

BANKING CODE OF 1999 (EXCERPT)
Act 276 of 1999
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 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, 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 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 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 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