank in its stock under this section,  
5 including the limitation on transferability if the registered  
6 holder is liable to the bank for any debt that is due and unpaid,  
7 shall not be applicable with respect to any stock duly listed on  
8 any stock exchange.

9 (5) Each certificate issued after the effective date of this  
10 act shall state all of the following:

11 (a) The name and address of the principal office of the  
12 bank.

13 (b) The name of the holder of record of the stock it  
14 represents.

15 (c) The number, par value, class, and series of shares which  
16 the certificate represents.

17 (d) The respective voting, distribution, dividend, liquida-  
18 tion, dissolution, and other rights, preferences, and limitations  
19 of the stock issued, which information shall be stated in full or  
20 in summary upon the front or back of the certificate or shall be  
21 incorporated by a reference to the articles of incorporation set  
22 forth on the front of the certificate.

23 (e) If the stock is not listed, that no transfer of the  
24 stock shall be valid against the bank so long as the registered  
25 holder is liable as principal debtor, surety, or otherwise to the  
26 bank, except with the approval of the board of directors or as  
27 otherwise provided in this act.



1 (f) The signature of the president or other officer as  
2 provided by the bylaws of the bank and, optionally, the seal of  
3 the bank.

4 (6) All of the following may be a facsimile:

5 (a) The signature of a transfer agent.

6 (b) The signature of a registrar.

7 (c) The signature of an officer of the bank.

8 (d) The seal of the bank.

9 (7) If an officer who has signed a share certificate or  
10 whose facsimile signature has been used on a share certificate  
11 ceases to be an officer, whether because of death, resignation,  
12 or otherwise, before the certificate has been delivered by the  
13 bank, the certificate, nevertheless, may be adopted by the bank  
14 and delivered as though the person who signed it or whose facsim-  
15 ile signature has been used on the stock had not ceased to be an  
16 officer.

17 Sec. 3804. (1) By a vote of shareholders owning 2/3 of each  
18 class of the stock entitled to vote, a bank may amend its arti-  
19 cles to increase its capital stock to any sum approved by the  
20 commissioner, either by an increase in the par value of autho-  
21 rized stock or by the authorization of new stock.

22 (2) An increase in capital shall not be valid until the  
23 whole amount of the increase has been paid in, notice of the pay-  
24 ment signed by an officer of the bank has been transmitted to the  
25 commissioner specifying the amount of the increase in capital and  
26 that it has been duly paid in as a part of the capital of the

1 bank. The certificate shall be conclusive evidence that the  
2 stock has been duly and validly issued.

3 (3) In the case of the issuance of new stock, in voting upon  
4 the increase of capital stock, 2/3 of the shareholders entitled  
5 to vote shall have power to fix the value of, and the price at  
6 which the stock shall be subscribed and paid for by the share-  
7 holders, but not less than par, as well as the time and manner of  
8 the subscription and payment, and to authorize the directors to  
9 sell the stock.

10 (4) Notwithstanding this section, a bank, with the approval  
11 of the commissioner and by a vote of shareholders owning 2/3 of  
12 each class of the stock entitled to vote, for the stated purpose  
13 of providing stock options for 1 or more employees, may increase  
14 its capital stock in an aggregate par value amount not to exceed  
15 at any 1 time 5% of the par value of its then outstanding common  
16 stock. The additional stock, when duly authorized, may be issued  
17 by the bank from time to time for this purpose but for no other  
18 purpose, as options are exercised and payment for the stock is  
19 received, free from any preemptive rights to subscribe for  
20 stock.

21 Sec. 3805. (1) By a vote of shareholders owning 2/3 of the  
22 bank's stock entitled to vote, a bank may reduce its capital  
23 stock. The reduction may be accomplished by a reduction in the  
24 par value of the existing stock or by a reduction in the number  
25 of the shares of stock. A reduction shall not be made until the  
26 amount of the proposed reduction has been approved by the  
27 commissioner.

1       (2) The approval of the commissioner shall be based upon a  
2 finding that the security of existing creditors of the bank will  
3 not be impaired by the proposed reduction. This section does not  
4 discharge any bank from any obligation that may be due from the  
5 bank.

6       (3) Retirement of preferred stock in accordance with the  
7 articles of incorporation is not considered to be a reduction of  
8 capital under this section.

9       (4) A shareholder shall not be entitled to any distribution  
10 of cash or other assets by reason of any reduction of the common  
11 capital of any bank unless the distribution has been approved by  
12 the commissioner and by the affirmative vote of at least 2/3 of  
13 the shares of each class of stock outstanding, voting as  
14 classes.

15       Sec. 3806. (1) From time to time, the board of directors of  
16 a bank may declare and pay dividends on the common stock of the  
17 bank consistent with this section.

18       (2) A cash dividend or dividend in kind shall not be  
19 declared or paid unless the bank will have a surplus amounting to  
20 not less than 20% of its capital after the payment of the  
21 dividend.

22       (3) A cash dividend or dividend in kind shall not be  
23 declared by a bank except out of net income then on hand after  
24 deducting its losses and bad debts due the bank on which interest  
25 is past due and unpaid for a period of 6 months. Unless the  
26 debts are well secured and in process of collection or the debts  
27 constitute claims against solvent estates in probate, all debts

1 shall be considered bad debts within the meaning of this  
2 section.

3       (4) A cash dividend or dividend in kind shall not be  
4 declared or paid until the cumulative dividends on preferred  
5 stock, if any, have been paid in full. By their unanimous vote,  
6 the preferred shareholders may waive their right to any amount of  
7 the accumulated but unpaid dividends.

8       (5) If at any time the surplus of a bank is less than the  
9 amount of its capital, before the declaration of a cash dividend  
10 or dividend in kind, it shall transfer to surplus not less than  
11 10% of its net income of the preceding 6 months in the case of  
12 quarterly or semiannual dividends, or not less than 10% of its  
13 net income of the preceding 2 consecutive 6-month periods in the  
14 case of annual dividends. For the purpose of this section, any  
15 amounts transferred to a fund for the retirement of any preferred  
16 stock of the bank out of its net income for the periods are con-  
17 sidered to be additions to its surplus, if, upon the retirement  
18 of the preferred stock, the amounts credited into the retirement  
19 fund may then properly be carried to surplus. In this case, the  
20 bank shall be obligated to credit to surplus the amounts trans-  
21 ferred into the retirement fund on account of the preferred stock  
22 as the stock is retired.

23       (6) Without regard to the limitations of this section and  
24 section 3804, a bank, with the approval of the commissioner, and  
25 by vote of shareholders owning 2/3 of the stock entitled to vote,  
26 may amend its articles to increase its capital stock by  
27 declaration of a stock dividend on the capital stock. After the

1 increase, the surplus of the bank shall be at least equal to 20%  
2 of the capital stock as increased.

3 (7) A bank may pay dividends on its preferred stock at the  
4 applicable rate without regard to subsections (1) through (6).

5 (8) Dividends paid to shareholders under a dividend rein-  
6 vestment plan shall be subject to this act relative to payment of  
7 dividends.

8 (9) A dividend shall not be paid from capital or surplus of  
9 the bank.

10 Sec. 3807. (1) If, in the opinion of the commissioner, the  
11 capital of a bank has become impaired, the commissioner shall  
12 notify the bank of his or her determination and require the  
13 directors to meet the deficiency in the capital within a 2-month  
14 period. The directors shall meet the deficiency by either making  
15 a pro rata assessment upon the stock held by each shareholder, or  
16 taking steps to dissolve the bank. The 2-month period may be  
17 extended by order of the commissioner, if in his or her discre-  
18 tion an extension is necessary to allow the directors to meet the  
19 deficiency.

20 (2) Before an assessment may be made by the directors, each  
21 shareholder, secured party, and pledgee indicated on the books of  
22 the bank as holding an interest in the stock shall be provided  
23 with written notice in a manner reasonably calculated to give  
24 actual notice of the determination made by the commissioner that  
25 the capital of the bank is impaired and the amount of the assess-  
26 ment that each shareholder must pay.

1       (3) If a shareholder refuses or neglects to pay an  
2 assessment levied by the directors within 30 days from the date  
3 notice was provided, the directors shall sell all or part of the  
4 shareholder's shares to the highest bidder in a manner provided  
5 in section 3808. Upon expiration of the 30-day period and  
6 refusal or neglect by a shareholder to pay the assessment, a  
7 security interest in favor of the bank in the amount of the  
8 assessment shall attach to all of the shareholder's shares for  
9 the sole purpose of satisfying the assessment levied. The secur-  
10 ity interest shall have priority over any other security inter-  
11 ests perfected by a creditor or otherwise granted by the share-  
12 holder in shares issued after the effective date of this act.

13       (4) If the directors fail to restore the capital of the bank  
14 or take steps to dissolve the bank during the 2-month period fol-  
15 lowing notice from the commissioner and any extension granted  
16 under subsection (1), the commissioner may appoint a receiver for  
17 the bank in accordance with this act.

18       (5) If any part of the capital of a bank consists of pre-  
19 ferred stock, the determination of whether the capital of the  
20 bank is impaired and the amount of the impairment shall be based  
21 upon the par value of its stock even though the amount that the  
22 holders of the preferred stock shall be entitled to receive in  
23 the event of retirement or dissolution shall be in excess of the  
24 par value of the preferred stock.

25       (6) The holders of preferred stock shall not be liable for  
26 assessments to restore impairment in the capital of a bank.

