SAVINGS BANK ACT
Act 354 of 1996

AN ACT to codify the laws relating to savings banks; to provide for incorporation, regulation, supervision, and internal administration of savings banks; to prescribe the rights, powers, and immunities of savings banks; to prescribe the powers and duties of certain state agencies and officials; to provide for remedies; and to prescribe penalties.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

Compiler's note: 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.

The People of the State of Michigan enact:

CHAPTER 1
SHORT TITLE AND DEFINITIONS

487.3101 Short title.

Sec. 101. This act shall be known and may be cited as the "savings bank act".

History: 1996, Act 354, Imd. Eff. July 1, 1996.

Compiler's note: 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.

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487.3102 Definitions; A to I.

Sec. 102. As used in this act:

(a) "Agency office" means a place at which the business of a savings bank is conducted other than by regularly employed personnel of the savings bank, as provided under section 417(6).

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

(c) "Approved by the members", for a mutual savings bank, means approved by a majority of all votes cast at a duly held regular meeting or special meeting.

(d) "Affiliate" means a corporation, business trust, limited liability company, association, or an organization to which 1 or more of the following apply:

(*i*) A savings bank, 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 a savings bank who own or control either a majority of the shares of that savings bank or more than 50% of the number of shares voted for the election of directors of that savings bank at the preceding election, or by trustees for the benefit of the shareholders of that savings bank, or by members of the savings bank if it is a mutual savings bank.

(*iii*) A majority of its directors, trustees, or other persons holding similar positions are directors of any 1 savings bank.

(*iv*) Owns or controls, directly or indirectly, either a majority of the shares of capital stock of any 1 savings bank or more than 50% of the number of shares voted for the election of directors of that savings bank at the preceding election, or controls in any manner the election of a majority of the directors of that savings bank, or for the benefit of whose shareholders all or substantially all the capital stock of that savings bank is held by trustees.

(e) "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.

(f) "Bank" means a state banking corporation organized or reorganized under the provisions of the banking code of 1999, 1999 PA 276, MCL 487.11101 to 487.15101, or organized under a law of this state before March 1, 2000.

(g) "Bank holding company" means a stock or mutual company as defined in the bank holding company act of 1956, chapter 240, 70 Stat. 133, or a company defined as a savings and loan holding company in the

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home owners' loan act, chapter 64, 48 Stat. 128, that is not a savings bank, national banking association, or association.

(h) "Branch" means a place of business, other than the principal office of a savings bank, at which the savings bank transacts business that may be conducted at its principal office. Branch does not include a subsidiary, service entity, agency office, trust office, loan production office, place where only records are made, posted, or kept, place of business of a financial institution with which the savings bank has an agency relationship under section 401, or an automated teller machine if it is made available to 2 or more federal or state chartered financial institutions under a state statute which regulates electronic funds transfer facilities. The acceptance of deposits in furtherance of a school thrift or savings plan by an officer, employee, or agent of a savings bank at any school is not the establishment or operation of a branch. The receipt of deposits by a messenger service or the delivery by 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 savings bank.

(i) "Bureau" means the office of financial and insurance services in the department of consumer and industry services.

(j) "Capital" means the stated par value of issued and outstanding unimpaired common stock and the stated par value of issued and outstanding unimpaired preferred stock.

(k) "Commissioner" means the commissioner of the office of financial and insurance services.

(*l*) "Compliance review committee" means both of the following:

(*i*) One or more persons assigned by management or appointed by the board of directors or other governing body of a depository institution, or of a subsidiary of a depository institution, or of a service corporation or other service entity of a depository institution, for the purposes set forth in section 339.

(*ii*) Any other person to the extent the person acts in an investigatory capacity at the direction of a compliance review committee.

(m) "Compliance review documents" means documents prepared in connection with a review or evaluation conducted by or for a compliance review committee.

(n) "Consolidate", "consolidated", "consolidating", and "consolidation" mean the consolidation or merger of 2 or more depository institutions.

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

(p) "Consolidated organization" means an organization that results from a consolidation of consolidating organizations.

(q) "Consolidating organizations" means any combination of banks, out-of-state banks, national banks, associations, savings banks, or state or federal credit unions that have consolidated or are in the process of consolidation as provided in section 701 or 702.

(r) "Depository institution" means a bank, out-of-state bank, national bank, association, savings bank, cooperative bank, industrial 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.

(s) "Director" means a director, trustee, or other person holding a similar position with respect to an organization whether incorporated or unincorporated. Director does not include an advisory director, honorary director, director emeritus, or similar person, unless the person is otherwise performing functions similar to those of a director.

(t) "Dividend reinvestment plan" means a plan that is offered solely to existing shareholders of the savings bank and which allows the shareholders to reinvest dividends received under section 316 in stock of the savings bank and that may allow additional cash amounts to be contributed by the shareholders participating in the reinvestment plan.

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

(v) "Fiduciary" means a trustee, executor, administrator, guardian, conservator, agent, receiver, trustee in bankruptcy, assignee for creditors, or any holder of a similar position of trust. It also describes the relationship of a director to a savings bank as stipulated in section 323.

(w) "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.

(x) "Impairment" means a condition in which the value of the savings bank's assets is less than the aggregate amount of the savings bank's liabilities to creditors and depositors, less its capital, if the savings bank is a stock savings bank, or a condition in which the value of the savings bank's assets is less than the aggregate amount of the savings bank's liabilities to creditors and members, if the savings bank is a mutual savings bank.

(y) "Incorporator" means a person who signed the original articles of incorporation.

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History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 480, Imd. Eff. Jan. 11, 2001.

487.3103 Definitions; L to W.

Sec. 103. As used in this act:

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

(b) "Loan production office" means an office of the savings bank at which only activities related to money lending are conducted, which is not the principal office or a branch or an agency office or an office of an affiliated depository institution.

(c) "Member" means a person holding a savings account of a mutual savings bank.

(d) "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 messenger service may be owned and operated by 1 or more depository institutions or affiliates or by a third party.

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

(f) "Mutual savings bank" means a savings bank for which the articles of incorporation do not authorize the issuance of common or preferred stock.

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

(h) "Net income" means the remainder of all earnings from operations plus actual recoveries on loans and investments and other assets, after deducting from the total all operating expenses, actual losses, accrued dividends on preferred stock, if any, and all taxes.

(i) "Out-of-state bank" means a banking corporation or savings bank organized under the laws of another state, the District of Columbia, or a territory 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.

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

(k) "Publication", "published", and "publish" 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.

(*l*) "Residential real estate" means improved real property that is used or intended to be used as a residence or residences and contains not more than 4 dwelling units.

(m) "Savings bank" means a state banking corporation organized or reorganized under this act.

(n) "Savings liability" or "deposit liability" means the aggregate amount of accounts of depositors, including interest accrued or credited to the accounts, less redemptions and withdrawals.

(o) "Service entity" means a stock corporation, mutual company, limited liability company, limited liability partnership, or limited partnership in which a savings bank has invested under section 410. Upon written approval of the commissioner, a service entity may be a general partnership.

(p) "Shareholder" means the registered owner of any share or shares of capital stock of a savings bank.

(q) "Stock savings bank" means a savings bank for which the articles of incorporation authorize the issuance of capital stock.

(r) "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 federally insured depository institutions, and in which a savings bank has an ownership interest, membership interest, or other legally enforceable interest which has the indicia of ownership. Upon written approval of the commissioner, and subject to the ownership requirements set forth in this subsection, a subsidiary may be a general partnership.

(s) "Surplus" means the amount paid for issued and outstanding common and preferred stock 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.

(t) "Total capital" means an amount equal to any capital, plus any surplus, undivided profits, and instruments of indebtedness authorized under section 310.

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

(v) “Undivided profits” means the amount of retained earnings and any additional amounts held in capital reserve accounts of the savings bank.

(w) “Uniform commercial code” means the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102.

(x) “Value” means the present worth of all rights to future benefits arising from ownership.

(y) “Withdrawal value of a deposit account” means the amount invested in a deposit account, plus earnings, less lawful deductions.

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 480, Imd. Eff. Jan. 11, 2001.

CHAPTER 2
ADMINISTRATION

487.3201 Financial institutions bureau; jurisdiction; duties of commissioner; construction of act.

Sec. 201. (1) The financial institutions bureau shall have jurisdiction over and execute the laws relating to savings banks transacting business in this state.

(2) The commissioner shall maximize the capacity of savings banks in this state to offer convenient and efficient financial services, to promote home ownership and economic development, and to ensure that savings banks remain competitive with other types of financial institutions and providers of financial services.

(3) This act shall be liberally construed except for those provisions that relate to safety and soundness of operations, investments, and management.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3202 Prohibited conduct.

Sec. 202. Unless the person is organized under this act, a person shall not transact business under this act, do business under any name or title, circulate, advertise, make representations or give information that indicates or implies the operation of a business under this act.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3203 Federal insurance of deposits required.

Sec. 203. Unless the commissioner, for good cause shown, waives the requirement, a savings bank shall secure insurance of its deposit accounts backed by the full faith and credit of the United States government prior to commencing business.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3204 Savings bank; asset tests; loans for domestic residential housing; failure to satisfy asset tests.

Sec. 204. (1) A savings bank shall satisfy 1 of the following asset tests:

(a) An asset test requiring that not less than 50% of the total assets of the savings bank, as measured by monthly averages calculated at the close of each calendar month, in at least 9 months of the immediately preceding 12-month period, consist of 1 or more of the following:

(*i*) Loans that were made to purchase, refinance, construct, improve, or repair domestic residential housing, including single and multifamily dwellings, or manufactured housing.

(*ii*) Home equity loans.

(*iii*) Real property acquired as a result of foreclosure or deed-in-lieu of foreclosure with respect to loans described in this section.

(*iv*) Securities backed by or representing an interest in mortgages on domestic residential housing, including single or multifamily dwellings, or manufactured housing.

(*v*) Shares of stock issued by any federal home loan bank.

(*vi*) 50% of the dollar amount of the domestic residential housing mortgage loans, including single or multifamily dwellings, originated by the savings bank and sold within 90 days of origination.

(*vii*) Investments both debt and equity in the capital stock or obligations of and any other security issued by any service entity or subsidiary of the savings bank, if the service entity or subsidiary derives at least 80% of its annual gross revenues from activities directly related to purchasing, financing, refinancing, constructing, improving, or repairing domestic residential housing, including single or multifamily dwellings, or manufactured housing.

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(*viii*) 200% of the dollar amount of loans and investments to purchase, construct, or develop 1 to 4 family residences the purchase price of which is, or is guaranteed to be, not greater than 60% of the median value of comparable newly-constructed 1 to 4 family residences within the savings bank's local community.

(*ix*) 200% of the dollar amount of loans for the purchase, construction, development, or improvement of domestic residential housing, churches or other places of worship, schools, nursing homes, hospitals, and facilities serving similar functions within a community, located within a geographic region or neighborhood in which the credit needs of low and moderate income residents are not being adequately met at the time the relevant loan is made.

(*x*) Loans to small businesses located within a geographic area described in subparagraph (*ix*).

(*xi*) Loans for the purchase, construction, development, or improvement of churches or other places of worship, schools, nursing homes, hospitals, and other facilities utilized for similar functions or services within a community.

(*xii*) Loans for the purchase, construction, development, or improvement of facilities and residential developments dedicated to public use or property used on a nonprofit basis for residents.

(*xiii*) Loans for personal, family, household, or education purposes.

(*xiv*) Shares of stock issued by the federal home loan mortgage corporation and the federal national mortgage association.

(*xv*) Loans secured by an interest in churches or other places of worship, schools, nursing homes, hospitals, educational, health, or welfare institutions or facilities, facilities designed or used primarily for residential purposes for students, residents, and persons under care, employees, or members of the staff of the institutions or facilities, and other facilities utilized for similar functions or services within a community.

(*xvi*) Cash and other highly liquid assets.

(*xvii*) Obligations of the United States or of a state or political subdivision thereof, and stock or obligations of a corporation that is an instrumentality of the United States or of a state or political subdivision thereof, but not including obligations the interest on which is excludable from gross income under section 415 of the internal revenue code of 1986, 26 U.S.C. 415.

(*xviii*) Property acquired through the liquidation of defaulted loans described in this section.

(*xix*) Loans made for the payment of expenses of college or university education or vocational training, in accordance with order or declaratory ruling of the commissioner.

(*xx*) Property used by the savings bank in the conduct of its business of acquiring the savings of the public and investing in loans.

(b) An asset test prescribed by order or declaratory ruling of the commissioner.

(2) If a multifamily dwelling securing a loan is used in part for nonresidential purposes, the entire loan is deemed a loan for domestic residential housing if the planned residential use exceeds 80% of the property's planned use, determined as of the time the loan is made. Loans made to finance the acquisition or development of land shall be considered loans for domestic residential housing if there is reasonable assurance that the property will become residential real property within a period of 3 years from the date of acquisition of the land.

(3) In the event a savings bank does not satisfy either of the asset tests of subsection (1), the savings bank shall promptly notify the commissioner in writing of the failure.

(4) A savings bank which fails to satisfy either of the asset tests of subsection (1) may requalify as a savings bank by meeting the percentage of total assets test in subsection (1)(a) for 9 of the 12 months following notice to the commissioner, including the month the notice is given, or a savings bank may requalify as a savings bank by meeting a requalification test prescribed by order or declaratory ruling of the commissioner. The savings bank shall promptly give notice to the commissioner as soon as the savings bank requalifies or fails to requalify as a savings bank under this subsection.

(5) If the savings bank fails to requalify as a savings bank under subsection (4), the savings bank shall make application with the appropriate governmental agency to convert its charter, or liquidate, but may continue to operate as a savings bank under an order of the commissioner for the period of time stated in the order. If the savings bank fails to comply with the order for continued operation, or upon expiration of the time prescribed in the order without conversion of charter or liquidation, the commissioner may appoint a conservator under section 605 or apply to the circuit court for the county in which the savings bank is located for the appointment of a receiver for the savings bank. The activities of the conservator or receiver shall otherwise be governed by the terms of chapter 6.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3205 Appointment of examiners and employees; payment of compensation, travel, and expenses.

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Sec. 205. The commissioner may appoint examiners and other employees for the carrying out 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 by the legislature.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3206 Commissioner, deputy commissioner, or examiner; prohibited conduct.

Sec. 206. (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 a savings bank or safe and collateral deposit company, 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 a savings bank or safe and collateral deposit company, or of any affiliate or subsidiary thereof, or receive, either directly or indirectly, a fee, perquisite, reward, emolument, or other compensation from those entities.

(3) The commissioner, deputy commissioner, or examiner shall not borrow money, directly or indirectly, from a savings bank, except for a mortgage loan upon the mortgagor's own home or installment debt transferred to a savings bank in the regular course of business by a seller of consumer goods. This subsection does not apply to loans made prior to the person's respective term of office. If the commissioner, a deputy commissioner, or an examiner of the bureau borrows from, or is or becomes indebted to a savings 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 proceeds have been or are to be used.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3207 Commissioner, deputy commissioner, or examiner; civil liability.

Sec. 207. The commissioner, 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 or her office.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3208 Rules, orders, and declaratory rulings.

Sec. 208. (1) The commissioner may promulgate rules in addition to those specifically provided for by this act as he or she may consider necessary to effectuate and enforce this act 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.

(2) The commissioner may also issue orders and declaratory rulings as he or she considers necessary to effectuate the purposes and to execute and enforce the provisions of this act.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3209 Savings banks and entities subject to examination by commissioner.

Sec. 209. (1) A savings bank together with its subsidiaries, service entities, and entities the controlling interests of which are more than 50% owned by subsidiaries or service entities or association service corporations, are subject to examination of the commissioner, with or without prior notice, not less frequently than once every 18 months concerning the conditions and affairs of the savings bank. The commissioner shall also examine a savings bank 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 a savings bank concerning the affairs and business of the savings bank. The commissioner shall ascertain whether the savings bank 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 entity necessary to disclose fully the relationship between a savings bank and the affiliate, subsidiary, or service entity and the effect of the relationship upon the savings bank.

(2) The commissioner may examine the branch or branches located in this state of an out-of-state bank under 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 under 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 savings bank to furnish a copy of any report required by a federal or state bank regulatory agency.

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

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

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 481, Imd. Eff. Jan. 11, 2001.

487.3210 Schedule of supervisory fees; initial supervisory fee.

Sec. 210. (1) The commissioner shall periodically establish a schedule of supervisory fees to be paid by savings banks. Except for a minimum fee consistent with subsection (2), the fee shall not be more than 25 cents for each $1,000.00 of total assets of the savings bank as reported by the savings bank on its report of condition as of December 31 of the previous year.

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

(3) The commissioner shall provide an invoice of the annual supervisory fee to each savings bank by July 1 of each year. The annual supervisory fee shall be paid by August 15 of that year.

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

(5) The initial supervisory fee of a savings bank newly organized and chartered under this act, during the initial supervisory year, shall be the minimum supervisory fee established by the commissioner.

(6) The commissioner shall periodically establish a schedule of fees, beyond those charged for normal supervision, to be paid for applications, special evaluations and analyses, and examinations, including examinations of trust services and safe deposit and collateral deposit companies.

(7) The fees established under subsection (6) shall be equal to the estimated cost to the bureau for conducting the activity for which the fee is imposed.

(8) The commissioner may charge reasonable fees for furnishing and certifying copies of documents or serving notices required by this act.

(9) To the extent any fees assessed under this act are unpaid when due, the commissioner may, upon proper notice, maintain an action against the savings bank for the recovery of the fees plus interest and costs.

(10) The fees 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.

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 481, Imd. Eff. Jan. 11, 2001.

487.3211 Circuit court subpoena to appear; petition by commissioner; scope; failure to appear as contempt.

Sec. 211. The commissioner may petition the circuit court for the county in which the examination is being carried on to issue a subpoena on behalf of the bureau requiring a person to appear before the bureau and be examined under oath with reference to any matter within the scope of an examination of a savings bank under this act, and to produce books, records, or papers. A failure to obey the subpoena of the circuit court may be punished by the circuit court as a contempt of the circuit court.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3212 Privilege against self-incrimination; perjury.

