AN ACT to revise and codify the laws relating to banks, industrial banks, foreign banks, trust companies, and safe and collateral deposit companies; to provide for their incorporation, regulation, and supervision; to authorize the granting of trust powers to banks and to regulate the exercise of those powers; to create, within the department of commerce, a financial institutions bureau and to prescribe its powers and duties; to prescribe penalties for violations of this act; and to repeal certain acts and parts of acts.


The People of the State of Michigan enact:

CHAPTER 1

SHORT TITLE, PURPOSE AND DEFINITIONS
067 487.301  Banking code of 1969; short title.

Sec. 1. This act shall be known and may be cited as the "banking code of 1969".


067 487.302  Banking code of 1969; state policy.

Sec. 2. It is the policy of this state that the business of all banking organizations shall be supervised and regulated in such manner as to insure the safe and sound conduct of such business, to conserve their assets and to eliminate unsound and destructive competition among such banking organizations and thus to maintain public confidence in such business and protect the public interest and the interests of depositors, creditors and shareholders.


067 487.305  Definitions.

Sec. 5. As used in this act:

(a) "Articles" means articles of incorporation, all amendments to articles of incorporation, and agreements of consolidation and merger.

(b) "Association" means a federal savings association organized
under section 5 of the home owners' loan act, chapter 64, 48
Stat. 132, 12 U.S.C. 1464, or a savings and loan association,
building and loan association, or homestead association that is
organized under the laws of a state or the District of Columbia
and whose deposits are insured by the federal deposit insurance
corporation.

(c) "Affiliate" means a corporation, business trust,
association, or similar organization to which any of the
following apply:

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

(ii) Control of the organization is held, directly or
indirectly, through stock ownership or in any other manner, by
the shareholders of an organization who own or control either a
majority of the shares of that organization or more than 50% of
the number of shares voted for the election of directors of that
organization at the preceding election, or by trustees for the
benefit of the shareholders of that organization.

(iii) A majority of its directors, trustees, or other persons
exercising similar functions are directors of any 1 organization.
(iv) Owns or controls, directly or indirectly, either a majority of the shares of capital stock of an organization or more than 50% of the number of shares voted for the election of directors of an organization at the preceding election, or controls in any manner the election of a majority of the directors of an organization, or for the benefit of whose shareholders or members all or substantially all the capital stock of an organization is held by trustees.

(d) "Bank" means a state banking corporation organized or reorganized under the provisions of this act or organized under the provisions of any law of this state enacted before August 20, 1969.

(e) "Branch" means, except as otherwise provided in this subdivision, a branch bank, branch office, branch agency, additional office, or a branch place of business at which deposits are received, checks paid, or money lent. The acceptance of deposits in furtherance of a school thrift or savings plan by an officer, employee, or agent of a bank at any school shall not be construed as the establishment or operation of a branch. An electronic funds transfer facility that is made available to 2 or more federal or state chartered financial institutions pursuant to a state statute that regulates electronic funds transfer facilities is not a branch. An additional office of a state agency is not a branch. An international banking facility as defined in 12 C.F.R. 204.8(a)(1), as in effect December 31, 1982, is not a branch. The receipt of deposits by a messenger service
or the delivery by a messenger service of items representing deposit account withdrawals or of loan proceeds is not the establishment or operation of a branch, whether or not the messenger service is owned or operated by the bank. Branch does not include an agent acting under section 151(31).

(f) "Bureau" means the financial institutions bureau created by this act.

(g) "Capital" or "capital stock" means the amount of unimpaired common stock issued and outstanding, plus the amount of unimpaired preferred stock issued and outstanding.

(h) "Commissioner" means the commissioner of the financial institutions bureau.

(i) "Consolidate", "consolidated", "consolidating", and "consolidation" include, respectively, consolidate or merge, consolidated or merged, consolidating or merging, and consolidation or merger.

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

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

(l) "Consolidating organizations" means any combination of banks, out-of-state banks, national banks, associations, or savings banks that have consolidated or are in the process of consolidation as provided in section 125 or 125a.

(m) "Depository institution" means a bank, out-of-state bank, national bank, association, savings bank, or credit union organized under the laws of this state, another state, the District of Columbia, the United States, or a territory or protectorate of the United States.

(n) "Federal agency" means a foreign bank agency established and operating under section 4 of the international banking act of 1978, 12 U.S.C. 3102.

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

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

(q) "Foreign bank" means an entity organized and recognized as a bank under the laws of a foreign country that lawfully engages in the business of banking and is not directly or indirectly owned or controlled by United States citizens or by a corporation organized under the laws of the United States. Foreign bank includes foreign commercial banks, foreign merchant banks, and
other foreign institutions that engage in banking activities usual in connection with the business of banking in the countries in which the foreign institutions are organized.

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

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

(t) "Foreign country" means a country other than the United States of America and includes a colony, dependency, or possession of a country other than the United States of America.

(u) "Incorporator" means a signer of the original articles of incorporation.

(v) "Institution" means a bank, state agency, state foreign bank branch, or safe and collateral deposit company operating or organized or reorganized under the provisions of this act or operating or organized under the provisions of any law of this

(x) "Messenger service" means a service such as a courier service or an armored car service that picks up from or delivers to customers of 1 or more depository institutions or 1 or more affiliates of a depository institution cash, currency, checks, drafts, securities, or other items relating to transactions between or involving a depository institution or affiliate of a depository institution and those customers, or that transfers cash, currency, checks, drafts, securities, or other items or documents between depository institutions or affiliates of depository institutions. The service may be owned and operated by 1 or more depository institutions or affiliates or by a third party.

(y) "Mobile branch" means a branch in which the location of the physical structure of the branch is moved from time to time.

(z) "National bank" means a bank chartered by the federal government under the national bank act, chapter 106, 13 Stat. 99.

(aa) "Out-of-state bank" means a banking corporation organized under the laws of another state, the District of Columbia, a territory or a protectorate of the United States whose principal office is located in a state other than this state, the District of Columbia, a territory or a protectorate of the United States,
and whose deposits are insured by the federal deposit insurance corporation.

(bb) "Publication" and "published" mean publication in a newspaper printed in the English language and published and circulated in the county where the depository institution is located or, if there is no newspaper published and circulated in the county where the depository institution is located, in any newspaper having general circulation in the county.

(cc) "Savings bank" means a savings bank organized under the laws of a state, the District of Columbia, a territory or protectorate of the United States, or of the United States, whose deposits are insured by the federal deposit insurance corporation.

(dd) "Service corporation" means a corporation organized under the laws of a state that engages in activities determined by the commissioner by order or rule to be incidental to the conduct of a banking business as provided in this act or activities that further or facilitate the corporate purposes of a bank, or that furnishes services to a bank or subsidiaries of a bank and the voting stock of which is owned directly or indirectly by 1 or more banks, out-of-state banks, national banks, associations, or savings banks.

(ee) "Shareholder" means the registered owner of any share or shares of capital stock of an institution.
(ff) "State agency" means a foreign bank agency established and operating under chapter 3A.

(gg) "State foreign bank branch" means a foreign bank branch established and operating under chapter 3A.

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


Sec. 8. (1) Except as hereafter provided, the distinction heretofore existing between banks and industrial banks is abolished and all of the provisions of this act shall be applicable to any industrial bank heretofore incorporated under the laws of this state, which shall be deemed to be a bank under all sections of this act except that until any presently existing industrial bank sells its assets to, consolidates with or converts into a bank in the manner provided in this act for the sale of assets, consolidation or conversion of banks, it shall not receive deposits payable on demand or exercise trust powers.
Wherever provision is made in this act for action by the cashier or assistant cashier of a bank, such action may be taken by a secretary, assistant secretary, treasurer or assistant treasurer of an existing industrial bank.

A new industrial bank shall not be created after the effective date of this act but nothing in this section shall prohibit the renewal or extension of the corporate life of any existing industrial bank.


Sec. 9. (1) Except as hereafter provided, the distinction heretofore existing between banks and trust companies is abolished and all of the provisions of this act shall be applicable to any trust company heretofore incorporated under the laws of this state which shall be deemed to be a bank under all sections of this act except that until any presently existing trust company sells its assets to, consolidates with or converts into a bank in the manner provided in this act for the sale of assets, consolidation or conversion of banks, it shall have no power to receive deposits.

(2) Wherever provision is made in this act for action by the cashier or assistant cashier of a bank, such action may be taken by a secretary, assistant secretary, treasurer or assistant treasurer.
treasurer of an existing trust company.

(3) A new trust company shall not be created after the effective date of this act but nothing in this section shall prohibit the renewal or extension of the corporate life of any existing trust company.


CHAPTER 2
ADMINISTRATION

Sec. 11. (1) A financial institutions bureau is created within the department of commerce, and the bureau shall have jurisdiction over and shall execute the laws relating to institutions transacting business under the laws of this state.

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

(3) Before entering upon the duties of his or her office, the commissioner shall take and subscribe the constitutional oath of office and file it in the office of the secretary of state.
(4) The commissioner shall be prohibited for a period of 6 months from the date he or she leaves office from accepting employment with a state chartered depository financial institution regulated by the financial institutions bureau.


Sec. 11a. This act shall be implemented by the commissioner to maximize the capacity of banks in this state to offer convenient and efficient financial services, to promote economic development, and to ensure that banks remain competitive with other types of financial institutions.


Sec. 11b. Nothing in this amendatory act shall grant the commissioner the authority to authorize banks to engage in the sale or service of insurance.


State banking department; transfer of powers and duties to financial institutions bureau; transfer of property; saving
Sec. 12. (1) The powers and duties now vested by law in the state banking department, are transferred to and vested in the bureau. Any hearing or other proceeding pending before the state banking department shall not abate but is transferred to the bureau and shall be conducted and determined by the bureau in accordance with the provisions of the law governing such hearing or proceeding.

(2) All property, credits, books, correspondence, funds, appropriations, records, files and other papers belonging to the state banking department are transferred to the financial institutions bureau. All orders and rules which have been issued pursuant to law by the commissioner of the banking department and which are in effect, shall continue in effect until modified, suspended, revoked or repealed by the commissioner.


Administrative rules: R 487.41 et seq.; R 487.201 et seq.; and R 487.901 et seq. of the Michigan Administrative Code.

Sec. 13. The commissioner shall appoint a first deputy and such other deputies as he sees fit and may revoke such appointments at his pleasure. The first deputy shall possess the powers and
perform the duties of the commissioner during a vacancy or during
the absence or inability of the commissioner to act. The
commissioner shall designate the order in which the deputies
shall become acting commissioner in the absence of the
commissioner and the first deputy. Before entering upon the
duties of their offices, the first deputy and other deputies
shall take and subscribe the constitutional oath of office and
file it in the office of the secretary of state.


Sec. 14. The commissioner may appoint examiners and other
employees for the carrying out of the provisions of this act. The
compensation, travel and other expenses of the commissioner,
deputy commissioners, examiners and employees shall be paid in
the manner provided by law for other state officers and
employees, within the appropriations made therefor by the
legislature.


Sec. 15. (1) During his or her term of office or employment,
the commissioner, a deputy commissioner, or an examiner of the
bureau shall not be a shareholder, either directly or indirectly, of an institution subject to this act, of an out-of-state bank, of a national bank, or of any affiliate or subsidiary thereof.

(2) During his or her term of office or employment, the commissioner, a deputy commissioner, or an examiner of the bureau shall not be an officer, director, or employee of an institution subject to this act, of an out-of-state bank, of a national bank, or of any affiliate or subsidiary thereof or receive, either directly or indirectly, a fee, perquisite, reward, emolument, or other compensation from any such entities.

(3) The commissioner, a deputy commissioner, or examiner shall not borrow money, directly or indirectly, from an institution subject to this act, except for a mortgage loan upon the mortgagor's own home or upon installment debt transferred to an institution in the regular course of business by a seller of consumer goods.

(4) Subsection (3) does not apply to loans made prior to the person's respective term of office.

(5) If the commissioner, a deputy commissioner, or an examiner of the bureau borrows from, or is or becomes indebted to, an institution subject to this act, an out-of-state bank, or a national bank, he or she shall make a written report to the bureau, or to the governor in the case of the commissioner, stating the date and amount of the loan or indebtedness, the security given on the loan, and the purpose for which the
Sec. 16. The commissioner, any deputy commissioner, examiner or other employee of the bureau shall not be liable in any civil action for damages for any act done or omitted in good faith in performing the functions of his office.

Sec. 17. Employees of the bureau handling money or securities in the course of their duties shall be bonded in such form and amount as the director of the department of commerce may determine.

Sec. 18. The commissioner shall devise a seal for the use of the bureau, a description of which, with an impression thereof, shall be filed in the office of the secretary of state.
Sec. 19. The commissioner shall promulgate rules in addition to those specifically provided for by this act as he may deem necessary to effectuate the purposes and to execute and enforce the provisions of this act in accordance with the provisions of Act No. 88 of the Public Acts of 1943, as amended, being sections 24.71 to 24.80 of the Compiled Laws of 1948, and subject to Act No. 197 of the Public Acts of 1952, as amended, being sections 24.101 to 24.110 of the Compiled Laws of 1948.

Sec. 20. For each calendar year the commissioner shall compile and publish an annual report in such form and containing such information as the commissioner may determine necessary to reasonably summarize the operations of the bureau during such year.

Sec. 23. (1) Each institution together with its subsidiaries and service corporations shall be subject to examination of the

The commissioner, or the commissioner's authorized agent, shall examine, with or without prior notice, 1 or more times in each calendar year the condition and affairs of each institution. One examination shall be known as the annual examination. The commissioner shall examine an institution under the commissioner's jurisdiction when requested by its board of directors. In connection with an examination, the commissioner, or the commissioner's authorized agent, may examine on oath a director, officer, agent, employee, or shareholder of an institution concerning the affairs and business of the institution. The commissioner shall ascertain whether the institution transacts its business in the manner prescribed by law and the rules promulgated pursuant to law. The commissioner, or the commissioner's authorized agent, may make an examination of an affiliate, subsidiary, or service corporation necessary to disclose fully the relation between an institution and the affiliate, subsidiary, or service corporation and the effect of the relation upon the institution.

(2) The commissioner may examine the branch or branches located in this state of an out-of-state bank as permitted by the federal deposit insurance act, chapter 967, 64 Stat. 873.

(3) In fulfilling the requirements of subsections (1) and (2), the commissioner may use an examination made pursuant to the federal reserve act, chapter 6, 38 Stat. 251, or the federal deposit insurance act, or the law of another state governing the activities of out-of-state banks in that state. The commissioner may require the institution to furnish a copy of any report.
084 required by a federal or state bank regulatory agency.

084

084 (4) An examination required by this section shall include the fiduciary activities of the institution.

084

084 (5) The commissioner may contract with other state bank regulatory agencies to assist in the conduct of examinations of banks with 1 or more branches located in other states and in examinations of out-of-state banks with 1 or more branches located in this state.


067 487.325 Supervisory fee; credit; schedule of fees; amount of fee; fees for furnishing and certifying copies of documents; action for recovery of fees or expenses; disposition and use of fees and expenses.

067

084 Sec. 25. (1) As determined by the commissioner, each bank shall pay an annual supervisory fee of not less than 4 cents nor more than 25 cents for each $1,000.00 of the total assets of the bank as reported by the bank on its report of condition for the previous year. The supervisory fee for a bank that was a national bank or an association on December 31 of the previous year shall be based upon its total assets as reported by the bank in the report of condition for the previous year that was filed by the bank with its state of charter or federal regulator. The
084 supervisory fee for a bank that was not engaged in the business
084 of banking on December 31 of the previous year shall be the
084 minimum supervisory fee established by the commissioner.
084
084 (2) The supervisory fee for a bank shall not be less than
084 $1,000.00.
084
084 (3) The commissioner shall invoice the supervisory fee no later
084 than July 1 of each year and shall be paid by the bank no later
084 than August 15 of that year.
084
084 (4) If a bank has paid a supervisory fee but is not examined by
084 the commissioner during the calendar year, the bank shall receive
084 a credit of not less than 30% nor more than 70% of the
084 supervisory fee against its next succeeding annual supervisory
084 fee. The percentage of the supervisory fee credit shall be
084 determined annually by the commissioner and shall be the same for
084 all banks.
084
084 (5) The commissioner shall periodically establish a schedule of
084 fees to be paid by institutions, out-of-state banks, national
084 banks, and foreign banks for examinations, evaluations, and
084 applications considered necessary by the commissioner.
084
084 (6) The amount of a fee established under subsection (5) shall
084 be equal to the estimated cost to the bureau of processing the
084 examination, evaluation, or application for which the fee is
084 imposed.
(7) The commissioner may charge reasonable fees for furnishing and certifying copies of documents filed in the bureau and the costs of publishing or serving of notices required by this act.

(8) If any fees or expenses provided for in this section are not paid by an institution, out-of-state bank, national bank, or foreign bank when due, the commissioner may, after proper notice to the institution, out-of-state bank, national bank, or foreign bank, maintain an action against the institution, out-of-state bank, national bank, or foreign bank for the recovery of the fees or expenses plus interest and costs.

(9) The fees and expenses collected under this section are not refundable and shall be paid into the state treasury to the credit of the bureau and used only for the operation of the bureau.


487.327 Subpoena; petition; failure to obey; contempt.

Sec. 27. The commissioner may petition the circuit court for the jurisdiction in which the examination is being carried on to issue a subpoena on behalf of the bureau requiring any person to appear before the bureau and be examined under oath with
084 reference to any matter within the scope of an examination of an
084 institution as provided for in section 23 or 142 and to produce
084 books, records, or papers. A failure to obey the subpoena of the
084 circuit court may be punished by the circuit court as a contempt
084 of the circuit court.

487.328 Self-incrimination; immunity.

Sec. 28. No person shall be excused from testifying or from
084 producing any books, papers, records or memoranda in any
084 examination when ordered to do so by the commissioner, upon the
084 ground that the testimony or evidence, documentary or otherwise,
084 may tend to incriminate him or subject him to a criminal penalty;
084 but no individual shall be prosecuted or subjected to any penalty
084 or forfeiture for or on account of any transaction, matter, or
084 thing concerning which he is compelled, after having claimed his
084 privilege against self-incrimination, to testify or produce
084 evidence, documentary or otherwise, except that the individual so
084 testifying shall not be exempt from prosecution or punishment for
084 perjury committed in so testifying.

487.329 Confidentiality of information obtained by commissioner
067 and other employees of bureau; exception.
Sec. 29. (1) The commissioner and all deputies, agents, and employees of the bureau shall be bound by oath to keep secret all facts and information obtained in the course of their duties, except if the person is required pursuant to law to report upon, take official action, or testify in any proceedings regarding the affairs of an institution.

(2) Notwithstanding subsection (1), the commissioner may make disclosure to persons at such times as is in the public interest within the purposes of this act.

(3) The provisions of this section are not applicable to, and do not prohibit the furnishing of information or documents to, the federal or out-of-state bank, association, or savings bank regulatory agencies, and are not applicable to disclosures made to interested parties by the commissioner, at his or her discretion, with respect to supervisory actions, examinations, or applications.


Sec. 30. (1) Except with respect to rules promulgated under
084 section 19, a cease and desist order made under sections 35 to 084 46, an order made on an application seeking approval of the 084 commissioner under section 53, 54, 121, 125, 130b, 141, 142, 144, 084 151(32), 151h, or 157, or an objection issued under section 171, 084 an institution or an interested party who is dissatisfied with an 084 order, ruling, or finding issued by the commissioner may request 084 a reconsideration of the order, ruling, or finding within 10 days 084 after the issuance of the order, ruling, or finding. Within 30 084 days after the receipt of a written request for reconsideration, 084 the commissioner shall set the matter down for a formal hearing 084 unless a formal hearing has been held before the issuance of the 084 order, ruling, or finding. The commissioner may conduct a formal 084 hearing before the issuance of an order, ruling, or finding.

084

084 (2) A hearing held under subsection (1) shall be conducted 084 pursuant to the administrative procedures act of 1969, Act 084 No. 306 of the Public Acts of 1969, being sections 24.201 to 084 24.328 of the Michigan Compiled Laws.

084

084 (3) The commissioner shall require an entity making an 084 application under section 53, 54, 121, 125, 130b, 141, 142, 144, 084 151(32), 151h, or 157 to give notice of the application by 084 publication. The applicant, within 10 days after the acceptance 084 of an application, shall publish notice in a newspaper or 084 newspapers of general circulation in the community or communities 084 in which the bank, branch, state foreign bank branch, state 084 agency, or additional office of a state foreign bank branch or 084 state agency, is to be located and in which the bank, banks, bank 084 holding company, state foreign bank branch, or state agency
involved in the subject application are located. Publication shall be in the form prescribed by the commissioner and be 1 time per week for 2 consecutive weeks with an interval between publications of not less than 5 days. Proof of publication shall be filed with the commissioner within 10 days after the date of the second publication of notice.

(4) An interested party who desires to protest the application shall file a written notice of protest with the commissioner and with the applicant within 10 days after the date of the second publication of notice. Within 30 days after the date of the second publication of notice, an interested party who has filed a written notice of protest shall file with the commissioner and with the applicant, a written statement setting forth all of the following:

(a) A list of specific items in the application which are the basis for the protest and an explanation of the reasons for the protest.

(b) A statement of the facts supporting the reasons for the protest including economic and financial data.

(c) A request for oral argument if desired.

(5) Within 40 days after the date of the second publication of notice, the applicant may file with the commissioner and with the parties that have filed written notice of protest, written material in response to the written statement and may request
oral argument before the commissioner if oral argument has not been requested by an interested party who has filed a written notice of protest.

(6) Oral argument may be held at the commissioner's discretion if neither the applicant nor an interested party requests oral argument.

(7) An oral argument, if scheduled as provided in this section, shall be held within 55 days after the date of the second publication of notice.

(8) Only the applicant and those interested parties who have filed written statements under subsection (4) may participate in the oral argument. Oral argument may be made by each party or by an authorized representative. Oral argument shall be limited to issues raised in the materials submitted in connection with the application and the protest. One hour shall be permitted to each participant other than the applicant for oral argument. The applicant shall have as much time as all other participants have been permitted. The commissioner shall have a stenographic record made of the oral argument, with costs to be allocated equally among the parties requesting oral argument unless otherwise provided by rule of the commissioner.

(9) The commissioner shall issue an order within 100 days after the filing of the application. If an application is denied, or if a protested application is approved, the commissioner shall provide a detailed written explanation of the basis of the
commissioner's decision. Appeal of an order shall not be made by a party without first requesting a reconsideration of the order under subsection (10).

(10) The applicant or an interested party who filed written statements under subsection (4) and who participated in the oral argument, if held, who is dissatisfied with an order of the commissioner or an institution that is dissatisfied with an objection issued under section 171, may within 5 days after the issuance of the order or objection file with the commissioner a written request for reconsideration of the order or objection stating the reasons for the request. The commissioner, within 10 days of receiving the request for reconsideration, shall render a decision on the request for reconsideration. If a petition for reconsideration is granted, the commissioner shall grant the applicant and all interested parties 10 days to file written arguments or briefs. The commissioner may conduct an oral argument after granting a petition for reconsideration. The argument shall be held within 10 days after granting the petition. The commissioner shall issue a final order, objection, or withdrawal of an objection within 20 days after granting the petition for reconsideration.

(11) The commissioner may promulgate rules pursuant to Act No. 306 of the Public Acts of 1969, to provide the application procedure. The rules shall be consistent with this section.

Sec. 35. (1) If in the opinion of the commissioner any institution is engaging or has engaged, or the commissioner has reasonable cause to believe that the institution is about to engage, in an unsafe or unsound practice in conducting the business of the institution or is violating or has violated, or the commissioner has reasonable cause to believe that the institution is about to violate, a law or rule, the commissioner may issue and serve upon the institution a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged unsafe or unsound practice or violation, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the institution. The hearing shall be not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the commissioner at the request of the institution. Unless the institution appears at the hearing by a duly authorized representative, it shall be
084 deemed to have consented to the issuance of the cease and desist order. In the event of such consent, or if upon the record made at the hearing, the commissioner finds that an unsafe or unsound practice or violation specified in the notice of charges has been established, the commissioner may issue and serve upon the institution an order to cease and desist from the practice or violation. The order may require the institution and its directors, officers, employees, and agents to cease and desist from the practice or violation and to take affirmative action to correct the conditions resulting from any such practice or violation.

084 (2) A cease and desist order becomes effective at the expiration of 30 days after the service of the order upon the institution, except in the case of an order issued upon consent which shall become effective at the time specified in the order, and shall remain effective and enforceable as provided in the order, except to the extent it is stayed, modified, terminated, or set aside by action of the commissioner or a reviewing court.

