

SAVINGS AND LOAN ACT OF 1980 (EXCERPT)
Act 307 of 1980

491.1119 Definitions; control of savings association or another holding company; location of savings association; meaning of state chartered savings association; charter or acquisition of Michigan associations or Michigan holding companies by out-of-state association or out-of-state holding company; opening or acquiring branch offices; conditions; form, contents, and approval of application; charter or acquisition of savings associations by Michigan association or Michigan holding company; opening or acquiring branch offices; filing and approval of application; requirements; determination; powers or privileges of acquired savings association not affected; authority of holding company not impaired or affected; comments on application by supervisor; agreement as condition of approval; rules; assessment of composite records; excessive interest rates; reciprocity.

Sec. 1119. (1) As used in this section:

(a) "Acquire" means 1 or more of the following:

(i) Merge, consolidate or combine with.

(ii) Directly or indirectly gain ownership or control of at least 10% of the voting shares.

(iii) Directly or indirectly acquire or gain control of all or a substantial portion of the assets of.

(iv) Take any other action that results in direct or indirect control of.

(b) "Company" means any corporation, partnership, trust, joint-stock company, or similar organizations, but does not include the federal savings and loan insurance corporation, any federal home loan bank, or any company the majority of the shares of which is owned by the United States or any state, or by an officer of the United States or any state in his or her official capacity, or by an instrumentality of the United States or any state.

(c) "Consumer loan" means credit offered or extended by a lender primarily for personal, family, or household purposes, except for a loan, mortgage, or advance secured by a first lien on residential real property or by a first lien on a mobile home.

(d) "Holding company" means any company which directly or indirectly controls a savings association or controls any other company which is a savings and loan holding company under this definition.

(e) "Lender" means a savings association, holding company, or a subsidiary of a savings association or holding company.

(f) "Michigan association" means an association or a federal association located in this state.

(g) "Michigan holding company" means a holding company which has designated to the federal savings and loan insurance corporation this state as the state in which the principal savings and loan business of the holding company is located.

(h) "Out-of-state association" means a savings association located in a state other than this state.

(i) "Out-of-state holding company" means a holding company which has designated to the federal savings and loan insurance corporation a state other than this state as the state in which the principal savings and loan business of such holding company is located.

(j) "Savings association" means any company, wherever located, and regardless of whether federally or state chartered, the deposits of which are insured by the federal savings and loan insurance corporation and any domestic savings bank.

(k) "State" means any state of the United States, the District of Columbia, any territory of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Virgin Islands.

(2) For the purposes of this section, a company controls a savings association or another holding company if it is deemed to have control thereof under section 408(a)(2) of title IV of the national housing act, 12 USC 1730a. In the case of a federal association, a savings association is located in the state in which its home office is located, and in the case of a state chartered association, the state in which it is chartered.

(3) If a savings association is referred to in this section as state chartered, it means that the association is chartered by a state and is not federally chartered.

(4) An out-of-state association or out-of-state holding company may charter or acquire 1 or more Michigan associations or Michigan holding companies, or in the case of an out-of-state association, open or acquire 1 or more branch offices, if the following conditions, to the extent applicable, are met:

(a) The supervisor determines that the laws of the state in which the out-of-state association or out-of-state holding company is located authorize a Michigan association or a Michigan holding company, as appropriate, to take action in that state similar to the action proposed by the out-of-state association or out-of-state holding company in Michigan, under conditions which are not unduly restrictive.

(b) The supervisor determines that an acquisition under subdivision (a) would not restrict the powers or privileges of any savings association acquired in that state.

(c) In the case of an out-of-state chartered association opening a branch office, the association submits an application which is approved by the supervisor in accordance with the procedures contained in section 522. The supervisor shall treat an application from an out-of-state chartered association in the same manner as he or she would treat an application from a domestic association.

(d) In the case of a merger involving 1 or more out-of-state associations, in which the resulting association will be a domestic association, the out-of-state association and domestic association follow the procedures and the supervisor approves the merger as set forth in section 800. The supervisor shall treat any plan of merger involving an out-of-state association in the same manner that he or she would treat a plan of merger involving only Michigan associations.

(e) The supervisor determines that the proposed action is not likely to impair the safety and soundness of any domestic association to be acquired, or of a domestic association that is already controlled by an out-of-state holding company.

(f) The supervisor determines that the applicant has complied with the requirements of subsections (12) and (13).

(5) An out-of-state association or out-of-state holding company seeking to take an action pursuant to subsection (4) shall file an application with the supervisor. The application shall be in a form and contain the information considered necessary by the supervisor. The supervisor shall approve the application if the supervisor determines that the applicant is an out-of-state association or out-of-state holding company and that all of the applicable conditions set forth in subsection (4) are met.

