

BANKING CODE OF 1999 (EXCERPT)
Act 276 of 1999
Chapter 3
BANK ORGANIZATION AND STRUCTURE
Part 1
FORMATION

487.13101 Bank organization generally.

Sec. 3101.

Not less than 5 natural persons, a majority of whom are residents of this state and citizens of the United States or its territories or possessions, or a bank holding company, may file an application to organize a bank under this act.

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

487.13102 Bank organization; application.

Sec. 3102.

(1) An application to organize a bank under this act shall be in the form prescribed by the commissioner and shall set forth information as the commissioner may require.

(2) The commissioner shall examine the information and statements contained in the application and make any other investigation as to the persons, conditions, and circumstances surrounding, affecting, or pertaining to the organization of the bank, as is necessary to satisfy the commissioner as to all of the following:

(a) Whether the character, responsibility, and fitness of the incorporators, and of the proposed directors and officers, and their motives in seeking to organize the bank are such as to command the confidence of the community and to warrant the belief that the business of the proposed bank will be honestly and efficiently conducted.

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

(c) The likelihood of successful operation of the proposed bank, giving consideration to, but not limited to, both of the following:

(i) Economic and demographic characteristics of the area primarily to be served by the bank.

(ii) The competition offered by existing banks and other financial services providers.

(d) Whether the capital structure of the proposed bank is adequate for the conduct of its business.

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

487.13103 Organization of depository institutions generally.

Sec. 3103.

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

(2) Any number of depository institutions may apply to organize a 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 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 bank. The commissioner shall issue to the applicants, within the time period provided in section 2302, written notice of

approval or disapproval of the application.

(5) A depository institution organized under this section is not subject to the provisions of section 3102, but shall comply with all other provisions of the act.

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

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

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

487.13104 Expenses of incorporators; reimbursement.

Sec. 3104.

(1) Following the date authorized by the commissioner for the bank to commence business, a bank and its incorporators may jointly request permission from the commissioner for the bank to reimburse the incorporators for the incorporators' reasonable and necessary organizational expenses.

(2) A joint request by a bank and its incorporators shall include an accounting of the funds expended by the incorporators which shall be prepared by an independent certified public accountant in accordance with generally accepted accounting principles.

(3) If the commissioner determines that the accounting of funds expended is substantially similar to the amount disclosed in the application as estimated expenses of organization, the commissioner may authorize the bank to reimburse the incorporators.

(4) The commissioner may waive the requirements of this section if the expenses of organizing a bank will be paid by a bank holding company.

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

487.13105 Bank as body corporate; authorization.

Sec. 3105.

If the commissioner approves the articles of incorporation as required by this act, the bank shall become a body corporate. A bank shall not transact any business, except as is incidental and necessarily preliminary to its organization, until it has been authorized by the commissioner to commence the business of banking.

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

487.13106 Commencement of business.

Sec. 3106.

(1) Within 30 days after the approval of its articles of incorporation, or a later time not to exceed 1 year as approved by the commissioner, the bank shall notify the commissioner that all of its capital and surplus has been fully paid in and that it has complied with all of the required provisions of this act necessary to be authorized to commence the business of banking.

(2) The commissioner shall make examinations as he or she considers necessary to verify the conditions set forth in subsection (1), and if it appears that the bank is lawfully entitled to commence business, the commissioner, within 30 days after receiving the notice provided for in this section, shall give to the bank a certificate under the official seal of the bureau that the bank has complied with all of the required provisions and is authorized to commence

business.

(3) The application is considered abandoned and of no further effect if the bank fails to furnish the notice provided for in this section within the specified time or fails to comply with the required provisions within the period of time determined by the commissioner.

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

487.13107 Organization meeting; notice.

Sec. 3107.

The organizational meeting of every bank shall be called by a notice designating the time and place of the meeting and stating the purpose for which the meeting is called. The notice shall be served personally on all the incorporators at least 5 days before the date set for the meeting. If all the incorporators are present at the meeting or in writing waive notice, then no notice shall be required for the organizational meeting.

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

487.13108 Capital adequacy; requirements.

Sec. 3108.

(1) A bank organized under this act shall have capital in an amount the commissioner considers adequate to conduct its business.

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

(3) After organization, each bank shall maintain an adequate capital structure appropriate to conduct its business and the protection of its depositors. The capital adequacy of a 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, and its risk management, with due regard to the bank's capacity to furnish the broadest service to the public.

(4) At all times a bank shall maintain surplus in an amount equal to at least the amount of its capital, except as provided in subsection (2) and except as provided in section 3806, and shall not reduce surplus without the approval of the commissioner.

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

Part 2 ARTICLES OF INCORPORATION

487.13201 Articles of incorporation; approval generally.

Sec. 3201.

(1) Upon approval of the application under section 3103 by the commissioner, at least 2 original articles of incorporation, executed by the incorporators, shall be submitted to the commissioner. The commissioner shall approve the articles if the articles conform to law. One of the original articles will be retained for the bureau's records and 1 of the original articles will be forwarded to the incorporators.

(2) Before approving, certifying, and distributing the articles of incorporation, the incorporators shall furnish evidence to the commissioner that a firm commitment to insure deposit accounts up to the maximum permitted by federal law has been issued by the federal deposit insurance corporation, unless the commissioner, for good cause shown, waives this requirement.

(3) Approval of articles of incorporation by the commissioner under this act does not indemnify the bank against claims for the improper use of the bank name stated in the articles.

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

487.13202 Articles of incorporation; contents.

Sec. 3202.

- (1) The articles of incorporation shall specify all of the following:
 - (a) The name of the bank.
 - (b) The county and the city, village, or township where the principal office of the bank is to be located.
 - (c) The purpose or purposes of incorporation as provided in this act.
 - (d) The authorized number of shares of its capital stock, and 1 of the following:
 - (i) If the bank is to be authorized to issue only 1 class of stock, the total number of shares of stock that the bank may issue and the par value of each share.
 - (ii) If the bank is to be authorized to issue more than 1 class of stock, a statement of the total number of shares of all classes of stock that the bank may issue, the number of shares of each class, the par value of each share of each class, and a statement of all designations, powers, preferences, and rights and the qualifications, limitations, and restrictions of each class.
 - (e) The names of the incorporators.
 - (f) The period for which the bank is organized, which may be in perpetuity.
 - (g) That shareholders of the bank may be assessed a capital deficiency payment and that if such assessment is not paid the directors may sell any or all of the shares owned by the shareholder to satisfy the assessment.
 - (h) Any other provisions consistent with the laws of this state for regulating the business of banking and for the conduct of the affairs of the bank.
- (2) Articles approved by the commissioner before the effective date of this act are considered to be in compliance with this section.

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

487.13203 Articles of incorporation; amendments.

Sec. 3203.