084 (3) If the commissioner determines that an out-of-state bank branch located in this state is acting in violation of the laws of this state or that the activities of the branch are being conducted in an unsafe and unsound manner, the commissioner may undertake enforcement actions and proceedings as would be permitted if the branch were a bank. If the commissioner determines that a national bank is acting in violation of the laws of this state, the commissioner shall notify the comptroller of the currency and the Michigan attorney general.
Sec. 36. (1) Whenever the commissioner determines that the violation or threatened violation or the unsafe or unsound practice or practices, specified in the notice of charges served upon the institution pursuant to subsection (1) of section 35, or the continuation thereof, is likely to cause insolvency or substantial dissipation of assets or earnings of the institution, or is likely to otherwise seriously prejudice the interests of its depositors, the commissioner may issue a temporary order requiring the institution to cease and desist from any such violation or practice. Such order shall become effective upon service upon the institution and, unless set aside, limited or suspended by a court in proceedings authorized by subsection (2), shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the commissioner shall dismiss the charges specified in such notice or if a cease and desist order is issued against the institution, until the effective date of such order.

(2) Within 10 days after the institution has been served with a temporary cease and desist order, the institution may apply to the circuit court for the county in which the home office of the institution is located for an order to set aside, suspend, or modify the order.
institution is located for an injunction setting aside, limiting or suspending the enforcement, operation or effectiveness of the order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the institution under subsection (1) of section 35 and the court shall have jurisdiction to issue the injunction.


Section 37. (1) Whenever, in the opinion of the commissioner, any director or officer of an institution has committed any violation of law or rule or of a cease and desist order which has become final, or has engaged or participated in any unsafe or unsound practice in connection with the institution, or has committed or engaged in any act, omission or practice which constitutes a breach of his fiduciary duty as a director or officer and the commissioner determines that the institution has suffered or will probably suffer substantial financial loss or other damage or that the interests of its depositors could be seriously prejudiced by reason of the violation or practice or breach of fiduciary duty, the commissioner may serve upon the director or officer a written notice of his intention to remove him from office.

(2) Whenever, in the opinion of the commissioner, any director or officer of any institution, by conduct or practice with
respect to another institution or other business organization which resulted in substantial financial loss or other damage, has evidenced his personal unfitness to continue as a director or officer and, whenever, in the opinion of the commissioner, any other person participating in the conduct of the affairs of any institution, by conduct or practice with respect to such institution or other business organization which resulted in substantial financial loss or other damage, has evidenced his personal unfitness to participate in the conduct of the affairs of such institution, the commissioner may serve upon the director, officer or other person a written notice of his intention to remove him from office or to prohibit his further participation in any manner in the conduct of the affairs of the institution.

(3) In respect to any director or officer of any institution or any other person to whom notice is sent pursuant to subsection (1) or (2) of this section, if the commissioner deems it necessary for the protection of the institution or the interests of its depositors that the director, officer or other person be suspended from office or prohibited from further participation in any manner in the conduct of the affairs of the institution, the commissioner may serve upon such director, officer or other person, a written notice suspending him from office or prohibiting him from further participation in any manner in the conduct of affairs of the institution. The suspension or prohibition shall become effective upon service of the notice and, unless stayed by a court in proceedings authorized by section 38, shall remain in effect pending the completion of the
administrative proceedings pursuant to the notice served under subsections (1) or (2) and until such time as the commissioner shall dismiss the charges specified in such notice or, if an order of removal or prohibition is issued against the director, officer or other person, until the effective date of such order. Copies of the notice shall also be served upon the institution of which he is a director or officer or in the conduct of whose affairs he has participated.

(4) A notice of intention to remove a director, officer or other person from office or to prohibit his participation in the conduct of the affairs of any institution shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. The hearing shall be held not earlier than 30 days nor later than 60 days after the date of service of the notice, unless an earlier or a later date is set by the commissioner at the request of the director, officer or other person and for good cause shown. Unless the director, officer or other person appears at the hearing in person or by a duly authorized representative, he shall be deemed to have consented to the issuance of an order of removal or prohibition. In the event of consent, or if upon the record made at the hearing the commissioner finds that any of the grounds specified in the notice have been established, the commissioner may issue such orders of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the institution, as he deems appropriate. The order shall become effective at the expiration of 30 days after service upon the institution and the director, officer or other person.
concerned except in the case of an order issued upon consent, which shall become effective at the time specified therein. The order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated or set aside by action of the commissioner or a reviewing court.

Sec. 38. Within 10 days after any director, officer or other person has been suspended from office or prohibited from participation in the conduct of the affairs of any institution under subsection (3) of section 37, the director, officer or other person may apply to the circuit court for the county in which the home office of the institution is located for a stay of the suspension or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon the director, officer or other person under subsections (1) or (2) of section 37 and the court shall have jurisdiction to stay the suspension or prohibition.

Sec. 39. Whenever any director or officer of any institution or other person participating in the conduct of the affairs of an
084 institution is charged in any information, indictment, warrant or
084 complaint authorized by a county, state or United States
084 authority with the commission of, or participation in, a felony
084 involving dishonesty or breach of trust, the commissioner, by
084 written notice served upon the director, officer or other person
084 may suspend him from office or prohibit him from further
084 participation in any manner in the conduct of the affairs of the
084 institution. A copy of the notice shall also be served upon the
084 institution. The suspension or prohibition shall remain in effect
084 until the information, indictment, warrant or complaint is
084 finally disposed of or until terminated by the commissioner. If a
084 judgment of conviction with respect to the offense is entered
084 against the director, officer or other person, and at such time
084 as the judgment is not subject to further appellate review, the
084 commissioner may issue and serve upon the director, officer or
084 other person an order removing him from office or prohibiting him
084 from further participation in any manner in the conduct of the
084 affairs of the institution except with the consent of the
084 commissioner. A copy of the order shall also be served upon the
084 institution, whereupon the director or officer shall cease to be
084 a director or officer of the institution. A finding of not guilty
084 or other disposition of the charge shall not preclude the
084 commissioner from thereafter instituting proceedings to suspend
084 or remove the director, officer or other person from office or to
084 prohibit further participation in institution affairs, pursuant
084 to subsections (1), (2) or (3) of section 37.
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067 487.340 Director; suspension; temporary directors; operation of board.

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084 Sec. 40. If at any time, because of the suspension or removal of 1 or more directors pursuant to this section, the board of directors of an institution has less than a quorum of directors not so suspended or removed, all powers and functions vested in or exercisable by the board shall vest in and be exercisable by the directors on the board not so suspended or removed, until such time as there is a quorum of the board of directors. If all of the directors of an institution are suspended or removed pursuant to this section, the commissioner shall appoint persons to serve temporarily as directors pending the termination of the suspensions or removals, or until such time as their successors are duly elected and take office.

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067 487.341 Hearings; private, public; petition; review.

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084 Sec. 41. (1) Any hearing provided for in sections 35 to 46 shall be conducted in accordance with the provisions of Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.313 of the Compiled Laws of 1948. The hearing shall be private, unless the commissioner, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest. After the hearing and within 90 days after the commissioner has notified the parties that the case has been submitted to him for final decision, he
(2) Any party to the proceeding, or any person required by an order issued under sections 35 to 46 to cease and desist from any of the violations or practices stated therein or to be suspended, removed or prohibited from participation in the conduct of the affairs of any institution, may obtain a review of any order served pursuant to subsection (1) of this section, other than a consent order, which review shall be exclusively as provided in Act No. 306 of the Public Acts of 1969. Unless a petition for review is timely filed as provided in that act, the commissioner, at any time, upon such notice and in such manner as he deems proper, may modify, terminate or set aside the order. Upon the timely filing of a petition for review, the commissioner may modify, terminate or set aside the order with the permission of the court.

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

Sec. 42. The commissioner may apply to the circuit court of the county in which the home office of the institution is located, or in the circuit court for Ingham county, for the enforcement of any effective and outstanding notice or order issued under sections 35 to 46 including any temporary cease and desist order issued pursuant to subsection (1) of section 36, and the court shall have jurisdiction and power to order and require compliance therewith; but except as otherwise provided in this section no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under sections 35 to 46, or to review, modify, suspend, terminate or set aside any such notice or order.

Sec. 43. Any director or officer or former director or officer of any institution or any other person, against whom there is outstanding and effective any notice or final order served upon the director, officer or other person under subsections (1), (2) or (3) of section 37, or of section 39, who (i) participates in any manner in the conduct of the affairs of the institution involved, or directly or indirectly solicits or procures, or transfers or attempts to transfer, or votes or attempts to vote, any proxies, consents, or authorizations in respect of any voting rights in such institution, or (ii) without the prior written
approval of the commissioner, votes for a director, serves or acts as a director, officer or employee of any institution, shall be fined not more than $5,000.00 or imprisoned for not more than 1 year, or both.


487.344 Final cease and desist order; violation; definitions.

Sec. 44. As used in sections 35 to 46:

(a) "Cease and desist order which has become final" and "order which has become final" means a cease and desist order or an order issued by the commissioner with the consent of the institution or the director or officer or other person concerned or with respect to which no petition for review of the action of the commissioner has been filed and perfected in a circuit court as specified in subsection (2) of section 41, or with respect to which the action of the court in which the petition is filed is not subject to further review by the courts of the state.

(b) "Violation" includes, without limitation, any action, alone or with others, for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.


487.345 Service of process; notice to governor.
Sec. 45. (1) A service required or authorized to be made by the commissioner under sections 35 to 46 may be made by registered or certified mail, or in any other manner reasonably calculated to give actual notice as the commissioner by rule or otherwise may provide. Copies of a notice or order served by the commissioner upon an institution or any director or officer of an institution or other person participating in the conduct of the institution's affairs, pursuant to the provisions of sections 35 to 46, shall also be sent to the appropriate federal and out-of-state bank, association, and savings bank regulatory agencies.

(2) In connection with the issuance of a cease and desist order under this act, the commissioner shall inform the governor of his or her intent to issue the order. Failure to inform the governor renders the order invalid.


Sec. 46. In connection with any proceeding under section 35, subsection (1) of section 36 or section 37, the commissioner shall provide the appropriate federal supervisory authorities with notice of intent to institute such a proceeding and the grounds therefor. No institution or other party who is the subject of any notice or order issued by the commissioner under sections 35 to 46 shall have standing to raise the requirements.
of section 45 or this section with respect to notifying federal supervisory authorities as ground for attacking the validity of any notice or order.


CHAPTER 3

CORPORATE STRUCTURE

Bankers and fiduciaries; qualifications.

Sec. 51. (1) A person shall not engage in the business of banking in this state unless authorized by this act, the laws of another state, the national bank act, chapter 106, 13 Stat. 99, the international banking act of 1978, or if engaged in the business of banking on the effective date of this act under authority of former Act No. 341 of the Public Acts of 1937.

(2) Except for acting as an escrow agent, only an individual or corporation may act as a fiduciary in this state. A corporation acting as a fiduciary may do so only if the corporation is 1 of the following:

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

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

(c) An out-of-state bank, that is authorized to exercise trust powers under the law of the state where it is organized, provided that the laws of the state, District of Columbia, territory, or protectorate of the United States under which it is chartered allow a bank to exercise trust powers in its state, the District of Columbia, territory, or protectorate. An out-of-state bank authorized to exercise trust powers under this section may do so only to the extent a bank may exercise trust powers under this act.

(d) A national bank authorized to exercise trust powers under the national bank act, chapter 106, 13 Stat. 99, provided the national bank is located in this state, or, if the national bank is located in another state, the District of Columbia, or a territory or protectorate of the United States, the laws where the national bank is located allow a bank to exercise trust powers in that state, the District of Columbia, territory, or protectorate. A national bank authorized to exercise trust powers under this section may do so only to the extent that a bank may exercise trust powers under this act.

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

Banking business; incorporators.

Sec. 52. Except as otherwise provided in chapter 3A, any number of natural persons, not less than 5, a majority of whom are residents of this state and citizens of the United States or its territories or possessions, may incorporate to carry on the business of banking under this act.


Application by incorporators for permission to organize bank; form; contents; publication and proof of notice; waiver; examination and investigation; approval or disapproval; appeal.

Sec. 53. (1) Such persons shall apply to the commissioner for permission to organize a bank under this act, which application shall be on forms prescribed by the commissioner and shall set forth such information as the commissioner may require in addition to the following:

(a) Their names and addresses.

(b) Their present principal business occupations.
(c) Such information respecting their financial responsibilities as the commissioner may require.

(d) The nature and extent of their present or prior relationships, directly or indirectly, with banks, trust companies or other financial organizations.

(2) The incorporators, after making such application, shall publish notice twice and in consecutive weeks that the application has been made. The notice shall set forth the names and addresses of the incorporators and the proposed name and location of the bank to be organized. Proof of such notice shall be furnished to the commissioner within 30 days after the date of the application. The commissioner may waive the publication requirements, if in his opinion, such waiver is necessary or appropriate in the public interest.

(3) The commissioner shall examine the information and statements contained in the application as well as make any other or further investigation as to the persons, conditions and circumstances surrounding or in any manner affecting or pertaining to the organization of such bank, and he shall make a careful investigation sufficient to satisfy him as to:

(a) Whether the character, responsibility and fitness of the incorporators and of the proposed directors and officers, and their motives in seeking to organize the bank are such as to command the confidence of the community and to warrant the belief
that the business of the proposed bank will be honestly and
efficiently conducted.

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

(c) The likelihood of successful operation of the proposed
bank, giving consideration to, but not by way of limitation:

(i) Population density.

(ii) Economic characteristics of the area primarily to be
served.

(iii) The competition offered by existing banks and other
financial institutions.

(d) Whether the capital structure of the proposed bank meets
the requirements of section 7.

(e) Whether there has been or will be any violation of section
55.

(4) The commissioner shall approve or disapprove the
application in writing within 100 days of the receipt of the
application or the last amendment or supplement thereto, except
that in the case of an application to organize a new bank under
section 130(2)(a) for the sole purpose of consolidating or
merging the new bank with or into an existing bank, the
084 commissioner shall approve or disapprove the application in
084 writing within 30 days of the receipt of the application or the
084 last amendment or supplement thereto. If the commissioner
084 disapproves the application, the applicants may appeal in the
084 manner provided in section 30.


067 487.354 Application by depository institutions for permission to
067 incorporate bank; form; contents; examination and
067 investigation; notice of approval or disapproval; compliance;
067 ownership of shares of stock; "applicant" defined; rules.

067

084 Sec. 54. (1) Any number of depository institutions may apply to
084 incorporate a bank exclusively to serve depository institutions
084 or their officers, directors, and employees.

084 (2) A depository institution shall apply to the commissioner
084 for permission to organize a bank under this act, which
084 application shall be on forms prescribed by the commissioner and
084 set forth the information the commissioner requires.

084 (3) The commissioner shall examine the information contained in
084 the application and make any other investigation the commissioner
084 considers necessary pertaining to the organization of the new
084 bank. The commissioner shall issue to the applicants, within the
084 time period provided in section 30, written notice of approval or
084 disapproval of the application.
(4) A bank organized pursuant to this section is not subject to the provisions of section 53, but shall comply with all other provisions of the act, except as otherwise specifically provided in rules of the commissioner promulgated under subsection (7).

(5) The shares of stock of a bank organized pursuant to this section shall be owned exclusively by depository institutions.

(6) As used in this section, "applicant" means the depository institutions making an application pursuant to this section.

(7) The commissioner may promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, to implement and enforce this section. The rules shall be consistent with this section.


Sec. 55. In addition to paid-in capital and surplus requirements as set forth in section 71, each subscriber at the time he subscribes to the stock of a proposed bank shall pay in cash a sum at least equal to 5% but not more than 10% of the par value of such stock into a fund to be used to defray the expenses.
of organization. No organization expense shall be paid out of any other funds of the bank. If the application is approved, any unexpended balance shall be transferred to undivided profits. If the application has been finally denied, any unexpended balance shall be distributed among the contributors in proportion to their respective payments. The commissioner may require an account of disbursements from the fund and may order the incorporators to restore any sum which has been expended for other than proper organizational expenses. Not more than 75% of the organization expense fund shall be expended for obtaining subscriptions to stock.


Sec. 58. (1) Upon approval of the application by the commissioner, at least 4 original articles of incorporation, executed by a majority of the applicants and acknowledged before any officer authorized by the laws of this state to take and certify acknowledgments, shall be submitted to the commissioner. If the commissioner finds that the articles conform to law and that all fees and charges have been paid as required by law, he shall approve and file 1 of the original articles in his office, certify and forward 1 of the original articles to the county clerk of the county in which the bank is located, 1 of the original articles to the corporation division of the department of treasury, and 1 of the original articles to the incorporators.
(2) As a condition precedent to approving, certifying and distributing the articles of incorporation, the incorporators shall furnish evidence that a firm commitment to insure deposit accounts up to the maximum permitted by federal law has been issued by the federal deposit insurance corporation, unless the commissioner, for good cause shown, waives such requirement.


487.361 Articles of incorporation; contents.

Sec. 61. The articles of incorporation shall specify:

(a) The name of the bank which shall not resemble the name of any other bank transacting business in this state so closely as to be likely to cause confusion.

(b) The county and the city, incorporated village or township where the principal office of the bank is to be located and to conduct its business.

(c) The purpose or purposes of incorporation as provided in this act.

(d) The authorized amount of its capital stock, and:

(i) If the bank is to be authorized to issue only 1 class of stock, the total number of shares of stock which the bank may
issue and the par value of each of such shares.

(ii) If the bank is to be authorized to issue more than 1 class of stock, a statement of the total number of shares of all classes of stock which the bank may issue, the number of shares of each class thereof, the par value of each share of each class and a statement of all or any of the designations, powers, preferences and rights, and the qualifications, limitations and restrictions thereof.

e) The names, places of residence and addresses of the incorporators and the number of shares subscribed for by each.

(f) The period for which the bank is organized, which may be in perpetuity.

g) Any other provisions consistent with the laws of this state for regulating the business of banking and for the conduct of the affairs of the bank.


Sec. 64. The filing of the articles or any other papers pursuant to the provisions of this act is required for the purpose of affording all persons the opportunity of acquiring knowledge of the contents thereof but a person dealing with the
corporation shall not be charged with or be entitled to assert constructive notice of the contents of any articles or papers by reason of the filing except shareholders, officers and directors of the corporation.


487.366 Body corporate; preliminary powers.

Sec. 66. When the commissioner approves and files the articles of incorporation as required by this act, the bank shall become a body corporate. A bank shall not transact any business, except such as is incidental and necessarily preliminary to its organization, until it has been authorized by the commissioner to commence the business of banking.


487.367 Commencement of business; time period; notice; examination; certificate showing authorization.

Sec. 67. (1) Within 30 days after the approval and filing of its articles of incorporation, or such later time not to exceed 1 year as approved by the commissioner, the bank shall notify the commissioner that all of its capital and surplus has been fully paid in and that it has complied with all the provisions of this act required to be complied with before a bank shall be authorized to commence the business of banking.
(2) The commissioner shall make such examinations as he deems necessary to verify the same and if it appears that the bank is lawfully entitled to commence business, the commissioner, within 30 days after receiving the notice provided for in this section, shall give to the bank a certificate under the official seal of the bureau that the bank has complied with all of the required provisions and is authorized to commence business.

(3) The application shall be deemed abandoned and of no further effect if the bank fails to furnish the notice provided for in this section within the specified time or fails to comply with the required provisions within such period of time as the commissioner determines.


487.369 First meeting of bank incorporators; notice; contents; service; waiver.

Sec. 69. The first meeting of every bank shall be called by a notice signed by any incorporator designating the time and place of the meeting and stating the purpose for which such meeting is called. The notice shall be served personally on all the incorporators at least 5 days before the date set for the meeting. If all the incorporators are present at the meeting or in writing waive notice and fix a time and place of meeting, then no notice shall be required for the first meeting.

Sec. 71. (1) A bank hereafter organized shall have capital in such an amount as the commissioner deems adequate on the basis of the population of the area to be served and the anticipated nature of the institution's business but in no event less than $100,000.00, except that if a new bank is organized under section 130(2)(a) for the sole purpose of effecting its consolidation or merger with an existing bank having its principal office in the same city or village as the new bank and if upon completion of the consolidation or merger a bank holding company becomes the owner of all of the outstanding voting shares of the consolidated organization, then this subsection shall not apply to the new bank but shall apply to the consolidated organization.

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

(3) After organization each bank shall maintain an adequate capital structure appropriate for the conduct of its business and the protection of its depositors. The capital adequacy of a bank shall be analyzed and appraised in relation to the character of its management, the liquidity of assets, history of earnings and of the retention thereof, the potential volatility of the deposit structure and with due regard to the bank's capacity to furnish the broadest service to the public.

(4) At all times a bank shall maintain surplus in an amount
084 which is equal to at least the amount of its capital, except as
084 provided in subsection (2) as to the initial surplus and except
084 as provided in section 85, and shall not reduce surplus without
084 the approval of the commissioner.


487.373 Capital notes, debentures and other evidences of
indebtedness; procedure to issue.

Sec. 73. Any bank, with the approval of shareholders owning 2/3
of the stock of the bank entitled to vote, may issue capital
notes, debentures, and any other instrument of indebtedness, with
or without warrants for preferred and/or common stock,
convertible and nonconvertible, subordinated on insolvency,
liquidation, or dissolution to all obligations except obligations
to shareholders as such, in such amounts and under such terms and
conditions as are approved by the commissioner on the basis of
normal business considerations. In connection with the issuance
of convertible capital notes, debentures or any other instrument
of indebtedness, the commissioner may grant approval for the bank
to reserve such number of authorized and unissued shares of
capital stock as shall be required for issuance in exchange for
capital notes and debentures with respect to which conversion
privileges exist. If capital notes, debentures or any other
instrument of indebtedness are converted into shares of common or
preferred stock, a verified certificate executed by the president
of the bank stating the amount of such conversion, and such other
information with respect thereto as the commissioner may require, shall be filed in the office of the commissioner. Outstanding capital notes, debentures and any other instrument of indebtedness issued pursuant to this section shall be added to "capital" and "capital stock" as such terms are used in sections 188, 189, 194, 196 to 198 and 233 for the purpose of computing the limitations contained in those sections based on amounts of capital and capital stock.

Sec. 75. Whenever a vote of the holders of shares of stock is required in this act, those provisions shall apply only to the voting stock in the bank, out-of-state bank, national bank, association, or savings bank, voting by classes.

Sec. 77. (1) There shall be issued to every shareholder in a bank certificates of stock which shall be transferable on the books of the bank in such manner as may be prescribed in the
byslaw or articles of incorporation. A transfer of stock shall not be valid against the bank, except with the consent of the board of directors, so long as the registered holder thereof is liable as principal debtor, surety or otherwise to the bank for any debt which is due and unpaid.

(2) Whenever the registered holder of stock of a bank is liable to it as principal debtor, surety or otherwise for any debt which is due and unpaid, the directors of the bank may sell a sufficient amount of the stock of the delinquent shareholder in the same manner and with the same effect as provided in section 201 in the case of an unpaid assessment on the stock of the bank. Nothing contained in this section shall prevent the bank from bringing proceedings to recover the entire amount of the indebtedness at any time before any such sale or to recover the balance of the debt and costs after the proceeds of sale have been applied against the debt and costs or to recover the balance of the debt after the cancellation of the stock.

(3) The rights of any bank in its stock under this section shall be subject to any pledge, sale or other transfer of the stock which is made prior to the maturity of any indebtedness of the registered holder thereof to the bank and of which the bank has knowledge prior to the maturity, whether or not the stock was transferred on the books of the bank. Any stock of a bank which is pledged, sold or otherwise transferred prior to the maturity of any indebtedness of the registered holder thereof to the bank and of which pledge, sale or other transfer the bank has knowledge prior to the maturity, may be transferred on the books
of the bank after the maturity without the consent of the board
of directors of the bank. The rights of any bank in its stock
under this section, including the limitation on transferability
if the registered holder is liable to the bank for any debt which
is due and unpaid, shall not be applicable with respect to any
stock duly listed on any stock exchange.

(4) Certificates hereafter issued shall state (a) the name and
location of the bank, (b) the name of the holder of record of the
stock represented thereby, (c) the number, par value and class of
shares which the certificates represent, (d) if the bank issues
stock of more than 1 class, the respective rights, preferences,
privileges, voting rights, powers, restrictions, limitations and
qualifications of each class of stock issued shall be stated in
full or in summary upon the front or back of the certificates or
shall be incorporated by a reference to the articles of
corporation set forth on the front of the certificates and (e)
if the stock is not listed, that no transfer thereof shall be
valid against the bank so long as the registered holder is liable
as principal debtor, surety or otherwise to the bank, except with
the approval of the board of directors or except as otherwise
provided in this act. Every certificate hereafter issued shall be
signed by the president or vice president and cashier or
assistant cashier of the bank or by such other officers as the
bylaws of the bank shall provide and shall be sealed with the
seal of the bank.

