CHAPTER 221.

STATE BANKS.

221.01 State banks. (1) APPLICATION. Any number of adult persons, citizens of Wisconsin, not less than seven nor more than twenty, desiring to associate for the purpose of organizing a banking corporation under this chapter, shall make application to the banking commission in such manner as may be prescribed on a form furnished by it.

(2) CONTENTS. Such application shall be prepared and filed in duplicate, and shall set forth:

(a) The location of the proposed corporation.

(b) The character of the business to be transacted.

(c) The proposed capital.

(d) The full name, residence, and occupation of each applicant.

(e) Such other information as the banking commission may require.

(3) NOTICE. Upon receipt by the banking commission of such application properly executed, it shall, within five days, forward to the applicants a copy of an official notice of application for authority to organize a bank, containing such information as shall make known to the public the facts specifically required by statute to be given in the application, and assigning a date and place for hearing on the application. Such notice shall be published once each week for four successive weeks by the applicants, at their own expense, in a newspaper published in the city, town, village, or place where such bank is to be located; or, if no newspaper is published therein, in a newspaper published in the county in which such place is located; or, if none is published in such county, then the newspaper published at the nearest county seat in an adjoining county. Following the last publication, proof of publication shall be filed with the banking commission in such form as it may require. The commission may waive the requirement of publication herein contained where the bank to be organized is to replace, absorb or consolidate one or more existing banks.

(4) FEE. The applicants shall pay to the banking commission fifty dollars to defray the cost of the investigation of the application, which sum shall be paid into the state treasury.

(5) INVESTIGATION. The banking commission shall thereupon ascertain at the hearing and from the best sources of information at its command, and by such investigation as it may deem necessary, whether the character, responsibility and general fitness of the persons named in such application are such as to command confidence and to warrant the belief that the business of the proposed corporation will be honestly and efficiently conducted in accordance with the intent and purpose of this chapter; and whether public convenience and advantage will be promoted by allowing such bank to organize; and it also shall investigate the character and experience of the proposed officers, the adequacy of existing banking facilities, and the need of further banking capital; the outlook for the growth and development of the city, town or village in which such bank is to be located, and the surrounding territory from which patronage would be drawn; the methods and banking practices of the existing bank or banks; the interest rate which they charge to borrowers; the character of the service which they render the community, and the prospects for the success of the proposed bank if efficiently managed. Such investigation shall be completed within ninety days from the filing in the office of the banking commission of proof of publication and the making of the deposit herein required, but in the event a majority of the applicants and the banking commission mutually agree to it, the time may be extended an additional period of sixty days.

(6) DECISION. After completing such investigation the commission shall make a written report to the banking review board stating the results of its investigation and its recommendation. The board shall consider the matter, conducting any necessary hearing, and promptly make its decision approving or disapproving the organization of the proposed bank. Such decision shall be final except for review in court. If approval is given, the commission shall indorse on each of the original applications the word "Approved" over its official signature. If disapproved, it shall indorse the word "Disapproved" over its official signature. One of the duplicate originals shall be filed in its office and one returned by mail to the applicants.

(10) CERTIFICATE OF AUTHORITY. In the event of the approval of the application for authority to organize a banking corporation, the banking commission shall issue to the applicants, who shall thereafter be known as the corporators, a certificate of authority conferring upon them such powers as are incidentally or necessarily preliminary to the organization of a banking corporation. These powers shall include the effecting of a temporary organization, consisting of a chairman, a secretary, and a treasurer; the execution and filing of articles of incorporation; the making of rules for the procedure of the corporators and the conduct of the first meeting of the stockholders; the opening of subscription books for stock; the securing of an option on real estate to be used as a banking house; the fixing of an amount at which the stock shall be sold; the collection of subscriptions to the stock; the selection of a depository for such funds as may be collected; the appointment of and acting by any agent or agents, and the compilation of a set of by-laws for submission to the stockholders.

(11) TEMPORARY ORGANIZATION. The chairman of the corporators shall preside at all meetings and shall exercise such other duties as ordinarily pertain to the position. The secretary shall attend to the correspondence of the corporators, shall record fully all proceedings of meetings of the corporators, shall file and preserve all documents and papers of the organization, and shall attend to the filing of the necessary papers with the banking commission. The treasurer shall receive all moneys paid in on subscriptions to stock or for other purposes, keep a true account thereof, shall deposit such funds in the designated depository, and shall pay such valid orders as may be drawn on him. The corporators shall require a bond in a suitable amount from the treasurer, and other officers and agents who may handle the funds of the proposed bank. Claims against the organization shall be audited by the corporators, and record of action thereon noted in the minutes. If ordered paid, an order shall be drawn upon the treasurer and signed by the president and secretary. The corporators shall until the completion of the organization exercise such other powers as are conferred upon the corporators by the statutes relating to other corporations, so far as such powers shall not be in conflict with the limitations of this chapter, and shall be applicable.

(12) CAPITAL. The aggregate amount of the capital stock of any bank hereafter organized shall not be less than thirty thousand dollars in towns, villages or cities having five thousand inhabitants or less; and shall not be less than seventy-five thousand dollars in any city or village having more than five thousand and less than twenty thousand inhabitants; and shall not be less than one hundred thousand dollars in any city or village having twenty thousand or more and less than two hundred thousand inhabitants; and shall not be less than two hundred thousand dollars in any city having a population of two hundred thousand inhabitants or more according to the last official census.

(13) TRUST COMPANY BANK; REORGANIZATION. Any trust company bank may, by

amendment to its articles of incorporation, duly adopted by its stockholders and approved by the banking commission, in the manner prescribed for by section 221.25 of the statutes, convert its corporate organization into that of a state bank with all the powers of a state banking corporation under the statutes under such name as shall be declared by such amendment and approved by the banking commission, which name may include the word "trust." Such converted corporation shall continue to have all the powers previously held by it as a trust company bank and shall be a continuation for all purposes whatsoever of the trust company bank so converted into a state bank, including holding and performing any and all trusts and fiduciary relations of whatsoever nature of which said trust company bank was fiduciary at the time of such conversion, and also including its appointment in any fiduciary capacity by any court or otherwise, and the holding, accepting and performing of any and all trusts and fiduciary relations whatsoever as to or for which said trust company bank may have been appointed, nominated or designated by any will or conveyance or otherwise, whether or not such trust or fiduciary relation shall have come into being and taken effect at such conversion. Whenever and if any such converted corporation shall have been fully discharged of and from any and all trusts committed to it, it may, by amendment to its articles of incorporation, duly adopted by its stockholders and approved by the banking commission, surrender its powers to act in a fiduciary capacity and eliminate from its corporate name and style the word "trust;" and may thereupon withdraw from the state treasurer all securities by it deposited with him pursuant to section 223.02 of the statutes.

(14) NAME. Every bank incorporated under this section shall be known as a state bank. [*Spl. S. 1931 c. 10 s. 11, 12, 13; Spl. S. 1931 c. 26 s. 1; 1935 c. 245; 1937 c. 284 s. 3*]

221.02 Promotion commission prohibited. No individual, partnership or corporation shall directly or indirectly receive or contract to receive any commission, compensation, bonus, right or privilege of any kind for organizing any banking corporation in this state, or for securing a subscription to the original capital stock of any banking corporation in this state, or to any increase thereof; provided, that this section shall not be construed as prohibiting an attorney or attorneys at law from receiving reasonable compensation for legal service in connection therewith. Each and every individual, partnership or corporation violating the provisions of this section shall forfeit to the state one thousand dollars for each and every such violation and in addition thereto double the amount of such commission, compensation or bonus.

Note: Section 221.02, relating to commission, is applicable to the organization of savings banks. Guardian Agency v. Guardian Mut. Savings Bank, 227 W 550, 279 NW 79.

221.03 Articles of incorporation. (1) The articles of incorporation shall be filed with the banking commission within sixty days from the date of the certificate of authority to organize has been approved, and if not filed within that period all rights of the corporators shall cease and the certificate of authority to organize be null and void.

(2) The articles of incorporation shall be executed in triplicate, and shall be signed by not less than seven nor more than twenty-one persons, including a majority of the corporators. All signers shall be citizens of the state of Wisconsin and subscribers to stock of the bank. Such articles shall contain:

(a) The declaration that they associate for the purpose of forming a banking corporation under and pursuant to the privileges and restrictions of this chapter, stating whether it is a state bank, trust company bank, or other type of corporation to which this chapter may apply.

(b) The name of such bank, which name shall be subject to the approval of the banking commission, shall not be in any material respect similar to the name of any bank existing or which may have heretofore existed in the same county or in any adjoining county within the radius of fifty miles, and which name, except in the case of a bank organized as a mutual savings bank, shall not contain the word "savings."

(c) The particular village, town or city, and the county where such bank is to be located.

(d) The amount of the capital stock.

(e) The limitation, if any, on the duration of its existence.

Such articles may also contain any other lawful provisions defining and regulating the powers or business of the bank, its officers or directors; the transfer of its stock and the disposition of new stock which may be created by the original capital being increased by amendment to the articles.

(3) The banking commission shall, within its discretion, approve or disapprove such articles of incorporation. If approved, the banking commission shall indorse on each of the three triplicate originals the word "approved." One of such originals it shall file in its office, and to the two remaining originals it shall attach a certificate showing the date of filing, the approval and date of approval, and return the same to the corporators. One

of such originals shall be filed with the records of the bank, and the other shall be recorded in the office of the register of deeds of the county in which such banking corporation is located. No bank shall until its articles be left for record with the register of deeds have legal existence, nor be authorized to exercise any other powers than those incidentally or necessarily preliminary to its organization.

(4) A fee of one hundred dollars shall be paid to the banking commission when the articles of incorporation are filed, and the banking commission shall pay such fee into the state treasury.

(5) A certificate signed by the register of deeds, showing the articles have been filed in his office, shall be returned to the banking commission.

(6) Within ninety days from the filing of the articles of incorporation, the corporators shall file with the banking commission, in duplicate, a complete list of the stockholders of the proposed bank, showing the number of shares held by each, the post-office address, and the approximate worth of each.

(7) Within the same period the corporators shall also file a declaration subscribed and sworn to by each of them, setting forth to the best of their knowledge and belief:

(a) That all stockholders have subscribed for the stock accredited to them in list of stockholders, in good faith and not as the representative or agent of any corporation or other person.

(b) That all stockholders are possessed of a sufficient amount of property in this state, over lawful exemptions, to make the double liability imposed on stockholders of a bank by section 221.42, collectible.

(c) That no individual, partnership, or corporation has, directly or indirectly, by any of them been paid any commission, compensation, or bonus, or been given any right or privilege of any kind; nor has any contract or agreement been entered into for payment at any future time of any commission, compensation, or bonus; nor has any promise or agreement, direct or indirect, been entered into to give or allow any person, partnership, or corporation any concession, contract, or privilege.

(d) That twenty per cent of each stock subscription has been paid in lawful money.

(e) That no corporator has entered into any agreement or promise that the bank when open shall loan to any stockholder funds for the purpose of paying any indebtedness that may have been incurred by a stockholder to obtain funds to make payment for stock.

(f) That all money received in payment of stock subscriptions, except such amount as may have been paid out by order of the corporators, is on deposit to the credit of the corporators in the depository bank. [*1935 c. 245; 1937 c. 284 s. 3*]

221.04 Powers. (1) GENERAL. Upon the execution and filing of the articles of incorporation with the banking commission and the approval by the commission, and upon the filing of an approved copy of such articles with the register of deeds of the county in which the bank is to be located, the bank shall become a body corporate, and in addition to the powers conferred by the general corporations law, subject to the restrictions and limitations contained in this section, having the following powers:

(a) To make contracts necessary and proper to effect its purpose and conduct its business.