Sec. 212. (1) A person shall not be excused from testifying or from producing any books, papers, records, or memoranda in any examination when ordered to do so by the commissioner, upon the ground that the testimony or evidence, documentary, or otherwise, may tend to incriminate him or her or subject him or her to a criminal penalty. An individual shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she is compelled, after having claimed his or her privilege against self-incrimination, to testify or produce evidence, documentary, or otherwise.

(2) An individual shall not be exempt from prosecution or punishment for perjury committed in testifying.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3213 Confidentiality; exception.

Sec. 213. (1) The commissioner and all deputies, agents, and employees of the bureau shall keep secret all facts and information obtained in the course of their duties under this act, except if the person is required under law to report upon, take official action, or testify in any proceedings regarding the affairs of a savings bank. This subsection applies to all former commissioners, deputies, agents, and employees of the bureau.

(2) This section does not apply to, and does not prohibit the furnishing of information or documents to, depository institution regulatory agencies, and is not applicable to disclosures made in the public interest by

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the commissioner, at his or her discretion.

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 481, Imd. Eff. Jan. 11, 2001.

487.3214 Application for approval; requirements; appeal.

Sec. 214. (1) A savings bank that seeks the commissioner's approval under section 302, 303, 312, 336, 412, 421, 701, 709, 710, 711, 711a, 712, 712a, or 715 shall submit an application to the bureau.

(2) The application shall contain information and be accompanied by documents as required by the bureau.

(3) If an application is considered incomplete by the bureau, it will either be returned for completion or the applicant will be requested to submit additional information as necessary to make the application complete.

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

(5) The statutory period, as set forth in this section, regarding the issuance of orders by the commissioner shall commence on the date of acceptance of the application.

(6) If, subsequent to the date of acceptance, the applicant wishes to amend the application or supplement or provide additional material in connection with the application, the commissioner may suspend processing of the application or proceed with the statutory period for the issuance of an order.

(7) In connection with an application, the commissioner may consider additional information from any source.

(8) The commissioner shall approve or disapprove an application in writing within 100 days after the date of acceptance of an application, or the last amendment to the application. An order disapproving an application shall state the basis for disapproval.

(9) An applicant who is dissatisfied with an order of the commissioner, or an institution that is dissatisfied with an objection issued under section 417, may submit a written request for a reconsideration of the order or objection stating the reasons for the request. The request must be received by the bureau within 5 days after the date of the order or objection. 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 10 days to file written arguments or briefs. The commissioner may allow for oral argument after granting a petition for reconsideration. The oral 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.

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

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 481, Imd. Eff. Jan. 11, 2001.

487.3215 Unsafe or unsound practice or violation; notice of charges; hearing; order to cease and desist; effect and enforcement; out-of-state bank branch.

Sec. 215. (1) If in the opinion of the commissioner a savings bank is engaging, has engaged, or is about to engage in an unsafe or unsound practice in conducting the business of the savings bank or is violating, has violated, or is about to violate a law or rule, the commissioner may issue and serve upon the savings bank a notice of charges in respect to the practice or violation. 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 savings bank.

(2) The hearing shall be not earlier than 30 days or later than 60 days after service of the notice unless another date is set by the commissioner at the request of the savings bank. Unless the savings bank appears at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the cease and desist order.

(3) In the event of a 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 savings bank an order to cease and desist from the practice or violation. The order may require the savings bank 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 the practice or violation.

(4) A cease and desist order becomes effective at the expiration of 30 days after the service of the order upon the savings bank, 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.

(5) 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

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unsound manner, the commissioner may undertake enforcement actions and proceedings as would be permitted if the branch were a savings bank.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3216 Temporary cease and desist order; effective and enforceable; injunction to set aside, limit, or suspend order.

Sec. 216. (1) If the commissioner determines that the violation or unsafe or unsound practice specified in the notice of charges served upon the savings bank under section 215 is likely to cause insolvency or substantial dissipation of assets or earnings of the savings bank, or is likely to otherwise seriously prejudice the interests of its depositors, the commissioner may issue a temporary order requiring the savings bank to cease and desist from the violation or practice. The order shall become effective upon service upon the savings bank, unless set aside, limited, or suspended by a court in proceedings authorized by subsection (2), and shall remain effective and enforceable pending the completion of the administrative proceedings under the notice and until such time as the commissioner shall dismiss the charges specified in the notice or if a cease and desist order is issued against the savings bank, until the effective date of such order.

(2) No later than 10 days after the savings bank has been served with a temporary cease and desist order, the savings bank may apply to the circuit court for the county in which the home office of the savings bank 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 savings bank under section 215 and the court shall have jurisdiction to issue the injunction.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3217 Intent by commissioner to remove director or officer from office; notice; suspension or prohibition; effective date; service of copies of notice; statement of facts; hearing; issuance of order; effect and enforcement.

Sec. 217. (1) If in the opinion of the commissioner a director or officer of a savings bank has committed a violation of law or rule or of a cease and desist order that has become final, or has engaged or participated in an unsafe or unsound practice in connection with the savings bank, or has committed or engaged in an act, omission, or practice that constitutes a breach of his or her fiduciary duty as a director or officer and the commissioner determines that the savings bank has suffered or will probably suffer substantial financial loss or other damage or that the interest of its depositors could be seriously prejudiced by reason of the violation, practice, or breach of fiduciary duty, the commissioner may serve upon the director or officer a written notice of his or her intention to remove him or her from office.

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

(3) In addition to a notice sent under subsection (1) or (2), if the commissioner deems it necessary for the protection of the savings bank or the interests of its depositors that the director, officer, or other person be immediately suspended from office or prohibited from further participation in any manner in the conduct of the affairs of the savings bank, the commissioner may serve upon the director, officer, or other person a written notice suspending him or her from office or prohibiting him or her from further participation in any manner in the conduct of affairs of the savings bank. The suspension or prohibition shall become effective upon service of the notice and, unless stayed by a court in proceedings authorized by section 218, shall remain in effect pending the completion of the administrative proceedings under the notice served under subsection (1) or (2) and until such time as the commissioner may dismiss the charges specified in the notice or, if an order of removal or prohibition is issued against the director, officer, or other person, until the effective date of the order. Copies of the notice shall also be served upon the savings bank of the director or officer or in the conduct of whose affairs he or she has participated.

(4) A notice of intention to remove a director, officer, or other person from office or to prohibit his or her participation in the conduct of the affairs of any savings bank shall contain a statement of the facts constituting grounds for the notice, and shall fix a time and place at which a hearing will be held. The hearing shall be held not earlier than 30 days nor later than 60 days after the date of service of the notice, unless

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another date is set by the commissioner at the request of the director, officer, or other person and for good cause shown.

(5) Unless the director, officer, or other person appears at the hearing in person or by a duly authorized representative, he or she shall be considered 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 an order of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the savings bank. The order shall become effective at the expiration of 30 days after service upon the savings bank and the director, officer, or other person, except in the case of an order issued upon consent, which shall become effective at the time specified in the order. The order shall remain effective and enforceable unless it is stayed, modified, terminated, or set aside by action of the commissioner or a reviewing court.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3218 Stay of suspension or prohibition; application to circuit court.

Sec. 218. No later than 10 days after a director, officer, or other person has been suspended from office or prohibited from participation in the conduct of the affairs of a savings bank under section 217, the director, officer, or other person may apply to the circuit court for the county in which the home office of the savings bank is located for a stay of the suspension or prohibition pending the completion of the administrative proceedings under the notice served upon the director, officer, or other person under section 217.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3219 Felony charge involving dishonesty or breach of trust by director or officer; suspension or prohibition; duration; entry of conviction; order of removal from office or prohibition; service of copy; finding of not guilty or other disposition.

Sec. 219. (1) If a director or officer of a savings bank or other person participating in the conduct of the affairs of a savings bank is charged in any information, indictment, warrant, or complaint authorized by a county, state, or United States authority with the commission of or participation in a felony involving dishonesty or breach of trust, the commissioner, by written notice served upon the director, officer, or other person, may suspend him or her from office or prohibit him or her from further participation in any manner in the conduct of the affairs of the savings bank. A copy of the notice shall also be served upon the savings bank.

(2) The suspension or prohibition shall remain in effect until the information, indictment, warrant, or complaint is finally disposed of or until terminated by the commissioner. If a judgment of conviction with respect to the offense is entered against the director, officer, or other person, and the judgment is not subject to further appellate review, the commissioner may issue and serve upon the director, officer, or other person an order removing him or her from office or prohibiting him or her from further participation in any manner in the conduct of the affairs of the savings bank.

(3) A copy of the order shall also be served upon the savings bank, whereupon the director or officer shall cease to be a director or officer of the savings bank.

(4) A finding of not guilty or other disposition of the charge shall not preclude the commissioner from instituting proceedings to suspend or remove the director, officer, or other person from office or to prohibit further participation in savings bank affairs, under section 217.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3220 Board of directors; less than quorum.

Sec. 220. If, because of the suspension or removal of 1 or more directors under this act, the board of directors of a savings bank has less than a quorum of directors, all powers and functions vested in or exercisable by the board shall vest in and be exercisable by the remaining directors on the board. If all of the directors of a savings bank are suspended or removed under this act, 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.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3221 Hearing; decision; review; modifying, terminating, or setting aside order; commencement of proceedings not as stay of order.

Sec. 221. (1) A hearing provided for in this chapter shall be conducted 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. The hearing shall be private unless the commissioner determines that a public hearing is necessary to protect the public interest.

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(2) After the hearing and within 90 days after the commissioner has notified the parties that the case has been submitted for final decision, the commissioner shall render a decision that shall include findings of fact upon which the decision is based and issue and serve upon each party to the proceeding an order consistent with the decision.

(3) A party to the proceeding, or a person required by an order issued under sections 215 to 225 to cease and desist from any of the violations or practices stated in the order or to be suspended, removed, or prohibited from participation in the conduct of the affairs of any savings bank, may obtain a review of an order served under subsection (2), other than a consent order, which shall be reviewed as provided in Act No. 306 of the Public Acts of 1969.

(4) Unless a petition for review is timely filed as provided in that act, the commissioner, at any time, upon notice and in a manner as he or she 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.

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

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3222 Notice or order; jurisdiction of court.

Sec. 222. The commissioner may apply to the circuit court of the county in which the home office of the savings bank is located, or in the circuit court for Ingham county, for the enforcement of an effective and outstanding notice or order issued under sections 215 to 225, including any temporary cease and desist order issued under section 216(1), and the court shall have jurisdiction to order and require compliance with the notice or order. Except as otherwise provided in this act, a court shall not have jurisdiction to review, modify, suspend, terminate, or set aside a notice or order under this section.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3223 Prohibited acts; fine; limitation.

Sec. 223. A director or officer, or former director or officer, of a savings bank or any other person against whom there is outstanding and effective a notice or final order served upon the director, officer, or other person under section 217(1), (2), or (3), or section 219, who participates in any manner in the conduct of the affairs of the savings bank 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 the voting rights in the savings bank, or without the prior written approval of the commissioner, votes for a director, serves or acts as a director, officer, or employee of a savings bank, shall be fined not more than $5,000.00 or imprisoned for not more than 1 year, or both.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3224 Service of notice; intent to issue cease and desist order; notice to governor.

Sec. 224. (1) A service required or authorized to be made by the commissioner under sections 215 to 225 may be made by registered or certified mail, or in any other manner reasonably calculated to give actual notice as the commissioner may provide. Copies of a notice or order served by the commissioner upon a savings bank, any director or officer, or any other person participating in the conduct of the savings bank's affairs shall also be sent to the appropriate federal supervisory authorities.

(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.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3225 Proceedings under MCL 487.3215, 487.3216(1), or 487.3217; notice to federal authorities of intent to institute proceedings.

Sec. 225. In connection with a proceeding under section 215, 216(1), or 217, the commissioner shall provide the appropriate federal supervisory authorities with notice of intent to institute a proceeding and the grounds for the proceeding. An institution or other party who is the subject of a notice or order issued by the commissioner under sections 215 to 225 shall not have standing to raise the requirements of section 224 or this section with respect to notifying federal supervisory authorities as ground for attacking the validity of a notice or order.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3226 Definitions.

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Sec. 226. As used in sections 215 to 225:

(a) "Cease and desist order which has become final" and "order which has become final" mean 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 in a circuit court 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 any action, alone or with others, for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation under sections 215 to 225.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

CHAPTER 3

CORPORATE STRUCTURE

487.3301 Corporation; formation; purpose.

Sec. 301. A corporation may be formed by 1 or more persons in accordance with the laws of this state for the purpose of conducting a savings bank business.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3302 Organization of savings bank; application; forms; notice; publication requirements; waiver; examination of information and statements; approval or disapproval of application.

Sec. 302. (1) A person shall apply to the commissioner for permission to organize a savings bank under this act. The application shall be on forms prescribed by the commissioner and set forth such information as the commissioner may require.

(2) After making application, the incorporators 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 savings bank to be organized. Proof of the 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 or her opinion, the 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 investigation as to the conditions and circumstances surrounding or in any manner affecting or pertaining to the organization of the savings bank sufficient to satisfy him or her as to all of the following:

(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 savings bank are such as to command the confidence of the community and to warrant the belief that the business of the proposed savings bank will be honestly and efficiently conducted.

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

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

(*i*) Population density.

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

(*iii*) The competition offered by existing savings banks, other financial institutions, and other providers of financial services.

(d) Whether the capital structure of the proposed savings bank meets the requirements of section 307.

(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 to the application, except that in the case of an application to organize a new bank under section 706 for the sole purpose of consolidating or merging the new bank with or into an existing bank, the commissioner shall approve or disapprove the application in writing within 30 days of the receipt of the application or the last amendment or supplement to the application. If the commissioner disapproves the application, the applicants may appeal in the manner provided in section 214.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3302a Organization of branch by out-of-state savings bank; proof of federal insurance on deposits; determination of compliance; certificate of organization and eligibility to accept deposits and investments of public funds.

Sec. 302a. (1) An out-of-state savings 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.

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(2) If the commissioner determines after receipt of the proof required under subsection (1) that the out-of-state savings bank is safe and sound, that the out-of-state savings bank is subject to regulation, that there exists an agreement for exchange of supervisory information between the bureau and the out-of-state savings bank regulator, and that the out-of-state savings bank has otherwise complied with this act, the commissioner shall provide to the out-of-state savings bank a certificate of organization and eligibility to accept deposits and investments of public funds of the state and local units of government.

History: Add. 1997, Act 50, Imd. Eff. June 30, 1997.

487.3303 Organization of savings bank to serve depository institutions; application.

Sec. 303. (1) Any number of depository institutions may apply to organize a savings bank exclusively to serve depository institutions or their officers, directors, employees, and affiliates.

(2) Any number of depository institutions may apply to organize a savings bank to engage exclusively in providing trust services and other services as may be authorized by order or declaratory ruling of the commissioner.

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

(4) The commissioner shall examine the information contained in the application and make any other investigation the commissioner considers necessary pertaining to the organization of the new savings bank. The commissioner shall issue to the applicants, within the time period provided in section 214, written notice of approval or disapproval of the application.

(5) Except as otherwise provided by rule, a savings bank organized under this section is not subject to the provisions of section 302, but shall comply with all other provisions of this act.

(6) The shares of stock of a stock savings bank organized under this section shall be owned exclusively by depository institutions.

(7) As used in this section, "applicant" means the depository institutions making an application under this section.

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

487.3304 Organizational expenses; reimbursement; review.

Sec. 304. (1) Following the date authorized by the commissioner for the savings bank to commence business, the savings bank may reimburse the organizers for reasonable and necessary organizational expenses. Any reimbursement under this section shall be predicated upon an accounting of the organizational expenses by an independent certified public accountant which shall be prepared in accordance with generally accepted accounting principles.

(2) The commissioner may review the accounting of the organizational expenses and may order the organizers to restore any sums that were reimbursed for other than reasonable and necessary expenses.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3305 Articles of incorporation.

Sec. 305. (1) Upon approval of the application, at least 2 original articles of incorporation executed by a majority of the applicants 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 or she shall approve and file 1 of the original articles in his or her office and certify and forward 1 of the original articles to the incorporators.

(2) As a condition for 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 the requirement to furnish the evidence.

(3) The articles of incorporation shall provide all of the following information:

(a) The name of the savings bank. The name shall not be similar to the name of any other savings bank transacting business in this state that would cause confusion.

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

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

(d) The authorized number of shares of common and preferred stock for a stock savings bank and 1 of the following:

(*i*) If the savings bank is to be authorized to issue only 1 class of stock, the par value of the shares.

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(*ii*) If the savings bank is to be authorized to issue more than 1 class of stock, the number of shares of each class, the par value of each class, and a statement of all designations, powers, preferences, rights, qualifications, limitations, and restrictions of each class.

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

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

(g) Any other provisions consistent with the business of banking and for the conduct of the affairs of the savings bank.

(4) If the commissioner approves and files the articles of incorporation under this act, the savings bank shall become a body corporate. A savings bank shall not transact any business, except as is incidental and necessary to its organization, until it has been authorized by the commissioner to commence business.

(5) Except shareholders, members, officers, and directors of a savings bank, a person dealing with a savings bank organized under this act shall not be charged with constructive notice of the contents of any articles or papers by reason of a filing required under this act.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3306 Authorization to commence business; conditions; verification; certificate with official seal; application deemed abandoned and no effect; first meeting.

Sec. 306. (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 savings 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 savings bank shall be authorized to commence business.

(2) The commissioner shall make such examinations as he or she deems necessary to verify the same and if it appears that the savings bank is lawfully entitled to commence business, the commissioner, within 30 days after receiving the notice under this section, shall give to the savings bank a certificate under the official seal of the bureau that the savings 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 savings bank fails to furnish the notice required by this section within the specified time or fails to comply with the required provisions within such period of time as the commissioner determines.

(4) The first meeting of every savings 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 the meeting is called. The notice shall be served 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, then no notice shall be required for the first meeting.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3307 Required capital; applicability of section to consolidated organization; authorization of stock savings bank or mutual savings bank to commence business; total capital; maintenance of surplus amount.

