

## CHAPTER 221

## STATE BANKS

221.01	State banks	221.245	Cancellation of charter of merged bank
221.02	Promotion commission; brokerage fees	221.25	Consolidation of banks
221.03	Articles of incorporation	221.26	Banks may be placed in hands of commissioner.
221.04	Powers	221.27	Reserves
221.041	Bank service corporations.	221.28	Reserve to be kept up
221.045	Definition of terms "capital" and "capital stock" in banking laws	221.29	Limit of loans and investments
221.046	Banks may issue and sell capital notes or debentures; approval of department	221.30	Banks not to hold own stock.
221.047	Banks may issue preferred stock; approval of commissioner; restrictions	221.31	Loans to bank officials; penalty
221.05	Prohibition to transact business	221.32	Limit on mortgage loans
221.06	Authority to commence business	221.325	Health and accident insurance as additional collateral.
221.07	Publication of certificate	221.33	Assets not to be pledged as security
221.08	Board; officers; duty to hold and attend meetings; penalty	221.34	Checks certified, when
221.09	Duty of examining committee	221.35	Interest rate
221.10	Stock book	221.36	Bad debts, what are.
221.11	Stockholders' right to vote.	221.37	Surplus fund
221.12	Articles may be amended.	221.38	Dividends
221.13	Extension of corporate existence of state bank.	221.39	Theft, how punished.
221.14	Real estate, for what purposes held.	221.40	Bank officers and employes not to take commissions
221.15	Reports; proofs of publication	221.41	Charter, how forfeited
221.16	One hundred dollars per day forfeiture	221.43	Shares of stock, when not transferable.
221.17	Making false statements made a felony	221.46	Legal process, how served
221.18	Inspection; refusal to permit; action to dissolve; prosecutions	221.47	Circulating notes, when issuable
221.19	Prosecutions	221.48	Banks coming under this chapter.
221.205	Banks; disciplinary provisions	221.49	Not to use "bank"
221.21	When organized as national bank	221.50	Declaration of unlimited individual responsibility
221.22	National banks may reorganize as state banks	221.51	Liability under the stockholders' declaration.
221.23	Consolidation of banks	221.52	Commissioner may disregard such declaration
221.24	Liquidation, when authorized, notice	221.53	Fees for certified copies
		221.56	Stock control of bank or trust company by other corporation.
		221.57	Bank-owned banks

**221.01 State banks. (1) APPLICATION.** Any number of adult persons, citizens of Wisconsin, not less than 7 nor more than 20, desiring to associate for the purpose of organizing a banking corporation under this chapter, shall make application to the commissioner of banking in such manner as may be prescribed on a form furnished by him.

**(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 commissioner may require.

**(3) NOTICE.** Upon receipt by the commissioner of such application properly executed, he shall, within 5 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. The notice shall be published as a class 3 notice, under ch. 985, by the applicants, at their own expense, in the city, village or town where the bank is to be located. Proof of publication shall be filed with the commissioner in such form as he requires. The commissioner 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 commissioner of banking a fee of \$1,500 together with the actual costs incurred by the commissioner in making an investigation of the application, which sum shall be paid into the state treasury.

**(5) INVESTIGATION.** The commissioner shall thereupon ascertain at the hearing and from the best sources of information at his command, and by such investigation as he 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 he 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 90 days from the filing in the office of the commissioner of proof of publication and the making of the deposit herein required, but in the event a majority of the applicants and the commissioner mutually agree to it, the time may be extended an additional period of 60 days.

(6) **DECISION.** After completing such investigation the commissioner shall make a written report to the banking review board stating the results of his investigation and his 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 pursuant to s. 220.035 (1) and (3). If approval is given, the commissioner shall indorse on each of the original applications the word "Approved" over his official signature. If disapproved, he shall indorse the word "Disapproved" over his official signature. One of the duplicate originals shall be filed in his office and one returned by mail to the applicants.

(10) **CERTIFICATE OF AUTHORITY.** In the event of approval of the application for authority to organize a banking corporation, the commissioner 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 commissioner. 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 chairman 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 are not in conflict with the limitations of this chapter and are applicable.

(12) **CAPITAL.** (a) The aggregate amount of the capital stock of any bank hereafter organized shall not be less than \$50,000 in towns, cities and villages of less than 10,000 population; not less than \$100,000 in towns, cities and villages having 10,000 or more and less than 25,000 population; and not less than \$250,000 in cities having 25,000 or more population. In addition to the required capital stock a contingent fund and paid-in surplus, each in an amount equal to at least 25% of the aggregate amount of the capital stock, are to be subscribed at the time the subscription list of common stockholders is made up.

(b) After February 1, 1967, any state bank which does not have fully paid-in capital stock in the amount prescribed in par. (a) shall be ordered by the commissioner to increase its capital stock to such amount. The commissioner may, in addition to his other powers to act against delinquent banks, require any bank failing to comply with such order to pay a forfeiture to the commissioner of \$10 for each day of noncompliance. If any bank fails or refuses to pay such forfeiture, the commissioner

may maintain an action for the recovery thereof. This paragraph shall not apply to any state bank in which the capital surplus and undivided profits equal or exceed 10% of its deposits.

(c) Any state bank, with the approval of the commissioner and by vote of stockholders owning two-thirds of the stock of the bank entitled to vote, may authorize an increase in the common stock of the bank in the category of authorized but unissued stock. Such authorized but unissued stock may be issued to employees of the bank pursuant to a stock option or stock purchase plan adopted in accordance with par. (d), or in exchange for convertible preferred stock and convertible capital debentures in accordance with the terms and provisions of such securities. Authorized but unissued stock may also be issued for such other purposes and considerations as may be approved by the board of directors of the bank and by the commissioner.

(d) 1. Any state bank may grant options to purchase, sell or enter into agreements to sell shares of its capital stock to its employes, for a consideration of not less than 100% of the fair market value of the shares on the date the option is granted or, if pursuant to a stock purchase plan, 85% of the fair market value on the date the purchase price is fixed, pursuant to the terms of an employe restricted stock option plan or an employe stock purchase plan which has been adopted by the board of directors of the bank and approved by the holders of at least two-thirds of the outstanding shares of the bank entitled to vote and by the commissioner. Stock options issued hereunder shall not extend beyond a period of 10 years from date of issuance and shall otherwise qualify as restricted stock options.

2. Employe stock options and stock purchase agreements may provide that options may be exercisable or that shares may be purchased on any business day. A notarized notice specifying the number of shares issued pursuant to option and stock purchase plans and the amount paid in therefor shall be executed by the president, vice president or cashier of the bank and filed with the commissioner not later than the 10th day of the month following issuance and no stock shall be deemed validly issued until the commissioner has issued his certificate specifying the amount of stock so purchased, the purchase price thereof having been duly paid into the capital of the bank, and his approval thereof.

(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 commissioner, in the manner prescribed for by s. 221.25, 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 commissioner, 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 commissioner, 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 s. 223.02.

(14) **NAME.** Every bank incorporated under this section shall be known as a state bank.