1       Sec. 3808. (1) If, 30 days after notice as provided in  
2 section 3807, a shareholder has refused or neglected to pay an  
3 assessment levied on the shares held by the shareholder, the  
4 directors may sell any or all of the shareholder's shares to sat-  
5 isfy the assessment. The proceeds of the sale shall be distrib-  
6 uted in the following order:

7       (a) The reasonable expenses of holding for sale and selling  
8 the stock in a manner not prohibited by law, including reasonable  
9 attorney fees and legal expenses incurred by the bank.

10       (b) The satisfaction of the assessment levied by the  
11 directors.

12       (c) The satisfaction of an indebtedness secured by any  
13 security interest in the stock if written notification demanding  
14 proceeds is received by the bank before distribution of the pro-  
15 ceeds is completed. Unless the holder of a security interest  
16 provides reasonable proof of the interest, the bank does not have  
17 to comply with this subdivision.

18       (d) Any remaining surplus shall be distributed to the  
19 shareholder.

20       (2) Disposition of the stock may be at a public or private  
21 sale at any time and on any terms, but every aspect of the dispo-  
22 sition including the method, manner, time, place, and terms shall  
23 be commercially reasonable and reasonably calculated to meet the  
24 deficiency.

25       (3) A sale of stock as provided in this section shall effect  
26 an absolute cancellation of any outstanding certificates  
27 evidencing the stock sold and any security interest granted or

1 pledge made in stock issued after the effective date of this  
2 act. Upon full payment of the stock sold, the bank shall issue  
3 new certificates to the purchaser.

4 (4) The purchaser takes the stock free of any rights or  
5 interests the shareholder may have based on an unintentional  
6 failure by the bank to comply with this section or section 3807  
7 if all of the following apply:

8 (a) The purchaser has no knowledge of any defect in the  
9 proceedings.

10 (b) The purchaser does not act in collusion with any share-  
11 holders of the bank, a secured party, other bidders, or the  
12 bank.

13 (c) The purchaser makes the purchase in good faith.

14 (5) The ability of a bank to make an assessment under sec-  
15 tion 3807 or to sell the stock of a shareholder under this sec-  
16 tion is not limited by the uniform commercial code.

17 PART 9

18 ADMINISTRATION

19 Sec. 3901. Deposits shall be repaid to the depositor, or  
20 the depositor's lawful representatives, according to the terms of  
21 the agreement between the depositor and the bank.

22 Sec. 3902. (1) An officer or the board of directors of a  
23 bank may appoint a compliance review committee to evaluate loan  
24 underwriting standards, asset quality, financial reporting to  
25 federal or state regulatory agencies, compliance with the bank's  
26 policies, compliance with federal or state statutory or  
27 regulatory requirements, or other related matters.



1       (2) Any documents, data, compilations, analyses, or other  
2 information and material gathered, generated, created, produced,  
3 developed, or prepared by or for a compliance review committee by  
4 1 or more employees of the bank or by 1 or more other persons  
5 retained by the bank to assist the compliance review committee in  
6 performing its functions shall be considered compliance review  
7 material.

8       (3) A document, compilation, analysis, or item of informa-  
9 tion, data, or material remains compliance review material under  
10 this section even if it is delivered or disclosed to employees of  
11 the bank who are not members of the compliance review committee  
12 or to attorneys, accountants, auditors, consultants, or other  
13 professional advisers retained by the bank or to 1 or more other  
14 persons retained by the bank to assist the committee in perform-  
15 ing its functions or to evaluate the committee.

16       (4) Except as provided in subsection (5), compliance review  
17 material is confidential and is not discoverable or admissible in  
18 evidence in any civil action.

19       (5) Subsection (4) does not apply to any information  
20 required by statute or regulation to be maintained by or provided  
21 to a governmental entity to the extent that law requires the gov-  
22 ernmental entity to disclose the information for discovery or  
23 admission into evidence.

24       Sec. 3903. (1) The board of directors shall require every  
25 employee involved in the handling of money, accounts, or securi-  
26 ties of the bank to be bonded by a surety company authorized to  
27 do business in this state in an amount determined by the board.

1 The bank shall pay for any surety bonds required of its  
2 employees.

3 (2) Every bank shall maintain a financial institution bond  
4 sufficient to protect against loss. If a bank refuses to comply  
5 with this requirement, the commissioner may contract for the bond  
6 and charge the cost to the bank. If the charge is not paid, the  
7 commissioner may collect the charge in an action instituted by  
8 the attorney general.

9 Sec. 3904. (1) A bank may indemnify a person described in  
10 subsection (2) who was or is a party or is threatened to be made  
11 a party to any type of threatened, pending, or completed action,  
12 suit, or proceeding, other than an action by or in the right of  
13 the bank, against expenses, including attorney fees, judgments,  
14 penalties, fines, and amounts paid in settlement actually and  
15 reasonably incurred by him or her in connection with the action,  
16 suit, or proceeding if the person acted in good faith and in a  
17 manner he or she reasonably believed to be in or not opposed to  
18 the best interests of the bank or its shareholders or that the  
19 conduct was lawful.

20 (2) Subsection (1) applies to a person who is or was a  
21 director, officer, employee, or agent of the bank or is or was  
22 serving at the request of the bank as a director, officer, part-  
23 ner, trustee, employee, or agent of another bank or national  
24 banking association, foreign or domestic corporation, partner-  
25 ship, joint venture, trust, or other enterprise, whether for  
26 profit or not.

1       (3) The termination of an action, suit, or proceeding by  
2 judgment, order, settlement, or conviction, or upon a plea of  
3 nolo contendere or its equivalent, does not, of itself, create a  
4 presumption that the person did not act in good faith and in a  
5 manner that he or she reasonably believed to be in or not opposed  
6 to the best interests of the bank or its shareholders, or that  
7 the conduct was lawful.

8       (4) A bank may indemnify a person who was or is a party to  
9 or is threatened to be made a party to any threatened, pending,  
10 or completed action or suit by or in the right of the bank to  
11 procure a judgment in its favor by reason of the fact that he or  
12 she is or was a director, officer, employee, or agent of the bank  
13 or is or was serving at the request of the bank as a director,  
14 officer, partner, trustee, employee, or agent of another bank or  
15 national banking association, foreign or domestic corporation,  
16 partnership, joint venture, trust, or other enterprise, whether  
17 for profit or not, against expenses, including actual and reason-  
18 able attorney fees and amounts paid in settlement actually and  
19 reasonably incurred by the person in connection with the action  
20 or suit, if the person acted in good faith and in a manner the  
21 person reasonably believed to be in or not opposed to the best  
22 interests of the bank or its shareholders. Indemnification shall  
23 not be made for a claim, issue, or matter in which the person has  
24 been found liable to the bank except as authorized in subsection  
25 (5).

26       (5) A director, officer, employee, or agent of the bank who  
27 is a party or threatened to be made a party to an action, suit,

1 or proceeding may apply for indemnification to the court  
2 conducting the proceeding or to another court of competent  
3 jurisdiction. On receipt of an application, the court after  
4 giving any notice it considers necessary may order indemnifica-  
5 tion if it determines that the person is fairly and reasonably  
6 entitled to indemnification in view of all the relevant circum-  
7 stances, whether or not he or she met the applicable standard of  
8 conduct set forth in this section or was adjudged liable, but if  
9 he or she was adjudged liable, his or her indemnification is  
10 limited to reasonable expenses incurred.

11       Sec. 3905. (1) To the extent that a director, officer,  
12 employee, or agent of a bank has been successful on the merits or  
13 otherwise in defense of an action, suit, or proceeding described  
14 in section 3904, or in defense of a claim, issue, or matter in  
15 the action, suit, or proceeding, he or she shall be indemnified  
16 against actual and reasonable expenses, including attorney fees,  
17 incurred by him or her in connection with the action, suit, or  
18 proceeding and an action, suit, or proceeding brought to enforce  
19 the mandatory indemnification provided in this subsection.

20       (2) An indemnification under section 3904, unless ordered by  
21 the court, shall be made by the bank only as authorized in the  
22 specific case upon a determination that indemnification of the  
23 director, officer, employee, or agent is proper in the circum-  
24 stances because he or she has met the applicable standard of con-  
25 duct set forth in section 3904 and upon an evaluation of the rea-  
26 sonableness of expenses and amounts paid in settlement. This

1 determination and evaluation shall be made in any of the  
2 following ways:

3 (a) By a majority vote of a quorum of the board consisting  
4 of directors who are not parties or threatened to be made parties  
5 to the action, suit, or proceeding.

6 (b) If the quorum described in subdivision (a) is not  
7 obtainable, by majority vote of a committee duly designated by  
8 the board and consisting solely of 2 or more directors not at the  
9 time parties or threatened to be made parties to the action,  
10 suit, or proceeding.

11 (c) By independent legal counsel in a written opinion, which  
12 counsel shall be selected in 1 of the following ways:

13 (i) By the board or its committee in the manner prescribed  
14 in subdivision (a) or (b).

15 (ii) If a quorum of the board cannot be obtained under sub-  
16 division (a) and a committee cannot be designated under subdivi-  
17 sion (b), by the board.

18 (d) By all independent directors who are not parties or  
19 threatened to be made parties to the action, suit, or  
20 proceeding.

21 (e) By the shareholders, but shares held by directors, offi-  
22 cers, employees, or agents who are parties or threatened to be  
23 made parties to the action, suit, or proceeding may not be  
24 voted.

25 (3) All directors may participate in the designation of a  
26 committee under subsection (2)(b) or in the selection of  
27 independent legal counsel under subsection (2)(c)(ii).