Sec. 307. (1) A stock savings bank organized under this act shall have capital in an amount as the commissioner considers adequate.

(2) This section does not apply if the new stock savings bank is organized under section 706 for the sole purpose of effecting its consolidation or merger with an existing bank or association having its principal office in the same city or village as the new stock savings 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. This section does apply to the consolidated organization.

(3) A stock savings bank shall not be authorized to commence business until it has surplus of at least 20% of its capital.

(4) A mutual savings bank shall not be authorized to commence business until:

(a) An aggregate minimum dollar amount and number of savings accounts shall be subscribed for and paid in cash, as determined by the commissioner.

(b) The commissioner shall have received confirmation from the federal deposit insurance corporation that the accounts of the mutual savings bank will be insured by the federal deposit insurance corporation.

(5) After organization each savings bank shall maintain adequate total capital for the conduct of its business and the protection of its depositors. The total capital of a savings 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 of earnings, the potential volatility of the deposit structure, its risk management, and the savings

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

(6) At all times a stock savings bank shall maintain surplus in an amount which is equal to at least the amount of its capital, except as provided in subsection (3) as to the initial surplus and except as provided in section 316 and shall not reduce surplus without the approval of the commissioner.

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

487.3308 Stock savings bank; stock issuance.

Sec. 308. A stock savings bank may issue shares of common stock and preferred stock that may be divided into classes and the classes into series.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3309 Mutual savings bank; membership.

Sec. 309. The membership of a mutual savings bank shall consist solely of every depositor or holder of a deposit account issued by the savings bank.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3310 Issuance of capital notes, debentures, and other indebtedness.

Sec. 310. (1) A savings bank, with the approval of shareholders owning 2/3 of the stock of a stock savings bank who are entitled to vote, or with the approval of 2/3 of the members of a mutual savings bank who are entitled to vote, may issue capital notes, debentures, and any other instrument of indebtedness, with or without warrants for preferred or common stock, convertible and nonconvertible, subordinated on insolvency, liquidation, or dissolution to all obligations except obligations to shareholders or members, in such amounts and under such terms and conditions as are approved by the commissioner on the basis of normal business considerations.

(2) In connection with the issuance of convertible capital notes, debentures, or any other instrument of indebtedness, the commissioner may grant approval for the savings bank to reserve a number of authorized and unissued shares of capital stock as required for issuance in exchange for capital notes and debentures with respect to which conversion privileges exist.

(3) 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 savings bank stating the amount of the conversion, and any other information with respect to the conversion as the commissioner may require, shall be filed in the office of the commissioner.

(4) Outstanding capital notes, debentures, and any other instrument of indebtedness issued under this section shall be added to "capital" and "capital stock" as the terms are used in sections 428, 429, and 432 to 434, for the purpose of computing the limitations contained in those sections based on amounts of capital and capital stock.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3311 Applicability of provisions to voting stock.

Sec. 311. Whenever a vote of the holders of shares of stock is required by this act, those provisions shall apply only to the voting stock of the savings bank, bank, out-of-state bank, national bank, or association.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3312 Issuance of stock by mutual savings bank; conversion.

Sec. 312. Upon application and approval of the commissioner, a mutual savings bank may amend its articles of incorporation to authorize the issuance of stock and may issue stock. Conversion shall be accomplished in accordance with section 715.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3313 Issuance of certificates of stock by savings bank.

Sec. 313. (1) Except as provided in subsection (2), the shares of a savings bank shall be represented by certificates of stock that shall be issued to every shareholder and transferable on the books of the savings bank in a manner as may be prescribed in the bylaws or articles of incorporation. A transfer of stock shall not be valid against the savings bank, except with the consent of the board of directors, so long as the registered holder of the stock is liable as principal debtor, surety, or otherwise to the savings bank for any debt which is due and unpaid.

(2) Unless the articles of incorporation or bylaws provide otherwise, the board may authorize the issuance of some or all of the shares of any or all of its classes or series of stock without certificates if within a reasonable time after issuance of a share without a certificate the savings bank provides the shareholder with a

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written statement of the information required on a certificate under subsection (5). The authorization shall not have any effect on shares already represented by certificates unless they are surrendered to the savings bank.

(3) If the registered holder of stock of a savings bank is liable to the savings bank as principal debtor, surety or otherwise for any debt which is due and unpaid, the directors of the savings 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 501. This section does not prevent the savings bank from bringing proceedings to recover the entire amount of the indebtedness at any time before the 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.

(4) Except as provided in section 501, the rights of a savings bank in its stock in which the shareholder is liable to the bank as principal debtor, surety, or otherwise is subject to any pledge, sale, or other transfer of the stock that is made before the maturity of an indebtedness of the registered holder of the stock to the savings bank and of which the savings bank has knowledge before the maturity, whether or not the stock was transferred on the books of the savings bank. Any stock of a savings bank that is pledged, sold, or otherwise transferred before the maturity of any indebtedness of the registered holder of the stock to the savings bank and of which pledge, sale, or other transfer the savings bank has knowledge before the maturity, may be transferred on the books of the savings bank after the maturity without the consent of the board of directors of the savings bank.

(5) The rights of a savings bank in its stock under this section, including the limitation on transferability if the registered holder is liable to the savings bank for any debt that is due and unpaid, shall not be applicable with respect to any stock duly listed on any stock exchange.

(6) Each certificate issued after the effective date of the amendatory act that added subsection (8) shall state all of the following:

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

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

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

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

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

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

(7) All of the following may be a facsimile:

(a) The signature of a transfer agent.

(b) The signature of a registrar.

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

(d) The seal of the savings bank.

(8) If an officer who has signed a share certificate or whose facsimile signature has been used on a share certificate ceases to be an officer, whether because of death, resignation, or otherwise, before the certificate has been delivered by the savings bank, the certificate, nevertheless, may be adopted by the savings bank and delivered as though the person who signed it or whose facsimile signature has been used on the stock had not ceased to be an officer.

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

487.3314 Increase in capital stock.

Sec. 314. (1) By a vote of shareholders owning 2/3 of each class of the stock entitled to vote, a savings bank may amend its articles to increase its capital stock to any sum approved by the commissioner, either by an increase in the par value of authorized stock or by the authorization of new stock.

(2) An increase in capital shall not be valid until the whole amount of the increase has been paid in, notice of the payment signed by an officer of the savings bank has been transmitted to the commissioner, and the commissioner's certificate of approval has been obtained specifying the amount of the increase in capital and that it has been duly paid in as a part of the capital of the savings bank. The certificate shall be conclusive evidence that the stock has been duly and validly issued.

(3) In the case of the issuance of new stock, in voting upon the increase of capital stock, 2/3 of the shareholders entitled to vote shall have power to fix the value of, and the price at which the stock shall be

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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 stock.

(4) Notwithstanding this section, a savings 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 or directors, may increase its capital stock in an aggregate par value amount not to exceed at any 1 time 5% of the par value of its then outstanding common stock. The additional stock, when duly authorized, may be issued by the savings bank from time to time for this 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.

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

487.3315 Reduction in capital stock.

Sec. 315. (1) By a vote of shareholders owning 2/3 of the stock entitled to vote of the savings bank, a savings bank may reduce its capital stock to an amount not less than that required by this act to authorize the formation of the savings 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 the stock. A reduction shall not be made until the amount of the proposed reduction has been reported to and approved by the commissioner.

(2) The approval of the commissioner shall be based upon a finding by him or her that the security of existing creditors of the savings bank will not be impaired by the proposed reduction. This section does not discharge a savings bank that has decreased its capital stock from an obligation or demand that is due from the savings bank.

(3) Retirement of preferred stock under the articles of incorporation is not considered to be a reduction of capital under this section.

(4) A shareholder is not entitled to a distribution of cash or other assets by reason of a reduction of the capital of a savings 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.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3316 Declaration and payment of dividends.

Sec. 316. (1) The board of directors of a savings bank may declare and pay dividends on the common stock of the savings bank subject to the following restrictions:

(a) A cash dividend or dividend in kind shall not be declared or paid unless the savings 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 savings bank except out of net income then on hand after deducting all bad debts. Unless the debts are well secured and in process of collection or the debts constitute claims against solvent estates in probate, debts due the savings bank on which interest is past due and unpaid for a period of 6 months shall be considered bad debts under 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 or preferred shareholders have waived their right to receive dividends.

(d) If the surplus of a savings 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 income of the preceding half-year in the case of quarterly or semiannual dividends, or not less than 10% of its net income of the preceding 2 consecutive half-year periods in the case of annual dividends. For the purpose of this section, an amount transferred to a fund for the retirement of preferred stock of the savings bank out of its net income for the periods is considered to be additions to its surplus, if upon the retirement of the preferred stock the amounts credited into the retirement fund may then properly be carried to surplus. The savings bank is obligated to credit to surplus the amounts transferred into the retirement fund on account of the preferred stock as the stock is retired.

(e) Notwithstanding the limitations of this section, a savings bank with the approval of the commissioner and by vote of shareholders owning 2/3 of the stock entitled to vote may increase its capital stock by declaration of a stock dividend on the capital stock. After the increase the surplus of the bank shall be at least equal to 20% of the capital stock as increased.

(2) A savings bank may pay dividends on its preferred stock at a rate as may be applicable without regard to the limitations of this section.

(3) A holding company that owns common or preferred stock of a savings bank may waive its right to receive dividends and any payment in lieu of dividends.

(4) Dividends paid to shareholders under a dividend reinvestment plan shall be subject to this act regarding

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the payment of dividends.

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

487.3317 Mutual savings bank; meetings.

Sec. 317. (1) An annual meeting of the members of a mutual savings bank shall be held at a time and place designated by or in the manner provided in the bylaws.

(2) Special meetings of the members of a mutual savings bank may be called at any time by the president or board of directors or by the president, a vice president, or the secretary upon the written request of members holding of record in the aggregate at least 10% of the savings deposits of the savings bank. The written request shall show the purposes of the meeting and shall be delivered to the principal office of the mutual savings bank addressed to the president.

(3) In the consideration of all questions requiring action by the members of a mutual savings bank, each member shall be entitled to the number of votes set forth in the savings bank's charter. The savings bank charter may provide between 1 and 1,000 votes per member and may further provide that each member shall be permitted to cast 1 vote for each $100.00, or fraction thereof, of the withdrawal value of his or her deposit account.

(4) In order that a mutual savings bank may determine the members entitled to notice of any meeting to vote, or entitled to receive a distribution or to exercise any rights in respect of any other lawful action, the board of directors of the savings bank may fix, in advance, a record date that is not more than 9 months or less than 6 months prior to the date of the meeting or more than 9 months prior to any other action.

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

487.3318 Records.

Sec. 318. (1) Each savings bank shall keep correct and complete books and records of accounts.

(2) Each mutual savings bank shall maintain membership records which shall show the name and address of the member and date of membership.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3319 Savings bank; meetings; voting.

Sec. 319. (1) The annual meeting of the shareholders of every stock savings bank shall be held at a time and place designated by or in the manner provided in the bylaws. Special meetings of shareholders shall be called and held as provided in the bylaws of the savings bank. At any meeting, each shareholder entitled to vote shall be entitled to 1 vote for each share held by him or her. A shareholder may vote at any meeting of the savings bank by written proxy.

(2) Persons holding shares of stock of a savings bank in a fiduciary capacity are entitled to vote the shares so held, unless the trust instrument contains a provision to the contrary. Persons whose shares are pledged are entitled to vote unless in the transfer by the pledgor on the books of the savings 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.

(3) A shareholder shall not vote his or her stock in any manner except in person or by proxy. This prohibition shall not be construed to apply to any voting trust agreement of shareholders with respect to the voting of stock, which agreement has been approved by the commissioner.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3320 Savings bank; meeting notice.

Sec. 320. The commissioner may call a meeting of the members or shareholders of a savings bank for any purpose by giving a notice of the time, place, and purposes of this meeting at least 3 days prior to the meeting to the members or shareholders either by personal service, registered mail sent to their last known addresses as shown by the books of the savings bank, or by publication at least once a week for 4 consecutive weeks prior to the meeting.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3321 Savings bank; stock ledger; designation of transfer agent or registrar of shares; list to be furnished upon request.

Sec. 321. (1) A stock savings bank shall keep and maintain a stock ledger in which shall be correctly entered the name and address of each shareholder of the savings bank, the number of shares held by each, the date when the shareholder acquired the shares, and the name of the transferor. The board of directors of a savings bank may designate any corporation authorized by law to act as transfer agent or registrar of shares of

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corporations, to act as transfer agent or transfer agent and registrar of the shares of the savings bank, but a corporation shall not be designated to act in both capacities at the same time.

(2) Upon demand made by the commissioner, a savings bank shall file with the commissioner a list containing the name and address of each shareholder of the savings 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.

(3) Within 2 calendar weeks of any demand made for a purpose reasonably related to the requester's interest as a shareholder or as a representative of a group of shareholders by any shareholder being the record owner of at least 5% of the issued shares of the savings bank or by any person representing any group who are the record owners of at least 5% of the issued shares of the savings bank, the savings bank shall prepare and furnish the requester a list containing the name and address of each shareholder of the savings bank together with the number of shares held by each according to its records as of the close of business on the date of receipt of the demand.

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

487.3322 Savings bank; election of directors; vacancy; bylaws; meetings; chief executive officer; minutes; quorum; notice of meeting.

Sec. 322. (1) A savings bank shall be managed by a board of not less than 5 nor more than 25 directors who shall be elected in the first instance by the incorporators at a meeting held before the savings bank is authorized to commence business and afterwards at the annual meeting of the members or shareholders. If for any reason an election is not held at the annual meeting, then the election shall be held at any subsequent meeting called for that purpose of which notice is given as provided in the bylaws of the savings bank. The board of directors may fill a vacancy that occurs in the board by death, resignation, or otherwise for the unexpired term. Subject to limitations as to numbers, the shareholders or members may elect directors not to exceed 2 less than the full board and the unfilled directorships shall be considered as vacancies and filled by the board of directors. Directors shall hold office until their successors are elected and have qualified.

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

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

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

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

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

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

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

(c) At each annual meeting after the classification established under subdivision (b), a number of directors equal to the number of the class whose term expires at the time of the meeting shall be elected to hold office until the second succeeding annual meeting if there are 2 classes, or until the third succeeding annual meeting if there are 3 classes.

(4) The board of directors shall meet not less than 6 times per year, in person or by means of electronic communication devices that enable all participants in a meeting to communicate with each other, for the purpose of carrying out their duties under this act. The directors shall designate the savings bank's chief executive officer at the first board of directors meeting of each fiscal year. The board shall keep and record minutes of each meeting. The minutes shall be 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.

(5) The commissioner may call a meeting of the board of directors of a savings bank by giving a notice of the time, place, and purpose of the meeting at least 3 days prior to the meeting to the directors either by personal service, registered mail sent to their last known addresses as shown by the books of the savings bank, or publication at least once in each week for 4 consecutive weeks prior to the meeting.

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

487.3323 Oath.

Sec. 323. Each director prior to taking office shall take and subscribe an oath that he or she will diligently and honestly perform his or her duties and will not knowingly violate, or permit to be violated, any provisions of this act. The signed oath shall be transmitted to the commissioner.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

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487.3324 Purchase or sale of securities by director; conditions.

Sec. 324. (1) A savings bank may contract for, or purchase from, any of its directors, or from any person of which any of the savings bank's directors is an officer, director, manager, owner, employee, or agent, any securities or other property, only when the purchase is made in the ordinary course of business upon terms not less favorable to the savings bank than those offered by others, and the purchase is authorized by a majority of the board of directors not interested in the sale of the securities or property evidenced by their affirmative vote or written assent. If a director, or person of which any director is an officer, director, manager, owner, employee, or agent, acting for or on behalf of others, sells securities or other property to a savings bank, the commissioner may require a full disclosure to be made of all commissions or other considerations received. If a director or person, acting in his, her, or its own behalf, sells securities or other property to the savings bank, the commissioner may require a full disclosure of all profits realized from the sale.

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

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

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

487.3325 Director or officer of savings bank; discharge of duties; violation; removal; vote.

Sec. 325. (1) A director or an officer of a savings bank shall discharge the duties of his or her position in good faith and with that degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position.

(2) 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 savings bank, upon the report of an independent appraiser selected with reasonable care by the board or by an officer of the savings bank, or upon financial statements of the savings bank represented to him or her to be correct by the president or the officer of the savings 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 savings bank.

(3) The articles of incorporation of a savings bank may contain a provision providing that a director is not personally liable to the savings bank or its shareholders or members for monetary damages for a breach of the director's fiduciary duty. 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 savings bank or its shareholders or members.

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

(c) A violation of section 223.

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

(4) 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.

(5) If a director or officer of a savings bank knowingly violates, or knowingly permits any of the agents, officers, directors, or employees of the savings bank to violate, this act, rules promulgated under this act, or an order or declaratory ruling of the commissioner, every director and officer who participated in or assented to the violation shall be held liable in his or her personal and individual capacity for all damages that the savings bank, any shareholder, or any other person sustains as a result of the violation. An action to recover damages under this section shall be brought within 3 years from the time of the violation.

(6) The shareholders may remove 1 or more directors with or without cause unless the articles provide that directors may be removed only for cause. The vote for removal shall be by a majority of shares entitled to vote at an election of directors, except that the articles may require a higher vote for removal without cause. This subsection shall not invalidate any bylaw adopted before the effective date of the amendatory act that added this subsection that applies to removal without cause.

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

(8) If holders of a class or series of stock are entitled by the articles to elect 1 or more directors, this section

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applies, with respect to removal of a director so elected, to the vote of the holders of the outstanding shares of that class or series of stock.

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

487.3326 Indemnification of party.

Sec. 326. (1) A savings bank may indemnify a 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 savings bank, or by reason of the fact that he or she is or was a director, officer, employee, or agent of the savings bank or is or was serving at the request of the savings bank as a director, officer, partner, trustee, employee, or agent of another financial institution, 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 and not opposed to the best interests of the savings bank or its members or shareholders, and in a criminal action or proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. The termination of an action, suit, or proceeding by judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, does not 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 and not opposed to the best interests of the savings bank or its members or shareholders, and in a criminal action or proceeding create a presumption that the person had reasonable cause to believe that his or her conduct was unlawful.