**History:** 1973 c. 83; 1983 a. 119, 538.

**221.02 Promotion commission; brokerage fees.** 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. This section shall not be construed as prohibiting an attorney or attorneys at law from receiving reasonable compensation for legal service in connection therewith. It shall be lawful for a bank to pay a brokerage fee of not in excess of 2 1/2 per cent for the sale of any increase in the capital of a banking corporation in this state provided that such fee is charged to the current expense account of said bank and such increase in capital is carried on the bank's books in a sum not less than the par value thereof. Each and every individual, partnership or corpora-

**221.02 STATE BANKS**

3788

tion violating the provisions of this section shall forfeit to the state \$1,000 for each and every such violation and in addition thereto double the amount of such commission, compensation or bonus.

**221.03 Articles of incorporation.** (1) The articles of incorporation shall be filed with the commissioner of banking within a reasonable time as determined by the commissioner of banking from the date of the certificate of authority to organize has been approved, and if not filed within that period all rights of the incorporators shall cease and the certificate of authority to organize is void.

(2) (a) The articles of incorporation shall be executed in triplicate, and shall be signed by not less than 7 nor more than 21 persons, including a majority of the incorporators. All signers shall be citizens of the state of Wisconsin and subscribers to stock of the bank. Such articles shall contain:

1. 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.

2. The name of such bank, which name shall be subject to the approval of the commissioner, 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 50 miles, and which name, except in the case of a bank organized as a mutual savings bank, shall not contain the word "savings".

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

4. The amount of the capital stock.

5. The limitation, if any, on the duration of its existence.

(b) 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 commissioner shall, within his discretion, approve or disapprove such articles of incorporation. If approved, the commissioner shall indorse on each of the 3 triplicate originals the word "approved". One of such originals he shall file in his office, and to the 2 remaining originals he shall attach a certificate showing the date of filing, the approval and date of approval, and return the same to the incorporators. 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 \$100 shall be paid to the commissioner when the articles of incorporation are filed, and the commissioner shall pay such fee into the state treasury.

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

(6) Within 90 days from the filing of the articles of incorporation, the incorporators shall file with the commissioner, in duplicate, the proposed bylaws and 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. On approval by the commissioner, the bylaws shall be submitted for consideration by the shareholders.

(7) Within the same period the incorporators 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.

(d) That 100 per cent of each stock subscription has been paid in lawful money.

(e) That no incorporator 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 incorporators, is on deposit to the credit of the incorporators in the depository bank.

History: 1973 c 83; 1983 a 119

**221.04 Powers.** (1) GENERAL. Upon the execution and filing of the articles of incorporation with the commissioner of banking and the approval by the commissioner, 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 bylaws 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 bylaws shall provide for safe and orderly conduct of the corporation's business and for the protection of its depositors and stockholders. No bylaw or regulation shall be made, amended or repealed except by an affirmative vote of two-thirds of the outstanding capital stock having voting power.

(f) To exercise by its board of directors, or duly authorized officers or agents, subject to law, all such incidental powers 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, except as provided under pars.

(i) to (j), (m) and (n), establish branch offices, branch banks or bank stations, but this prohibition shall not apply to any branch office or branch bank established and maintained prior to May 14, 1909, or any bank station established and maintained prior to May 17, 1947, and any bank may exercise the powers granted by this subsection to carry on the business of banking in any such branch office, branch bank or banking station so established. Applications for the establishment of bank stations which were on file with the banking commission on or before April 1, 1947 may be granted, subject to the provisions of this section as they existed prior to May 17, 1947.

(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 be-

comes 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.

(i) To establish and maintain, upon approval by the commissioner, a bank station, as defined by the commissioner, exclusively to receive deposits, permit withdrawals, issue cashiers' checks, money orders, drafts and travelers' checks and provide safekeeping and safety deposit services in any town completely surrounded by outlying waters and having no bank or place where such banking may be done in the town or readily accessible to all persons of the town desiring the service. A bank whose home bank is located on a body of land completely surrounded by outlying waters, as defined in s. 29.01 (9) and (11), may establish and maintain a bank station across such outlying waters from the home bank but within the same municipality. Such a bank station is not subject to the distance limitations of par. (j) 2 or 3. Interpretation of this paragraph by the comptroller of currency to mean that a national bank may establish a bank station, branch bank or branch office in any place or town other than in one completely surrounded by outlying waters will render this paragraph void.

(im) Notwithstanding par. (f) or (j) 2 or 3, to establish and maintain a branch at an airport operated by a county having at least 500,000 population, if the branch is approved by the commissioner and the banking review board.

(j) 1. To establish and maintain a branch bank, upon approval by the commissioner and the banking review board, within 25 miles of the home bank or within the county of the home bank, whichever is greater.

2. A bank may not establish a branch under subd. 1 within 0.75 miles of another bank's branch existing on May 7, 1982.

3. A bank may not establish a branch under subd. 1 within 1.5 miles of another home bank.

4. Notwithstanding subd. 2 or 3, a home bank owned by a bank holding company on May 7, 1982, may be converted to a branch pursuant to a merger or consolidation under s. 221.25 if it is within the distance specified in subd. 1 of the home bank of which it will become a branch and which also is owned by the bank holding company. For purposes of this paragraph, a home bank converted to a branch under this subdivision is a branch existing on May 7, 1982.

5. Notwithstanding subd. 2 or 3, a home bank created by a bank holding company after May 7, 1982, may be converted to a branch pursuant to a merger or consolidation under s. 221.25 if it was owned by the bank holding company for at least 5 years before conversion and if it is within the distance specified in subd. 1 of the home bank of which it will become a branch and which also is owned by the bank holding company. For purposes of this paragraph, a home bank converted to a branch under this subdivision is a branch existing on May 7, 1982.

6. A home bank acquired by a bank holding company after May 7, 1982, may be converted to a branch pursuant to a merger or consolidation under s. 221.25 if it is within the distance specified in subd. 1 of the home bank of which it will become a branch and which also is owned by the bank holding company, except that if it is within the territory specified in subd. 2 or 3 for another bank's branch or another home bank, it may not be converted until 5 years after its initial establishment. For purposes of this paragraph, a home bank converted to a branch under this subdivision is a branch existing on May 7, 1982.

7. A home bank may be merged into or consolidated with another home bank pursuant to s. 221.25, if the home banks are within the distance specified in subd. 1. The home bank may be converted to a branch of the surviving home bank, except that if it is within the territory specified in subd. 2 or 3 for another bank's branch or another home bank, and it is to be converted to a branch of the surviving home bank, the merger or consolidation may not occur until 5 years after initial establishment of the merged or consolidated bank. For purposes of this paragraph, a home bank converted to a branch under this subdivision is a branch existing on May 7, 1982.

8. Notwithstanding subds. 1 to 3, a branch of a home bank converted to a branch under subd. 4, 5, 6 or 7 becomes a branch of the new home bank. For purposes of this paragraph, a branch existing on May 7, 1982, as a branch of the converted home bank, is a branch existing on May 7, 1982, of the home bank of which it becomes a branch under this subdivision.

