

HOUSE BILL No. 6669

November 29, 2006, Introduced by Rep. Kolb and referred to the Committee on Banking and Financial Services.

A bill to amend 1999 PA 276, entitled "Banking code of 1999," by amending the heading of chapter 2 and sections 1201, 1202, and 2101 (MCL 487.11201, 487.11202, and 487.12101).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1201. As used in this act:

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

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

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

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

4 (iv) An unpaid expense of supervision or conservatorship of a
5 bank.

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

7 (b) "Administrative procedures act of 1969" means the
8 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
9 24.328.

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

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

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

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

1 election of directors of that organization at the preceding
2 election.

3 (B) By trustees for the benefit of the shareholders or members
4 of that organization.

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

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

18 (d) "Applicant" means a person making an application under
19 this act.

20 (e) "Articles" means articles of incorporation, all amendments
21 to articles of incorporation, and agreements of consolidation and
22 merger.

23 (f) "Association" means a federal savings association
24 organized under section 5 of the home owners' loan act, ~~chapter~~
25 ~~64, 48 Stat. 132, 12 U.S.C. USC 1464~~, or a savings and loan
26 association, building and loan association, or homestead
27 association that is organized under the laws of a state, the

1 District of Columbia, or a territory or protectorate of the United
2 States, and whose deposits are insured by the federal deposit
3 insurance corporation.

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

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

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

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

1 branch. An additional office of a state agency is not a branch. An
2 international banking facility as defined in 12 ~~C.F.R.~~ **CFR**
3 204.8(a)(1), as in effect December 31, 1982, is not a branch. The
4 receipt of deposits by a messenger service or the delivery by a
5 messenger service of items representing deposit account withdrawals
6 or of loan proceeds is not the establishment or operation of a
7 branch, whether or not the messenger service is owned or operated
8 by the bank. Branch does not include an agent acting under section
9 4101(1)(d).

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

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

21 (m) "Cease and desist order which has become final" or "order
22 which has become final" means a cease and desist order or an order
23 issued by the commissioner with the consent of the institution or
24 the director or officer or other person concerned, or with respect
25 to which no petition for review of the action of the commissioner
26 has been filed and perfected in a circuit court as specified in
27 section 2310(2), or with respect to which the action of the court

1 in which the petition is filed is not subject to further review by
2 the courts of the state.

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

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

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

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

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

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

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

1 and winding up its affairs.

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

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

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

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

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

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

18 Sec. 1202. As used in this act:

19 (a) "Financial institution" means an organization licensed,
20 chartered, or regulated by the ~~financial institutions~~ bureau
21 under the laws of this state.

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

1 institutions that engage in banking activities usual in connection
2 with the business of banking in the countries in which the foreign
3 institutions are organized.

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

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

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

19 (f) "Incorporator" means a signer of the original articles of
20 incorporation.

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

25 (h) "International banking act of 1978" means the
26 international banking act of 1978, Public Law 95-369, 92 Stat. 607.

27 (i) "Investment security" means a marketable obligation in the

1 form of a bond, note, or debenture, commonly regarded as an
2 investment security and that is salable under ordinary
3 circumstances with reasonable promptness at a fair value.

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

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

19 (l) "Member" means a person with ownership interest under the
20 Michigan limited liability company act, 1993 PA 23, MCL 450.4101 to
21 450.5200.

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

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

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

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

10 (p) "National bank act" means the national bank act, chapter
11 106, 13 Stat. 99.

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

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

22 (s) "Professional investor" means an accredited investor under
23 15 ~~U.S.C.~~ **USC** 77b.

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

CHAPTER 2

~~FINANCIAL INSTITUTIONS BUREAU~~ OFFICE OF FINANCIAL AND INSURANCE
SERVICES

Sec. 2101. (1) ~~A financial institutions bureau is created within the department of consumer and industry services, and the bureau shall have~~ **THE BUREAU HAS** jurisdiction over and **SHALL** administer the laws relating to financial institutions transacting business in this state.

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

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

(4) The commissioner shall approve a seal for the use of the bureau ~~— A~~ **AND FILE A** description and impression of the seal ~~shall be filed~~ with the secretary of state.

(5) The commissioner is prohibited for a period of 6 months from the date he or she leaves office from accepting employment with a state chartered depository financial institution regulated by the bureau.

(6) **THE COMMISSIONER SHALL ANNUALLY SUBMIT A REPORT TO THE STANDING COMMITTEES OF THE SENATE AND HOUSE OF REPRESENTATIVES CONCERNED WITH FINANCIAL INSTITUTIONS THAT INCLUDES THE FOLLOWING INFORMATION:**

(A) **THE NAME AND LOCATION OF EACH DEPOSITORY INSTITUTION**

1 BRANCH LOCATED IN THIS STATE AND THE SERVICES OFFERED AT THAT
2 BRANCH AND WHETHER THAT DEPOSITORY INSTITUTION IS A PROFIT OR
3 NONPROFIT INSTITUTION.

4 (B) A DESCRIPTION OF EACH GEOGRAPHICAL AREA IN THIS STATE IN
5 WHICH THE COMMISSIONER BELIEVES THAT THE BANKING NEEDS OF RESIDENTS
6 ARE NOT FULLY MET.

7 (C) SOURCES OF PUBLIC AND PRIVATE DEVELOPMENT MONEY, AND
8 RECOMMENDATIONS TO THE LEGISLATURE, TO ENCOURAGE DEPOSITORY
9 INSTITUTIONS TO PROVIDE ADDITIONAL BRANCHES OR SERVICES IN THE
10 GEOGRAPHICAL AREAS DESCRIBED IN SUBDIVISION (B), INCLUDING, BUT NOT
11 LIMITED TO, CREATION OF NEW STATE GRANT PROGRAMS.