

CHAPTER 220

BANKING

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220.02 Commissioner of banking; duties. (1) The commissioner shall appoint a deputy subject to s. 15.04 (2) and (3). The deputy shall possess all powers and perform the duties attached to the office of commissioner during a vacancy thereof and during the absence or inability of the commissioner. The commissioner may also employ such examiners and other personnel to assist him or her and the deputy in the discharge of the several duties imposed upon the commissioner by this chapter as he or she finds necessary, and who shall perform such other duties as the commissioner directs.

(2) The commissioner of banking shall enforce all laws relating to banks and banking in this state, and shall enforce and cause to be enforced every law relating to the supervision and control thereof, including those relating to:

(a) State banks under this chapter and ch. 221, mutual savings banks under ch. 222 and trust company banks under ch. 223.

(b) The lending of money under s. 138.09 or those relating to finance companies, motor vehicle dealers, adjustment service companies, community currency exchanges and collection agencies under ch. 218.

(c) Sellers of checks under ch. 217.

(d) Fiduciary operations of organizations under ss. 220.04 (7) and 223.105.

(e) The disposition of certain assets of a charitable trust, as defined in s. 701.107 (3), under ss. 701.107 to 701.109.

(3) It is the intent of sub. (2) to give the commissioner of banking jurisdiction to enforce and carry out all laws relating to banks or banking in this state, including those relating to state banks, mutual savings banks, trust company banks, and also all laws relating to small loan companies or other loan companies or agencies, finance companies, motor vehicle dealers, adjustment service companies, community currency exchanges and collection agencies and those relating to sellers of checks under ch. 217, whether doing business as corporations, individuals or otherwise, but to exclude laws relating to credit unions and savings and loan associations.

(5) Except as otherwise provided in s. 220.037, any interested person or any bank or banking corporation aggrieved by an act, order or determination of the commissioner may, within 10 days from the date thereof, apply to the banking review board to review the same. All such applications for review shall be considered and disposed of as speedily as possible. The banking review board may require the commissioner to submit any of his official actions subject to such review to said board for its approval.

(6) The commissioner shall employ in the office of the commissioner of banking, a competent person as supervisor for the supervision and examination of all consumer credit agencies over which the commissioner has jurisdiction. Such supervisor shall be subject to ch. 230, and shall not be eligible for such position unless he or she has at least 5 years' actual experience either in the sales finance or loan business, or serving in the supervisory department having supervision over consumer credit agencies of this or some other state, or a combination of both.

History: 1971 c. 239, 307; 1973 c. 3, 243; 1975 c. 65; 1977 c. 196 s. 131; 1977 c. 418; 1981 c. 390; 1985 a. 127; 1987 a. 399.

220.035 Banking review board. (1) (a) The banking review board shall advise the commissioner of banking and others in respect to improvement in the condition and service of banks and banking business in this state and shall review the acts and decisions of the commissioner of banking, except for such acts and decisions subject to review under s. 220.037, and shall perform such other review functions in relation to banking as are provided by law. The banking review board may require the commissioner of banking to submit any of his official actions to it for its approval. The board may make rules of procedure as provided in ch. 227.

(b) Any interested person aggrieved by any act, order or determination of the commissioner of banking may apply for review thereof by filing a petition with the secretary of the board within 10 days after the act, order or determination to be reviewed, which petition shall state the nature of the petitioner's interest, facts showing that petitioner is aggrieved and directly affected by the act, order or determination to be reviewed and the ground or grounds upon which petitioner claims that the act, order or determination should be modified or reversed. The issues raised by the petition for review shall be considered by the board upon giving at least 10 days' written notice of the time and place when said matter will be heard to the commissioner and the person applying for review or his attorney and upon any other person who participated in the proceedings before the commissioner or his attorney. Notice of hearing may be given by registered mail, return receipt requested, and the return receipt signed by the addressee or his agent shall be presumptive evidence that such notice was received by the addressee on the day stated on the receipt. Any other interested party shall have the right to appear in any proceeding before the board.

(c) The board shall base its determination upon the record made by the commissioner and may also receive additional evidence to supplement such record if it finds it necessary.

The board shall affirm, modify or reverse the act, order or determination under review. The burden of overcoming the act, order or determination of the commissioner under review shall be on the person seeking the review. Any findings of fact made by the commissioner shall be sustained if supported by substantial evidence in the record made by him or in such record supplemented by evidence taken by the board. The board shall have the powers granted by s. 885.01 (4). Any person causing a witness to be subpoenaed shall advance and pay the fees and mileage of such witness which shall be the same as in circuit court. The fees and mileage of witnesses who are called at the instance of the commissioner shall be paid by the state in the same manner that other expenses are audited and paid upon presentation of properly verified vouchers approved by at least one member of the board and charged to the appropriation of the office of the commissioner of banking.

(d) Each member of the board and all employes of the board shall, with respect to the disclosure of information concerning banks, be subject to the same requirements and penalties as the commissioner of banking.

(2) The banking review board may make rules and regulations to safeguard the interest of depositors and stockholders generally in emergencies.

(3) Any final order or determination of the banking review board shall be subject to review in the manner provided in ch. 227.

