

# SENATE BILL No. 920

November 27, 2007, Introduced by Senator GLEASON and referred to the Committee on Banking and Financial Institutions.

A bill to amend 1999 PA 276, entitled  
"Banking code of 1999,"  
by amending sections 1201, 1202, and 3711 (MCL 487.11201,  
487.11202, and 487.13711).

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

1       Sec. 1201. As used in this act:

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

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

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

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

1 (iv) An unpaid expense of supervision or conservatorship of a  
2 bank.

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

4 (b) "Administrative procedures act of 1969" means the  
5 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to  
6 24.328.

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

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

17 (ii) Control of the organization is held, directly or  
18 indirectly, through either of the following:

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

27 (B) By trustees for the benefit of the shareholders or members

1 of that organization.

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

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

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

17 (e) "Articles" means articles of incorporation, all amendments  
18 to articles of incorporation, and agreements of consolidation and  
19 merger.

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

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

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

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

14 (j) "Branch" means, except as otherwise provided in this  
15 subdivision, a branch bank, branch office, branch agency,  
16 additional office, or a branch place of business at which deposits  
17 are received, checks paid, or money lent. The acceptance of  
18 deposits in furtherance of a school thrift or savings plan by an  
19 officer, employee, or agent of a bank at a school shall not be  
20 construed as the establishment or operation of a branch. An  
21 electronic funds transfer facility that is made available to 2 or  
22 more depository institutions under Michigan law that regulates  
23 electronic funds transfer facilities is not a branch. A trust  
24 office of a bank is not a branch. A loan production office is not a  
25 branch. An additional office of a state agency is not a branch. An  
26 international banking facility as defined in 12 ~~C.F.R.~~ **CFR**  
27 204.8(a)(1), as in effect December 31, 1982, is not a branch. The

1 receipt of deposits by a messenger service or the delivery by a  
2 messenger service of items representing deposit account withdrawals  
3 or of loan proceeds is not the establishment or operation of a  
4 branch, whether or not the messenger service is owned or operated  
5 by the bank. Branch does not include an agent acting under section  
6 4101(1)(d).

7 (k) "Bureau" means the ~~financial institutions bureau of the~~  
8 ~~department of consumer and industry services~~ **OFFICE OF FINANCIAL**  
9 **AND INSURANCE SERVICES OF THE DEPARTMENT OF LABOR AND ECONOMIC**  
10 **GROWTH.**

11 (l) "Capital" or "capital stock" means the stated par value of  
12 issued and outstanding unimpaired common stock and the stated par  
13 value of issued and outstanding unimpaired preferred stock. For  
14 purposes of sections 4202, 4301, 4307, and 4308, "capital" and  
15 "capital stock" shall also include outstanding capital notes,  
16 debentures, and any other instrument of indebtedness issued under  
17 section 3801.

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

27 (N) **"COMMERCIAL ACTIVITIES" MEANS ACTIVITIES IN WHICH A BANK**

1 **HOLDING COMPANY, FINANCIAL HOLDING COMPANY, NATIONAL BANK, OR**  
2 **SUBSIDIARY OF A NATIONAL BANK MAY NOT ENGAGE UNDER FEDERAL LAW.**

3 (O) ~~(n)~~—"Commissioner" means the commissioner of the ~~financial~~  
4 ~~institutions bureau~~ **OFFICE OF FINANCIAL AND INSURANCE SERVICES.**

5 (P) ~~(e)~~—"Consolidate", "consolidated", "consolidating", and  
6 "consolidation" include, respectively, consolidate or merge,  
7 consolidated or merged, consolidating or merging, and consolidation  
8 or merger.

9 (Q) ~~(p)~~—"Consolidated bank" means a bank that results from a  
10 consolidation between a bank and 1 or more banks, out-of-state  
11 banks, national banks, associations, or savings banks.

12 (R) ~~(q)~~—"Consolidated organization" means an out-of-state  
13 bank, national bank, association, or savings bank organized under  
14 the laws of another state or the United States that results from a  
15 consolidation of 1 or more banks, with 1 or more out-of-state  
16 banks, national banks, associations, or savings banks.

17 (S) ~~(r)~~—"Consolidating organizations" means any combination of  
18 banks, out-of-state banks, national banks, associations, or savings  
19 banks that have consolidated or are in the process of consolidation  
20 as provided in section 3701 or 3702.

21 (T) ~~(s)~~—"Depository institution" means a bank, out-of-state  
22 bank, national bank, foreign bank branch, association, savings  
23 bank, or credit union organized under the laws of this state,  
24 another state, the District of Columbia, the United States, or a  
25 territory or protectorate of the United States.