(2) A savings 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 savings bank to procure a judgment in its favor or by reason of the fact that he or she is or was a director, officer, partner, trustee, employee, or agent of the savings bank or is or was serving at the request of the savings bank as a director, officer, partner, trustee, employee, or agent of another financial institution, 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 actually and reasonably 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 and not opposed to the best interests of the savings bank or its shareholders or members. Indemnification shall not be made for a claim, issue, or matter in which the person has been found liable to the savings bank except as authorized in subsection (3).

(3) A director, officer, employee, or agent of the savings bank who is a party or threatened to be made a party to an action, suit, or proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court after giving any notice it considers necessary may order indemnification if it determines that the person is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he or she met the applicable standard of conduct set forth in this section or was adjudged liable, but if he or she was adjudged liable, his or her indemnification is limited to reasonable expenses incurred.

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

487.3327 Indemnification of director, officer, employee, or agent.

Sec. 327. (1) To the extent that a director, officer, employee, or agent of a savings bank has been successful on the merits or otherwise in defense of an action, suit, or proceeding described in section 326, 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 by this act.

(2) An indemnification under section 326, unless ordered by a court, shall be made by the savings 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 326. This determination shall be made by any of the following:

(a) 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) Independent legal counsel in a written opinion.

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(d) The shareholders or members.

(3) If a person is entitled to indemnification under section 326 for a portion of expenses, including actual and reasonable attorneys' fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount of the expenses, the savings 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.

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

487.3328 Payment or reimbursement of expenses incurred in civil or criminal action, suit, or proceeding.

Sec. 328. A savings bank may pay or reimburse the reasonable expenses incurred by a director, officer, employee, or agent who is a party or threatened to be made a party to an action, suit, or proceeding described in this section in advance of the final disposition of the action, suit, or proceeding if all of the following apply:

(a) The person furnishes the savings bank a written affirmation of his or her good faith belief that he or she has met the applicable standard of conduct set forth in this section.

(b) The person furnishes the savings bank a written undertaking executed personally or on his or her behalf to repay the advance if it is ultimately determined that he or she did not meet the standard of conduct. The undertaking shall be by unlimited general obligation of the person on whose behalf advances are made but need not be secured.

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

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

487.3329 Rights to indemnification.

Sec. 329. (1) The indemnification or advancement of expenses provided by or granted under this act 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. 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.

(2) The right to indemnification provided for under this act continues for 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.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3330 Insurance; trust fund.

Sec. 330. (1) A savings 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.

(2) A savings 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 savings bank or is or was serving at the request of the savings 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 savings bank has the power to indemnify him or her against the liability under sections 326 to 329.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3330a Consolidation or merger; position of director, officer, employee, or agent of depository institution.

Sec. 330a. For purposes of this section and sections 326, 327, 328, 329, 330, and 332, a person who is or was a director, officer, employee, or agent of a depository institution absorbed in a consolidation or merger or is or was serving at the request of the depository institution as a director, officer, partner, trustee, employee, or agent of another depository institution, 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.

History: Add. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

487.3331 Articles of incorporation; amendment.

Sec. 331. (1) With the approval of the commissioner and by vote of a majority of members or voting shares

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of the savings bank, a savings bank may amend its articles of incorporation in any manner not inconsistent with this act.

(2) An amendment is effective when certified copies of the amendment in a form as the commissioner may require signed by the president or a vice president and the cashier or an assistant cashier, have been submitted to the commissioner and have been approved and filed by the commissioner as with the original articles of incorporation.

(3) Notwithstanding subsection (2), an amendment that provides solely for a change in the name of the savings 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.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3332 Definitions; best interests of savings bank, shareholders, or members.

Sec. 332. (1) As used in sections 325 to 331:

(a) "Fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan.

(b) "Other enterprise" shall include employee benefit plans.

(c) "Savings bank" includes all savings banks, banks, out-of-state banks, national banks, and associations, absorbed in a consolidation or merger and the consolidated savings bank, so that a person who is or was a director, officer, employee, or agent of the savings bank, bank, out-of-state bank, national bank, or association or is or was serving at the request of the savings bank, bank, out-of-state bank, national bank, or association as a director, officer, partner, trustee, employee, or agent of another savings bank, bank, out-of-state bank, national bank, or association, 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 savings bank as he or she would if he or she had served the consolidated savings bank in that capacity.

(d) "Serving at the request of the savings bank" shall include any service as a director, officer, employee, or agent of the savings 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.

(2) 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 savings bank or its shareholders or members as referred to in section 326.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3333 Liquidation; notice; certificate of termination; designation of liquidating agent or committee; bond; reports; removal; appointment of new agent or committee; examination by commissioner; publication of notice; filing and forwarding certificate of termination.

Sec. 333. (1) A solvent savings bank may go into liquidation and be closed upon expiration of its corporate charter or by the vote of a 2/3 majority of members or voting shares. In the event of a termination, the last board of directors immediately upon expiration of its corporate charter or adoption of the resolution by the members or shareholders shall notify the commissioner of the action by filing with him or her in quadruplicate a certificate of termination signed by a majority of the remaining members of the board of directors. The certificate shall be in a form as the commissioner may require.

(2) The members or 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 the law and under the supervision of the commissioner and the board of directors.

(3) The agent or committee shall furnish to the savings bank a bond satisfactory to the commissioner in form and amount.

(4) The liquidating agent or committee shall render to the commissioner reports in a form and at such times as the commissioner may require. The liquidating agent or committee shall make periodic reports not less frequently than annually to the members or shareholders.

(5) At any lawfully convened meeting, by vote of a majority of members or voting shares, the members or shareholders may remove the liquidating agent or committee and appoint a new agent or a new committee.

(6) The commissioner may examine the affairs of a liquidating savings bank 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 savings 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.

(7) 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 savings bank for payment. Proof of the publication shall be filed with the commissioner by the liquidating agent or committee. The provisions of this

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section with respect to publication of notice shall not apply to a savings bank in voluntary liquidation which disposes of sufficient assets to a state or national bank to pay its depositors and creditors in full or if all of its liabilities are assumed by the state or national bank.

(8) If 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 or she 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 savings bank shall cease, subject to section 334.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3334 Commencement of voluntary liquidation procedures; savings bank as body corporate; actions, suits, or proceedings begun prior to liquidation proceeding; powers of surviving directors.

Sec. 334. (1) Except as provided in subsection (2), a savings bank that commences voluntary liquidation proceedings under section 333 shall continue to be a body corporate for the further term of the lesser of 3 years from the commencement of the proceedings or the date the certificate is issued under section 333(8) for the purpose of prosecuting and defending actions for or against the savings bank and to enable 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 an action, suit, or proceeding begun or commenced by or against the savings bank prior to the commencement of voluntary liquidation proceedings, and with respect to any action, suit, or proceeding begun or commenced by the savings bank within 3 years after the commencement of voluntary liquidation proceedings, the savings bank shall be continued as a body corporate until any judgments, orders, or decrees are fully executed.

(3) If the number of directors of a savings bank that has commenced voluntary liquidation proceedings is less than the full number of directors required or authorized by statute or by the bylaws of the savings bank for any reason, a majority of the remaining surviving directors or the sole surviving director shall possess the same powers in acting for the savings bank under this section as the duly authorized board of directors of the savings bank possessed before the commencement of voluntary liquidation proceedings.

(4) A savings bank in liquidation under the laws of this state shall not continue to be a body corporate for the purpose of continuing the business for which it was organized.

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

487.3335 Savings bank; expiration of term by limitation; extension; renewal.

Sec. 335. (1) A savings bank whose term will expire by limitation, at any time preceding the expiration of such term, by amendment of its articles, may extend its corporate term for a limited period of time or in perpetuity.

(2) A savings bank whose term has expired, but which has not been wound up or dissolved and which has nevertheless inadvertently continued its active business beyond such term, may renew its corporate existence by amendment of its articles with the consent of at least 2/3 of its members or the holders of at least 2/3 of the outstanding shares. The officers and directors de facto shall do and perform all things required 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.

(3) A savings bank de facto shall not be permitted to renew its corporate life unless the action is taken within 3 years after its term has expired and renewal does not relieve the savings bank from any penalties that may have accrued against it under any law of this state.

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

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

487.3336 Sale or purchase of assets; consideration; purpose; filing certified copies of proceedings; liability; maintenance of principal office or branches.

Sec. 336. (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 2/3 of its members or the holders of 2/3 of its stock entitled to vote, a savings bank may do either or both of the following:

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

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

(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.

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

(4) Certified copies of all shareholders' and directors' proceedings under this section shall be submitted to the commissioner and shall contain the terms of the sale and purchase, including a copy of the agreement of sale and purchase.

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

(6) Notwithstanding any other provision of this act, a savings bank that purchases or assumes all or substantially all of the assets or liabilities of a depository institution may retain, maintain, and operate the principal office or branches of the depository institution as branches of the purchasing savings bank without providing notice to the commissioner provided it assumes the deposit liabilities of the depository institution maintained at the principal office or branches.

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

487.3337 Sale or purchase of branches; notice.

Sec. 337. (1) A savings bank may sell 1 or more of its branches to a bank, out-of-state bank, national bank, association, or savings bank located in a state whose laws would permit a savings bank to purchase 1 or more branches in that state of the purchasing depository institution.

(2) A savings 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 savings bank that purchases 1 or more branches under subsection (2) shall provide notice as required under section 417 before operating the purchased branch or branches.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3338 Unlimited amounts or share of deposits.

Sec. 338. There shall be no limit upon the amount or share of deposits held or controlled in this state by any savings bank or holding company on a consolidated basis.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3339 Compliance review committee; construction of section.

Sec. 339. (1) A compliance review committee shall evaluate and seek to improve all of the following:

(a) Loan policies or underwriting standards.

(b) Asset quality.

(c) Financial reporting to federal or state government or regulatory agencies.

(d) Compliance with federal or state statutory or regulatory requirements.

(2) Except as provided in subsection (3), all of the following apply to a compliance review committee:

(a) Compliance review documents are confidential and are not subject to discovery or admissible in evidence in a civil action.

(b) Individuals serving on a compliance review committee or acting under the direction of a compliance review committee shall not be required to testify in a civil action about the contents of a compliance review document or conclusions of a compliance review committee or about the actions taken by a compliance review committee.

(c) Compliance review documents delivered to individuals who are not members of the compliance review committee, or to other entities including state, federal, or foreign governmental or regulatory agencies, shall remain confidential and are not discoverable or admissible in evidence in a civil action.

(3) This section does not apply to any civil action initiated by a federal or state regulatory agency.

(4) This section shall not be construed to limit the testimony that can be required about matters other than the contents of a compliance review document or conclusions or actions of a compliance review committee. This section does not limit the discovery or admissibility in a civil action of any documents other than compliance review documents.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

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CHAPTER 4
POWERS

487.3401 Savings bank; powers.

Sec. 401. (1) Except as otherwise provided by this act, a savings bank may engage in the business of banking and exercise all powers incidental to the business of banking or which further or facilitate the purposes of a savings bank. A savings bank has all the powers conferred by this act and granted by rule, order, or declaratory ruling of the commissioner, including, but not limited to, all of the following powers:

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

(b) 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.

(c) To make contracts.

(d) To sue and be sued, complain, and defend in its corporate name as fully as a natural person.

(e) 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 may appoint officers as the board considers necessary, who need not be members of the board, define their duties, dismiss at pleasure, and appoint other officers to fill vacancies.

(f) 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 savings bank.

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

(h) To make investments permitted by this act and those investments permitted by order or declaratory ruling of the commissioner.

(i) 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, establish and operate charitable trusts.

(j) To purchase, take, lease as lessee, or otherwise acquire and to own, hold, and use, to sell, lease as lessor, pledge, grant a security interest in, convey, or otherwise dispose of personal property in connection with the exercise of a power granted by this act.

(k) To act as agent of the United States or of an instrumentality or agency of the United States, or of a state, for the sale or issue of bonds, notes, or other obligations of the United States, or of a state and to act as a fiscal agent of the United States, a state, or as a treasury tax and loan depository and perform all reasonable duties in those capacities as may be prescribed or required by regulation of the secretary of the treasury of the United States, or of the treasurer of a state, and to take other action as may be necessary or proper to enable the savings bank to act under this subdivision.

(*l*) 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 its membership, and to exercise all powers, not inconsistent with the provisions of this act, conferred on member banks by the federal reserve act.

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

(n) To become a member and buy and hold stock 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.

(o) To sell mortgage loans to the federal national mortgage association, the federal home loan mortgage corporation, and the government national mortgage association, or successors of the associations, or any other secondary market loan purchaser and, in connection with these associations, to make payments of capital contributions, required by law, in the nature of subscriptions for stock of an association or successor of the association, to receive stock evidencing the capital contributions, and to hold or dispose of the stock.

(p) To conduct its business through subsidiaries, at the same location or a location different from the savings bank. A subsidiary may engage in all activities and make all investments permitted for a savings bank by this act or by rule, order, or declaratory ruling of the commissioner, except that a subsidiary may not accept deposits or engage in trust activities unless specifically authorized by the commissioner or by another statute of this state. In addition, a subsidiary may engage in activities specifically permitted for subsidiaries by order or declaratory ruling of the commissioner. Except upon written approval of the commissioner, a savings

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bank shall not be a general partner in a subsidiary.

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

(r) 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.

(s) Notwithstanding any provision of this act, to acquire and hold 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 disposition of property within a period of 60 months after the date of acquisition, or a longer period as the commissioner may approve.

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

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

(v) To make, sell, purchase, arrange, participate in, invest in, or otherwise deal in loans or extensions of credit for consumer purposes, which are unsecured or secured by liens or interests in personal property or real estate.

(w) To make, sell, purchase, arrange, participate in, invest in, or otherwise deal in loans or extensions of credit for agricultural, business, corporate, or commercial purposes, which are unsecured or secured by liens or interests in personal property or real estate.

(x) To borrow money from any source, assign or pledge any of its assets or properties as collateral security subject to limitations stated in section 508, and issue its notes, bonds, and other obligations.

(y) To make deposits in a bank organized solely for the purpose of providing banking services to financial institutions.

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

(aa) To conduct business using electronic information processing, including the electronic processing and execution of transactions between a savings bank and its customers and a savings bank and other depository institutions.

(bb) To establish and operate a loan production office or loan production offices within this state and outside this state as permitted by section 418.

(cc) To contract with a person or entity to act as an agent in an agency office, as permitted by section 417.

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

(*i*) Receive deposits.

(*ii*) Permit withdrawals of deposits.

(*iii*) Renew time deposits.

(*iv*) Close loans.

(*v*) Service loans.

(*vi*) Receive loan payments.

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

(ee) To sell money orders, travel checks, cashier's checks, and similar instruments drawn by it on its accounts or as agent for any organization empowered to sell the instruments through agents within this state.

(ff) To guarantee the signatures of customers and others.

(gg) To operate a safe and collateral deposit company or department under section 428.

(hh) To engage directly in the real estate brokerage business as provided under article 25 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518, and section 409.

(ii) To own in whole or in part a real estate brokerage business as provided under article 25 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518, and section 409.

(jj) To issue securities in the form of bonds, notes, debentures, and other evidence of indebtedness.

(2) The commissioner may authorize by order or declaratory ruling a savings bank to exercise further powers consistent with the safe and sound conduct of the business of banking or of a business related or incidental to banking as are granted by the laws of the United States or of any state or political subdivision of the United States to financial service providers.

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 1996, Act 422, Imd. Eff. Nov. 22, 1996;—Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

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487.3402 Purchase, design, manufacture, construction, repair, modification, or improvement of real property; use of loan proceeds; liability for defect.

Sec. 402. A savings bank that makes a loan the proceeds of which are used or may be used by the borrower to finance the purchase, design, manufacture, construction, repair, modification, or improvement of real property shall not be liable for any defect in the real property purchased, designed, manufactured, constructed, repaired, modified, or improved or for any loss or damage resulting from the failure of the borrower or any agent or other person employed by the borrower to use due care in the examination, design, manufacture, construction, repair, modification, or improvement of the real property.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3403 Purchase of corporation stock by savings bank; limitation on aggregate investments.

Sec. 403. Except as otherwise provided by this act, with the approval of the commissioner, a savings 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 savings bank.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3404 Purchase of stock, or loans to, Michigan business development corporation.

Sec. 404. Except as otherwise provided by this act or in its articles of incorporation, a savings bank may purchase the shares of stock of, or make loans to, the Michigan business development corporation.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3405 Venture capital investments; "professional investor" and "venture capital" defined.

Sec. 405. (1) Except as otherwise provided by this act and in its articles of incorporation, a savings bank may make venture capital investments, or may invest in equity securities of a professional investor a majority of whose assets consist of venture capital investments.

(2) If a savings bank makes a venture capital investment under subsection (1), an officer or director of the savings bank shall not hold an equity position in the financed company, and the savings bank shall not invest more than 50% of the company.

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

(4) This section does not limit the authority of a savings 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, title I of chapter 686, 54 Stat. 789, 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 are dedicated to investing in equity or debt securities and whose net worth exceeds $500,000.00 prior to the savings 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 title I of the securities exchange act of 1934, chapter 404, 48 Stat. 892, 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.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3406 "Investment security" and "secretary" defined; purchase of investment securities.

Sec. 406. (1) As used in this section:

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

(b) "Secretary" means the secretary of the United States department of housing and urban development.

(2) A savings bank may purchase investment securities for its own account when in its prudent banking

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judgment, which may be based in part upon estimates that it believes to be reliable, it determines that there is adequate evidence that the obligor will be able to perform all it undertakes to perform in connection with the securities, including all debt service requirements, and that the securities may be sold with reasonable promptness at a price which corresponds to their fair value. The purchase of investment securities in which the investment characteristics are considered distinctly or predominantly speculative, or the purchase of investment securities that are in default, whether as to principal or interest, is prohibited.

(3) A savings bank may purchase without limit 1 or more of the following:

(a) Obligations of the United States, or obligations that 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.

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

(c) Obligations issued by banks for cooperatives.