(4) The board shall have an office in the quarters of the commissioner of banking. The board's secretary shall keep a record of the meetings of the board and of all hearings, decisions, orders and determinations of the board. The board may make reasonable rules not inconsistent with law as to the time of meetings, time of hearings, notice of hearings and manner of conducting same and of deciding the matters presented. The board may direct that hearings and testimony be taken by any member of the board or by an examiner designated by the board.

(5) The board may employ assistance necessary in the performance of its work and fix reasonable compensation therefor, subject to any statutes applicable thereto.

(6) Any bank whose assets, upon the basis of a fair valuation, are equal to or in excess of its liabilities exclusive of capital stock, preferred stock, capital notes and debentures, shall be deemed to be safe and solvent. The banking review board may prescribe schedules, rules and regulations for arriving at a fair valuation of various classes of assets of banks.

History: 1971 c. 307.

Remedy under (3) is exclusive where contested issues of public interest and constitutionality could have been remedied on administrative review. *State ex rel. 1st Nat. Bank v. M & I Peoples Bk.* 82 W (2d) 529, 263 NW (2d) 196.

220.037 Consumer credit review board. (1) The commissioner shall delegate a department employe to keep and preserve the records of the consumer credit review board.

(2) The consumer credit review board shall counsel, advise with and review the acts and decisions of the commissioner of banking under chs. 138, 217 and 218. In performing such review functions, the board shall have all the powers granted to the banking review board under s. 220.035 (1) and its final orders and determinations shall be subject to judicial review under ch. 227. The board may establish rules of procedure in accordance with ch. 227.

History: 1973 c. 3.

220.04 Powers of commissioner. (1) (a) The commissioner of banking or any deputy or examiner shall examine at least once in each year the cash, bills, collaterals, securities, assets, books of account, condition and affairs of each bank, trust

company bank and mutual savings bank doing business in this state, except national banks. For that purpose the commissioner may examine on oath any of the officers, agents, directors, clerks, stockholders, customers or depositors thereof, touching the affairs and business of such institution. In making such examinations of banks, the commissioner shall determine the fair valuation of all assets in accordance with the schedules, rules and regulations prescribed by the banking review board.

(b) In lieu of any examination required to be made by the commissioner, the commissioner may accept any examination that may have been made of any bank, trust company bank or mutual savings bank within a reasonable period by the federal deposit insurance corporation or a federal reserve bank, provided a copy of the examination is furnished the commissioner.

(2) The commissioner shall examine, or cause to be examined, any bank when requested by the board of directors of such bank. The commissioner shall also ascertain whether such bank transacts its business at the place designated in the articles of incorporation, and whether its business is conducted in the manner prescribed by law.

(3) The commissioner or deputy commissioner may, in the performance of his or her official duties, issue subpoenas and administer oaths. In case of any refusal to obey a subpoena issued by the commissioner or deputy commissioner, the refusal shall be reported at once to the circuit court of the circuit in which the bank is located. The court shall enforce obedience to the subpoena in the manner provided by law for enforcing obedience to subpoenas of the court.

(4) Whenever the commissioner is of the opinion that the loaning, investing or other banking policies or practices of any officer or director of any bank have been prejudicial to the best interests of such bank or its depositors, or that such policies or practices, if put into operation or continued, will endanger the safety or solvency of said bank or impair the interests of its depositors, the commissioner may, with the approval of the banking review board, request the removal of such officer or director. Such request shall be served on the bank and on such officer or director in the manner provided by law for serving a summons in a court of record or shall be transmitted to said bank and officer or director by registered mail with return receipt requested. If such request for removal is not complied with within a reasonable time fixed by the commissioner he may by order, with like approval of the banking review board, remove such officer or director, but no order of removal shall be entered until after an opportunity for hearing before the banking review board is given to such officer or director upon not less than 10 days' notice. An order of removal shall take effect as of the date issued. A copy of such order shall be served upon the bank and upon such officer or director in the manner provided by law for service of a summons in a court of record or by mailing such copy to such bank or officer or director at his last-known post-office address. Any removal under this subsection shall be effective in all respects the same as if made by the board of directors or stockholders of said bank. Any officer or director removed from office under the provisions of this subsection shall not be reelected as an officer or director of any bank without the approval of the commissioner and the banking review board. An order of removal under this subsection shall be deemed a final order or determination of the banking review board within the meaning and contemplation of s. 220.035 (3).

(5) The commissioner, in connection with the liquidation of any bank or banking corporation or when called upon to approve any plan of reorganization and stabilization thereof

or when he is satisfied the interests of the depositors and creditors in assets held under any trust arrangement so require in connection with such reorganization and stabilization, may cause the bank or banking corporation or trust to be audited. The expense of the audit shall, upon the certificate of the commissioner, be refunded forthwith to the office of the commissioner of banking by the bank, banking corporation or the trustees out of the assets of the bank, banking corporation or trust. Such charges shall be a preferred claim against the assets.