- (1) With the approval of the commissioner, and by vote of shareholders owning a majority of voting shares of the bank, a bank may amend its articles of incorporation in any manner not inconsistent with this act. An amendment, signed by an authorized officer or officers of the bank, shall be effective when approved by the commissioner.
- (2) Notwithstanding subsection (1), an amendment that provides solely for a change in the name of the bank is not subject to the approval of the commissioner and shall be effective on the date it is received by the commissioner or at a later date specified by the bank.

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

Part 3 DISSOLUTION

487.13301 Proposed resolution of dissolution; certificate of termination; designation of liquidating agent or committee; reports; examination by commissioner; filing of certificate; termination.

Sec. 3301.

(1) A solvent bank may go into dissolution and be closed upon expiration of its corporate term or by the vote of its shareholders.

(2) The proposed dissolution shall be submitted for approval at any meeting of shareholders. Notice shall be given to each shareholder of record within the time and in the manner as provided in this act for the giving of notice of meetings of shareholders, and shall state that a purpose of the meeting is to vote on dissolution of the bank.

(3) At the meeting, a vote of shareholders shall be taken on the proposed resolution of dissolution. The dissolution shall be approved upon receiving the affirmative vote of the holders of at least 2/3 of the outstanding shares of the bank entitled to vote on dissolution.

(4) The board of directors immediately at expiration of its corporate term or adoption of a resolution of dissolution by the shareholders shall submit to the commissioner in duplicate a certificate of termination. The certificate shall be signed by a majority of the remaining members of the board of directors on a form approved by the commissioner.

(5) Within 3 months after the date the certificate of termination is submitted under subsection (4), the shareholders shall designate 1 or more persons to act as a liquidating agent or committee. The liquidating agent or committee shall conduct the dissolution in accordance with this act and other applicable law under the supervision of the commissioner and the board of directors. The agent or committee shall furnish to the bank in dissolution a bond satisfactory to the commissioner.

(6) The liquidating agent or committee shall submit to the commissioner reports in the form and at the times the commissioner may require. The liquidating agent or committee shall make periodic reports not less frequently than semiannually to the shareholders. A copy of each periodic shareholder report shall be filed with the commissioner.

(7) The shareholders may remove the liquidating agent or committee and appoint a new agent or a new committee at a special meeting of shareholders by vote of a majority of the shares entitled to vote. Notice shall be given to each shareholder of record within the time and in the manner as provided in this act for the giving of notice of meetings of shareholders and shall state that the purpose of the meeting is to vote on removing the liquidating agent or committee.

(8) The commissioner may examine the bank in dissolution at any time for the purpose of determining that the rights of the depositors and creditors are being properly served.

(9) If the commissioner finds that a dissolution has been completed in conformity to law and that all fees and charges have been paid as required by law, the commissioner shall file 1 copy of the certificate of termination in the office of the bureau and shall certify and deliver 1 copy to the liquidating agent or committee. Upon the filing of the certificate the existence of the bank is terminated.

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

487.13302 Bank in dissolution as body corporate.

Sec. 3302.

(1) A bank that begins dissolution under section 3301 shall continue to be a body corporate until the commissioner certifies and files the certificate of termination under section 3301(9) for all of the following:

- (a) Prosecuting and defending actions for or against the bank.
- (b) Disposing of and conveying the bank's property.
- (c) Dividing the bank's assets.
- (d) Gradually settling and closing its affairs.

(2) Subject to section 3401, a bank in dissolution shall not continue to be a body corporate for the purpose of continuing the business for which it was organized.

(3) An action, suit, or proceeding commenced by or against the bank in dissolution must be commenced before the filing of the certificate of termination under section 3301(9).

(4) If the number of directors of a bank in dissolution is less than the full number of directors required or authorized by statute or by the bylaws of the bank, a majority of the remaining directors or the sole remaining director shall possess the same powers in acting for the bank in dissolution under this act as the duly authorized board of directors of the bank possessed before the commencement of dissolution.

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

487.13303 Bank in dissolution; function of officers, directors, and shareholders.

Sec. 3303.

(1) Subject to section 3302 or as otherwise provided by the commissioner, a bank in dissolution, its officers, directors, and shareholders shall continue to function in the same manner as if dissolution had not occurred.

(2) The directors of the bank in dissolution are not considered to be trustees of its assets and shall be held to no greater standard of conduct than that prescribed by section 3504.

(3) Title to the assets of a bank in dissolution remains in the bank until transferred.

(4) The dissolution of the bank does not change quorum or voting requirements for the board or shareholders, and does not alter provisions regarding election, appointment, resignation, or removal of, or filling vacancies among, directors or officers, or provisions regarding amendment or repeal of bylaws or adoption of new bylaws.

(5) Shares of the stock of a bank in dissolution may be transferred.

(6) The bank in dissolution may sue and be sued in its corporate name and process may issue by and against the bank in dissolution in the same manner as if dissolution had not occurred.

(7) An action brought against the bank before the commencement of its dissolution is not limited or affected because of the dissolution.

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

487.13304 "Existing claim" and "existing claimant" defined; notice to depositors and creditors; existing claims; effective date of written notice.

Sec. 3304.

(1) As used in this section:

(a) "Existing claim" means a claim or right against the bank in dissolution, liquidated, or unliquidated. It does not include a contingent liability or a claim based on an event occurring after the commencement of dissolution.

(b) "Existing claimant" means a person holding an existing claim.

(2) The board of directors of a bank in dissolution shall notify the bank's depositors and creditors in writing of the dissolution within 30 days after submitting the certificate of termination under section 3301(4). The written notice shall include all of the following:

(a) A mailing address where an existing claim can be sent.

(b) A statement that the bank in dissolution may demand sufficient information to permit it to make a reasonable judgment whether the existing claim should be accepted or rejected.

(c) The deadline, not less than 3 months from the effective date of the written notice, by which the existing claim shall be received.

(d) A statement that the existing claim will be barred if not received by the deadline.

(3) The notice under subsection (2) does not constitute an acceptance that a person to whom the notice is directed has a valid existing claim against the bank in dissolution.

(4) An existing claim against the bank in dissolution is barred if either of the following applies:

(a) The existing claimant who was given written notice under subsection (2) does not file the claim with the bank by the deadline.

(b) The existing claimant who was given written notice under subsection (2) and whose existing claim was rejected in writing by the bank in dissolution does not commence a proceeding to enforce the existing claim within 90 days from the effective date of the written notice of rejection.

(5) The effective date of the written notice under this section is the earliest of the following:

(a) The date it is received.

(b) Five days after its deposit in the United States mail as evidenced by the postmark, if it is mailed postpaid and correctly addressed.

(c) The date shown on the return receipt, if the notice is sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

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

487.13305 "Claim" and "claimant" defined; notice of dissolution; publication; requirements.

Sec. 3305.