(6) In the case of any proposed action under subsection (4), if any future federal legislation or regulation requires an approval by a state official in addition to any approvals which may be required under subsection (5), the supervisor is authorized to and shall grant or deny that approval in accordance with the standards set forth in the applicable federal legislation or regulation, and if there are no such standards, shall grant the approval if the applicable conditions set forth in subsection (4) are met.

(7) A Michigan association or Michigan holding company may charter or acquire 1 or more savings associations or, in the case of a Michigan association, open or acquire 1 or more branch offices in any state outside of this state. A domestic association or Michigan holding company desiring to take an action pursuant to this subsection shall file an application with the supervisor. The supervisor shall approve the application if the domestic association or Michigan holding company meets the requirements of subsections (12) and (13).

(8) The supervisor shall make a determination required by subsection (5) or (7) within 60 days after receipt of the application.

(9) Any action of any savings association or holding company pursuant to this section shall not affect the powers or privileges of an acquired savings association.

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

(11) Notwithstanding the claim that an out-of-state association, an out-of-state holding company, a Michigan association, or a Michigan holding company, proposing to engage in activities permitted under subsection (4) or (7), and due to the operation of federal law, need not obtain the supervisor's approval pursuant to subsection (5) or (7), it shall furnish the supervisor a copy of any application filed with the appropriate federal agency. The supervisor may, within 30 days, submit comments on the application to the appropriate federal agency.

(12) In connection with an application filed by a holding company or savings association pursuant to subsection (5) or (7), the applicant, as a condition of the approval, shall sign an agreement which shall be in substantially the following form:

“Applicant and all its subsidiaries, wherever located, when making a consumer loan to a resident of this state who does not physically travel out of this state, in order to obtain the consumer loan, hereby agrees to comply with the laws of this state governing the maximum rate of interest that may be charged, and other provisions relating to that type of consumer loan which protects consumers. This written agreement shall not apply to unsecured open end credit extended by a savings association not located in this state, or to any other subsidiaries of the applicant not located in this state, to the extent that federal law may make provisions of Michigan law not applicable to credit extended by lenders. This written agreement shall not require a Michigan association, which is a subsidiary of the applicant, to comply with the laws of this state governing the maximum rate of interest that may be charged, and other provisions relating to that type of consumer loan which protects consumers, if federal law is enacted to preempt any of the provisions of the laws of this state for a consumer loan made to a resident of this state by a Michigan association. Noncompliance shall be

limited to the specific extent of the preemption. Nothing in this agreement shall exempt the applicant or any of its subsidiaries from complying with Michigan law to the extent that the lender is otherwise required to comply with Michigan law.”

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

(13) In connection with an application filed by a holding company or savings association pursuant to subsection (5) or (7), the supervisor shall assess the composite record of the subsidiaries of the holding company or the savings association in meeting the credit needs of the communities in the state in which those entities are located, including low and moderate income neighborhoods consistent with the safe and sound operation of those entities. In assessing the record of those entities, the supervisor shall consider the factors considered by the appropriate federal financial supervisory agency pursuant to regulations promulgated under the community reinvestment act of 1977, 12 U.S.C. 2901 to 2905 and a copy of the most recent assessment of those entities conducted by the appropriate federal financial supervisory agency pursuant to the community reinvestment act of 1977. The supervisor shall give attention to the objective of minimizing the administrative burdens of holding companies and savings associations. The supervisor may seek to obtain from the appropriate federal financial supervisory agency copies of relevant information in the possession of the agency which may bear upon the record of the applicant or its subsidiaries as appropriate in meeting the credit needs of their entire communities, including low and moderate income neighborhoods, consistent with the safe and sound operation of the applicant or subsidiaries to make the assessment provided for in this subsection. This subsection shall not authorize the supervisor to make an on-site examination of a state chartered association for the purpose of assessing the record of the association.

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

(15) If another state has enacted legislation which contemplates permitting a Michigan savings association or Michigan holding company to charter or acquire 1 or more savings associations or holding companies located in that state, or opening or acquiring 1 or more branch offices in that state, and if a transaction is prevented by a determination by the appropriate official or agency, or a court of competent jurisdiction in that state, that Michigan law does not satisfy the reciprocity standard established by a law of that state, the supervisor shall take appropriate actions to communicate with persons in that state to encourage action to bring about a positive determination in that state with respect to reciprocity with Michigan. The supervisor shall also promptly notify the clerk of the House of Representatives and Secretary of the Senate of any negative determination by another state with respect to reciprocity.

History: Add. 1987, Act 106, Imd. Eff. July 7, 1987.