(6) (a) The commissioner, with the approval of the banking review board, may establish uniform savings rules which shall be adopted by every bank, mutual savings bank and trust company bank. Such rules may provide the conditions under which banks, mutual savings banks or trust company banks may accept time deposits and the methods of figuring interest. Such rules may also provide the term of notice of withdrawal and the amounts which may be withdrawn by depositors, which conditions the bank may put in force in times of financial stress by action of its board of directors. The maximum rate of interest on deposits paid by banks whose deposits are not insured by the federal deposit insurance corporation, whether certificates of deposit or book savings deposits, shall be the same as the rate set by the federal deposit insurance corporation for banks whose deposits are insured by it.

(b) In times of financial distress, the commissioner with the approval of the banking review board may by order restrict the withdrawal of any class of deposits in any bank, mutual savings bank or trust company bank. The pendency of any proceeding for review of such order shall not stay or suspend the operation of such order.

(d) The commissioner of banking, with the approval of the banking review board, may establish rules regulating the kind and amount of foreign bonds or bonds and securities offered for sale by the international bank for reconstruction and development, the inter-American development bank, the African development bank and the Asian development bank which state banks, trust company banks and mutual savings banks may purchase, except that such rules shall not apply to bonds and securities of the Canadian government and Canadian provinces, which are payable in American funds.

(7) (a) In this subsection:

1. "Fiduciary operation" has the meaning designated under s. 223.105 (1) (a).

2. "Fiduciary property" means that property held by an organization as trustee or in any fiduciary capacity requiring the issuance of letters by a court or probate registrar in this state.

3. "Organization" has the meaning designated under s. 223.105 (1) (b).

(b) The commissioner of banking may, with the approval of the banking review board, establish uniform rules regulating organizations engaging in fiduciary operations. Such rules may:

1. Authorize the office of the commissioner of banking or any other state agency having jurisdiction over the organization to require the organization to submit periodic reports, in such form and containing such information as the commissioner of banking may prescribe, regarding the organization's fiduciary operations.

2. Require the organization to maintain separate books of account for its fiduciary operations and to maintain fiduciary property separate from the property of the organization.

3. Require the organization to maintain reasonable safeguards to protect fiduciary property including the maintenance

of an indemnity fund in the same manner as that required of trust company banks under s. 223.02.

(8) Unless the commissioner is expressly restricted by statute from acting under this subsection with respect to a specific power, right or privilege, the commissioner of banking by rule may, with the approval of the banking review board, authorize state banks to exercise any power under the notice, disclosure or procedural requirements governing national banks or to make any loan or investment or exercise any right, power or privilege permitted national banks under federal law, regulation or interpretation. Notice, disclosure and procedures prescribed by statute which may be modified by a rule adopted under this subsection include, but are not limited to, those provided under s. 138.056. A rule adopted under this subsection may not affect s. 138.041 or chs. 421 to 428 or restrict powers specifically granted state banks under this chapter or ch. 221 or ch. 222 or 224.

(9) (a) *Definitions.* In this subsection:

1. "Official" means a director, officer, employe or agent of a regulated entity or any other person which participates in the conduct of the affairs of a regulated entity.

2. "Regulated entity" means a bank, trust company bank, mutual savings bank and any other entity which is described in s. 220.02 (2) or 221.56 as under the supervision and control of the commissioner of banking.

(b) *Notice of hearing.* The commissioner may serve a notice of a hearing which complies with s. 227.44 (1) and (2) on an official or regulated entity if, as a result of an examination or report made to the commissioner, the commissioner determines any of the following:

1. The official or regulated entity is violating or is about to violate the banking laws of this state or any rule or order issued by the commissioner.

2. The regulated entity is being operated in an unsafe or unsound manner.

3. An official is violating or is about to violate a written condition which the commissioner imposed in connection with granting an application or request by the regulated entity, or a written agreement entered into with the commissioner.

(c) *Conduct of hearing.* A hearing under par. (b) shall be conducted in the manner specified for a contested case, as defined in s. 227.01 (3), under ss. 227.44 to 227.50.

(d) *Cease and desist order.* If the recipient of a notice of hearing fails to appear or if upon the record made at the hearing the commissioner finds that a violation or unsafe or unsound practice has been established, the commissioner may issue and serve on the official or regulated entity an order to cease and desist from the violation or practice. The order may require the official or regulated entity to correct the conditions resulting from the violation or practice. An order issued under this paragraph is effective upon service on the official or regulated entity named in the order and may be appealed under s. 220.035.

(e) *Temporary order.* 1. If the commissioner finds that a violation or practice described in par. (b) is likely to cause insolvency or substantial dissipation of assets or earnings of the regulated entity or seriously prejudice the interests of its depositors, the commissioner may issue a temporary order requiring the official or regulated entity named in the notice of hearing to cease and desist from the violation or practice and to take affirmative action to prevent insolvency, dissipation of assets or earnings or prejudice to depositors pending completion of the proceedings. The temporary order is effective upon service on the official or regulated entity named in the notice of hearing and remains effective and enforceable pending completion of the administrative pro-

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ceedings unless suspended, set aside or limited by a court as provided in subd. 2.

2. Within 20 days after an official or regulated entity is served with a temporary order under subd. 1, the official or regulated entity may apply to the circuit court for the county within which the regulated entity is located for an injunction setting aside, limiting or suspending the enforcement of the order pending the completion of the administrative proceeding.