(5) Notwithstanding any law to the contrary, where any share
certificate is signed by a transfer agent or by a transfer agent
and a registrar, the signature of any officers of the bank required thereon or the seal of the bank may be a facsimile. If any officer who has signed share certificates or whose facsimile signature has been used thereon ceases to be such officer, whether because of death, resignation or otherwise, before the certificate has been delivered by the bank, the certificate nevertheless, may, be adopted by the bank and delivered as though the person who signed it or whose facsimile signature has been used thereon had not ceased to be such officer.


Sec. 79. (1) With the approval of the commissioner, and by a vote of shareholders owning 2/3 of each class of the stock entitled to vote, a bank may increase its capital stock to any sum approved by the commissioner, either by an increase in the par value of the existing stock or by the issuance of new stock, including preferred stock. An increase in capital shall not be valid until the whole amount of the increase is paid in and notice thereof, duly acknowledged before a notary public by the president, vice president, cashier, or assistant cashier of the bank, has been transmitted to the commissioner and his or her certificate obtained specifying the amount of the increase in capital stock and that it has been duly paid in as a part of the capital of the bank. The certificate shall be conclusive evidence
that the stock has been duly and validly issued. In the case of the issuance of new stock, in voting upon the increase of capital stock, the shareholders entitled to vote shall have power, by the same statutory majority, to fix the value of, and the price at which the increase of the capital stock shall be subscribed and paid for by the shareholders, but not less than par, as well as the time and manner of the subscription and payment, and to authorize the directors to sell the capital stock.

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

authorize the formation of such a bank. The reduction may be accomplished by a reduction in the par value of the existing stock or by a reduction in the number of the shares of such stock. A reduction shall not be made until the amount of the proposed reduction has been reported to the commissioner and has been approved by him.

(2) The approval of the commissioner shall be based upon a finding by him that the security of existing creditors of the bank will not be impaired by the proposed reduction. Nothing herein contained shall operate in any way to discharge any bank which may decrease its capital stock from any obligation or demand that may be due from the bank.

(3) Retirement of preferred stock in accordance with the provisions of the articles of incorporation shall not be deemed to be a reduction of capital under the provisions of this section.

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

Sec. 85. (1) From time to time, the board of directors of a bank may declare and pay dividends on the common stock of the bank subject to the following restrictions:

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

(b) A cash dividend or dividend in kind shall not be declared by any bank except out of net profits then on hand after deducting therefrom its losses and bad debts. All debts due the bank on which interest is past due and unpaid for a period of 6 months, unless the debts are well secured and in process of collection or the debts constitute claims against solvent estates in probate, shall be considered bad debts within the meaning of this section.

(c) A cash dividend or dividend in kind shall not be declared or paid until the cumulative dividends on preferred stock, if any, have been paid in full.

(d) If at any time the surplus of a bank is less than the amount of its capital, before the declaration of a cash dividend or dividend in kind, it shall transfer to surplus not less than 10% of its net profits of the preceding half-year in the case of quarterly or semiannual dividends, or not less than 10% of its net profits of the preceding 2 consecutive half-year periods in the case of annual dividends. For the purpose of this section, any amounts transferred to a reserve account for the retirement
084 of any preferred stock of any bank out of its net profits for
084 such periods shall be deemed to be additions to its surplus, if,
084 upon the retirement of the preferred stock, the amounts so
084 credited into the retirement reserve may then properly be carried
084 to surplus. In any such case the bank shall be obligated to
084 credit to surplus the amounts transferred into the retirement
084 reserve on account of the preferred stock as such stock is
084 retired.

084

084 (e) For the purpose of this section the term "net profits"
084 means the remainder of all earnings from operations plus actual
084 recoveries on loans and investments and other assets, after
084 deducting from the total thereof all operating expenses, actual
084 losses, accrued dividends on preferred stock, if any, and all
084 taxes.

084

084 (f) Without regard to the foregoing limitations of this
084 section, any bank, with the approval of the commissioner, and by
084 vote of shareholders owning 2/3 of the stock entitled to vote,
084 may increase its capital stock by declaration of a stock dividend
084 on such capital stock. After the increase the surplus of the bank
084 shall be at least equal to 20% of the capital stock as increased.
084 No such increase shall be effective until a certificate of such
084 declaration of dividend, signed by the president, vice president,
084 cashier or assistant cashier of the bank and duly acknowledged
084 before a notary public, shall have been transmitted to the
084 commissioner and his certificate obtained specifying the amount
084 of the increase of capital stock by stock dividend and his
084 approval thereof.
(2) Any bank may pay dividends on its preferred stock at such rate as may be applicable without regard to any of the limitations of this section.


487.391 Shareholders' meetings; voting rights; fiduciaries; pledges.

Sec. 91. (1) The annual meeting of the shareholders of every bank shall be held on the day in each year that is provided in the bylaws of the bank. Special meetings of shareholders shall be called and held as provided in the bylaws of the bank.

(2) At any meeting, each shareholder entitled to vote shall be entitled to 1 vote for each share held by the shareholder. A shareholder may vote at any meeting of the bank by proxy in writing signed by the shareholder.

(3) A bank may provide in the initial articles of incorporation or by amendment to the articles by a vote of shareholders owning a majority of the total number of shares of each class of its outstanding capital stock, that in an election of directors each shareholder may cast as many votes as the number of shares owned by the shareholder multiplied by the number of directors to be elected. In the shareholder's discretion, the shareholder may distribute their total number of votes cumulatively for 1 or more of the candidates.
(4) A person holding shares of the capital stock of a bank in a fiduciary capacity shall be entitled to vote the shares unless the trust instrument contains a provision to the contrary. A person whose shares are pledged shall be entitled to vote unless in the transfer by the pledgor on the books of the bank, he or she has expressly empowered the pledgee to vote the shares, in which case only the pledgee or his or her proxy may vote the shares.

(5) A shareholder shall not vote his or her stock except in person or by proxy. This prohibition does not apply to a voting trust agreement of shareholders with respect to the voting of stock, if the agreement has been approved by the commissioner.


487.393 Shareholders' meetings called by commissioner; notice.

Sec. 93. The commissioner, whenever he deems it expedient, may call a meeting of the shareholders of any bank, for any purpose, by giving a notice of the time, place and purposes thereof at least 3 days prior to said meeting to the shareholders either by personal service, by registered or certified mail sent to their last known addresses as shown by the books of the bank or by publication thereof at least once in each week for 4 consecutive weeks prior to the meeting.
Sec. 94. (1) Each bank shall keep and maintain a stock ledger in which shall be correctly entered the name and address of each shareholder of the bank, the number of shares held by each, the date when such shareholder acquired the shares and the name of the transferor. In lieu of the foregoing requirements the board of directors of any bank may designate any corporation authorized by law to act as transfer agent or registrar of shares of corporations, to act as transfer agent or transfer agent and registrar of the shares of the bank; but the same corporation shall not be designated to act in both capacities at the same time.

(2) Within 2 calendar weeks of any demand therefor made by the commissioner, a bank shall file with the commissioner a list containing the name and address of each shareholder of the bank together with the number of shares held by each according to its records as of the close of business on the date of issuance of the demand. Within 2 calendar weeks of any demand therefor made for proper cause by any shareholder being the record owner of at least 5% of the issued shares of the bank or on the demand for proper cause of any person representing any group who are the record owners of at least 5% of the issued shares of the bank, the bank shall prepare and furnish the requestor a list containing the name and address of each shareholder of the bank.
Sec. 96. (1) A bank shall be managed by a board of not less than 5 nor more than 25 directors. The first board shall be elected by the incorporators at a meeting held before the bank is authorized to commence business and thereafter at the annual meeting of the shareholders or at any subsequent meeting called for the purpose of which notice is given as provided in the bylaws of the bank. The board of directors may fill any vacancy on the board for the current year. The shareholders may elect not to exceed 2 less than the full board and the unfilled directorships are considered vacancies and may be filled by the board of directors. Directors shall hold office until their successors are elected and have qualified.

(2) The board of directors shall meet not less than 6 times per fiscal year for the purpose of carrying out their duties under this section. The minutes of each meeting shall be kept and signed by the presiding officer and the secretary of the meeting. A majority of the board of directors constitutes a quorum for the transaction of business.
(3) The commissioner may call a meeting of the board of directors of any bank, for any purpose, by giving a notice of the time, place, and purpose of the meeting at least 3 days prior to the meeting date to the directors by personal service, by registered or certified mail, or by publication at least once in each week for 4 consecutive weeks prior to the meeting date.


487.397 Directors; oath; filing.

Sec. 97. Every director when elected or appointed shall take and subscribe an oath that he will diligently and honestly perform his duties in such office and will not knowingly violate, or permit to be violated, any provisions of this act. The oath shall be transmitted to the commissioner for filing.


487.399 Directors; purchase from or sales to; disclosure.

Sec. 99. (1) A bank may contract for, or purchase from, any of its directors, or from any firm of which any of its directors is a member, any securities or other property, only when such purchase is made in the regular course of business upon terms not less favorable to the bank than those offered by others, or when such purchase is authorized by a majority of the board of directors not interested in the sale of such securities or
property, which authority shall be evidenced by the affirmative vote or written assent of such directors. When any director, or firm of which any director is a member, acting for or on behalf of others, sells securities or other property to a bank, the commissioner by rule may require a full disclosure to be made, in any or all cases, on forms prescribed by him, of all commissions or other considerations received. Whenever a director or firm, acting in his or its own behalf, sells securities or other property to the bank, the commissioner, by rule, may require a full disclosure of all profits realized from such sale.

(2) A bank may sell securities or other property to any of its directors, or to a firm of which any of its directors is a member, in the regular course of business on terms not more favorable to the director or firm than those offered to others, when the sale is authorized by a majority of the board of directors of a bank evidenced by their affirmative vote or written assent. Nothing in this section shall be construed as authorizing banks to purchase or sell securities or other property which banks are not otherwise authorized by law to purchase or sell.
with that degree of diligence, care, and skill which an
ordinarily prudent person would exercise under similar
circumstances in a like position. In discharging his or her
duties, a director or an officer, when acting in good faith, may
rely upon the opinion of legal counsel for the bank, upon the
report of an independent appraiser selected with reasonable care
by the board or by an officer of the bank, or upon financial
statements of the bank represented to him or her to be correct by
the president or the officer of the bank having charge of its
books of account, or as stated in a written report by an
independent public or certified public accountant or firm of
accountants fairly to reflect the financial condition of the
bank.

(2) The articles of incorporation of a bank may contain a
provision providing that a director is not personally liable to
the bank or its shareholders for monetary damages for a breach of
the director's fiduciary duty. However, the provision does not
eliminate or limit the liability of a director for any of the
following:

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

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

(c) A violation of section 43.
(d) A transaction from which the director derived an improper personal benefit.

(e) An act or omission occurring before January 1, 1987.

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


Sec. 101. (1) A bank may indemnify any person who was or is a party or is threatened to be made a party to a threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal, other than an action by or in the right of the bank, or by reason of the fact that he or she is or was a director, officer, employee, or agent of the bank or is or was serving at the request of the bank as a director, officer, partner, trustee, employee, or agent of another bank or national banking association, foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, against expenses, including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement actually and
reasonably incurred by him or her in connection with the action, suit, or proceeding if the person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the bank or its shareholders, and with respect to any criminal action or proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, does not, of itself, create a presumption that the person did not act in good faith and in a manner that he or she reasonably believed to be in or not opposed to the best interests of the bank or its shareholders, and with respect to a criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

(2) A bank may indemnify a person who was or is a party to or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the bank to procure a judgment in its favor by reason of the fact that he or she is or was a director, officer, employee, or agent of the bank or is or was serving at the request of the bank as a director, officer, partner, trustee, employee, or agent of another bank or national banking association, foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, against expenses, including actual and reasonable attorneys' fees and amounts paid in settlement incurred by the person in connection with the action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests
of the bank or its shareholders. However, indemnification shall not be made for a claim, issue, or matter in which the person has been found liable to the bank unless and only to the extent that the court in which the action or suit was brought has determined upon application that, despite the adjudication of liability but in view of all circumstances of the case, the person is fairly and reasonably entitled to indemnification for the expenses which the court considers proper.


Sec. 102. (1) To the extent that a director, officer, employee, or agent of a bank has been successful on the merits or otherwise in defense of an action, suit, or proceeding described in section 101, or in defense of any claim, issue, or matter in the action, suit, or proceeding, he or she shall be indemnified against expenses, including actual and reasonable attorneys’ fees, incurred by him or her in connection with the action, suit, or proceeding and an action, suit, or proceeding brought to enforce the mandatory indemnification provided in this subsection.

(2) An indemnification under section 101, unless ordered by a court, shall be made by the bank only as authorized in the specific case upon a determination that indemnification of the
director, officer, employee, or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in section 101. This determination shall be made in any of the following ways:

(a) By a majority vote of a quorum of the board consisting of directors who were not parties to the action, suit, or proceeding.

(b) If the quorum described in subdivision (a) is not obtainable, then by a majority vote of a committee of directors who are not parties to the action. The committee shall consist of not less than 2 disinterested directors.

(c) By independent legal counsel in a written opinion.

(d) By the shareholders.

(3) If a person is entitled to indemnification under section 101 for a portion of expenses, including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount of the expenses, the bank may indemnify the person for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.

Sec. 103. Expenses incurred in defending a civil or criminal action, suit, or proceeding described in section 101 may be paid by the bank in advance of the final disposition of the action, suit, or proceeding upon receipt of an undertaking by or on behalf of the director, officer, employee, or agent to repay the expenses if it is ultimately determined that the person is not entitled to be indemnified by the bank. The undertaking shall be by unlimited general obligation of the person on whose behalf advances are made but need not be secured.


Indemnification or advancement of expenses not exclusive of other rights; limitation; continuation of indemnification.

Sec. 104. The indemnification or advancement of expenses provided by or granted under sections 101 to 103 is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under the articles of incorporation, the bylaws, or a contractual agreement. However, the total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses. The indemnification provided for in sections 101 to 103 continues as to a person who ceases to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of the person.
Sec. 104a. A bank has the power to purchase and maintain insurance, including insurance issued by an affiliated insurer and insurance for which premiums may be adjusted retroactively, in whole or in part, based upon claims experience, or similar arrangements. A bank may also create a trust fund or other form of funded arrangement on behalf of any person who is or was a director, officer, employee, or agent of the bank or is or was serving at the request of the bank as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, against any liability asserted against him or her and incurred by him or her in any capacity or arising out of his or her status in that capacity, whether or not the bank has the power to indemnify him or her against the liability under sections 101 to 104.
a director, officer, employee, or agent of the bank, out-of-state
bank, national bank, association, or saving bank or is or was
serving at the request of the bank, out-of-state bank, national
bank, association, or saving bank as a director, officer,
partner, trustee, employee, or agent of another bank,
out-of-state bank, national bank, association, or saving bank,
foreign or domestic corporation, partnership, joint venture,
trust, or other enterprise, whether for profit or not, shall hold
the same position with respect to the consolidated bank as he or
she would if he or she had served the consolidated bank in that
capacity.


487.404c "Other enterprise" and "serving at the request of the
bank" defined for purposes of SS 487.401 to 487.404b.

Sec. 104c. For the purposes of sections 101 to 104b, "other
enterprise" shall include employee benefit plans; "fines" shall
include any excise taxes assessed on a person with respect to an
employee benefit plan; and "serving at the request of the bank"
shall include any service as a director, officer, employee, or
agent of the bank which imposes duties on, or involves services
by, the director, officer, employee, or agent with respect to an
employee benefit plan, its participants or beneficiaries; and a
person who acted in good faith and in a manner he or she
reasonably believed to be in the interest of the participants and
beneficiaries of an employee benefit plan shall be considered to
Sec. 105. (1) With the approval of the commissioner, and by vote of shareholders owning a majority of voting shares of the bank, a bank may amend its articles of incorporation in any manner not inconsistent with the provisions of this act. An amendment shall be operative when certified copies thereof, in such form as the commissioner may require, signed in the name of the bank by the president or a vice-president and the cashier or an assistant cashier, and acknowledged before a notary public by the president or vice-president signing the same, have been submitted to the commissioner and have been approved and filed by the commissioner as in the case of original articles of incorporation.

(2) Notwithstanding subsection (1), an amendment that provides solely for a change in the name of the bank is not subject to the approval of the commissioner and shall be effective on the date it is filed with the commissioner or at a later date specified in the amendment.


Sec. 111. (1) A solvent bank may go into liquidation and be closed upon expiration of its corporate charter or by the vote of its shareholders owning 2/3 of its stock entitled to vote. In the event of such termination, the last board of directors immediately upon expiration of its corporate charter or adoption of the resolution by the shareholders shall notify the commissioner of such action by filing with him in quadruplicate a certificate of termination signed by a majority of the remaining members of the board of directors, which certificate shall be in such form as the commissioner may prescribe.

(2) The shareholders shall designate 1 or more persons to act as a liquidating agent or committee and the agent or committee shall conduct the liquidation in accordance with law and under the supervision of the commissioner and the board of directors. The agent or committee shall furnish to the bank a bond satisfactory to the commissioner in form and amount. The liquidating agent or committee shall render to the commissioner reports in such form and at such times as he may require. The liquidating agent or committee shall make periodic reports not less frequently than annually to the shareholders. At any lawfully convened meeting, by vote of the majority of the stock entitled to vote, the shareholders may remove the liquidating agent or committee and appoint a new agent or a new committee.

(3) The commissioner may examine into the affairs of the bank...
so liquidating at any time for the purpose of determining that the rights of the depositors and creditors are being properly served. The expenses of the examination shall be paid by the bank but shall not exceed $100.00 per day for each examiner and actual expenses incurred while making the examination, to be credited to the general fund.

(4) The liquidating agent or committee shall publish a notice once each week for 8 consecutive weeks informing depositors and creditors to present their claims against the bank for payment and proof of the publication shall be made to the commissioner by the liquidating agent or committee. The provisions of this section with respect to publication of notice shall not apply to any bank in voluntary liquidation which disposes of sufficient of its assets to a state or national bank to pay its depositors and creditors in full or if all of its liabilities are assumed by such state or national bank.

(5) When the commissioner finds that a liquidation has been completed in conformity to law and when all fees and charges have been paid as required by law, he shall file 1 copy of the certificate of termination in the office of the bureau and shall certify and forward by mail 1 copy to the corporation division, department of treasury, 1 copy to the county clerk in the county in which the bank is located and 1 copy to the liquidating agent or committee, and the existence of the bank shall thereupon cease, subject to the provisions of section 113.

Sec. 113. (1) A bank which commences voluntary liquidation proceedings as provided in section 111 shall continue to be a body corporate for the further term of 3 years from the commencement of the proceedings for the purpose of prosecuting and defending actions for or against it and of enabling it gradually to settle and close its affairs; to dispose of and convey its property; and to divide its assets; but not for the purpose of continuing the business for which it was organized.

(2) With respect to any action, suit or proceeding begun or commenced by or against the bank prior to the commencement of voluntary liquidation proceedings, and with respect to any action, suit or proceeding begun or commenced by the bank within 3 years after the commencement of voluntary liquidation proceedings, the bank shall be continued as a body corporate beyond the 3-year period and until any judgments, orders or decrees therein are fully executed.

(3) Whenever the number of directors of a bank which has commenced voluntary liquidation proceedings is less than the full number of directors required or authorized by statute or by the bylaws of the bank for any reason, a majority of the remaining surviving directors or the sole surviving director, during the period of 3 years, shall possess the same powers in acting for the bank under this section as the duly authorized board of
084 directors of the bank possessed before the commencement of
084 voluntary liquidation proceedings or during the term of 3 years.
084
084  (4) A bank in liquidation under the laws of this state may
084 continue to be a body corporate for further terms upon
084 application to the commissioner, which extensions shall be from
084 year to year at the discretion of the commissioner until the
084 liquidation is completed.
084
067
067 487.415 Corporate term; extension prior to expiration.
067
084  Sec. 115. A bank whose term will expire by limitation, at any
084 time preceding the expiration of such term, by amendment of its
084 articles, may extend its corporate term for a limited period of
084 time or in perpetuity.
084
067
067 487.416 Corporate term; renewal after expiration.
067
084  Sec. 116. A bank whose term has expired, but which has not been
084 wound up or dissolved and which has nevertheless inadvertently
084 continued its active business beyond such term, may renew its
084 corporate existence by amendment of its articles with the consent
084 of the holders of at least 4/5 of its capital stock. The officers
084 and directors de facto shall do and perform all things required
084 of officers and directors de jure as respects calling a special
meeting of the shareholders and submitting to them the question
of renewing the corporate existence. No bank de facto shall be
permitted to renew its corporate life unless the action is taken
within 3 years after its term has expired and renewal shall not
relieve the bank from any penalties that may have accrued against
it under any law of this state.


Sec. 118. A bank whose term has been extended or renewed shall
be the same bank and shall have the same shareholders, directors
and officers, shall have and enjoy all the rights, privileges,
immunities and powers and be subject to all the liabilities which
it respectively possessed and was subject to before the extension
or renewal of its existence.


Sec. 121. (1) With the approval of the commissioner based upon
an examination or other appropriate analysis of either the buying
or selling organization, or both, and upon the affirmative vote
of a majority of the members of its board of directors and of the
holders of 2/3 of its stock entitled to vote, a bank may do
either or both of the following:

(a) Sell all or substantially all of its assets of every kind, character, and description, including, but not limited to, its goodwill and corporate franchises, to any bank, out-of-state bank, national bank, association, or savings bank.

(b) Purchase all or substantially all of the assets of every kind, character, and description, including, but not limited to, its goodwill and corporate franchises, and assume the liabilities of any bank, out-of-state bank, national bank, association, or savings bank.

(2) The consideration for a purchase and sale under this section may include shares of stock of the purchasing bank, out-of-state bank, national bank, association, or savings bank. A purchase and sale shall not be made to defeat or defraud any of the creditors of the organizations.

(3) Certified copies of all shareholders' and directors' proceedings under this section shall be filed with the commissioner and shall contain in detail the particulars relating to the sale and purchase, including a copy of the agreement of sale and purchase.

Sale or purchase of branches by bank.

Sec. 122. (1) A bank may sell 1 or more of its branches, without selling all or substantially all of the bank, to a bank, out-of-state bank, national bank, association, or savings bank located in a state whose laws would permit a bank to purchase 1 or more branches in that state of the purchasing depository institution.

(2) A bank may purchase 1 or more branches, without purchasing all or substantially all of the depository institution, from a bank, out-of-state bank, national bank, association, or savings bank.

(3) A bank that purchases 1 or more branches under subsection (2) shall provide notice to the commissioner under section 171 before operating the purchased branch or branches.


Actions and events occurring on or before November 29, 1995; effect of written agreement.

Sec. 123. A written agreement entered into under former section 130b shall remain in effect with regard to actions taken and events occurring on or before November 29, 1995. A cause of action shall not accrue under such an agreement for an action taken or event occurring after November 29, 1995.
Sec. 124. Notwithstanding the Riegle-Neal interstate banking and branching efficiency act of 1994, Public Law 103-328, 108 Stat. 2338, to the contrary, there shall be no limit upon the amount or share of deposits held or controlled in this state by any bank, out-of-state bank, national bank, or bank holding company on a consolidated basis.

Sec. 125. (1) Subject to approval by the commissioner, a bank may consolidate with any number of consolidating organizations to form a consolidated bank.

(2) The approval of the commissioner shall be based on an examination or other appropriate analysis of each consolidating organization and the agreement of consolidation. A consolidation shall not be made to defeat or defraud any of the creditors of any of the consolidating organizations.
084 (3) A majority of the directors of each organization proposing
to consolidate may enter into an agreement, signed by them, or by
their designated representative or representatives, and under the
seals of the respective organizations, prescribing the terms and
conditions of consolidation, the mode of carrying the
consolidation into effect, and stating other facts required or
permitted by the provisions of this act and any laws of the
United States that are to be set out in the articles, as can be
stated in the case of a consolidation, to be stated in such
altered form as the circumstances of the case require, as well as
the manner of converting the shares of each of the consolidating
organizations, into shares of the consolidated organization, with
other details and provisions as are considered necessary.