1       (4) If a person is entitled to indemnification under section  
2 3904 for a portion of expenses, including attorney fees, judg-  
3 ments, penalties, fines, and amounts paid in settlement, but not  
4 for the total amount of the expenses, the bank may indemnify the  
5 person for the portion of the expenses, judgments, penalties,  
6 fines, or amounts paid in settlement for which the person is  
7 entitled to be indemnified.

8       Sec. 3906. A bank may pay or reimburse the reasonable  
9 expenses incurred by a director, officer, employee, or agent who  
10 is a party or threatened to be made a party to an action, suit,  
11 or proceeding described in section 3904 in advance of the final  
12 disposition of the action, suit, or proceeding if all of the fol-  
13 lowing apply:

14       (a) The person furnishes the bank a written affirmation of  
15 his or her good faith belief that he or she has met the applica-  
16 ble standard of conduct set forth in section 3904.

17       (b) The person furnishes the bank a written undertaking exe-  
18 cuted personally or on his or her behalf to repay the advance if  
19 it is ultimately determined that he or she did not meet the stan-  
20 dard of conduct. The undertaking shall be by unlimited general  
21 obligation of the person on whose behalf advances are made but  
22 need not be secured.

23       (c) A determination is made that the facts then known to  
24 those making the determination would not preclude indemnification  
25 under this act.

26       Sec. 3907. The indemnification or advancement of expenses  
27 provided by or granted under sections 3904, 3905, and 3906 are

1 not exclusive of other rights to which a person seeking  
2 indemnification or advancement of expenses may be entitled under  
3 the articles of incorporation, the bylaws, or a contractual  
4 agreement. The total amount of expenses advanced or indemnified  
5 from all sources combined shall not exceed the amount of actual  
6 expenses incurred by the person seeking indemnification or  
7 advancement of expenses. The indemnification provided for in  
8 sections 3904, 3905, and 3906 continues as to a person who ceases  
9 to be a director, officer, employee, or agent and shall inure to  
10 the benefit of the heirs, executors, and administrators of the  
11 person.

12       Sec. 3908. A bank has the power to purchase and maintain  
13 insurance or create a trust fund or other form of funded arrange-  
14 ment on behalf of any person who is or was a director, officer,  
15 employee, or agent of the bank or is or was serving at the  
16 request of the bank as a director, officer, partner, trustee,  
17 employee, or agent of another foreign or domestic corporation,  
18 partnership, joint venture, trust, or other enterprise, whether  
19 for profit or not, against any liability asserted against him or  
20 her and incurred by him or her in that capacity or arising out of  
21 his or her status in that capacity, whether or not the bank has  
22 the power to indemnify him or her against the liability under  
23 sections 3904, 3905, 3906, and 3907.

24       Sec. 3909. For purposes of this section and sections 3904,  
25 3905, 3906, 3907, 3908, and 3910, a person who is or was a direc-  
26 tor, officer, employee, or agent of a depository institution  
27 absorbed in a consolidation or merger or is or was serving at the

1 request of the depository institution as a director, officer,  
2 partner, trustee, employee, or agent of another depository insti-  
3 tution, foreign or domestic corporation, partnership, joint ven-  
4 ture, trust, or other enterprise, whether for profit or not,  
5 shall hold the same position with respect to the consolidated  
6 bank as he or she would if he or she had served the consolidated  
7 bank in that capacity.

8       Sec. 3910. (1) For the purposes of sections 3904, 3905,  
9 3906, 3907, 3908, and 3909:

10       (a) "Fines" includes any excise taxes assessed on a person  
11 with respect to an employee benefit plan.

12       (b) "Other enterprise" includes employee benefit plans.

13       (c) "Serving at the request of the bank" includes any serv-  
14 ice as a director, officer, employee, or agent of the bank that  
15 imposes duties on, or involves services by, the director, offi-  
16 cer, employee, or agent with respect to an employee benefit plan,  
17 its participants, or its beneficiaries.

18       (2) A person who acted in good faith and in a manner he or  
19 she reasonably believed to be in the interest of the participants  
20 and beneficiaries of an employee benefit plan shall be considered  
21 to have acted in a manner not opposed to the best interests of  
22 the bank or its shareholders as referred to in section 3904.

23       Sec. 3911. (1) The commissioner may require reports from  
24 any bank if, in the commissioner's judgment, they are necessary  
25 to inform the commissioner fully as to the condition of the  
26 bank. The commissioner shall give a bank at least 30 days'



1 notice in writing of the date by which the report is to be  
2 submitted to the bureau.

3 (2) A bank that fails to make, and transmit, any report  
4 required under this section shall be subject to a penalty estab-  
5 lished by the commissioner not to exceed \$1,000.00 for each day  
6 after the date for making the report established by the commis-  
7 sioner in subsection (1). The commissioner may maintain an  
8 action against a bank for the recovery of the penalty.

9 (3) A penalty assessed under this section shall be paid into  
10 the state treasury to the credit of the bureau and used only for  
11 the operation of the bureau.

12 Sec. 3912. Attachment or execution shall not be issued  
13 against a bank or its property before final judgment in any suit,  
14 action, or proceeding involving the bank in any court.

15 Sec. 3913. A written agreement entered into under section  
16 130b of former 1969 PA 319 shall remain in effect with regard to  
17 actions taken and events occurring on or before November 29,  
18 1995. A cause of action shall not accrue under an agreement for  
19 an action taken or event occurring after November 29, 1995.

## 20 CHAPTER 4

### 21 BANKING POWERS

#### 22 PART 1

#### 23 GENERAL PROVISIONS

24 Sec. 4101. (1) Subject to the limitations and restrictions  
25 contained in this act or in a bank's articles, the bank may  
26 engage in the business of banking and a business related or  
27 incidental to banking, and for that purpose, without specific

1 mention in its articles, shall have and exercise the powers and  
2 means appropriate to effect the purpose for which the bank is  
3 incorporated, powers conferred by former 1969 PA 319 and by this  
4 act, and the following corporate powers:

5       (a) To make contracts.

6       (b) To sue and be sued, complain, and defend in its corpo-  
7 rate name as fully as a natural person.

8       (c) To make, alter, amend, and repeal bylaws not inconsis-  
9 tent with its articles or with law for the administration and  
10 regulation of the affairs of the bank.

11       (d) To enter into agency relationships with affiliated  
12 depository institutions. A bank or an affiliated depository  
13 institution in its capacity as an agent under this subdivision  
14 may do any or all of the following:

15       (i) Receive deposits.

16       (ii) Permit withdrawals of deposits.

17       (iii) Renew time deposits.

18       (iv) Close loans.

19       (v) Service loans.

20       (vi) Receive loan payments.

21       (vii) Engage in any activity specifically authorized by this  
22 act or by order or declaratory ruling of the commissioner.

23       (e) To contract, upon 30 days' advance written notice to the  
24 commissioner, unless the commissioner objects in writing within  
25 30 days after receipt of the written notice, with a person for  
26 the person to act as an agent of the bank in an agency office and  
27 engage in any of the activities set forth in section 4109.

1       (2) A bank has and may exercise the following additional  
2 powers:

3       (a) As authorized by order or declaratory ruling of the com-  
4 missioner, to exercise at a branch such additional powers consis-  
5 tent with the safe and sound conduct of the business of banking  
6 as are granted by the laws of the state, territory, protectorate,  
7 or foreign country where the branch is located.

8       (b) As authorized by order or declaratory ruling of the com-  
9 missioner, to exercise further powers consistent with the safe  
10 and sound conduct of the business of banking or of a business  
11 related or incidental to banking as are granted by the laws of  
12 the United States or of any state or political subdivision of the  
13 United States to financial service providers.

14       (c) To own and operate a messenger service or to own or  
15 invest in an entity that operates a messenger service.

16       (d) To engage in any aspect of the insurance and surety  
17 business as an agent, broker, solicitor, or insurance counselor  
18 as provided under the insurance code of 1956, 1956 PA 218,  
19 MCL 500.100 to 500.8302, and to own an insurance agency in whole  
20 or in part as provided under that act.

21       (e) To provide brokerage services for the offer, sale, or  
22 purchase of a security or commodity contract.

23       (3) In addition, a bank has the powers granted by order or  
24 declaratory ruling of the commissioner.

25       Sec. 4102. (1) If a bank operates a safe deposit and stor-  
26 age department, the legal liability of the bank on account of any  
27 loss to a customer shall not exceed the sum of \$10,000.00 for any

1 1 box or compartment, including all property accepted for storage  
2 outside of the box or compartment. The bank may contract with  
3 the renter to have the renter assume all risks arising from the  
4 use of the box, compartment, or storage.

5 (2) The bank shall have a lien for unpaid rental and storage  
6 charges on the contents of any box or compartment and any prop-  
7 erty accepted for storage outside of the box or compartment. If  
8 the charges are not paid within 1 year from the date of accrual,  
9 the bank may sell the property at public auction upon like notice  
10 as is required by law for sales on execution. After retaining  
11 from the proceeds of sale the amount of all charges due and owing  
12 at the time of the sale, and the reasonable expenses of the sale,  
13 the bank shall pay the balance, if any, upon proper showing to  
14 the persons entitled to the balance. The bank may fairly and in  
15 good faith purchase all or any part of the property at the sale.

16 Sec. 4103. (1) A bank may accept drafts or bills of  
17 exchange drawn upon it having not more than 6 months' sight to  
18 run, exclusive of days of grace, if 1 or more of the following  
19 apply:

20 (a) The drafts or bills of exchange grow out of transactions  
21 involving the importation or exportation of goods.