26 (U) ~~(t)~~—"Dissolution" means the process by which a solvent  
27 bank voluntarily ends its corporate existence by liquidating its

1 assets and winding up its affairs.

2 (V) ~~(u)~~—"Dividend reinvestment plan" means a plan that is  
3 offered solely to existing shareholders of the bank and which  
4 allows the shareholders to reinvest dividends received under  
5 section 3806 in stock of the bank and that may allow additional  
6 cash amounts to be contributed by the shareholders participating in  
7 the reinvestment plan.

8 (W) ~~(v)~~—"Federal agency" means a foreign bank agency  
9 established and operating under the international banking act of  
10 1978.

11 (X) ~~(w)~~—"Federal branch" means a foreign bank branch  
12 established and operating under the international banking act of  
13 1978.

14 (Y) ~~(x)~~—"Federal deposit insurance act" means the federal  
15 deposit insurance act, chapter 967, 64 Stat. 873.

16 (Z) ~~(y)~~—"Federal home loan bank act" means the federal home  
17 loan bank act, chapter 522, 47 Stat. 725.

18 (AA) ~~(z)~~—"Federal reserve act" means the federal reserve act,  
19 chapter 6, 38 Stat. 251.

20 Sec. 1202. As used in this act:

21 (a) "Financial institution" means an organization licensed,  
22 chartered, or regulated by the ~~financial institutions bureau~~ **OFFICE**  
23 **OF FINANCIAL AND INSURANCE SERVICES** under the laws of this state.

24 (b) "Foreign bank" means an entity organized and recognized as  
25 a bank under the laws of a foreign country that lawfully engages in  
26 the business of banking and is not directly or indirectly owned or  
27 controlled by United States citizens or by a corporation organized

1 under the laws of the United States. Foreign bank includes foreign  
2 commercial banks, foreign merchant banks, and other foreign  
3 institutions that engage in banking activities usual in connection  
4 with the business of banking in the countries in which the foreign  
5 institutions are organized.

6 (c) "Foreign bank agency" means an office or place of business  
7 of a foreign bank, established under this act, the international  
8 banking act of 1978, or the laws of another state, that does not  
9 exercise trust powers and at which deposits of citizens or  
10 residents of the United States are not accepted.

11 (d) "Foreign bank branch" means a place of business of a  
12 foreign bank, located in any state, the District of Columbia, or a  
13 territory, or protectorate of the United States, that is not a  
14 foreign bank agency, bank, or out-of-state bank, at which deposits  
15 are received and that is established and operating as a branch of a  
16 foreign bank under this act, the international banking act of 1978,  
17 or the laws of another state.

18 (e) "Foreign country" means a country other than the United  
19 States and includes a colony, dependency, or possession of a  
20 country other than the United States.

21 (f) "Incorporator" means a signer of the original articles of  
22 incorporation.

23 (g) "Institution" means a bank, state agency, or state foreign  
24 bank branch operating or organized or reorganized under this act or  
25 operating or organized under any law of this state enacted before  
26 August 20, 1969.

27 (h) "International banking act of 1978" means the



1 international banking act of 1978, Public Law 95-369. ~~92 Stat.~~  
2 ~~607.~~

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

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

16 (k) "Loan production office" means an office of a depository  
17 institution or institutions at which activities related to the  
18 lending of money are conducted, deposits are not received, and  
19 checks are not paid, and which office is not the principal office,  
20 a branch, or an agency of an affiliated depository financial  
21 institution.

22 (l) "Member" means a person with ownership interest under the  
23 Michigan limited liability company act, 1993 PA 23, MCL 450.4101 to  
24 450.5200.

25 (m) "Messenger service" means a service such as a courier  
26 service or an armored car service that picks up from or delivers to  
27 customers of 1 or more depository institutions or 1 or more

1 affiliates of a depository institution cash, currency, checks,  
2 drafts, securities, or other items relating to transactions between  
3 or involving a depository institution or affiliate of a depository  
4 institution and those customers, or that transfers cash, currency,  
5 checks, drafts, securities, or other items or documents between  
6 depository institutions or affiliates of depository institutions.  
7 The service may be owned and operated by 1 or more depository  
8 institutions or affiliates or by a third party.

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

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

13 (p) "National bank act" means the national bank act, chapter  
14 106, 13 Stat. 99.

15 (q) "Out-of-state bank" means a banking corporation organized  
16 under the laws of another state, the District of Columbia, or a  
17 territory or a protectorate of the United States whose principal  
18 office is located in a state other than this state, in the District  
19 of Columbia, or in a territory or a protectorate of the United  
20 States, and whose deposits are insured by the federal deposit  
21 insurance corporation. **THE TERM INCLUDES AN INDUSTRIAL LOAN BANK OR**  
22 **INDUSTRIAL LOAN COMPANY ORGANIZED OR CHARTERED UNDER THE LAWS OF**  
23 **ANOTHER STATE.**

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

27 (s) "Professional investor" means an accredited investor under

1 15 U.S.C.—USC 77b.

