§ 131. Prohibitions against encroachments upon certain powers of banks and trust companies. 1. No person unauthorized by law shall subscribe to or become a member of, or be in any way interested in any association, institution or company formed or to be formed for the purpose of issuing notes or other evidences of debt to be loaned or put in circulation as money; nor shall any such person subscribe to or become in any way interested in any bank or trust company or fund created or to be created for the like purposes or either of them. No corporation, domestic or foreign, other than a national bank or a federal reserve bank, unless expressly authorized by the laws of this state, shall employ any part of its property, or be in any way interested in any fund which shall be employed for the purpose of receiving deposits, making discounts, receiving for transmission or transmitting money in any manner whatsoever, or issuing notes or other evidences of debt to be loaned or put into circulation as money, except that a small business investment company as defined in and operating pursuant to the provisions of an act of congress entitled "Small Business Investment Act of 1958," may act as depository or fiscal agent of the United States when so designated by the secretary of the treasury without violating the provisions of this section, except that a corporation duly licensed by the superintendent under article thirteen-B of this chapter or therein expressly excepted from the application of said article may engage in the business of selling or issuing checks or the business of receiving money for transmission or transmitting the same and except that services of an agent or representative may be performed in connection with the obligations of issuers where each such marketable obligation has a face value of not less than one hundred thousand dollars. The discounting of bills, notes or evidences of debt by a corporation organized solely for the purpose of enabling producers of farm, dairy, horticultural or other agricultural products or cooperative corporations of such producers to avail themselves of the provisions of an act of congress approved March fourth, nineteen hundred and twenty-three, known as the agricultural credits act of nineteen hundred and twenty-three, same being subchapter three of chapter seven of title twelve of the code of laws of the United States as adopted by congress January third, nineteen hundred thirty-five, and amendments thereto, where such discounting is solely in connection with the rediscount of such bills, notes or evidences of debt

under the provisions of said act of congress shall not be deemed or construed to be a form of banking, nor shall the making of such discounts be deemed to violate any provisions of law pertaining to banking. Except as otherwise provided in article twelve-D of this chapter, engaging in the business of loaning money in this state on bonds, notes or other evidences of indebtedness, secured by deeds of trust or mortgages upon real property or personal property situated in, upon or appurtenant thereto, and/or purchasing of or otherwise acquiring existing bonds, notes or other evidences of indebtedness, deeds of trust or mortgages of or upon such properties, or any interest therein, and the holding of the same, or the endorsing, selling, assigning, transferring or disposing of the same to another corporation, by a domestic business corporation, or by a foreign corporation which is authorized to transact business in this state, shall not be deemed or construed to violate any of the provisions of this chapter. The purchase or other acquisition on original issue or subsequent transfer for less than the principal amount thereof or otherwise at a discount of any evidences of indebtedness or other obligations for the payment of money shall not by reason of such discount be or be deemed to be a violation of the provisions of this section.

2. No person, association of persons or corporation, unless expressly authorized by law, shall keep any office for the purpose of issuing any evidences of debt, to be loaned or put in circulation as money; nor shall they issue any bills or promissory notes or other evidences of debt for the purpose of loaning them or putting them in circulation as money, unless thereto specially authorized by law.

3. Except as otherwise provided in article five or article five-C of this chapter or subdivision four of this section, no corporation other than a trust company shall have or exercise in this state the power of receiving deposits of money, securities or other personal property from any person or corporation in trust, or have or exercise in this state any of the powers specified in section one hundred of this article, or have or maintain an office in this state for the transaction of, or transact, directly or indirectly, any such or similar business, except that a federal reserve bank may exercise the powers conferred by

subdivision one of such section if authorized so to do by the laws of the United States and any domestic corporation legally exercising any of the powers conferred by such subdivision at the time this act takes effect may continue to exercise such powers, and a foreign banking corporation or trust company incorporated under the laws of another state, which by the law of the state of its incorporation may act as trustee, guardian, executor, administrator, or in any other fiduciary capacity under any last will and testament or codicil thereto or other testamentary writing or under any deed of trust inter vivos or other written instrument establishing a trust, or by the appointment of any court of said state, may act in this state in any such fiduciary capacity, provided similar domestic corporations which have the power under the law of this state to act herein in any such fiduciary capacity, are permitted to act in like fiduciary capacity in the state where such foreign corporation has its domicile, provided that if such foreign corporation proposes to act in any fiduciary capacity in this state and to do so is required to file its qualification in the surrogate's court of this state, it shall file in the office of the clerk of the surrogate's court of the county in which application for such appointment is pending (a) a duly executed instrument in writing, by its terms of indefinite duration and irrevocable, appointing such clerk and his or her successors its true and lawful attorney, upon whom all process in any action or proceeding against such fiduciary, affecting or relating to the state, trust or fund represented or held by such fiduciary or the acts of defaults of such corporation in reference to such estate, trust or fund may be served with the same force and effect as if it were a domestic corporation and had been lawfully served with process within the state, and (b) a copy of its charter certified by its secretary under its corporate seal, together with the post office address of its principal office; provided further that if such foreign corporation proposes to act in any other fiduciary capacity in the state, it shall file in the office of the superintendent (a) a duly executed instrument in writing, by its terms of indefinite duration and irrevocable, appointing the superintendent and his or her successors its true and lawful attorney, upon whom all process in any action or proceeding against such fiduciary affecting or relating to the estate, trust or fund held or represented by such fiduciary or the acts or