22 (b) The drafts or bills of exchange grow out of transactions  
23 involving the domestic shipment of goods.

24 (c) The drafts or bills of exchange are secured at the time  
25 of acceptance by a warehouse receipt or other document conveying  
26 or securing title covering readily marketable staples.

1       (2) Except as provided in subsection (3), a bank shall not  
2 accept bills of exchange, or be obligated for a participation  
3 share in bills of exchange, in an amount equal at any time in the  
4 aggregate to more than 150% of its capital and surplus.

5       (3) The commissioner, under conditions as the commissioner  
6 may prescribe, may authorize by order or declaratory ruling any  
7 bank to accept bills of exchange, or be obligated for a partici-  
8 pation share in bills of exchange, in an amount not exceeding at  
9 any time in the aggregate 200% of its capital and surplus.

10       (4) Notwithstanding subsections (2) and (3), with respect to  
11 any bank, the aggregate acceptances, including obligations for a  
12 participation share in acceptances, growing out of domestic  
13 transactions shall not exceed 50% of the aggregate of all accep-  
14 tances, including obligations for a participation share in accep-  
15 tances, authorized for the bank under this section.

16       (5) A bank shall not accept bills, or be obligated for a  
17 participation share in bills of exchange, whether in a foreign or  
18 domestic transaction, for any 1 person, partnership, corporation,  
19 association, or other entity in an amount equal at any time in  
20 the aggregate to more than 10% of its capital and surplus, unless  
21 the bank is secured either by attached documents or by some other  
22 actual security growing out of the same transaction as the  
23 acceptance.

24       (6) With respect to a bank that issues an acceptance, the  
25 limitations contained in this section do not apply to that por-  
26 tion of an acceptance that is issued by the bank and that is

1 covered by a participation agreement sold to another bank,  
2 out-of-state bank, or national bank.

3 (7) In order to carry out the purposes of this section, the  
4 commissioner may define any of the terms used in this section.

5 Sec. 4104. (1) A bank may engage directly in, or own in  
6 whole or in part, a real estate brokerage business as provided  
7 under article 25 of the occupational code, 1980 PA 299,  
8 MCL 339.2501 to 339.2518.

9 (2) A bank that engages directly in the real estate broker-  
10 age business or owns in whole or in part a real estate brokerage  
11 business shall provide written notice of its licensure as a real  
12 estate broker or its ownership of a real estate brokerage busi-  
13 ness to the commissioner within 10 days of licensure or  
14 ownership. The notice required by this subsection shall include  
15 the name and business address of the real estate brokerage.

16 (3) A bank that engages directly in the real estate broker-  
17 age business or owns in whole or in part a real estate brokerage  
18 business shall not do any of the following:

19 (a) Impose a requirement, verbally or in writing, that a  
20 borrower must contract for or enter into any other arrangement  
21 for real estate brokerage services with a particular real estate  
22 broker.

23 (b) Impose a requirement, verbally or in writing, that as a  
24 condition of approving a loan a borrower must contract or enter  
25 into any other arrangement for real estate brokerage services.

26 (c) Impose a requirement, verbally or in writing, that a  
27 real estate brokerage customer shall make application for a loan

1 or any other service or services of a particular bank or any of  
2 its subsidiaries, agencies, or service entities.

3 (d) Impose a requirement, verbally or in writing, that a  
4 condition of providing real estate brokerage services is that the  
5 customer shall make an application for a loan or any other  
6 arrangement for other services of the bank or any of its subsidi-  
7 aries, agencies, or service entities.

8 (e) Offer or provide more favorable consideration, terms, or  
9 conditions for any financial products or services to induce or  
10 attempt to induce a person to enter into any arrangement for real  
11 estate brokerage services with any particular real estate  
12 broker.

13 (f) Offer or provide more favorable terms or conditions for  
14 any real estate brokerage services to induce or attempt to induce  
15 a person to apply for a loan or obtain any other services of a  
16 particular bank or any of its subsidiaries, agencies, or service  
17 entities.

18 (g) Any other activity prohibited by order or declaratory  
19 ruling of the commissioner.

20 (4) A bank that engages directly in the real estate broker-  
21 age business or owns in whole or in part a real estate brokerage  
22 business under this section shall clearly disclose in writing to  
23 any person who applies for credit related to a real estate trans-  
24 action or applies for prequalification or preapproval for credit  
25 related to a real estate transaction, that the person is not  
26 required to contract for or enter into an arrangement for real  
27 estate brokerage services with a particular real estate broker.

1 Compliance with the disclosure requirements of this subsection  
2 shall not be necessary when a person applies for credit or pre-  
3 qualification for credit solely for the purpose of refinancing an  
4 existing indebtedness.

5       (5) A real estate brokerage that is affiliated with a bank  
6 shall clearly disclose in writing, before the time an agency  
7 agreement for real estate brokerage services is executed, that  
8 the person is not required to apply, contract for, or enter into  
9 any other arrangement for services of a particular bank or any of  
10 its subsidiaries, agencies, or service entities.

11       (6) The requirements of subsections (4) and (5) do not apply  
12 when the person has been given the affiliated business arrange-  
13 ment disclosure statement required by the real estate settlement  
14 procedures act of 1974, Public Law 93-533, 88 Stat. 1724.

15       (7) If the commissioner finds that a bank has violated this  
16 section, the commissioner may issue an order requiring the bank  
17 to cease and desist the activity that violates this section. If  
18 the commissioner additionally finds that the violation was know-  
19 ingly committed, the commissioner may order any of the  
20 following:

21       (a) A civil fine of not more than \$500.00 for each violation  
22 but not to exceed an aggregate civil penalty of \$10,000.00.

23       (b) That restitution be made to a customer for actual dam-  
24 ages directly attributable to the acts that are found to be a  
25 violation of this section.



1       (8) An action under this section shall not be brought more  
2 than 3 years after the date of the violation that is the basis of  
3 the action.

4       Sec. 4105. A bank may perform for others 1 or more of the  
5 following services or activities, and any other services or  
6 activities permitted by order or declaratory ruling of the  
7 commissioner:

8       (a) Provide life, health, and casualty insurance for offi-  
9 cers and employees of financial institutions and operate bonus  
10 plans and retirement benefit plans for those officers and  
11 employees.

12       (b) Service mortgages and land contracts.

13       (c) Originate and service mortgage loans, mortgages, and  
14 land contracts, on behalf of financial institutions, corpora-  
15 tions, and state or federal agencies or instrumentalities.

16       (d) Act as escrow agent or depository for other escrow  
17 agents or fiduciaries.

18       (e) Conduct credit analysis, appraising, construction loan  
19 inspection, and abstracting.

20       (f) Conduct research, studies, and surveys.

21       (g) Develop and operate storage facilities for microfilm or  
22 other duplicate records.

23       (h) Advertise, broker, and conduct other activities to pro-  
24 cure and retain both deposits and loans, but not pool deposits or  
25 solicit or promote pooled deposits.

26       (i) Provide liquidity management, investment, advisory, and  
27 consulting services.

1 (j) Establish, own, lease, operate, or maintain electronic  
2 funds transfer terminals.

3 (k) Purchase office supplies, furniture, and equipment.

4 (l) Prepare local, state, and federal tax returns.

5 (m) Perform data processing services.

6 (n) Subject to applicable state or federal law, provide bro-  
7 kerage services for the offer, sale, or purchase of a security or  
8 commodity contract.

9 Sec. 4106. (1) With the approval of the commissioner, based  
10 upon an examination or other appropriate analysis of either the  
11 buying or selling organization, or both, and upon the affirmative  
12 vote of a majority of the members of its board of directors and  
13 of the holders of 2/3 of its stock entitled to vote, a bank may  
14 do either or both of the following:

15 (a) Sell all or substantially all of its assets of every  
16 kind, character, and description and assign its liabilities to  
17 any depository institution.

18 (b) Purchase all or substantially all of the assets of every  
19 kind, character, and description and assume the liabilities of  
20 another depository institution.

21 (2) The consideration for a purchase and sale under this  
22 section may include shares of stock of the purchasing bank,  
23 out-of-state bank, national bank, association, or savings bank.

24 (3) A purchase and sale shall not be made to defeat or  
25 defraud any of the creditors of the depository institutions.

26 (4) Certified copies of all shareholders' and directors'  
27 proceedings under this section shall be submitted to the

1 commissioner and shall contain the terms of the sale and  
2 purchase, including a copy of the agreement of sale and  
3 purchase.

4       (5) The liability of a depository institution or of its  
5 shareholders, directors, or officers, or the rights of creditors  
6 of, or other persons transacting business with, the depository  
7 institution shall not be lessened or impaired as the result of a  
8 sale of assets under this section.

9       (6) Notwithstanding any other provision of this act, a bank  
10 that purchases or assumes all or substantially all of the assets  
11 or liabilities of a depository institution may retain, maintain,  
12 and operate the principal office or branches of the depository  
13 institution as branches of the purchasing bank without providing  
14 notice to the commissioner under section 3711(1) provided it  
15 assumes the deposit liabilities of the depository institution  
16 maintained at the principal office or branches.

17       Sec. 4107. (1) A bank may sell 1 or more of its branches,  
18 without selling all or substantially all of the bank, to another  
19 depository institution located in this state or in a state whose  
20 laws would permit a bank to purchase 1 or more branches in that  
21 state of the purchasing depository institution.

22       (2) A bank may purchase 1 or more branches of another depos-  
23 itory institution, without purchasing all or substantially all of  
24 the depository institution.

