

[No. 482]

(HB 5909)

AN ACT to amend 1996 PA 354, entitled "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," by amending sections 303, 307, 313, 314, 316, 317, 321, 322, 324, 325, 326, 327, 328, 334, 335, 336, 401, 409, 412, 413, 417, 422, 428, 430, 432, 501, 508, 701, 703, 705, 706, 708, 709, 710, 711, 712, 713, 715, and 804 (MCL 487.3303, 487.3307, 487.3313, 487.3314, 487.3316, 487.3317, 487.3321, 487.3322, 487.3324, 487.3325, 487.3326, 487.3327, 487.3328, 487.3334, 487.3335, 487.3336, 487.3401, 487.3409, 487.3412, 487.3413, 487.3417, 487.3422, 487.3428, 487.3430, 487.3432, 487.3501, 487.3508, 487.3701, 487.3703, 487.3705, 487.3706, 487.3708, 487.3709, 487.3710, 487.3711, 487.3712, 487.3713, 487.3715, and 487.3804), section 401 as amended by 1996 PA 422, section 422 as amended by 2000 PA 63, and section 508 as amended by 1997 PA 50, and by adding sections 330a, 711a, and 712a; and to repeal acts and parts of acts.

*The People of the State of Michigan enact:*

**487.3303 Organization of savings bank to serve depository institutions; application. [M.S.A. 23.710(3303)]**

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.

**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. [M.S.A. 23.710(3307)]**

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

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(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 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.

### **487.3313 Issuance of certificates of stock by savings bank. [M.S.A. 23.710(3313)]**

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 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

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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.

### **487.3314 Increase in capital stock. [M.S.A. 23.710(3314)]**

Sec. 314. (1) By a vote of shareholders owning  $\frac{2}{3}$  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.

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(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 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.

### **487.3316 Declaration and payment of dividends. [M.S.A. 23.710(3316)]**

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 the payment of dividends.

**487.3317 Mutual savings bank; meetings. [M.S.A. 23.710(3317)]**

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.

**487.3321 Savings bank; stock ledger; designation of transfer agent or registrar of shares; list to be furnished upon request. [M.S.A. 23.710(3321)]**

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 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.

**487.3322 Savings bank; election of directors; vacancy; bylaws; meetings; chief executive officer; minutes; quorum; notice of meeting. [M.S.A. 23.710(3322)]**

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

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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.

### **487.3324 Purchase or sale of securities by director; conditions. [M.S.A. 23.710(3324)]**

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.

**487.3325 Director or officer of savings bank; discharge of duties; violation; removal; vote. [M.S.A. 23.710(3325)]**

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

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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 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.

### **487.3326 Indemnification of party. [M.S.A. 23.710(3326)]**

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.

**487.3327 Indemnification of director, officer, employee, or agent. [M.S.A. 23.710(3327)]**

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.

(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.

**487.3328 Payment or reimbursement of expenses incurred in civil or criminal action, suit, or proceeding. [M.S.A. 23.710(3328)]**

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.

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

**[M.S.A. 23.710(3330a)]**

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.

**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.**

**[M.S.A. 23.710(3334)]**

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.

**487.3335 Savings bank; expiration of term by limitation; extension; renewal. [M.S.A. 23.710(3335)]**

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.

**487.3336 Sale or purchase of assets; consideration; purpose; filing certified copies of proceedings; liability; maintenance of principal office or branches. [M.S.A. 23.710(3336)]**

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:

(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.

**487.3401 Savings bank; powers. [M.S.A. 23.710(3401)]**

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.

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(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

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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 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.

**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.  
[M.S.A. 23.710(3409)]**

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 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.

**487.3412 Change in location of principal office.  
[M.S.A. 23.710(3412)]**

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.

**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. [M.S.A. 23.710(3413)]**

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.

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(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:

(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.

### **487.3417 Savings bank with branch in another state. [M.S.A. 23.710(3417)]**

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 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.

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(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.

**487.3422 Definitions; trust service agreements.  
[M.S.A. 23.710(3422)]**

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

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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 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.

### **487.3428 Safe deposit and storage department. [M.S.A. 23.710(3428)]**

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.

### **487.3430 Interest and charges on loans and credit extensions. [M.S.A. 23.710(3430)]**

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.

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(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.

### **487.3432 Loans and extensions of credit and leases; limitations; exceptions; definitions. [M.S.A. 23.710(3432)]**

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.

**487.3501 Impairment of capital. [M.S.A. 23.710(3501)]**

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.

(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.

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(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.

### **487.3508 Pledge of assets. [M.S.A. 23.710(3508)]**

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

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

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

### **487.3701 Consolidated savings bank. [M.S.A. 23.710(3701)]**

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 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.

**487.3703 Consolidated savings bank; rights, interests, privileges, powers, restrictions, disabilities, liabilities, and duties. [M.S.A. 23.710(3703)]**

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 with, the consolidating organization shall not be altered or impaired as the result of a consolidation.

**487.3705 Operation of branches of consolidated or acquired savings bank. [M.S.A. 23.710(3705)]**

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

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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.

### **487.3706 Definitions; consolidation. [M.S.A. 23.710(3706)]**

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 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.

**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.  
[M.S.A. 23.710(3708)]**

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 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.

**487.3709 Conversion of federally chartered shareholder-owned financial institution into savings bank. [M.S.A. 23.710(3709)]**

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.

**487.3710 Conversion of state chartered shareholder-owned financial institution into savings bank. [M.S.A. 23.710(3710)]**

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

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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.

(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.

### **487.3711 Conversion of member-owned federally chartered financial institution into mutual savings bank. [M.S.A. 23.710(3711)]**

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.

### **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. [M.S.A. 23.710(3711a)]**

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.

**487.3712 Conversion of member-owned state chartered financial institution into mutual savings bank. [M.S.A. 23.710(3712)]**

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.

**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. [M.S.A. 23.710(3712a)]**

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.

**487.3713 Rights, obligations, and relations of converted and converting organization. [M.S.A. 23.710(3713)]**

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 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.

**487.3715 Conversion of mutual savings bank to stock savings bank. [M.S.A. 23.710(3715)]**

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  $\frac{2}{3}$  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.

**487.3804 Tax exemptions. [M.S.A. 23.710(3804)]**

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.

## 2000 PUBLIC AND LOCAL ACTS

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### **Repeal of § 487.3425.**

Enacting section 1. Section 425 of the savings bank act, 1996 PA 354, MCL 487.3425, is repealed.

### **Conditional effective date.**

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 90th Legislature are enacted into law:

- (a) House Bill No. 5907.
- (b) House Bill No. 5908.

This act is ordered to take immediate effect.

Approved January 10, 2001.

Filed with Secretary of State January 11, 2001.

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**Compiler's note:** House Bill No. 5907, referred to in enacting section 2, was filed with the Secretary of State January 11, 2001, and became P.A. 2000, No. 480, Imd. Eff. Jan. 11, 2001.

House Bill No. 5908, also referred to in enacting section 2, was filed with the Secretary of State January 11, 2001, and became P.A. 2000, No. 481, Imd. Eff. Jan. 11, 2001.

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