defaults of such corporation in reference to such estate, trust or fund may be served with the same force and effect as if it were a domestic corporation and had been lawfully served with process within the state, (b) a written certificate of designation, which may be changed from time to time thereafter by the filing of a new certificate of designation, specifying the name and address of the officer, agent, or other person to whom such process shall be forwarded by the superintendent, and (c) a copy of its charter certified by its secretary under its corporate seal, together with the post office address of its principal office.

4. (a) Except as otherwise provided in article five or article five-C of this chapter, no foreign corporation, having authority to act in this state as trustee, guardian, executor, administrator, or in any other fiduciary capacity shall establish or maintain, directly or indirectly, any branch office or agency in this state.

(b) Notwithstanding any other provisions of this chapter, a bank or trust company incorporated under the laws of another state, which is authorized by its charter and by the laws of the state of its incorporation to exercise in such state any or all of the fiduciary powers that trust companies are authorized to exercise in this state pursuant to sections one hundred, one hundred-a, one hundred-b, one hundred-c and one hundred-d of this article, may establish and maintain a trust office in this state for purposes of exercising any or all of the fiduciary powers authorized by the laws of the state of its incorporation; provided, however, that (i) such trust office is not its principal office; (ii) such exercise does not exceed the powers authorized under sections one hundred, one hundred-a, one hundred-b, one hundred-c and one hundred-d of this article; and (iii) a bank or trust company organized under the laws of this state and authorized to exercise any or all fiduciary powers under sections one hundred, one hundred-a, one hundred-b, one hundred-c and one hundred-d of this article is permitted to establish a trust office and exercise substantially similar fiduciary powers on substantially the same basis as permitted an out-of-state state bank or trust company pursuant to this subdivision, in the state where such out-of-state state bank or trust company is so incorporated. A trust office established or maintained by such an out-of-state state bank or trust company pursuant

to this subdivision shall not be considered to be a branch office pursuant to any other provisions of this chapter.

(c) An out-of-state state bank or trust company seeking to establish and maintain a trust office or open any additional trust offices in this state shall file a notice with the superintendent in the form prescribed by the superintendent describing the proposed activities of the office and such other information as the superintendent shall request. The trust office may commence operation thirty days after the superintendent receives such notice, unless the superintendent notifies the out-of-state state bank or trust company in writing within such time period that such office may not commence operation or that additional information or time is required for the superintendent to consider such notice.

(d) Such out-of-state state bank or trust company may establish and maintain additional trust offices in this state pursuant to and consistent with the provisions of this subdivision, provided that the superintendent finds that the establishment and maintenance of any and all trust offices by such out-of-state state bank or trust company is and continues to be consistent with the goals set forth in the declaration of policy contained in section ten of this chapter. The superintendent shall have the power at any time in his or her discretion to examine any trust office established pursuant to this section to the same extent as is provided for in the case of banking organizations pursuant to the provisions of this chapter. If any such foreign corporation or out-of-state state bank or trust company violates this provision, such foreign corporation or out-of-state state bank or trust company shall not thereafter be appointed or act in any such fiduciary capacity in this state. The validity of any mortgage heretofore given by a foreign corporation to a trust company doing business within a foreign domicile of such mortgagor to secure the payment of an issue of bonds shall not be affected by any of the provisions of this section and such mortgage shall be enforceable in accordance with the laws of this state against property covered thereby within the state of New York.

5. Any out-of-state state bank or trust company subject to the provision of subdivision three or four of this section may be either in corporate form or organized as a limited liability company.

6. Every person, and every corporation, director, agent, officer or member thereof, who shall violate any provision of this section, directly or indirectly or assent to such violation, shall forfeit an amount as determined pursuant to section forty-four of this chapter to the people of the state.