2 (t) "Publication", "publish", or "published" means to appear  
3 in a newspaper of general circulation in the community or  
4 communities where the principal office or offices of the depository  
5 institution or institutions are located.

6 Sec. 3711. (1) ~~A—SUBJECT TO SUBSECTION (13)~~, A bank may  
7 establish and operate a branch or branches within any state, the  
8 District of Columbia, a territory or protectorate of the United  
9 States, or a foreign country, unless the commissioner objects in  
10 writing within 30 days after receipt of a written notice from the  
11 bank of its intent to establish a branch. The commissioner may  
12 issue a written statement of intent not to object at any time  
13 before the expiration of the 30 days.

14 (2) The written notice of intent to establish a mobile branch  
15 shall contain a statement by the applying bank that it intends to  
16 move the location of the physical structure of the branch from time  
17 to time.

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

21 (4) ~~Unless—SUBJECT TO SUBSECTION (13)~~, ~~UNLESS~~ the commissioner  
22 objects in writing within 30 days after receipt of written notice  
23 from a bank of its intent to contract for branch services, a bank  
24 may contract with 1 or more banks, out-of-state banks, national  
25 banks, associations, or savings banks for the depository  
26 institution or institutions to act as branches to provide services  
27 to the customers of the contracting bank. The commissioner may

1 issue a written statement of intent not to object at any time prior  
2 to the expiration of the 30 days. This subsection shall not be  
3 construed to limit the powers granted to a bank under section  
4 4101(1)(d).

5 (5) ~~Unless~~ **SUBJECT TO SUBSECTION (13), UNLESS** the commissioner  
6 objects in writing within 30 days after receipt of written notice  
7 from a contracting depository institution of its intent to contract  
8 for branch services, 1 or more out-of-state banks, national banks,  
9 associations, or savings banks may contract with a bank for the  
10 bank to provide services to the customers of the contracting out-  
11 of-state bank, national bank, association, or savings bank. The  
12 commissioner may issue a written statement of intent not to object  
13 at any time prior to the expiration of the 30 days. This subsection  
14 shall not be construed to limit the powers granted to a bank under  
15 section 4101(1)(d).

16 (6) Subject to the requirements, limitations, and restrictions  
17 of subsections (1) to (3), a state agency or state foreign bank  
18 branch organized under this act may establish and operate  
19 additional offices in the United States and its territories and  
20 protectorates.

21 (7) ~~An~~ **SUBJECT TO SUBSECTION (13), AN** out-of-state bank or  
22 national bank located in a state, the District of Columbia, or a  
23 territory or protectorate of the United States whose laws permit  
24 the establishment in that state, district, territory, or  
25 protectorate of a branch by a bank may establish and operate 1 or  
26 more branches in this state.

27 (8) An out-of-state bank may apply to organize a branch in

1 this state under this act by providing to the commissioner proof  
2 that its deposits are insured by an agency of the United States  
3 government. If the commissioner determines that the out-of-state  
4 bank is safe and sound, **THAT THE PROPOSED BRANCH COMPLIES WITH**  
5 **SUBSECTION (13)**, that the out-of-state bank is subject to  
6 regulation, and that there exists an agreement for exchange of  
7 supervisory information between the bureau and the out-of-state  
8 bank's regulator, the commissioner shall provide to the out-of-  
9 state bank a certificate of organization and eligibility to accept  
10 deposits and investments of public funds of the state and local  
11 units of government.

12 (9) A foreign bank branch that has designated a home state  
13 other than this state may establish and operate 1 or more  
14 additional offices in this state.

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

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

23 (a) Designate and maintain an agent located in this state upon  
24 whom process for judicial and administrative matters may be served  
25 and shall provide written notice containing the name and address of  
26 its agent to the commissioner before commencing operations in this  
27 state.

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

4           (12) For purposes of this section, the designated agent of a  
5 bank or a national bank is its chief executive officer.

6           (13) A BANK, OUT-OF-STATE BANK, OR NATIONAL BANK SHALL NOT  
7 ESTABLISH OR MAINTAIN A BRANCH OR AN AUTOMATED TELLER MACHINE IN  
8 THIS STATE THAT IS ON, IN, OR WITHIN 1.5 MILES OF ANY PREMISES OR  
9 PROPERTY OWNED, LEASED, OR CONTROLLED BY AN AFFILIATE IF THE  
10 AFFILIATE ENGAGES IN COMMERCIAL ACTIVITIES ON OR IN THAT PROPERTY  
11 OR PREMISES.