25       (3) A bank that proposes to purchase 1 or more branches  
26 under subsection (2) shall provide notice to the commissioner

1 under section 3711 before operating the purchased branch or  
2 branches.

3       Sec. 4108. (1) Except as otherwise provided in this sec-  
4 tion, a bank or bank officer shall not give preference to a  
5 depositor or creditor by pledging the assets of the bank as col-  
6 lateral security or otherwise.

7       (2) A bank may pledge its assets in an aggregate amount not  
8 in excess of 10% of its total assets for the purpose of securing  
9 the following:

10       (a) Funds belonging to the United States or belonging to or  
11 being administered by an officer, instrumentality, or agent of  
12 the United States, funds of estates being administered by a fed-  
13 eral court under a federal bankruptcy law, and other funds when  
14 required or permitted to do so under the laws of the United  
15 States or an order of a federal court.

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

17       (c) Funds of the Mackinac bridge authority, which is  
18 declared to be a political subdivision of this state, under 1950  
19 (Ex Sess) PA 21, MCL 254.301 to 254.304.

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

23       (e) Funds on deposit under 1941 PA 205, MCL 252.51 to  
24 252.64, providing for limited access highways.

25       (f) Funds on deposit to the credit of the Michigan employ-  
26 ment security commission.

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

6 (h) Funds belonging to any political subdivision of this  
7 state.

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

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

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

21 (4) A bank may pledge its assets to secure liabilities of  
22 all of the following types:

23 (a) In the case of member banks, liabilities incurred under  
24 the federal reserve act. In the case of nonmember banks, liabil-  
25 ities incurred through borrowing under the same conditions as are  
26 imposed upon members of the federal reserve system by the federal  
27 reserve act.

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

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

5 (d) Liabilities incurred on account of a loan made with the  
6 express approval of the commissioner under section 4202(3)(c).

7 (e) Liabilities incurred on account of borrowings from 1  
8 business day to the next from a bank or national banking associa-  
9 tion of excess reserve balances from time to time maintained by  
10 the bank or national banking association under section 19 of the  
11 federal reserve act, chapter 6, 38 Stat. 270.

12 (f) Liabilities incurred on account of securities sold under  
13 a repurchase agreement.

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

16 Sec. 4109. An agent of a bank described in section  
17 4101(1)(e) may engage in any of the following activities:

18 (a) Accept a deposit to an existing account and record the  
19 addition to the account or give other evidence of receipt as pre-  
20 scribed by the bank.

21 (b) Accept a withdrawal form and other evidence required by  
22 the bank from an account holder for transmission to the bank.

23 (c) Solicit and accept a new account. Evidence of account  
24 ownership shall be issued only by authority of the bank. An  
25 agent may obtain signature cards from the bank for the account  
26 holder. An agent of a bank shall not possess an unissued or

1 blank authenticated savings account passbook or certificate or  
2 other evidence of account ownership.

3 (d) Solicit and accept an application for a loan or for a  
4 land contract purchase. The agent shall submit the application  
5 to the bank for processing and approval.

6 (e) Disburse withdrawn or loaned funds, upon approval of  
7 each disbursement by the bank.

8 (f) Accept payment on a loan or on a land contract and issue  
9 evidence of receipt as prescribed by the bank.

10 (g) Any other services as approved by order or declaratory  
11 ruling of the commissioner.

12 PART 2

13 LOANS

14 Sec. 4201. (1) A bank may collect interest and charges on  
15 loans and extensions of credit as permitted by the laws of this  
16 state or of the United States to any person.

17 (2) A bank may charge a discount on obligations purchased by  
18 the bank.

19 Sec. 4202. (1) Except as otherwise provided in this section  
20 or by order or declaratory ruling of the commissioner, the total  
21 loans and extensions of credit and leases by a bank to a person  
22 at no time shall exceed 15% of the capital and surplus of the  
23 bank, except that upon approval by 2/3 vote of its board of  
24 directors the limit may be increased to not to exceed 25% of the  
25 capital and surplus of the bank.

26 (2) If the commissioner determines at any time that the  
27 interests of a group of more than 1 person are so interrelated

1 that they should be considered as a unit for the purpose for  
2 which credit was extended, the total loans and extensions of  
3 credit and leases of persons of that group shall be combined and  
4 considered loans and extensions of credit and leases of 1 person  
5 under this section. A bank shall not be considered to have vio-  
6 lated this section solely by reason of the fact that the indebt-  
7 edness of a group then held exceeds the limitations of this sec-  
8 tion at the time of a determination by the commissioner that the  
9 indebtedness of that group shall be combined, but if required by  
10 the commissioner, the bank shall dispose of indebtedness of the  
11 group in the amount in excess of that permitted by this section  
12 within a reasonable time determined by the commissioner.

13 (3) The following loans and extensions of credit shall not  
14 be subject to subsection (1):

15 (a) A loan or extension of credit arising from the discount  
16 of commercial or business paper evidencing an obligation to the  
17 person negotiating it with recourse.

18 (b) The purchase of banker's acceptances of another bank of  
19 the kind described in paragraph 7 of section 13 of the federal  
20 reserve act, chapter 6, 38 Stat. 263-264.

21 (c) A loan or extension of credit to a financial institution  
22 or to a receiver, conservator, or any other agent or supervising  
23 authority in charge of the business and property of the financial  
24 institution, when the loan or extension of credit is approved by  
25 the commissioner.

26 (d) A loan or extension of credit to a customer, secured or  
27 covered by guarantees or by commitments or agreements to take



1 over or to purchase the loan or extension of credit, made by a  
2 federal reserve bank or by the United States, or a department,  
3 bureau, board, commission, or establishment of the United States,  
4 including a corporation wholly owned directly or indirectly by  
5 the United States.

6 (e) A loan or extension of credit from 1 business day to the  
7 next to a depository institution of excess reserve balances from  
8 time to time maintained under section 19 of the federal reserve  
9 act, chapter 6, 38 Stat. 270.

10 (f) A loan or extension of credit secured by bonds, notes,  
11 certificates of indebtedness, or treasury bills of the United  
12 States or by other obligations fully guaranteed as to principal  
13 and interest by the United States.

14 (g) A loan or extension of credit secured by a loan agree-  
15 ment between a local public agency or a public housing agency and  
16 an instrumentality of the United States pursuant to federal hous-  
17 ing legislation under which funds will be provided for payment of  
18 the obligation secured by the loan agreement.

19 (h) A loan or extension of credit arising from securities  
20 purchased under an agreement to resell.

21 (i) A loan or extension of credit to the student loan mar-  
22 keting association.

23 (j) A loan or extension of credit fully secured by a segre-  
24 gated deposit account in the lending bank.

25 (k) A loan or extension of credit arising from the accep-  
26 tance by a bank of drafts or bills of exchange drawn upon the  
27 bank, or a bank's participation in drafts or bills of exchange

1 drawn upon and accepted by another bank, out-of-state bank, or  
2 national bank in conformity with section 3909.

3 (1) Other loans or extensions of credit as determined by the  
4 commissioner by order or declaratory ruling.

5 (4) The following limitations based upon capital and surplus  
6 apply to all of the following:

7 (a) Loans and extensions of credit to a customer secured by  
8 bills of lading, warehouse receipts, or similar documents trans-  
9 ferring or securing title to readily marketable staples shall be  
10 subject to a limitation of 30% of capital and surplus, if the  
11 market value of the staples securing the loans or extensions of  
12 credit at all times equals or exceeds 115% of the outstanding  
13 amount of the loans or extensions of credit. The staples shall  
14 be fully covered by insurance if it is customary to insure the  
15 staples.

16 (b) Loans or extensions of credit to a customer secured by  
17 shipping documents or instruments transferring or securing title  
18 covering livestock, or giving a lien on livestock, if the market  
19 value of the livestock securing the obligation is not at any time  
20 less than 115% of the face amount of the notes covered, shall be  
21 subject to a limitation of 30% of capital and surplus. Loans or  
22 extensions of credit arising from the discount by dealers in  
23 dairy cattle of paper given in payment for dairy cattle, which  
24 paper carries a full recourse indorsement or unconditional guar-  
25 antee of the seller and which are secured by the cattle being  
26 sold, shall be subject to a limitation of 30% of capital and  
27 surplus.

1 (c) Loans or extensions of credit arising from the discount  
2 of negotiable or nonnegotiable installment consumer paper, which  
3 carries a full recourse indorsement or unconditional guarantee by  
4 the person transferring the paper, shall be subject to a limita-  
5 tion of 30% of capital and surplus. If the bank's files or the  
6 knowledge of its officers of the financial condition of each  
7 maker of the consumer paper is reasonably adequate, and an offi-  
8 cer of the bank designated for that purpose by the board of  
9 directors of the bank certifies in writing that the bank is rely-  
10 ing primarily upon the responsibility of each maker for the pay-  
11 ment of the loans or extensions of credit, the limitations of  
12 this section as to the loans and extensions of credit of each  
13 maker shall be the sole applicable loan limitation. The certifi-  
14 cation shall be retained as part of the records of the bank.

15 Sec. 4203. A bank that makes a loan, the proceeds of which  
16 are used or may be used by the borrower to finance the purchase,  
17 design, manufacture, construction, repair, modification, or  
18 improvement of real or personal property, shall not be liable for  
19 any defect in the property purchased, designed, manufactured,  
20 constructed, repaired, modified, or improved or for any loss or  
21 damage resulting from the failure of the borrower or any agent or  
22 other person employed by the borrower to use due care in the  
23 examination, design, manufacture, construction, repair, modifica-  
24 tion, or improvement of the property.