(d) Obligations issued by the federal home loan banks.

(e) Obligations insured by the secretary under title XI of the national housing act, chapter 847, 80 Stat. 1274, 12 U.S.C. 1749aaa to 1749aaa-5.

(f) Obligations insured by the secretary under section 207 of title II of the national housing act, chapter 847, 48 Stat. 1252, 12 U.S.C. 1713, if the debentures to be issued in payment of the insured obligations are guaranteed as to principal and interest by the United States.

(g) Obligations, participations, or other instruments of or issued by the federal national mortgage association or the government national mortgage association.

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

(i) Obligations of a public housing agency, as defined in the United States housing act of 1937, chapter 896, 88 Stat. 653, secured by any of the following:

(*i*) An agreement between the public housing agency and the secretary in which the public housing agency agrees to borrow from the secretary, and the secretary agrees to lend to the public housing agency, before the maturity of the obligations, money in an amount which together with any other money irrevocably committed to the payment of interest on such obligations will suffice to pay the principal of the obligations with interest to maturity on the obligations which money under the terms of the agreement is required to be used for the purpose of paying the principal of and the interest on the obligations at their maturity.

(*ii*) A pledge of annual contributions under an annual contributions contract between the public housing agency and the secretary if the contract contains the covenant by the secretary that is authorized by section 6(g) of title I of the United States housing act of 1937, chapter 896, 88 Stat. 659, 42 U.S.C. 1437d, and if the maximum sum and the maximum period specified in the contract under section 6(g) of the United States housing act of 1937 is not less than the annual amount and the period for payment that are requisite to provide for the payment when due of all installments of principal and interest on such obligations.

(*iii*) A pledge of both annual contributions under an annual contributions contract containing the covenant by the secretary that is authorized by section 6(g) of the United States housing act of 1937 and a loan under an agreement between the local public housing agency and the secretary in which the public housing agency agrees to borrow from the secretary and the secretary agrees to lend to the public housing agency, prior to the maturity of the obligations involved, money in an amount which, together with any other money irrevocably committed under the annual contributions contract to the payment of principal and interest on the obligations, will suffice to provide for the payment when due of all installments of principal and interest on the obligations, which money under the terms of the agreement is required to be used for the purpose of paying the principal and interest on the obligations at their maturity.

(j) Obligations of a local public agency, as defined in former section 110(h) of part A of title I of the housing act of 1949, secured by an agreement between the local public agency and the secretary in which the local public agency agrees to borrow from the secretary and the secretary agrees to lend to the local public agency, money in an aggregate amount which, together with any other money irrevocably committed to the payment of interest on the obligations, will suffice to pay, when due, the interest on all installments, including the final installment, of the principal of the obligations, which money under the terms of the agreement is required to be used for the payments.

(k) Any other investment security authorized by order or declaratory ruling of the commissioner.

(4) The total amount of investment securities of any 1 obligor or maker, held by a savings bank for its own account under this subsection, shall not exceed at any time 20% of its capital, surplus, and subordinated notes and debentures. This limitation shall not require a savings bank to dispose of any securities lawfully held by it on the effective date of this act. The statutory limitation on the amount of investment securities of any 1

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obligor or maker which may be held by a savings bank shall be determined on the basis of the par or face value of the securities. For purposes of this section, capital notes or debentures shall not include capital notes or debentures issued to or held by the federal deposit insurance corporation.

(5) A savings bank shall maintain in its credit files information adequate to demonstrate that it has exercised prudence in making the determinations and carrying out the transactions described in subsection (2).

(6) If a savings bank purchases investment securities convertible into stock or with stock purchase warrants attached, entries shall be made by the savings bank at the time of purchase to write down the cost of the securities to an amount that represents the investment value of the securities considered independently of the conversion feature or attached stock purchase warrants. A savings bank shall not purchase investment securities that are convertible into stock at the option of the issuer.

(7) Subject to the exercise of prudent banking judgment, a savings bank may engage in the underwriting of any of the following investment securities:

(a) Obligations of the United States.

(b) General obligations of any state of the United States or a political subdivision of the United States.

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

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

(e) Obligations of the Asian development bank.

(f) Obligations of the Tennessee valley authority.

(g) Obligations issued by any state or political subdivision or agency of a state or political subdivision for housing, university, or dormitory purposes.

(h) Obligations of the African development bank.

(i) Obligations of the international finance corporation.

(j) Other obligations listed in subsection (3).

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

(8) For the purposes of underwriting under subsection (7), prudence shall require a consideration of the resources and obligations of the obligor and a determination that the obligor possesses resources sufficient to provide for all required payments in connection with the obligation.

(9) For the purposes of underwriting under subsection (7), a savings bank shall not underwrite any investment securities of a foreign country that has been identified by the United States state department as engaging in or sponsoring terrorism.

(10) The restrictions and limitations of this section do not apply to securities acquired through foreclosure on collateral, or acquired in good faith by way of compromise of a doubtful claim or to avoid a loss in connection with a debt previously contracted. This section does not limit the investment authority of a savings bank granted by any other section of this act.

(11) A savings bank may invest in other assets authorized by order or declaratory ruling of the commissioner.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3407 Acquisition, development, or improvement of real estate; limitation on investment of assets; powers of savings bank.

Sec. 407. A savings bank may invest not more than 10% of its total assets in the acquisition and development of real estate for sale, or for the improvement of real estate by construction or rehabilitation of residential or commercial units for sale or rental purposes. For purposes of this section, a savings bank may purchase, take, lease as lessee, or otherwise acquire, and own, hold, use, sell, lease as lessor, pledge, grant a security interest in, convey, or otherwise dispose of real estate. The investment by a savings bank may be direct or indirect as a stockholder in a corporation, member of a limited liability company, or limited partner in a partnership or limited liability partnership.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3408 Services performed by savings bank.

Sec. 408. A savings bank may perform 1 or more of the following services, and any other services permitted by order or declaratory ruling of the commissioner:

(a) 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.

(b) Service mortgages and land contracts.

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

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

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(e) Credit analysis, appraising, construction loan inspection, and abstracting.

(f) Research, studies, and surveys.

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

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

(i) Liquidity management, investment, advisory, and consulting services.

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

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

(*l*) Prepare local, state, and federal tax returns for individuals or organizations that are not corporations operated for profit.

(m) Data processing services.

(n) Subject to applicable state or federal law, provide brokerage services for the offer, sale, or purchase of a security or commodity contract.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3409 Savings bank engaged in real estate brokerage business; notice of licensure or ownership; prohibited acts; disclosure to credit applicant; violation of section; orders; limitation.

Sec. 409. (1) A savings 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.

(2) A savings 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 into any other arrangement for real estate brokerage services.

(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 savings bank or any of its subsidiaries, agencies, or service entities.

(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 savings bank or any of its subsidiaries, agencies, or service entities.

(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.

(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 savings bank or any of its subsidiaries, agencies, or service entities.

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

(3) A savings 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.

(4) A real estate brokerage that is affiliated with a savings 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 savings bank or any of its subsidiaries, agencies, or service entities.

(5) The requirements of subsections (3) and (4) do not apply when the person has been given the affiliated business arrangement disclosure statement required by the real estate settlement procedures act of 1974, Public Law 93-533, 88 Stat. 1724.

(6) If the commissioner finds that a savings bank has violated this section, the commissioner may issue an order requiring the savings bank to cease and desist the activity that violates this section. If the commissioner

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additionally finds that the violation was knowingly committed, the commissioner may order any of the following:

(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.

(7) 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.

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

487.3410 Investment in service entities.

Sec. 410. (1) Upon 30 days' notice to the commissioner, a savings bank may invest in service entities that engage in activities described in subsections (4) and (5). The maximum aggregate investment by a savings bank in service entities shall be the lesser of 5% of the savings bank's total assets or 75% of its capital and surplus, if it is a stock savings bank, or the lesser of 5% of the savings bank's total assets or 75% of its total capital, if it is a mutual savings bank.

(2) Except upon written approval of the commissioner, a savings bank shall not invest as a general partner in a service entity. For purposes of this section, investment in a service entity shall include loans by a savings bank or its subsidiary to a service entity.

(3) Subject to the investment limit in subsection (1), a savings bank or its subsidiary that has made an initial investment in a service entity may make additional investments in that service entity without notice to the commissioner.

(4) A service entity that directly, or through its wholly owned subsidiary, engages in any of the following activities or investments is a service entity in which a savings bank may invest:

(a) Services primarily for financial institutions that include any of the following:

(*i*) Credit analysis, appraising, construction loan inspection, and abstracting.

(*ii*) Developing and administering personnel benefit programs, including life insurance, health insurance, and pension or retirement plans.

(*iii*) Research, studies, and surveys.

(*iv*) Developing and operating storage facilities for microfilm or other duplicate records.

(*v*) Advertising, brokerage, and other services to procure and retain both savings accounts and loans, but not pooling savings accounts or soliciting or promoting pooled savings accounts.

(*vi*) Serving as escrow agent, including executing and delivering conveyances, reconveyances, and transfers of title.

(*vii*) Providing liquidity management, investment, advisory, and consulting services.

(*viii*) Providing clerical, accounting, and internal auditing services.

(*ix*) Establishing, owning, leasing, operating, or maintaining remote service units.

(*x*) Purchasing office supplies, furniture, and equipment.

(b) Real estate services that include any of the following:

(*i*) Maintaining and managing real estate, including real estate used for agricultural purposes.

(*ii*) Managing owners' associations for condominium, cooperative, planned unit development, or other rental real estate projects.

(*iii*) Providing home ownership and financial counseling.

(*iv*) Providing relocation services.

(*v*) Providing real estate brokerage services for property owned by a person that owns an interest in the service entity, the service entity or its wholly owned subsidiary, or a joint venture in which the service entity or its wholly owned subsidiary participates.

(*vi*) Acquiring real estate for development or subdivision, for construction of improvements, for resale or leasing to others for construction, or for use as manufactured home sites.

(*vii*) Acquiring improved real estate or manufactured homes to be held for rental or resale, or for remodeling, renovating, or demolishing and rebuilding for sale or rental.

(*viii*) Acquiring, maintaining, and managing real estate, improved or unimproved, to be used for offices and related facilities of a savings bank, subsidiary, or service entity, or of a person that owns an interest in the savings bank, subsidiary, or service entity, or for offices and related facilities and for rental or sale, if the acquisition, maintenance, and management is performed under a prudent program of property acquisition to meet either the present needs or reasonable future needs for office and related facilities of the savings bank, subsidiary, or service entity, or of the person that owns an interest in the savings bank, subsidiary, or service entity.

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(*ix*) Real estate brokerage under article 25 of the occupational code, Act No. 299 of the Public Acts of 1980, being sections 339.2501 to 339.2518 of the Michigan Compiled Laws. A savings bank with an investment in a real estate brokerage business must comply with section 409.

(c) Securities brokerage and investment advisory services that include execution of securities transactions on an agency or riskless principal basis, and the provision of standardized and individualized investment advice to individuals or entities.

(d) Other investments that include any of the following:

(*i*) Investing in adjustable rate preferred stock and money market preferred stock.

(*ii*) Investing in an entity that provides insurance in connection with loans, and investing in an entity which reinsures a provider of the insurance.

(*iii*) Making voting and nonvoting investments in corporations and in partnerships, whether as a general or limited partner, limited liability companies, and limited liability partnerships provided such other corporation or partnership or limited liability company engages only in activities permissible for a savings bank or a service entity.

(e) Other services that include any of the following:

(*i*) Preparing state and federal tax returns for individuals or organizations that are not corporations operated for profit.

(*ii*) Acting as an insurance broker or agent.

(*iii*) Providing data processing services.

(f) Offering credit card programs, debit card programs, and similar arrangements.

(g) Offering mutual fund investment products.

(5) A savings bank may also invest in service entities that engage directly or through a wholly owned subsidiary in activities determined by order or declaratory ruling of the commissioner to be incidental to the conduct of the business of a financial services provider, activities that further or facilitate the purposes of a financial services provider, or which provide services to a financial services provider. The commissioner shall consider the ability of service entities to exercise any additional power in a safe and sound manner. The commissioner shall also consider the ability of service entities to compete with, or offer the same or similar services as offered by, service corporations or service organizations of other providers of financial services. The commissioner shall give notice to all savings banks of rules promulgated, or declaratory rulings or determinations, or orders issued pursuant to this subsection.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3411 Powers granted in MCL 487.3401 and 487.3403 construed.

Sec. 411. The powers granted in sections 401 and 403 shall not be construed as limiting any grant of authority made elsewhere by this act except as provided in section 401. 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 savings bank.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3412 Change in location of principal office.

Sec. 412. (1) Upon prior written notice to the commissioner, a savings bank may change the location of its principal office to any existing branch location of the savings bank within this state.

(2) Unless the commissioner objects in writing within 60 days after receipt of written notice from the savings bank of its intent to relocate its principal office, a savings bank may change the location of its principal office to any other location within this state which is not an existing branch location of the savings bank. The commissioner may issue a written statement of intent not to object at any time before expiration of the 60 days.

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

487.3413 Transactions relating to capital stock of corporation; authorization; purchase and sale of securities and stock; loan or discount; purchase or holding of own stock.

Sec. 413. (1) A savings bank shall not engage in any transaction with respect to shares of the capital stock of any corporation unless specifically authorized by this act or by the commissioner under section 401 or 410.

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

(3) A savings bank shall not make any loan or discount on 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.

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

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(a) The savings bank is holding shares previously purchased until disposed of in compliance with an existing stock option plan.

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

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

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

487.3414 Savings bank possessing capital and surplus more than $1,000,000.00; powers; application; savings bank operating foreign branches; restrictions and limitations; further powers.

Sec. 414. (1) A savings bank possessing a capital and surplus of $1,000,000.00 or more may file application with the commissioner for permission to exercise, upon conditions and under such rules, orders, or declaratory rulings as may be prescribed by the commissioner, any of 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 capital and surplus if it is a stock savings bank, or 10% of its total capital if it is a mutual savings bank 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, or 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 order or declaratory 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 on. 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.

(3) Every savings bank operating foreign branches under this section shall furnish information concerning the condition of the branches to the commissioner upon demand, and every savings bank investing in capital stock of banking organizations or corporations as provided under this section 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 or she deems best.

(4) Before a savings bank is permitted to purchase stock in a banking organization or corporation under this section, the banking organization or corporation shall enter into an agreement or undertaking with the commissioner to restrict their operations or conduct their businesses in a manner or under such limitations and restrictions as the commissioner may prescribe. If at any time the commissioner has ascertained that the orders or rulings prescribed by him or her are not being complied with, the commissioner may institute an investigation of the matter and subpoena witnesses and documents and administer oaths. If the investigation results in establishing the failure of the banking organization or corporation in question, or of the savings bank which is a stockholder, to comply with the rules of the commissioner, the commissioner may order the savings bank to dispose of stockholdings in the banking organization or corporation.

(5) Orders or rulings 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 orders or rulings prescribe, to exercise any 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 orders or rulings 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 orders or rulings shall not authorize a foreign branch to engage or participate, directly or indirectly, in the business of underwriting, selling, or distributing securities.

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History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3415 Savings bank with branch offices in foreign country.

Sec. 415. (1) Notwithstanding section 1105 of the uniform commercial code, Act No. 174 of the Public Acts of 1962, being section 440.1105 of the Michigan Compiled Laws, a savings bank doing business in this state, that 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 the branch offices to no greater extent than a savings bank, banking corporation, or other organization or association for banking purposes organized and existing under the laws of the foreign country would be liable under its laws. The laws of the foreign country for the purpose of this section shall be considered to include all acts, decrees, regulations, and orders promulgated or enforced by an authority asserting governmental, military, or police power of any kind at the place where any branch office is located, whether or not the 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 a dominant authority that 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 savings bank in the foreign territory is seized, destroyed, or canceled, then the liability of the savings bank for any deposit received and to be repaid by it, and for any contract made and 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 savings bank at the time of the seizure, destruction, or cancellation of the assets bears to the aggregate of all the deposit and contract liabilities of the branch offices of the savings bank in the foreign territory, as shown at such time by the books or other records of the savings bank.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3416 Savings bank as owner or lessor of personal property; lease payments as rent; taxes; prohibition.

Sec. 416. (1) A savings bank may become the owner or lessor of personal property for the purpose of leasing the property or obtaining an assignment of a lessor's interest in a lease of the property or permitting the use of the property, and may incur additional obligations as may be incident to becoming an owner or lessor of such property.

(2) Lease payments shall constitute rent rather than interest.

(3) This section shall not exempt from general property taxation any personal property of a savings bank which 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) A savings bank 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 savings bank's capital and surplus.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3417 Savings bank with branch in another state.

Sec. 417. (1) A savings bank may establish and operate a branch or branches within any state, the District of Columbia, a territory or protectorate of the United States, or a foreign country, unless the commissioner objects in writing within 30 days after receipt of a written notice from the bank of its intent to establish a branch. The commissioner may issue a written statement of intent not to object at any time before the expiration of the 30 days.

(2) The written notice of intent to establish a mobile branch shall contain a statement by the applying savings 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 1 location to another without prior written notice to the commissioner.

(4) Unless the commissioner objects in writing within 30 days after receipt of written notice from a savings bank of its intent to contract for branch services, a savings bank may contract with 1 or more banks, out-of-state banks, national banks, associations, or savings banks for the depository institution or institutions to act as branches to provide services to the customers of the contracting savings bank. The commissioner may issue a written statement of intent not to object at any time before the expiration of the 30 days. This

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subsection shall not be construed to limit the powers granted to a savings bank under section 401(cc).

(5) Unless the commissioner objects in writing within 30 days after receipt of written notice from a contracting depository institution of its intent to contract for branch services, 1 or more out-of-state banks, national banks, associations, or savings banks may contract with a savings bank for the savings bank to provide services to the customers of the contracting out-of-state bank, national bank, association, or savings bank. The commissioner may issue a written statement of intent not to object at any time before the expiration of the 30 days. This subsection shall not be construed to limit the powers granted to a savings bank under section 401(cc).