9. Notwithstanding subd. 2 or 3 and with the approval of the commissioner and the banking review board, a bank may relocate its home bank under this paragraph to another place in the municipality in which the home bank is located and continue to operate the former home bank as a branch at the same location or at a location within 1,500 feet of its prior location, if all of the following conditions are met:

a. The new home bank location is at least 0.75 miles from a branch existing on May 7, 1982, of any other bank or from another home bank.

b. At least 25% by area of the real property within 2 miles of the former home bank is a blighted area, as defined in s. 66.431 (4) (b), or an area in need of rehabilitation or conservation work within the meaning of s. 66.435 (3).

c. The bank has experienced, over at least the past 5 years, deposit growth, retention of earnings or a return on invested capital which is substantially below the average for all banks in this state.

10. Notwithstanding subd. 2 or 3 and with the approval of the commissioner and the banking review board, a branch may be relocated no more than once every 10 years within 1,500 feet of its prior location, except that its initial location continues to be its location for purposes of subds. 1 to 9 and 11 to 19.

11. A home bank may establish a branch within the territory authorized under subd. 1 in another state, with the approval of the commissioner, the banking review board and the appropriate regulator of the other state.

12. Except as provided in subd. 12m, the location of a home bank on May 7, 1982, or upon the creation of the home bank, whichever is later, continues to be its location for purposes of this paragraph, notwithstanding any subsequent relocation or redesignation of the home bank.

12m. Notwithstanding subds. 1 to 3 or 12 and with the approval of the commissioner and the banking review board, the location or designation of a home bank may be changed once before January 1, 1984 and the changed location continues to be its location for purposes of this paragraph, notwithstanding any subsequent relocation or redesignation of the home bank. If a home bank in existence on May 7, 1982 establishes or applies for authority to establish a new branch of that home bank after May 7, 1982 and before January 1, 1984, the location and designation of that home bank may not be changed. For purposes of this paragraph, a home bank relocated or redesignated under this paragraph is a home bank existing on May 7, 1982.

13. A home bank or branch exists on May 7, 1982 if its establishment was approved by the appropriate state or federal regulator before May 7, 1982.

14. Subdivisions 1 to 3 and 7 do not apply to an emergency situation where the commissioner finds that a bank is failing and that it must be merged or consolidated under s. 221.25 for the protection of depositors. The opportunity to merge or consolidate with the bank shall first be

offered to and not accepted by all other banks within the distances specified in subd. 1 before it may be offered to a bank outside of the distances specified in subd. 1.

15. A merger or consolidation resulting in conversion of a home bank to a branch under subd. 4, 5, 6 or 7 shall be approved under s. 221.25 if the financial and managerial resources and future prospects of the surviving home bank are satisfactory to the commissioner.

16. All distances under this paragraph shall be measured in a straight line from the nearest adjacent points in the respective property lines.

17. This paragraph does not invalidate or impair the business of banking at any branch office, branch bank or bank station existing on May 7, 1982.

18. Application for the establishment of a branch under this paragraph shall be made to the commissioner on a form furnished by the commissioner. The application shall be accompanied by a fee of \$500.

19. Branches established under this paragraph are subject to all laws and rules applicable to banks generally.

(k) 1. Directly or indirectly, to acquire, place and operate, or participate in the acquisition, placement and operation of, at locations other than its main or branch offices, customer bank communications terminals, in accordance with rules established by the commissioner. Terminals established in accordance with such rules are not subject to the limitations of par. (i) or (j) or s. 221.14 (4m). The rules of the commissioner shall provide that any such customer bank communications terminal shall be available for use, on a nondiscriminatory basis, by any state or national bank which has its principal place of business in this state, by any other bank obtaining the consent of a state or national bank which has its principal place of business in this state and is using the terminal and by all customers designated by a bank using the terminal. This paragraph does not authorize a bank which has its principal place of business outside this state to conduct banking business in this state. The customer bank communications terminals also shall be available for use, on a nondiscriminatory basis, by any credit union, savings and loan association or mutual savings bank, whose home office is located in this state, if the credit union, savings and loan association or mutual savings bank requests to share its use, subject to rules jointly established by the commissioner of banking, the commissioner of credit unions and the commissioner of savings and loan. The rules of the commissioner and the joint rules shall each prohibit any advertising with regard to a shared terminal which suggests or implies exclusive

ownership or control of the shared terminal by any financial institution or group of financial institutions operating or participating in the operation of the terminal. The commissioner by order may authorize the installation and operation of a customer bank communications terminal in a mobile facility, after notice and hearing upon the proposed service stops of the mobile facility.

2. In this paragraph "customer bank communications terminal" means a terminal or other facility or installation, attended or unattended, which is not located at the principal place of business or at a branch or remote facility of a bank and through which customers and banks may engage, by means of either the direct transmission of electronic impulses to and from a bank or the recording of electronic impulses or other indicia of a transaction for delayed transmission to a bank, in transactions which are incidental to the conduct of the business of banking and which are otherwise permitted by law. "Customer bank communications terminal" also includes all equipment, regardless of location, which is interconnected with a customer bank communications terminal and which is necessary to transmit, route and process electronic impulses in order to enable the customer bank communications terminal to perform any function for which it is designed.

3. If any person primarily engaged in the retail sale of goods or services owns or operates a customer bank communications terminal on such person's premises and allows access to such terminal by any financial institution, group of financial institutions, or their customers for any purpose or function nothing in this paragraph or in rules established by the commissioner shall, or shall be construed or interpreted to, require such person to accept any connection to or use of the customer bank communications terminal on its premises for any other purpose or function or to accept any connection to the terminal on its premises by any other financial institution.

4. If a person primarily engaged in the retail sale of goods or services owns or operates a customer bank communications terminal on such person's premises and allows access to the terminal by any financial institution, group of financial institutions or their customers for any purpose or function, no laws governing such institutions or rules established by the commissioner shall apply to such person other than those laws or rules directly related to the particular function performed by the terminal on such person's premises for a financial institution.

5. Information transmitted from a customer bank communications terminal, either identified as to particular transactions or aggregate

**221.04 STATE BANKS**

3792

information, shall only be used for purposes of effecting the financial transactions for which such information was received, for any other purpose lawfully authorized by contract or for any other purpose permitted by statute or rules pertaining to the dissemination and disclosure of such information.

(L) To establish and maintain facilities for the receipt of checks and other transit items as an intermediary or payor bank in bank-to-bank transactions. Establishment or maintenance of a facility under this paragraph shall not constitute establishment or maintenance of a branch bank within the meaning of pars. (f), (i) and (j).

(m) To establish and maintain a branch bank at the former site of a branch bank in a 1st class city upon approval by the commissioner and the banking review board. In this paragraph, "former site" means any parcel of real estate upon which a branch bank in operation on May 17, 1947, but no longer in operation as a branch bank on November 1, 1957, was actually located, as well as any site the nearest point of the boundary of which is 250 feet or less from any point along the boundary of any parcel of real estate actually occupied by a former branch bank. All measurements under this paragraph shall be made along the shortest straight line connecting the 2 nearest points of the respective parcels of real estate. No bank may establish and maintain more than one branch bank under this paragraph at one time. No more than one branch bank may be established and maintained on a former site of a branch bank at one time. A branch bank established and maintained under this paragraph may not be moved to a location which is not on the former site on which it is established. Applications for the establishment of a branch bank under this paragraph shall be made to the commissioner on a form furnished by the commissioner. Interpretation of this paragraph by the comptroller of currency to mean that a national bank may establish a bank station, branch bank or branch office in any place other than on or within 250 feet of the former site of a branch bank renders this paragraph void.