084 (4) The proposed consolidation agreement shall be submitted to
the shareholders of each consolidating organization, at a
separate meeting called by the directors for the sole purpose of
considering the agreement. A notice indicating the time, place,
and purpose of the meeting shall be given by publication at least
once a week for 4 consecutive weeks preceding the date of the
meeting. A copy of the notice shall also be mailed to each
shareholder of each consolidating organization at his or her last
known address as appears from the stock records of the
consolidating organizations, by registered or certified mail, at
least 10 days prior to the date of the meeting. No notice by
publication or otherwise shall be required if it is waived. At
the meeting, the proposed consolidating agreement shall be
considered and a vote by ballot, in person or by proxy, taken for
the adoption or rejection of the agreement. At the meeting, each
share of stock shall entitle the holder to 1 vote. If the votes
of shareholders of each consolidating organization representing
2/3 of the total number of shares of each class of each
consolidating organization's outstanding capital stock are cast
for the adoption of the agreement, that fact shall be certified
on the agreement by the cashier or assistant cashier, secretary
or assistant secretary of each of the consolidating
organizations. If the agreement is adopted and certified, it
shall be acknowledged by the president or a vice-president of
each of the consolidating organizations, before any officer
authorized to take acknowledgment of deeds, to be the respective
act, deed, and agreement of each of the consolidating
organizations. If an out-of-state bank, national bank,
association, or savings bank is a consolidating organization and
approval is required by the laws of another state or of the
United States, that organization shall furnish a certified copy
of consent or approval of the appropriate state or federal
regulator of the consolidation to the commissioner. The
consolidation agreement required by this section shall be filed
with the commissioner who shall certify upon the agreement the
date it was filed. The filing with the commissioner shall be the
act of consolidation of the consolidating organizations. The
consolidation agreement or a copy certified by the commissioner,
is evidence of the agreement and act of consolidation of the
consolidating organizations and the observance and performance of
all necessary acts and conditions precedent to the consolidation.
A bank holding company that is the sole shareholder of all of the
outstanding issued stock of a bank, out-of-state bank, or
national bank that is a consolidating organization in a proposed
consolidation may waive the shareholder meeting requirement of
this subsection.

(5) In effecting a consolidation, stock of the consolidated
bank may be issued in accordance with this act and as provided by
the terms of the consolidation agreement free from any preemptive
rights of the shareholders of the respective consolidating
organizations.

Nov. 29, 1995.

***** 487.425a  SUBSECTION (1)(a) DOES NOT APPLY AFTER MAY 31,
1997: See subsection (2) of 487.425a  *****

487.425a  Formation of consolidated organization; conditions;
applicability of subsection (1)(a).

Sec. 125a. (1) A bank may consolidate with any number of
consolidating organizations to form a consolidated organization
in accordance with the laws under which the consolidated
organization is chartered, if the following apply:

(a) Consolidation is permitted by the laws under which each
consolidating organization is organized and the appropriate
regulator or regulators approve the consolidation.
(b) The consolidating organizations provide notice to the commissioner by filing a copy of the application for consolidation within 10 days after the date the application is filed with the appropriate federal regulator.

(c) The consolidated organization complies with section 126(4) with respect to notice of consolidation, but that notice is limited to a court, public tribunal, agency, or officer of this state.

(2) Subsection (1)(a) does not apply after May 31, 1997.


Sec. 126. (1) When filing and approval of the consolidation agreement as required by section 125 have been completed, the corporate existence of each consolidating organization is merged into and continued in the consolidated bank. To the extent authorized by this act, the consolidating bank possesses all the rights, interests, privileges, powers, and franchises and is subject to all the restrictions, disabilities, liabilities, and duties of each of the consolidating organizations. The title to all property, real, personal, and mixed, is transferred to the consolidated bank, and shall not revert or be in any way impaired by reason of this act.
(2) A consolidated bank holds and enjoys the same and all rights of property, franchises, and interests, including appointments, designations, and nominations and all other rights and interests in any fiduciary capacity, in the same manner and to the same extent as those rights and interests were held or enjoyed by each consolidating organization at the time of the consolidation. If a consolidating organization at the time of consolidation was acting under appointment of any court in a fiduciary capacity, the consolidated bank is subject to removal by a court of competent jurisdiction.

(3) A consolidated bank shall file with each court or other public tribunal, agency, or officer in any state by which any of the consolidating organizations shall have been appointed in the capacity of fiduciary or agent, and in the court file of each estate, suit, or any other proceeding in which any of them has been acting, an affidavit setting forth the fact of consolidation, the name of each consolidating organization, the name of the consolidated bank, the location of its main office, and the amount of its capital and surplus. This subsection does not require filing of an affidavit related to any consolidating organization that after the consolidation retains the same corporate name, charter, and main office location.

Sec. 127. A certified copy of the agreement of consolidation, after filing and approval of the commissioner, shall be recorded in the office of the register of deeds of each county where real property owned by any of the consolidating organizations is situated.


Sec. 128. (1) Whether it maintains a presence in this state, a consolidated organization or any of its successors in interest are subject to service of process in a proceeding in this state for enforcement of any obligation incurred in this state by any consolidating organization that is or was a party to a consolidation.

(2) An action or proceeding by or against any of the consolidating organization in a court or any other public tribunal of this state may be prosecuted to judgment, as if consolidation had not taken place, or the consolidated bank or consolidated organization may be substituted in the place of any consolidating organization whose existence has ceased.


Consolidation; operation of branches; notice.
Sec. 129. (1) A bank with the commissioner's approval, an out-of-state bank, or national bank that consolidates its operations with, or purchases the assets or 1 or more branches of, another bank, out-of-state bank, national bank, association, or savings bank may operate the consolidated or acquired bank, out-of-state bank, national bank, association, or savings bank branch or branches located in this state as a branch or branches of the consolidated or acquired bank.

(2) A bank, out-of-state bank, national bank, association, or savings bank operating a branch in this state as the result of a consolidation or purchase of assets or a branch or branches under this act shall provide notice of that operation to the commissioner within 30 days after the effective date of the consolidation or purchase.


Sec. 130. (1) As used in this section:

(a) "Bank holding company" means a company as defined in the

Consolidation of new and existing banks or existing associations; definitions; provisions; "consolidation" and "merger" explained.

Sec. 130. (1) As used in this section:

(a) "Bank holding company" means a company as defined in the...
084 bank holding company act of 1956, chapter 240, 70 Stat. 133, which is not a bank or national banking association and which is a bank holding company approved by the board of governors of the federal reserve system pursuant to section 3(d) of the bank holding company act of 1956, chapter 240, 70 Stat. 134, 12 U.S.C. 1842, or will become such an approved bank holding company prior to or upon the completion of the consolidation provided in this section.

084

(b) "Existing bank" means a bank engaged in the business of banking prior to the consolidation provided in this section.

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(c) "New bank" means a bank not engaged in the business of banking prior to the consolidation provided in this section.

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(d) "Existing association" means a stock association engaged in the savings and loan business prior to the consolidation provided in this section.

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(2) Notwithstanding any other section of this act:

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(a) Natural persons as provided in section 52 may organize and incorporate as the incorporator or incorporators a new bank having its principal office in the same city or village as the principal office of an existing bank or existing association in the manner specified in section 53, but without regard to section 53(2) and (3)(b), (c), (d), and (e), and section 55, if the new bank is organized for the sole purpose of effecting its consolidation under section 125 with an existing bank or existing
084 association having its principal office in the same city or
084 village as the new bank and if upon completion of the
084 consolidation a bank holding company becomes the owner of all of
084 the outstanding voting shares of the consolidated organization,
084 other than shares necessary to qualify directors. The new bank
084 and the existing bank may consolidate under the charter of either
084 bank. The new bank and the existing association shall consolidate
084 under the charter of the new bank and sections 125, 126, 127, and
084 128 are applicable with respect to the consolidation except that
084 the agreement of consolidation may provide that shares of either
084 or both the consolidating organizations, in lieu of being
084 converted into shares of the consolidated organization, will be
084 converted into shares or other securities of the bank holding
084 company.

(b) A shareholder of the existing bank or existing association
084 who votes against the consolidation, or who has given notice in
084 writing to that bank or association at or prior to the meeting
084 called for the purpose of considering the agreement of
084 consolidation that he or she dissents from the consolidation, is
084 entitled to receive in cash from the consolidated organization
084 the fair value of all shares held by him or her, if and when the
084 consolidation is consummated, upon written request made to the
084 consolidated organization at any time within 30 days after the
084 date of consummation of the consolidation, accompanied by the
084 surrender of his or her stock certificates. Upon the filing of
084 the written request and the surrender of stock certificates, the
084 shareholder shall cease to have any of the rights of a
084 shareholder except the right to be paid the fair value of his or
her shares. The request having been made shall not be withdrawn except with the written consent of the consolidated organization. The fair value of the shares shall be determined, as of the date on which the meeting of shareholders of the existing bank or existing association was held adopting the agreement of consolidation, by a qualified and independent appraiser selected by the commissioner upon written application filed by a dissenting shareholder entitled to receive the fair value of his or her shares or by the consolidated organization. The appraiser selected shall file a written report of his or her appraisal with the commissioner, who in turn shall forward copies to all interested parties. The valuation determined by the appraiser is final and binding on all parties as to the fair value of the shares. The consolidated organization shall pay to each dissenting shareholder entitled the fair value of his or her shares within 30 days following the receipt of the written report of the appraiser. The fees and expenses of the appraisal, which shall be approved by the commissioner, shall be paid by the consolidated organization. The agreement of consolidation shall provide the manner of disposing of the shares of the existing bank or existing association surrendered by the dissenting shareholders.

(c) The consolidated organization, whether or not it is the new bank, the existing bank, or any national bank resulting from a consolidation or merger of an existing national bank, and a new national bank having its principal office in the same city or village as the principal office of the existing national bank under the provisions of the national bank laws in a situation
where the new national bank was organized for the express purpose of effecting its consolidation or merger with the existing national bank and upon the completion of the consolidation or merger a bank holding company becomes the owner of all of the outstanding voting shares of the resulting consolidated national bank, other than shares necessary to qualify directors, shall have the right, notwithstanding any of the requirements, restrictions, and limitations of section 171 or any other provision of law, to retain and continue to operate or to establish and operate as its principal office the principal office of the existing bank, existing association, or existing national bank and as its branches all branches of the existing bank, existing association, or existing national bank which were legally operating immediately prior to the consolidation or merger, whether or not the principal office or the branch or branches could, at the time the consolidation or merger becomes effective, have been established or reestablished consistently with the requirements, restrictions, and limitations of section 171, or any other provision of law.

(3) For the purposes of this section consolidation and merger are interchangeable and each means and includes the consolidation or merger of banks, stock associations, or national banks in any manner provided by this act or by federal banking laws.

Sec. 130a. (1) For purposes of this section:

(a) "Consolidation agreement" means an agreement entered into among an existing bank or an existing association, a new bank, and a new holding company which provides both of the following:

(i) That the existing bank or existing association and the new bank will be consolidated or merged.

(ii) That upon consummation of the consolidation or merger, the shares of capital stock of the existing bank or existing association will be converted into or exchanged for shares of the capital stock or other securities of the new holding company.

(b) "Existing association" means a stock association that is a party to a consolidation agreement and is engaged in the savings and loan business prior to the consolidation or merger provided for in the consolidation agreement.

(c) "Existing bank" means a bank or national banking association that is a party to a consolidation agreement and is engaged in the business of banking prior to the consolidation or merger provided for in the consolidation agreement.
(d) "New bank" means a bank or national banking association that is a party to a consolidation agreement and is not engaged in the business of banking prior to the consummation of the consolidation or merger provided for in the consolidation agreement.

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

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

(ii) Prior to its acquisition of an existing bank or existing association pursuant to the consolidation agreement, the corporation does not have control of a bank, an association, or national banking association and has not transacted any business except business incidental to its organization and to the entering into, and performance of, the consolidation agreement.

(iii) Upon consummation of the consolidation or merger provided for in the consolidation agreement, the corporation will become a bank holding company as defined in section 2 of the bank holding company act of 1956, 12 U.S.C. 1841.

(iv) Immediately after its acquisition of an existing bank or existing association pursuant to the consolidation agreement, the corporation will not have control of more than 1 bank or 1 national banking association.
(v) Prior to the acquisition of an existing bank or existing association pursuant to the consolidation agreement, the corporation is not, and immediately after acquisition of control of the existing bank or existing association will not be, controlled by a bank holding company as defined in section 2(a)(2) of the bank holding company act of 1956, 12 U.S.C. 1841.

(f) "Control" means control as defined in section 2 of the bank holding company act of 1956, 12 U.S.C. 1841.

(2) A new holding company may apply to the commissioner for approval of the terms and conditions of the issuance of the shares or other securities of the new holding company into which the shares of an existing bank or existing association are to be converted, or for which the shares of the existing bank or existing association are to be exchanged, pursuant to a consolidation agreement, and for approval of the terms and conditions of the conversion or exchange. The application for approval shall be in a form, contain information, and be accompanied by documents as shall be required by the commissioner. Within 30 days after the application is filed, the commissioner shall conduct a hearing upon the fairness of the terms and conditions at which all persons to whom it is proposed to issue the securities in the conversion or exchange shall have the right to appear. Within 20 days after the hearing, the commissioner shall either approve or disapprove the terms and conditions of the issuance and of the conversion or exchange. Nothing in this subsection shall be construed to require a new holding company to apply for or obtain the approval of the
commissioner of the terms and conditions of the issuance and conversion or exchange of securities provided for in a consolidation agreement or to make unlawful any transaction that is lawful without regard to this subsection.


487.430b Acquisition of ownership or control of voting shares of capital stock; conditions; application; approval; powers or privileges not affected or impaired; limitation; agreement; assessing record of bank subsidiaries; excessive interest rate; reciprocity; effective date of section.

Sec. 130b. (1) For purposes of this section:

(a) "Bank holding company" means a bank holding company as defined in section 2 of the bank holding company act of 1956, 12 U.S.C. 1841.

(b) "Banking institution" means an entity that is, or is eligible to become, an "insured bank" as defined in section 3 of the federal deposit insurance act, 12 U.S.C. 1813.

(c) "Consumer loan" means credit offered or extended by a lender primarily for personal, family, or household purposes, except for a loan, mortgage, or advance secured by a first lien on residential real property or by a first lien on a mobile home.
(d) "Lender" means a banking institution or a subsidiary of a bank holding company.

(e) "Michigan banking institution" means a banking institution whose principal place of business is located in this state and is incorporated under this act or former Act No. 341 of the Public Acts of 1937, and a national banking association whose principal place of business is located in this state.

(f) "Out of state bank holding company" means a bank holding company located in a state other than this state.

(g) "Regional bank holding company" means a bank holding company that is located in Illinois, Indiana, Minnesota, Ohio, or Wisconsin, other than a bank holding company that is controlled, directly or indirectly, by a bank holding company that is not itself a regional bank holding company or is not located in this state.

(h) "Subsidiary" means a subsidiary as defined in section 2 of the bank holding company act of 1956, 12 U.S.C. 1841.

(i) A bank holding company is located in the state in which the operations of such bank holding company's banking subsidiaries were principally conducted, as defined in section 3(d) of the bank holding company act of 1956, 12 U.S.C. 1842, as of the date described in section 3(d) of that act.

(j) A banking institution is located in the state in which its
principal place of business is located.

(k) A bank holding company controls a banking institution or another bank holding company if it has control as defined in section 2(a)(2) of the Bank Holding Company Act of 1956, 12 U.S.C. 1841.

(2) With the approval of the commissioner, a regional bank holding company may acquire, directly or indirectly, ownership or control of any or all of the voting shares of the capital stock of any number of Michigan banking institutions if all of the following conditions are met:

(a) The commissioner determines that the laws of the state in which the regional bank holding company is located authorize a bank holding company located in this state to acquire, directly or indirectly, ownership or control of any or all of the voting shares of the capital stock of 1 or more banking institutions located in that state, under conditions which are not unduly restrictive.

(b) The commissioner determines that an acquisition described in subdivision (a) would not restrict the powers or privileges of any banking institution acquired in that state.

(c) The commissioner does not determine that the acquisition is likely to impair the safety and soundness of the Michigan banking institution to be acquired or of a Michigan banking institution that is already controlled by the regional bank holding company.
(d) The commissioner determines that the applicant has complied with the requirements of subsections (11) and (12).

(3) A regional bank holding company desiring to make an acquisition pursuant to subsection (2) shall file an application with the commissioner. The application shall be in a form and contain the information considered necessary by the commissioner.

The commissioner shall approve the application if the commissioner determines that the applicant is a regional bank holding company and that all of the conditions set forth in subsection (2) are met.

(4) Beginning October 10, 1988, with the approval of the commissioner, an out of state bank holding company may acquire, directly or indirectly, ownership or control of any or all of the voting shares of the capital stock of any number of Michigan banking institutions if all of the following conditions are met:

(a) The commissioner determines that the laws of the state in which the out of state bank holding company is located authorize a bank holding company located in this state to acquire, directly or indirectly, ownership or control of any or all of the voting shares of 1 or more banking institutions in that state, under conditions which are not unduly restrictive.

(b) The commissioner determines that an acquisition described in subdivision (a) would not restrict the powers or privileges of any banking institution acquired in that state.
(c) The commissioner does not determine that the acquisition is likely to impair the safety and soundness of the Michigan banking institution to be acquired or of a Michigan banking institution that is already controlled by the regional bank holding company.

(d) The commissioner determines that the applicant has complied with the requirements of subsections (11) and (12).

(5) An out of state bank holding company desiring to make an acquisition pursuant to subsection (4) shall file an application with the commissioner. The application shall be in a form and contain the information considered necessary by the commissioner. The commissioner shall approve the application if the commissioner determines that the applicant is an out of state bank holding company and that all of the conditions set forth in subsection (4) are met.

(6) With the approval of the commissioner, a bank holding company located in this state may acquire, directly or indirectly, ownership or control of any or all of the voting shares of the capital stock of a banking institution located outside this state. A bank holding company desiring to make an acquisition pursuant to this subsection shall file an application with the commissioner. The commissioner shall approve the application if the bank holding company meets the requirements of subsections (11) and (12).

(7) The commissioner shall make a determination required by
subsection (3), (5), or (6) within 60 days after receipt of the application.

(8) An acquisition made pursuant to this section shall not affect the powers or privileges of the acquired banking institution.

(9) Nothing in this section shall be construed as impairing or affecting the authority of a bank holding company that is located in this state and is not controlled by an out of state bank holding company to acquire control of a Michigan banking institution.

(10) Nothing in this section shall be construed as authorizing any banking subsidiary or any other person, firm, or corporation to operate a branch or otherwise to engage in the business of banking or to act as fiduciary in this state other than as provided in section 51.

(11) In connection with an application filed by a bank holding company, pursuant to subsection (3), (5), or (6), the applicant, as a condition of the approval, shall sign an agreement which shall be in substantially the following form: "Applicant and all its subsidiaries, wherever located, when making a consumer loan to a resident of this state who does not physically travel out of this state in order to obtain the consumer loan, hereby agrees to comply with the laws of this state governing the maximum rate of interest that may be charged and other provisions, relating to that type of consumer loan, which protect consumers. This written
agreement shall not apply to unsecured open end credit extended by a banking institution not located in this state or to any other subsidiaries of the applicant not located in this state, to the extent that federal law may make such provisions of Michigan law inapplicable to such credit extended by such lenders. This written agreement shall not require a Michigan banking institution which is a subsidiary of the applicant to comply with the laws of this state governing the maximum rate of interest that may be charged and other provisions, relating to that type of consumer loan, which protect consumers if federal law is enacted to preempt any of the provisions of such laws of this state for a consumer loan made to a resident of this state by such Michigan banking institution, but such noncompliance shall be limited to the specific extent of the preemption. Nothing in this agreement shall exempt the applicant or any of its subsidiaries from complying with Michigan law to the extent that such lender is otherwise required to comply with Michigan law."

Any material deviation from the form of the agreement provided in this subsection shall be by rule promulgated pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. Any rule promulgated pursuant to this subsection shall not add to or delete any of the substantive provisions provided in this subsection.

(12) In connection with an application filed by a bank holding company pursuant to subsection (3), (5), or (6), the commissioner shall assess the composite record of the bank subsidiaries of the bank holding company in meeting the credit needs of the
communities in the state in which the bank subsidiaries are located, including low and moderate income neighborhoods, consistent with the safe and sound operation of the bank subsidiaries of the bank holding company. In assessing the record of the bank subsidiaries of the applicant, the commissioner shall consider the factors considered by the appropriate federal financial supervisory agency pursuant to regulations promulgated under the community reinvestment act of 1977, 12 U.S.C. 2901. The commissioner shall request the applicant to supply the commissioner with information and disclosures prepared by the applicant in compliance with the community reinvestment act of 1977, 12 U.S.C. 2901 and regulations promulgated thereunder, and a copy of the most recent assessment of the bank subsidiaries of the applicant conducted by the appropriate federal financial supervisory agency pursuant to the community reinvestment act. In making such request, the commissioner shall give attention to the objective of minimizing the paperwork burdens of banking organizations. The commissioner may seek to obtain from the appropriate federal financial supervisory agency copies of relevant information in the possession of such applicable agency, which may bear upon the record of the bank subsidiaries of the applicant in meeting the credit needs of their entire communities, including low and moderate income neighborhoods, consistent with the safe and sound operation of the bank subsidiaries, to make the assessment provided for in this subsection. This subsection shall not authorize the commissioner to make an on-site examination of a national banking association, and shall not authorize the commissioner to make an on-site examination of a state chartered bank for the purpose of
assessing the record of the bank subsidiaries of the applicant.

(13) If a lender that is not located in this state takes a security interest on a consumer loan, and charges a rate of interest in excess of the rate permitted by the laws of this state or otherwise violates a provision of the laws of this state relating to that type of consumer loan which protect consumers, such security interest shall not be enforceable in this state, unless the lender shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error. Examples of bona fide error include, but are not limited to, clerical, calculation, computer malfunction and programming, and printing errors, except that an error of legal judgment by a lender is not a bona fide error. This subsection shall not apply if the consumer is a resident of this state who physically travels out of this state in order to obtain the consumer loan.

(14) If another state has enacted legislation which contemplates the possibility of a bank holding company located in this state being able to acquire any or all of the voting shares of the capital stock of 1 or more banking institutions located in that state, and if such transaction is prevented by a finding by the appropriate official or agency in that state, or a court of competent jurisdiction in that state, to the effect that Michigan law does not satisfy the reciprocity standard established in that state's law, the commissioner shall take appropriate actions to communicate with persons in that state in an attempt to encourage
action to bring about a positive finding in that state with 
respect to reciprocity with Michigan. The commissioner shall also 
promptly notify the clerk of the house of representatives and 
secretary of the senate of any such negative finding by another 
state with respect to reciprocity. This subsection shall only be 
applicable to negative findings in Illinois, Indiana, Minnesota, 
Ohio, or Wisconsin before October 10, 1988.

(15) This section shall take effect January 1, 1986.


487.431 Bank; conversion into stock association or national 
banking association.

Sec. 131. (1) Upon the affirmative votes of the shareholders 
representing 2/3 of the total number of shares of each class of 
its outstanding capital stock, a bank may be converted under the 
laws of this state into a stock association or under the laws of 
the United States into a national banking association. The 
conversion of a bank into a stock association or a national 
banking association shall not release the bank from its 
obligations to pay and discharge all the liabilities created by 
law or incurred by it before becoming a stock association or a 
national banking association or any tax imposed by the laws of 
this state up to the date of its becoming a stock association or 
a national banking association in proportion to the time which 
has elapsed since the last preceding payment or any assessment, 
penalty, or forfeiture imposed or incurred under the laws of this
state up to the date of its becoming a stock association or a national banking association. No conversion shall be made to defeat or defraud any of the creditors of the bank.

(2) Certified copies of all proceedings by the directors and shareholders of the stock association or bank shall be filed with the commissioner in triplicate and in addition, the bank shall furnish a certified copy of consent or approval of the comptroller of the currency to the conversion if the consent or approval is required by the national bank laws. One copy of the proceedings shall be filed in the office of the bureau and the commissioner shall certify and forward 1 copy of the proceedings to the county clerk of the county in which such converted bank is located and 1 to the corporation division, department of treasury.


487.433 National banking association or stock association; conversion into bank.

Sec. 133. (1) With the approval of the commissioner and upon the affirmative votes of the shareholders representing 2/3 of the total number of shares of each class of its outstanding capital stock, a national banking association doing business in this state and having an unimpaired capital and surplus sufficient to entitle it to become a bank under the provisions of existing laws of this state may be converted into a bank if the conversion is
not in contravention of any laws of the United States. In such case, the articles of incorporation may be executed by a majority of the directors of the national banking association. A majority of the directors, after executing the articles of incorporation, shall have the power to execute all other papers and to do whatever may be required to complete its organization as a bank. The shares of the bank may continue to be for the same amount each as they were before the conversion, and the directors may continue to be directors of the bank until others have been elected or appointed pursuant to the laws of this state. The approval of the commissioner shall be based on an examination of the national banking association and of the proceedings had by its directors and shareholders with respect to the conversion. No conversion shall be made to defeat or defraud any of the creditors of the bank. In his or her discretion and subject to conditions as he or she may prescribe, the commissioner may permit the converted bank to retain and carry, at a value determined by the commissioner, assets of the converting national banking association as do not conform to the legal requirements relative to assets acquired and held by banks.