(f) *Forfeitures.* 1. As part of an order issued under par. (d), the commissioner may impose a forfeiture of up to \$1,000 for each violation or practice under par. (b).

2. An official or regulated entity who violates an order issued under par. (d) shall, for each violation, forfeit not more than \$10,000 per day for each day the violation continues. Assessment of a forfeiture under this subdivision shall commence on the latest of 10 days after the date of delivery of the order or, if an appeal is taken under s. 220.035, 10 days after the date of the decision of the banking review board.

(g) *Enforcement.* The commissioner may institute proceedings to recover a forfeiture under par. (f) or to enjoin the violation of an order issued under par. (d) and, after notice and opportunity for a hearing as provided in sub. (4), may order the removal of an official who commits a violation or engages in a practice under par. (b) or who violates an order issued under par. (d), if the commissioner finds that the practice or violation involves personal dishonesty resulting in financial gain to the official or demonstrates a wilful or continuing disregard for the safety or soundness of the regulated entity, and the commissioner finds any of the following:

1. As a result of the practice or violation the regulated entity has suffered or will probably suffer substantial financial loss or other damage.

2. The interests of the depositors could be seriously prejudiced by the violation or practice.

(10) If it appears to the commissioner of banking that a person has engaged or is about to engage in an act or practice constituting a violation of the laws of this state relating to banks and banking, including this chapter, chs. 217, 218 and 221 to 224 and s. 138.09, or a rule promulgated or order issued under those laws, the commissioner may bring an action in the name of the state in the circuit court of the appropriate county to enjoin the acts or practices and to enforce compliance with the laws, rules or orders, or the commissioner may refer the matter to the district attorney of the appropriate county or, if the alleged violation may be enforced by the attorney general under s. 220.12, 221.18, 221.205, 221.28 or 224.06 (7) or is statewide in nature, to the attorney general. Upon a proper showing, the court may grant a permanent or temporary injunction or restraining order, appoint a receiver for the defendant or the defendant's assets or order rescission of any acts determined to be unlawful. The court may not require the commissioner to post a bond.

History: 1971 c. 239; 1975 c. 65; 1981 c. 45; 1983 a. 119; 1987 a. 252.

220.05 Examination fees; assessment by commissioner.

(1) The commissioner of banking shall assess each state bank, mutual savings bank and trust company bank for the cost of each examination made, which cost shall be determined by the commissioner and shall include the salaries and expenses of all examiners and other employes of the commissioner actively engaged in such an examination, the salaries and expenses of the commissioner, review examiner or other person whose services are required in connection with such examination and any reports thereof, and any other expenses

which may be directly apportioned. Any charge so made shall be paid within 30 days from the time the bank receives notice of the assessment.

(2) On or before the fifteenth day of July of each year, each state bank, mutual savings bank and trust company bank shall pay to the commissioner an annual assessment for the maintenance of the office of the commissioner of banking in an amount to be determined by the banking review board, but which shall not exceed 8 cents per \$1,000 of resources, or part thereof, for the first \$5,000,000 and shall not exceed 6 cents per \$1,000, or part thereof, for all resources over \$5,000,000.

(5) Whenever in the judgment of the commissioner, the condition or conduct of any bank renders it necessary or expedient to make an extra examination or to devote any extraordinary attention to its affairs, the commissioner shall have the authority to make any and all necessary extra examinations and audits or partial audits and to devote any necessary attention to the conduct of its affairs; and such bank shall pay for each additional examination, and for each audit or partial audit, the actual cost thereof. Where an audit or partial audit is ordered, the actual reasonable cost of auditors shall be charged. Before directing any examination in excess of 2 or any audit or partial audit, the commissioner shall examine the audits and examinations of any clearing house association as to the bank in question which may be furnished to it and shall avoid duplication of examinations, audits or partial audits wherever reasonably possible. In case of audits or partial audits for which a charge may be made under the provisions of this section, the commissioner shall promptly send a copy to the bank and the bank shall pay the reasonable cost thereof. When the commissioner delivers to a bank a copy of any examination, audit or partial audit, he may by letter accompanying same require the bank to have the receipt of same acknowledged in the record of the next meeting of directors of the bank and may require that there be sent to him a certified copy of action by the directors showing that all the directors of the bank have read said copy and are familiar with its contents and have signed a statement to such effect on the copy received by the bank and may require that a duplicate of such signed statement signed by all directors to be sent to the commissioner to be attached to and filed with the original of such examination, audit or partial audit on file in the office. Failure of the bank or its board of directors or any of them to comply with any such order or direction of the commissioner within a reasonable time fixed by it shall be sufficient ground for the taking of possession of said bank by the commissioner and liquidating said bank under s. 220.08.

(6) Any bank or trust company holding any property in trust or in any fiduciary capacity or as custodian or bailee shall pay in addition to said fees and assessments provided for in sub. (2) the actual reasonable cost of any and all examinations (whether or not they are in excess of 2 in any one year) conducted by the office of the commissioner of banking of the books, records and business of said bank or trust company insofar as they relate to said property held in trust or other fiduciary capacity or as custodian or bailee, said cost to include a fair charge for time of assistants and office overhead and to be determined by the commissioner within a reasonable time after each said examination has been completed. A statement of such charge shall be promptly sent to said bank or trust company. Each such bank or trust company shall pay such charge within 10 days after receipt of such statement. Said cost shall include the cost of furnishing copy to the bank or trust company.