- (1) As used in this section:
 - (a) "Claim" means a claim or right against the bank in dissolution, liquidated or unliquidated, of a claimant that did not receive the written notice required by section 3304.
 - (b) "Claimant" means a person holding a claim.
- (2) The board of directors of a bank in dissolution shall publish notice of dissolution. The first notice shall be published within 30 days after submitting the certificate of termination under section 3301(4) and request that persons with claims against the bank in dissolution present them as required by the notice.
- (3) The notice shall comply with all of the following:
 - (a) Be published once each week for 8 consecutive weeks.
 - (b) Describe the information to be included in a claim and provide a mailing address where the claim is to be sent.
 - (c) Contain a statement that the bank in dissolution may demand sufficient information to permit it to make a reasonable judgment whether the claim should be accepted or rejected.
 - (d) State the deadline, not less than 6 months from the last publication date, by which the claim shall be received.
 - (e) State that a claim against the bank in dissolution will be barred unless a proceeding to enforce the claim is commenced within 6 months after the last publication date of the notice published under this section.
- (4) A claim against the bank in dissolution is barred if any of the following apply:
 - (a) The claimant does not deliver a claim or commence a proceeding in an appropriate court to enforce the claim against the bank in dissolution within 6 months after the last publication date of the notice published under this section.
 - (b) The claimant whose claim was rejected in writing by the bank in dissolution does not commence a proceeding to enforce the claim within 90 days from the effective date of the written notice of rejection.
 - (c) The claimant, whose claim is contingent or based on an event occurring after the commencement of dissolution, that does not deliver a claim within 6 months after the last publication date of the notice published under this section or file an action in an appropriate court to enforce the claim against the bank in dissolution before the commissioner certifying and filing the certificate of termination under section 3301(9).

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

487.13306 Court supervision of bank in dissolution.

Sec. 3306.

- (1) After a bank has commenced dissolution, the commissioner, the bank in dissolution, a creditor, or a shareholder may apply to an appropriate court for an order that the affairs of the bank in dissolution and the liquidation of its assets continue under supervision of the court. The court shall make orders and judgments as may be required, including, but not limited to, continuance of the liquidation of the assets of the bank in dissolution by its liquidating agent or committee under supervision of the court, or the appointment of a receiver of the bank in dissolution to be vested with powers as the court designates to liquidate the affairs of the bank.
- (2) For good cause shown, and so long as a bank in dissolution has not made complete distribution of its assets, the court may permit a creditor who has not delivered his or her claim or commenced a proceeding to enforce his or her claim within the time limits provided in sections 3304 and 3305 to file the claim or to commence a proceeding within the time as the court directs.

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

487.13307 Debts, obligations, and liabilities.

Sec. 3307.

(1) A bank in dissolution or its liquidating agent or committee shall act on all claims filed and notify all claimants of the action taken or to be taken on their respective claims within 6 months of the last date for filing the claims.

(2) Before making a distribution of assets to shareholders, a bank in dissolution shall pay or make provision to satisfy its debts, obligations, and liabilities. Compliance with this section requires, to the extent a reasonable estimate is possible, that provision be made to satisfy those debts, obligations, and liabilities anticipated to arise after the date the certificate of termination is filed under section 3301(9).

(3) Provision need not be made to satisfy any debt, obligation, or liability that is or is reasonably anticipated to be barred under section 3304 or 3305.

(4) The fact that the assets provided by the bank in dissolution for the satisfaction of its debts, obligations, and liabilities are insufficient to satisfy claims arising after a certificate of termination is filed under section 3301(9) shall not create a presumption that the bank in dissolution has failed to comply with this section.

(5) After payment of or adequate provision to satisfy the debts, obligations, or liabilities of the bank in dissolution has been made, the remaining assets shall be distributed to shareholders according to their respective rights and interests. The distribution may be made in cash, in kind, or both.

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

Part 4 TERM EXTENSION

487.13401 Expiration of corporate term; extension.

Sec. 3401.

(1) A bank whose corporate term will expire by limitation may amend its articles to extend its corporate term for a limited period of time or in perpetuity.

(2) A bank whose term has expired, but which has not submitted a certificate of termination under section 3301 and has inadvertently continued its active business beyond the term, may adopt a resolution to amend its articles to renew its corporate existence. Notice shall be given to each shareholder of record in the manner provided in this act for the giving of notice of meetings of shareholders, and shall state that the purpose of the meeting is to vote on the renewal of corporate term. At the meeting a vote of the shareholders shall be taken on the proposed extension, which shall be adopted upon receiving the affirmative vote of holders of at least 2/3 of the outstanding shares.

(3) The officers and directors de facto of a bank whose corporate term has expired shall do and perform all acts required of officers and directors de jure with regard to calling a special meeting of the shareholders and submitting to them the question of renewing the corporate term. A bank de facto shall not be permitted to renew its corporate term unless the action is taken within 1 year after its corporate term has expired and renewal shall not relieve the bank from any penalties that may have accrued against it under law.

(4) A bank whose corporate term has been extended or renewed under this section shall be the same bank and shall have the same shareholders, directors, and officers, and 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 expiration of its corporate term.

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

Part 5 OFFICERS AND DIRECTORS

487.13501 Board of directors; election; appointment of officers; meetings.

Sec. 3501.

(1) A bank shall be managed by a board of not less than 5 nor more than 25 directors. The first board shall be elected by the incorporators at the meeting held under section 3107 before the bank is authorized to commence business. All subsequent boards shall be elected by the shareholders at the annual meeting of the shareholders or at

a meeting called for that purpose as provided in the bylaws of the bank. The board of directors may fill a vacancy on the board for the remainder of the vacated term. Directors shall hold office until their successors are elected and qualified.

(2) The bylaws of the 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 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 appoint a director as chief executive officer who shall be a full-time employee of the bank and perform duties 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 chief executive officer. The board may appoint officers, who need not be members of the board, define their duties, dismiss them at pleasure, and appoint other officers to fill vacancies.

(5) Except as otherwise provided by this act, the board of directors may appoint committees of its members to perform its duties.

(6) The board of directors shall meet not less than 6 times per fiscal year in person or by means of electronic communication devices that enable all participants in a meeting to communicate with each other. The minutes of each meeting shall be kept and 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.

(7) The commissioner may call a meeting of the board of directors of any bank, for any purpose, by giving a notice of the time, place, and purpose of the meeting at least 3 days before the meeting date to the directors by personal service, by registered or certified mail, or by other appropriate method reasonably designed to provide adequate notice.

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

487.13502 Board of directors; oath.

Sec. 3502.

Every director when elected or appointed shall take and subscribe an oath that he or she will diligently and honestly perform the duties of the office and will not knowingly violate, or permit to be violated, any provisions of this act. The oath shall be transmitted to the commissioner for filing.

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

487.13503 Sale or purchase of securities or property.

Sec. 3503.

(1) A bank may contract for, or purchase from, any of its directors, or from any person of which any of the 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 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 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 bank, the commissioner may require a full disclosure of all profits realized from the sale.