(n) 1. Upon amendment of the articles of association under s. 221.12 and obtaining, prior to the date which is 2 years after May 7, 1982, approval of the commissioner and the banking review board, to relocate the principal office of the bank to another place in the municipality in which the principal office is located on the date of the amendment, and to continue to operate the former principal office, or an office located within 1,500 feet of the boundary of the parcel of real estate occupied by the former principal office measured on a straight line connecting the 2 nearest points on the respective parcels of

real estate, as a branch, notwithstanding par. (f), if all the services provided by the principal office are also provided by the branch, the branch is operated for at least 5 years after the date of relocation and the commissioner and the banking review board find that:

a. At least 25% by area of the real property within 2 miles of the former principal office is either a blighted area, as defined in s. 66.431 (4) (b), or an area in need of rehabilitation or conservation work within the meaning of s. 66.435 (3);

b. The location under this paragraph is necessary because the applicant has experienced, over at least the past 5 years, deposit growth, retention of earnings or a return on invested capital which is substantially below the average for all commercial banks in this state; and

c. The principal office was not relocated for the 5 years immediately before approval of a branch under this paragraph.

2. This paragraph applies only to the relocation of a principal office which is located in a 1st, 2nd or 3rd class city.

3. Not more than 4 branch offices nor more than one branch for any principal office may be approved under this paragraph.

3m. A branch office approved under this paragraph may not cease operations unless it has operated for at least 5 years and the commissioner and the banking review board have approved cessation. The commissioner may approve cessation only after holding a public hearing in the area served by the branch or principal office and considering all of the following:

a. The availability of other financial institutions to residents of the area.

b. Any potential adverse effects cessation would have on the residents of the area.

c. The extent to which the branch or principal office has met the needs of residents of the area for credit and deposit services, including the results of any evaluation under 12 USC 2903.

d. The financial condition of the principal office or the branch and its principal office.

4. Any finding by the comptroller of currency which permits a national bank to operate a branch at a location which the commissioner finds does not meet the requirements of subs. 1 to 3 renders this paragraph void.

(2) SAFETY DEPOSITS; LIEN. Any bank may take and receive from any individual or corporation for safekeeping 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 safekeeping, and in case such lien shall not be paid within 2 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 2 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.** 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 INTERNATIONAL BANKING AND FINANCIAL INSTITUTIONS; FEDERAL NATIONAL MORTGAGE ASSOCIATION.** (a) Any bank may, with the approval of the commissioner of banking, invest an amount not exceeding in the aggregate 15% of its paid-in capital stock and surplus in one or more corporations principally engaged in international or foreign banking, or banking in dependencies or insular possessions of the United States organized pursuant to ss. 611-631 of Title 12 of the United States Code, and any bank may also invest with the approval of the commissioner of banking an amount not exceeding in the aggregate 10% of its paid-in capital stock and surplus in the stock of one or more corporations principally engaged in international or foreign financial operations other than banking as well as such financial operations in dependencies or insular possessions of the United States organized pursuant to said ss. 611-631 of Title 12 of the United States Code.

(b) Any bank having loans secured by real estate mortgage may with the approval of the commissioner of banking sell all or any portion of them to the federal national mortgage association, or any successor thereof, and in connection therewith make payments of any capital contributions, required pursuant to law, in the nature of subscriptions for stock of the federal national mortgage association or any successor thereof, receive stock evidencing such capital contributions and hold or dispose of such stock.

**(4g) STOCK IN BANK-OWNED BANKS.** Any bank may, with the approval of the commissioner, acquire and hold stock in an aggregate amount not exceeding 4% of its capital and surplus, in one or more banks chartered under s. 221.57 or in one or more bank holding companies wholly owning a bank chartered under s. 221.57.

**(4m) STOCK IN AGRICULTURAL CREDIT CORPORATION.** Any bank may invest, with the approval of the commissioner of banking, in an agricultural credit corporation. Unless a bank owns at least 80% of the stock of the agricultural credit corporation, the amount which it invests in the corporation shall not exceed 20% of the bank's paid-in capital stock and surplus.

**(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 commissioner upon demand. If at any time the commissioner shall

ascertain or believe that any regulations prescribed by him with reference to such business are not being complied with, said commissioner is hereby authorized and empowered to institute an investigation of the matter in order to satisfy himself 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 commissioner, 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 commissioner, 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 commissioner shall comply with s. 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 s. 223.03 (8). In passing upon application for permission to exercise such fiduciary powers, the commissioner 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 him 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 commissioner may within 6 months after the date on which the application of such bank was filed, issue under his 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 commissioner to the bank thereby authorized to

exercise fiduciary powers; another shall be filed and recorded in the office of the commissioner, 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.

(6m) TRUST SERVICE OFFICES. Any state bank exercising trust powers may, with the approval of the commissioner of banking, establish and maintain a trust service office at any office in this state of any other state or national bank. Any state bank may, with the approval of the commissioner, permit any other state or national bank exercising trust powers or any trust company bank organized under ch. 223 to establish and maintain a trust service office at any of its banking offices. The establishment and operation of such trust service offices shall be subject to s. 223.07. This subsection is not intended to authorize branch banking. If, at any time, the U.S. comptroller of the currency interprets this subsection or s. 223.07 to mean that a national bank may establish a branch office, other than an office with powers limited to those of trust service offices as provided in s. 223.07, this subsection and s. 223.07 shall be rendered void as of the date of enactment.

(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 commissioner of banking of Wisconsin, and in such manner and to such extent as said commissioner may in his discretion approve, and with such limitations upon the exercise of said powers as said commissioner may in his discretion impose.

**(8) CONTRIBUTIONS.** (a) Any bank may make contributions to religious, charitable or civic organizations in any one year in an aggregate amount not in excess of one-half of one per cent of its common stock and surplus as of January 1 of such year without approval by the stockholders.

(b) Such contributions in excess of one-half of one per cent of the common stock and surplus as of January 1 of such year may be made in any one year provided such excess contribution is approved in advance by stockholders owning not less than  $66 \frac{2}{3}$  per cent of the outstanding common stock.

**(9) INSURANCE INTERMEDIARY LICENSE.** A bank organized under this chapter, or an officer or salaried employe of any such bank, may obtain a license as an insurance intermediary if otherwise qualified.

**History:** 1973 c. 152; 1975 c. 58, 199, 313, 371, 389, 391; 1977 c. 132, 136, 307, 310; 1979 c. 102 s. 159; 1979 c. 267, 305; 1979 c. 355 ss. 150, 241; 1981 c. 314, 338, 344; 1983 a. 27 s. 2202 (38); 1983 a. 119; 1983 a. 189 s. 329 (14); 1983 a. 319.

Twenty-five mile limitation under sub (1) (j) 1 is measured by straight-line distance and not road mileage. State ex rel. 1st Nat. Bank v. M & I Peoples Bank, 95 W (2d) 303, 290 NW (2d) 321 (1980).