(b) To sue and be sued; to appear and defend in all actions and proceedings under its corporate name to the same extent as a natural person.

(c) To adopt and use a corporate seal and alter the same at pleasure.

(d) To elect or appoint the necessary officers, agents and servants, define their duties and obligations, fix their compensation, dismiss them, fill vacancies, and require bonds.

(e) To make, amend, and repeal by-laws and regulations, not inconsistent with law or its articles of incorporation, for its own government, for the orderly conduct of its affairs and the management of its property, for determining the manner of calling and conducting its meetings, and such others as shall be necessary or convenient for the accomplishment of its purpose; provided, that such by-laws shall provide for safe and orderly conduct of the corporation's business and for the protection of its depositors and stockholders, and no by-laws or regulations, or amendments or repeal thereof, shall become of effect until approved by the banking commission.

(f) To exercise by its board of directors, or duly authorized officers or agents, subject to law, all such incidental powers as shall be usual and necessary to carry on the business of banking; by buying, discounting, and negotiating promissory notes, bonds, drafts, bills of exchange, foreign and domestic, and other evidences of debt; by buying and selling coin and bullion; by receiving commercial and savings deposits under such regulations as it may establish; by buying and selling exchange, and by loans on personal and real security as hereafter provided; but no bank shall establish more than one office of deposit and discount or establish branch offices or branch banks, provided that this prohibition shall not apply to any branch office or bank established prior to May 14, 1909.

(g) To have succession until it is dissolved by the act of its shareholders owning two-thirds of its stock, or until its corporate existence becomes terminated by provision of its articles of incorporation or its franchise becomes forfeited by some violation of the law.

(h) To deposit with the treasurer of the United States so much of its assets not exceeding its capital and surplus as may be necessary under the act of congress, approved June 25, 1910, and all amendments thereof, to qualify as a depository for postal savings funds and other government deposits.

(2) SAFETY DEPOSITS; LIEN. Any bank may take and receive from any individual or corporation for safe-keeping and storage, gold and silver plate, jewelry, money, stocks, securities, and other valuables or personal property; and rent out the use of safes or other receptacles upon its premises upon such compensation as may be agreed upon. Such bank shall have a lien for its charges on any property taken or received by it for safe-keeping, and in case such lien shall not be paid within two years from the date it accrues, or in case any property so taken or received by it shall not be called for by the person or persons depositing the same, or his or their legal representatives or assigns, within two years from the date of the accruing of any lien upon the same, such bank may sell such property at public auction upon like notice as is required by law for sales of personal property on execution, and after retaining from the proceeds of such sale all the liens and charges due and owing and the reasonable expenses of the sale, shall pay the balance thereof to the person or persons so depositing such property, or his or their legal representatives or assigns.

(3) MEMBERSHIP AND INVESTMENTS IN FEDERAL RESERVE BANK AND NATIONAL CREDIT CORPORATION. (a) Any bank may purchase and hold, for the purpose of becoming a member of the federal reserve bank, so much of the capital stock thereof as will qualify it for membership in such reserve bank pursuant to an act of congress, approved December 23, 1913, entitled the "Federal Reserve Act;" may become a member of such federal reserve bank, and may have and exercise all powers, not in conflict with the laws of this state, which are conferred upon any such member bank by the "Federal Reserve Act." Such member bank and its directors, officers, and stockholders shall continue to be subject, however, to all liabilities and duties imposed upon them by any law of this state.

(3m) AUTHORITY OF BANKS TO SECURE BENEFITS OF FEDERAL BANKING ACT. Any state bank, mutual savings bank or trust company bank may, by action of its board of directors, enter into such contracts, incur such obligations and generally do and perform any and all such acts and things whatsoever as may be necessary or appropriate in order to take advantage of any and all memberships, loans, subscriptions, contracts, grants, rights or privileges, which may at any time be available or inure to banking institutions or to their depositors, creditors, stockholders, conservators, receivers or liquidators, by virtue of those provisions of section 8 of the federal "Banking Act of 1933" (section 12b of the federal reserve act as amended) which establish the federal deposit insurance corporation and provide for the insurance of deposits, or of any other provision of that or of any other act or resolution of congress to aid, regulate or safeguard banking institutions and their depositors including any amendments of the same or any substitutions therefor; also to subscribe for and acquire any stock, debentures, bonds or other types of securities of the federal deposit insurance corporation and to comply with the lawful regulations and requirements from time to time issued or made by such corporation. Such bank and its directors, officers and stockholders shall continue to be subject, however, to all liabilities and duties imposed upon them by any laws of this state.

(4) STOCK IN NATIONAL BANKS. Any bank may, with the approval of the banking commission, invest an amount not exceeding in the aggregate ten per centum of its paid-in capital stock in the stock of one or more banks or corporations chartered or incorporated under the laws of the United States, and principally engaged in international or foreign banking, or banking in a dependency or insular possession of the United States either directly or through the agency, ownership or control of local institutions in foreign countries, or in such dependencies, or insular possessions; including the stock of one or more banks or corporations chartered or incorporated under section 25*a* of the federal reserve act, as approved December 24, 1919.

(5) INFORMATION TO COMMISSIONER; STOCK HOLDINGS. Every such bank investing in the capital stock of banks or corporations as provided herein shall be required to furnish information concerning the condition of such banks or corporations to the banking commission upon demand. If at any time the banking commission shall ascertain or believe that any regulations prescribed by it with reference to such business are not being complied with, said banking commission is hereby authorized and empowered to institute an investigation of the matter in order to satisfy itself as to the actual nature of the transactions referred to. Should such investigation result in establishing the failure of the corporation in question, or of the bank or banks which may be stockholders therein, to comply with the regulations laid down by the said banking commission, such bank or

banks may be required to dispose of stock holdings in said corporation upon reasonable notice.

(6) TRUST POWERS. When thereto authorized by the banking commission, and if and after it shall have in good faith complied with all requirements of law and fulfilled all the conditions precedent to the exercise of such powers imposed by law upon trust company banks, any state bank may act as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics, and in any other fiduciary capacity in which trust company banks are permitted to act. Any state bank so authorized by the banking commission shall comply with section 223.02 before exercising such authority and shall be thereupon entitled to the same exemption as to making and filing any oath or giving any bond or security as is conferred on trust company banks by subsection (8) of section 223.03. In passing upon application for permission to exercise such fiduciary powers, the banking commission may take into consideration the amount of capital and surplus of the applying bank, whether or not such capital and surplus is sufficient under the circumstances, the needs of the community to be served, and any other facts and circumstances that seem to it material, and may grant or refuse the application accordingly; provided, that no special authorization shall be issued to any such bank having a capital less than the capital from time to time required by law of a national bank exercising fiduciary power in the same place. If satisfied that such bank has in good faith complied with all the requirements of law and fulfilled all the conditions precedent to the exercise of such powers imposed by law, the banking commission may within six months after the date on which the application of such bank was filed, issue under its hand and official seal, in triplicate, a special authorization certificate to such bank. Such certificate shall state that the bank named therein has complied with the provisions of law applicable to banks exercising fiduciary powers, and is authorized to exercise the same. One of the triplicate special authorization certificates shall be transmitted by the banking commission to the bank thereby authorized to exercise fiduciary powers; another shall be filed and recorded in the office of the banking commission, and the third shall be recorded at the expense of such bank in the office of the register of deeds of the county in which such bank is located. In the conduct of its business under or in connection with such authorization to exercise fiduciary powers every bank so authorized shall comply with and be governed by all the provisions of law from time to time applicable to individuals acting in a similar capacity.

(6a) TRUST FUNDS, HOW KEPT. Every such bank exercising trust powers shall keep its trust accounts in books separate from its other books of account. All funds and property held by it in a trust capacity shall, at all times, be kept separate from the other funds and property of the bank, except that uninvested trust funds may be deposited in an account in such bank or in any other bank, provided any such bank is a member of the Federal Deposit Insurance Corporation. All such deposits of uninvested trust funds shall be deposited as trust funds to its credit as trustee and not otherwise. All bank accounts comprising trust funds so deposited shall, in the event of insolvency or liquidation of any bank in which such accounts are maintained, have preference and priority in all assets of such bank over its general creditors without the necessity of tracing or identifying such trust funds.

(7) SALE OF U. S. BONDS. Any state bank, mutual savings bank or trust company bank may, by resolution of its board of directors authorizing such action, act whenever designated by the secretary of the treasury of the United States or by any other instrumentality of the United States, as agent for said secretary of the treasury or other instrumentality of the United States in the sale of bonds or other obligations of the United States or in such other matters as said secretary of the treasury or other instrumentality of the United States may designate. Any of said institutions may enter into such contracts, incur such obligations or make such investment or pledge of its assets and generally do and perform all such acts and things whatsoever as may be necessary or appropriate in order to exercise the powers hereby granted. Provided, however, that any state bank, mutual savings bank or trust company bank may exercise such powers only upon express approval previously granted by the banking commission of Wisconsin, and in such manner and to such extent as said banking commission may in its discretion approve, and with such limitations upon the exercise of said powers as said banking commission may in its discretion impose. [*Spl. S. 1931 c. 8; 1933 c. 484 s. 1; Spl. S. 1933 c. 2; 1935 c. 110, 245, 469; 1937 c. 284 s. 1, 3; 1941 c. 113; 1943 c. 359*]

Note: The implied agreement of the bank not to pay out the depositor's money unless his prospective borrower obtained a bond with two sureties was not beyond the power or function of the bank, it not guaranteeing the responsibility of the bondsmen, as holding money deposited for or directed to be applied to a specific purpose is not ultra vires. Money deposited for a specific purpose becomes in effect a general deposit, and the bank is held to the same liability as for a general deposit. Ertman v. Liberty State Bank, 209 W 599, 245 NW 693.

State banks are not authorized to act in fiduciary capacity with respect to private trusts as distinguished from court trusts.

Money delivered to bank for investment in securities legal for investment of trust funds, but invested in securities not satisfying trust fund investment laws or trust agreement, held not in bank at time of bank's delinquency so as to entitle cestui to preferred claim. Mahan v. Herreid, 211 W 79, 247 NW 468.

Contract under which money or property is deposited with investment company determines whether deposit is general or special, and where special purpose clearly appears, fund is applicable first to discharge of obligations to special beneficiary for whom fund was deposited, and claims of general creditors are secondary. State ex rel. Rohn Shoe Mfg. Co. v. Industrial Commission, 217 W 138, 258 NW 449.

Banks in an area where one bank had closed and another was experiencing heavy withdrawals of deposits during an economic depression had authority to make a contract to indemnify a bank in assuming the second bank's liabilities against resulting loss as necessary to stabilize the banking business in such area and protect depositors and stockholders from loss. Fetzer v. State Bank of Forestville, 229 W 452, 282 NW 639.

221.045 Definition of terms "capital" and "capital stock" in banking laws. (1) Whenever the term "capital" as distinguished from the term "capital stock" is used in any law of this state relating to banking, it shall mean and include the capital stock and preferred stock of a bank and the outstanding capital notes and debentures legally issued and sold by such bank exclusive of Class "B" capital notes and debentures as classified by the banking commission. The "capital" of any such bank may be deemed to be unimpaired when the amount of such capital notes and debentures as represented by cash or sound assets or the amount of such preferred stock, or both such notes and debentures and such preferred stock, equals or exceeds the impairment of the "capital stock" as found by the banking commission.

(2) Whenever the term "capital stock" is used in any law of this state relating to banking, it shall mean and include the stock of a bank other than preferred stock. [*1935 c. 245; 1937 c. 387*]

Note: Preferred stock issued under provisions of section 221.045, Stats. 1933, is not subject to payment of double liability. 22 Atty. Gen. 719.