25 Sec. 4204. (1) A bank that requires a mortgagor to maintain  
26 hazard insurance as a condition of receiving a mortgage loan  
27 shall not require the amount of the hazard insurance to be

1 greater than the replacement cost of the mortgaged building or  
2 buildings.

3 (2) A bank may require an amount of property and casualty  
4 insurance that is required of the bank as a condition of sale,  
5 transfer, or assignment of all or part of the mortgage to a third  
6 party. This subsection does not require that the bank anticipate  
7 a sale, transfer, or assignment at the time the mortgage is  
8 made.

9 Sec. 4205. Unless a debt is well secured and in process of  
10 collection or the debt constitutes a claim against solvent estate  
11 in probate, a debt due to a bank on which interest is past due  
12 and unpaid for a period of 6 months shall be charged off to the  
13 reserve for loan and lease losses of the bank.

14 PART 3

15 INVESTMENTS

16 Sec. 4301. (1) A bank may purchase, sell, underwrite, and  
17 hold investment securities that are obligations in the form of  
18 bonds, notes, or debentures of a type and to the extent permitted  
19 by this act.

20 (2) A bank may hold, without limit, any of the following:

21 (a) Obligations of the United States, or obligations that  
22 are guaranteed fully as to principal and interest by the United  
23 States, or any general obligations of any state or of any politi-  
24 cal subdivision of a state.

25 (b) Obligations issued under authority of the farm credit  
26 act of 1971, Public Law 92-181, 85 Stat. 583.

- 1 (c) Obligations issued by banks for cooperatives.
- 2 (d) Obligations issued by the federal home loan banks.
- 3 (e) Obligations insured by the secretary under title XI of  
4 the national housing act, chapter 847, 65 Stat. 295, 12  
5 U.S.C. 1750, 1750b to 1750c, and 1750e to 1750g.
- 6 (f) Obligations insured by the secretary under section 207  
7 of title II of the national housing act, chapter 847, 48  
8 Stat. 1252, 12 U.S.C. 1713, if the debentures to be issued in  
9 payment of the insured obligations are guaranteed as to principal  
10 and interest by the United States.
- 11 (g) Obligations, participations, or other instruments of or  
12 issued by the federal national mortgage association or the gov-  
13 ernment national mortgage association.
- 14 (h) Mortgages, obligations, or other securities that are or  
15 ever have been sold by the federal home loan mortgage corporation  
16 under 12 U.S.C. 1454 or 1455.
- 17 (i) Obligations of a public housing agency, as defined in  
18 the United States housing act of 1937, 42 U.S.C. 1401.
- 19 (j) Obligations of a local public agency secured by a loan  
20 agreement between the local public agency and the secretary of  
21 the United States department of housing and urban development.
- 22 (k) Any other investment security authorized by order or  
23 declaratory ruling of the commissioner.
- 24 (3) Subject to the exercise of prudent banking judgment, a  
25 bank may engage in the underwriting of any of the following  
26 investment securities:

1 (a) Obligations of the United States or any political  
2 subdivision of the United States.

3 (b) Obligations of any state or any political subdivision  
4 thereof.

5 (c) Obligations of the international bank for reconstruction  
6 and development.

7 (d) Obligations of the inter-American development bank.

8 (e) Obligations of the Asian development bank.

9 (f) Obligations of the Tennessee valley authority.

10 (g) Obligations issued by any state or political subdivision  
11 or agency of a state or political subdivision for housing, uni-  
12 versity, or dormitory purposes.

13 (h) Obligations of the African development bank.

14 (i) Obligations of the international finance corporation.

15 (j) Other obligations listed in subsection (2).

16 (k) Other obligations authorized by order or declaratory  
17 ruling of the commissioner.

18 (4) A bank may purchase for its own account other investment  
19 securities, but the total amount of investment securities of any  
20 1 obligor or maker, held by a bank under this subsection, shall  
21 not exceed at any time 25% of its capital and surplus.

22 (5) The statutory limitation on the amount of investment  
23 securities of any 1 obligor or maker that may be held by a bank  
24 shall be determined on the basis of the par or face value of the  
25 securities.

26 (6) A bank shall not purchase investment securities  
27 convertible into stock at the option of the issuer.

1       (7) The restrictions and limitations of this section with  
2 respect to a bank acquiring and holding securities for its own  
3 account do not apply to securities acquired through foreclosure  
4 on collateral, or acquired in good faith by way of compromise of  
5 a doubtful claim or to avoid a loss in connection with a debt  
6 previously contracted. This section does not limit the invest-  
7 ment authority of a bank granted by any other section of this  
8 act.

9       Sec. 4302. (1) A bank may purchase investment securities  
10 for its own account when in its prudent banking judgment, which  
11 may be based in part upon estimates that it believes to be reli-  
12 able, it determines that there is adequate evidence that the  
13 obligor will be able to perform all it undertakes to perform in  
14 connection with the securities, including all debt service  
15 requirements, and that the securities may be sold with reasonable  
16 promptness at a price that corresponds to their fair value.

17       (2) A bank shall not purchase investment securities in which  
18 the investment characteristics are considered distinctly or pre-  
19 dominantly speculative, or purchase investment securities that  
20 are in default, whether as to principal or interest.

21       Sec. 4303. Notwithstanding any other section of this act, a  
22 bank may invest in other assets authorized by order or declara-  
23 tory ruling of the commissioner.

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

1       (2) A bank may purchase and sell securities and stock upon  
2 the order of and for the account of a customer without recourse.

3       (3) A bank shall not make a loan on or discount the security  
4 of the shares of its own capital stock unless the security is  
5 necessary to prevent loss upon a debt previously contracted in  
6 good faith.

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

9       (a) The bank is holding shares amounting to not more than 5%  
10 of its common stock until disposed of in compliance with an  
11 existing stock option plan.

12       (b) The purchase or holding of the shares is necessary to  
13 prevent loss upon a debt previously contracted in good faith.

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

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

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

23       (b) The Michigan business development corporation.

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



1 (d) Business entities whose primary purpose is to provide  
2 capital to banks, which banks are largely owned or controlled by  
3 individuals classified as racial minorities.

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

11 (f) Agricultural credit business entities organized solely  
12 for the purpose of making loans to farmers and ranchers for agri-  
13 cultural purposes, including the breeding, raising, fattening, or  
14 marketing of livestock.

15 (g) The student loan marketing association established under  
16 section 439 of part B of title IV of the higher education act of  
17 1965, Public Law 89-329, 20 U.S.C. 1087-2.

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

1 institutions or their officers, directors, employees, and  
2 customers.

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

8 (j) Foreign banks that are not engaged, directly or indi-  
9 rectly, in any activity in the United States except as, in the  
10 judgment of the commissioner, is incidental to the international  
11 or foreign business of the foreign banks.

12 (k) Entities that provide, and entities that reinsure pro-  
13 viders of, insurance.

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

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

19 (b) Adjustable rate preferred stock and money market pre-  
20 ferred stock.

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

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

26 Sec. 4305. (1) Except as otherwise provided by this act, a  
27 bank may make venture capital investments, and may invest in

1 equity securities of a professional investor a majority of whose  
2 assets consists of venture capital investments.

3 (2) If a bank makes a venture capital investment under sub-  
4 section (1), an officer or director of the bank shall not hold an  
5 equity position in the financed company, and the bank shall own  
6 less than 50% of the company.

7 (3) A bank's investment under subsection (1) in any 1 entity  
8 shall not exceed an amount equal to 5% of the capital and surplus  
9 of the bank, and all investments under subsection (1) shall not  
10 exceed an amount equal to 10% of the capital and surplus of the  
11 bank.

12 (4) This section does not limit the authority of a bank to  
13 exercise lending or investment powers which are otherwise autho-  
14 rized by law.

15 Sec. 4306. A bank may lease, purchase, hold, and convey any  
16 of the following real property:

17 (a) As necessary for the convenient transaction of its busi-  
18 ness, including space within its banking offices building to rent  
19 as lessor to third parties.

20 (b) As conveyed to it in satisfaction of debts previously  
21 contracted in the course of its business.

22 (c) As it purchases at sales under judgments, decrees, or  
23 mortgages held by the bank or to secure debts due to it.

24 (d) As it legally owned on the effective date of this act.

25 (e) As conveyed to it under sections 4401 to 4405.

26 (f) As it may acquire in connection with the purchase by it  
27 of a land contract, but the purchase of the land contract

1 constitutes a loan secured by real property for purposes of  
2 section 4202.

3 (g) For any other purpose as may be permitted by this act or  
4 by order or declaratory ruling of the commissioner.

5 Sec. 4307. A bank may invest not more than 10% of its total  
6 assets in the acquisition and development of real property for  
7 sale, or for the improvement of real property by construction or  
8 rehabilitation of residential or commercial units for sale or  
9 rental purposes. For purposes of this section, a bank may pur-  
10 chase, take, lease as lessee, or otherwise acquire, and own,  
11 hold, use, sell, lease as lessor, pledge, grant a security inter-  
12 est in, convey, or otherwise dispose of real property. The  
13 investment by a bank may be direct, or indirect as a stockholder  
14 in a corporation, member of a limited liability company, or  
15 limited partner in a partnership or limited liability  
16 partnership.

17 Sec. 4308. (1) A bank may lease, purchase, hold, and convey  
18 real property for the use of a customer by lease arrangement with  
19 the bank, but the acquisition of real property and leasing to a  
20 customer constitutes a loan secured by real property for purposes  
21 of section 4202.