The commissioner of banking and the banking review board may not simultaneously consider a bank merger application, which would create a bankless community, and an application for a branch bank under 221.04 (1) (j), Stats. 1967, 58 Atty. Gen. 62.

The 25-mile limitation upon the location of branch banks under (1) (j) is to be measured on a straight-line distance basis. 64 Atty. Gen. 10.

Plaintiff banks failed to satisfy "zone of interests" requirement of standing test and so lacked standing to object to acquisition of competitor bank. Marshall & Ilsley Corp. v. Heimann, 652 F (2d) 685 (1981).

**221.041 Bank service corporations. (1)** Unless the context requires otherwise:

(a) "Bank service corporation" means a corporation organized to perform bank services for

2 or more banks, each of which owns part of the capital stock of the corporation.

(b) "Bank services" means check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices and similar items, or any other clerical, bookkeeping, accounting, statistical or other similar functions performed for a bank.

(c) "Invest" includes any advance of funds to a bank service corporation, whether by purchase of stock, the making of a loan, or otherwise, except a payment for rent earned, goods sold and delivered, or services rendered prior to the making of such payment.

**(2) (a)** No limitation or prohibition otherwise imposed by any law of this state shall prevent any 2 or more banks from investing not more than 10 per cent of the paid-in and unimpaired capital and unimpaired surplus of each of them in a bank service corporation.

(b) If stock in a bank service corporation has been held by 2 banks, and one of the banks ceases to utilize the services of the corporation and ceases to hold stock in it, and leaves the other as the sole stockholding bank, the corporation may nevertheless continue to function as such and the other bank may continue to hold stock in it.

**(3)** Whenever a bank (referred to in this subsection as an "applying bank") applies for a type of bank services for itself from a bank service corporation which supplies the same type of bank services to another bank, and the applying bank is competitive with any bank which holds stock in such corporation, the corporation must offer to supply such services by either:

(a) Issuing stock to the applying bank and furnishing bank services to it on the same basis as to the other banks holding stock in the corporation, or

(b) Furnishing bank services to the applying bank at rates no higher than necessary to fairly reflect the cost of the services, including the reasonable cost of the capital provided to the corporation by its stockholders, at the corporation's option, unless comparable services at competitive overall costs are available to the applying bank from another source, or unless the furnishing of the services sought by the applying bank would be beyond the practical capacity of the corporation. In any action or proceeding to enforce the duty imposed by this subsection, or for damages for the breach thereof, the burden shall be upon the bank service corporation to show such availability.

(4) No bank service corporation may engage in any activity other than the performance of bank services for banks.

(5) Any bank may cause to be performed, by contract or otherwise, any bank services for itself, whether on or off its premises, provided assurances satisfactory to the commissioner of banking are furnished to the commissioner by both the bank and the party performing the services that the performance thereof will be subject to regulation and examination by the commissioner to the same extent as if such services were being performed by the bank itself on its own premises.

History: 1983 a 189

**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 commissioner of banking. 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 commissioner.

(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.

**221.046 Banks may issue and sell capital notes or debentures; approval of 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 commissioner of banking 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 commissioner of banking, 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.

**221.047 Banks may issue preferred stock; approval of commissioner; restrictions.**

(1) Except as provided in sub. (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 10 days' notice given by registered mail pursuant to action taken by the board of directors, and subject to the approval of the commissioner, issue preferred stock of one or more classes, in such amount and with such par value as may be approved by said commissioner; provide subject to the approval of the commissioner, 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 having a capital stock of less than \$100,000 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 commissioner.

(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. Pre-

ferred stock shall be subject to s. 221.38 but shall not be subject to s. 221.37.

(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.

**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 commissioner of banking to commence the business of banking.

**221.06 Authority to commence business.** Whenever, within a reasonable time as determined by the commissioner of banking 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 bylaws approved by the commissioner of banking, 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 commissioner that it is so prepared, and the commissioner shall make or cause to be made an examination.

(1) If such examination satisfies the commissioner 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, he shall forthwith give such bank a certificate of authority under his hand and official seal that such bank is authorized to commence business. The certificate of authority to commence business shall constitute the charter of the bank and shall be given a charter number by the commissioner.

(2) If the commissioner 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, he may, with the advice and consent of the attorney general, withhold the certificate herein mentioned.

History: 1973 c. 83.

**221.07 Publication of certificate.** The bank shall cause the certificate issued hereunder to be published as a class 1 notice, under ch. 985, in

the city, village or town where the bank is located. Such notice shall be published within 15 days of the issuing of the certificate. Proof of publication shall be filed with the commissioner of banking. In the event of any bank failing to comply with the provisions of this section the commissioner 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 \$100, which amount shall be collected by the commissioner, and when recovered shall be paid into the state treasury.

**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 5 directors, at least two-thirds of whom shall reside in this state, and a majority of the directors of a bank not chartered under s. 221.57 shall reside in the county or adjoining counties in which the bank is located. No person who has 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. If the bylaws provide for a minimum and maximum number of directors, the stockholders may at any annual meeting vote to elect less than the maximum number and to authorize the board to appoint directors to the unfilled offices at any time prior to the next annual meeting. In no event shall the stockholders elect less than 5 directors nor shall the board be permitted to appoint more than 2 persons to such unfilled offices.

(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 9, they may, for a period of not to exceed 6 months during any one year, designate by resolution 9 members, any 5 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 commissioner of banking, and afterwards at the annual meeting of the stockholders which shall be held at a time established in the bylaws. 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 bylaws.

(4) Every director shall take and subscribe an oath to perform diligently and honestly the director's duty and not knowingly violate or permit a violation of chs. 220 to 224.

**221.08 STATE BANKS**

3798

(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 senior executive officer in charge of conducting business 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 3 or more of its members, a majority of whom shall be other than active executives, except in cities of the first or second class, or except when a majority of the directors are actively engaged in the bank's management. The committee shall meet at least once each month 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 commissioner and such vacancy shall be filled within a reasonable time as the commissioner 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 the meeting, the names of the directors present and the reason for the absence of each 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. The 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. The minute book shall be kept in the vault of the bank at all times except when actually needed elsewhere within the bank. It is 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 the bank by the bank examiner and the names of the directors in attendance at each of these 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 \$100 nor more than \$500, or by imprisonment in the county jail not less than 30 days nor more than 6 months, or by both such fine and imprisonment.

**History:** 1971 c. 120; 1979 c. 89, 308, 355; 1981 c. 84; 1983 a. 119.

**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 duty it shall be to examine and study the report of each examination made by bank supervising authorities. The examining committee shall report to the board, within 45 days after receipt of the report of the examination relative to criticisms and suggestions contained in the report rendered by the supervising authorities and shall be charged with the duty of commenting on any matter relative to the affairs of the bank which in their judgment should be known to the directors. The board shall cause such report to be recorded in the minute books of the bank, and a duly authenticated copy thereof transmitted to the commissioner of banking.

**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 \$50. In all actions, suits and proceedings such book shall be presumptive evidence of the facts therein stated.