History: 1985 a. 127.

220.06 Not to disclose information. (1) In this section, "licensee" means a person licensed by the commissioner of banking under ch. 138, 217 or 218.

(1m) No commissioner of banking, deputy, assistant deputy or examiner may examine a bank or licensee in which such person is interested as a stockholder, officer or employe. No commissioner, deputy, assistant deputy or examiner may examine a bank or licensee located in the same village, city or county with any bank or licensee in which such person is so interested. The commissioner of banking, deputy, assistant deputies and every employe in the office of the commissioner, and each member and employe of the banking review board, shall keep secret all facts and information obtained in the course of examinations or from reports not under s. 221.15 (1) filed by a bank or licensee with the office of the commissioner of banking, except so far as the public duty of the officer requires reporting upon or taking special action regarding the affairs of any bank or licensee, and except when called as a witness in any criminal proceeding or trial in a court of justice. The commissioner may furnish to the federal deposit insurance corporation or to any regulatory authority for state or federal financial institutions, insurance or securities a copy of any examination made of any such bank or licensee or of any report made by such bank or licensee and may give access to and disclose to the corporation or to any regulatory authority for state or federal financial institutions, insurance or securities any information possessed by the commissioner with reference to the conditions or affairs of any such insured bank or licensee if the regulatory authority agrees to treat all information received with the same degree of confidentiality as applies to reports of examination that are in the custody of the commissioner.

(2) If any commissioner, deputy, assistant deputy, examiner or other employe in such office or any member of the banking review board or any employe thereof discloses the name of any debtor of any bank or licensee, or anything relative to the private account or transactions of such bank or licensee, or any fact obtained in the course of any examination of any bank or licensee, except as herein provided, he or she shall be subject, upon conviction, to forfeiture of office, or position and to the payment of a fine of not less than \$100 nor more than \$1,000, or imprisonment in the Wisconsin state prisons not less than 6 months nor more than 2 years, or both.

(3) (a) Examination reports possessed by a bank or licensee are confidential, remain the property of the office of the commissioner of banking and are returnable immediately on request of the office.

(b) Officers and employes of a bank or licensee may not redisclose information in the examination reports. A person violating this paragraph may be fined not less than \$100 nor more than \$1,000 or imprisoned not more than 6 months or both.

History: 1977 c. 418; 1979 c. 102; 1983 a. 27; 1985 a. 127, 325; 1987 a. 252.

220.065 Immunity of commissioner. The commissioner of banking shall not be subject to any civil liability or penalty, nor to any criminal prosecution, for any error in judgment or discretion made in good faith and upon reasonable grounds in any action taken or omitted by him in his official capacity under the provisions of chs. 220 to 224.

220.07 Banks; impairment of capital. (1) CAPITAL IMPAIRED; DUTY OF COMMISSIONER; DEFICIENCY. Whenever the commissioner of banking determines that the capital of any bank is impaired or reduced below the amount required by law or the articles of incorporation, or below the amount certified to the commissioner as paid in, the commissioner

may require such bank under his or her hand and seal of office to make good such impairment or deficiency within 60 days after the date of such requisition. In any case, where the capital of a bank becomes impaired or reduced below the amount required by law or the articles of incorporation, the board of directors of such bank may make a proportional assessment upon all of the stock of the bank to make good such deficiency, and may provide that the amount of such deficiency shall be due and payable at a time to be fixed by such board of directors, which time shall be not less than 10 days after notice of the assessment. Notice to stockholders residing in another state shall be given by registered mail and a return receipt demanded. If any stockholder fails or neglects to pay the amount of the assessment against his or her stock for 10 days after the assessment becomes due and payable, the directors of the bank may offer the stock for sale, and sell the stock at public sale upon 10 days' notice to be given by posting copies of the notice of sale in 5 public places in the town, village or city where the bank is located. Upon the sale, the purchaser shall forthwith pay the amount of the assessment against the stock. The amount received from the sale of the stock, less the cost and expenses of the sale, shall be paid to the original owner of the stock.

(2) **REVIEW OF COMMISSIONER'S ORDER.** In any case where the commissioner has made an order requiring capital to be made good, the bank may within 10 days after the making of said order secure a review of same by the banking review board by filing in the office of the commissioner a statement requesting such review and stating the grounds of objection to the order of the commissioner. Said board shall promptly conduct a hearing thereon after affording reasonable notice to the bank and shall affirm, modify or set aside the order of the commissioner. No such review or hearing shall extend the time for compliance with the order of the commissioner unless the banking review board shall so direct.

History: 1979 c. 110.

220.075 Banks, ratio of capital to deposits. (1) If the commissioner finds that the average of deposits for a fiscal year, as computed under sub. (2), in a bank exceed an amount equal to 15 times the unimpaired capital and the undistributed surplus of the bank, the commissioner shall order the bank to increase its capital or surplus or both. The order shall provide that within one year the total unimpaired capital and undistributed surplus shall exceed one-fifteenth of the average deposits as reported in accordance with this section. For purposes of making calculations under this subsection, a bank shall subtract from undistributed surplus that amount of all items classified by the commissioner as doubtful or loss which exceeds the bank's undivided profits and loan loss reserves.