22 (2) An institution may incur additional obligations incident  
23 to becoming an owner or lessor of real property acquired for the  
24 use of a customer.

25 (3) Inventory of real property held under this section and  
26 not leased shall not exceed 25% of the institution's capital and  
27 surplus.

1       Sec. 4309. (1) A bank may lease, purchase, hold, and convey  
2 personal property for the use of a customer by lease arrangement  
3 with the bank, but the acquisition of personal property and leas-  
4 ing to a customer constitutes a loan secured by personal property  
5 under section 4202.

6       (2) An institution may incur additional obligations incident  
7 to becoming an owner or lessor of personal property acquired for  
8 the use of a customer.

9       (3) Inventory of personal property held under this section  
10 and not leased shall not exceed 25% of the institution's capital  
11 and surplus.

12       (4) Personal property of an institution that is leased,  
13 loaned, or otherwise made available to and used by a person in  
14 connection with a business conducted for profit shall be subject  
15 to taxation in the same amount and to the same extent as though  
16 the lessee or user were the owner of the property. When due, the  
17 taxes shall constitute a debt due from the lessee or user to the  
18 unit of government for which the taxes were assessed.

19       Sec. 4310. (1) As authorized by order or declaratory ruling  
20 of the commissioner, a bank may invest in service entities that  
21 engage in activities in which a bank is not authorized to  
22 engage.

23       (2) The maximum aggregate investment by a bank in service  
24 entities shall be the lesser of 5% of the bank's total assets or  
25 75% of its capital and surplus.

26       (3) The commissioner shall give notice to all banks of  
27 orders and declaratory rulings issued under this section.

1 (4) For purposes of subsection (2), investment in a service  
2 entity shall include loans by a bank or its subsidiary to a serv-  
3 ice entity.

4 (5) Subject to the investment limit in subsection (2), a  
5 bank or its subsidiary that has made an initial investment in a  
6 service entity may make additional investments in that service  
7 entity without notice to the commissioner.

8 PART 4

9 TRUSTS

10 Sec. 4401. (1) Upon application, the commissioner may grant  
11 to any bank or state foreign bank branch full trust powers, as  
12 provided in this section, but subject to the conditions, limita-  
13 tions, and restrictions in this act, except that trust powers  
14 shall not be granted to a state agency.

15 (2) Upon approval of the application, the bank or state for-  
16 eign bank branch shall have the power to conduct a trust business  
17 including, but not by way of limitation, all of the following:

18 (a) In and by its corporate name to take, receive, hold,  
19 repay, reconvey, and dispose of any effects and property, both  
20 real and personal, that may be granted, committed, transferred,  
21 or conveyed to it with its consent, upon any terms or upon any  
22 trust at any time, by any person, including minors, bodies corpo-  
23 rate, or by any court, and to administer, fulfill, and discharge  
24 the duties of the trust for the remuneration as agreed upon.

25 (b) To act as agent for the transaction of business, the  
26 management of estates, the collection of rents, interest,  
27 dividends, and money, and the collection of principal and

1 interest on mortgages, bonds, notes, and securities for money and  
2 to enforce the payment thereof, and also to act as agent for the  
3 purpose of issuing, negotiating, registering, transferring, or  
4 countersigning the certificates of stock, bonds, or other obliga-  
5 tions of any corporation, association, or municipality and to  
6 manage any sinking fund on the terms as agreed upon.

7       (c) To accept and to execute the offices of personal repre-  
8 sentative, trustee, receiver, conservator, liquidating agent,  
9 assignee, or guardian of any minor, incompetent person, legally  
10 incapacitated person, or any person subject to guardianship. In  
11 all cases when application is made to a court for the appointment  
12 of a trustee, receiver, personal representative, or guardian of  
13 any minor, incompetent person, legally incapacitated person, or  
14 any other person subject to guardianship, the court may appoint  
15 the bank or state foreign bank branch, with its consent, to hold  
16 the office. The accounts of the bank or state foreign bank  
17 branch as trustee, receiver, conservator, liquidating agent,  
18 assignee, personal representative, or guardian shall be regularly  
19 settled and adjusted by the proper office or tribunals. All  
20 proper, legal, usual, and customary charges, costs, and expenses  
21 shall be allowed to the bank or state foreign bank branch for the  
22 care and management of the estate so committed to it. In case of  
23 appointment by any court, the bank or state foreign bank branch  
24 shall not be required to give any security except in the discre-  
25 tion of the court. If the court orders the bank or state foreign  
26 bank branch to give security, the security shall be a bond in an  
27 amount fixed by the court and with a surety company authorized to

1 do business in this state, or with personal surety or sureties on  
2 the bond satisfactory to the court.

3 (d) To exercise by its board of directors or authorized  
4 officers or agents, subject to law, all incidental powers as are  
5 necessary to carry on a trust business.

6 (e) A bank or state foreign bank branch acting as a fidu-  
7 ciary may charge a reasonable fee for its services.

8 Sec. 4402. (1) As used in this section:

9 (a) "Host bank" means a bank, national bank, association,  
10 savings bank, or other legal entity for which trust services are  
11 provided by any other bank, out-of-state bank, national bank,  
12 association, or savings bank.

13 (b) "Trust service provider" means a bank, national bank,  
14 association, or savings bank providing trust services to any  
15 other bank, out-of-state bank, national bank, association, sav-  
16 ings bank, or other legal entity.

17 (c) "Banking office" means a principal office or authorized  
18 branch of a bank, out-of-state bank, national bank, association,  
19 or savings bank.

20 (2) A bank granted full trust powers may contract by written  
21 agreement with any other legal entity to carry on trust services  
22 in its name and for its account at 1 or more of the offices of  
23 the other legal entity.

24 (3) A bank may contract by written agreement with any other  
25 legal entity exercising full trust powers to carry on trust serv-  
26 ices at 1 or more of its banking offices but in the name and for  
27 the account of the other legal entity.



1 (4) An agreement provided for in this section, including any  
2 lease, or a modification or extension of an agreement, is not  
3 effective until it is filed with the commissioner.

4 (5) Thirty days after a host bank mails a notice of substi-  
5 tution as provided in subsection (6), a trust service provider  
6 shall be substituted for a host bank as fiduciary or agent and  
7 succeed to the title of assets held by a host bank in a fiduciary  
8 capacity for each account in which the host bank, under the terms  
9 of a trust service agreement approved by the commissioner, will  
10 no longer serve as fiduciary or agent. A trust service provider  
11 shall not be substituted for the host bank for an account in  
12 which the recipient of a notice of substitution objects to the  
13 substitution in the manner provided in subsection (6).

14 (6) For each account in which a trust service provider is  
15 substituted for a host bank under the terms of a trust service  
16 agreement, a written notice of substitution shall be sent by the  
17 host bank by certified mail. The notice of substitution shall  
18 include the date the notice was mailed and explain that the trust  
19 service provider will not be substituted for the host bank for  
20 the account if the recipient of the notice sends a written objec-  
21 tion to the host bank by first-class mail within 30 days after  
22 the date the notice was mailed. The notice of substitution shall  
23 be sent to the following as appropriate:

24 (a) For employee benefit plans, to the plan sponsors.

25 (b) For individual retirement accounts and retirement  
26 accounts for the self-employed, to the account owners.

1 (c) For agency and escrow accounts, to the principals.

2 (d) For securities for which a host bank serves as trustee,  
3 registrar, transfer agent, or paying agent, to the issuers.

4 (e) For revocable trusts under agreement, to the settlors.

5 (f) For irrevocable trusts under agreement, to any  
6 co-fiduciary, to the settlor, to each current income beneficiary  
7 who is an adult, and, if a current income beneficiary is a minor,  
8 to a parent of the minor with whom the minor resides or to the  
9 conservator or guardian of the minor. The notice to the settlor  
10 shall not grant to the settlor any authority over the trust or  
11 trustee that the settlor does not already have, including the  
12 authority to object to the substitution of a trust service pro-  
13 vider for a host bank. For purposes of this subdivision,  
14 "current income beneficiary" means a person currently entitled to  
15 income or a person to whom the trustee, in the trustee's discre-  
16 tion, may pay principal or income.

17 (g) For testamentary trusts, to the persons notified under  
18 subdivision (f) and to the probate court that appointed the host  
19 bank as trustee.

20 (h) For conservatorships, to any co-fiduciary, to the pro-  
21 tected person for whom the conservatorship was created or, if the  
22 conservatorship was created for a minor, to a parent of the minor  
23 with whom the minor resides or to the guardian of the minor, and  
24 to the probate court that appointed the host bank as  
25 conservator.

26 (i) For guardianships, to any co-fiduciary, to the minor or  
27 legally incapacitated person for whom the guardian was appointed

1 if the ward is at least 14 years of age, and to the probate court  
2 that appointed the host bank as guardian.

3 (j) For probate estates, to any co-fiduciary, to any inter-  
4 ested party as defined by section 7 of the revised probate code,  
5 1978 PA 642, MCL 700.7, and to the probate court that appointed  
6 the host bank as personal representative.

7 (7) Subsections (1), (5), and (6) apply to trust service  
8 agreements in effect on or after December 6, 1985.

9 Sec. 4403. (1) A bank exercising a trust power as provided  
10 in this section and sections 4401, 4402, 4404, and 4405 shall  
11 segregate all assets held in a fiduciary capacity from the gen-  
12 eral assets of the bank, shall keep a separate set of books and  
13 records showing in proper detail all transactions engaged in  
14 under the authority of this section and sections 4401, 4402,  
15 4404, and 4405, and at all times shall keep the bank's trust  
16 department business separate and distinct from the bank's commer-  
17 cial banking business.