221.046 Banks may issue and sell capital notes or debentures; approval of state banking department. (1) Any state bank, mutual savings bank, or trust company bank, may by the action of its board of directors issue and sell its capital notes or debentures of one or more classes in such amount, in such form, with such maturity and conferring such rights and privileges upon the holders thereof as the said board shall determine; provided, however, that no such issuance or sale shall be made unless the same shall be approved by the banking commission and the banking review board.

(2) Before any such capital notes or debentures are retired or paid by the bank, any existing deficiency of its capital, disregarding the notes and debentures to be retired, must be paid in cash or in assets acceptable to the banking commission, so that the sound capital assets shall at least equal the capital stock of the bank.

(3) Such capital notes or debentures shall in no case be subject to any assessment. The holders of such capital notes or debentures shall not be liable for any debts, contracts or engagements of such bank nor for assessments to restore impairments in the capital of such bank. [*Spl. S. 1933 c. 12; 1935 c. 245*]

221.047 Banks may issue preferred stock; approval of state banking commission; restrictions. (1) Except as provided in subsection (2), any bank organized under the laws of this state may by provision in its original articles, or by amendment thereto, adopted by a two-thirds vote of the stock having voting power, upon not less than ten days' notice given by registered mail pursuant to action taken by the board of directors, and subject to the approval of the banking commission, issue preferred stock of one or more classes, in such amount and with such par value as may be approved by said commission; provide subject to the approval of the commission, for payment of dividends on such preferred stock at a specified rate before dividends are paid upon the capital stock; for the cumulation of such dividends; for a preference of such preferred stock over the capital stock in the distribution of the corporate assets; for the conversion of such preferred stock into capital stock; for the redemption of such preferred stock and for denying or restricting the voting power of such preferred stock.

(2) No bank may issue preferred stock unless it shall have outstanding capital stock in an amount equal to the minimum capital stock required at the time for the organization of a bank in the same town, village or city.

(3) In the case of any newly organized bank which has not yet issued capital stock, the requirement of notice to and vote of stockholders shall not apply. No issue of preferred stock shall be valid until the par value of all preferred stock so issued shall be paid in.

(4) No change in relation to such preferred stock shall be made except by amendment to the articles adopted by a vote of two-thirds of the preferred stock and two-thirds of the capital stock, and subject to the approval of the banking commission.

(5) Such preferred stock shall in no case be subject to any assessment. The holders of such preferred stock shall not be held individually responsible as such holders for any

debts, contracts or acknowledgments of such bank, and shall not be liable for assessments to restore impairments in the capital of such bank. Preferred stock shall be subject to the provisions of section 221.38 but shall not be subject to the provisions of sections 221.37 and 221.42.

(6) No dividends shall be declared or paid on capital stock until the cumulative dividends on the preferred stock have been paid in full. If the bank is placed in liquidation, no payment shall be made to the holders of the capital stock until the holders of the preferred stock have been paid in full the par value of such stock plus all cumulative dividends. [*1937 c. 387*]

Note: State bank may not issue preferred stock containing "cut back" provision. 27 Atty. Gen. 810.

221.05 Prohibition to transact business. No bank shall transact any business, except such as is incidental or necessarily preliminary to its organization until it has been regularly authorized by the banking commission to commence the business of banking. [*1937 c. 284 s. 3*]

221.06 Authority to commence business. Whenever, within a period of six months from the date of the filing of the articles of incorporation, a bank organizing under this chapter has complied with all provisions of the law, and has adopted by-laws approved by the banking commission, and has provided itself with suitable banking quarters, and has supplied the necessary books, forms, stationery, furniture and equipment for the proper and orderly transaction of the business of banking, it shall give notice in writing to the banking commission that it is so prepared, and the banking commission shall make or cause to be made an examination. If such examination satisfies the commission that such bank has complied with all provisions of the law, that the stock subscriptions have been fully paid in lawful money, and it appears that such bank is lawfully entitled to commence business, it shall forthwith give to such bank a certificate of authority under its hand and official seal that such bank is authorized to commence business. If the banking commission has reason to believe that the stockholders have formed the corporation for any other than the legitimate business contemplated by this chapter, or that any of the facts stated in the declaration are untrue, or that other reasons exist, which would make the opening of the bank injurious to the public interest, it may, with the advice and consent of the attorney-general, withhold the certificate herein mentioned. [*1937 c. 284 s. 3*]

221.07 Publication of certificate. The bank shall cause the certificate issued hereunder to be published in some newspaper printed in the village, town or city where such bank is located, or if no newspaper is printed in such place, in a newspaper printed in the county where the bank is located; or if no newspaper is printed in such county, in a newspaper printed in an adjoining county. Such notice shall be printed once each week for four successive weeks, and the first printing thereof shall be within fifteen days of the issuing of the certificate. Proof of publication shall be filed with the banking commission. In the event of any bank failing to comply with the provisions of this section the banking commission shall cause the notice to be published and the bank shall be liable for the expense thereof, and in addition thereto such bank shall be subject to a penalty of one hundred dollars, which amount shall be collected by the banking commission, and when recovered shall be paid into the state treasury. [*1937 c. 284 s. 3*]

221.08 Board; officers; duty to hold and attend meetings; penalty. (1) The affairs of the bank shall be managed by a board of not less than five directors, all of whom shall be residents of the state of Wisconsin, and a majority of whom shall be residents of the county or adjoining counties in which such bank shall be located. No person who shall have been convicted of a crime against the banking laws of the United States, or of any state of the union, shall be elected director. They shall be elected by the stockholders and hold office for one year and until their successors have been elected and have qualified.

(2) A majority of the board of directors shall constitute a quorum for the transaction of business; provided, that when the number of directors shall exceed nine, they may, once in six months, designate by resolution nine members, any five of whom shall constitute a quorum.

(3) In the first instance, the directors shall be elected at the meeting held before the bank is authorized to commence business by the banking commission, and afterwards at the annual meeting of the stockholders to be held during the month of July or January; and if for any reason an election is not had at that meeting, it may be held at a subsequent meeting called for that purpose, of which due notice shall be given as provided in the by-laws of such bank.

(4) Every director shall take and subscribe an oath that he will diligently and honestly perform his duty in such office, and will not knowingly violate or permit a violation of any provision of this act; and that he is the owner in good faith of capital stock of the bank having a par value of not less than five hundred dollars standing in his name on the books

of the bank; and that such shares are not pledged as collateral security; provided, that any person serving as a director of any bank on the effective date of this subsection, shall be eligible for reelection annually thereafter if he meets the requirements in force prior to that date. Any such oath shall be transmitted to the banking commission and filed in its office.

(5) Any vacancy in the board of directors shall be filled by the board, and the directors so appointed shall hold office until the next election.

(6) The officers of the bank shall be elected by the board of directors and hold their offices for one year and until their successors are elected and qualified, unless sooner removed by the board of directors.

(7) No person who shall have been previously convicted of any crime against the banking laws of the United States, or of any state of the union, shall be elected to the office of president, vice president, cashier or assistant cashier.

(8) The president and vice president shall be chosen from the board of directors.

(9) The board of directors shall meet at the bank at least once each month. At such monthly meeting they shall generally investigate the affairs of such bank and determine whether the assets are of the value at which they are carried on the books of the bank. Such directors shall name a loan committee of three or more of its members, a majority of whom shall be other than active executives, except when a majority of the directors are actively engaged in the bank's management, who shall meet at more frequent regular intervals and shall determine policies as to renewals and applications for new loans. Any director who shall be found to be lax in attendance may be removed by the commission and such vacancy shall be filled within a reasonable time as the commission may direct.

(10) The board of directors shall elect a secretary, who shall keep a correct record of the minutes of the meeting in a book kept for that purpose, which minutes shall particularly disclose the date of said meeting and the names of the directors present, and the reason for the absence of each and every director not in attendance at the meeting. This record of the meeting of the board of directors shall be subscribed to by the presiding officer. Such minutes shall be read and approved at the next succeeding meeting, by the board of directors, and the minutes of such next succeeding meeting shall show such fact. Such minute book shall be kept in the vault of the bank at all times. It shall be the duty of the bank examiner to examine such book at the time he examines the bank and to include in his report of examination of such bank, a statement of the dates on which such meetings were held since the last examination of said bank by the bank examiner and the names of the directors in attendance at each of said meetings.

(11) Any person who shall make a false entry in said book, or who shall change or alter any entry made therein, shall be deemed guilty of a misdemeanor, and upon conviction thereof, be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail not less than thirty days nor more than six months, or by both such fine and imprisonment. [*1931 c. 249, 250; 1935 c. 245; 1937 c. 284 s. 3*]

221.09 Duty of examining committee. The board of directors of each bank shall annually appoint from its members or stockholders an examining committee, whose duties it shall be to examine the condition of the bank at least once every six months, or oftener, if required. The examining committee shall report to the board, giving in detail all items included in the assets of the bank which they have reason to believe are not of the value at which they appear on the books and records of the bank, and giving the value of each of such items as in their judgment they may have determined. The board shall cause said report to be recorded in the minute books of the bank, and a duly authenticated copy thereof transmitted to the banking commission. [*1937 c. 284 s. 3*]

221.091 [*Repealed by 1935 c. 245*]

221.10 Stock book. Every bank shall keep a stock book, which shall at all times during the usual hours for transacting business, be subject to the inspection of the officers, directors and stockholders of the bank. Such stock book shall show the name, residence and number of shares held by each stockholder. A refusal by the officers of such bank to exhibit such book to any person rightfully demanding inspection thereof, shall subject such officer to a forfeiture of fifty dollars. In all actions, suits and proceedings such book shall be presumptive evidence of the facts therein stated.

Note: This section does not apply to building and loan associations. State ex rel. Schomberg v. Home Mut. B. & L. Ass'n, 220 W 649, 265 NW 701.

221.11 Stockholders' right to vote. At all stockholders' meetings each share of stock which provides for voting rights shall entitle the owner of record to one vote. A stockholder may vote at any meeting of the stockholders by proxy, but no active or salaried officer may vote any such proxies. [*1937 c. 387*]

221.12 Articles may be amended. A bank may amend its articles of association in any manner not inconsistent with the provisions of law, at any time, by a vote of its stock-

holders representing two-thirds of the capital stock, such vote to be taken at a meeting called for that purpose. Such amendment may provide for a change of location of such bank, subject to the approval of the banking commission. Such amendment, certified by the president and cashier, shall be filed as required for articles of incorporation. No increase of the capital shall be valid until the amount thereof has been subscribed and actually paid in; provided, that the entire surplus fund of a bank, or as much thereof as may be required, may be declared and paid out as a stock dividend, to apply on, and be converted into, such increase of capital. No reduction of capital shall be made to a less amount than is required under the provisions of this act for capital, nor be valid or warrant the cancellation of stock certificates or diminish the personal liability of stockholders, until such reduction has been approved by the banking commission; nor shall any such reduction be effected in any other way than by a pro rata reduction of all outstanding shares unless approved by the banking commission. Such approval shall be given only when the commission is satisfied that such a reduction of the capital is in the best interests of the depositors. In case of reduction of capital, the double liability imposed by section 221.42 shall apply to all stock issued and outstanding at the time of the reduction and such liability shall continue for one year from the time the reduction takes effect. [*1933 c. 6 s. 3; 1935 c. 245*]

Note: A state bank can increase its capital stock only upon compliance with this section. Whether in any case a state bank has complied with the statute is a judicial question, there being no administrative officer authorized to make the determination. A subscription to, and payment in of the amount for, an authorized increase in the capital stock of a state bank, enlarges the power of the bank to increase its capital stock to that extent, within the statute. A contract of subscription to an authorized increase in the capital stock of a state bank creates a valid and binding obligation upon the part of the subscriber. The statute was intended to protect the interests of depositors of the bank, and was not intended for the benefit of subscribers to an increase in the capital stock. Coyle v. Franklin S. Bank, 213 W 601, 252 NW 361.