(2) (a) For purposes of computing the average of deposits for a fiscal year, a bank may deduct from its average of actual deposits for a fiscal year that amount by which the average of the following cash and cash equivalent items for the fiscal year exceeds 20% of its average of actual deposits for the fiscal year:

1. Cash on hand, including clearings.
2. Balances with federal reserve banks.
3. Short-term obligations of or demand balances with other insured financial institutions in the United States.
4. Book value of direct obligations of the United States and obligations of agencies of the United States.

(b) For purposes of computing the actual deposits and the average of cash and cash equivalent items for a fiscal year, in order to compute the average of deposits for the fiscal year under par. (a), a bank shall use either the average of account balances at the close of business on the 1st, 11th and 21st day

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of each month or the average daily account balances for the fiscal year.

(3) On or before April 15 annually, each bank shall file with the commissioner a report, in the form required by the commissioner, which discloses the unimpaired capital, the undistributed surplus and the average of actual deposits, average of cash and cash equipment items and average of deposits for the fiscal year ending at the close of business on March 31 of the same year.

(4) Any bank failing to file a report as required by this section shall be subject, at the discretion of the commissioner, to a forfeiture of \$100 for each day after the due date of the report until the report is filed. A bank's failure to comply with an order issued by the commissioner under this section is cause for forfeiture of the bank's charter or for the removal of its officers or directors.

History: 1987 a. 252.

220.08 Delinquent banks; commissioner may take possession. (1) Whenever it shall appear to the commissioner of banking that any bank or banking corporation to which this chapter is applicable has violated its charter or any law of the state, or is conducting its business in an unsafe or unauthorized manner, or if the capital of any such bank or banking corporation is impaired, or if any such bank or banking corporation shall refuse to submit its books, papers, and concerns to the inspection of any examiner, or if any officer thereof shall refuse to be examined upon oath touching the concerns of any such bank or banking corporation, or if any such bank or banking corporation shall suspend payment of its obligations, or if from any examination or report provided for by this chapter the commissioner shall have reason to conclude that such bank or banking corporation is in an unsound or unsafe condition to transact the business for which it is organized, or that it is unsafe and inexpedient for it to continue business, or if any such bank or banking corporation shall neglect or refuse to observe an order of the commissioner, specified in s. 220.07, or if the commissioner shall find that the management of the bank or the manner in which the work of any of its officers or employees is done, if continued, is such as to endanger the safety or solvency of the bank and the commissioner shall have made written recommendations for change in management or officers and employees and such recommendation shall not have been complied with after the expiration of a reasonable time therefor fixed by the commissioner, the commissioner may take possession of the property and business of such bank or banking corporation, and retain such possession until such bank or banking corporation shall resume business, or its affairs be finally liquidated as herein provided. Whenever facts have come to the attention of the commissioner which cause him to believe that it may be necessary or advisable to take possession of a bank, or if he has reasonable cause to believe that any of the grounds for taking possession of a bank, specified in this section, exist, he shall bring the matter to the attention of the banking review board, reporting to them in writing the situation and his own recommendation as to action to be taken. The banking review board shall promptly consider the matter and promptly decide whether or not the commissioner should take possession of the bank. If the review board decides that the commissioner should take possession, he shall forthwith take possession as hereinbefore provided. If at any time the commissioner is confronted with an emergency situation where in his opinion it is imperative in order to protect the public or for other reasons that possession of the bank be at once taken, he may do so forthwith without referring the matter to the banking review board.

(2) On taking possession of the property and business of any such bank or banking corporation, the commissioner shall forthwith give notice of such fact to any and all banks or banking corporations holding or in possession of any assets of such bank or banking corporation. No bank or banking corporation knowing of such taking possession by the commissioner, or notified as aforesaid, shall have a lien or charge for any payment, or advance, thereafter made, or liability thereafter incurred, against any of the assets of the bank or banking corporation of whose property and business the commissioner shall have taken possession as aforesaid, except that all drafts issued and delivered against existing balances on deposit in any drawee banks or banking corporations shall be paid on presentation, if they correspond by number and amount to a list to be certified to them by the commissioner, his deputies or representatives, and if there be insufficient funds in deposit such drafts shall be preferred claims. Such bank or banking corporation may, with the consent of the commissioner, resume business upon such conditions as may be approved by him.

(2a) The commissioner on taking possession of a bank for liquidation shall, with the approval of the circuit court, withdraw from the general fund of such bank an amount of money deemed adequate by the commissioner and the circuit court for the payment of current monthly expenses and set up a working fund. Such working fund shall be deposited by the commissioner in one or more state banks in an account known as "bank liquidation account" together with like funds from other banks in liquidation. Once each month the expenses so paid from the working fund shall be approved by the circuit court. Upon such approval, the working fund of each liquidating bank shall be reimbursed from the general fund of said liquidating bank so that the balance of each working account in said bank liquidation account shall always be the amount approved by the circuit court. When a liquidating bank is ready to pay the final dividend and final expenses, the working fund assigned to the bank liquidation account shall be reassigned back to the general account of such bank.

