

BANKING CODE OF 1999 (EXCERPT)

Act 276 of 1999

Chapter 1

Part 1

SHORT TITLE AND GENERAL PROVISIONS

487.11101 Short title.

Sec. 1101.

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

History: 1999, Act 276, Eff. Mar. 1, 2000

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

487.11102 Supervision and regulation of banking organizations; state policy.

Sec. 1102.

It is the policy of this state that the business of all banking organizations shall be supervised and regulated in a manner that insures the safe and sound conduct of business, to conserve their assets, promote competition among banking organizations, to maintain public confidence in the business, and to protect the public interest and the interests of depositors, creditors, and shareholders.

History: 1999, Act 276, Eff. Mar. 1, 2000

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

487.11103 Filing of documents as constructive notice of contents; limitation.

Sec. 1103.

The filing of documents under this act does not provide constructive notice of the contents of the documents except as to shareholders, directors, and officers of the institution or depository institution on behalf of which the documents are filed.

History: 1999, Act 276, Eff. Mar. 1, 2000

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

487.11104 Remedies; construction of act.

Sec. 1104.

(1) This act does not impair or affect an act done, offense committed, or right accruing, accrued, or acquired, or liability, penalty, forfeiture, or punishment incurred before the effective date of this act, but may be enjoyed,

asserted, enforced, prosecuted, or inflicted as if this act had not been enacted.

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

(3) This act shall not be construed to affect the legality of investments made or of transactions conducted, under any provisions of law in force when the investments or transactions were made or conducted, nor to require the change of investments for those named in this act, except to prevent loss, or injury to the institution, or to the borrowers on the securities. Extension of such loan or investment shall not be made by any institution, unless necessary to avoid loss as provided in this subsection.

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

(5) An institution governed by the terms of this act organized and incorporated before the effective date of this act under any law of this state, which if now incorporated would be required to incorporate under and be subject to this act, shall be subject to this act without formal reorganization under this act and shall be considered to exist under this act. This act shall govern all institutions incorporated in this state.

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

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

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

History: 1999, Act 276, Eff. Mar. 1, 2000

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

487.11105 Person engaged in business of banking; corporation as fiduciary.

Sec. 1105.

(1) A person shall not engage in the business of banking in this state unless authorized by this act, the laws of another state, the national bank act, the international banking act of 1978, or if engaged in the business of banking on the effective date of this act under former 1969 PA 319.

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

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

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

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

(d) A national bank authorized to exercise trust powers under the national bank act. A national bank authorized to exercise trust powers under this subdivision may do so only to the extent that a bank may exercise trust powers under this act.

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

History: 1999, Act 276, Eff. Mar. 1, 2000

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

487.11106 Use of designation or name.

Sec. 1106.

The use of the word "bank", "banker", or "banking" or any foreign language words of similar meaning as a designation or name, or part of a designation or name under which business is or may be conducted in this state, is restricted to a national bank, a bank subject to this act, an out-of-state bank, a bank holding company registered under the bank holding company act, a foreign bank agency, a foreign bank branch, a savings and loan holding company as defined in 12 C.F.R. 583.20, or a savings bank that is lawfully conducting business in this state, unless that designation or name, taken as a whole, would not imply a banking business. Use of the term "mortgage banker" or "mortgage banking" in the name or assumed name of a licensee or registrant under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, does not violate this section.

History: 1999, Act 276, Eff. Mar. 1, 2000

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

487.11107 Tax exemptions.

Sec. 1107.

All mortgages or other securities held by banks are exempt from all municipal or other taxes under the laws of this state, and all personal property owned by banks is exempt from taxation.

History: 1999, Act 276, Eff. Mar. 1, 2000

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

Part 2 DEFINITIONS

487.11201 Definitions; A to F.

Sec. 1201.

As used in this act:

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

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

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

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

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

(v) Unpaid fees or assessments owed to the department.

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

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

(i) A person, directly or indirectly, owns or controls either more than 25% of its voting shares or a majority of the shares voted at the most recent election for the election of its directors, trustees, or other individuals who exercise similar functions, or controls in any manner the election of a majority of its directors, trustees, or other individuals who exercise similar functions.

(ii) Control of the organization is held, directly or indirectly, through 1 of the following:

(A) Stock ownership or in any other manner, by the shareholders or members of an organization that own or

control more than 25% of the shares of that organization, more than 25% of the ownership interest in the organization, a majority of the shares voted for the election of directors of that organization at the most recent election, or a majority of the ownership vote for election of directors of that organization at the most recent election.

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

(C) By the power to exercise, directly or indirectly, a controlling influence over the management or policies of the organization, as determined by the commissioner after notice and an opportunity for a hearing.

(iii) A majority of its directors, trustees, or other individuals who exercise similar functions constitute a majority of the directors, trustees, or other individuals who exercise similar functions of any 1 organization.

(iv) The organization owns or controls, directly or indirectly, either more than 25% of the shares of capital stock or other ownership interest of an organization, or a majority of the shares voted of the total ownership vote for the election of directors of an organization at the preceding election, or controls in any manner the election of a majority of the directors of an organization, or for the benefit of whose shareholders or members all or substantially all the capital stock or ownership interest of an organization is held by trustees.

(d) "Applicant" means a person that submits an application under this act.

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

(f) "Association" means a federal savings association organized under section 5 of the home owners' loan act, 12 USC 1464, or a savings and loan association, building and loan association, or homestead association that is organized under the laws of a state, the District of Columbia, or a territory or protectorate of the United States, and whose deposits are insured by the Federal Deposit Insurance Corporation.

(g) "Bank" means a state banking corporation that is organized or reorganized under this act or organized under any law of this state enacted before March 1, 2000, including a state banking corporation that voluntarily limits its activities.