Those who have paid for portion of increase in stock of bank which has become insolvent, balance of increase not being sold, have nevertheless same rights in reorganization plan as original stockholders. 21 Atty. Gen. 167.

221.13 Curative act; extension of corporate existence of state bank. (1) Any bank organized under the laws of this state and doing business at the time of the passage of this act may, at any time before the date of the expiration of its corporate existence as evidenced by its articles of association or by any attempted amendment thereof, extend its period of succession by amending its articles of association in the manner provided by section 221.12, and shall have succession for such extended period, unless sooner dissolved by the act of its stockholders, or unless its charter becomes forfeited by some violation of law.

(2) Every attempted amendment of the articles of association of any bank, organized under the laws of this state and doing business at the time of the passage of this act, including an attempted amendment of such articles after the termination of the corporate existence of such bank provided in the articles of association, purporting to extend the period of the corporate existence thereof in the manner provided by section 221.12, heretofore taken, is hereby validated, and the period of succession of any such bank is extended accordingly, and it shall have succession for such extended period unless sooner dissolved by the act of its stockholders, or unless its charter becomes forfeited by some violation of law. [*1935 c. 458*]

221.14 Real estate, for what purposes held. A bank may purchase, hold and convey real estate for the following purposes only:

First. Such as shall be necessary for the convenient transaction of its business, including with its banking offices other apartments to rent as source of income. No bank shall invest in a banking office, including apartments connected therewith, together with furniture and fixtures, or become liable thereon in a sum exceeding fifty per cent of its capital and surplus; provided, that in lieu thereof it may invest, with the approval of the banking commission, not to exceed thirty-five per cent of its capital and surplus in the stocks, bonds or obligations of a bank building corporation. Any bank not owning its banking offices shall not hereafter invest in furniture and fixtures a sum exceeding fifteen per cent of its capital and surplus.

Second. Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its business.

Third. Such as it shall purchase at sale on judgments, decrees or mortgage foreclosures under securities held by it, but a bank shall not bid at such sale a larger amount than is necessary to satisfy its debts and costs.

Fourth. No real estate acquired in the cases contemplated in the second and third subdivisions preceding, shall be held for a longer time than five years, except an extension is granted by the banking commission. If such extension be not granted, it must be sold at a private or public sale within one year thereafter. Nothing in this section shall be construed to prevent a bank from loaning moneys upon real estate security as provided

by law. Real estate shall be conveyed under the corporate seal of the bank, and the hand of the president or vice president and cashier or assistant cashier. [*1937 c. 284 s. 3*]

Note: Where a bank, in the regular transaction of its business, took a deed of mortgage land which deed contained a provision whereby the grantee assumed the mortgage, and the bank thereafter sold said land, the bank was held liable in an action brought by the mortgagee upon said provision in the deed. Brunner v. Barronett State Bank, 205 W 283, 236 NW 437.

221.15 Reports; proofs of publication. (1) Every bank shall make to the banking commission not less than three reports during each calendar year, at such times as the said commission shall require the same, according to the forms which it shall prescribe and furnish. Such forms shall conform as nearly as practicable to that now required of national banks, including the schedules.

(2) Such reports shall be signed and verified by the oath or affirmation of one of the officers of such bank, and attested by at least two of the directors, provided, that if by reason of absence or other inability it shall be impracticable to obtain the signature of two directors such report shall specify such reason, and the attestation thereof by a director so absent or under disability shall thereupon be dispensed with.

(3) Such report shall exhibit in detail and under proper heads, the resources and liabilities of the bank at the close of the business of any past day by the banking commission specified, and shall be transmitted to said banking commission within five days after the receipt of request therefor from it.

(4) Such reports shall be published in a newspaper in the village or city or county where such bank is located, in such condensed form as may be prescribed by the banking commission.

(5) Proof of publication shall be furnished to said banking commission, within fifteen days after the receipt of the aforesaid call.

(6) At least once each year, and as often as requested by the banking commission, every bank shall report to the banking commission on call by it, a list of its stockholders, their residences, and the amount of stock held by each, which report shall be signed and verified by the oath or affirmation of one of the officers of said bank.

(7) The banking commission shall also have the power to call for special reports from any bank whenever in its judgment the same is necessary to inform it fully of the condition of such bank. [*Spl. S. 1931 c. 10 s. 10; 1937 c. 284 s. 3*]

Note: The lending bank was not "estopped" to claim that the liabilities of the closed borrowing bank to it for various loans was any greater than the amount of the borrowing bank's bills-payable account as reduced by the last of the loan transactions in question, where the lending bank was not a participant in a violation by the borrowing bank of the statute relating to publication of reports of condition, and where the proceeds of the various loans were actually used in the business of the borrowing bank. Banking Comm. v. First Wisconsin Nat. Bank, 234 W 60, 290 NW 735.

221.16 Ten dollars per day forfeiture. Every bank failing to make and transmit to the banking commission any of the reports or proofs of publication as required by this chapter, shall be subject at the discretion of the banking commission to a forfeiture of ten dollars for each day after the time required for making such reports. Whenever any bank fails or refuses to pay the forfeiture herein imposed for a failure to make and transmit such report, the banking commission is hereby authorized to institute proceedings for the recovery of such forfeiture. [*1937 c. 284 s. 3*]

221.17 Making false statements made a felony. Any banker, officer, director or employe of any bank who shall wilfully and knowingly subscribe to or make, or cause to be made, any false statement or false entry in the books of any bank, or mutual savings bank, or shall knowingly subscribe to or exhibit false papers, with the intent to deceive any person or persons authorized to examine into the affairs of said bank, or mutual savings bank, or shall knowingly make, state, or publish any false report or statement of any such bank, or mutual savings bank, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine of not less than one thousand dollars and not more than five thousand dollars, or by imprisonment in the state penitentiary not less than one year nor more than ten years, or by both such fine and imprisonment in the discretion of the court.

Note: A banker who repeatedly, by colorable transactions, reduced the amount of bills payable shortly before the call of the banking commissioner for a statement of the bank's condition was expected, and who restored the account of bills receivable to their true condition directly after the statement of the bank's condition had been made to the commissioner was guilty of making a false statement and punishable under this section. Rosenberg v. State, 212 W 434, 249 NW 541.

Entries by the president of a bank in the stock register and statements in reports to the commissioner of banking, showing certain persons to be stockholders of the bank, were not in violation of this section, where the stock had been entered in the names of such persons with their consent, and they later assigned the stock to the president but the stock was not presented for transfer nor actually transferred on the books of the bank, and such persons continued to act as stockholders, since, under such circumstances, such persons must be considered to be stockholders of the bank. Lochner v. State, 214 W 109, 252 NW 695.

Intent to deceive the commissioner of

banking or the examiners of his department is an essential element of the offense of causing false entries in the ledger of a bank with intent to deceive persons authorized to examine into its affairs. Hobbins v. State, 214 W 496, 253 NW 570.

Evidence that bank officer purchasing bonds with funds received in settlement of brother-in-law's debt to bank entered debit on books to bond account at increase of $724.61 over cost of bonds, crediting same amount to loans and discounts, warranted charge of making false entries with intent to deceive persons authorized to examine into affairs of bank. Oleston v. Schoultz, 217 W 349, 258 NW 801.

See note to 221.39, citing Lochner v. State, 218 W 472, 261 NW 227.

An indictment alleging that officers of a bank executed a note to fraudulently cover up and conceal an item representing the cost of furniture and fixtures of the bank in excess of statutory limitations, and that the note was entered on the books of the bank as a loan and discount, but not alleging that the note was not genuine or not collectible on demand, did not state an offense under this section. Shinners v. State ex rel. Behling, 221 W 416, 266 NW 784.

221.18 Inspection; refusal to permit; action to dissolve; prosecutions. Whenever any officer in charge of a bank shall refuse to submit the books, papers and concerns of such bank to the inspection of the banking commission, its deputy, or examiner appointed hereunder, or refuse to be examined on oath touching the concerns of the bank, the banking commission may inform the attorney-general whose duty it shall be to institute an action to procure a judgment dissolving such corporation. In order to carry out the provisions of this act the banking commission is hereby authorized to commence and maintain in its own name as banking commission any and all actions necessary or proper to enforce any of the provisions of this act. [*1937 c. 284 s. 3*]

221.19 Prosecutions. In order to carry out the provisions of sections 220.07, 220.08, 221.18 and 221.42, the banking commission is authorized to commence and maintain in its name any and all actions necessary or proper to enforce any of the provisions of said sections. [*1935 c. 245*]

221.20 Perjury, how committed. Every officer or employe of any bank required by law to take any oath or affirmation, or who shall wilfully swear or affirm falsely upon any material matter, shall be deemed guilty of perjury, and upon conviction thereof shall be punished as provided by the laws of this state for the punishment of perjury.

221.205 Banks; disciplinary provisions. Whenever the banking commission shall have or receive information causing it to believe that any bank, trust company bank, or any other corporation or association in respect to whose affairs or any part thereof it has any supervision or control under the law, or any officer or employe or member thereof has been guilty of a violation of any of the provisions of law or regulations or orders in execution thereof which subjects any such corporation or association or person to prosecution for a criminal offense or for recovery of penalty under the law, it shall bring such facts and information to the attention of the banking review board with its recommendation in writing as to action to be taken. Said banking review board shall, if in its judgment probable cause exists for believing that a criminal offense has been committed, or a penalty incurred, call the facts and information to the attention of the attorney-general whose duty it shall be to cause prosecution or other action to be instituted if in its judgment the facts warrant. Nothing herein contained shall be deemed to prevent the institution of any prosecution by any district attorney of this state with or without any advice or act on the part of the attorney-general. Nothing herein contained shall preclude the banking commission, in any case where it deems it important to act immediately, from causing any arrest and prosecution where it is satisfied that there is reason to believe the offense has been committed and that prosecution should be immediately commenced. [*Spl. S. 1931 c. 10 s. 9; 1937 c. 284 s. 3*]

221.21 When organized as national bank. Any bank organized under this chapter may reorganize under the laws of the United States as a national bank. As soon as such bank shall have obtained the certificate from the comptroller of the currency, authorizing it to commence business under the United States banking law, such reorganized bank shall take and hold all of the assets, real and personal, of such bank organized under this chapter, subject to all liabilities existing against said bank organized under this chapter at the time of such reorganization, and shall immediately notify the banking commission of such reorganization and transfer. [*1937 c. 284 s. 3*]

221.22 National banks may reorganize as state banks. Any national bank authorized to dissolve, and which shall have taken the necessary steps to effect dissolution, may reorganize under this chapter, upon the consent in writing of the owners of two-thirds of the capital stock of such bank, and with the approval of the banking commission. Such stockholders shall make, execute and acknowledge articles of organization as required by this chapter, and shall set forth the said written consent of such stockholders. Upon the filing of said articles as provided by this chapter, and upon the approval of the banking commission, such bank shall be deemed to be reorganized under this chapter, and thereupon all assets, real and personal, of such dissolved national bank shall be vested in and be and

become the property of such reorganized bank, subject to all liabilities of such national bank not liquidated before such reorganization. [*1937 c. 284 s. 3*]

221.23 Consolidation of banks. A bank, which is in good faith winding up its business, for the purpose of consolidating with some other bank, may transfer its resources and liabilities to the bank with which it is in process of consolidation; but no consolidation shall be made without the consent of the banking commission, and not then to defeat or defraud any of the creditors in the collection of their debts against such banks, or either of them. [*1937 c. 284 s. 3*]