**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.

**221.12 Articles may be amended.** A bank may amend its articles of association in any manner not inconsistent with law, at any time, by a vote of its stockholders representing two-thirds of the capital stock, such vote to be taken at a meeting called for that purpose. The amendment may provide for a change of loca-

tion of the bank, subject to s. 221.04 (1) (j) and the approval of the commissioner of banking. Subject to s. 221.04 (1) (j), the amendment may provide for a change of the location of a parent bank to the location of a branch thereof and a change of the location of a branch thereof to the location of a parent bank if the change is first approved by the commissioner of banking upon application. The amendment, certified by the president and cashier, and setting forth the volume and page of recording in the office of the register of deeds of the original articles of association, shall be recorded 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. 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 this chapter 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 commissioner. No reduction may be effected in any other way than by a proportional reduction of all outstanding shares unless approved by the commissioner. The approval may be given only when the commissioner is satisfied that the reduction of the capital is in the best interests of the depositors.

**History:** 1979 c. 89; 1979 c. 110 s. 60 (11); 1981 c. 344.

**221.13 Extension of corporate existence of state bank.** (1) Any bank organized under the laws of this state and doing business on May 15, 1915 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 s. 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 on May 15, 1915, 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 s. 221.12, taken before said date, 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.

**History:** 1979 c. 89.

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

(1) Real estate 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 60% of its capital and surplus; but in lieu thereof it may invest, with the approval of the commissioner of banking, not to exceed 40% 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 20% of its capital and surplus.

(2) Real estate conveyed to it in satisfaction of debts previously contracted in the course of its business.

(3) Real estate purchased 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.

(4) Real estate purchased or leased by a bank, subject to the approval of the commissioner of banking, for the purpose of providing parking facilities for immediate and reasonable future needs. The distance between the bank premises and the parking facility shall not exceed 1,000 feet. Parking fees and property rentals may be derived from the acquired real estate.

(4m) (a) Real estate, if such real estate is within the distances under par. (b) of the main or a branch office of the bank and used as a manned or unmanned remote facility for paying and receiving only. All measurements under this subsection shall be made in a straight line from the nearest adjacent points in the respective property lines. Remote facilities may be established only with specific approval by the commissioner and the banking review board. The authority under this subsection is in addition to the authority to establish facilities which are attached to or a part of the main or a branch office of a bank.

(b) 1. Except as provided in subd. 2, one mile.

2. If the real estate or the main or branch office is within a federal standard metropolitan statistical area containing a 1st class city, 0.5 miles.

(5) Real estate purchased and held, except in cities of the first class, subject to the approval of the commissioner of banking, for the purpose of providing needed housing accommodations for its essential employes in areas where such accommodations are not otherwise available.

(6) No real estate acquired in the cases contemplated in subs. (2) and (3) shall be held for a longer time than 5 years, except an extension is granted by the commissioner. 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.

History: 1973 c. 193; 1981 c. 344.

#### 221.15 Reports; proofs of publication. (1)

Every bank shall make to the commissioner of banking not less than 2 reports during each calendar year, at such times as the said commissioner shall require the same, according to the forms which he 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 2 of the directors, provided, that if by reason of absence or other inability it shall be impracticable to obtain the signature of 2 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 specified by the commissioner, and shall be transmitted to the commissioner within 30 days after the receipt of request therefor from the commissioner.

(4) The reports shall be published as a class 1 notice, under ch. 985, where the bank is located, in the condensed form as the commissioner prescribes.

(5) Proof of publication shall be furnished to the commissioner within 45 days after the receipt of the aforesaid call.

(6) When requested by the commissioner, any bank shall report to the commissioner on call by him, 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 commissioner shall also have the power to call for special reports from any bank whenever in his judgment the same is necessary to inform him fully of the condition of such bank.

History: 1977 c. 230.

**221.16 One hundred dollars per day forfeiture.** Every bank failing to make and transmit to the commissioner of banking any of the reports or proofs of publication as required by this chapter shall be subject, at the discretion of the commissioner, to a forfeiture of \$100 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 commissioner is hereby authorized to institute proceedings for the recovery of such forfeiture.

History: 1983 a. 119.

#### 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 \$1,000 and not more than \$5,000, or by imprisonment in the Wisconsin state prisons not less than one year nor more than 10 years, or by both such fine and imprisonment in the discretion of the court.

History: 1977 c. 418 s. 924 (18) (e).

#### 221.18 Inspection; refusal to permit; action to dissolve; prosecutions.

Whenever any officer in charge of a bank refuses to submit the books, papers and concerns of such bank to the inspection of the commissioner of banking, his deputy, or examiner appointed hereunder, or refuses to be examined on oath touching the concerns of the bank, the commissioner may inform the attorney general. The department of justice shall then institute an action to procure a judgment dissolving such corporation. In order to carry out this section the commissioner may commence and maintain in his own name as commissioner of banking any and all actions necessary or proper to enforce this section.

**221.19 Prosecutions.** In order to carry out ss. 220.07, 220.08 and 221.18, the commissioner of

banking may commence and maintain in his name any and all actions necessary or proper to enforce any of said sections.

**221.205 Banks; disciplinary provisions.**

Whenever the commissioner of banking shall have or receive information causing him to believe that any bank, trust company bank, or any other corporation or association in respect to whose affairs or any part thereof he 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, he shall bring such facts and information to the attention of the banking review board with his 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 his 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 commissioner of banking, in any case where he deems it important to act immediately, from causing any arrest and prosecution where he is satisfied that there is reason to believe the offense has been committed and that prosecution should be immediately commenced.

**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 commissioner of banking of such reorganization and transfer.

**221.22 National banks may reorganize as state banks.** Any national bank authorized to dissolve, and which shall have taken the neces-

sary 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 commissioner of banking. 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 commissioner, 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.

**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 commissioner of banking, and not then to defeat or defraud any of the creditors in the collection of their debts against such banks, or either of them.

**221.24 Liquidation, when authorized, notice.**

(1) Any bank organized or doing business under 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, the board of directors shall give notice of this fact to the commissioner of banking, and the notice shall be certified by the president and cashier under the seal of the bank.

(2) The board of directors shall also give notice of this fact by certified mail to all persons whose names appear as creditors upon the books of the bank and by publication as a class 3 notice, under ch. 985. The notice shall direct all persons who may have claims against the bank to file the same.

**221.245 Cancellation of charter of merged bank.**

Whenever any bank has merged or consolidated with or been absorbed by another bank, the commissioner of banking may cancel the charter of the first mentioned bank after notice of proposed cancellation has been published as a class 3 notice, under ch. 985, in the county wherein the bank is located, unless written objections are filed with the commissioner within a time specified in the notice stating grounds which the commissioner deems sufficient.

**221.25 STATE BANKS**

3802

**221.25 Consolidation of banks. (1)** That any 2 or more banks may, with the approval of the commissioner of banking, 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 30 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 commissioner 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 20 days from the date of the certificate of approval of the commissioner, 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 3 persons, one to be selected by the shareholders, one by the directors, and the third by the 2 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 5 days after being notified of the appraisal appeal to the commissioner, who shall cause a reappraisal to be made by an appraiser or appraisers to be named by said commissioner, 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 30 days after the final appraisal provided for by this section.

**(2)** The bank or banks consolidating with another bank under sub. (1) 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 commissioner 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 commissioner 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.