(2) With the approval of the commissioner and upon the affirmative vote of shareholders representing more than 50% of the total number of shares of each class of its outstanding capital stock, a stock association having an unimpaired capital and surplus sufficient to entitle it to become a bank under the provisions of existing law of this state may be converted into a bank. In such case, the articles of incorporation may be executed by a majority of the directors of the stock association. A
majority of the directors, after executing the articles of incorporation, may execute all other papers and do whatever may be required to complete its organization as a bank. The shares of the bank may continue to be for the same amount each as they were before the conversion, and the directors may continue to be directors of the bank until others have been elected or appointed pursuant to the laws of this state. The approval of the commissioner shall be based on an examination of the stock association and of the proceedings had by its directors and shareholders with respect to the conversion. A conversion shall not be made to defeat or defraud any of the creditors of the association. Subject to conditions as he or she may prescribe, the commissioner may permit the converted bank to retain and carry, at a value determined by the commissioner, assets of the converting stock association which do not conform to the legal requirements relative to assets acquired and held by banks.


487.435 Effect of conversion.

Sec. 135. (1) When a conversion under either section 131 or 133 becomes effective, all the property of the converting organization, including all its right, title, and interest in and to all property of whatsoever kind, whether real, personal or mixed, and things in action, and every right, privilege, interest, and asset of any conceivable value or benefit then existing, belonging, or pertaining to it, or which would inure to
it, shall immediately by act of law and without any conveyance or transfer and without any further act or deed, be vested in and become the property of the converted organization, which shall have, hold, and enjoy the same in its own right as fully and to the same extent as it was possessed, held, and enjoyed by the converting organization. The converted organization shall be deemed to be a continuation of the entity and of the identity of the converting organization. All the rights, obligations, and relations of the converting organization to or in respect to any person, estate, creditor, depositor, trustee, or beneficiary of any trust, and in, or in respect to, any executorship or trusteeship or any other trust or fiduciary function, shall remain unimpaired. The converted organization shall succeed to all such rights, obligations, relations, and trusts, and the duties and liabilities connected therewith, and shall execute and perform each and every trust and relation in the same manner as if the converted organization had itself assumed the trust or relation and the obligations and liabilities connected therewith.

If the converting organization is acting as administrator, coadministrator, executor, coexecutor, trustee, or cotrustee of or in respect to any estate or trust being administered under the laws of this state, such relation, as well as any other or similar fiduciary relations, and all rights, privileges, duties, and obligations connected therewith shall remain unimpaired and shall continue into and in the converted organization from and as of the time of taking effect of the conversion, irrespective of the date when any such relation may have been created or established and irrespective of the date of any trust agreement relating thereto or the date of the death of any testator or
decedent whose estate is being so administered. Nothing done in connection with the conversion, in respect to any executorship, trusteeship, or similar fiduciary relation, shall be deemed to be or to effect under the laws of this state a renunciation or revocation of any letters of administration or letters testamentary pertaining to such relation nor a removal or resignation from any such executorship or trusteeship or other fiduciary relationship nor shall the same be deemed to be of the same effect as if the executor or trustee or other fiduciary had died or otherwise become incompetent to act.

(2) A bank or national banking association resulting from a conversion under either section 131 or 133 shall have the right, notwithstanding any of the requirements, restrictions, and limitations of section 171 to the contrary, to retain and continue to operate any and all branches of the converting organization which were in lawful operation immediately prior to conversion, without being required to establish or reestablish any branch or branches pursuant to section 171 and irrespective of whether any such branch or branches could, at the time the conversion becomes effective, have been established or reestablished as a branch or branches of such converting or converted organization, consistently with the requirements, restrictions, and limitations of section 171.

Sale, consolidation or conversion; rights or liabilities unimpaired.

Sec. 139. The liability of any bank or national banking association or of the shareholders, directors or officers thereof, or the rights or remedies of the creditors thereof, or of persons transacting business therewith, shall not be lessened or impaired by virtue of the sale of all or substantially all of the assets thereof or by the consolidation of 2 or more organizations or the conversion of an organization.


CHAPTER 3A

Application by foreign bank to establish state agency, foreign bank branch, or bank representative office; contents; examination; investigation; issuance of certificate of authority.

Sec. 141. (1) A foreign bank authorized by its charter or articles of incorporation to engage in the business of banking, that has complied with the laws of the foreign country in which it is chartered or incorporated, and that does not operate a federal agency in this state, may submit to the commissioner an application to establish a state agency.

(2) A foreign bank authorized by its charter or articles of incorporation to engage in the business of banking, and that has
complied with the laws of the jurisdiction in which it is chartered or incorporated, and that has not previously designated any other state as its home state under provisions of the international banking act of 1978, may submit an application to the commissioner to establish and operate a state foreign bank branch.

(3) Upon written notification to the commissioner, a foreign bank authorized by its charter or articles of incorporation to engage in the business of banking, and that has complied with the applicable laws of the jurisdiction in which it is chartered or incorporated, may establish and operate a foreign bank representative office in this state.

(4) The commissioner shall examine the information and statements contained in the application submitted under subsection (1) or (2) and make any investigation the commissioner considers necessary regarding the financial and managerial resources of the applicant. The commissioner shall also consider whether there exists an opportunity for a bank having its principal place of business in this state to conduct business in the foreign country in which the applicant is chartered or incorporated.

(5) If, after examining the information contained in the application, conducting any investigation considered necessary, and receiving all necessary application and investigation fees from the applicant, the commissioner is satisfied as to the sufficiency of the capital and surplus of the bank and the
prospects of successful operation if established, and the commissioner determines approval of the application would be in the public interest, the commissioner shall issue to the applicant a certificate of authority to conduct business in this state at the address specified in the certificate.


Sec. 142. (1) Except as otherwise provided in this act or other law of this state, operations of a foreign bank at a state agency shall be conducted with the same rights and privileges and subject to the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply under this act to a bank doing business at the same location, except that a state agency or an additional office of a state agency shall not accept nor solicit deposits from citizens or residents of the United States or exercise trust powers. Operations of a foreign bank representative office are limited to representational functions.

(2) With the prior approval of the commissioner, a foreign bank that operates a state agency or state foreign bank branch is
permitted to establish and operate additional offices subject to section 171. For purposes of section 171, the principal office of a foreign bank operating under this act shall be its first state agency or state foreign bank branch established in this state.

(3) A state agency or state foreign bank branch shall not be required to become an insured bank, as insured bank is defined in section 3 of the federal deposit insurance act, chapter 967, 64 Stat. 873, 12 U.S.C. 1813, unless the state foreign bank branch accepts deposits described in section 3 of the federal deposit insurance act.

(4) A foreign bank that operates a state agency or state foreign bank branch in this state shall maintain the accounts and conduct the business of the state agency or state foreign bank branch independently of the accounts and business of the parent foreign bank.

(5) The commissioner may, at any time, investigate the accounts and business of a state agency, state foreign bank branch, or foreign bank representative office operating in this state, and for that purpose may require that a foreign bank make available in this state for examination all the books, accounts, records, and files of the foreign bank that contain information regarding the accounts and business of that state agency, state foreign bank branch, or foreign bank representative office.

Sec. 143. A foreign bank operating a state agency or state foreign bank branch in this state shall, at the times and in the form prescribed by the commissioner, file with the commissioner reports written in the English language, showing the amount of its assets and liabilities and containing other information requested by the commissioner. A foreign bank that fails to comply with this section is subject to the penalty provided in section 226.


Sec. 144. (1) A state agency or state foreign bank branch may be converted into a federal agency or federal branch pursuant to the international banking act of 1978.

(2) A federal agency or federal branch may be converted, with the written approval of the commissioner, into a state agency or state foreign bank branch. If the converted state agency or state foreign bank branch succeeds to assets in which it does not have
the legal power to invest, or liabilities which it does not have power to incur, those assets or liabilities shall be disposed of within the next 12 calendar months of the date of the conversion, except that the commissioner may extend this period in the interest of an orderly disposition of those assets or liabilities. The disposition period shall not exceed 3 years.


487.445 Engaging in unsafe or unsound practices; violation of state or federal law, rule, or regulation; notice of intent to revoke certificate of authority; hearing; decision.

Sec. 145. (1) If, in the opinion of the commissioner, a foreign bank is engaging, or has engaged, or the commissioner has reasonable cause to believe that the foreign bank is about to engage, in an unsafe or unsound practice in conducting the business of a state agency, state foreign bank branch, or foreign bank representative office, or is violating, has violated, or the commissioner has reasonable cause to believe that the foreign bank is about to violate, a state or federal law or a state or federal rule or regulation, the commissioner may issue and serve upon the foreign bank a notice of intent to revoke the foreign bank's certificate of authority. The notice shall inform the foreign bank of its right to request a hearing within 10 days.

(2) If the foreign bank requests a hearing, the commissioner shall hold a hearing which shall be conducted in accordance with

(3) Within 60 days after the hearing, the commissioner shall file a written decision containing his or her findings and serve a copy upon the foreign bank.


Sec. 146. Authority to operate a state agency, state foreign bank branch, or foreign bank representative office shall terminate upon dissolution of the foreign bank, or the commissioner's revocation of the foreign bank's authority to operate in this state. Upon termination of the authority to operate a state agency or state foreign bank branch, the commissioner shall become agent for the foreign bank for service of process and shall exercise the same powers, including the right to appoint a receiver, over the assets and liabilities of the state agency or state foreign bank branch as are permitted over a state chartered bank in liquidation pursuant to sections 111 and 251 to 268.
Additional corporate powers of bank.

Sec. 151. Subject to the limitations and restrictions contained in this act or in a bank's articles, the bank may engage in the business of banking and a business related or incidental to banking, and for that purpose, without specific mention in its articles, a bank has the powers conferred by this act and the following additional corporate powers:

(1) To have a corporate seal, that may be altered at pleasure, and to use the corporate seal by causing it, or a facsimile of it, to be impressed, affixed, or reproduced in any manner.

(2) To have succession in perpetuity or for a limited period of time, as fixed by its articles or until its affairs are finally wound up by liquidation, forfeiture, or dissolution as provided by this act.

(3) To make contracts.

(4) To sue and be sued, complain, and defend in its corporate name as fully as a natural person.
(5) To elect or appoint directors who shall appoint from their members a president who shall perform duties as may be designated by the board, and who shall serve as the chairperson of the board, unless the board designates another director to be chairperson in lieu of the president. The board shall appoint 1 or more vice-presidents, a cashier, and other officers as the board considers necessary, who may or may not be members of the board, shall define their duties, shall dismiss the officers or any of them at pleasure, and shall appoint other officers to fill their places.

(6) To make, alter, amend, and repeal bylaws not inconsistent with its articles or with law for the administration and regulation of the affairs of the bank.

(7) To have and exercise the powers and means appropriate to effect the purpose for which the bank is incorporated.

(8) To make contributions and donations for the public welfare or for religious, charitable, scientific, or educational purposes, and, in connection with the contributions and donations, to establish and operate charitable trusts.

(9) To purchase, take, lease as lessee, or otherwise acquire and to own, hold, and use, to sell, lease as lessor, mortgage, pledge, grant a security interest in, convey, or otherwise dispose of real or personal property in connection with the exercise of a power granted in this act.
(10) To act as agent of the United States, or of an instrumentality or agency of the United States, for the sale or issue of bonds, notes, or other obligations of the United States, or an instrumentality or agency of the United States and to take other action as may be necessary or proper to enable the bank to act under this subdivision.

(11) To become a member of the federal reserve system, to hold shares of stock in a federal reserve bank, to take all actions incident to maintenance of its membership, and to exercise all powers, not inconsistent with the provisions of this act, conferred on member banks by the federal reserve act, chapter 6, 38 Stat. 251.

(12) To become an insured bank pursuant to the federal deposit insurance act, and to take actions incident to the maintenance of an insured status under that act.

(13) To become a member of the federal home loan bank as defined in section 2 of the federal home loan bank act, chapter 522, 47 Stat. 725, 12 U.S.C. 1422, and to exercise those powers conferred upon a federal home loan bank member by the federal home loan bank that are consistent with this act.

(14) To purchase the shares of stock of a small business investment company doing business in this state and licensed under, or established pursuant to, the federal small business investment act of 1958, Public Law 85-699, 72 Stat. 689, and to
(15) To sell mortgage loans to the federal national mortgage association, or a successor of the association, and, in connection with the association, to make payments of capital contributions, required pursuant to law, in the nature of subscriptions for stock of the association or a successor of the association, to receive stock evidencing the capital contributions, and to hold or dispose of the stock.

(16) To conduct its business through subsidiaries, but a bank shall not acquire or hold for its own account shares of a bank or bank holding company, unless the shares are acquired as provided in subdivision (19). The commissioner may promulgate rules as he or she considers necessary to effectuate this subdivision and prevent evasions of this subdivision. For the purpose of this subdivision, "subsidiary" means a corporation of which at least 80% of the voting stock of the corporation is owned by state and national banks located in Michigan.

(17) To make application for and to obtain insurance of loans, but not to operate an insurance underwriting business.

(18) To give its bond in a proceeding in any court in which it is a party or upon an appeal in a proceeding, and to pledge assets as security for the bond.
(19) To acquire and hold, irrespective of any restriction or limitation of this act, property, or a security interest in property, as protection against loss on an evidence of indebtedness, on an agreement for the payment of money, or on an investment security previously acquired lawfully and in good faith, subject to both of the following:

(a) A determination by a majority vote of its directors, at least once each year, as to the advisability of retaining the property or security interest so acquired.

(b) Disposition within a period of 60 months after the date of acquisition, or a longer period as the commissioner may approve.

(20) To hold property lawfully held on August 20, 1969, subject to the inclusion of the property in any computation of a limitation on the acquisition for holding of property of a like character under this act.

(21) To service loans for others and to receive a fee for the service.

(22) To purchase capital stock, bonds, debentures, or other obligations of a corporation created pursuant to the authority granted by sections 161 to 165, but subject to the limitations and conditions of those sections.

(23) To execute and deliver guarantees as may be incidental or
usual in carrying on the business of a bank.


(25) To purchase open accounts, with or without recourse against the seller of an open account, which accounts need not represent an evidence of indebtedness, and including open accounts in connection with export transactions, when the accounts are protected by insurance such as that provided by the foreign credit insurance association and the export-import bank.

(26) To purchase for its own account shares of stock issued by an agricultural credit corporation or a corporation organized solely for the purpose of making loans to farmers and ranchers for agricultural purposes, including the breeding, raising, fattening or marketing of livestock. Unless a bank owns at least 80% of the stock of the corporation, the amount invested by the bank at any 1 time in the stock of the corporation shall not exceed 20% of the unimpaired capital and surplus of the bank.

(27) To make, arrange, participate in, purchase, or sell loans or extensions of credit secured by liens or interests in real estate or leaseholds.

(28) To purchase and hold for its own account any class of voting securities of a bank organized and chartered pursuant to
section 54 or the national bank act, chapter 106, 13 Stat. 99, and engaged exclusively in providing services to depository institutions or their officers, directors, and employees, or a bank holding company that owns or controls a bank organized and chartered pursuant to section 54 or the national bank act, if the stock of a bank holding company is owned exclusively, except to the extent directors' qualifying shares are required by law, by depository institutions and if all subsidiaries of the company engage exclusively in serving depository institutions or their officers, directors, and employees. The amount of securities of a bank or bank holding company held by an investing bank shall not exceed 20% of the capital and surplus of the investing bank.

(29) To purchase, hold, and dispose of mortgages, obligations, or other securities that are or ever have been sold by the federal home loan mortgage corporation pursuant to sections 305 and 306 of the federal home loan mortgage corporation act, title III of the emergency home finance act of 1970, Public Law 91-351, 12 U.S.C. 1454 and 1455.

(30) To incur liabilities, borrow money, and issue its notes, bonds, and other obligations.

(31) To enter into agency relationships with affiliated depository institutions. A bank or an affiliated depository institution in its capacity as an agent under this subsection may do all of the following:

(a) Receive deposits.
(b) Permit withdrawals of deposits.

(c) Renew time deposits.

(d) Close loans.

(e) Service loans.

(f) Receive loan payments.

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

(32) To exercise all incidental powers as shall be necessary to carry on the business of banking. In order to implement the provisions of this subdivision, the commissioner may promulgate rules pursuant to section 19, or issue declaratory rulings in accordance with the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, or issue orders on applications by 1 or more banks to exercise powers not specifically authorized by this act. It is intended that this subdivision shall vest in the commissioner the discretion and authority to authorize banks to exercise the powers appropriate and necessary to compete with other depository financial institutions and other providers of financial services. In the exercise of the discretion permitted by this subdivision the commissioner shall consider the ability of banks to exercise any
084 additional power in a safe and sound manner, the authority of
084 national banks operating pursuant to federal law or regulation,
084 the powers of other competing entities providing financial
084 services in the banks' service area, and any specific limitations
084 on bank powers contained in this act or in any other state law.
084 On a quarterly basis, the commissioner shall give notice to all
084 banks of rules promulgated or declaratory rulings or
determinations issued pursuant to this subdivision.

084 (33) As authorized by order or declaratory ruling of the
084 commissioner, to exercise at its branch in another state such
084 powers consistent with the safe and sound conduct of the business
084 of banking and granted by the laws of the state where the branch
084 is located.

084 (34) As authorized by order or declaratory ruling of the
084 commissioner, to exercise such further powers consistent with the
084 safe and sound conduct of the business of banking as are granted
084 by the laws of the United States to national banks.

084 (35) To own and operate a messenger service or to own or invest
084 in a corporation that operates a messenger service.

084 (36) To engage in any aspect of the insurance and surety
084 business as an agent, broker, solicitor, or insurance counselor
084 as provided under the insurance code of 1956, Act No. 218 of the
084 Public Acts of 1956, being sections 500.100 to 500.8302 of the
084 Michigan Compiled Laws.
To own an insurance agency in whole or in part as provided under Act No. 218 of the Public Acts of 1956.


Purchase by bank of stock in corporation providing capital to banks owned or controlled by racial minorities.

Sec. 151a. Subject to the limitations and restrictions contained in this act or in its articles, with the approval of the commissioner a bank may purchase the shares of stock of any corporation whose primary purpose is to provide capital to banks largely owned or controlled by individuals classified as racial minorities. All such investments in the aggregate shall not exceed an amount equal to 2% of the capital and surplus of the bank.

Sec. 151b. Subject to the limitations and restrictions contained in this act or in the bank's articles of incorporation, a bank may purchase the shares of stock of, or make loans to, the Michigan business development corporation.


Sec. 151c. (1) Subject to the limitations contained in this act and in its articles of incorporation, a bank may make venture capital investments, or may invest in equity securities of a professional investor a majority of whose assets consists of venture capital investments.

(2) If a bank makes a venture capital investment pursuant to subsection (1), an officer or director of the bank shall not hold an equity position in the financed company, and the bank shall own less than 50% of such company.

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

(4) This section shall not limit the authority of a bank to exercise lending or investment powers which are otherwise authorized by law.

(5) As used in this section:

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

(b) "Venture capital" means equity financing that is provided for starting up or expanding a company, or related purposes such as financing for seed capital, research and development, introduction of a product or process into the marketplace, or similar needs requiring risk capital. A venture capital investment shall not include the purchase of a share of stock in a company if, on the date on which the share of stock is purchased, the company has securities outstanding that are registered on a national securities exchange under section 12(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78(l); that are registered or required to be registered under section 12(g) of that act; or which would be required to be so registered except for the exemptions in section 12(g)(2) of that act.
487.451d Bank; authorized investments and services.

Sec. 151d. A bank may:

(a) Make investments in 1 or more of the following:

(i) Securities and in corporations or partnerships authorized by title IX of the housing and urban development act of 1968, Public Law 90-448, 82 Stat. 476.

(ii) Financial options to hedge a bank's interest rate risks.

(b) Perform 1 or more of the following services, primarily for financial institutions:

(i) Provide life, health, and casualty insurance for officers and employees of financial institutions and operate bonus plans and retirement benefit plans for those officers and employees.

(ii) Service mortgages and land contracts.

(iii) Originate and service mortgage loans, mortgages, and land contracts, on behalf of financial institutions, corporations, and state or federal agencies or instrumentalities.

(iv) Act as escrow agent or depository for other escrow agents.
or fiduciaries for the holding of money as custodian or in trust for others.

Credit analysis, appraising, construction loan inspection, and abstracting.

Research, studies, and surveys.

Develop and operate storage facilities for microfilm or other duplicate records.

Advertising, brokerage, and other services to procure and retain both deposits and loans, but not pooling deposits or soliciting or promoting pooled deposits.

Liquidity management, investment, advisory, and consulting services.

Establish, own, lease, operate, or maintain electronic funds transfer terminals.

Purchase office supplies, furniture, and equipment.

(c) Provide 1 or more of the following services:

Prepare local, state, and federal tax returns for individuals or organizations that are not corporations operated for profit.
(ii) Data processing services.

(iii) Other activities as the commissioner by rule determines appropriate.


487.451e Bank; additional authorized investments.

Sec. 151e. (1) A bank may invest in both of the following:

(a) Shares or certificates of an open-end management investment company registered with the securities and exchange commission under the investment company act of 1940, title I of chapter 686, 54 Stat. 789, 15 U.S.C. 80a-1 to 80a-64, while the portfolio of the company is restricted by its investment policy, changeable only by vote of the shareholders, to investments permitted by order of the commissioner.

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

(2) With the approval of the commissioner, a bank may invest in other categories of assets that the commissioner determines are consistent with the purposes of this act. Investments under this subsection are subject to limitations as determined appropriate by the commissioner and established by rule.
084   (3) This section does not limit the investment authority of a
084 bank granted by any other section of this act.


067

067 487.451f Bank; brokerage services; rules.

067

084   Sec. 151f. Subject to applicable state or federal law, a bank
084 may provide brokerage services for the offer, sale, or purchase
084 of a security or commodity contract. The commissioner may
084 promulgate rules to clarify and enforce this section under the
084 administrative procedures act of 1969, Act No. 306 of the Public
084 Acts of 1969, being sections 24.201 to 24.328 of the Michigan
084 Compiled Laws. As used in this section, "security" means a
084 security as defined in section 401 of the uniform securities act,
084 Act No. 265 of the Public Acts of 1964, being section 451.801 of
084 the Michigan Compiled Laws.

084


067

067 487.451g Bank; limitation on investment in real estate.

067

084   Sec. 151g. A bank may invest not more than 10% of its total
084 assets in the purchase and development of real estate for sale or
084 for the improvement of real estate by the construction of
084 residential or commercial units for sale or rental purposes.

084

Sec. 151h. (1) A bank may invest, in aggregate not more than 5% of the bank's total assets in 1 or more service corporations. An investment under this subsection is subject to limitations and approvals established by rules promulgated by the commissioner.

(2) As used in this section, "service corporation" means a corporation organized under the laws of any state that engages in activities determined by the commissioner by order or rule to be incidental to the conduct of a banking business as provided in this act or activities that further or facilitate the corporate purposes of a bank, or that furnishes services to a bank, out-of-state bank, national bank, association, or savings bank, or subsidiaries or affiliates, the voting stock of which is owned directly or indirectly by 1 or more banks, out-of-state banks, national banks, associations, or savings banks.

(3) To implement this section, the commissioner may promulgate rules under the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. In the alternative the commissioner may issue orders under section 30(3) to (10) on applications by 1 or more banks for a determination that a proposed activity is permitted by this section.
(4) The commissioner, on at least a quarterly basis, shall give notice to all banks of any rules, orders, or determinations issued under this section.


487.451i Property/casualty insurance as condition to loan; limitation on amount required; amount as condition of sale, transfer, or assignment.

Sec. 151i. (1) Except as provided in subsection (2), a bank that requires a mortgagor to maintain property/casualty insurance as a condition to receiving a mortgage loan shall not require the amount of the property/casualty insurance to be greater than the replacement cost of the mortgaged building or buildings.

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


487.451j Bank engaged in or owning real estate brokerage business.
Sec. 151j. (1) A bank may do either of the following:


(b) Own in whole or in part a real estate brokerage business as provided under Act No. 299 of the Public Acts of 1980.

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

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

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

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

084 (c) Impose a requirement, verbally or in writing, that a real estate brokerage customer shall make application for a loan or any other service or services of a particular bank or any of its subsidiaries, agencies, or service entities.

084 (d) Impose a requirement, verbally or in writing, that a condition of providing real estate brokerage services is that the customer shall make an application for a loan or any other arrangement for other services of the bank or any of its subsidiaries, agencies, or service entities.

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

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

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

084 (4) A bank that engages directly in the real estate brokerage business or owns in whole or in part a real estate brokerage...
business under this section shall clearly disclose in writing to any person who applies for credit related to a real estate transaction or applies for prequalification or preapproval for credit related to a real estate transaction, that the person is not required to contract for or enter into an arrangement for real estate brokerage services with a particular real estate broker. Compliance with the disclosure requirements of this subsection shall not be necessary when a person applies for credit or prequalification for credit solely for the purpose of refinancing an existing indebtedness.