(3) Upon taking possession of the property and business of such bank or banking corporation, the commissioner is authorized to collect moneys due to such bank or banking corporation, and do such other acts as are necessary to conserve its assets and business, and shall proceed to liquidate the affairs thereof, as hereinafter provided. The commissioner shall collect all debts due and claims belonging to it, and, upon the order of the circuit court, may sell or compound all bad or doubtful debts, and on like order may sell all the real and personal property of such bank or banking corporation on such terms as the court shall direct.

(3a) That in addition to the authority conferred by sub. (3), the commissioner with the approval of the banking review board may, for purposes of collection or liquidation, sell, assign, convey and transfer or approve the sale, assignment, conveyance and transfer of the assets of a closed bank or bank operating under a stabilization and readjustment agreement to any other bank or trust company under such terms and conditions as he may deem for the best interests of the depositors and unsecured creditors of such bank.

(3b) The acts of any special deputy commissioner under sub. (4) shall be binding on the commissioner of banking to the same extent and with like effect as if such acts were done by said commissioner.

(4) The commissioner may, under his or her hand and official seal, appoint one or more special deputy commissioners, as agent or agents, to assist the commissioner in the duty of reorganization, consolidation, liquidation and distribu-

tion, the certificate of appointment to be filed in the office of the commissioner and a certified copy in the office of the clerk of the circuit court for the county in which such bank or banking corporation is located. Such special deputy commissioners may execute, acknowledge and deliver any and all deeds, assignments, releases or other instruments necessary and proper to effect any sale and transfer or encumbrance of real estate or personal property after the same has been approved by the commissioner, and an order obtained from the circuit court of the county in which the bank concerned is located. The commissioner may from time to time authorize a special deputy commissioner to perform such duties connected with such reorganization, consolidation, liquidation and distribution as the commissioner deems proper. The commissioner may employ such counsel and procure such expert assistance and advice as may be necessary in the reorganization, consolidation, liquidation and distribution of the assets of such banks or banking corporations. The commissioner may retain such of the officers or employes of such banks or banking corporations as he or she deems necessary.

(5) The commissioner shall give notice, in such newspapers as he may direct, by publication of a class 3 notice, under ch. 985, calling on all persons who may have claims against such bank or banking corporation, to present the same to the commissioner, within 3 months after the date of first insertion. Such notice shall also fix a place and time (not less than 3 months after the date of first insertion) to make legal proof thereof. The commissioner shall mail a similar notice to all persons whose names appear as creditors upon the books of the bank or banking corporation. Any creditor of such bank or banking corporation holding security of any nature, shall file a claim as a general creditor only for the amount by which the debt exceeds the value of such security. The value of said security and the amount to be allowed on the claim so filed shall, upon application of such creditor or the commissioner and upon at least 20 days' notice to the opposing party, be determined by the circuit court of the county wherein such bank or banking corporation is located. If the commissioner doubts the justice and validity of any claim, he may reject the same, and serve notice of such rejection upon the claimant either by mail or personally. An affidavit of the service of such notice, which shall be prima facie evidence thereof, shall be filed with the commissioner. An action upon a claim so rejected must be brought within 6 months after such service. Claims presented after the expiration of the time fixed in the notice to creditors shall be entitled to receive only liquidating dividends declared after presentation, unless otherwise ordered by the court.

(6) Upon taking possession of the property and assets of such bank or banking corporation, the commissioner shall make an inventory of the assets of such bank or banking corporation, in duplicate, one to be filed in the office of the commissioner, and one in the office of the clerk of circuit court for the county in which such bank or banking corporation is located; upon the expiration of the time fixed for the presentation of claims, the commissioner shall make in duplicate a full and complete list of the claims presented, including and specifying such claims as have been rejected by it, one to be filed in the office of the commissioner, and one in the office of the clerk of circuit court for the county in which such bank or banking corporation is located. Such inventory and list of claims shall be open at all reasonable times to inspection.

(7) The compensation of the special deputy commissioners, counsel, and other employes and assistants, and all expenses of supervision and liquidation, shall be fixed by the commissioner subject to the approval of the circuit court for the

county in which such bank or banking corporation is located, on notice of such bank or banking corporation, and shall upon the certificate of the commissioner be paid out of the funds of such bank or banking corporation in the hands of the commissioner. Expenses of supervision and liquidation shall include the cost of services rendered by the office of the commissioner of banking to the bank or banking corporation being liquidated and the commissioner shall the first of each month determine such cost in the manner hereinafter provided, which cost shall be charged to each bank in liquidation and the same shall be paid to the office of the commissioner of banking as other expenses of liquidation are paid. The amount of the aforesaid supervision cost to be paid by each bank in liquidation shall be determined by taking that portion of the total supervision cost of all banks in liquidation for the preceding month, which the total book value of the unliquidated book assets of each said bank bears to the total book value of all the unliquidated book assets of every bank in liquidation. In making computations for each month the total supervision cost and all book values of unliquidated assets shall be determined as of the last business day of the preceding month. The moneys collected by the commissioner shall be from time to time deposited in one or more state banks, and, in case of the suspension or insolvency of the depository, such deposits shall be preferred before all other deposits.