**(4)** Application for approval of a consolidation under sub. (1) shall be made on a form prescribed by the commissioner. The application shall be accompanied by a fee of \$1,000.

**History:** 1983 a. 119.

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

state treasurer to be placed to the credit of s. 20.124 (1) (g) in the percentage specified in that paragraph.

History: 1981 c. 20

**221.27 Reserves. (1)** In this section:

(a) "Municipal obligation" has the meaning given under s. 67.01 (6).

(b) "Short-term" means maturing within 18 months or less.

(2) Every bank shall maintain sufficient reserves to meet anticipated withdrawals, commitments and loan demand. Every bank shall maintain at least the level of reserves required for it by the federal reserve system. The commissioner of banking may prescribe additional reserve requirements for an individual bank based on examination findings or other reports available to the commissioner.

(3) Reserves of a bank shall consist of any of the following:

(a) Cash.

(b) Cash items in the process of collection.

(c) Short-term obligations of or demand balances with other insured financial institutions in the United States.

(d) Short-term obligations of or guaranteed by the federal government.

(e) Short-term obligations of this state.

(f) Short-term municipal obligations.

(g) Short-term obligations approved by rule of the commissioner of banking.

(h) Balances with federal reserve banks.

History: 1981 c. 84, 279; 1983 a. 189 s. 329 (7)

**221.28 Reserve to be kept up.** Whenever the reserve of any bank falls below the amount required 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 commissioner shall notify any bank whose reserve is below the amount required, to make good such reserve, and in case the bank fails, for 30 days thereafter to make good such reserve, the commissioner may assess such bank \$100 for each 2-week period which the bank has been in default or may notify the attorney general and the department of justice shall institute proceedings for the appointment of a receiver and to wind up the business of the bank. Such assessment shall be paid to the commissioner and if any such bank fails or refuses to pay such assessment the commissioner may maintain an action for the recovery of the assessment.

**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, computed individ-

ually as to each partner on the basis of his direct liability, 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) This limitation shall be 30% of capital and surplus in addition to that stated in par. (a) for the following liabilities:

1. Liabilities secured by warehouse receipts issued by warehouse keepers licensed and bonded in this state under s. 100.13 or under the federal bonded warehouse act or holding a registration certificate under ch. 127, and providing the receipts cover readily marketable nonperishable staples which are fully covered by insurance if it is customary to insure the staples, and providing the market value of the staples is not at any time less than 140% of the face amount of the obligation.

2. Liabilities in the form of notes or bonds and meeting any of the following qualifications:

a. 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; or

b. Secured or covered by guarantees or by commitments or agreements to take over, or to purchase the bonds or notes made by any federal reserve bank or by the small business administration or by the department of defense or the maritime commission of the United States; or

c. Secured by mortgage or trust deeds insured by the federal housing administrator; or

d. Secured by mortgage or trust deeds insured by the secretary of agriculture through the farmers home administration, under Title 1 of the Bankhead-Jones farm tenant act, and amendments thereto.

(c) The limitations in this section shall not apply to liabilities in the form of notes and secured by not less than a like amount of direct obligations of the United States which will mature not more than 18 months from the date of such liabilities to the bank are entered into.

(d) The limitations of this section shall not apply to direct obligations of the United States, or obligations fully and unconditionally guaranteed by the United States, or to liabilities in the form of bonds issued by the federal land banks in accordance with sec. 21 of the federal farm loan act and amendments thereto, or in securities of the federal land bank, federal intermediate credit banks or banks for cooperatives issued pursuant to the farm credit act of 1971 and amendments thereto, or in form of notes, debentures and certificates of interest of the commodity credit corporation, or in notes and

**221.29 STATE BANKS**

3804

debentures issued by the federal national mortgage association or the export-import bank of Washington or in notes, debentures and bonds issued by the federal home loan bank.

(e) Where a portion of such liabilities is guaranteed under the provisions of the servicemen's readjustment act of 1944 (38 U.S. Code 693; 58 Stat. 284) and amendments and regulations pertaining thereto the limitation stated in par. (a) shall apply only to that portion of such liabilities which is not guaranteed by the administrator of veterans' affairs.

(f) The limitations in this section shall not apply to that portion of any loan which is guaranteed by a federal or Wisconsin state guaranty program approved by the commissioner. The commissioner shall designate federal and Wisconsin state guaranty programs which qualify under this paragraph.

(2) (a) Except as otherwise provided in this subsection, 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.

(b) Where such liabilities are in the form of bonds, notes or other evidences of indebtedness which are a general obligation of any city, town, village, county, vocational, technical and adult education district or school district in this state the total liability of any such municipality shall at no time exceed 50% of the capital and surplus of such bank. The total amount of temporary borrowings of any such municipality maturing within one year from date of issue shall not exceed 60% of the capital and surplus of such bank. Temporary borrowings and longer term Wisconsin general obligation borrowings of a single municipal corporation may be considered separately in arriving at the limitations provided in this subsection.

(c) Liabilities in the form of revenue obligations of any municipality of this state are subject to the limitations provided in sub. (2) (a) but in addition thereto any bank is permitted to invest in any general obligation of such municipality an amount which will bring the combined total of such general obligations and such revenue obligations of a single municipality to a sum not in excess of 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 subs. (1) and (2).

(5) No bank may make or renew any loan or loans, the aggregate total of which exceeds the

level established by the board of directors without being supported by a sworn financial statement unless the loan is secured by collateral having a value in excess of the amount of the loan.

(6) A sworn financial statement furnished by the borrower to a bank in compliance with sub. (5) must be renewed annually as long as the loan or any renewal thereof remains unpaid and is subject to sub. (5).

(7) A loan or a renewal of a loan made by any bank in compliance with sub. (5), without sworn financial statement, may be treated by such bank as entirely independent of any secured loan made by the same borrower providing such loan does not exceed the loan limitations provided in this section.

**History:** 1971 c. 40, 154; 1973 c. 114; 1975 c. 364; 1979 c. 308, 335.

**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 6 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.

**221.31 Loans to bank officials; penalty.** (1) No bank may loan without security more than \$10,000 in the aggregate to any officer or employe, nor more than \$25,000 in the aggregate to any director, and any loan in excess of these limits is subject to the following conditions:

(a) The loan shall previously be approved by resolution of the board of directors recorded in its minutes or be within the limits of a line of credit approved for such director, officer or employe at least annually by resolution of the board of directors recorded in its minutes.

(b) The amount of any loan in excess of these limits shall be secured in full by indorsement or collateral security, the sufficiency of which shall

be reviewed by the board of directors at its first meeting after each new loan.

(2) Every officer, director or employe of any bank who in violation of this section, directly or indirectly, borrows or otherwise procures for personal use money, funds or property of such bank or through use of personal credit or accommodation of another person or by acceptance for discount at the bank of any note, bond or evidence of debt which he or she knows or has reason to know is worth less than the price at which it is accepted as an asset, shall be imprisoned in the Wisconsin state prisons not more than 10 years.