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

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

(7) If the commissioner finds that a bank has violated this section, the commissioner may issue an order requiring the bank to cease and desist the activity that violates this section. If the commissioner additionally finds that the violation was knowingly committed, the commissioner may order any of the
(a) A civil fine of not more than $500.00 for each violation but not to exceed an aggregate civil penalty of $10,000.00.

(b) That restitution be made to a customer for actual damages directly attributable to the acts that are found to be a violation of this section.

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


Sec. 152. The powers granted in sections 151 and 151a shall not be construed as limiting or enlarging any grant of authority made elsewhere by this act except as provided in section 151(19). Except as otherwise provided in this act or in the articles or in the bylaws, such powers shall be exercised by the board of directors of the bank.

Sec. 154. A bank may purchase, sell, underwrite, and hold investment securities which are obligations in the form of bonds, notes or debentures of such type and to the extent permitted from time to time by order of the commissioner. A bank may hold, without limit, investment securities which are obligations of the United States, or obligations which are guaranteed fully as to principal and interest by the United States, or any general obligations of any state or of any political subdivision of a state.


Sec. 157. Upon written notice to the commissioner, a bank may change the location of its main office to any existing branch location of the bank within the limits of the city, village, or township in which the bank is located. With the prior written approval of the commissioner, a bank may change the location of its principal office to any other location within this state.

Sec. 159. (1) Except for its own capital stock or the capital stock of an affiliate of the bank, a bank shall not engage in a transaction with respect to shares of the capital stock of a corporation unless specifically authorized by this act or by the commissioner under this act.

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

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


Sec. 161. (1) A bank possessing a capital and surplus of $1,000,000.00 or more may file application with the commissioner

487.461 Foreign banking; powers; application; contents; approval.
for permission to exercise, upon conditions and under such
regulations as may be prescribed by the commissioner, the
following powers:

(a) To establish branches in foreign countries for the
furtherance of foreign commerce of the United States and to act,
if required to do so, as fiscal agents of the United States.

(b) To invest an amount not exceeding in the aggregate 10% of
its paid in capital stock and surplus in the stock of 1 or more
banking organizations or corporations chartered or incorporated
under the laws of the United States or of any state, territory,
or protectorate of the United States, and principally engaged in
international or foreign banking, either directly or through the
agency, ownership, or control of foreign banks.

(c) To acquire and hold, directly or indirectly, stock or other
evidences of ownership in 1 or more foreign banks that are not
engaged, directly or indirectly, in any activity in the United
States except as, in the judgment of the commissioner, is
incidental to the international or foreign business of the
foreign bank, and to make loans or extensions of credit to or for
the account of the foreign bank in the manner and within the
limits prescribed by the commissioner by general or specific rule
or ruling.

(2) An application under this section shall specify the name
and capital and surplus of the bank filing it, the powers applied
for and the places where the banking operations are to be carried
The commissioner may approve or reject the application in whole or in part if for any reason the granting of the application is considered inexpedient and from time to time may increase or decrease the number of places where the banking operations may be carried on.


Sec. 162. Every bank operating foreign branches shall furnish information concerning the condition of the branches to the commissioner upon demand, and every bank investing in capital stock of banking organizations or corporations as provided in sections 161 to 165 shall furnish information concerning the condition of the banking organizations or corporations to the commissioner upon demand. The commissioner may order special examinations of the branches, banking organizations or corporations at such times as he deems best.


Sec. 163. Before any bank is permitted to purchase stock in any such banking organizations or corporations, the banking
organizations or corporations shall enter into an agreement or undertakings with the commissioner to restrict their operations or conduct their businesses in such manner or under such limitations and restrictions as the commissioner may prescribe for the places wherein the business is to be conducted. If at any time the commissioner has ascertained that the rules prescribed by him are not being complied with, he may institute an investigation of the matter and send for persons and papers, subpoena witnesses and administer oaths in order to satisfy himself as to the actual nature of the transactions referred to. If the investigation results in establishing the failure of the banking organization or corporation in question, or of the bank which may be a stockholder therein, to comply with the rules laid down by the commissioner the bank may be required to dispose of stockholdings in the banking organization or corporation upon reasonable notice.


Every bank operating foreign branches shall conduct the accounts of each foreign branch independently of the accounts of other foreign branches established by it and of its home office and at the end of each year shall transfer to its general ledger the profit or loss accrued to each branch as a separate item.

Sec. 165. Rules issued by the commissioner, in addition to regulating powers which a foreign branch may exercise under other provisions of law, may authorize a foreign branch, subject to such conditions and requirements as the rules prescribe, to exercise such further powers as may be usual in connection with the transaction of the business of banking in the places where the foreign branch transacts business. The rules shall not authorize a foreign branch to engage in the general business of producing, distributing, buying or selling goods, wares or merchandise. Except to such limited extent as the commissioner may deem to be necessary with respect to securities issued by any foreign government or any department, district, province, county, possession, or other similar governmental organization or subdivision of a foreign government, and any agency or instrumentality of any foreign government or of any organization or subdivision, the rules shall not authorize a foreign branch to engage or participate, directly or indirectly, in the business of underwriting, selling or distributing securities.

whatever authority organized, which has 1 or more branch offices in any foreign country shall be liable for contracts to be performed at any branch offices and for deposits to be repaid at such branch offices to no greater extent than a bank, banking corporation or other organization or association for banking purposes organized and existing under the laws of such foreign country would be liable under its laws. The laws of the foreign country for the purpose of this section shall be deemed to include all acts, decrees, regulations and orders promulgated or enforced by a dominant authority asserting governmental, military or police power of any kind at the place where any branch office is located, whether or not such dominant authority is recognized as a de facto or de jure government.

(2) Notwithstanding section 1105 of Act No. 174 of the Public Acts of 1962, if by action of any dominant authority which is not recognized by the United States as the de jure government of the foreign territory concerned, any property situated in or any amount to be received in the foreign territory and carried as an asset of any branch office of the bank in the foreign territory is seized, destroyed or canceled, then the liability of the bank for any deposit theretofore received and thereafter to be repaid by it, and for any contract theretofore made and thereafter to be performed by it, at any branch office in the foreign territory shall be reduced pro tanto by the proportion that the value, as shown by the books or other records of the bank at the time of such seizure, destruction or cancellation of such assets bears to the aggregate of all the deposit and contract liabilities of the branch offices of such bank in the foreign territory, as shown at
Sec. 169. (1) An institution may become the owner or lessor of personal property acquired upon the specific request and for the use of a customer and may incur additional obligations as may be incident to becoming an owner or lessor of such property.

(2) The lease transactions shall not constitute obligations for the purpose of sections 196 to 198 and lease payments shall constitute rent rather than interest.

(3) The provisions of this section shall not be considered to exempt from general property taxation any personal property of an institution or national bank that is leased, loaned, or otherwise made available to and used by a private individual, association, or corporation in connection with a business conducted for profit. The personal property shall be subject to taxation in the same amount and to the same extent as though the lessee or user were the owner of the property. Taxes shall be assessed to the lessees or users of the property and collected in the same manner as taxes assessed to owners of personal property, except that the taxes shall not become a lien against the property. When due, the taxes shall constitute a debt due from the lessee or user to the
unit of government for which the taxes were assessed.

(4) Notwithstanding the restrictions under subsection (1), an institution may acquire and hold personal property, including equipment, for the purpose of leasing the property or obtaining an assignment of a lessor's interest in a lease of the property. An institution shall not acquire personal property under this section if the acquisition results in an inventory of personal property not leased in excess of 20% of the institution's capital and surplus.


487.471 Branch or branches; establishment and operation; mobile branch; moving location of branch; contracting with another bank to act as branch; services; additional office; establishment and operation by out-of-state or foreign bank.

Sec. 171. (1) Upon written notice to the commissioner, a bank may establish and operate a branch or branches within any state, the District of Columbia, or a territory or protectorate of the United States unless the commissioner objects in writing within 60 days after receipt of the written notice from the bank. The commissioner may issue a written statement of intent not to object at any time before the expiration of the 60 days.

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

(3) Except for a mobile branch, a branch of a bank shall not be
moved from one location to another without 30 days advance written
notice to the commissioner.

(4) Upon written notice to the commissioner, a bank may
contract with 1 or more banks, out-of-state banks, national
banks, associations, or savings banks to act as a branch to
provide services to the customers of the contracting bank unless
the commissioner objects in writing within 60 days after receipt
of the written notice from the bank. The commissioner may issue a
written statement of intent not to object at any time prior to
the expiration of the 60 days. This subsection shall not be
construed to limit the powers granted to a bank under
section 151(31).

(5) Upon written notice to the commissioner, 1 or more
out-of-state banks, national banks, associations, or savings
banks may contract with a bank to provide services to the
customers of the contracting out-of-state bank, national bank,
association, or savings bank, unless the commissioner objects in
writing within 60 days after receipt of the written notice. The
commissioner may issue a written statement of intent not to
object at any time before the expiration of the 60 days. This
subsection shall not be construed to limit the powers granted to
a bank under section 151(31).
Subject to the requirements, limitations, and restrictions of subsections (1) to (3), a state agency or state foreign bank branch organized under this act may establish and operate additional offices in the United States and its territories and protectorates.

(7) An out-of-state bank located in a state, the District of Columbia, or a territory or protectorate of the United States whose laws permit the establishment in that state, district, territory, or protectorate of a branch by a bank may establish and operate 1 or more branches in this state.

(8) An out-of-state bank may apply to organize a branch in this state under this act by providing to the commissioner proof that its deposits are insured by an agency of the United States government. If the commissioner determines after receipt of this proof and the notices required under subsections (9) and (14), that the out-of-state bank is safe and sound, that the out-of-state bank is subject to regulation, and that there exists an agreement for exchange of supervisory information between the bureau and the out-of-state bank's regulator, the commissioner shall provide to the out-of-state bank a certificate of organization and eligibility to accept deposits and investments of public funds of the state and local units of government.

(9) An out-of-state bank operating in this state shall designate and maintain an agent located in this state upon whom process for judicial and administrative matters may be served and
shall provide written notice containing the name and address of its agent to the commissioner before commencing operations in this state.

(10) An out-of-state bank operating in this state shall notify the commissioner in writing of any change in its designated agent or the agent's address within 10 days following the effective date of the change.

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

(12) A foreign bank operating in this state shall designate and maintain an agent located in this state upon whom process for judicial and administrative matters may be served and shall provide written notice containing the name and address of its agent to the commissioner before commencing operations in this state.

(13) A foreign bank operating in this state shall notify the commissioner in writing of any change in its designated agent or the agent's address within 10 days following the effective date of the change.

(14) Prior to commencing operations at a branch in this state, an out-of-state bank or national bank shall file with the commissioner the name of the bank, the street address and mailing address, if different, of the bank's principal office, the street
084 address of the branch office, and the date when the branch is to commence operations in this state.

084 (15) An out-of-state bank and national bank operating in this state shall designate and maintain an agent located in this state upon whom process for judicial and administrative matters may be served and shall provide written notice containing the name and address of its agent to the commissioner before commencing operations in this state.

084 (16) An out-of-state bank or national bank operating in this state shall notify the commissioner in writing of any change in its designated agent or the agent's address within 10 days following the effective date of the change.


067 487.472 "Section 172 bank" defined; revoking, withdrawing, or terminating designation as section 172 bank.

067 Sec. 172. (1) For purposes of this section, "section 172 bank" means a bank or national banking association which has on file with the commissioner a written statement and certified
(2) A designation as a section 172 bank may not be revoked, withdrawn, or terminated, except as provided in this section.

(3) At any time a section 172 bank may file with the commissioner a written statement revoking the designation of the bank or national banking association as a section 172 bank. The revocation shall be effective upon the date of filing and may not be withdrawn or revoked.


Sec. 174. (1) If a bank or foreign bank permanently discontinues the operations of any branch or foreign bank branch, all bills, checks, and notes otherwise presentable for acceptance or payment, all deposits to be made or withdrawn, all notices to stop payment of checks to be given, and similar functions shall be deemed transferable to, and treated as a part of, the principal office of the bank or in the case of a foreign bank, the principal office in this country. Unless the branch to be discontinued is a mobile branch, notice of the date upon which the branch or foreign bank branch shall discontinue operations shall be posted conspicuously and continuously in the office.
The lobby of the branch or foreign bank branch to be discontinued at least 14 days prior to discontinuance.

(2) Each out-of-state bank or national bank shall notify the commissioner in writing as to the effective date of the discontinuance of operations of any of its branch offices in this state at least 14 days before discontinuance.


487.481 Trust powers; application; approval; powers granted.

Sec. 181. (1) Upon application, the commissioner may grant to any bank or state foreign bank branch full trust powers, as provided in this section, but subject to the conditions, limitations, and restrictions in this section and sections 181 to 186, except that trust powers shall not be granted to a state agency established and operating pursuant to chapter 3A.

(2) Upon approval of the application, the bank or state foreign bank branch has the power to conduct a trust business including, but not by way of limitation, the following:

(a) In and by its corporate name to take, receive, hold, repay, reconvey, and dispose of any effects and property, both real and personal, that may be granted, committed, transferred, or conveyed to it with its consent, upon any terms or upon any trust...
at any time, by any person, including minors, bodies corporate, or by any court, including the federal courts, in the state, and to administer, fulfill, and discharge the duties of the trust for the remuneration as agreed upon.

(b) To act generally as agent for the transaction of business, the management of estates, the collection of rents, interest, dividends, and money, and the collection of principal and interest on mortgages, bonds, notes, and securities for money and to enforce the payment thereof, and also to act as agent for the purpose of issuing, negotiating, registering, transferring, or countersigning the certificates of stock, bonds, or other obligations of any corporation, association, or municipality and to manage any sinking fund therefor on the terms as agreed upon.

(c) To accept and to execute the offices of personal representative, trustee, receiver, conservator, liquidating agent, assignee, or guardian of any minor, incompetent person, legally incapacitated person, or any person subject to guardianship, subject to the laws of this state applicable to those proceedings. In all cases when application is made to any court in this state for the appointment of any trustee, receiver, personal representative, or guardian of any minor, incompetent person, legally incapacitated, or any other person subject to guardianship, the court may appoint the bank or state foreign bank branch, with its consent, to hold the office. The accounts of the bank or state foreign bank branch as trustee, receiver, conservator, liquidating agent, assignee, personal representative, or guardian shall be regularly settled and
adjusted by the proper office or tribunals. All proper, legal, usual, and customary charges, costs, and expenses shall be allowed to the bank or state foreign bank branch for the care and management of the estate so committed to it. In case of appointment by any court, the bank or state foreign bank branch shall not be required to give any security except in the discretion of the court, other than as provided in section 184 for deposit with the state treasurer. If the court orders the bank or state foreign bank branch to give security, the security shall be a bond in an amount fixed by the court and with a surety company authorized to do business in this state as surety on the bond, or with personal surety or sureties on the bond satisfactory to the court. If any bank or state foreign bank branch is required, in the course of the administration of any trust, to give a bond, whether as additional security, substituted security, or otherwise, the surety on the bond shall not be liable directly or indirectly for any act or default committed by the bank or state foreign bank branch prior to the date of the filing and approval of the bond, or for the failure of the bank or state foreign bank branch to pay over on final settlement if the failure to pay over is due to an act or default committed prior to the filing and approval of the bond, or for the failure of the bank or state foreign bank branch to collect from itself or from any prior surety or sureties the amount of any loss due to any act or default committed by the bank prior to the date of the filing and approval of the bond.

(d) To exercise by its board of directors or authorized officers or agents, subject to law, all incidental powers as are
necessary to carry on a trust business.


Compiler's note: In the second sentence of subsection (c), the phrase "legally incapacitated" evidently should read "legally incapacitated person."

Sec. 181a. (1) As used in this section:

(a) "Host bank" means a bank, national bank, association, savings bank, or other legal entity for which trust services are provided by any other bank, out-of-state bank, national bank, association, or savings bank.

(b) "Trust service provider" means a bank or national bank providing trust services to any other bank, out-of-state bank, national bank, association, savings bank, or other legal entity.

(c) "Banking office" means a main office or authorized branch of a bank, out-of-state bank, national bank, association, or
(2) A bank granted full trust powers may contract by written agreement with any other legal entity to carry on trust services in its name and for its account at 1 or more of the offices of the other legal entity.

(3) A bank may contract by written agreement with any other legal entity exercising full trust powers to carry on trust services at 1 or more of its banking offices but in the name and for the account of the other legal entity.

(4) An agreement provided for in this section, including any lease, or a modification or extension of an agreement, is not effective as to the bank until it is approved in writing by the commissioner. The commissioner may approve or disapprove the agreement based on the sufficiency of the capital and surplus of the bank and other facts or circumstances that the commissioner considers proper.

(5) Thirty days after a host bank mails a notice of substitution as provided in subsection (6), a trust service provider shall be substituted for a host bank as fiduciary or agent and succeed to the title of assets held by a host bank in a fiduciary capacity for each account in which the host bank, under the terms of a trust service agreement approved by the commissioner, will no longer serve as fiduciary or agent. A trust service provider shall not be substituted for the host bank for an account in which the recipient of a notice of substitution
objects to the substitution in the manner provided in subsection (6).

(6) For each account in which a trust service provider is substituted for a host bank under the terms of a trust service agreement, a written notice of substitution shall be sent by the host bank by certified mail. The notice of substitution shall include the date the notice was mailed and explain that the trust service provider will not be substituted for the host bank for the account if the recipient of the notice sends a written objection to the host bank by first-class mail within 30 days after the date the notice was mailed. The notice of substitution shall be sent to the following:

(a) For employee benefit plans, to the plan sponsors.

(b) For individual retirement accounts and retirement accounts for the self-employed, to the account owners.

(c) For agency and escrow accounts, to the principals.

(d) For securities for which a host bank serves as trustee, registrar, transfer agent, or paying agent, to the issuers.

(e) For revocable trusts under agreement, to the settlors.

(f) For irrevocable trusts under agreement, to any co-fiduciary, to the settlor, to each current income beneficiary who is an adult, and, if a current income beneficiary is a minor,
to a parent of the minor with whom the minor resides or to the conservator or guardian of the minor. The notice to the settlor shall not grant to the settlor any authority over the trust or trustee that the settlor does not already have, including the authority to object to the substitution of a trust service provider for a host bank. For purposes of this subdivision, "current income beneficiary" means a person currently entitled to income or a person to whom the trustee, in the trustee's discretion, may pay principal or income.

(g) For testamentary trusts, to the persons notified under subdivision (f) and to the probate court that appointed the host bank as trustee.

(h) For conservatorships, to any co-fiduciary, to the protected person for whom the conservatorship was created or, if the conservatorship was created for a minor, to a parent of the minor with whom the minor resides or to the guardian of the minor, and to the probate court that appointed the host bank as conservator.

(i) For guardianships, to any co-fiduciary, to the minor or legally incapacitated person for whom the guardian was appointed if the ward is at least 14 years of age, and to the probate court that appointed the host bank as guardian.

(j) For probate estates, to any co-fiduciary, to any interested party as defined by section 7 of the revised probate code, Act No. 642 of the Public Acts of 1978, being section 700.7 of the Michigan Compiled Laws, and to the probate court that appointed.
Sec. 182. (1) A bank exercising a trust power as provided in sections 181 to 186 shall segregate all assets held in a fiduciary capacity from the general assets of the bank, shall keep a separate set of books and records showing in proper detail all transactions engaged in under the authority of sections 181 to 186, and at all times shall keep the bank's trust department business separate and distinct from the bank's commercial banking business.

(2) Funds, at any time and from time to time, held in trust by the bank, awaiting investment or other disposition, may be commingled and consolidated, and may be deposited in other banks not affiliated with the bank as designated by the board of directors.
directors or may be held at any time and from time to time by the 
bank under a deposit relationship and used by the bank in the 
conduct of the bank's individual corporate business but only to 
the extent and when the bank shall set aside for the protection 
of the owners of the funds obligations of the United States, 
obligations which are guaranteed fully as to principal and 
interest by the United States, general obligations of this state 
or of any political subdivision of this state, or other 
securities approved by the commissioner equal at face value to 
the amount of the funds held and so used less the amount of the 
funds which are insured by the federal deposit insurance 
corporation. If the bank fails, the owners of the funds held in 
trust, awaiting investment or other disposition, shall have a 
lien on the securities set apart in addition to any other claims 
against the bank.


Sec. 183. (1) In passing upon applications for permission to 
exercise full fiduciary powers as provided in section 181, the 
commissioner shall take into consideration the following, and he 
may grant or refuse the application accordingly:

(a) The sufficiency of the capital and surplus of the applying 
bank.
(b) Any other facts or circumstances which he deems proper.

(2) Without regard to the capital and surplus requirements specified in subsection (1), the commissioner may grant to a bank the limited trust power to act as executor, administrator or guardian and to serve as a testamentary trustee.


Sec. 184. (1) Before any bank has commenced exercising trust powers, it shall deposit with the state treasurer securities of a value equal to not less than 50% of the amount of its capital stock or $500,000.00, whichever is the lesser. The securities shall be obligations of the United States, obligations which are guaranteed fully as to principal and interest by the United States, general obligations of this state or of any political subdivision thereof or other securities approved by the commissioner and shall be held by the state treasurer, in trust, as security for the trust creditors of the bank. The state treasurer may accept in lieu of the actual deposit of such securities a safekeeping receipt from a duly qualified depository institution designated by the state treasurer, which safekeeping receipt shall acknowledge the possession of the securities and that they are held subject only to the order of the state treasurer. The existence of such deposit and the amount thereof...
084 shall be considered by any court in connection with the
084 requirement of the court with respect to the giving of security
084 by the bank for the discharge of its obligations in the execution
084 of the office of executor, administrator, trustee, receiver or
084 assignee, or guardian of any minor, incompetent person, mental
084 incompetent or any person subject to guardianship. Upon the
084 deposit being made, the state treasurer shall issue to the bank a
084 certificate of such fact, and securities or such safekeeping
084 receipts equal in value, to be determined by the commissioner,
084 shall remain on deposit in the state treasury. The state
084 treasurer shall pay over to such bank, as soon as collected, the
084 interest and income received on the securities so deposited or he
084 shall authorize the bank to collect the same for its own benefit.
084
084  (2) When a bank goes into liquidation in the manner prescribed
084 by this act, the deposit shall be returned by the state treasurer
084 to the liquidating committee or liquidating agent appointed by
084 the shareholders of such bank, to be applied under the direction
084 of the commissioner by the liquidating committee or liquidating
084 agent. If a receiver is appointed for the bank, the deposit of
084 securities shall be returned to the receiver to be applied as the
084 circuit court may order. If pursuant to a plan of reorganization
084 of the bank, the deposit of securities are assigned by the bank
084 to a liquidating committee, liquidating trustees or liquidating
084 agents, or if the securities are to be liquidated by the bank
084 itself, the deposit of securities, upon written order of the
084 commissioner, shall be returned to the liquidating committee,
084 liquidating trustees, liquidating agents or bank, to be applied
084 under the direction of the commissioner.
Sec. 185. (1) Funds or property held by a bank as fiduciary and available for investment shall be invested at the time and in the manner specified by the agreement, instrument, or order creating or defining the trust or other capacity in which the bank is acting or, where the bank holds the funds or property as agent, as directed or permitted by the bank's principal. In the absence of investment specifications or limitations in the agreement, instrument, or order, funds or property held by a bank as fiduciary shall within a reasonable time be invested in real or personal property, of whatever type or nature, as an ordinarily prudent person of intelligence and integrity who is a trustee of the money of others would purchase, in the exercise of reasonable care, judgment, and diligence under the conditions existing at the time of purchase, having due regard, in the case of a purchase of securities, for the management, reputation, and stability of the issuer and the character of the particular securities.

(2) Except as otherwise permitted by law, a court order, or the agreement, instrument, or order creating or defining the trust, or other capacity in which the bank is acting or with the consent of all interested parties or their representatives, or where the bank holds the funds or property as agent, as directed or...
permitted by the bank's principal, funds or property held by a
bank as fiduciary shall not be invested in any securities or
other properties, real or personal, purchased from the bank in
its individual capacity or from any affiliate of the bank.

(3) Notwithstanding any other statutory or common law, except
when the agreement, instrument, or order creating or defining the
trust or other capacity in which the bank, or the bank and 1 or
more cofiduciaries, is acting prohibits the investment, a bank,
or a bank and 1 or more cofiduciaries, may invest in a registered
investment company any funds or property with respect to which
the bank, or the bank and 1 or more cofiduciaries, exercises
investment discretion, even though either or both of the
following apply:

(a) The bank or an affiliate of the bank provides services as
investment adviser, sponsor, distributor, manager, custodian,
transfer agent, registrar, or otherwise, to the investment
company and receives reasonable remuneration for those services.