221.24 Liquidation, when authorized. Any bank organized or doing business under the provisions of this chapter may go into liquidation by a vote of its stockholders owning two-thirds of the capital stock. Whenever a vote is taken to go into liquidation, it shall be the duty of the board of directors to cause notice of this fact to be certified under the seal of the bank by its president and cashier to the banking commission, and publication thereof, notifying the creditors to present their claims against the bank for payment, shall be made once in each week for eight successive weeks in a newspaper published in the village, city or county in which the bank is located, and if no newspaper is there published, then in the newspaper published at the nearest county seat. [*1937 c. 284 s. 3*]

221.245 Cancellation of charter of merged bank. Whenever any bank has merged or consolidated with or been absorbed by another bank, the banking commission may cancel the charter of such first mentioned bank after notice of proposed cancellation has been published once a week for four successive weeks in a newspaper having a general circulation in the county wherein such bank is located, unless written objections are filed with the commission within a time specified in said notice stating grounds which the commission deems sufficient. [*1935 c. 245*]

221.25 Consolidation of banks. (1) That any two or more banks may, with the approval of the banking commission, consolidate into one bank under the charter of either existing bank on such terms and conditions as may be lawfully agreed upon by a majority of the board of directors of each bank proposing to consolidate and be ratified and confirmed by the affirmative vote of the stockholders of each such bank owning at least two-thirds of its capital stock outstanding and at least two-thirds of any outstanding preferred stock having voting rights, at a meeting to be held on call of the directors, after sending notice of the time, place and object of the meeting to each shareholder of record by registered mail at least thirty days prior to said meeting; provided that the capital stock of such consolidated bank shall not be less than that required under existing law for the organization of a state bank in the place in which it is located; and provided further that when such consolidation shall have been effected and approved by the banking commission any shareholder of either of the banks so consolidated, who has not voted for such consolidation, may give notice to the directors of the bank in which he is interested, within twenty days from the date of the certificate of approval of the banking commission, that he dissents from the plan of consolidation as adopted and approved and desires to withdraw from such bank, whereupon he shall be entitled to receive the value of the shares so held by him, to be ascertained by an appraisal made by a committee of three persons, one to be selected by the shareholders, one by the directors, and the third by the two so chosen; the expense of such appraisal shall be borne by the bank; and in case the value so fixed shall not be satisfactory to the shareholder he may within five days after being notified of the appraisal appeal to the banking commission which shall cause a reappraisal to be made by an appraiser or appraisers to be named by said commission which appraisal shall be final and binding, and if said reappraisal shall exceed the value fixed by said committee the bank shall pay the expense of reappraisal, otherwise the shareholder shall pay said expense, and the value so ascertained and determined shall be deemed to be a debt due and be forthwith paid to said shareholder from said bank, and the share or shares so paid shall be surrendered and after such notice as the board of directors may provide, be sold at public auction within thirty days after the final appraisement provided for by this section.

(2) The bank or banks consolidating with another bank under the provisions of the preceding subsection shall not be required to go into liquidation but their assets and liabilities shall be reported by the bank with which they have consolidated; and all the rights, franchises and interests of said banks so consolidated in and to every species of property, personal and mixed, and choses in action thereto belonging, shall be deemed to be transferred to and vested in such bank into which it is consolidated without any deed or other transfer, and the said consolidated bank shall hold and enjoy the same and all rights of property, franchises and interests in the same manner and to the same extent as was held and enjoyed by the bank or banks so consolidated therewith.

(3) The banking commission may after consultation with the banking review board make recommendations to any bank or trust company within this state as to advisability

of consolidation with other banks and may make recommendations as to terms for consolidation or merger of banks in order to avoid a condition of oversupply of banks in any community or area of the state. The banking commission may also, if requested so to do, act as mediator or arbitrator to fix any of the terms of any such consolidation or merger. It shall be within the power of the board of directors of any bank or trust company organized under the laws of this state to appropriate a reasonable amount from the assets of the bank toward assisting in bringing about a consolidation or merger of banks or to aid in reorganization or in avoiding the closing of a bank where such action is deemed to be in the interests of safe banking and the maintenance of credit and banking facilities in the county in which such bank is located. [*Spl. S. 1931 c. 10 s. 9; Spl. S. 1931 c. 15 s. 2; 1933 c. 6 s. 3; 1935 c. 215, 245; 1937 c. 284 s. 3; 1937 c. 387*]

221.255 Bank stations; application; investigation; restrictions; revocation of permit. (1) Any bank may establish and maintain a receiving and paying station in the manner provided in this section, in any community not having adequate banking facilities, anywhere within the county in which the home office of the bank is located or anywhere in any adjoining county having a population of less than sixteen thousand, or in any other county if within the trade area of the home office of the bank and not more than twenty-five miles from such home office, but no bank shall be permitted to establish, maintain or operate more than four such receiving and paying stations nor any such station within three miles of any other existing bank or an authorized receiving and paying station of any other bank; however, any such station in operation at the time of the passage of this act shall not be subject to the three-mile limit.

(2) Any bank desiring to establish such a receiving and paying station shall make application to the banking commission in such manner and in such form as shall be prescribed by the commission, giving such information as the commission may require and shall at the time of filing the application pay to the commission twenty-five dollars to defray the cost of investigation by the commission.

(3) The banking commission shall thereupon estimate from the best sources of information at its command and by such investigation as it may deem necessary whether public convenience and advantage will be promoted by allowing such station to be established and maintained, and the commission shall also investigate the management and the solvency of the applicant bank, the adequacy of existing banking facilities and the surrounding territory from which the patronage would be drawn.

(4) After completing such investigation, the commission shall make written report to the banking review board stating the results of its investigation and its recommendation. The said board shall consider the matter, conducting any hearing it may deem necessary, and shall promptly make its decision approving or disapproving the establishment and maintenance of the proposed station. The decision of the banking review board shall be final.

(5) No bank when more than ten per cent of the stock is owned, held or controlled by any corporation, or by an association, investment trust or other form of trust or by a chain bank or holding company, shall be permitted to establish a receiving and paying station.

(6) No banking business shall be transacted in any such station other than receiving and paying out deposits, issuing drafts and travelers' checks, handling and making collections, and cashing checks and drafts.

(7) Whenever a paying and receiving station shall be permitted to operate under this section, the banking commission in each case shall prescribe the rules and regulations for its operation.

(8) Whenever the banking commission shall determine that the continued operation of any such station will no longer promote public convenience and advantage, and that it will prove detrimental to the bank operating such station, the commission shall have written report thereon to the banking review board. Said board shall promptly consider the matter and may hold a hearing thereon, and shall decide whether or not the permit to operate such station shall be revoked. If the review board decides that the permit shall be revoked, it shall certify its decision to the banking commission and said commission shall forthwith order the discontinuance of such station within such time as the commission may specify therein. A copy of said order shall be transmitted to the bank operating such station.

(9) Whenever any bank, which has been granted a permit to establish and maintain such a receiving and paying station, shall deem it advisable to discontinue the maintenance of such station, it may make written application to the banking commission for the cancellation of its permit, and the commission shall thereupon enter its order, cancelling such permit, within such time as the commission may specify therein.

(10) This section shall not be construed as committing the state in any manner to a policy of permitting branch banking. [*1935 c. 215; 1939 c. 11*]

Note: Banking commission may not waive provision of 221.255 (1), Stats. 1937, prohibiting establishment of bank receiving and paying station within four miles of any other existing bank or station. 27 Atty. Gen. 729.

221.26 Bank may be placed in hands of commission. Any bank doing business under this chapter may place its affairs and assets under the control of the banking commission, by posting a notice on its front door, as follows: "This bank is in the hands of the banking commission." Immediately upon posting such notice, such bank shall notify the banking commission of such action. The posting of such notice, or the taking possession of any bank by the banking commission, shall be sufficient to place all its assets and property of whatever nature in the possession of the banking commission, and shall operate as a bar to any attachment proceedings. For each and every day the banking commission shall be so placed in possession of the bank, and until such time as a special deputy commissioner of banking is appointed, as provided in subsection (4) of section 220.08, such bank shall pay to the said banking commission the actual cost of such liquidation proceedings. All such fees shall be paid by the said commission to the state treasurer to be placed to the credit of the state banking department fund. [*1937 c. 284 s. 3*]

221.27 Cash reserve. Every bank shall keep on hand at all times at least twelve per cent of its total deposits, of which such portion as the board of directors may determine, may be on deposit in banks approved by the banking commission as reserve banks; except in the cases of banks which shall be approved by the banking commission as reserve banks, which banks shall at all times keep on hand at least twenty per cent of their total deposits in lawful money or on deposit in banks subject to the approval of the banking commission, as reserve banks. Cash items shall not be considered as a part of the reserve of any bank. United States government bonds, home owner loan corporation bonds or federal farm mortgage corporation bonds owned by any such bank to an amount not exceeding one-third of the required reserve, may be considered as a part of such required reserve; provided, that any bank or trust company incorporated under the laws of this state which is or hereafter may become a member of the federal reserve bank system of the United States of America shall be required to carry during the period of such membership only such cash reserve funds as may be required from time to time to be maintained by national bank members of said federal reserve bank system. [*1935 c. 245*]

221.28 Reserve to be kept up. Whenever the reserve of any bank shall fall below the amount required herein to be kept, such bank shall not increase its loans or discounts otherwise than by discounting or purchasing bills of exchange payable at sight or on demand, and the banking commission shall notify any bank whose reserve may be below the amount herein required, to make good such reserve, and in case the bank fails, for thirty days thereafter to make good such reserve, the banking commission may notify the attorney-general and he shall institute proceedings for the appointment of a receiver and to wind up the business of the bank. [*1937 c. 284 s. 3*]

221.29 Limit of loans and investments. (1)(a) The total liabilities of any person or partnership, including the liabilities of the several partners except special partners, or corporation, other than a municipal corporation, to any bank for money borrowed shall at no time exceed 20 per cent of the capital stock and surplus or 15 per cent of the capital and surplus of such bank with the exceptions stated in this subsection.

(b) Providing such liabilities are secured by warehouse receipts issued by warehousemen licensed and bonded in this state under section 100.13 or under the federal bonded warehouse act, and providing such receipts cover readily marketable nonperishable staples which are fully covered by insurance if it is customary to insure such staples, and providing the market value of such staples is not at any time less than 140 per cent of the face amount of the obligation, this limitation shall be 30 per cent in addition to that stated in paragraph (a) hereof.

(c) Providing such liabilities are in the form of notes and secured by not less than a like amount of bonds or notes of the United States issued since April 24, 1917 or certificates of indebtedness of the United States, this limitation shall be 30 per cent in addition to that stated in paragraph (a) hereof.

(d) Such liabilities as are created before April 1, 1949 in the form of notes may exceed the limitation stated in paragraph (a), provided that the excess shall not exceed 30 per cent in addition to that stated in paragraph (a), and provided such excess is secured or covered by guarantees or by commitments or agreements to take over, or to purchase the same made by any federal reserve bank, or by the Reconstruction Finance Corporation, or by the war department, the navy department or the maritime commission of the United States.

(2) The total liabilities of any municipal corporation to any bank for money borrowed shall at no time exceed 25 per cent of the capital and surplus of such bank, except,

however, temporary borrowings of such corporation maturing within one year from the date of issue, in which event the limitation shall be 60 per cent of the capital stock and surplus or 50 per cent of the capital and surplus of such bank.

(3) The discounting of bills of exchange drawn in good faith against actually existing values and the discounting of commercial or business paper actually owned by the person negotiating the same shall not be considered as money borrowed within the meaning of subsections (1) and (2) of this section.