(2) A 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 bank evidenced by their affirmative vote or written assent.

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

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

487.13504 Discharge of duties; liability; commencement of action; violation; statute of limitations.

Sec. 3504.

(1) A director or an officer of a 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. 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 bank, upon the report of an independent appraiser selected with reasonable care by the board or by an officer of the bank, or upon financial statements of the bank certified to him or her to be correct by an officer of the bank, or as stated in a written report by an independent public or certified public accountant or firm of accountants to reflect fairly the financial condition of the bank.

(2) The articles of incorporation of a bank may provide that a director is not personally liable to the bank or its shareholders 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 bank or its shareholders.
- (b) Acts or omissions not in good faith or that involve intentional misconduct or knowing violation of law.
- (c) A violation of section 2312.
- (d) A transaction from which the director derived an improper personal benefit.

(3) 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.

(4) If a director or officer of a bank knowingly violates, or knowingly permits any of the agents, officers, directors, or employees of the 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 bank, any shareholder, or any other person sustains as a result of the violation. An action to recover damages under this section shall be brought within 3 years from the time of the violation.

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

487.13505 Removal of director.

Sec. 3505.

(1) 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 section shall not invalidate any bylaw adopted before the effective date of this act that applies to removal without cause.

(2) In the case of a 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.

(3) 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.

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

487.13506 Sale of stock or securities; officer or employee as agent prohibited.

Sec. 3506.

An officer or employee of any bank, in his or her individual capacity, shall not act as agent in the sale of stock or other securities to any person or receive directly or indirectly any consideration or commission resulting from the sale of stock or other securities by others to the bank by which he or she is employed.

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

487.13507 Procurement of loan; receipt of gratuity or consideration prohibited.

Sec. 3507.

An officer, director, or employee of a bank shall not receive, or consent, or agree to receive from a customer of the bank any consideration or gratuity in return for the procurement of a loan or other service from the bank.

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

Part 6 SHAREHOLDERS

487.13601 Meeting of shareholders.

Sec. 3601.

(1) The annual meeting of the shareholders of every bank shall be held on the day in each year that is provided in the bylaws of the bank. Special meetings of shareholders shall be called and held as provided in the bylaws of the bank.

(2) At any meeting, each shareholder entitled to vote shall be entitled to 1 vote for each share held by the shareholder. A shareholder may vote at any meeting of the bank by proxy in writing signed by the shareholder.

(3) A bank may provide in the initial articles of incorporation or by amendment to the articles by a vote of shareholders owning a majority of the total number of shares of each class of its outstanding capital stock, that in an election of directors each shareholder may cast as many votes as the number of shares owned by the shareholder multiplied by the number of directors to be elected. In the shareholder's discretion, the shareholder may distribute his or her total number of votes cumulatively for 1 or more of the candidates.

(4) A person holding shares of the capital stock of a bank in a fiduciary capacity shall be entitled to vote the shares unless otherwise provided in the trust instrument. A person whose shares are pledged shall be entitled to vote unless the pledgor has expressly empowered the pledgee to vote the shares and the pledge of the stock and the empowerment to vote are recorded by the issuing bank or its agent, in which case only the pledgee or his or her proxy may vote the shares.

(5) A shareholder shall have the right to vote in person or by proxy, except that a bank shall not vote shares it holds under section 3804(4) or 4304(4).

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

487.13602 Meeting called by commissioner.

Sec. 3602.

The commissioner may call a meeting of the shareholders of any bank by giving at least 3 days' notice of the time, place, and purposes of the meeting to the shareholders by registered or certified mail sent to their last known addresses as shown on the records of the bank or by another appropriate method reasonably designed to provide adequate notice.

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

487.13603 Names and addresses of shareholders; record.

Sec. 3603.

(1) A bank shall keep and maintain an accurate record of the name and address of each shareholder of the bank, the number of shares held by each, the date when the shareholders acquired the shares, and the name of the transferor.

(2) In lieu of the requirements under subsection (1), the board of directors of a bank may designate a 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 bank, but the same corporation shall not be designed to act in both capacities at the same time.

(3) Upon demand by the commissioner, a bank shall submit to the commissioner a list containing the name and address of each shareholder of the 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.

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

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

487.13604 Provisions applicable to voting stock.

Sec. 3604.

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

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

Part 7 CONSOLIDATION AND CONVERSION

487.13701 Consolidated bank; formation.

Sec. 3701.

(1) Subject to approval by the commissioner, a bank may consolidate with any number of consolidating organizations to form a consolidated 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 terms required or permitted by this act and any laws of the United States, as well as the manner of converting the shares of each of the consolidating organizations into shares of the consolidated organization, with other details and provisions as are considered necessary.

(4) The proposed consolidation agreement shall be submitted to the shareholders of each consolidating organization, at separate meetings of their shareholders. A notice indicating the time, place, and purpose of the meeting shall be mailed to each shareholder of each consolidating organization at his or her last known address as appears from the stock records of the consolidating organizations, by registered or certified mail, 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.

(5) 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. At the meeting, each share of stock shall entitle the holder to 1 vote. If the votes of 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 are cast for the adoption of the agreement, the vote shall be certified on the agreement by an officer of each of the consolidating organizations.

(6) If an 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 copy of the approval of the appropriate state or federal regulator of the consolidation to the commissioner.

(7) The consolidation agreement required by this section shall be submitted to the commissioner, who shall, upon approval, certify upon the agreement the effective date of the consolidation. The consolidation agreement or a copy certified by the commissioner is evidence of the agreement and act of consolidation of the consolidating organizations and the observance and performance of all necessary acts and conditions precedent to the consolidation.

(8) A bank holding company that is the sole shareholder of all of the outstanding issued stock of a bank, out-of-state bank, or national bank that is a consolidating organization in a proposed consolidation may waive the shareholder meeting requirement of this subsection.

(9) In effecting a consolidation, stock of the consolidated bank may be issued in accordance with this act and as provided by the terms of the consolidation agreement free from any preemptive rights of the shareholders of the respective consolidating organizations.

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

487.13702 Consolidated organization.

Sec. 3702.

On an interstate basis, a bank may consolidate with any number of consolidating organizations to form a consolidated organization in accordance with the laws under which the consolidated organization is chartered, if all of the following apply:

(a) Consolidation is permitted by the laws under which each consolidating organization is organized and the appropriate regulator or regulators approve the consolidation.

(b) The consolidating organizations provide notice to the commissioner by filing a copy of the application for consolidation within 10 days after the date the application is filed with the appropriate federal regulator.

(c) The consolidated organization complies with section 3703(3) with respect to notice of consolidation, but that

notice is limited to a court, public tribunal, agency, or officer of this state.

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

487.13703 Consolidated bank; rights, privileges, and powers.

Sec. 3703.