(b) The bank as fiduciary owns or controls a majority of the
voting shares of the investment company or a majority of the
shares voted for the election of its directors or trustees or the
bank as fiduciary otherwise controls the election of a majority
of its directors or trustees.

(4) As used in subsection (3), "registered investment company"
means an investment company that is registered under the
investment company act of 1940, title I of chapter 686,
For purposes of this section, a bank is considered to be holding funds or property in a fiduciary capacity if it is holding the assets as trustee, personal representative, custodian, conservator, guardian, agent, or in any other fiduciary capacity.

Sec. 186. The commissioner may promulgate such rules necessary to enforce compliance with the provisions of sections 181 to 186 and to provide for the proper exercise of the powers granted therein.

Sec. 188. (1) Any bank may operate a safe deposit and storage department or invest an amount not exceeding in the aggregate 15% of its unimpaired capital stock and surplus in the stock of not more than 1 safe and collateral deposit company organized under the laws of this state.
(2) If a bank operates a safe deposit and storage department, the legal liability of the bank on account of any loss to a customer shall not exceed the sum of $10,000.00 for any 1 box or compartment, including all property accepted for storage outside of the box or compartment. The bank may contract with the renter to have the renter assume all risks arising from the use of the box, compartment or storage.

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

(a) Such as shall be necessary for the convenient transaction of its business, including with its banking offices other space in the same buildings to rent as lessor. Without the approval of the commissioner, a bank shall not invest in bank premises, or in the stock, bonds, debentures or other such obligations of any corporation holding the premises of the bank or make loans to or upon the security of the stock, bonds and debentures of any such corporation, if the aggregate of all such investments and loans, together with the amount of any indebtedness incurred in connection with a bank premises real estate transaction by any such corporation which is an affiliate of the bank, exceeds 2/3 of the capital and surplus of the bank.

(b) Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its business.

(c) Such as it shall purchase at sales under judgments, decrees or mortgages held by the bank or shall purchase to secure debts due to it.

(d) Such as it shall legally own on the effective date of this act.

(e) Such as shall be conveyed to it under the provisions of sections 181 to 186.

(f) Such as it may acquire in connection with the purchase by it of a land contract but the acquisition of such real estate and
the purchase of such land contract constitutes a loan secured by real estate within the meaning of section 194. At the termination of such land contract, the bank must divest itself of such real estate within 1 year after termination or such additional period as the commissioner may approve.

(g) Such as it may acquire upon the specific request and for the use of a customer by lease arrangement with the bank, but the acquisition of such real estate and leasing to the customer constitutes a loan secured by real estate within the meaning of section 194. At the termination of such lease, the bank must divest itself of such real estate within 1 year after termination or such additional period as the commissioner may approve.

(2) Real estate shall be conveyed under the corporate seal of the bank and the signature of such officers as may be authorized by its board of directors.

(3) Real estate acquired in the cases contemplated in subdivisions (b) and (c) of subsection (1) shall not be held for a longer period than 5 years or such extended period thereafter as may be approved by the commissioner.


487.491 Collection of interest and charges on loans.

Sec. 191. Banks may collect interest and charges on loans as follows:
(a) On any loan made pursuant to an existing credit card arrangement or other agreement existing prior to the loan whereby the bank honors the borrower's draft, pays or agrees to pay the borrower's obligations, purchases the borrower's obligation, or advances money to or for the account of the borrower, and in which the loan finance charges are not precomputed but are computed from time to time on the basis of the unpaid balances, interest, and charges in a combined amount of not to exceed 1.5% of the unpaid balance per month.

(b) On any existing credit card arrangement or future credit card arrangement banks may not charge a discount of more than 5% of the gross amount of obligations purchased by the bank.

(c) On installment loans which are repayable in uniform weekly, semimonthly, monthly, quarterly, or semiannual installments, except for the final installment which may be less than the amount of any previous installment, and the term of which loan does not exceed a period of 84 months and 32 days:

(i) For an installment loan for the purchase of a motor vehicle, a rate of interest equivalent to 16.5% or less per annum on the unpaid balance, and on loans made after June 1, 1981, a rate of interest equivalent to 12.83% or less per annum on the unpaid balance.

(ii) For any other installment loan under this subdivision, a rate of interest equivalent to 12.83% or less per annum on the
unpaid balance. In addition, banks may collect on any installment loan a charge for expenses of $1.00 for each $50.00 or fraction thereof but not in excess of $15.00. If the annual percentage rate computed in accordance with the disclosure requirements of title I of the consumer credit protection act, 15 U.S.C. 1601 to 1667e, and the regulations promulgated under that act, is not thereby increased, then the installment loan may provide for interest computed and payable on unpaid balances instead of being added in advance. In that event, the final installment may be larger than the amount of any previous installment to the extent that is necessary to cover a deferred interest charge which may have accrued due to installment payments being received later than the periodic installment due date. The deferred interest charge shall be computed on the basis of additional interest charges accruing for late installment payments and appropriate interest reductions for installment payments made before the due date. The bank shall notify the borrower of the deferred interest charge not less than 25 days before the due date of the final installment. If the final installment payment is more than 105% of a previous installment, the borrower shall be given the option to pay the deferred interest charge not more than 25 days after the date the last installment payment is due.

(d) On any loan not covered by subdivision (a), (b), or (c), a bank may charge, collect, and receive interest and other charges in the same manner and at up to the maximum rate or amount permitted by law for the same type of loans made by national banking associations authorized to do business in this state.
(e) On any loan not covered by subdivision (a), (b), (c), or (d), as provided by section 192.


487.492 Interest and charges on loans; investigation fee or handling charge.

Sec. 192. A bank or any officer or employee thereof shall not, directly or indirectly, take or receive more than the rate of interest allowed by law in advance on its loans and discounts. Except as otherwise provided by law, a bank may charge an investigation fee or handling charge in connection with any one transaction of not to exceed $6.00 and such fee or charge shall not be considered as interest but such investigation fee or handling charge shall not be made on any transaction renewing or continuing an original transaction.


487.493 Interest on deposits; regulation.

Sec. 193. (1) A bank shall not, directly or indirectly, by any device whatsoever, pay any interest on any deposit which is payable on demand. If national banking associations are permitted to pay interest on demand deposits, the commissioner, by
appropriate rule, may permit state banks to pay interest on demand deposits in the same manner and at the same rate accorded national banking associations.

(2) Insofar as inconsistent with the provisions of this section, any act or part of an act requiring the payment of interest by banks on trust funds or any or all public funds as hereinbefore prescribed is superseded.

(3) From time to time the commissioner may regulate the payment of interest on all other deposits in the case of a bank which is not a member of either the federal reserve system or the federal deposit insurance corporation.


Sec. 194. On a real estate loan, the primary security for which is not a first lien on real estate, a bank may collect interest at the rate of 15% or less per annum on the unpaid balance. This section shall not impair the validity of a transaction or rate of interest lawful without regard to this section.

Sec. 195. (1) A bank may accept drafts or bills of exchange drawn upon it having not more than 6 months' sight to run, exclusive of days of grace, if 1 or more of the following applies:

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

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

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

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

(3) The commissioner, under conditions as the commissioner may prescribe, may authorize by regulation or order any bank to
(4) Notwithstanding subsections (2) and (3), with respect to any bank, the aggregate acceptances, including obligations for a participation share in such acceptances, growing out of domestic transactions shall not exceed 50% of the aggregate of all acceptances, including obligations for a participation share in such acceptances, authorized for the bank under this section.

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

(6) With respect to a bank that issues an acceptance, the limitations contained in this section shall not apply to that portion of an acceptance that is issued by the bank and that is covered by a participation agreement sold to another bank, out-of-state bank, or national bank.

(7) In order to carry out the purposes of this section, the commissioner may define any of the terms used in this section.
Sec. 196. (1) The total loans and extensions of credit by a bank to a person, which includes an individual or any legal entity, at no time shall exceed 15% of the capital and surplus of the bank, except that upon approval by 2/3 vote of its board of directors such limit may be increased to not to exceed 25% of the capital and surplus of the bank.

(2) If the commissioner determines at any time that the interests of a group of more than 1 person, copartnership, association, or corporation are so interrelated that they should be considered as a unit for the purpose for which credit was extended, the total loans and extensions of credit of that group acquired at any time shall be combined and deemed loans and extensions of credit acquired from 1 customer in applying the limitations of sections 196 to 198. A bank shall not be deemed to have violated sections 196 to 198 solely by reason of the fact that the indebtedness of a group then held exceeds the limitations of sections 196 to 198 at the time of a determination by the commissioner that the indebtedness of that group shall be
combined but if required by the commissioner, the bank shall dispose of indebtedness of the group in the amount in excess of the limitations of sections 196 to 198 within a reasonable time determined by the commissioner.

(3) The limitations provided by subsection (1) shall not apply to loans and extensions of credit described in sections 197 and 198.

(4) As used in this section and sections 197 and 198:

(a) "Loan and extension of credit" or "loan or extension of credit" includes all direct or indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of the person. To the extent specified by the commissioner, loan and extension of credit or loan or extension of credit includes any liability of a bank to advance funds to or on behalf of a person pursuant to a contractual commitment. Such term does not include investment securities held by a bank pursuant to section 154.

(b) "Person" means an individual, sole proprietorship, partnership, joint venture, association, trust, estate, business trust, corporation, sovereign government or agency or any instrumentality or political subdivision thereof, or any similar entity or organization.

Sec. 197. The following loans and extensions of credit shall not be subject under sections 196 to 198 to a limitation based upon the capital and surplus:

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

(b) The purchase of banker's acceptances of another bank of the kind described in paragraph 7 of section 13 of the federal reserve act, chapter 6, 38 Stat. 251.

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

(d) A loan or extension of credit to a customer, secured or covered by guarantees or by commitments or agreements to take over or to purchase the loan or extension of credit, made by a federal reserve bank or by the United States, or a department, bureau, board, commission, or establishment of the United States, including a corporation wholly owned directly or indirectly by
the United States.

(e) A loan or extension of credit from 1 business day to the next to a bank, out-of-state bank, national bank, association, or savings bank of excess reserve balances from time to time maintained under section 19 of the federal reserve act, chapter 6, 38 Stat. 251.

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

(g) A loan or extension of credit secured by a loan agreement between a local public agency or a public housing agency and an instrumentality of the United States pursuant to federal housing legislation under which funds will be provided for payment of the obligation secured by the loan agreement.

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

(i) A loan or extension of credit to the student loan marketing association.

(j) A loan or extension of credit fully secured by a segregated deposit account in the lending bank.

(k) A loan or extension of credit arising from the acceptance
Sec. 198. The following limitations based upon capital and surplus shall apply:

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

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

(c) Loans or extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper which carries a full recourse indorsement or unconditional guarantee by the person transferring the paper, shall be subject to a limitation of 30% of capital and surplus. If the bank's files or the knowledge of its officers of the financial condition of each maker of the consumer paper is reasonably adequate, and an officer of the bank designated for that purpose by the board of directors of the bank certifies in writing that the bank is relying primarily upon the responsibility of each maker for the payment of the loans or extensions of credit, the limitations of this section as to the loans and extensions of credit of each maker shall be the sole applicable loan limitation. The certification shall be retained as part of the records of the bank.

Sec. 199. (1) One or more individuals may open a savings or checking account with a bank in the names of 2 or more minor or adult individuals. The savings or checking account contract shall do all of the following:

(a) Designate that the money on deposit in the account may be withdrawn by 1 or more of the depositors during the lifetimes of all of them.

(b) Specify that the account and all additions to the account shall be the property of the depositors as joint tenants, tenants by the entireties, or as tenants in common.

(2) If specification is not made in the savings or checking account contract concerning the nature of the joint tenancy created, the account and all additions to the account shall be the property of the persons as joint tenants, and in the absence of fraud or undue influence, the opening of an account shall be conclusive evidence in an action or proceeding of the intention of all parties to the account to vest title to the account and all additions to the account in the survivor.

(3) The power of the depositors, or any 1 or more of them to obtain substitute evidence of the savings or checking account or
a substituted account upon loss or destruction of the evidence of
ownership of the account, to pledge the account in whole or in
part, and to execute a power of attorney with respect to the
account shall be coextensive with the right of the depositors to
make withdrawals from the account during the time all depositors
to the account are living.


CHAPTER 5

REGULATION

487.501 Impairment of capital; determination; assessments upon
shareholders.

Sec. 201. (1) Every bank whose capital, in the opinion of the
commissioner, shall have become impaired by losses or otherwise,
within 2 months after receiving notice thereof from the
commissioner, shall meet the deficiency in the capital by an
assessment upon the shareholders pro rata on the amount of
capital stock held by each. If any bank fails to restore its
capital as provided by law for 2 months after receiving notice
from the commissioner or, within the same period, fails to take
steps to liquidate its business and affairs, a receiver may be
appointed for the bank in accordance with the provisions of this
act. The commissioner, in his discretion, may grant such
extensions of time as he deems advisable in order to allow the
c bank to meet the deficiency in the capital.
(2) If any part of the capital of a bank consists of preferred stock, the determination of whether or not the capital of the bank is impaired and the amount of such impairment shall be based upon the par value of its stock even though the amount which the holders of the preferred stock shall be entitled to receive in the event of retirement or liquidation shall be in excess of the par value of the preferred stock.

(3) The directors of every bank whose capital has become impaired by losses or otherwise shall levy within the 2 months' period an assessment upon the stock of the bank to repair the deficiency, and shall give notice of the action of the commissioner and the amount of the assessment which each shareholder must pay for the purpose of making good the deficiency to each shareholder by written or printed notice mailed to the shareholder at his last known address as appears from the records of the bank or served personally upon him.

(4) If the assessment is levied by the directors, and if any shareholder refuses or neglects to pay the assessment as provided in this section within 30 days from the date of mailing to the shareholder a notice of the amount to be paid by him, the directors of the bank shall sell the stock of the shareholder to the highest bidder at either public or private sale in the manner provided for the disposition of collateral pursuant to the provisions of section 9504 of Act No. 174 of the Public Acts of 1962, being section 440.9504 of the Compiled Laws of 1948.
(5) A sale of stock as provided in this section shall effect an absolute cancellation of the outstanding certificates evidencing the stock so sold and shall make same null and void, and new certificates shall be issued by the bank to the purchaser thereof. Out of the proceeds of the stock so sold, the directors shall pay the necessary costs of sale and the amount of assessment levied thereon and the balance if any shall be paid to the person whose stock has been sold.

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


487.505 Reserve cities for certain banks; designation; approval; legal depositary for reserve funds.

Sec. 205. (1) Annually the commissioner shall designate and approve certain cities in this and any other state as reserve cities for banks which are not member banks under the federal reserve act.

(2) Any bank or national banking association in such cities shall be a legal depositary for reserve funds referred to in this section, if it shall have a combined capital and surplus of $500,000.00 if located in a city which has a population of not more than 250,000, $1,000,000.00 if located in a city which has a population of more than 250,000, $1,500,000.00 if located in a city which has a population of more than 500,000 and
$3,000,000.00 if located in a city which has a population of more than 1,000,000.


Compiler's note: The repealed sections pertained to reserve funds.

487.511 Loans to executive officers; limitations; report of outstanding indebtedness; interest in partnership; indorsing or guaranteeing loan or other asset; rules; installment debt.

Sec. 211. (1) An executive officer of a bank shall not borrow from or otherwise become indebted to a bank of which the person is an executive officer and a bank shall not make a loan or extend credit in any other manner to any of its own executive officers except as provided in this section. Loans made to an executive officer before the date the person became an executive officer may be continued, renewed, or extended for periods expiring not more than 5 years after the date the person became an executive officer. With a prior approval of a 2/3 majority of the entire board of directors a bank may extend credit to an executive officer of the bank and the executive officer may become indebted to the bank in an amount not exceeding an amount
established from time to time by the commissioner, except that credit secured by a real estate mortgage upon an executive officer's residence and credit to finance the education of the executive officer or the spouse or children of the executive officer shall not be subject to such limitation. A loan made pursuant to this subsection shall be subject to the loan limitations as provided in sections 196 to 198.

(2) Each bank officer shall make a written report to the directors, at the time of the annual meeting of the bank directors, as to all of the officer's outstanding indebtedness to a bank or national banking association which report shall state the dates of all loans, the current balances of all loans, and whether the indebtedness is secured.

(3) Borrowing by, or loaning to, a partnership, in which 1 or more executive officers of a bank are partners having either individually or together a majority interest in the partnership, is within the prohibition of this section. This section shall not prohibit an officer of a bank from indorsing or guaranteeing for the protection of the bank a loan or other asset which was previously acquired by the bank in good faith or from incurring any indebtedness to the bank for the purpose of protecting the bank against loss or giving financial assistance to the bank. The commissioner shall determine what shall be deemed to be a borrowing, indebtedness, loan, or extension of credit, for the purposes of this section, and shall promulgate rules as necessary to effectuate this section in accordance with its purposes and to prevent evasions of the provisions.
(4) This section shall not be construed to prevent an officer of a bank from being indebted to the bank upon installment debt transferred to the bank in the regular course of business by a seller of consumer goods purchased by the officer or debt resulting from the normal use by the officer of a credit card issued or caused to be issued by the bank.


487.513 Directors and officers; personal liability for violation of act; limitation of action.

Sec. 213. If the directors or officers of a bank knowingly violate, or knowingly permit any of the agents, officers or directors of a bank to violate, any of the provisions of this act or rules of the commissioner made under authority thereof, every director and officer who participated in or assented to the violation shall be held liable in his personal and individual capacity for all damages which the bank, any shareholder or any other person sustains in consequence of the violation. Any action to recover damages shall be brought within 3 years from the time of the violation, and not afterwards.
Sec. 215. Except as otherwise provided in this act, a bank shall not be affiliated with any corporation, association, business trust or other similar organization engaged principally in the issue, flotation, underwriting, public sale or distribution, at wholesale or retail, or through syndicate participation of stocks, bonds, debentures, notes or other securities. Nothing in this section shall apply to any organization which has been placed in formal liquidation and which transacts no business except such as may be incidental to the liquidation of its affairs.

Sec. 217. An officer or employee of any bank, in his individual capacity, shall not act as agent in the sale of stock or other securities to any person, partnership, association or corporation or receive directly or indirectly any consideration or commission resulting from the sale of stock or other securities by others to the bank by which he is employed.
487.519 Consideration or gratuity for procuring loan.

Sec. 219. An officer, director or employee of a bank may not receive or consent or agree to receive any consideration or gratuity from a borrower for procuring a loan from the bank.


487.521 Officers and employees; bonding, expense; insurable losses.

Sec. 221. (1) The board of directors shall require every employee concerned in the handling of moneys, accounts or securities of the bank, who can be bonded, to be bonded by a surety company authorized to do business in this state in such an amount as shall be determined by them. The bank shall pay for any surety bonds required of its employees.

(2) The commissioner shall require every bank to provide reasonable protection and indemnity against burglary, defalcation and other reasonably required insurable losses. Whenever a bank refuses to comply with such requirement, the commissioner may contract for the protection and indemnity and charge the same to the bank. If the charge is not paid, the commissioner may collect the same in an action instituted by the attorney general.
Sec. 223. The commissioner may require reports from any bank whenever, in the commissioner's judgment, they are necessary to inform the commissioner fully as to the condition of the bank. The commissioner may require publication of reports and proof of publication by a date determined by the commissioner and in the manner and form as the commissioner may prescribe except that the commissioner shall give a bank at least 30 days' notice in writing of the date required for the publication of reports.

Sec. 226. Every bank failing to make and transmit to the commissioner or to publish and furnish to the commissioner proof...
of publication of any of the reports required by section 223 shall be subject to a penalty of $100.00 for each day after the time for making any report. All penalties collected shall be paid into the state treasury to the credit of the general fund.

Whenever any bank delays or refuses to pay the penalty for a failure to make and transmit a report, the commissioner may maintain an action against the delinquent bank for the recovery of such penalty.


Sec. 228. Subject to section 193, all savings deposits shall be repaid to the depositor, or his or her lawful representatives, at such time, with such interest, and under such regulations as the board of directors of the bank may prescribe.


Sec. 230. Notwithstanding any other provision of law, the board of directors of a bank, with the approval of the commissioner, may regulate and prescribe the terms, conditions and bylaws and rules under which deposits, other funds and assets may be
received, conserved, paid out, withdrawn or otherwise disposed of whenever in the opinion of the commissioner an emergency exists in the affairs of a bank and such action is advisable to conserve, safeguard and protect depositors, borrowers, deposits, moneys, funds, assets and the business of the bank, and all parties in interest, including the public, but no such terms, conditions, bylaws and rules shall be in force until a copy thereof is posted in the lobby of each office of the bank.


Sec. 231. (1) Except as otherwise provided in this section, a bank or bank officer shall not give preference to a depositor or creditor by pledging the assets of the bank as collateral security or otherwise.

(2) A bank, with the written consent of the commissioner, may pledge its assets in an amount not in excess of 10% of its total deposits for the purpose of securing the following:

(a) Funds belonging to the United States or belonging to or being administered by an officer, instrumentality, or agent of the United States, funds of estates being administered by a federal court under a federal bankruptcy law, and other funds when required or permitted to do so under the laws of the United States or an order of a federal court.
(b) Surplus funds of the state held by the state treasurer.

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

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

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

(f) Funds on deposit to the credit of the Michigan employment security commission.

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

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

(3) The requirements, restrictions, and limitations imposed by this section shall not apply to the pledging of an obligation of the United States, direct or fully guaranteed, or both, for the purpose of securing a deposit of the United States when the deposit is established coincidentally with the purchase of an
A bank may pledge its assets to secure liabilities of the following types:

(a) In the case of member banks, liabilities incurred under the Federal Reserve Act, chapter 6, 38 Stat. 251. In the case of nonmember banks, liabilities incurred through borrowing under the same conditions as are imposed upon members of the Federal Reserve System by the Federal Reserve Act, chapter 6, 38 Stat. 251.

(b) In the case of Federal Home Loan Bank members, liabilities incurred under the Federal Home Loan Bank Act, chapter 522, 47 Stat. 725.

(c) Liabilities incurred under former section 202 of title II of the Federal Farm Loan Act, chapter 245, 39 Stat. 360.

(d) Liabilities incurred on account of a loan made with the express approval of the commissioner under section 197(c).

(e) Liabilities incurred on account of borrowings from 1 business day to the next from a bank or national banking association of excess reserve balances from time to time maintained by the bank or national banking association under section 207, or section 19 of the Federal Reserve Act, chapter 6, 38 Stat. 251.
(f) Liabilities incurred on account of securities sold under a repurchase agreement.


Compiler's note: The repealed section pertained to indebtedness of bank.

487.535 Deposits with other banks or national banking association; deposit in legal depositary in a reserve city; limitations.

Sec. 235. Except where required or permitted under the federal reserve act, chapter 6, 38 Stat. 251, or the federal home loan bank act, chapter 522, 47 Stat. 725, a bank shall not deposit an amount in excess of 10% of its capital and surplus with any other bank or national banking association but any bank may deposit an amount not to exceed 15% of its capital, surplus and deposits in any legal depositary in a reserve city designated by the commissioner pursuant to the provisions of this act.

Sec. 239. (1) An overdraft existing for 90 days shall be charged off to the profit and loss account of the bank at the expiration of that time.

(2) A director or executive officer of a bank shall not knowingly overdraw his account.


Sec. 241. All debts due to any bank on which interest is past due and unpaid for a period of 6 months, unless the debts are well secured and in process of collection or the debts constitute claims against solvent estates in probate, shall be charged off to the reserve for bad debts or the profit and loss account of the bank at the expiration of that time.


Sec. 245. Any transfer of any assets of a bank to either its shareholders or creditors made after the commission of an act of insolvency or made in contemplation thereof, with a view to
preventing the application of its assets in the manner prescribed
by this act, or with a view to the preference of 1 creditor over
another, is null and void.


Sec. 246. (1) An officer or the board of directors of a bank
may appoint a compliance review committee to evaluate loan
underwriting standards, asset quality, financial reporting to
federal or state regulatory agencies, compliance with the bank's
policies, compliance with federal or state statutory or
regulatory requirements, or other related matters.

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

(3) A document, compilation, analysis, or item of information,
data, or material remains compliance review material under this
section even if it is delivered or disclosed to employees of the
bank who are not members of the compliance review committee or to
attorneys, accountants, auditors, consultants, or other
professional advisers retained by the bank or to 1 or more other
persons retained by the bank to assist the committee in performing its functions or to evaluate the committee.