(4) The limitation herein provided shall apply only to new loans made after the effective date hereof [June 26, 1941]. The renewal of an existing loan without increasing the amount thereof shall not be considered a new loan and a renewal with an increase shall be considered a new loan to the extent of the increase.

(5) No bank having a combined capital and surplus of more than $25,000 shall make or renew any loan of $500 or more without securing a sworn financial statement unless the loan is secured by collateral having a value in excess of the amount of the loan. No bank having a combined capital and surplus of $25,000 or less shall make or renew any loan of more than 2 per cent of its combined capital and surplus without securing a sworn financial statement unless such loan is secured by collateral having a value in excess of the amount of the loan. [*Spl. S. 1931 c. 10 s. 13; 1935 c. 245; 43.08(2); 1941 c. 279; 1943 c. 246*]

Note: An agreement to guarantee the payment to a bank of all notes, drafts and acceptances executed or indorsed by a borrower "which may be owned or which may hereafter be acquired . . . or so executed or indorsed by the" borrower, is not limited to the amount which the bank could legally loan the borrower where, following excessive loans, the guarantor obtained from the borrower a chattel mortgage, providing that the mortgage is additional security for the benefit of the bank, and expressly continuing the guaranty in force. Caroline S. Bank v. Radtke, 213 W 110, 250 NW 763.

To invoke application of 30 per cent loan limitation provided by (1), Stats. 1937, in case of state banks all of such loan must be secured by warehouse receipts or United States government obligations in amount not less than 140 per cent of face amount of obligation. Such requirement as to collateral security cannot be extended, however, to loans coming under 15 per cent and 20 per cent limitations in said section. 27 Atty. Gen. 18.

221.30 Banks not to hold own stock. (1) No bank shall be the holder of or purchaser of any portion of its capital stock, capital notes or debentures unless such purchase shall be necessary to prevent loss upon a debt previously contracted in good faith. Stock, notes or debentures so purchased shall in no case be held by the bank for a longer time than six months if the stock, notes or debentures can be sold for the amount of the claim of the bank against the same, and it must be sold for the best price obtainable within one year, or it shall be canceled, and shall then amount to a reduction of the capital stock, capital notes or debentures; provided, that, if such reduction shall reduce the capital stock below the minimum required by law, such capital stock shall be again increased to the amount required by law as provided herein.

(2) No bank shall loan any part of its capital, surplus or deposits on the capital stock, capital notes or debentures of its own bank as collateral security, nor on the capital stock of any other bank as collateral security, if by making such loan, the total stock of such other bank held by such loaning bank as collateral security will exceed in the aggregate ten per cent of the capital stock of such other bank; provided, that no loan upon the capital stock, capital notes or debentures of any bank shall be made unless such bank has been in existence for two or more years, has earned and paid a dividend upon its capital stock, and unless there is no default in the payment of principal, dividends or interest of any capital stock, capital notes or debentures of such bank. [*1935 c. 245*]

Note: A by-law of a state bank, providing that any stockholder desiring to dispose of his stock shall give notice to the bank and that "the bank" shall have a ten-day option for the purchase of such stock, is void as in conflict with the provision that no bank shall hold or purchase any of its capital stock unless necessary to prevent loss on a debt previously contracted in good faith. Quinn v. Ellenson, 236 W 627, 296 NW 82.

221.31 Loans to bank officials; penalty. (1) No bank or mutual savings bank shall loan more than one thousand dollars in the aggregate to any director, officer or employe, except under the following conditions:

(a) The loan must previously be approved by resolution of the board of directors recorded in its minutes.

(b) The entire line of loans made to such director, officer or employe, including those previously made, must be secured to their full amount by indorsements or collateral security, the sufficiency of which shall have been approved by resolution of the board of directors recorded in its minutes.

(c) In no event shall the indorsement of any director or directors be accepted as sufficient security for a loan to another director.

(2) Every officer, director or employe of any bank or mutual savings bank who in violation of this section, directly or indirectly, borrows or otherwise procures for his use

money, funds or property of such bank or mutual savings bank in excess of one thousand dollars in amount or value upon his credit or through use of his credit or accommodation of another person, firm or corporation or by acceptance for discount at said bank or mutual savings bank of any note, bond or evidence of debt which he knows or has reason to know is worth less than the price at which it is accepted as an asset, shall be punished by imprisonment in the state prison not exceeding ten years. [*1931 c. 252*]

Note: In prosecution of bank official for violation of statute prohibiting bank official from borrowing from bank more than $1,000 for his use without approved security, evidence that defendant, while owing bank $200 note, borrowed additional $1,000 without security, and paid $200 note nine days later with proceeds from $1,000 note, which he also later repaid, held insufficient to warrant inference necessary to sustain conviction that defendant received for his use proceeds of $1,000 note prior to date of payment of $200 note. Thomas v. State, 218 W 83, 259 NW 829.

Bank president and director, to whose "interest account," overdrawn by amount exceeding balance in his personal checking account by $2,012.06, proceeds of his wife's unindorsed and unsecured note for $3,200 were credited, held guilty of borrowing or otherwise procuring for his use money of bank in excess of $1,000 without authorization by board of directors, though amount of note exceeded interest account overdraft by less than $1,000 (Stats. 1929). State v. Bradford, 218 W 68, 260 NW 248.

221.32 Limit on mortgage loans. No bank shall lend any part of its capital, surplus or deposits upon real estate mortgages or on any other form of real estate security, directly or as collateral, except in this and adjoining states; nor shall it lend on real estate mortgages or any other form of real estate security, an amount exceeding fifty per cent of the aggregate of its capital, surplus and deposits, except when authorized as to amount, security and location by resolution of two-thirds of its board of directors properly entered upon its minutes.

Note: State banks, savings banks and trust company banks may invest in FHA insured real estate mortgage loans on property no matter where located. 26 Atty. Gen. 481.

221.33 Assets not to be pledged as security. (1) No bank or bank officer shall give preference to any depositor or creditor by pledging the assets of the bank as collateral security; provided, that a state bank may deposit with the treasurer of the United States so much of its assets not exceeding its capital and surplus as may be necessary under the act of congress, approved June 25, 1910, and all amendments thereof, to qualify as a depository for postal-savings funds and other government deposits; and provided, that any bank may borrow money for temporary purposes, and may pledge assets of the bank not exceeding 50 per cent in excess of the amount borrowed as collateral security therefor; provided, that any state bank so authorized by the banking commission, which shall comply with section 223.02, shall be exempt from furnishing the bond specified in section 221.04 (6), and shall be entitled to the same exemption as to making and filing any oath or giving any bond or security as is conferred on trust company banks by section 223.03 (8), but it shall be unlawful for any bank to borrow money unless a resolution stating the amount, naming the bank from which it shall be borrowed, and designating 2 officers to sign the promissory note evidencing such debt, shall have been duly adopted by the board of directors and spread of record in the minute book. Until April 1, 1947, a bank may pledge assets in an amount not to exceed 4 times the amount of its capital and surplus to the Federal Reserve Bank (as fiscal agent of the United States) of the Federal Reserve district in which it is located, except that no such pledge shall be made in excess of the amount of its capital and surplus without the consent of the banking commission. Provided, that whenever it shall appear that a bank is borrowing habitually for the purpose of reloaning, the banking commission may require such bank to repay money so borrowed. Nothing herein contained shall prevent any bank from rediscounting in good faith and indorsing any of its negotiable notes if the same shall have been authorized by a recorded resolution of the board of directors.

(2) It shall be unlawful for any bank to issue its certificate of deposit for the purpose of borrowing money. Neither shall any bank make partial payments upon certificates of deposit. [*1937 c. 284 s. 3; 1943 c. 461*]

Note: Personal guaranty of deposit by stockholders of bank is not contrary to public policy or invalid as contravening provisions of this section, prohibiting giving of preference to depositor by pledging assets of bank, nor as contravening rule prohibiting pledging of assets of bank to secure its deposits. Citizens S. Bank v. Schmitz, 219 W 552, 263 NW 702.

The phrase "not exceeding fifty per cent in excess of the amount borrowed" refers to the actual value, and not the face value, of the collateral. A secured creditor of an insolvent bank is entitled to interest on his claim from the date of the bank's closing, to the extent that the security will produce a sum sufficient to pay interest as well as principal. Banking Comm. v. First Wisconsin Nat. Bank, 234 W 60, 290 NW 735.

221.34 Checks certified, when. It shall be unlawful for any officer, clerk or agent of any bank doing business under this chapter to certify any check, draft or order drawn upon the bank unless the person, firm or corporation drawing such check, draft or order has on deposit with the bank at the time such check, draft or order is certified an amount

of money equal to the amount specified in such check. Any check, draft or order so certified by the duly authorized officer shall be a good and valid obligation against such bank.

221.35 **Interest rate.** No bank shall demand or receive for loans or discounts a rate of interest exceeding that allowed by law, excepting that it shall be lawful for any bank to receive interest in advance according to the ordinary usages of banking institutions.

221.36 Bad debts, what are. All debts due to any bank, on which interest is past due and unpaid for a period of twelve months, unless the same are well secured or in process of collection, shall be considered bad debts and shall be charged off to the profit and loss account at the expiration of one year.

221.37 **Surplus fund.** The board of directors of a bank may declare a dividend from so much of its net profits, after providing for all expenses, losses, interest and taxes accrued or due from said bank, as they shall deem expedient; but before any such dividend is declared not less than one-tenth of the net profits of the bank for the preceding half year, or for such period as is covered by the dividend, shall be carried to a surplus fund, until such surplus fund shall amount to fifty per cent of the capital stock, except that whenever the daily average of the aggregate deposits for a period of one year in any bank shall be less than an amount equal to ten times the unimpaired capital and surplus, such surplus to be computed after eliminating all items classified by the banking commission as doubtful or loss, such bank may, with the approval of the banking commission, be exempt from the requirement of this section. Any losses sustained by any bank in excess of its undivided profits may be charged to its surplus account; provided, that its surplus fund shall thereafter be reimbursed from its earnings, and no dividends shall be declared or paid by any such bank in excess of one-half of its net earnings until its surplus fund shall be fully restored to the amount required by law. [*Spl. S. 1931 c. 10 s. 13; Spl. S. 1931 c. 15 s. 2; 1937 c. 272*]

221.38 **Dividends not to be declared, when.** No dividend shall be paid to any stockholder of a bank until the capital stock has been fully paid in and no dividend shall thereafter be declared or paid by the directors of any bank except out of the net profits properly applicable thereto, and which shall not in any way impair or diminish the capital; and if any such shall be paid, every stockholder receiving the same shall be liable to restore the full amount thereof unless the capital be subsequently made good; and if the directors of any bank shall pay any dividend before the capital stock is fully paid in, or shall pay such dividend when the corporation is insolvent or in danger of insolvency, or not having reason to believe that there were sufficient net profits properly applicable thereto, to pay the same without impairing or diminishing the capital, they shall be jointly and severally liable to the creditors of the corporation at the time of declaring such dividends to double the amount thereof. Interest unpaid, although due or accrued, on debts owing to any bank, shall not be included in calculation of its profits previous to a dividend; nor shall any bank, except with the previous written consent of the banking commission, enter or at any time carry on its books any of its assets at a valuation exceeding its actual cost to such bank. [*1937 c. 284 s. 3*]

221.39 **Embezzlement, how punished.** Every president, director, cashier, officer, teller, clerk or agent of any bank or mutual savings bank who embezzles, abstracts or wilfully misapplies any of the moneys, funds, credits, or property of the bank or mutual savings bank, whether owned by it or held in trust, or who, without authority of the directors, issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment or decree; or who makes any false entry in any book, report or statement of the bank with intent in either case to injure or defraud the bank or mutual savings bank or any person or corporation, or to deceive any officer of the bank or mutual savings bank, or any other person, or any agent appointed to examine the affairs of such bank or mutual savings bank; or any person who, with like intent, aids, or abets any officer, clerk or agent in the violation of this section, upon conviction thereof shall be imprisoned in the state prison not to exceed twenty years.