(1) If approval and certification of the consolidation agreement as required by section 3701 have been completed, the corporate existence of each consolidating organization is merged into and continued in the consolidated bank. To the extent authorized by this act, the consolidated 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 bank, and shall not revert or be in any way impaired by reason of this act.

(2) A consolidated 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 bank is subject to removal by a court of competent jurisdiction.

(3) A consolidated bank shall file with each court or other public tribunal, agency, or officer in any state by which any of the consolidating organizations have 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 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 principal office 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.

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

487.13704 Service of process.

Sec. 3704.

(1) Whether it maintains a presence in this state, a consolidated 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 any consolidating organization that is or was a party to a consolidation.

(2) An action or proceeding by or against any of the consolidating organizations in a court or any other public tribunal of this state may be prosecuted to judgment, as if consolidation had not taken place, or the consolidated bank or consolidated organization may be substituted in the place of any consolidating organization whose existence has ceased.

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

487.13705 Notice of operation.

Sec. 3705.

(1) A consolidated bank or consolidated organization may operate all branches and principal offices located in this state of the consolidating organizations without providing the notice required by section 3711(1).

(2) A bank, out-of-state bank, national bank, association, or savings bank operating a branch in this state as the result of a consolidation shall provide notice of that operation to the commissioner within 30 days after the effective date of the consolidation.

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

487.13706 Definitions; applicable provisions.

Sec. 3706.

(1) As used in this section:

(a) "Existing bank" means a bank engaged in the business of banking before the consolidation provided in this section.

(b) "New bank" means a bank not engaged in the business of banking before the consolidation provided in this section.

(c) "Existing association" means a stock association engaged in the savings and loan business before the consolidation provided in this section.

(d) "Existing savings bank" means a stock savings bank engaged in the savings bank business before the consolidation provided in this section.

(2) Notwithstanding any other provision of this act, both of the following apply:

(a) A new bank may be organized for the sole purpose of effecting its consolidation under section 3701 with an existing bank, existing savings 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. The new bank and existing bank may consolidate under the articles of either bank. The new bank and the existing savings bank or association shall consolidate under the articles of the new bank. Sections 3701, 3703, and 3704 apply to the consolidation, except that the agreement of consolidation may provide that shares of either or both the consolidating organizations will be converted into shares or other securities of the bank holding company.

(b) A shareholder of the existing bank, existing savings bank, or existing association who votes against the consolidation, or who has given notice in writing to that bank or association at or before the meeting called for the purpose of considering the agreement of consolidation that the shareholder dissents from the consolidation, is entitled to receive in cash from the consolidated organization the fair value of all shares held by the shareholder, 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 the stock voted in dissent by the shareholder. Upon the filing of the written request and the surrender of stock certificates, if any, the shareholder shall cease to have any of the rights of a shareholder except the right to be paid the fair value of the shareholder's 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, existing savings bank, or existing association was held adopting the agreement of consolidation, by a qualified and independent appraiser selected by the commissioner upon written request submitted by a dissenting shareholder entitled to receive the fair value of his or her shares. The appraiser selected shall file a written 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 appraisal. 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, existing savings bank, or existing association surrendered by the dissenting shareholders.

(3) The commissioner shall approve or disapprove an application submitted under this section in writing within 30 days after acceptance of the application or the last amendment or supplement to the application.

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

487.13707 Definitions; consolidation agreement; approval of terms and conditions.

Sec. 3707.

(1) As used in this section:

(a) "Consolidation agreement" means an agreement entered into among an existing bank, existing savings bank, or an existing association, and a new bank, and a new holding company that provides both of the following:

(i) That the existing bank, existing savings bank, or existing association and the new bank will be consolidated or merged.

(ii) That upon consummation of the consolidation or merger, the shares of capital stock of the existing bank, existing savings bank, or existing association will be converted into or exchanged for shares of the capital stock or other securities of the new holding company.

(b) "Existing association" means a stock association that is a party to a consolidation agreement and is engaged in the savings and loan business before the consolidation or merger provided for in the consolidation agreement.

(c) "Existing bank" means a bank or national banking association that is a party to a consolidation agreement and is engaged in the business of banking before the consolidation or merger provided for in the consolidation agreement.

(d) "Existing savings bank" means a stock savings bank that is a party to a consolidation agreement and is engaged in the savings bank business before the consolidation or merger provided for in the consolidation agreement.

(e) "New bank" means a bank or national banking association that is a party to a consolidation agreement and is not engaged in the business of banking before the consummation of the consolidation or merger provided for in the consolidation agreement.

(f) "New holding company" means a corporation that is not a bank, association, or national banking association and as to which all of the following apply:

(i) The corporation is a party to a consolidation agreement.

(ii) Before its acquisition of an existing bank, existing savings bank, or existing association pursuant to the consolidation agreement, the corporation does not have control of a bank, savings bank, association, or national banking association and has not transacted any business except business incidental to its organization and to the entering into, and performance of, the consolidation agreement.

(iii) Upon consummation of the consolidation or merger provided for in the consolidation agreement, the corporation will become a bank holding company as defined in section 2 of the bank holding company act.

(iv) Immediately after its acquisition of an existing bank, existing savings bank, or existing association under the consolidation agreement, the corporation will not have control of more than 1 bank or 1 national banking association.

(v) Before the acquisition of an existing bank, existing savings bank, or existing association under the consolidation agreement, the corporation is not, and immediately after acquisition of control of the existing bank, existing savings bank, or existing association shall not be, controlled by a bank holding company as defined in section 2(a)(2) of the bank holding company act.

(g) "Control" means control as defined in section 2 of the bank holding company act.

(2) A new holding company may apply to the commissioner for approval of the terms and conditions of the issuance of the shares or other securities of the new holding company into which the shares of an existing bank, existing savings bank, or existing association are to be converted, or for which the shares of the existing bank, existing savings bank, or existing association are to be exchanged, under a consolidation agreement, and for approval of the terms and conditions of the conversion or exchange. The application for approval shall be in a form, contain information, and be accompanied by documents as required by the commissioner. Within 30 days after the application is filed, the commissioner shall conduct a hearing upon the fairness of the terms and conditions at which all persons to whom it is proposed to issue the securities in the conversion or exchange shall have the right to appear. Within 20 days after the hearing, the commissioner shall either approve or disapprove the terms and conditions of the issuance and of the conversion or exchange. This subsection does not apply to the terms and conditions of the issuance and conversion or exchange of securities provided for in a consolidation agreement or to make unlawful any transaction that is lawful without regard to this subsection.

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

487.13708 Conversion of bank into stock association, stock savings bank, or national banking association.

Sec. 3708.

(1) Upon the affirmative vote of the shareholders representing more than 50% of the total number of shares of each class of its outstanding capital stock, a bank may be converted under the laws of this state into a stock association or stock savings bank or under the laws of the United States into a national banking association. The conversion of a bank into a stock association, stock savings bank, or national banking association shall not release the bank from its obligations to pay and discharge either of the following:

(a) All the liabilities created by law or incurred by the bank before becoming a stock association, stock savings bank, or a national banking association.