(6) Upon 30 days' advance written notice to the commissioner, a savings bank may contract with a person or entity to act as an agent in an agency office. The written notice shall include the name and address of the person or entity who will act as agent for the savings bank, the location of the agency office, when the agency office will be operational, and the activities in which the agency office will initially be engaged. A savings bank may perform any of the following activities through an agency office:

(a) Accept a deposit to an existing account and record the addition to the account or give other evidence of receipt as prescribed by the savings bank.

(b) Accept a withdrawal form and such other evidence required by the savings bank from an account holder for transmission to the main office or a branch office of the savings bank.

(c) Solicit and accept a new account. Evidence of account ownership shall be issued only by authority of the main office or a branch office of the savings bank. An agent may obtain signature cards from the savings bank for the account holder.

(d) Solicit and accept an application for a loan or for a land contract purchase. The agent shall submit the application to the main office or a branch of the savings bank for processing and approval.

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

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

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

(7) An out-of-state savings bank or federal savings 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 savings bank may establish and operate 1 or more branches in this state.

(8) An out-of-state savings 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 that the out-of-state savings bank is safe and sound, that the out-of-state savings bank is subject to regulation, and that there exists an agreement for exchange of supervisory information between the bureau and the out-of-state savings bank's regulator, the commissioner shall provide to the out-of-state savings bank a certificate of organization and eligibility to accept deposits and investments of public funds of the state and local units of government.

(9) Prior to commencing operations at a branch in this state, an out-of-state savings bank or federal savings bank shall provide written notice to the commissioner of the name of the institution, the street address and mailing address, if different, of the institution's principal office, the street address of the branch office, and the date when the branch is to commence operations in this state.

(10) Each savings bank, out-of-state savings bank, and federal savings bank operating in this state shall do both of the following:

(a) 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.

(b) 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) For purposes of this section, the designated agent of a savings bank or a federal savings bank is its chief executive officer.

(12) If a savings bank permanently discontinues the operations of any branch, all functions of the branch shall be considered transferable to, and treated as a part of, the principal office of the savings bank.

(13) A savings bank, out-of-state savings bank, or federal savings bank shall notify the commissioner in writing before discontinuing operations of a branch.

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

487.3418 Loan production offices.

Sec. 418. (1) Without notice to or approval of the commissioner, a savings bank may establish and operate

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a loan production office or loan production offices.

(2) A savings bank may perform any of the following activities through a loan production office:

(a) Receive loan applications.

(b) Process loans.

(c) Assemble information related to the approval of loans.

(d) Close loans.

(e) Disburse loan proceeds approved by the principal office or a branch.

(f) Receive loan payments.

(g) Any other activities as approved by rule, order, or declaratory ruling of the commissioner.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3419 Purchase or assumption of national or state chartered bank, savings bank, or association; operation as new branch.

Sec. 419. Notwithstanding any other provision of this act, a savings bank that purchases or assumes all or substantially all of the assets or liabilities of an eligible insured national or state chartered bank, savings bank, or association may retain and maintain the main premises, branches, or agency offices of the former national bank, state chartered bank, or association as branches of the purchasing savings bank, provided it assumes the deposit liabilities of the eligible national bank, state chartered bank, savings bank, or association maintained at the main premises, branches, or agency offices. The notice required by section 417(1) shall be given for each main premises, branch, or agency office the purchasing savings bank intends to operate as a new branch.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3420 Discontinuing operations of branch or agency office; transfer of functions.

Sec. 420. If a savings bank permanently discontinues the operations of any branch or agency office, 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 savings bank. The savings bank shall give written notice to the commissioner before discontinuing operations of any branch or agency office.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3421 Trust powers; conditions, limitations, and restrictions.

Sec. 421. (1) Upon application, the commissioner may grant to a savings bank full trust powers, as provided in this section, but subject to the conditions, limitations, and restrictions in this section and sections 422 to 428.

(2) Upon approval of the application, the savings bank has the power to conduct a trust business including, but not limited to, any of 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 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 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 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, conservator, or guardian of any minor, incompetent person, legally incapacitated person, or other person subject to conservatorship or guardianship, the court may appoint the savings bank, with its consent, to hold the office. The accounts of the savings bank 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 savings bank for the care and management of the estate so committed to it. In case of appointment by any court, the savings bank shall not be required to give any security except in the discretion of the court, other than as provided in section 426 for deposit with the state treasurer. If the court orders the savings bank to give

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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 savings bank 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 savings bank prior to the date of the filing and approval of the bond, or for the failure of the savings bank 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 savings bank to collect from itself or from any prior surety or sureties the amount of any loss due any act or default committed by the savings 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 all incidental powers as are necessary to carry on a trust business.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3422 Definitions; trust service agreements.

Sec. 422. (1) As used in this section:

(a) "Banking office" means a main office or authorized branch of a bank, out-of-state bank, national bank, association, or savings bank.

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

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

(2) A savings 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 savings 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 a lease, or a modification or extension of an agreement, is not effective until it is filed with the commissioner.

(5) Thirty days after a host savings bank mails a notice of substitution as provided in subsection (6), a trust service provider shall be substituted for a host savings bank as fiduciary or agent and succeed to the title of assets held by a host savings bank in a fiduciary capacity for each account in which the host savings 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 savings bank for an account in which the recipient of a notice of substitution with respect to that account objects to the substitution under subsection (6).

(6) For an account in which a trust service provider is substituted for a host savings bank under the terms of a trust service agreement, the host savings bank shall send a written notice of substitution 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 savings bank for the account if the recipient of the notice sends a written objection to the host savings bank by first-class mail within 30 days after the date the notice was mailed. The host savings bank shall send the notice of substitution to all of 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 savings 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 did not have before the notice, including the authority to object to the substitution of a trust service provider for a host savings 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 savings bank as trustee.

(h) For conservatorships, to any co-fiduciary, to the protected person for whom the conservatorship was

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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 savings 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 savings bank as guardian.

(j) For probate estates, to any co-fiduciary, to any interested person as defined by section 1105 of the estates and protected individuals code, 1998 PA 386, MCL 700.1105, and to the probate court that appointed the host savings bank as personal representative.

(7) Subsections (1), (5), and (6) apply to trust service agreements in effect on or after July 1, 1996.

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 63, Eff. Apr. 1, 2000;—Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

487.3423 Separation of trust department business from commercial bank business; commingled and consolidated funds; limitation; lien on securities in event of savings bank failure.

Sec. 423. (1) A savings bank exercising a trust power under sections 421 to 427 shall segregate all assets held in a fiduciary capacity from the general assets of the bank, keep a separate set of books and records showing in proper detail all transactions engaged under sections 421 to 427, and at all times keep the savings bank's trust department business separate and distinct from the savings bank's commercial banking business.

(2) Funds, at any time and from time to time, held in trust by the savings bank, awaiting investment or other disposition, may be commingled and consolidated, and may be deposited in other financial institutions not affiliated with the savings bank as designated by the board of directors or may be held at any time and from time to time by the savings bank under a deposit relationship and used by the savings bank in the conduct of the savings bank's individual corporate business but only to the extent and when the savings bank shall set aside for the protection of the owners of the funds obligations of the United States, obligations that 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, less the amounts of the funds which are insured by the federal deposit insurance corporation. If the savings 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 savings bank.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3424 Fiduciary powers; considerations.

Sec. 424. (1) In passing upon applications for permission to exercise full fiduciary powers under section 421, the commissioner shall take into consideration the following, and he or she may grant or refuse the application accordingly:

(a) The sufficiency of the capital and surplus of the applying savings bank.

(b) Any other facts or circumstances that he or she deems proper.

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

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3425 Repealed. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

Compiler's note: The repealed section pertained to commencement of trust powers.

487.3426 Fund or property held by savings bank as fiduciary; investments; "registered investment company" defined; funds considered as held in fiduciary capacity.

Sec. 426. (1) Funds or property held by a savings 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 savings bank is acting or, where the savings bank holds the funds or property as agent, as directed or permitted by the savings bank's principal. In the absence of investment specifications or limitations in the agreement, instrument, or order, funds or property held by a savings 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

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stability of the issuer and the character of the particular securities.

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

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

(a) The savings bank or an affiliate of the savings 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 savings 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 savings 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, 54 Stat. 789, 15 U.S.C. 80a-1 to 80a-64.

(5) For purposes of this section, a savings 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.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3427 Enforcement of MCL 487.3421 to 487.3426; orders or declaratory rulings.

Sec. 427. The commissioner may issue orders or declaratory rulings to enforce sections 421 to 426.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3428 Safe deposit and storage department.

Sec. 428. (1) If a savings bank operates a safe deposit and storage department, the legal liability of the savings 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 savings bank may contract with the renter to have the renter assume all risks arising from the use of the box, compartment, or storage.

(2) The savings 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 savings bank may sell the property at public auction upon like notice as is required by law for sales on execution.

(3) 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 savings bank shall pay any balance to the persons entitled to the proceeds. The savings bank may fairly and in good faith purchase all or part of the property at the sale.

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

487.3429 Lease, purchase, holding, and conveyance of real estate.

Sec. 429. (1) A savings bank may lease, purchase, hold, and convey real estate for any of the following purposes:

(a) 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 savings bank shall not invest in premises of the savings bank or in the stock, bonds, debentures, or other obligations of any corporation holding the premises of the savings bank or make loans to or upon the security of the stock, bonds, and debentures of any such corporation, if the aggregate of all 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 savings bank, exceeds 2/3 of the capital and surplus of the stock savings bank or 2/3 of the total capital of the mutual savings bank.

(b) As permitted under section 408.

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(c) For all purposes with regard to real estate conveyed to it in satisfaction of debts previously contracted in the course of its business.

(d) For all purposes with regard to real estate purchased at sales under judgments, decrees, or mortgages held by the savings bank or purchased to secure debts due to it.

(e) For all purposes with regard to real estate legally owned by the savings bank on the effective date of this act.

(f) For all purposes with regard to real estate conveyed to it under sections 421 through 427.

(g) For all purposes with regard to real estate acquired in connection with the purchase by the savings bank of a land contract. At the termination of a land contract, the savings bank shall divest itself of the real estate within 1 year after termination or such additional period as the commissioner may approve.

(h) For all purposes with regard to real estate acquired upon the specific request and for the use of a customer by lease arrangement with the savings bank. At the termination of a lease, the savings bank shall divest itself of the real estate within 1 year after termination or such additional period as the commissioner may approve.

(i) Any other purposes as may be permitted by order or declaratory ruling of the commissioner.

(2) Real estate shall be conveyed under the corporate seal of the savings bank and the signature of the officers authorized by its board of directors to approve the conveyance.

(3) Real estate acquired under subsection (1)(c) and (d) shall not be held for a period longer than 5 years or such other period as approved by the commissioner.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3430 Interest and charges on loans and credit extensions.

Sec. 430. (1) Savings banks may collect interest and charges on loans and extensions of credit, including open-end credit to any person, as follows:

(a) As permitted by the credit reform act, 1995 PA 162, MCL 445.1851 to 445.1864.

(b) On obligations purchased by the savings bank, the savings bank may charge a discount.

(c) On a loan not covered by subdivision (a) or (b), a savings bank may charge, collect, and receive interest and other charges in the same manner and at up to 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.

(d) On a loan not covered by subdivision (a), (b), or (c), as otherwise permitted by law.

(2) A savings bank or any officer or employee of the savings bank shall not, directly or indirectly, take or receive more than the rate of interest allowed by law in advance on its loans and discounts.

(3) Except as otherwise provided by law, an investigation fee or handling charge in connection with any transaction shall not be considered as interest.

(4) A savings bank may pay interest on any deposit that is payable on demand, unless the commissioner by rule, or order, or declaratory ruling restricts the right of the savings bank to pay interest on demand deposits or unless restricted by federal law.

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

487.3431 Drafts or bills of exchange.

Sec. 431. (1) A savings 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 apply:

(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 of 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 savings bank shall not accept bills of exchange, 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 the capital and surplus of a stock savings bank and more than 150% of the total capital of a mutual savings bank.

(3) Under conditions as the commissioner may prescribe, the commissioner may authorize, by rule, order, or declaratory ruling, a savings bank to accept bills of exchange, or be obligated for a participation share in such bills, in an amount not exceeding at any time in the aggregate 200% of the capital and surplus of a stock savings bank and more than 200% of the total capital of a mutual savings bank.

(4) Notwithstanding subsections (2) and (3), with respect to any savings bank, the aggregate acceptances, including obligations for a participation share in the acceptances, growing out of domestic transactions shall not exceed 50% of the aggregate of all acceptances, including obligations for a participation share in the

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acceptances, authorized for the savings bank under this section.

(5) A savings bank shall not accept bills of exchange, 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 the capital and surplus of a stock savings bank and more than 10% of the total capital of a mutual savings bank, unless the savings bank is secured either by attached documents or by some other actual security growing out of the same transaction as the acceptance.

(6) If a savings bank issues an acceptance, the limitations of this section do not apply to that portion of an acceptance that is issued by the savings bank and is covered by a participation agreement sold to a bank, out-of-state bank, national bank, association, or other savings bank.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3432 Loans and extensions of credit and leases; limitations; exceptions; definitions.

Sec. 432. (1) Except as otherwise provided in this section or by order or declaratory ruling of the commissioner, the total loans and extensions of credit and leases by a stock savings bank to a person at no time shall exceed 15% of the capital and surplus of the stock savings bank, except that upon approval by 2/3 vote of its board of directors the limit may be increased not to exceed 25% of the capital and surplus of the stock savings bank.

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

(3) If the commissioner determines that the interests of a group of more than 1 person 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 and leases of persons of that group shall be combined and considered loans and extensions of credit and leases of 1 person under this section.

(4) A savings bank is not considered to have violated this section through section 434 solely by reason of the fact that the indebtedness of a group then held exceeds the limitations of this section through section 434 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 savings bank shall make a reasonable attempt to dispose of indebtedness of the group in the amount in excess of that permitted by this section within a reasonable time determined by the commissioner.

(5) The limitations under subsections (1) and (2) shall not apply to loans and extensions of credit described in sections 433 and 434.

(6) As used in this section and sections 433 and 434:

(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 an 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 savings bank to advance funds to or on behalf of a person under a contractual commitment. Such term also includes the cost of purchase of personal property for the purpose of leasing the property to a person. Loan and extension of credit or loan or extension of credit does not include investment securities held by a savings bank under section 411.

(b) "Person" means an individual, partnership, association, corporation, governmental entity, or any other legal entity.

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

487.3433 Loans and extensions of credit; exceptions to limitations.

Sec. 433. All of the following loans and extensions of credit are not subject to a limitation based upon capital and surplus, or total capital under section 432 or 434:

(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. 263.

(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

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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 savings bank.

(k) A loan or extension of credit arising from the acceptance by a savings bank of drafts or bills of exchange drawn upon the savings bank, or a savings bank's participation in drafts or bills of exchange drawn upon and accepted by a bank, out-of-state bank, national bank, association, or savings bank under section 431.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3434 Capital and surplus; limitations.

Sec. 434. All of 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 of a stock savings bank, or 30% of total capital of a mutual savings bank, if the 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 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 of a stock savings bank, or 30% of total capital of a mutual savings bank. 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 a person transferring the paper, shall be subject to a limitation of 30% of capital and surplus of a stock savings bank, or 30% of total capital of a mutual savings bank. If the savings 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 savings bank designated for that purpose by the board of directors of the savings bank certifies in writing that the savings 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 savings bank.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3436 Automatic teller machine located on premises of casino, casino enterprise, liquor store, or adult entertainment establishment; preventing access to cash benefits from Michigan bridge card; definitions.

Sec. 436. (1) A savings bank that owns, operates, or manages an automated teller machine located on the premises of a casino, casino enterprise, liquor store, or adult entertainment establishment shall work with the department of human services to ensure that the automated teller machine does not allow an individual access to cash benefits from a Michigan bridge card.

(2) As used in this section:

(a) "Adult entertainment establishment" means any of the following:

(*i*) An on-premises licensee that holds a topless activity permit described in section 916(3) of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1916.

(*ii*) Any other retail establishment that provides adult-oriented entertainment in which performers disrobe

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or perform in an unclothed state for entertainment.

(b) "Alcoholic liquor" means that term as defined in section 105 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1105.

(c) Subject to subsection (3), "casino" means that term as defined in section 2 of the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.202.

(d) Subject to subsection (3), "casino enterprise" means that term as defined in section 2 of the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.202.

(e) "Gaming" means that term as defined in section 2 of the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.202.

(f) "Liquor store" means a retailer, as defined in section 111 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1111, that is exclusively or primarily engaged in the sale of alcoholic liquor. The term does not include a retailer that is a retail food store.

(g) "Michigan bridge card" means the card that is used to distribute cash benefits by the department of human services.

(h) "Retail food store" means that term as defined in 7 USC 2012.

(3) As used in this section, the terms casino and casino enterprise do not include any of the following:

(a) A grocery store that sells groceries, including staple foods, and is located in a casino or a casino enterprise.

(b) Any other business establishment that offers gaming that is incidental to the principal purpose of that establishment.

History: Add. 2013, Act 196, Eff. Feb. 1, 2014.

CHAPTER 5

REGULATION

487.3501 Impairment of capital.

Sec. 501. (1) If, in the opinion of the commissioner, the capital of a savings bank has become impaired, the commissioner shall notify the savings bank of his or her determination and require the directors to meet the deficiency in the capital within a 2-month period. The directors shall meet the deficiency by either making a pro rata assessment upon the stock held by each shareholder, or taking steps to dissolve the bank. The 2-month period may be extended by order of the commissioner, if in his or her discretion an extension is necessary to allow the directors to meet the deficiency.

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

(3) If a shareholder refuses or neglects to pay an assessment levied by the directors within 30 days from the date notice was provided, the directors shall sell all or part of the shareholder's shares to the highest bidder in a manner provided in this section. Upon expiration of the 30-day period and refusal or neglect by a shareholder to pay the assessment, a security interest in favor of the savings bank in the amount of the assessment shall attach to all of the shareholder's shares for the sole purpose of satisfying the assessment levied. The security interest shall have priority over any other security interests perfected by a creditor or otherwise granted by the shareholder in shares issued after the effective date of this act.