Note: Evidence that bank president, without authority from directors, gave personal check on bank without funds on deposit to cover it, and covered up his action by false entries and kiting of checks was sufficient to sustain finding that he was guilty of making false entries with intent to deceive and of "wilful misapplication of bank's funds with intent to defraud bank," though he intended at time to make overdraft good and did so four days later, and irrespective of whether funds were applied to his personal use or to use of company of which he was officer, or whether he obtained physical possession of funds. Lochner v. State, 218 W 472, 261 NW 227.

221.40 **Bank officers and employes not to take commissions.** Any officer, director, agent or employe of any bank, or mutual savings bank, who shall for himself, directly or

indirectly, take, accept or receive, or offer or agree to take, accept or receive, any commission, fee, compensation, or thing of value whatever, from any person in consideration of the bank, or mutual savings bank, of which he is such officer, director, agent or employe, loaning any money to, buying or discounting any note, bond, draft, or bill of exchange from, or accepting any draft for, or issuing any letter of credit to, such person, shall upon conviction thereof be imprisoned in the state prison not to exceed two years.

Note: To make it an offense for officers of a bank to accept anything of value from any person in consideration of the bank buying any bonds from such person, it must appear that moneys accepted by bank officers from an investment company in which they were also officers and stockholders, in the nature of stockholders' dividends or as compensation for their services rendered to the company, were paid to them for the purpose of influencing their judgment while acting on behalf of the bank in purchasing the bonds from the company. State ex. rel. Shinners v. Grossman, 213 W 135, 250 NW 832.

221.41 Charter, how forfeited. If the board of directors or a quorum thereof or any committee of such board of any bank shall knowingly violate or knowingly permit any of the officers, agents or employes of the bank to violate any of the provisions of this chapter, such directors shall jointly and severally be liable for the amount of the loss sustained by the bank; and if after a warning from the banking commission it shall fail to make good any loss or damage resulting from such acts, or continue such conduct, it shall constitute a ground for the forfeiture of the charter of such bank, and it shall thereupon be the duty of the banking commission to institute proceedings to enforce such forfeiture and to secure a dissolution and a winding up of the affairs of such bank. [*1937 c. 284 s. 3*]

Note: An infant may not by purchase of bank stock subject himself to a stockholder's statutory liability over and above the stockholder's subscription, since such liability is contractual. Banking Commission v. Hamilton, 229 W 89, 281 NW 693.

221.42 Liability of stockholders. (1) Except as provided in subsections (2) and (3) of this section, the stockholders of every bank shall be individually liable, equally and ratably, not one for another, for the benefit of creditors of said bank to the amount of their stock at the par value thereof, in addition to the amount invested in said stock. Such liability shall continue for one year after written notice to the banking commission of any transfer of stock, as to the affairs of the bank at the time and prior to the date of the transfer. But persons holding stock as executors, administrators, guardians or trustees, and persons holding stock as collateral security, shall not be personally liable as stockholders, but the assets or funds in their hands constituting the trust shall be liable to the same extent as the testator, intestate, ward or person interested in such trust fund would be, if living, or competent to act, and the person pledging such stock shall be deemed the stockholder and liable under this section. Such liability shall accrue and become due and payable as to the stockholders of any bank forthwith, upon the banking commission taking possession of the property and business of such bank under the provisions of the statutes, and may be enforced by the commission, in an action brought in its name, in any court of record having civil jurisdiction of the county in which such bank is located, and such action shall have precedence over all other actions pending in such court. In the event of the liquidation of such bank, the stockholders who shall have discharged such additional liability shall, after the payment of expenses and the claims of creditors, be entitled to reimbursement on account thereof out of any remaining property of such bank before the same is distributed among its stockholders.

(2) The provisions of subsection (1) imposing double liability do not apply to the holders of shares of stock issued after the effective date of this subsection by any bank which is a member of the temporary fund of the federal deposit insurance corporation or which is an insured bank, as defined in the federal banking act of 1933 or any act amendatory thereof or supplementary thereto; but when such bank ceases to be a member of such fund or ceases to be such an insured bank, the provisions of subsection (1) shall apply to such stockholders for the benefit of deposits received after the termination of the insured status of such bank.

(3) The liability of the holders of shares of stock issued prior to the effective date of this subsection by any bank which is a member of the temporary fund of the federal deposit insurance corporation or which is an insured bank, as defined in the federal banking act of 1933 or any act amendatory thereof or supplementary thereto, shall be the same as that provided for in any act that may be enacted by the congress governing the liability of holders of shares of stock issued by national banks prior to June 16, 1933; but when any such bank ceases to be a member of such fund or ceases to be such an insured bank, the provisions of subsection (1) shall apply to all such stockholders for the benefit of deposits received after the termination of the insured status of such bank. [*Spl. S. 1931 c. 10 s. 13; 1933 c. 17 s. 1; 1935 c. 245*]

Note: The words "equally and ratably, not one for another" in this statute were taken from the national bank act and must be taken to have the meaning attributed to them by the court before the words were adopted into the Wisconsin Statutes. Upon

taking possession of a bank the commissioner may demand of stockholders their superadded liability immediately. Should the amount so collected prove to be more than needed, the overpaying stockholders would be entitled to a refund. Actions to enforce this liability may be brought against stockholders separately and is an action at law and they are entitled to a trial by jury. Schwenker v. Bekkedal, 204 W 546, 236 NW 581.

An assessment may nevertheless be made against one who, to evade his liability as a stockholder, fraudulently transfers his bank stock to another who is financially irresponsible, or against one who transfers his stock to an agent who merely holds it as the agent of his principal. Lochner v. State, 214 W 109, 252 NW 695.

A claim of a stockholder of a bank as a depositor could not be set off in an action by the banking commission to enforce the superadded stockholder's liability. The proposed set-off failed to meet the requirement of 331.07 that the demands of the respective parties must be subsisting and due between the same parties in the same capacity or right. Banking Commission v. Bitker, 216 W 497, 257 NW 616.

See note to 313.08, citing Banking Commission v. Muzik, 216 W 596, 257 NW 174.

Refusal to order voluntary assessment credited on bank stockholders' statutory assessment was proper, whether or not banking commission had stated that voluntary assessment would be deemed statutory assessment if bank closed within reasonable time, and notwithstanding further fact that payments on voluntary assessment were placed in "stock assessment account" rather than in surplus or capital account. In re Plain State Bank, 217 W 257, 258 NW 783; Mueller v. Banking Commission, 217 W 507, 259 NW 426.

Bank stockholder's liability is solely statutory, and terminates on expiration of statutory period after written notice to banking commissioner of transfer of stock, even though transferor knew of bank's insolvency and of transferee's financial irresponsibility and intended to avoid statutory liability. Cleary v. Bertrand, 217 W 622, 258 NW 799.

Stockholders are bound by failure of officers of state bank to proceed under statute to contest right of banking commissioner to take over bank for liquidation, in absence of fraud or malfeasance by officers, and stockholders therefore could not, in action by commissioner to recover statutory assessment, assert objections to commissioner's taking over bank. Kingston v. Creedon, 218 W 252, 260 NW 453.

Where testator bequeathed subsequently insolvent bank's stock in trust for benefit of his widow during her lifetime or until she remarried, which stock was to be divided betwen two of his children upon death or remarriage of widow, trust estate held subject to stockholder's statutory liability. Trustees could not escape liability upon bank stock on ground that two bank directors, after stockholder's liability was declared due, gave their notes for amount of unpaid assessment, to facilitate resumption of operation of bank under agreement that bank would enforce express liability arising on stock held in trust. Such agreement was not illegal or contrary to public policy. Banking Commission v. Marquardt, 218 W 210, 260 NW 464.

Under 220.08 (1), 221.42, Stats. 1931, double liability of bank stockholder accrued when bank suspended business and commissioner took charge thereof, although he merely took charge for purpose of obtaining stabilization agreement and later, in connection with approving stabilization agreement, declared double liability due as though accrued under different and subsequently enacted statute. Schafer v. Bellin M. Hospital, 219 W 495, 264 NW 177.

Personal guaranty of deposit by stockholders of bank is not invalid as contrary to public policy, although it might result in impairing ability of such stockholders to meet their statutory contingent double liability as stockholders of bank. Citizens S. Bank v. Schmitz, 219 W 552, 263 NW 702.

A residuary legatee who declined to accept an assignment of certificates of bank stock or to exercise any of the rights incident to ownership of the stock did not become a stockholder and was not liable for a statutory assessment levied on the stockholders of the bank. Schafer v. Sell, 220 W 112, 264 NW 620.

Section 220.07 (20), Stats. 1933, is not retrospective in its operation, and hence stockholders who prior to its enactment had responded to a voluntary assessment under a stabilization agreement were not relieved from liability for a subsequent statutory assessment. Banking Commission v. Wiemann, 223 W 494, 271 NW 30.

A bank stockholder's liability is limited to the ratio which his stock bears to the total stock of the bank, and while the whole amount of the statutory liability may be collected, only so much as is needed can be used to pay creditors. The rest must be returned to the stockholder. Banking Commission v. Purves, 228 W 21, 279 NW 634.

Stockholders are not entitled to set off payments which they made upon stockholders' voluntary assessment as against their statutory double liability after a bank failure. The closed bank stockholders' statutory double liability accrues when the banking commission takes possession of the bank. A stockholders' assessment to be held by the bank as its trust fund for the stockholders and applied against any assessment levied on the bank's suspension was a voluntary assessment and not a trust for the stockholders. Banking Commission v. Prudential Inv. Co., 229 W 628, 282 NW 40.

This section gives to the commission the right to sue an executor or administrator for the purpose of subjecting to the double liability claim assets remaining in his hands, recovery being limited to the amount of such assets, where the claim became absolute after the death of the decedent, under the statutes of 1929. Cleary v. Boyle, 230 W 583, 284 NW 506.

In relation to a bank stabilization effected in 1932, where the stabilization and operation of the bank was under the control and supervision of the bank's officers, and the bank continued in business, acts of the banking commission in advising and assisting in working out a stabilization could not be construed as a taking of possession of the bank's property and business so as to accrue the double liability imposed on bank stockholders by 221.42, and hence a stockholder, who refused to pay a voluntary assessment assessed by the directors in 1932 in connection with the stabilization and, instead, elected to surrender his stock to the bank for public sale, as he had a right to do under the statutes in force at that time, fulfilled his obligations and was not subject to further liability as a stockholder. [Schafer v. Bellin Memorial Hospital, 219 W 495, distinguished] Banking Comm. v. Jordan, 238 W 509, 300 NW 251.

Provision in stock certificate of state bank making it "fully paid and nonassessable," contrary to this section and 220.07, is of no effect. 22 Atty. Gen. 410.

Judgments in favor of banking commission representing bank stockholders' statutory liability under this section are probably not assignable or salable by commission at final winding-up or liquidation sale; if sold they are probably enforceable by purchaser or assignee only to the extent of actual purchase price paid therefor. Problem of final liquidation of said judgments discussed and analyzed. 30 Atty. Gen. 382.