(b) Any tax imposed by this state up to the date of its becoming a stock association, stock savings bank, or national banking association in proportion to the time that has elapsed since the last preceding payment or assessment, penalty, or forfeiture imposed or incurred up to the date of its becoming a stock association, stock savings bank, or a national banking association.

(2) A conversion shall not be made to defeat or defraud any of the creditors of the bank.

(3) A certified copy of all resolutions relating to the proposed conversion adopted by the directors and shareholders of the bank shall be submitted to the bureau. If consent or approval is required by federal law, the bank shall provide the bureau with a certified copy of consent or approval of the appropriate federal regulator to the conversion.

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

487.13709 Conversion of depository institution.

Sec. 3709.

(1) With the approval of the commissioner and upon the affirmative vote of the shareholders representing more than 50% of the total number of shares of each class of its outstanding capital stock, a national banking association, stock association, or stock savings bank doing business in this state and having capital and surplus sufficient to entitle it to become a bank under this act may be converted into a bank if the conversion is not in contravention of any laws of the United States.

(2) A depository institution converting under subsection (1) may submit articles of incorporation executed by a majority of the directors of the national banking association, stock association, or stock savings bank. A majority of the directors, after executing the articles of incorporation, shall have the power to execute all other papers and to do whatever is required to complete its organization as a bank. The shares of the bank may continue to be for the same amount as they were before the conversion, and the directors may continue to be directors of the 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, stock association, or stock savings bank and on the action taken by its directors and shareholders with respect to the conversion. A conversion shall not be made to defeat or defraud any creditors. The commissioner may permit the converted bank to retain and carry assets of the converting national banking association, stock association, or stock savings bank which do not conform to the legal requirements relative to assets acquired and held by banks.

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

487.13710 Effect of conversion.

Sec. 3710.

If a conversion becomes effective under section 3708 or 3709, 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.

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

487.13711 Branch services.

Sec. 3711.

(1) A 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 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 bank of its intent to contract for branch services, a 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 bank. The commissioner may issue a written statement of intent not to object at any time prior to the expiration of the 30 days. This subsection shall not be construed to limit the powers granted to a bank under section 4101(1)(d).

(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 bank for the 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 prior to the expiration of the 30 days. This subsection shall not be construed to limit the powers granted to a bank under section 4101(1)(d).

(6) Subject to the requirements, limitations, and restrictions of subsections (1) to (3), a state agency or state foreign bank branch organized under this act may establish and operate additional offices in the United States and

its territories and protectorates.

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

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

(9) A foreign bank branch that has designated a home state other than this state may establish and operate 1 or more additional offices in this state.

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

(11) Each bank, out-of-state bank, foreign bank, and national 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.

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

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

487.13712 Discontinuing branch operations; transfer of functions to principal office.

Sec. 3712.

(1) If a bank or foreign bank permanently discontinues the operations of any branch, foreign bank agency, or foreign bank branch, all functions of the branch, foreign bank agency, or foreign bank branch shall be considered transferable to, and treated as a part of, the principal office of the bank or, in the case of a foreign bank, the principal office in this country.

(2) A bank, out-of-state bank, national bank, or foreign bank shall notify the commissioner in writing before discontinuing operations of a branch, foreign bank agency, or foreign bank branch.

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

487.13713 Principal office; relocation.

Sec. 3713.

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

(2) Unless the commissioner objects in writing within 60 days after receipt of written notice from the bank of its intent to relocate its principal office, a 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 bank. The commissioner may issue a written statement of intent not to object at any time before expiration of the 60 days.

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

487.13714 Branch office in foreign country; applicable provisions.

Sec. 3714.

Notwithstanding section 1105 of the uniform commercial code, both of the following apply:

(a) A bank which has 1 or more branch offices in a foreign country shall be liable for contracts to be performed and for deposits to be repaid at any branch office in that foreign country to no greater extent than a bank, banking corporation, or other organization or association for banking purposes organized and existing under the laws of the foreign country would be liable under its laws. The laws of the foreign country for the purpose of this section are considered to include all acts, decrees, regulations, and orders promulgated or enforced by a dominant authority asserting governmental, military, or police power of any kind at the place where the branch office is located, whether or not the dominant authority is recognized as a de facto or de jure government.

(b) If by action of a dominant authority that is not recognized by the United States as the de jure government of the foreign territory concerned, any property situated in or any amount to be received in the foreign territory and carried as an asset of a branch office of the bank in the foreign territory is seized, destroyed, or canceled, the liability of the bank for any deposit received and to be repaid by it, and for any contract made and to be performed by it, at any branch office in the foreign territory shall be reduced pro tanto by the proportion that the value, as shown by the books or other records of the bank at the time of the seizure, destruction, or cancellation of the assets bears to the aggregate of all the deposit and contract liabilities of the branch offices of the bank in the foreign territory, as shown at the time by the books or other records of the bank.

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

Part 8 CAPITAL

487.13801 Issuance of capital notes, debentures, or other instrument of indebtedness.

Sec. 3801.

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

(2) In connection with the issuance of convertible capital notes, debentures, or any other instrument of indebtedness, the commissioner may grant approval for the bank to reserve a number of authorized and unissued shares of capital stock as shall be required for issuance in exchange for capital notes and debentures with respect to which conversion privileges exist. If capital notes, debentures, or any other instruments of indebtedness are converted into shares of common or preferred stock, a verified certificate executed by the president of the bank stating the amount of the conversion, and other information with respect to the conversion as the commissioner may require, shall be filed in the office of the commissioner.

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

487.13802 Issuance of shares; number; classes; designations.

Sec. 3802.

(1) A bank may issue the number of shares authorized in its articles of incorporation. The shares may be all of 1 class or may be divided into 2 or more classes. Each class shall consist of shares having the designations and relative voting, distribution, dividend, liquidation, and other rights, preferences, and limitations, consistent with this

act as stated in the articles of incorporation of the issuing bank.

(2) If the shares are divided into 2 or more classes, the shares of each class shall be designated in a manner to distinguish them from the shares of other classes.

(3) Subject to the designations, relative rights, preferences, and limitations applicable to separate series, each share shall be equal to every other share of the same class.

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

487.13803 Stock certificates.

Sec. 3803.

(1) Except as provided in subsection (2), the shares of a bank shall be represented by certificates of stock that shall be issued to every shareholder and transferable on the books of the 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 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 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 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 bank.