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

(5) If any part of the capital of a savings bank consists of preferred stock, the determination of whether the capital of the savings bank is impaired and the amount of the impairment shall be based upon the par value of its stock even though the amount that the holders of the preferred stock shall be entitled to receive in the event of retirement or dissolution shall be in excess of the par value of the preferred stock.

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

(7) If, 30 days after notice as provided in this section, a shareholder has refused or neglected to pay an assessment levied on the shares held by the shareholder, the directors may sell any or all of the shareholder's shares to satisfy the assessment. The proceeds of the sale shall be distributed in the following order:

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

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

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

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

(8) Disposition of the stock may be at a public or private sale at any time and on any terms, but every aspect of the disposition including the method, manner, time, place, and terms shall be commercially reasonable and reasonably calculated to meet the deficiency.

(9) A sale of stock as provided in this section shall effect an absolute cancellation of any outstanding certificates evidencing the stock sold and any security interest granted or pledge made in stock issued after the effective date of this act. Upon full payment of the stock sold, the savings bank shall issue new certificates to the purchaser.

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

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

(b) The purchaser does not act in collusion with any shareholders of the savings bank, a secured party, other bidders, or the savings bank.

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

(11) The ability of a savings bank to make an assessment under this section or to sell the stock of a shareholder under this section is not limited by the uniform commercial code.

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

487.3502 Violations; liability of directors or officers.

Sec. 502. If the directors or officers of a savings bank knowingly violate or knowingly permit any of the agents, officers, or directors of a savings bank to violate this act or rules of the commissioner made under this act, those directors or officers shall be liable in his or her personal and individual capacity for all damages that the savings 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.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3503 Officer or employee as agent in sale of stock or securities; prohibition.

Sec. 503. An officer or employee of a savings bank, in his or her individual capacity, shall not act as agent in the sale of stock or other securities to another person, or receive directly or indirectly any consideration or commission resulting from the sale of stock or other securities by others to the savings bank of which he or she is employed, unless authorized by order or declaratory ruling of the commissioner.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3504 Receipt of consideration or gratuity prohibited.

Sec. 504. An officer, director, or employee of a savings bank shall not receive any consideration or gratuity from a borrower for procuring a loan from the savings bank.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3505 Surety bonds; protection against insurable losses.

Sec. 505. (1) The board of directors shall require every employee concerned in the handling of money, accounts, or securities of the savings bank, who can be bonded, to be bonded by a surety company authorized to do business in this state in an amount determined by the board. A surety bond may cover 1 or more employees. The savings bank shall pay for any surety bonds required of its employees.

(2) The commissioner shall require every savings bank to provide reasonable protection and indemnity against burglary, defalcation, and other reasonably required insurable losses. Whenever a savings bank refuses to comply with the requirements of this section, the commissioner may contract for the protection and indemnity and charge the costs to the savings bank. If the charge is not paid, the commissioner shall collect the costs in an action instituted by the attorney general.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3506 Reports; penalty for failure to report.

Sec. 506. (1) The commissioner may require reports from a savings bank whenever, in the commissioner's judgment, they are necessary to inform the commissioner fully as to the condition of the savings bank. The commissioner may require publication of reports and proof of publication by a date determined by the

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commissioner and in the manner and form as the commissioner may prescribe, except that the commissioner shall give a bank at least 30 days written notice of the date required for the publication of reports.

(2) A savings bank that does not make and transmit to the commissioner a report required by this section shall be subject to a penalty of $100.00 for each day after the date from making the report. All penalties collected shall be paid into the state treasury to the credit of the general fund. If a savings bank delays or refuses to pay the penalty, the commissioner may maintain an action against the delinquent savings bank for the recovery of the penalty.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3507 Regulation and prescription of terms, conditions, bylaws, and rules by board of directors.

Sec. 507. Notwithstanding any other provision of law, the board of directors of a savings bank, with the approval of the commissioner, may regulate and prescribe the terms, conditions, 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 savings bank and the action is advisable to conserve, safeguard, and protect depositors, borrowers, deposits, moneys, funds, assets, and the business of the savings bank and all parties in interest, including the public.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3508 Pledge of assets.

Sec. 508. (1) Except as otherwise provided in this section, a savings bank or savings bank officer shall not give preference to a depositor or creditor by pledging the assets of the savings bank as collateral security or otherwise.

(2) A savings bank may pledge its assets in an amount not in excess of 10% of its total assets 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.

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

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

(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 obligation of the United States by or through an institution.

(4) A savings bank may pledge its assets to secure liabilities of all 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.

(d) Liabilities incurred on account of a loan made with the express approval of the commissioner under section 433(c).

(e) Liabilities incurred on account of borrowings from 1 business day to the next under section 19 of the

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federal reserve act, chapter 6, 38 Stat. 251.

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

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 1997, Act 50, Imd. Eff. June 30, 1997;—Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

487.3509 Deposit by savings bank; limitation.

Sec. 509. 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 savings bank shall not deposit an amount in excess of 10% of the capital and surplus of a stock savings bank, or 10% of the total capital of a mutual savings bank, with any other savings bank, state chartered bank, association, or national bank. A savings bank may deposit an amount not to exceed 15% of the capital and surplus of a stock savings bank, or 15% of the total capital of a mutual savings bank in any legal depository in a reserve city designated by the commissioner.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3510 Insolvency; transfer of assets null and void.

Sec. 510. A transfer of any assets of a savings bank to its shareholders or members, or to its creditors made after the commission of an act of insolvency or made in contemplation of insolvency, 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.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3511 Property or casualty insurance as condition to mortgage loan.

Sec. 511. (1) Except as provided in subsection (2), a savings bank that requires a mortgagor to maintain property or casualty insurance as a condition to receiving a mortgage loan shall not require the amount of the property or casualty insurance to be greater than the replacement cost of the mortgaged building or buildings.

(2) A savings bank may require an amount of property or casualty insurance that is required of the savings 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 savings bank anticipate a sale, transfer, or assignment at the time the mortgage loan is made.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3512 Overdrafts.

Sec. 512. (1) An overdraft existing for 90 days shall be charged off to the profit and loss account of the savings bank at the expiration of that time.

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

(3) Unless a debt constitutes a claim against a solvent estate in probate, if the interest on a debt held by a savings bank is past due and unpaid for a period of 12 months, the savings bank shall charge off to its allowance for loan and lease losses the portion of the debt that is not well secured.

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2009, Act 58, Imd. Eff. July 2, 2009.

487.3514 Repealed. 2005, Act 192, Imd. Eff. Nov. 7, 2005.

Compiler's note: The repealed section pertained to filing of a supicious activity report by a savings bank with a federal government agency.

CHAPTER 6
RECEIVERSHIPS AND CONSERVATORSHIPS

487.3601 Receiver; appointment.

Sec. 601. (1) If a savings bank has refused to pay its deposits or obligations in accordance with the terms under which the deposits or obligations were incurred, or whenever a savings bank becomes insolvent, has refused to submit its books, papers, and records for inspection by the commissioner, appears to the commissioner to be in an unsafe or unsound condition, or the appointment of a conservator is required under section 204(5), the commissioner shall either appoint a conservator under section 605 with the attorney general representing the commission, or shall apply to the circuit court for the county in which the savings bank is located for the appointment of a receiver for the savings bank.

(2) In a 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 savings bank are insured to any extent by that corporation.

(3) The court may act upon the application without notice to any person but if at any time it appears to the

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court that none of the claimed reasons for receivership did in fact exist, the receivership shall be dissolved and the proceedings terminated.

(4) If the federal deposit insurance corporation accepts the appointment as receiver, it may act without bond.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3602 Receiver; powers; report to commissioner.

Sec. 602. (1) Subject to court approval, a receiver may do any of the following:

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

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

(c) Sell any and all real and personal property.

(d) Exercise all fiduciary functions of the savings 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 savings bank and be fully paid before any final distribution or payment of dividends to creditors or shareholders.

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

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

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

(i) Borrow money as may be necessary or expedient in aiding the liquidation of the savings bank and to secure the borrowings by the pledge, hypothecation, or mortgage of the assets of the savings bank.

(j) Exercise other powers and duties as may be provided by the court under the laws of this state applicable to the appointment of receivers.

(2) The receiver from time to time shall report to the commissioner with respect to all of his or her acts and proceedings in connection with the receivership.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3603 Procedures for liquidation; limitation.

Sec. 603. The full and exclusive procedures for the liquidation of a savings bank under this act shall be the procedures prescribed in this act and a receiver or other liquidating agent shall not be appointed for such purpose or for any savings bank or its assets and property except as expressly provided in this act.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3604 Rights of depositors and creditors of closed savings bank.

Sec. 604. (1) If a savings 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 savings bank, the corporation, whether or not it has become receiver of the savings bank, subrogated to all of the rights of the owners of the deposits against the closed savings bank in the same manner and to the same extent as subrogation of the corporation is provided for in the federal reserve act, in the case of the closing of a national banking association.

(2) The rights of depositors and other creditors of the closed savings bank shall be determined in accordance with the applicable provisions of the laws of this state.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3605 Conservator; appointment; powers; duties.

Sec. 605. (1) If any of the grounds set forth in section 601 authorizing the appointment of a receiver exist or whenever the commissioner considers it necessary in order to conserve the assets of a savings bank for the benefit of the depositors and other creditors, the commissioner may appoint a conservator for the savings bank and require of him or her a bond and security as the commissioner considers necessary.

(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 conservatorship for all sums expended by it in connection with the conservatorship as expenses or otherwise, and the funds shall be paid into the revolving fund provided for in section 607.

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(3) A conservator appointed under this section shall become a member of the bureau. All expenses of a conservatorship shall be paid out of the assets of the savings 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, shareholders, or members.

(4) The conservator, under the direction of the commissioner, shall take possession of the books, records, and assets of the savings bank, and take such action as may be necessary to conserve the assets of the savings 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 under this act and shall be subject to the obligations and penalties, not inconsistent with this act with respect to conservators, to which receivers are subject. During the time that the conservator remains in possession of the savings bank, the rights of all parties with respect to the savings bank, subject to 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 savings bank.

(5) While a savings bank is in the hands of the conservator appointed by the commissioner, the commissioner 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 that purpose. The commissioner may permit the conservator to receive deposits. Deposits received while the savings bank is in the hands of the conservator shall not be subject to any limitation as to payment or withdrawal. The deposits and any new assets acquired on account of the deposits shall be segregated and held especially for the new deposits and not be used to liquidate any indebtedness of the savings bank existing at the time that a conservator was appointed or any subsequent indebtedness incurred for the purpose of liquidating any indebtedness of the savings bank existing at the time the conservator was appointed. Deposits received while the savings 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.

(6) With the prior approval of the commissioner, the conservator of a savings bank may borrow money as necessary or expedient in aiding the operation, reorganization, or liquidation of the savings bank, including the payment of liquidating dividends, and may secure the loans by the pledge, hypothecation, or mortgage of the assets of the savings bank.

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

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3606 Affairs of savings bank turned back to board of directors; notice.

Sec. 606. (1) After 15 days from the date upon which the affairs of a savings bank have been turned back to its board of directors by the conservator, either with or without being reorganized, the provisions of section 605(5) with respect to the segregation of deposits shall no longer be effective.

(2) Before the conservator turns back the affairs of the savings bank to its board of directors, he or she shall publish a notice in form approved by the commissioner, stating the date on which the affairs of the savings bank will be returned to its board of directors and that the provisions of section 605(5) will not be effective after 15 days from that date. On the date of the publication of the notice, the conservator shall immediately send to every person who deposited money in the savings bank after the appointment of a conservator, a copy of the notice by mail addressed to the last known address of the person as shown by the records of the savings bank. The conservator shall send similar notice in like manner to every person making deposit in the savings bank under section 605(5) after the date of the newspaper publication and before the time when the affairs of the bank are returned to its directors.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3607 Orders or declaratory rulings as to receivers and conservators; compensation and expenses to reimburse bureau.

Sec. 607. (1) The commissioner may issue orders or declaratory rulings he or she considers 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 this act shall be turned over to the state treasurer and credited to a revolving fund to be held for the bureau to reimburse the bureau in connection with the provisions of this act with respect to receivers and conservators of savings banks.

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History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3608 Reorganization of savings bank.

Sec. 608. (1) In a reorganization of a savings bank under a plan of a kind that requires the consent of depositors and other creditors or of shareholders or members or of both depositors and other creditors and shareholders or members, the reorganization shall become effective when both of 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 or members and is in the public interest and has approved the plan subject to such conditions, restrictions, and limitations as he or she may require.

(b) After reasonable notice of the reorganization as determined by the commissioner, depositors and other creditors of the savings bank representing not less than 75% in amount of the sum of its total deposits and other liabilities as shown by the books of the savings bank, or shareholders owning at least 2/3 of its outstanding capital stock or 2/3 of the eligible voting members if it is a mutual savings bank as shown by the books of the savings 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 plan of reorganization shall not be included among the total deposits and other liabilities of the savings bank in determining the 75% of total deposits. The term "reorganization" as used in this section may be construed to include the establishment of a new savings bank in conformity with a plan of reorganization.

(2) When the reorganization becomes effective, all books, records, and assets of the savings bank shall be disposed of in accordance with the plan and the affairs of the savings bank shall be conducted by its board of directors in the manner provided by the plan and under the conditions, restrictions, and limitations that may have been prescribed by the commissioner.

(3) In a reorganization which has been approved and become effective, all depositors and other creditors and shareholders or members of the savings bank, whether or not they have consented to the plan of reorganization, shall be 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 or reorganization. The state or any department, agency, or political subdivision of the state holding a claim against the savings bank is authorized to participate in a plan of reorganization as any other creditor and shall be subject to and bound by its provisions as any other creditor.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

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CHAPTER 7
CONSOLIDATIONS, MERGERS, AND CONVERSIONS

487.3701 Consolidated savings bank.

Sec. 701. (1) Subject to approval by the commissioner, a savings bank may consolidate with any number of consolidating organizations to form a consolidated savings 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.

(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 prescribing the terms and conditions of consolidation, the mode of carrying the consolidation into effect and stating other facts required or permitted by this act and other applicable law 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 or membership interest of each of the consolidating organizations, into shares or membership interest of the consolidated organization, with other details and provisions as are considered necessary.

(4) The proposed consolidation agreement shall be submitted to the members or shareholders of each consolidating organization, at a separate meeting called by the directors for the sole purpose of considering the agreement. A copy of the notice shall be provided to each member or shareholder of each consolidating organization at his or her last known address as appears from the records of the consolidating organizations, at least 10 days prior to the date of the meeting. Notice shall not be required if it is waived by the commissioner or, in the case of individual notice to a shareholder, by the shareholder. At the meeting the proposed consolidation agreement shall be considered and a vote by ballot, in person or by proxy, taken for the adoption or rejection of the agreement. If the votes of members or shareholders of each consolidating organization representing not less than 2/3 of the total number of shares of each class of each consolidating organization's outstanding capital stock, or 2/3 of eligible voting members of a mutual organization, are cast

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for the adoption of the agreement, that fact shall be certified on the agreement by an officer of each of the consolidating organizations. If a bank, 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 organizations and the observance and performance of all necessary acts and conditions precedent to the consolidation. A bank holding company or thrift holding company that is the sole shareholder of all of the outstanding issued stock of a savings bank, bank, out-of-state bank, national bank, or association 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 savings 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.

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

***** *487.3702 SUBDIVISION (a) DOES NOT APPLY AFTER MAY 31, 1997: See subdivision (a) of 487.3702* *****

487.3702 Consolidated organization.

Sec. 702. A savings 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 all of 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. This subdivision does not apply after May 31, 1997.

(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 703(3) with respect to notice of consolidation, but that notice is limited to a court, public tribunal, agency, or officer of this state.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3703 Consolidated savings bank; rights, interests, privileges, powers, restrictions, disabilities, liabilities, and duties.

Sec. 703. (1) When the approval and certification of the consolidation agreement as required by section 701 have been completed, the corporate existence of each consolidating organization is merged into and continued in the consolidated savings bank. To the extent authorized by this act, the consolidated savings 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 savings bank, and shall not revert or be in any way impaired by reason of this act.

(2) A consolidated savings 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 as a fiduciary, 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 as a fiduciary, the consolidated savings bank is subject to removal by a court of competent jurisdiction.

(3) A consolidated savings bank shall file with each court or other public tribunal, agency, or officer in any state by which any of the consolidating organizations has been appointed as a fiduciary, and in the court file of each estate, suit, or any other proceeding in which any of them has been acting as a fiduciary, an affidavit setting forth the fact of consolidation, the name of each consolidating organization, the name of the consolidated savings bank, the location of its principal 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 principal location.

(4) The liability of any consolidating organization or of a shareholder, director, or officer of a consolidating organization, or the rights or remedies of the creditors of, or other persons transacting business

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with, the consolidating organization shall not be altered or impaired as the result of a consolidation.

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

487.3704 Consolidated organization; service of process; prosecution.

Sec. 704. (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 a consolidating organization that is or was a party to a consolidation.

(2) An action or proceeding by or against a 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 organization may be substituted in the place of any consolidating organization whose existence has ceased.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3705 Operation of branches of consolidated or acquired savings bank.

Sec. 705. (1) A savings bank, an out-of-state bank, or a national bank that consolidates its operations with 1 or more banks, out-of-state banks, national banks, associations, or savings banks 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 savings bank.

(2) A consolidated bank or consolidated organization may operate any branches and principal offices located in this state of the consolidating organizations without providing the notice required by section 417.

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

487.3706 Definitions; consolidation.

Sec. 706. (1) As used in this section:

(a) "Existing association" means a stock association engaged in the savings and loan business or federal savings bank business prior to the consolidation under this section.

(b) "Existing bank" means a savings bank, national banking association, or state chartered bank engaged in the business of banking prior to the consolidation under this section.