18 (2) Funds, at any time and from time to time, held in trust  
19 by the bank awaiting investment or other disposition, may be com-  
20 mingled and consolidated, and may be deposited in other banks as  
21 designated by the board of directors or may be held at any time  
22 and from time to time by the bank under a deposit relationship  
23 and used by the bank in the conduct of the bank's individual cor-  
24 porate business, but only to the extent and when the bank shall  
25 set aside for the protection of the owners of the funds obliga-  
26 tions of the United States, obligations that are guaranteed fully  
27 as to principal and interest by the United States, general

1 obligations of this state or of any political subdivision of this  
2 state, surety bonds, or other securities approved by the commis-  
3 sioner equal at face value to the amount of the funds held and so  
4 used less the amount of the funds that are insured by the federal  
5 deposit insurance corporation. If the bank fails, the owners of  
6 the funds held in trust, awaiting investment or other disposi-  
7 tion, shall have a lien on the securities set apart in addition  
8 to any other claims against the bank.

9       Sec. 4404. (1) In acting upon applications for permission  
10 to exercise full fiduciary powers as provided in section 4401,  
11 the commissioner shall take into consideration the sufficiency of  
12 the capital and surplus of the applying bank and any other facts  
13 or circumstances the commissioner considers proper.

14       (2) Without regard to the capital and surplus requirements  
15 specified in subsection (1), the commissioner may grant to a bank  
16 the limited trust power to act as executor, administrator, or  
17 guardian and to serve as a testamentary trustee.

18       Sec. 4405. (1) Funds or property held by a bank as fidu-  
19 ciary and available for investment shall be invested at the time  
20 and in the manner specified by the agreement, instrument, or  
21 order creating or defining the trust or other capacity in which  
22 the bank is acting or, where the bank holds the funds or property  
23 as agent, as directed or permitted by the bank's principal. In  
24 the absence of investment specifications or limitations in the  
25 agreement, instrument, or order, funds or property held by a bank  
26 as fiduciary shall within a reasonable time be invested in real  
27 or personal property, of whatever type or nature, as a prudent

1 investor would purchase, taking into account the purposes, terms,  
2 and distribution requirements expressed in the governing instru-  
3 ment, in the exercise of reasonable care, skill, and caution  
4 under conditions existing at the time of purchase. Compliance  
5 with the prudent investor rule shall be determined in light of  
6 the facts and circumstances that exist at the time of a  
7 fiduciary's decision or action and requires a standard of con-  
8 duct, not outcome or performance.

9       (2) Except as otherwise permitted by law, a court order, or  
10 the agreement, instrument, or order creating or defining the  
11 trust, or other capacity in which the bank is acting or with the  
12 consent of all interested parties or their representatives, or  
13 where the bank holds the funds or property as agent, as directed  
14 or permitted by the bank's principal, funds or property held by a  
15 bank as fiduciary shall not be invested in any securities or  
16 other properties, real or personal, purchased from the bank in  
17 its individual capacity or from any affiliate of the bank.

18       (3) Notwithstanding any other statutory or common law,  
19 except when the agreement, instrument, or order creating or  
20 defining the trust or other capacity in which the bank, or the  
21 bank and 1 or more cofiduciaries, is acting prohibits the invest-  
22 ment, a bank, or a bank and 1 or more cofiduciaries, may invest  
23 in a registered investment company any funds or property with  
24 respect to which the bank, or the bank and 1 or more cofiduci-  
25 aries, exercises investment discretion, even though either or  
26 both of the following apply:

1 (a) The bank or 1 or more affiliates of the bank provide  
2 services as investment adviser, sponsor, distributor, manager,  
3 custodian, transfer agent, registrar, or otherwise, to the  
4 investment company and receives reasonable remuneration for those  
5 services.

6 (b) The bank as fiduciary owns or controls a majority of the  
7 voting shares of the investment company or a majority of the  
8 shares voted for the election of its directors or trustees or the  
9 bank as fiduciary otherwise controls the election of a majority  
10 of its directors or trustees.

11 (4) As used in subsection (3), "registered investment  
12 company" means an investment company that is registered under the  
13 investment company act of 1940, title I of chapter 686, 54  
14 Stat. 789.

15 (5) For purposes of this section, a bank is considered to be  
16 holding funds or property in a fiduciary capacity if it is hold-  
17 ing the assets as trustee, personal representative, custodian,  
18 conservator, guardian, agent, or in any other fiduciary  
19 capacity.

20 CHAPTER 5

21 FOREIGN BANKS

22 STRUCTURE

23 Sec. 5101. (1) With the written approval of the commission-  
24 er, a foreign bank may establish and operate a state agency or  
25 state foreign bank branch in this state if the foreign bank has  
26 complied with all of the following:

1 (a) Is authorized by its charter or articles of  
2 incorporation to engage in the business of banking.

3 (b) Has complied with the laws of the foreign country in  
4 which it is chartered or incorporated.

5 (c) In the case of a state agency, the foreign bank does not  
6 operate a federal agency in this state.

7 (d) In the case of a state foreign bank branch, the foreign  
8 bank has not previously designated any other state as its home  
9 state under the international banking act of 1978.

10 (2) The commissioner shall examine the information and  
11 statements contained in the application submitted under subsec-  
12 tion (1) and make any investigation considered necessary regard-  
13 ing the financial and managerial resources of the applicant. The  
14 commissioner shall also consider whether there exists an opportu-  
15 nity for a bank having its principal place of business in this  
16 state to conduct business in the foreign country in which the  
17 applicant is chartered or incorporated.

18 (3) Upon written notification to the commissioner, a foreign  
19 bank authorized by its charter or articles of incorporation to  
20 engage in the business of banking, and that has complied with the  
21 applicable laws of the jurisdiction in which it is chartered or  
22 incorporated, may establish and operate a foreign bank represen-  
23 tative office in this state.

24 Sec. 5102. (1) A state agency or state foreign bank branch  
25 may be converted into a federal agency or federal branch under  
26 the international banking act of 1978.

1       (2) A federal agency or federal branch located in this state  
2 may be converted, with the written approval of the commissioner,  
3 into a state agency or state foreign bank branch. If the con-  
4 verted state agency or state foreign bank branch succeeds to  
5 assets in which it does not have the legal power to invest, or  
6 liabilities that it does not have power to incur, those assets or  
7 liabilities shall be disposed of within the next 12 calendar  
8 months of the date of the conversion, except that the commis-  
9 sioner may extend this period in the interest of an orderly dis-  
10 position of those assets or liabilities. The disposition period  
11 shall not exceed 3 years.

12       Sec. 5103. Authority to operate a state agency, state for-  
13 eign bank branch, or foreign bank representative office shall  
14 terminate upon dissolution of the foreign bank, or the  
15 commissioner's revocation of the foreign bank's authority to  
16 operate in this state. Upon termination of the authority to  
17 operate a state agency or state foreign bank branch, the commis-  
18 sioner shall become agent for the foreign bank for service of  
19 process and shall exercise the same powers, including the right  
20 to appoint a receiver, over the assets and liabilities of the  
21 state agency or state foreign bank branch as are permitted over a  
22 state chartered bank in liquidation or dissolution under sections  
23 2401 to 2410 and 3301 to 3307.

24       Sec. 5104. A foreign bank operating a state agency or state  
25 foreign bank branch in this state shall, at the times and in the  
26 form prescribed by the commissioner, file with the commissioner  
27 reports written in the English language, showing the amount of



1 its assets and liabilities and containing other information  
2 requested by the commissioner. A foreign bank that fails to  
3 comply with this section is subject to the penalty provided in  
4 section 3911.

5       Sec. 5105. (1) Except as otherwise provided in this act or  
6 other law of this state, operations of a foreign bank at a state  
7 foreign bank branch or state agency shall be conducted with the  
8 same rights and privileges and subject to the same duties,  
9 restrictions, penalties, liabilities, conditions, and limitations  
10 that would apply under this act to a bank doing business at the  
11 same location, except that a state agency or an additional office  
12 of a state agency shall not accept nor solicit deposits from cit-  
13 izens or residents of the United States or exercise trust  
14 powers. Operations of a foreign bank representative office are  
15 limited to representational functions.

16       (2) A foreign bank that operates a state agency or state  
17 foreign bank branch is permitted to establish and operate addi-  
18 tional offices subject to section 3711. For purposes of section  
19 3711, the principal office of a foreign bank operating under this  
20 act shall be its first state agency or state foreign bank branch  
21 established in this state.

22       (3) A state agency or state foreign bank branch shall not be  
23 required to become an insured bank, as insured bank is defined in  
24 section 3 of the federal deposit insurance act, unless the state  
25 foreign bank branch accepts deposits described in section 3 of  
26 the federal deposit insurance act.

1       (4) A foreign bank that operates a state agency or state  
2 foreign bank branch in this state shall maintain the accounts and  
3 conduct the business of the state agency or state foreign bank  
4 branch independently of the accounts and business of the parent  
5 foreign bank.

6       (5) The commissioner may examine the books, accounts,  
7 records, and files of the foreign bank that contain information  
8 regarding the accounts and business of a state agency, state for-  
9 eign bank branch, or foreign bank representative office.

10       Enacting section 1. The banking code of 1969, 1969 PA 319,  
11 MCL 487.301 to 487.598, is repealed.