(3) If the registered holder of stock of a bank is liable to the bank as principal debtor, surety or otherwise for any debt which is due and unpaid, the directors of the 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 3808. This section does not prevent the 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 sections 3807 and 3808, the rights of a bank in its stock in which the shareholder is liable to the bank as principal debtor, surety, or otherwise is subject to any pledge, sale, or other transfer of the stock that is made before the maturity of an indebtedness of the registered holder of the stock to the bank and of which the bank has knowledge before the maturity, whether or not the stock was transferred on the books of the bank. Any stock of a bank that is pledged, sold, or otherwise transferred before the maturity of any indebtedness of the registered holder of the stock to the bank and of which pledge, sale, or other transfer the bank has knowledge before the maturity, may be transferred on the books of the bank after the maturity without the consent of the board of directors of the bank. The rights of a bank in its stock under this section, including the limitation on transferability if the registered holder is liable to the bank for any debt that is due and unpaid, shall not be applicable with respect to any stock duly listed on any stock exchange.

(5) Each certificate issued after the effective date of this act shall state all of the following:

(a) The name and address of the principal office of the 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 bank so long as the registered holder is liable as principal debtor, surety, or otherwise to the 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 bank and, optionally, the seal of the bank.

(6) 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 bank.

(d) The seal of the bank.

(7) 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 bank, the certificate, nevertheless, may be adopted by the bank and delivered as though the person who signed it or whose facsimile signature has been used on the stock had not ceased to be an officer.

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

487.13804 Capital stock; increase.

Sec. 3804.

(1) By a vote of shareholders owning $\frac{2}{3}$ of each class of the stock entitled to vote, a 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 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 bank. The certificate shall be conclusive evidence that the stock has been duly and validly issued.

(3) In the case of the issuance of new stock, in voting upon the increase of capital stock, $\frac{2}{3}$ 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 bank, with the approval of the commissioner and by a vote of shareholders owning $\frac{2}{3}$ of each class of the stock entitled to vote, for the stated purpose of providing stock options for 1 or more employees, 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 bank from time to time for this purpose but for no other purpose, as options are exercised and payment for the stock is received, free from any preemptive rights to subscribe for stock.

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

487.13805 Capital stock; reduction.

Sec. 3805.

(1) By a vote of shareholders owning $\frac{2}{3}$ of the bank's stock entitled to vote, a bank may reduce its capital stock. The reduction may be accomplished by a reduction in the par value of the existing stock or by a reduction in the number of the shares of stock. A reduction shall not be made until the amount of the proposed reduction has been approved by the commissioner.

(2) The approval of the commissioner shall be based upon a finding that the security of existing creditors of the bank will not be impaired by the proposed reduction. This section does not discharge any bank from any obligation that may be due from the bank.

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

(4) A shareholder shall not be entitled to any distribution of cash or other assets by reason of any reduction of the common capital of any bank unless the distribution has been approved by the commissioner and by the affirmative vote of at least $\frac{2}{3}$ of the shares of each class of stock outstanding, voting as classes.

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

487.13806 Dividends.

Sec. 3806.

(1) From time to time, the board of directors of a bank may declare and pay dividends on the common stock of the bank consistent with this section.

(2) A cash dividend or dividend in kind shall not be declared or paid unless the bank will have a surplus amounting to not less than 20% of its capital after the payment of the dividend.

(3) A cash dividend or dividend in kind shall not be declared by a bank except out of net income then on hand after deducting its losses and bad debts. Unless the debts due the bank on which interest is past due and unpaid for a period of 6 months are well secured and in process of collection or the debts constitute claims against solvent estates in probate, all debts shall be considered bad debts within the meaning of this section.

(4) 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. By their unanimous vote, the preferred shareholders may waive their right to any amount of the accumulated but unpaid dividends.

(5) If at any time the surplus of a 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 6 months in the case of quarterly or semiannual dividends, or not less than 10% of its net income of the preceding 2 consecutive 6-month periods in the case of annual dividends. For the purpose of this section, any amounts transferred to a fund for the retirement of any preferred stock of the bank out of its net income for the periods are 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. In this case, the bank shall be obligated to credit to surplus the amounts transferred into the retirement fund on account of the preferred stock as the stock is retired.

(6) Without regard to the limitations of this section and section 3804, a bank, with the approval of the commissioner, and by vote of shareholders owning 2/3 of the stock entitled to vote, may amend its articles to 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.

(7) A bank may pay dividends on its preferred stock at the applicable rate without regard to subsections (1) through (6).

(8) Dividends paid to shareholders under a dividend reinvestment plan shall be subject to this act relative to payment of dividends.

(9) A dividend shall not be paid from capital or surplus of the bank.

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

487.13807 Deficiency; steps to make assessment or dissolution; extension.

Sec. 3807.

(1) If, in the opinion of the commissioner, the capital of a bank has become impaired, the commissioner shall notify the 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 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 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 section 3808. 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 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 bank or take steps to dissolve the 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 bank in accordance with this act.

(5) If any part of the capital of a bank consists of preferred stock, the determination of whether the capital of the 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 bank.

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

487.13808 Distribution of sale proceeds; issuance of new certificates; effect of uniform commercial code.

Sec. 3808.

(1) If, 30 days after notice as provided in section 3807, 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 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 bank before distribution of the proceeds is completed. Unless the holder of a security interest provides reasonable proof of the interest, the bank does not have to comply with this subdivision.

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

(2) 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.

(3) 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 bank shall issue new certificates to the purchaser.

(4) The purchaser takes the stock free of any rights or interests the shareholder may have based on an unintentional failure by the bank to comply with this section or section 3807 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 bank, a secured party, other bidders, or the bank.

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

(5) The ability of a bank to make an assessment under section 3807 or to sell the stock of a shareholder under this section is not limited by the uniform commercial code.

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

Part 9 ADMINISTRATION

487.13901 Repayment of deposits.

Sec. 3901.

Deposits shall be repaid to the depositor, or the depositor's lawful representatives, according to the terms of the agreement between the depositor and the bank.

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

487.13902 Compliance review committee.

Sec. 3902.

(1) An officer or the board of directors of a bank may appoint a compliance review committee to evaluate loan underwriting standards, asset quality, financial reporting to federal or state regulatory agencies, compliance with the bank's policies, compliance with federal or state statutory or regulatory requirements, or other related matters.

(2) Any documents, data, compilations, analyses, or other information and material gathered, generated, created, produced, developed, or prepared by or for a compliance review committee by 1 or more employees of the bank or by 1 or more other persons retained by the bank to assist the compliance review committee in performing its functions shall be considered compliance review material.

(3) A document, compilation, analysis, or item of information, data, or material remains compliance review material under this section even if it is delivered or disclosed to employees of the bank who are not members of the compliance review committee or to attorneys, accountants, auditors, consultants, or other professional advisers retained by the bank or to 1 or more other persons retained by the bank to assist the committee in performing its functions or to evaluate the committee.

(4) Except as provided in subsection (5), compliance review material is confidential and is not discoverable or admissible in evidence in any civil action.

(5) Subsection (4) does not apply to any information required by statute or regulation to be maintained by or provided to a governmental entity to the extent that law requires the governmental entity to disclose the information for discovery or admission into evidence.