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

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


CHAPTER 6

RECEIVERSHIPS AND CONSERVATORSHIPS

Sec. 251. Whenever a bank has refused to pay its deposits or obligations in accordance with the terms under which such deposits or obligations were incurred or whenever any bank becomes insolvent, or whenever any bank shall refuse to submit its books, papers and records for inspection by the commissioner or whenever it appears to the commissioner that the bank is in an unsafe or unsound condition, the commissioner shall either
appoint a conservator under the provisions of section 261 or, with the attorney general representing him, shall apply to the circuit court for the county in which the bank is located for the appointment of a receiver for the bank. In any proceeding for the appointment of a receiver the commissioner shall request that the court appoint the federal deposit insurance corporation as the receiver if the deposits in the bank are insured to any extent by the corporation. The court may act upon the application forthwith and without notice to any person but if at any time it appears to the court that none of the claimed reasons for receivership did in fact exist, the receivership shall be dissolved and the proceedings terminated. If the federal deposit insurance corporation accepts the appointment as receiver, it may act as such without bond.


Sec. 252. Subject to the approval of the appointing court, a receiver shall:

(a) Take possession of the books, records and assets of every description of the bank and collect all debts, dues and claims belonging to it.

(b) Sue and defend, compromise and settle all claims involving the bank.
(c) Sell any and all real and personal property.

(d) Exercise any and all fiduciary functions of the bank as of the date of the commencement of the receivership.

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

(f) Pay ratably any and all debts of such bank, except that debts not exceeding $50.00 in amount may be paid in full but the holders thereof shall not be entitled to interest thereon.

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

(h) Pay, ratably, to the shareholders of the bank in proportion to the number of shares held and owned by each the balance of the net assets of the bank after payment or provision for payments as provided in subdivisions (e), (f) and (g).

(i) Borrow such sum of money as may be necessary or expedient in aiding the liquidation of the bank and in connection therewith to secure such borrowings by the pledge, hypothecation or mortgage of the assets of the bank.
(j) Exercise such other powers and duties as may be provided by the appointing court pursuant to the laws of this state applicable to the appointment of receivers by circuit court judges.


487.553 Receiver; reports to commissioner.

Sec. 253. The receiver from time to time shall report to the commissioner with respect to all of his acts and proceedings in connection with the receivership.


487.554 Receiver; bank liquidation; act provides exclusive procedures.

Sec. 254. The full and exclusive procedures for the liquidation of a bank subject to the provisions of this act shall be the procedures prescribed in this act and no receiver or other liquidating agent shall be appointed for such purpose or for any bank or its assets and property except as expressly provided in this act.


487.557 Receivership; federal deposit insurance corporation; subrogation.
Sec. 257. Whenever any bank has been closed and placed in receivership, and the federal deposit insurance corporation pays or makes available for payment the insured deposit liabilities of the closed bank, the corporation, whether or not it has become receiver thereof, is subrogated to all of the rights of the owners of the deposits against the closed bank in the same manner and to the same extent as subrogation of the corporation is provided for in the federal reserve act, as amended, in the case of the closing of a national banking association. The rights of depositors and other creditors of the closed bank shall be determined in accordance with the applicable provisions of the laws of this state.


Sec. 261. (1) If any of the grounds set forth in section 251 authorizing the appointment of a receiver exist or whenever the commissioner deems it necessary in order to conserve the assets of any bank for the benefit of the depositors and other creditors thereof, the commissioner may appoint a conservator for the bank and require of him such bond and security as the commissioner deems proper.

(2) The commissioner may appoint as conservator 1 of the bank examiners of the bureau or some other competent and disinterested person. The bureau shall be reimbursed out of the assets of the
The conservatorship for all sums expended by it in connection with
the conservatorship as expenses or otherwise, which funds shall
be paid into the revolving fund provided for in section 267. Any
conservator by such appointment shall become a member of the
bureau. All expenses of any conservatorship shall be paid out of
the assets of the bank, upon the approval of the commissioner.
The expenses shall be a first charge upon the assets and shall be
fully paid before any final distribution or payment of dividends
to creditors or shareholders.


Sec. 262. The conservator, under the direction of the
commissioner, shall take possession of the books, records and
assets of every description of the bank, and take such action as
may be necessary to conserve the assets of the bank pending
further disposition of its business as provided by law. The
conservator shall have all the rights, powers and privileges of
receivers of banks appointed pursuant to this act and shall be
subject to the obligations and penalties, not inconsistent with
the provisions of this act with respect to conservators, to which
receivers are subject. During the time that the conservator
remains in possession of the bank, the rights of all parties with
respect thereto, subject to the other provisions of this act with
respect to conservators, shall be the same as if a receiver had
been appointed. The conservator may execute the discharge of any
real estate mortgage held as part of the assets of the bank.
Sec. 263. While a bank is in the hands of the conservator appointed by the commissioner, he may require the conservator to set aside and make available for withdrawal by depositors and payment to other creditors, on a ratable basis, such amounts as in the opinion of the commissioner may be used safely for this purpose. The commissioner may permit the conservator to receive deposits. Deposits received while the bank is in the hands of the conservator shall not be subject to any limitation as to payment or withdrawal. Such deposits and any new assets acquired on account of the deposits shall be segregated and shall be held especially for the new deposits and shall not be used to liquidate any indebtedness of such bank existing at the time that a conservator was appointed for it or any subsequent indebtedness incurred for the purpose of liquidating any indebtedness of the bank existing at the time the conservator was appointed. Deposits received while the bank is in the hands of the conservator shall be kept on hand in cash, invested in the direct obligations of the United States or deposited in banks designated by the commissioner.
Sec. 264. With the prior approval of the commissioner, the conservator of any bank may borrow such sums of money as are necessary or expedient in aiding the operation, reorganization or liquidation of the bank, including the payment of liquidating dividends, and may secure the loans by the pledge, hypothecation or mortgage of the assets of the bank.


Sec. 265. If the commissioner is satisfied that it may be done safely and that it would be in the public interest, he may terminate the conservatorship and permit the bank to resume the transaction of its business subject to such terms, conditions, restrictions and limitations as he may prescribe.


Sec. 266. After 15 days from the date upon which the affairs of a bank shall have been turned back to its board of directors by the conservator, either with or without being reorganized, the provisions of section 263 with respect to the segregation of deposits received while it is in the hands of the conservator and with respect to the use of such deposits to liquidate the
indebtedness of the bank shall no longer be effective. Before the conservator turns back the affairs of the bank to its board of directors, he shall publish a notice in form approved by the commissioner, stating the date on which the affairs of the bank will be returned to its board of directors and that the provisions of section 263 will not be effective after 15 days from such date. On the date of the publication of the notice, the conservator shall immediately send to every person who deposited money in the bank after the appointment of a conservator therefor, a copy of the notice by mail, postage prepaid, addressed to the last known address of the person as shown by the records of the bank. The conservator shall send similar notice in like manner to every person making deposit in the bank under section 263 after the date of the newspaper publication and before the time when the affairs of the bank are returned to its directors.


Receiver and conservator; rules prescribed by commissioner; revolving fund to reimburse bureau.

Sec. 267. (1) The commissioner is authorized and empowered to prescribe such rules as he deems necessary in order to carry out the provisions of this chapter as to receivers and conservators.

(2) All compensation and expenses allowed to reimburse the bureau when a bank examiner acts as receiver or conservator and all expenses for state supervision of receiverships and
conservatorships under the provisions of this act shall be turned over to the state treasurer and shall be credited to a revolving fund, hereby created, to be held for the bureau, which fund shall be disbursed on proper vouchers approved by the commissioner to reimburse the bureau in connection with the provisions of this act with respect to receivers and conservators of banks.


487.568 Reorganization of bank; consent; definition; effect on depositors, creditors, and shareholders.

Sec. 268. (1) In any reorganization of any bank under a plan of a kind which requires the consent of depositors and other creditors or of shareholders or of both depositors and other creditors and shareholders, the reorganization shall become effective when both the following occur:

(a) The commissioner is satisfied that the plan of reorganization is fair and equitable as to all depositors, other creditors and shareholders and is in the public interest and has approved the plan subject to such conditions, restrictions and limitations as he may prescribe.

(b) After reasonable notice of the reorganization as determined by the commissioner, depositors and other creditors of such bank representing at least 75% in amount of its total deposits and other liabilities as shown by the books of the bank or shareholders owning at least 2/3 of its outstanding capital stock...
as shown by the books of the bank or both depositors and other creditors representing at least 75% in amount of the total deposits and other liabilities and shareholders owning at least 2/3 of its outstanding capital stock as shown by the books of the bank, shall have consented in writing to the plan of reorganization. Claims of depositors or other creditors which will be satisfied in full under the provisions of the plan of reorganization shall not be included among the total deposits and other liabilities of the bank in determining the 75% thereof. The term "reorganization" as used in this section may be construed to include the establishment of a new bank in conformity with any plan of reorganization.

(2) When the reorganization becomes effective, all books, records and assets of the bank shall be disposed of in accordance with the provisions of the plan and the affairs of the bank shall be conducted by its board of directors in the manner provided by the plan and under the conditions, restrictions and limitations which may have been prescribed by the commissioner. In any reorganization which has been approved and become effective, all depositors and other creditors and shareholders of the bank, whether or not they have consented to the plan or reorganization, shall be fully and in all respects subject to and bound by its provisions and claims of all depositors and other creditors shall be treated as if they had consented to the plan of reorganization. The state or any department, agency or political subdivision thereof holding a claim against the bank is authorized to participate in a plan or reorganization as any other creditor and shall be subject to and bound by its
provisions as any other creditor.


Compiler's note: In subsection (2), "plan or reorganization" evidently should read "plan of reorganization."

CHAPTER 7

SAFE AND COLLATERAL DEPOSIT COMPANIES

487.571 Safe deposit and collateral deposit business; incorporation; exception.

Sec. 271. (1) Any number of persons, not less than 5, may incorporate for the purpose of carrying on a safe deposit and collateral deposit business under the provisions of this chapter and with the powers conferred by this chapter.

(2) A person, partnership, association, or corporation shall not carry on a safe deposit and collateral deposit business unless incorporated under the provisions of this chapter or authorized to do so under the provisions of this act or under another statute of this state. None of the provisions of this act with respect to safe and collateral deposit business shall apply to any savings and loan association duly organized or chartered by the state or to any federal savings and loan association.

084 Sec. 273. The persons incorporating shall execute, acknowledge
084 before any officer authorized by the laws of this state to take
084 and certify acknowledgments and deliver to the commissioner in
084 quadruplicate original articles of incorporation. If the
084 commissioner finds that the articles conform to law, when all
084 requirements have been complied with, he shall file 1 of the
084 original articles in the office of the bureau, certify and
084 forward by registered mail 1 of the original articles to the
084 county clerk of the county in which the safe and collateral
084 deposit company is located, and 1 to the corporation division,
084 department of treasury, and shall certify and return 1 of the
084 original articles to the incorporators.

084


084 Sec. 274. The articles of incorporation shall specify:

084 (a) The name of the incorporators and their places of residence
084 and addresses respectively and the number of shares of stock held
084 by each.

084 (b) The name by which the corporation shall be known and the
place where its principal office for the transaction of business is to be established.

(c) The purpose of the incorporation as mentioned in this act.

(d) The amount of capital stock, which shall not be less than $100,000.00 and be fully paid in at the time of incorporation; and which shall be divided into shares of $100.00 each.

(e) The number of the directors of the corporation, which shall be not less than 5 nor more than 9.

(f) The period for which such corporation is to be incorporated, which may be a term of years or in perpetuity.

(g) Any other provisions consistent with the laws of this state for the conduct of the affairs of any such safe and collateral deposit company.


Sec. 275. The articles of incorporation on file with the bureau, or copies thereof duly certified by the commissioner, with the seal of the bureau attached, or on file with the county clerk, or copies thereof duly certified by the county clerk, may be used as evidence in all courts for and against such
corporation. The commissioner shall certify upon the articles filed with the bureau, and the county clerks shall certify upon the articles filed with them, the date when they were filed.


$487.577$ Corporate powers.

Sec. 277. All corporations organized and established or governed under this chapter shall be deemed bodies politic and corporate, capable of suing and being sued, may have a common seal and may adopt, from time to time, bylaws not inconsistent with this chapter or any other provision of law.


$487.579$ Corporate officers.

Sec. 279. The officers of the corporation shall be a president, vice-president, secretary and treasurer, who shall be members of the board of directors, and such other officers as shall be provided for by the bylaws of the corporation. The office of secretary and treasurer may be held by 1 person.


$487.581$ First meeting; notice, contents, service; waiver.

Sec. 281. The first meeting of the corporation shall be called
by a notice signed by any incorporator designating the time and place of the meeting and stating the purpose for which the meeting is called. The notice shall be personally served on all the incorporators at least 2 days before the date set for the meeting, or if all the incorporators are present at the meeting or in writing waive notice and fix a time and place of meeting, then no notice whatever shall be required of the first meeting.

Sec. 282. The annual meeting of the corporation shall be held on the third Tuesday in January in each year, at the principal office of the corporation, in such manner and upon such notice as the bylaws of the corporation shall determine.

Sec. 283. The stock, property and affairs of such corporation shall be managed by a board of directors, who shall be chosen annually, at the annual meeting of the corporation or at any lawful adjournment thereof and shall hold their offices for the period of 1 year and until their successors shall be duly chosen. The board of directors shall have power to do all things which may be proper or necessary, not inconsistent with law, for the general regulation and management of the business of the
corporation and the administration of its affairs, including the election of officers. A majority of the board of directors constitutes a quorum at all lawful meetings.


Sec. 284. (1) A director or an officer of a safe and collateral deposit company shall discharge the duties of his or her position in good faith and with that degree of diligence, care, and skill which an ordinarily prudent person would exercise under similar circumstances in a like position. In discharging his or her duties, a director or an officer, when acting in good faith, may rely upon the opinion of legal counsel for the safe and collateral deposit company, upon the report of an independent appraiser selected with reasonable care by the board or by an officer of the safe and collateral deposit company, or upon financial statements of the safe and collateral deposit company represented to him or her to be correct by the president or the officer of the safe and collateral deposit company having charge of its books of account, or as stated in a written report by an independent public or certified public accountant or firm of accountants fairly to reflect the financial condition of the safe and collateral deposit company.

(2) The articles of incorporation of a safe and collateral deposit company may contain a provision providing that a director
is not personally liable to the safe and collateral deposit company or its shareholders for monetary damages for a breach of the director's fiduciary duty. However, the provision does not eliminate or limit the liability of a director for any of the following:

(a) A breach of the director's duty of loyalty to the safe and collateral deposit company or its shareholders.

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

(c) A violation of section 43.

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

(e) An act or omission occurring before January 1, 1989.

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

Indemnification generally.

Sec. 284a.(1) A safe and collateral deposit company may indemnify any person who was or is a party or is threatened to be made a party to a threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal, other than an action by or in the right of the safe and collateral deposit company, or by reason of the fact that he or she is or was a director, officer, employee, or agent of the safe and collateral deposit company or is or was serving at the request of the safe and collateral deposit company as a director, officer, partner, trustee, employee, or agent of another safe and collateral deposit company, foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, against expenses, including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with the action, suit, or proceeding if the person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the safe and collateral deposit company or its shareholders, and with respect to any criminal action or proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit, proceeding by judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, does not, of itself, create a presumption that the person did not act in good faith and in a manner that he or she reasonably believed to be in or not opposed to the best interests of the safe and collateral deposit company or to any proceeding;
deposit company or its shareholders, and with respect to a
criminal action or proceeding, had reasonable cause to believe
that his or her conduct was unlawful.

(2) A safe and collateral deposit company may indemnify a
person who was or is a party to or is threatened to be made a
party to any threatened, pending, or completed action or suit by
in the right of the safe and collateral deposit company to
procure a judgment in its favor by reason of the fact that he or
she is or was a director, officer, employee, or agent of the safe
and collateral deposit company or is or was serving at the
request of the safe and collateral deposit company as a director,
officer, partner, trustee, employee, or agent of another safe and
collateral deposit company, foreign or domestic corporation,
partnership, joint venture, trust, or other enterprise, whether
for profit or not, against expenses, including actual and
reasonable attorneys' fees and amounts paid in settlement
incurred by the person in connection with the action or suit if
the person acted in good faith and in a manner the person
reasonably believed to be in or not opposed to the best interests
of the safe and collateral deposit company or its shareholders.
However, indemnification shall not be made for a claim, issue, or
matter in which the person has been found liable to the safe and
collateral deposit company unless and only to the extent that the
court in which the action or suit was brought has determined upon
application that, despite the adjudication of liability but in
view of all circumstances of the case, the person is fairly and
reasonably entitled to indemnification for the expenses which the
court considers proper.
Sec. 284b. (1) To the extent that a director, officer, employee, or agent of a safe and collateral deposit company has been successful on the merits or otherwise in defense of any action, suit, or proceeding described in section 284a, or in defense of any claim, issue, or matter in the action, suit, or proceeding, he or she shall be indemnified against expenses, including actual and reasonable attorneys' fees, incurred by him or her in connection with the action, suit, or proceeding and an action, suit, or proceeding brought to enforce the mandatory indemnification provided in this subsection.

(2) An indemnification under section 284a, unless ordered by a court, shall be made by the safe and collateral deposit company only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in section 284a. This determination shall be made in any of the following ways:

(a) By a majority vote of a quorum of the board consisting of directors who were not parties to the action, suit, or proceeding.
(b) If the quorum described in subdivision (a) is not obtainable, by a majority vote of a committee designated by the board, in which board action directors who are parties may participate, consisting solely of 2 or more directors not parties to the action, suit, or proceeding.

(c) By independent legal counsel in a written opinion.

(d) By the shareholders.

3) If a person is entitled to indemnification under section 284a for a portion of expenses including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount of the expenses, the safe and collateral deposit company may indemnify the person for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.


Sec. 284c. Expenses incurred in defending a civil or criminal action, suit, or proceeding described in section 284a may be paid by the safe and collateral deposit company in advance of the final disposition of the action, suit, or proceeding upon receipt of an undertaking by or on behalf of the director, officer, employee, or agent to repay the expenses if it is ultimately
determined that he or she is not entitled to be indemnified by the safe and collateral deposit company. The undertaking shall be by unlimited general obligation of the person on whose behalf advances are made but need not be secured and may be accepted without reference to financial ability to repay.


Sec. 284d. The indemnification and advancement of expenses provided by or granted under sections 284a to 284c is not exclusive of any other rights to which a person seeking indemnification or advancement of expenses may be entitled under the articles of incorporation, a bylaw, an agreement, a vote of shareholders or disinterested directors, or otherwise. The indemnification provided for in sections 284a to 284c continues as to a person who ceases to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of the person.


Sec. 284e. A safe and collateral deposit company has the power to purchase and maintain insurance, including insurance issued by
an affiliated insurer and insurance for which premiums may be
adjusted retroactively, in whole or in part, based upon claims
experience, or similar arrangements. A safe and collateral
deposit company may also create a trust fund or other form of
funded arrangement on behalf of any person who is or was a
director, officer, employee, or agent of the safe and collateral
deposit company or is or was serving at the request of the safe
deposit company as a director, officer, partner,
trustee, employee, or agent of another foreign or domestic
corporation, partnership, joint venture, trust, or other
telephone, whether for profit or not, against any liability
asserted against him or her and incurred by him or her in any
capacity or arising out of his or her status in that capacity,
whether or not the safe and collateral deposit company would have
d power to indemnify him or her against the liability under
sections 284a to 284d.


487.584f "Safe and collateral deposit company" defined for
purposes of SS 487.584 to 487.584g.

Sec. 284f. For purposes of sections 284 to 284g, "safe and
collateral deposit company" includes all constituent corporations
absorbed in a consolidation or merger and the resulting or
surviving safe and collateral deposit company, so that a person
who is or was a director, officer, employee, or agent of a
constituent corporation or is or was serving at the request of
the constituent corporation as a director, officer, partner,
trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, shall stand in the same position with respect to the resulting or surviving safe and collateral deposit company as he or she would if he or she had served the resulting or surviving safe and collateral deposit company in the same capacity.


487.584g "Other enterprise" and "serving at the request of the bank" defined for purposes of SS 487.584a to 487.584f.

Sec. 284g. For the purposes of sections 284a to 284f, "other enterprise" shall include employee benefit plans; "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and "serving at the request of the safe and collateral deposit company" shall include any service as a director, officer, employee, or agent of the safe and collateral deposit company which imposes duties on, or involves services by, the director, officer, employee, or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he or she reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be considered to have acted in a manner not opposed to the best interests of the safe and collateral deposit company or its shareholders as referred to in section 284a.
Sec. 286. (1) Any corporation organized under this chapter may operate a safe deposit and storage business and provide proper vaults and premises for the same.

(2) The legal liability of the corporation on account of any loss to a customer shall not exceed the sum of $10,000.00 for any 1 box or compartment, including all property accepted for storage outside of the box or compartment. The corporation may contract with the renter to have the renter assume all risks arising from the use of such box, compartment or storage.

(3) The corporation shall have a lien for unpaid rental and storage charges on the contents of any box or compartment and any property accepted for storage outside of the box or compartment. If the charges are not paid within 1 year from the date of accrual, the corporation may sell the property at public auction upon like notice as is required by law for sales on execution and after retaining from the proceeds of sale the amount of all charges due and owing at the time of the sale and the reasonable expenses of the sale, it shall pay the balance upon proper showing to the person entitled thereto. The corporation may fairly and in good faith purchase the property or any part thereof at the sale.

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067 487.587 Property rights; investments.

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084 Sec. 287. A safe and collateral deposit corporation may purchase, lease, hold and convey all such real and personal property as may be necessary for the proper conduct of its business. Any surplus capital may be invested in such securities as are designated by law as lawful investments for banks organized and existing under the provisions of this act.

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067 487.589 Annual reports; time, signing, contents.

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084 Sec. 289. Every safe and collateral deposit company shall make to the commissioner not less than 1 report during each calendar year, at such time as the commissioner requires it, according to the forms prescribed by him, verified by the oath or affirmation of the president, vice-president, secretary or treasurer thereof and signed by a majority of its board of directors. The report shall exhibit the condition of the corporation and shall contain such information as may be required by the commissioner. The commissioner may call for special reports from any safe and collateral deposit company whenever, in his judgment, the same are necessary to inform him fully of the condition of the safe and collateral deposit company.

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GENERAL PROVISIONS, REPEALS AND SAVINGS CLAUSE

487.591 Attachment and execution against bank.

Sec. 291. Attachment or execution shall not be issued against any bank or its property before final judgment in any suit, action or proceeding in any court.


487.592 Use of word "bank," "banker," or "banking."

Sec. 292. The use of the word "bank", "banker", or "banking" or in any foreign language words of similar meaning as a designation or name, or part of a designation or name under which business is or may be conducted in this state, is restricted to a national bank, a bank subject to the provisions of this act, out-of-state bank, a bank holding company registered as such under the provisions of the federal bank holding company act of 1956, chapter 240, 70 Stat. 133, a foreign bank agency, a foreign bank branch, a savings and loan holding company as defined in 12 C.F.R. 583.20, or a savings bank that is lawfully conducting business in this state, unless that designation or name, taken as a whole, would not imply a banking business.

Sec. 293. (1) The powers, privileges, duties and restrictions conferred and imposed upon any institution existing and doing business under the laws of this state, to which this act is applicable, are abridged, enlarged or modified as each particular case may require to conform to the provisions of this act and to such amendments as may be made thereto. Nothing in this act shall be construed to affect the legality of investments heretofore made, or of transactions heretofore had, pursuant to any provisions of law in force when such investments were made or transactions had, nor to require the change of investments for those named in this act, except as the same can be done by the sale or redemption of the securities so invested in, in such manner as to prevent loss or embarrassment in the business of such institution, or unnecessary loss or injury to the borrowers on such securities; but no extension of any such loan or investment shall be made by any institution, unless necessary to avoid loss or embarrassment as above provided.

(2) No institution which may be incorporated under this act shall hereafter be incorporated except under the provisions of this act. Every institution governed by the terms of this act heretofore organized and incorporated under any law of this state, which if now incorporated would be required to incorporate under and be subject to this act, shall hereafter be subject to
the provisions of this act without formal reorganization hereunder and such corporations shall be deemed to exist under this act and the provisions of this act shall govern all such corporations heretofore or hereafter incorporated in this state.
Nothing in this act shall be construed as attempting to deprive any such corporation of any constitutional power, right, privilege or franchise which any such corporation now enjoys; nor to deprive any trust company of any abstracting business which it may now own and operate.


Sec. 295. Notwithstanding any other provision of law, no bank, industrial bank or trust company subject to the provisions of this act shall be governed by the provisions of Act No. 327 of the Public Acts of 1931, as amended, being sections 450.1 to 450.192 of the Compiled Laws of 1948.


Sec. 298. This act shall not impair or affect any act done, offense committed or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to the time this act takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if this act had not been passed. Such proceedings may be consummated under and according to the law in force at the time such proceedings are or were commenced. All prosecutions pending at the effective date of this act and all prosecutions instituted after the effective date of this act for offenses committed prior to the effective date of this act may be continued or instituted under and in accordance with the provisions of the law in force at the time of the commission of such offense.