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

(2) Notwithstanding any other section of this act:

(a) Persons as provided in section 301 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 302, but without regard to section 302(2) and (3)(b), (c), and (e), and section 304, if the new bank is organized for the sole purpose of effecting its consolidation under section 701 with an existing bank or existing association having its principal office in the same city or village as the new bank and if upon completion of the consolidation a bank holding company becomes the owner of all of the outstanding voting shares of the consolidated organization, other than shares necessary to qualify directors. The new bank and the existing bank may consolidate under the charter of either bank. The new bank and the existing association shall consolidate under the charter of the new bank and sections 701, 703, and 705 are applicable with respect to the consolidation except that the agreement of consolidation may provide that shares of either or both the consolidating organizations, in lieu of being converted into shares of the consolidated organization, will be converted into shares or other securities of the bank holding company.

(b) A shareholder of the existing bank or existing association who votes against the consolidation, or who has given notice in writing to that bank or association at or prior to the meeting called for the purpose of considering the agreement of consolidation that he or she dissents from the consolidation, is entitled to receive in cash from the consolidated organization the fair value of all shares held by him or her, if and when the consolidation is consummated, upon written request made to the consolidated organization at any time within 30 days after the date of consummation of the consolidation, accompanied by the surrender of his or her stock certificates. Upon the filing of the written request and the surrender of stock certificates, the shareholder shall cease to have any of the rights of a 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

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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 commissioner shall approve or disapprove an application submitted under this section in writing within 30 days after acceptance of the application or the last amendment or supplement to the application.

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

487.3706a Definitions; reorganization of existing mutual savings bank to mutual holding company; requirements; organization and incorporation of new savings bank subsidiary; approval.

Sec. 706a. (1) As used in this section:

(a) "Existing mutual savings bank" means a mutual savings bank engaged in the savings bank business before reorganization under this section.

(b) "Mutual holding company" means that term as defined in section 10(o) of the home owners' loan act, chapter 64, titles III and IX of Public Law 101-73, 12 U.S.C. 1467a, and OTS regulations governing mutual holding companies.

(c) "New savings bank" means a savings bank not engaged in the savings bank business before the reorganization provided in this section.

(d) "OTS" means the office of thrift supervision, United States department of the treasury.

(2) An existing mutual savings bank may reorganize to establish a mutual holding company, if all of the following requirements are met:

(a) The reorganization plan complies in all respects with OTS mutual holding company laws and receives the approval of the OTS, and the OTS grants a federal charter to the newly created mutual holding company.

(b) The reorganization plan receives the approval of the office of financial and insurance services.

(c) The board of directors of the existing mutual savings bank has approved the plan of reorganization at a meeting called in accordance with the bank's articles of incorporation and bylaws.

(d) A majority of the total votes of the members of the existing mutual savings bank eligible to be cast shall have approved the plan of reorganization after a membership meeting called in accordance with the bank's articles of incorporation and bylaws.

(3) Persons as provided in section 301 may organize and incorporate as the incorporator or incorporators any new savings bank subsidiary of the existing mutual savings bank, having its principal office in the same city or village as the principal office of the existing mutual savings bank, if the new savings bank is organized for the sole purpose of effecting a reorganization plan in accordance with this section.

(4) The assets, liabilities, and banking business of the existing mutual savings bank shall not be transferred to any new savings bank subsidiary or federal savings bank subsidiary under the reorganization plan until the office of financial and insurance services or OTS approves a charter for the subsidiary to operate as a savings bank or federal savings bank.

(5) Unless the office of financial and insurance services determines in writing that the subsidiary charter application does not meet the requirements for a savings bank under this act, the office of financial and insurance services shall approve the subsidiary's charter application if the applicant represents, and the commissioner believes, the subsidiary will conduct substantially the same banking business as the existing mutual savings bank.

History: Add. 2002, Act 263, Imd. Eff. May 1, 2002.

487.3707 Definitions; terms and conditions of conversion or exchange.

Sec. 707. (1) As used in this section:

(a) "Consolidation agreement" means an agreement entered into among an existing bank or an existing association, a new bank, and new holding company that 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.

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(c) “Existing bank” means a savings bank, national banking association, or state chartered bank 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 savings bank 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 savings 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 under 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.

(*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 savings bank.

(*v*) Prior to the acquisition of an existing bank or existing association under 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.

(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, under 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. This subsection shall not 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.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3708 Conversion of savings bank into stock association or national banking association; conversion of mutual savings bank into state or federal mutual savings and loan association.

Sec. 708. (1) Upon the affirmative vote of the majority of votes cast of each class of its outstanding capital stock, a savings 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 or federal savings bank.

(2) The conversion of a savings bank into a stock association or a national banking association shall not release the savings 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 that 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. A conversion shall not be made to defeat or defraud any of the creditors of the savings bank.

(3) Certified copies of all proceedings by the directors and shareholders of the stock association or savings bank shall be filed with the commissioner and in addition, the savings bank shall furnish a certified copy of consent or approval of the comptroller of the currency or office of thrift supervision to the conversion if the consent or approval is required by federal law.

(4) Upon the affirmative vote of the majority of the votes cast of a mutual savings bank, the mutual savings bank may be converted under the laws of this state into a mutual state savings and loan association or under the laws of the United States into a mutual federal savings and loan association or federal savings bank.

(5) The conversion of a mutual savings bank into a state or federal mutual savings and loan association

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shall not release the mutual savings bank from its obligations to pay and discharge all the liabilities created by law or incurred by it before becoming a state or federal savings and loan association or any tax imposed by the laws of this state up to the date of its becoming a state or federal savings and loan association in proportion to the time that 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 state or federal savings and loan association. A conversion shall not be made to defeat or defraud any of the creditors of the mutual savings bank.

(6) Certified copies of all proceedings by the members of the mutual savings bank shall be filed with the commissioner, and in addition the mutual savings bank shall furnish a certified copy of consent or approval of the office of thrift supervision to the conversion if the consent or approval is required by federal law. One copy of the proceedings shall be filed with the bureau.

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

487.3709 Conversion of federally chartered shareholder-owned financial institution into savings bank.

Sec. 709. (1) With the approval of the commissioner, and upon the affirmative vote of the majority of the votes cast of each class of its outstanding capital stock, a national banking association, federal savings bank, federal savings and loan association, or other federally chartered shareholder-owned financial institution doing business in this state and having an unimpaired capital and surplus sufficient to entitle it to become a savings bank under the provisions of existing laws of this state may be converted into a savings 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, federal savings bank, federal savings and loan association, or other federally chartered financial institution. 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 the organization of the mutual state savings and loan association, mutual state savings bank, or other member-owned state chartered financial institution as a savings bank.

(2) The shares of the savings 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 savings bank until others have been elected or appointed under the laws of this state.

(3) The approval of the commissioner shall be based on an examination of the national banking association, federal savings bank, federal savings and loan association, or other federally chartered financial institutions and of the proceedings had by its directors and shareholders with respect to the conversion.

(4) A conversion shall not be made to defeat or defraud any of the creditors of the national banking association, federal savings bank, federal savings and loan association, or other federally chartered financial institution.

(5) Subject to conditions as he or she may prescribe, the commissioner may permit the converted savings bank to retain and carry, at a value determined by the commissioner, assets of the converting national banking association, federal savings bank, federal savings and loan association, or other federally chartered financial institution as do not conform to the legal requirements relative to assets acquired and held by savings banks.

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

487.3710 Conversion of state chartered shareholder-owned financial institution into savings bank.

Sec. 710. (1) With the approval of the commissioner, and upon the affirmative vote of the majority of the votes cast of each class of its outstanding capital stock, a state chartered commercial bank, state chartered savings and loan association, or other state chartered shareholder-owned financial institution having an unimpaired capital and surplus sufficient to entitle it to become a savings bank under the provisions of existing laws of this state may be converted into a savings bank. In such case, the articles of incorporation may be executed by a majority of the directors of the state chartered commercial bank, state chartered savings and loan association, or other state chartered financial institution. 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 savings bank.

(2) The shares or membership interests of the savings 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 savings bank until others have been elected or appointed under the laws of this state.

(3) The approval of the commissioner shall be based on an examination of the state chartered commercial bank, state chartered savings and loan association, or other state chartered financial institution and of the proceedings had by its directors and shareholders with respect to the conversion.

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(4) A conversion shall not be made to defeat or defraud any of the creditors of the state chartered commercial bank, state chartered savings and loan association, or other state chartered financial institution.

(5) Subject to conditions as he or she may prescribe, the commissioner may permit the converted savings bank to retain and carry, at a value determined by the commissioner, assets of the converting state chartered commercial bank, state chartered savings and loan association, or other state chartered financial institution which do not conform to the legal requirements relative to assets acquired and held by savings banks.

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

487.3711 Conversion of member-owned federally chartered financial institution into mutual savings bank.

Sec. 711. (1) With the approval of the commissioner, and upon the affirmative vote of the majority of the votes cast, a mutual federal savings and loan association, mutual federal savings bank, or other member-owned federally chartered financial institution doing business in this state may be converted into a mutual savings 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 federal savings and loan association, federal savings bank, or other member-owned federally chartered financial institution. 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 savings bank.

(2) The shares or membership interests of the savings 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 savings bank until others have been elected or appointed under the laws of this state.

(3) The approval of the commissioner shall be based on an examination of the federal savings and loan association, federal savings bank, or other member-owned federally chartered financial institution and of the proceedings had by its directors and members with respect to the conversion.

(4) A conversion shall not be made to defeat or defraud any of the creditors of the federal savings and loan association, federal savings bank, or other member-owned federally chartered financial institution.

(5) Subject to conditions as he or she may prescribe, the commissioner may permit the converted savings bank to retain and carry, at a value determined by the commissioner, assets of the converting federal savings and loan association, federal savings bank, or other member-owned federally chartered financial institution as do not conform to the legal requirements relative to assets acquired and held by savings banks.

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

487.3711a Conversion of mutual federal savings and loan association, mutual federal savings bank, or other member-owned federally chartered financial institution into stock savings bank.

Sec. 711a. (1) With the approval of the commissioner, and upon the affirmative vote of 2/3 of votes cast, a mutual federal savings and loan association, mutual federal savings bank, or other member-owned federally chartered financial institution doing business in this state may be converted into a stock savings 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 federal savings and loan association, federal savings bank, or other member-owned federally chartered financial institution. 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 savings bank.

(2) The shares or membership interests of the savings 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 savings bank until others have been elected or appointed under the laws of this state.

(3) The approval of the commissioner shall be based on an examination of the federal savings and loan association, federal savings bank, or other member-owned federally chartered financial institution and of the proceedings had by its directors and members with respect to the conversion.

(4) A conversion shall not be made to defeat or defraud any of the creditors of the federal savings and loan association, federal savings bank, or other member-owned federally chartered financial institution.

(5) Subject to conditions as he or she may prescribe, the commissioner may permit the converted savings bank to retain and carry, at a value determined by the commissioner, assets of the converting federal savings and loan association, federal savings bank, or other member-owned federally chartered financial institution as do not conform to the legal requirements relative to assets acquired and held by savings banks.

History: Add. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

487.3712 Conversion of member-owned state chartered financial institution into mutual

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savings bank.

Sec. 712. (1) With the approval of the commissioner, and upon the affirmative vote of 2/3 of the votes cast, a mutual state savings and loan association or other member-owned state chartered financial institution may be converted into a mutual savings bank. In such case, the articles of incorporation may be executed by a majority of the directors of the savings and loan association, or other member-owned state chartered financial institution. 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 savings bank.

(2) The shares or membership interests of the savings 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 savings bank until others have been elected or appointed under the laws of this state.

(3) The approval of the commissioner shall be based on an examination of the savings and loan association, or other member-owned state chartered financial institution and of the proceedings had by its directors and members with respect to the conversion.

(4) A conversion shall not be made to defeat or defraud any of the creditors of the savings and loan association or other member-owned state chartered financial institution.

(5) Subject to conditions as he or she may prescribe, the commissioner may permit the converted savings bank to retain and carry, at a value determined by the commissioner, assets of the converting savings and loan association or other member-owned state chartered financial institution which do not conform to the legal requirements relative to assets acquired and held by savings banks.

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

487.3712a Conversion of mutual state savings and loan association, or mutual state savings bank, or other member-owned state chartered financial institution into stock savings bank.

Sec. 712a. (1) With the approval of the commissioner, and upon the affirmative vote of 2/3 of the votes cast, a mutual state savings and loan association, or mutual state savings bank, or other member-owned state chartered financial institution may be converted into a stock savings bank. In such case, the articles of incorporation may be executed by a majority of the directors of the savings and loan association, or other member-owned state chartered financial institution. 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 savings bank.

(2) The shares or membership interests of the savings 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 savings bank until others have been elected or appointed under the laws of this state.

(3) The approval of the commissioner shall be based on an examination of the savings and loan association, or other member-owned state chartered financial institution and of the proceedings had by its directors and members with respect to the conversion.

(4) A conversion shall not be made to defeat or defraud any of the creditors of the savings and loan association or other member-owned state chartered financial institution.

(5) Subject to conditions as he or she may prescribe, the commissioner may permit the converted savings bank to retain and carry, at a value determined by the commissioner, assets of the converting savings and loan association or other member-owned state chartered financial institution which do not conform to the legal requirements relative to assets acquired and held by savings banks.

History: Add. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

487.3713 Rights, obligations, and relations of converted and converting organization.

Sec. 713. If a conversion becomes effective under this act, all of the following shall apply:

(a) The converted organization shall be considered a continuation of the body corporate of the converting organization.

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

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

(d) All liabilities, restrictions, and disabilities of the converting organization, its shareholders, or its officers are immediately transferred to the converted organization to the same extent as they were in the converting organization.

(e) If the converting organization is acting in any fiduciary capacity under the laws of this state, the

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following apply:

(*i*) All rights, privileges, and obligations of the converting organization shall remain unimpaired and shall continue in the converted organization irrespective of the date when the fiduciary relationship was created.

(*ii*) If the converting organization had been appointed by a court or governmental tribunal, agency, or officer, the converted organization shall file an affidavit with the appointing authority setting forth the fact of conversion, the name of the converted organization, the location of its principal office, and the amount of its capital and surplus.

(*iii*) The converted organization acting as a fiduciary by appointment of a court is subject to removal by a court of competent jurisdiction.

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

(g) Any rights or remedies of the depositors, creditors, or other persons transacting business with the converting organization shall not be reduced or impaired as the result of a conversion.

(h) Whether or not it maintains a presence in this state, a converted organization or any of its successors in interest is subject to service of process in a proceeding in this state for enforcement of any obligation incurred in this state by the converting organization.

(i) An action or proceeding against the converting organization in a court or other governmental tribunal may be prosecuted to judgment as if the conversion had not taken place, or the converted organization may be substituted in place of the converting organization. This subsection shall not create any new cause of action against the converting organization as a result of the conversion.

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

487.3714 Liability not impaired by sale of assets, consolidation, or conversion.

Sec. 714. The liability of any savings bank, national banking association, stock association, or federal savings bank or of the shareholders, directors, or officers thereof, or the rights or remedies of the creditors thereof, or of persons transacting business with such entities, shall not be lessened or impaired by virtue of the sale of all or substantially all of the assets of such entities or by the consolidation of 2 or more organizations or the conversion of an organization.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3715 Conversion of mutual savings bank to stock savings bank.

Sec. 715. (1) A mutual savings bank may apply to convert to a stock savings bank. The application shall include a resolution of the board of directors authorizing the application, proposed amendments to the articles of incorporation of the mutual savings bank to authorize the issuance and sale of stock, a plan of conversion, and any other information as the commissioner may require. Within 100 days of receipt of a completed application, the commissioner shall issue his or her approval or denial of the proposed amendments to the articles of incorporation and the plan of conversion, along with his or her preliminary approval or denial of the conversion.

(2) Upon receipt of a preliminary approval to convert, a mutual savings bank shall obtain the affirmative vote of 2/3 of the votes cast.

(3) Following the approval of its membership, the mutual savings bank may request authorization of the commissioner to convert to a stock savings bank. The request shall include a certified copy of the election results of the membership along with a resolution of the board of directors requesting approval to convert to a stock savings bank. Within 30 days of receipt of a request to convert, the commissioner shall issue his or her approval or denial.

(4) The conversion of a mutual savings bank to a stock savings bank shall not release the mutual savings bank from its obligations to pay and discharge all the liabilities created by law or incurred by the mutual savings bank before becoming a stock savings bank or any tax imposed by the laws of this state up to the date of the mutual savings bank becoming a stock savings bank 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 the mutual savings bank becoming a stock savings bank. A conversion shall not be made to defeat or defraud any of the members or creditors of the mutual savings bank.

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

CHAPTER 8
GENERAL PROVISIONS, EXEMPTION FROM TAXATION

487.3801 Use of “bank,”“banker,” or “banking.”

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Sec. 801. (1) The use of the word “bank”, “banker”, or “banking”, or words in any foreign language of similar meaning, as a designation or name or part of a designation or name under which business is conducted in this state, is restricted to a national bank, a savings bank subject to this act, a bank, out-of-state bank, a bank holding company, a foreign bank agency, or a foreign bank branch, that is lawfully conducting business in this state, except if the designation or name, taken as a whole, would not imply a banking business.

(2) A savings bank subject to this act may use the phrase “state savings bank” or “savings bank” as part of a designation or name.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3802 Construction of act.

Sec. 802. (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 this act.

(2) This act shall not be construed to affect the legality of investments or of transactions made under any law in effect when the investments or transactions were made or to require the change of investments for those named in this act, except by the sale or redemption of the securities to prevent loss or embarrassment in the business of the institution, or unnecessary loss or injury to the borrowers on the securities.

(3) An extension of any loan or investment shall not be made by any institution, unless necessary to avoid loss or embarrassment as provided in subsection (2).

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3803 Effect of MCL 450.1 to 450.192.

Sec. 803. Notwithstanding any other law, a savings bank subject to the provisions of this act shall not be governed by Act No. 327 of the Public Acts of 1931, being sections 450.1 to 450.192 of the Michigan Compiled Laws.

History: 1996, Act 354, Imd. Eff. July 1, 1996.

487.3804 Tax exemptions.

Sec. 804. A savings bank subject to this act shall have the following tax exemptions:

(a) All mortgages or other securities held by savings banks are exempt from all municipal or other taxes under the laws of this state.

(b) All personal property owned by savings banks is exempt from taxation.

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001.

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