(h) "Bank holding company" means a company as defined in the bank holding company act that is not a bank or national banking association and that is a bank holding company approved by the Board of Governors of the Federal Reserve System under the bank holding company act or that will become an approved bank holding company before or upon the completion of a consolidation provided in section 3706.

(i) "Banking holding company act" means the federal bank holding company act of 1956, 12 USC 1841 to 1852.

(j) "Branch" means, except as otherwise provided in this subdivision, a branch bank, branch office, branch agency, additional office, or a branch place of business at which deposits are received, checks paid, or money lent. The acceptance of deposits in furtherance of a school thrift or savings plan by an officer, employee, or agent of a bank at a school is not considered as the establishment or operation of a branch. An electronic funds transfer facility that is made available to 2 or more depository institutions under any law of this state that regulates electronic funds transfer facilities is not a branch. A trust office of a bank is not a branch. A loan production office is not a branch. An additional office of a state agency is not a branch. An international banking facility as defined in 12 CFR 204.8(a)(1), as in effect December 31, 1982, is not a branch. The receipt of deposits by a messenger service or the delivery by a messenger service of items representing deposit account withdrawals or of loan proceeds is not the establishment or operation of a branch, whether or not the messenger service is owned or operated by the bank. Branch does not include an agent acting under section 4101(1)(d).

(k) "Bureau" or "department" means the department of insurance and financial services.

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

(m) "Cease and desist order which has become final" or "order which has become final" means a cease and desist order or an order issued by the director with the consent of the institution or the board member or officer or other person concerned, or with respect to which a petition for review of the action of the director was not filed and perfected in a circuit court under section 2310(2), or with respect to which the action of the court in which the petition is filed is not subject to further review by the courts of the state.

(n) "Commissioner" or "director" means the director of the department.

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

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

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

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

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

(t) "Derivative transaction" means any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, 1 or more commodities, securities, currencies, interest or other rates, indices, or other assets.

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

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

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

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

(y) "Federal deposit insurance act" means the federal deposit insurance act, 12 USC 1811 to 1835a.

(z) "Federal home loan bank act" means the federal home loan bank act, 12 USC 1421 to 1449.

(aa) "Federal reserve act" means the federal reserve act, 12 USC 221 to 522.

History: 1999, Act 276, Eff. Mar. 1, 2000 ;-- Am. 2016, Act 176, Eff. Sept. 12, 2016

487.11202 Definitions; F to P.

Sec. 1202.

As used in this act:

(a) "Financial institution" means an organization that is licensed, chartered, or regulated by the department under the laws of this state.

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

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

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

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

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

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

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

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

(j) "Loan and extension of credit" or "loan or extension of credit" includes all direct or indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of the person, and any credit exposure arising from a derivative transaction. To the extent specified by the director, loan and extension of credit or loan or extension of credit includes any liability of a bank to advance funds to or on behalf of a person under a contractual commitment. The term does not include investment securities held by a bank under section 4301.

(k) "Loan production office" means an office of a depository institution or institutions at which activities related

to the lending of money are conducted, deposits are not received, and checks are not paid, and which office is not the principal office, a branch, or an agency of an affiliated depository financial institution.

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

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

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

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

(p) "National bank act" means the national bank act, 12 USC 21 to 216d.

(q) "Operating in this state" means transacting business in this state from a branch or other physical location or by other means, soliciting customers in this state, or employing residents of this state.

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

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

(t) "Professional investor" means an accredited investor as defined in 15 USC 77b.

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

History: 1999, Act 276, Eff. Mar. 1, 2000 ;-- Am. 2016, Act 175, Eff. Sept. 12, 2016

487.11203 Definitions; S to V.

Sec. 1203.

As used in this act:

(a) "Savings bank" means a savings bank that is organized under the savings bank act, 1996 PA 354, MCL 487.3101 to 487.3804, or the laws of another state, the District of Columbia, a territory or protectorate of the United States, or of the United States, whose deposits are insured by the Federal Deposit Insurance Corporation.

(b) "Service entity" means a corporation, mutual company, limited liability company, limited liability partnership, or limited partnership in which a bank has invested under section 4310(1). With the written approval of the director, a service entity may be a general partnership.

(c) "Service provider" means a person that provides any of the following to an institution:

(i) Data processing services.

(ii) Activities that support financial services, including, but not limited to, lending, funds transfer, fiduciary activities, trading activities, and deposit taking.

(iii) Internet-related services, including, but not limited to, web services and electronic bill payments, mobile applications, system and software development and maintenance, and security monitoring.

(iv) Activities related to the business of banking.

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

(e) "State agency" means a foreign bank agency that is established and operating under this act.

(f) "State foreign bank branch" means a foreign bank branch that is established and operating under this act.

(g) "Stock association" means an association that has authority to issue shares of voting capital stock.

(h) "Subsidiary" means a corporation, mutual company, limited liability company, limited liability partnership, or limited partnership, the controlling interests of which are more than 50% owned by 1 or more depository institutions, and in which a bank has an ownership interest, membership interest, or other legally enforceable interest that is the indicia of ownership. With the approval of the director, and subject to the ownership requirements set forth in this subdivision, a subsidiary may be a general partnership.

(i) "Surplus" means the amount paid for issued and outstanding common and preferred stock of a bank in excess of the stated par value, plus any amount of transferred undivided profits and any additional amounts paid in or contributed to increase total capital.

(j) "Total capital" means an amount equal to any capital, plus any surplus, undivided profits, and instruments of indebtedness authorized under section 3801.

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

(l) "Uniform commercial code" means the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.9994.

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

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

History: 1999, Act 276, Eff. Mar. 1, 2000 ;-- Am. 2016, Act 175, Eff. Sept. 12, 2016