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

487.13903 Surety bond.

Sec. 3903.

(1) The board of directors shall require every employee involved in the handling of money, accounts, or securities of the bank to be bonded by a surety company authorized to do business in this state in an amount determined by the board. The bank shall pay for any surety bonds required of its employees.

(2) Every bank shall maintain a financial institution bond sufficient to protect against loss. If a bank refuses to comply with this requirement, the commissioner may contract for the bond and charge the cost to the bank. If the charge is not paid, the commissioner may collect the charge in an action instituted by the attorney general.

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

487.13904 Indemnification.

Sec. 3904.

(1) A bank may indemnify a person described in subsection (2) who was or is a party or is threatened to be made a party to any type of threatened, pending, or completed action, suit, or proceeding, other than an action by or in the right of the bank, against expenses, including attorney 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 or not opposed to the best interests of the bank or its shareholders and with respect to a criminal action or proceeding had no reasonable cause to believe his or her conduct was unlawful.

(2) Subsection (1) applies to a person who is or was a director, officer, employee, or agent of the bank or is or was serving at the request of the bank 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.

(3) 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, of itself, 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 or not opposed to the best interests of the bank or its shareholders and with respect to a criminal action or proceeding had no reasonable cause to believe his or her conduct was unlawful.

(4) A 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 bank to procure a judgment in its favor by reason of the fact that he or she is or was a director, officer, employee, or agent of the bank or is or was serving at the request of the bank as a director, officer, partner, trustee, employee, or agent of another bank or national banking association, foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, against expenses, including actual and reasonable attorney 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 or not opposed to the best interests of the bank or its shareholders. Indemnification shall not be made for a claim, issue, or matter in which the person has been found liable to the bank except as authorized in subsection (5).

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

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

487.13905 Indemnification; expenses and amounts.

Sec. 3905.

(1) To the extent that a director, officer, employee, or agent of a bank has been successful on the merits or otherwise in defense of an action, suit, or proceeding described in section 3904, or in defense of a claim, issue, or matter in the action, suit, or proceeding, he or she shall be indemnified against actual and reasonable expenses, including attorney 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 in this subsection.

(2) An indemnification under section 3904, unless ordered by the court, shall be made by the 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 3904 and upon an evaluation of the reasonableness of expenses and amounts paid in settlement. This determination and evaluation shall be made in any of the following ways:

(a) By a majority vote of a quorum of the board consisting of directors who are not parties or threatened to be made parties to the action, suit, or proceeding.

(b) If the quorum described in subdivision (a) is not obtainable, by majority vote of a committee duly designated by the board and consisting solely of 2 or more directors not at the time parties or threatened to be made parties to the action, suit, or proceeding.

(c) By independent legal counsel in a written opinion, which counsel shall be selected in 1 of the following ways:

(i) By the board or its committee in the manner prescribed in subdivision (a) or (b).

(ii) If a quorum of the board cannot be obtained under subdivision (a) and a committee cannot be designated under subdivision (b), by the board.

(d) By all independent directors who are not parties or threatened to be made parties to the action, suit, or proceeding.

(e) By the shareholders, but shares held by directors, officers, employees, or agents who are parties or threatened to be made parties to the action, suit, or proceeding may not be voted.

(3) All directors may participate in the designation of a committee under subsection (2)(b) or in the selection of independent legal counsel under subsection (2)(c)(ii).

(4) If a person is entitled to indemnification under section 3904 for a portion of expenses, including reasonable attorney fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount of the expenses, the bank may indemnify the person for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.

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

487.13906 Director, officer, employee, or agent as party to action; reimbursement.

Sec. 3906.

A 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 section 3904 in advance of the final disposition of the action, suit, or proceeding if all of the following apply:

(a) The person furnishes the 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 section 3904.

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

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

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

487.13907 Other rights to indemnification or advancement; limitation.

Sec. 3907.

The indemnification or advancement of expenses provided by or granted under sections 3904, 3905, and 3906 are not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under the articles of incorporation, the bylaws, or a contractual agreement. The total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses. The indemnification provided for in sections 3904, 3905, and 3906 continues as to a person who ceases to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of the person.

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

487.13908 Liability insurance or trust fund.

Sec. 3908.

A bank has the power to purchase and maintain insurance or create a trust fund or other form of funded arrangement on behalf of any person who is or was a director, officer, employee, or agent of the bank or is or was serving at the request of the bank as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, against any liability asserted against him or her and incurred by him or her in that capacity or arising out of his or her status in that capacity, whether or not the bank has the power to indemnify him or her against the liability under sections 3904, 3905, 3906, and 3907.

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

487.13909 Consolidation or merger; position of director, officer, employee, or agent of absorbed depository institution.

Sec. 3909.

For purposes of this section and sections 3904, 3905, 3906, 3907, 3908, and 3910, a person who is or was a director, officer, employee, or agent of a depository institution absorbed in a consolidation or merger or is or was serving at the request of the depository institution as a director, officer, partner, trustee, employee, or agent of another depository institution, foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, shall hold the same position with respect to the consolidated bank as he or she would if he or she had served the consolidated bank in that capacity.

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

487.13910 Definitions; person acting in best interests of bank or shareholders.

Sec. 3910.

(1) For the purposes of sections 3904, 3905, 3906, 3907, 3908, and 3909:

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

(b) "Other enterprise" includes employee benefit plans.

(c) "Serving at the request of the bank" includes any service as a director, officer, employee, or agent of the bank that imposes duties on, or involves services by, the director, officer, employee, or agent with respect to an employee benefit plan, its participants, or its beneficiaries.

(2) A person who acted in good faith and in a manner he or she reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be considered to have acted in a manner not opposed to the best interests of the bank or its shareholders as referred to in section 3904.

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

487.13911 Reports.

Sec. 3911.

(1) The commissioner may require reports from any bank if, in the commissioner's judgment, they are necessary to inform the commissioner fully as to the condition of the bank. The commissioner shall give a bank at least 30 days' notice in writing of the date by which the report is to be submitted to the bureau.

(2) A bank that fails to make, and transmit, any report required under this section shall be subject to a penalty established by the commissioner not to exceed \$1,000.00 for each day after the date for making the report established by the commissioner in subsection (1). The commissioner may maintain an action against a bank for the recovery of the penalty.

(3) A penalty assessed under this section shall be paid into the state treasury to the credit of the bureau and used only for the operation of the bureau.

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

487.13912 Attachment or execution.

Sec. 3912.

Attachment or execution shall not be issued against a bank or its property before final judgment in any suit, action, or proceeding involving the bank in any court.

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

487.13913 Action taken or event occurring on or before November 29, 1995.

Sec. 3913.

A written agreement entered into under section 130b of former 1969 PA 319 shall remain in effect with regard to actions taken and events occurring on or before November 29, 1995. A cause of action shall not accrue under an agreement for an action taken or event occurring after November 29, 1995.

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