History: 1977 c. 418; 1979 c. 308; 1983 a. 119

**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 50 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.

**Cross References:** See 138.051 and 138.052 for residential mortgage loans, 138.053 for interest adjustment clauses, and 138.055 and 138.056 for variable interest rate clauses

**221.325 Health and accident insurance as additional collateral.** The provisions of s. 215.21 (10) (b) shall be applicable to banks and for such purpose the word "association" therein means banks subject to this chapter.

**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. A state bank may deposit with the treasurer of the United States, or in the custody of federal reserve banks or branches thereof designated by the judges of the several courts of bankruptcy, 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, other government deposits and as depository for bankrupt estates, debtors, corporations and railroads under reorganization under U.S. bankruptcy laws, and amendments thereto, and receivers, trustees and other officers thereof appointed by any U.S. district court or by any bankruptcy court of the United States and that in acting as such depository a state bank shall have all the rights and privileges granted to banking institutions

under section 61 of the U.S. bankruptcy act, and amendments thereto; and any bank may borrow money for temporary purposes, and may pledge assets of the bank not exceeding 50% in excess of the amount borrowed as collateral security therefor. Any state bank so authorized by the commissioner of banking, who complies with s. 223.02, shall be exempt from furnishing the bond specified in s. 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 s. 223.03 (8), but it is unlawful for any bank to borrow money unless the board of directors has adopted a resolution designating the bank from which the money may be borrowed, the maximum amount for which the bank may become indebted at any one time, and the names of the officers who may sign the promissory note evidencing the indebtedness. 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 commissioner of banking. Whenever it appears that a bank is borrowing habitually for the purpose of reloading, the commissioner 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 has 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.

History: 1971 c. 120.

**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

**221.35 STATE BANKS**

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 12 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.** (1) Before the board of directors of a bank may declare and pay a cash dividend, a sum equivalent to not less than one-fifth 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 100 per cent of the capital stock, except that the bank, with the approval of the commissioner, may be exempted from the requirements of this section whenever its daily average of deposits for a period of one year shall be less than 10 times the unimpaired capital and surplus; such surplus shall not include items classified by the commissioner of banking as doubtful or loss.

(2) 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 cash dividends shall be declared or paid by any such bank in excess of one-half its net earnings until its surplus fund shall be fully restored to the amount which was in said fund immediately preceding such charge off.

(3) When the surplus fund of a bank is in excess of 100 per cent of its capital stock and losses charged against it do not reduce said surplus fund to an amount less than 100 per cent of its capital stock, the bank will not be subject to sub. (2) with respect to reimbursement to surplus and restricted dividends.

**221.38 Dividends.** (1) Except as provided in sub. (2), the board of directors of a bank may declare and pay a dividend from so much of its undivided profits as they shall deem expedient, but only after:

(a) Provision has been made for all expenses, losses, required reserves, taxes, and interest accrued or due from said bank;

(b) Compliance has been made with s. 221.37; except that, if a bank has had, during the immediate preceding 2 years, insufficient net profits to declare and pay a dividend out of current earnings and has paid a dividend out of undivided profits accrued during prior years,

such bank shall not declare and pay a second dividend either in part or in full out of undivided profits accrued during prior years except with the written consent of the commissioner of banking.

(2) No dividend shall be declared by the directors of a bank to the stockholders except out of net profits 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 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 commissioner, enter or at any time, carry on its books any of its assets at a valuation exceeding its actual cost to such bank.

**221.39 Theft, how punished.** Every president, director, cashier, officer, teller, clerk or agent of any bank or mutual savings bank who steals, 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 Wisconsin state prisons not to exceed 20 years.

History: 1977 c. 418 s. 924 (18) (e).

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

indirectly, takes, accepts or receives, or offers or agrees 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 or she is an 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 be fined not to exceed \$10,000 or imprisoned in the Wisconsin state prisons not more than 2 years or both.

**History:** 1977 c. 418; 1979 c. 250.

To sustain a conviction under this section, it is not necessary to show that the conduct of either the defendant or the bank was influenced by the unlawful transaction. *State v. O'Connor*, 77 W (2d) 261, 252 NW (2d) 671.

**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 commissioner of banking 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 commissioner to institute proceedings to enforce such forfeiture and to secure a dissolution and a winding up of the affairs of such bank.

**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 bylaws 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 s. 220.07, nor until such impairment shall have been made good. A transfer of stock shall be certified by the bank cashier to the commissioner of banking within 3 days after the transfer, if the transfer is of at least 5% of the outstanding shares or affects the holdings of the owner of record or beneficial owner of at least 5% of the outstanding shares. Failure to comply with this requirement shall be punishable by a fine of not to exceed \$100.

**History:** 1983 a. 119.

**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.

**221.47 Circulating notes, when issuable.** If the congress of the United States hereafter removes the tax on bank circulation or provides for the establishment of circulation of banks organized under state laws, any bank organized or doing business under this chapter may issue circulating notes or currency in accordance with any such act of congress, or under such regulations as the office of the commissioner of banking prescribes. 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.

**History:** 1971 c. 164.

**221.48 Banks coming under this chapter.** This chapter shall apply to, and govern, all banks organized and 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 this chapter.

**History:** 1971 c. 40.

**221.49 Not to use "bank".** (1) Except as provided in sub. (2), no person engaged in business in this state, not subject to supervision and examination by the commissioner of banking, and not required to make reports to him by this chapter, shall make use of "bank", in any form upon any office sign at the place where such business is transacted, nor shall such person 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 words, indicating that such business is the business of a bank, but members of the Mortgage Bankers Association of America may use the designation "mortgage banker". Violations of this section are subject to s. 220.02 (2).

(2) A check sold by a bank chartered under the laws of another state or a foreign country or a national bank authorized to do business in another state may include any form of "bank", if the bank is licensed under ch. 217.

**History:** 1981 c. 84, 259, 391.

**221.50 Declaration of unlimited individual responsibility.** The stockholders of any bank organized under the provisions of this chapter may file with the commissioner of banking 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

**221.50 STATE BANKS**

the commissioner 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.

**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 s. 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 commissioner of banking, 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 6 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 s. 221.50.

**221.52 Commissioner may disregard such declaration.** The commissioner of banking, his deputy or any examiner by him 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.

**221.53 Fees for certified copies.** Whenever any certified copy or copies of any records or papers filed in the office of the commissioner of banking shall be lawfully required to be furnished by him, the commissioner shall be entitled to a fee of 10 cents for each folio for making such copy or copies and 50 cents for each

certificate. All such fees shall be paid by the commissioner into the state treasury to the credit of the general fund.

**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 office of the commissioner of banking. It shall file reports of its financial condition when called for by the commissioner of banking, and the commissioner may order an examination of its condition and solvency whenever in his 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 commissioner 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 commissioner may order such corporation or trust to remedy such condition or policy within 90 days and if such order be not complied with, the commissioner 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 commissioner may exercise such authority.

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

(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.

**221.57 Bank-owned banks.** The commissioner and the banking review board may authorize the establishment of, and issue a charter to, a bank, all of the stock of which is owned by 2 or more state or national banks whose home offices are situated in this state. The bank shall be deemed a state bank chartered under this

chapter for all purposes, except that its functions shall be limited solely to providing banking and banking-related services to other banks. Such bank shall be empowered to authorize and to hold authorized but not issued stock.

**History:** 1977 c. 310.