221.43 Shares of stock, when not transferable. The shares of stock of an incorporated bank shall be deemed personal property, and shall be transferred on the books of the bank in such manner as the by-laws thereof may direct, and no transfer of capital

stock shall be valid while the bank is under notice to make good the impairment of its capital, as provided in section 220.07, nor until such impairment shall have been made good. No transfer of capital stock to any domestic or foreign corporation, association, investment trust or other form of organized trust, whether so specifically stated or not, shall be valid until the provisions of section 221.56 are complied with. All transfers of stock shall be certified by the bank cashier to the banking commission within three days after such transfer. Failure to comply with this requirement shall be punishable by a fine of not to exceed one hundred dollars. [*Spl. S. 1931 c. 10 s. 13; 1935 c. 393; 1937 c. 284 s. 2; 1937 c. 387*]

Note: Generally, the person in whose name bank stock stands on the stock register of a bank is a stockholder of the bank and continues as such record stockholder so far as the bank, the commissioner of banking, and the creditors of the bank are concerned, and for all purposes of law, until such stock is presented to the bank for transfer on its books, notwithstanding he may have assigned the stock to another. Bank stock not actually transferred on the books of the bank will nevertheless be considered as transferred when the holder of record has done everything that he reasonably can do to effect a transfer. Lochner v. State, 214 W 109, 252 NW 695.

Officer of bank has no right to refuse to transfer bank stock even if he believes it is being done to evade statutory liability or proposed holder of stock is limited. 21 Atty. Gen. 725.

221.44 Deposits by minors and unmarried females; trust deposits. Whenever any deposit shall be made in any bank by and in the name of any minor, or female being or thereafter becoming a married woman, the same shall be held for the exclusive right and benefit of such minor, or female, and free from the control or lien of all persons whatsoever, except creditors, and shall be paid with any interest due thereon, to the person in whose name the deposit shall have been made, and the receipt of such minor or female shall be a sufficient release or discharge for such deposit to the bank. Whenever any deposit shall be made by any person in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to such bank, in the event of the death of the trustee, the same or any part thereof, and any interest due thereon, may be paid to the person for whom the said deposit was made.

221.45 Joint deposits payable to either depositor. When a deposit has been made, or shall hereafter be made, in any bank, trust company bank or mutual savings bank transacting business in this state in the names of two persons, payable to either, or payable to either or the survivor, such deposit, or any part thereof, or any interest or dividend thereon, may be paid to either of said persons whether the other be living or not; and the receipt or acquittance of the person so paid shall be a valid and sufficient release and discharge to the bank for any payment so made.

Cross Reference: For delivery to a survivor of securities jointly owned, see 72.11 (3).

Note: This section, releasing banks from liability for withdrawals paid to either of the persons to whom a joint deposit is made payable, is immaterial in determining whether there has been a completed gift or transfer as between such persons themselves; and the statute does not dispense with any rule of the bank requiring the production of the passbook. Marshall & Ilsley Bank v. Voigt, 214 W 27, 252 NW 355.

Where testator bequeathed to nephew deposit certificates payable to order of testator or nephew, nephew held to take title to certificates by right of survivorship as joint payee rather than under will, even though there was no delivery of certificates to nephew nor any joint possession thereof, and hence county court had no jurisdiction over certificates as assets of estate, and question whether executor converted certificates was matter to be determined in circuit court. Estate of Staver, 218 W 114, 260 NW 655. See also Estate of Skilling, 218 W 574, 260 NW 660.

221.46 Legal process, how served. Legal process against any bank may be served upon such bank in the manner now provided by law for such service on other private corporations organized under the laws of this state.

Cross Reference: For manner of service, see 262.09.

221.47 Circulating notes, when issuable. In the event that the congress of the United States shall hereafter remove the tax on bank circulation or provide for the establishment of circulation of banks organized under state laws, any bank organized or doing business under this chapter shall have the power to issue circulating notes or currency in accordance with any such act of congress, or under such regulations as the banking department of this state shall prescribe. The provisions of this section shall not be construed to permit any mutual savings bank or any loan and trust company or any other than a banking corporation to issue circulating notes.

221.48 Banks coming under the provisions of this chapter. The provisions of this chapter shall apply to, and govern, all banks organized and now existing within this state, and the powers, privileges, duties and restrictions conferred and imposed upon any bank existing and doing business under the laws of this state, are hereby abridged, enlarged or modified as each particular case may require, to conform to the provisions of this chapter.

Nothing in this chapter shall be construed to affect the legality of investments heretofore made, or to transactions heretofore had, pursuant to any provisions of law in force when such investments were made or transactions had. Every bank now existing and doing business within this state shall on or before the first day of February next following the time when this chapter becomes operative, alter or amend its articles of organization, if necessary, to comply with the provisions of this chapter, and shall by said time make its business conform in all respects to the requirements of this chapter, except where such requirement is expressly waived herein.

221.49 Not to use word "bank," when; penalty. No person, copartnership or corporation engaged in business in this state, not subject to supervision and examination by the banking commission, and not required to make reports to it by the provisions of this chapter, shall make use of the words "bank," "savings bank," or "banker" (or the plural thereof) upon any office sign at the place where such business is transacted, having thereon any artificial or corporate name or other words indicating that such place or office is the place or office of a bank, nor shall such person or persons make use of or circulate any letterheads, billheads, blank notes, blank receipts, certificates, circulars, or any written or printed or partly written and partly printed paper whatever having thereon any artificial or corporate name, or other word or words, indicating that such business is the business of a bank. Any person or persons violating any of the provisions of this section, either individually or as an interested party in any copartnership or corporation shall be guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not less than three hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail not less than sixty days nor more than one year; or by both such fine and imprisonment. [*1937 c. 284 s. 3*]

221.50 Declaration of unlimited individual responsibility. The stockholders of any bank organized under the provisions of this chapter may file with the banking commission a declaration in writing, signed by each and all of them and by them acknowledged, consenting and agreeing to hold themselves individually responsible for all the debts, demands and liabilities of said bank. Upon application therefor the banking commission shall make and certify a copy of said declaration which shall be received in evidence and have the same effect as the original declaration would have if produced in evidence and duly proved. [*1937 c. 284 s. 3*]

Note: To make the declaration provided for in this section effective it is not necessary that all of the stockholders of the bank sign the instrument. The liability created by said declaration may be enforced by the banking commissioner in the same action with the enforcement of the double liability of stockholders. Schwenker v. Reedal, 205 W 376, 236 NW 603, 238 NW 289.

221.51 Liability under the stockholders' declaration. On and from the filing of such declaration the persons who have executed the same shall be individually liable for all the debts, demands and liabilities of said bank, as well those then existing and unpaid as those thereafter to be made, created or incurred. And in any action brought against any such bank for any debt, demand or liability thereof it shall be competent for the party plaintiff to join as defendant therewith any one, or more, or all of the stockholders, whose names are attached to such declaration, and in such action to recover and have judgment and execution against the defendants or either or any of them; provided, that nothing herein shall be construed to prevent any action from being maintained for any debt, demand or liability of such bank against said bank alone, or against the said stockholders, or either or any of them. In case of the bona fide sale and transfer of any stock or interest of any stockholder, in any such bank, as provided in section 221.43, a written memorandum of such transfer, signed and acknowledged in manner aforesaid by the vendor of said stock or interest, may be filed with the banking commission, and thereupon the individual liability of such vendor for the debts, demands and liabilities of said bank, which may be created or incurred after the expiration of six months from and after the filing of said memorandum shall cease; and in such case the purchaser of said stock shall not become or be responsible or liable in any manner for the debts, demands and liabilities of such bank unless he shall execute and file the declaration mentioned in the next preceding section. [*1937 c. 284 s. 3*]

Note: The signatures of all stockholders are not necessary to create the liability imposed by 221.50 on those who sign and file with the commissioner a declaration of individual responsibility for the debts of the bank. Schwenker v. Reedal, 205 W 376, 236 NW 603, 238 NW 289.

221.52 Commission may disregard such declaration. The banking commission, its deputy or any examiner by it appointed shall not be required to take into consideration such certificate of unlimited individual responsibility in determining the impairment of capital of any bank, or in determining the solvency of any such bank. [*1937 c. 284 s. 3*]

221.53 Fees for certified copies. Whenever any certified copy or copies of any records or papers filed in the office of the banking commission shall be lawfully required to be furnished by it, the banking commission shall be entitled to a fee of ten cents for each folio for making such copy or copies and fifty cents for each certificate. All such fees shall be paid by the banking commission into the state treasury to the credit of the general fund. [*1937 c. 284 s. 3*]

221.54 How to convert unincorporated banks. Any person, copartnership or corporation doing a banking business in this state may incorporate as a state bank, as provided herein for the organization of banks, provided, that the banking commission may accept good assets of such person or persons worth not less than par in lieu of cash in payment for the capital stock of such state bank. Every such person, copartnership or corporation shall conform to the provisions of section 221.49 on or before September 1, A. D. 1903, at which time the provisions of said section 221.49 shall be enforced by the banking commission. [*1937 c. 284 s. 3*]

221.56 Stock control of bank or trust company by other corporation. (1) Any domestic corporation, investment trust, or other form of trust which shall own, hold or in any manner control a majority of the stock in a state bank or trust company shall be deemed to be engaged in the business of banking and shall be subject to the supervision of the state banking department. It shall file reports of its financial condition when called for by the banking commission, and the commission may order an examination of its condition and solvency whenever in its opinion such examination is required, and the cost of such examination shall be paid by such corporation or association. Whenever in the opinion of the banking commission the condition of such corporation or association shall be such as to endanger the safety of the deposits in any bank or trust company which is owned or in any manner controlled by such corporation, or the operation of such corporation, association or trust shall be carried on in such manner as to endanger the safety of such bank or trust company or its depositors, the commission may order such corporation or trust to remedy such condition or policy within ninety days and if such order be not complied with, the commission shall have power to fully direct the operation of such banks or trust companies until such order be complied with, and may withhold all dividends from such corporation or trust during the period in which the commission may exercise such authority.

(2) The provisions of subsection (1) shall apply to any foreign corporation, association, investment trust, or other form of trust which shall be authorized to do business in Wisconsin.

(3) Every domestic corporation and every foreign corporation which shall purchase, own or in any manner control the voting of any stock in a state bank or trust company shall be liable to the creditors of such bank or trust company for any assessment made against the stockholders of such bank or trust company to the par value of the stock so purchased, owned or controlled in the same manner as is provided for individual stockholders of such banking corporation under the provisions of section 221.42. Any such domestic or foreign corporation shall deposit with the state treasurer securities such as are required to be deposited by trust company banks by section 223.02 equal in amount to fifty per cent of the par value of the stocks of state banks or trust companies which shall be held, owned or controlled by such domestic or foreign corporations, but not exceeding in the aggregate the largest amount required to be deposited by a Wisconsin trust company. In case the double liability of any such corporation against which an assessment may be made as provided herein shall not be fully paid by such corporation, then the stockholders of such corporation shall be liable for an assessment sufficient to cover the full amount of the assessment against such corporation.

(4) All of the foregoing provisions of this section relating to corporations shall apply equally to associations, investment trusts, or other forms of organized trusts, whether so specifically stated or not, but nothing contained in this section shall be construed to prohibit any trust company bank, or state or national bank, authorized to administer or execute trusts, to accept and carry out the provisions of any personal trust, or any trust created by will where the owner of bank stock shall create a trust for his own benefit during his lifetime, or shall provide by will a trust in bank stock for the benefit of his heirs, and trusts so created shall not be deemed to come within the provisions of this section. [*1935 c. 393; 1937 c. 284 s. 3; 1939 c. 513 s. 47*]

Note: Commissioner of banking has no authority to require holding companies to file with banking department list of their shareholders. 19 Atty. Gen. 141.

This section does not apply to the Reconstruction Finance Corporation in connection with the purchase by that corporation of preferred stock and debentures of a state bank. 28 Atty. Gen. 476.