(8) At any time after the expiration of the date fixed for the presentation of claims, the commissioner may out of the funds remaining in his hands after the payment of expenses declare one or more dividends, and after the expiration of one year from the first publication of notice to creditors, he may declare a final dividend, such dividends to be paid to such persons, and in such amounts, and upon such notice, as may be directed by the circuit court for the county in which such bank or banking corporation is located. Objections to any claim not rejected by the commissioner may be made by any party interested by filing a copy of such objections with the commissioner, who shall present the same to the circuit court at the time of the next application to declare a dividend. The court may if deemed advisable provide for the setting aside of a sum sufficient to pay all or any part of the dividends due on any unproved or unclaimed deposits.

(9) Whenever any such bank or banking corporation, of whose property and business the commissioner has taken possession, as aforesaid, deems itself aggrieved thereby, it may, at any time within 10 days after such taking possession, apply to the circuit court for the county in which such bank or banking corporation is located to enjoin further proceedings; and said court, after citing the commissioner to show cause why further proceedings should not be enjoined and hearing the allegations and proofs of the parties and determining the facts may, upon the merits dismiss such application or enjoin the commissioner from further proceedings, and direct him to surrender such business and property to such bank or banking corporation. Said bank or banking corporation may, if it desires so to do, within 10 days after taking possession apply to the banking review board to review the action of the commissioner in taking possession. The banking review board shall act speedily on such application. Within 10 days after notice of the decision of the banking review board, said bank or banking corporation may apply to said circuit court of the county in which such bank or banking corporation is located to enjoin further proceedings. The proceedings on such application shall be on notice to the commissioner and shall be the same as where the application to the court is made as above provided without application to the review board.

(10) Whenever the commissioner has paid to every depositor and creditor of such bank or banking corporation (not including stockholders), whose claims as such creditor or depositor have been duly proved and allowed, the full amount of such claims, and has made proper provision for unclaimed and unpaid deposits or dividends, and has paid all the expenses of the liquidation, the commissioner shall call a meeting of the stockholders of such bank or banking corporation by giving notice thereof by certified mail and by publication of a class 2 notice, under ch. 985, in the county where such bank or banking corporation is located. At such meeting the stockholders shall determine whether the commissioner shall be continued as liquidator and shall wind up the affairs of such bank or banking corporation, or whether an agent or agents shall be elected for that purpose, and in so determining the said stockholders shall vote by ballot, in person or by proxy, each share of stock entitling the holder to one vote, and the majority of the stock shall be necessary to a determination.

(11) In case it is determined to continue the liquidation under the commissioner, he shall complete the liquidation of the affairs of such bank or banking corporation, and after paying the expenses thereof, shall distribute the proceeds among the stockholders in proportion to the several holdings of stock in such manner and upon such notice as may be directed by the circuit court. In case it is determined to appoint an agent or agents to liquidate, the stockholders shall thereupon select such agent or agents by ballot, a majority of the stock present and voting, in person or by proxy, being necessary to a choice. Such agent or agents shall execute and file with the commissioner a bond to the people of the state in such amount, with such sureties and in such form as shall be approved by the commissioner, conditioned for the faithful performance of all the duties of his or their trust, and thereupon the commissioner shall transfer and deliver to such agent or agents all the undivided or uncollected or other assets of such bank or banking corporation then remaining in his hands; and upon such transfer and delivery, the said commissioner shall be discharged from any and all further liability to such bank or banking corporation and its or their creditors.

(12) Such agent or agents shall convert the assets coming into his or their possession into cash, and shall account for and make distribution of the property of said bank or banking corporation, as is herein provided in the case of distribution by the commissioner, except that the expenses thereof shall be subject to the direction and control of the circuit court. In case of the death, removal, or refusal to act of any such agent or agents, the stockholders, on the same notice, to be given by the commissioner upon proof of such death, removal, or refusal to act being filed with it, and by the same vote hereinbefore provided, may elect a successor, who shall have the same powers and be subject to the same liabilities and duties as the agent originally elected.

(13) The commissioner shall deposit dividends and unclaimed deposits which have been provided for and which remain unpaid in the hands of the commissioner for 6 months after the order for final distribution in one or more state banks, to the credit of the commissioner, in trust for the several depositors with and creditors of the liquidated bank or banking corporations from which they were received. The commissioner's annual report under s. 220.14 shall include the names of banks or banking corporations so taken possession of and liquidated and the sums of unclaimed and unpaid deposits or dividends with respect to each of them respectively.

(14) The commissioner may pay the moneys held by him or her to the persons entitled to them, upon being furnished satisfactory evidence of their right to the same. In cases of doubt or conflicting claims, the commissioner may require an order of the circuit court authorizing and directing the payment thereof. The commissioner may apply the interest earned towards defraying the expenses in the payment and distribution of such unclaimed deposits or dividends to the depositors and creditors entitled to receive them, and if necessary may draw on the fund to defray such expenses. After one year from the time of the order for final distribution, the commissioner shall report and deliver all unclaimed funds to the state treasurer as provided in ch. 177. All claims subsequently arising shall be presented to the commissioner. If the commissioner determines that any claim should be allowed, he or she shall certify to the department of administration the name and address of the person entitled to payment and the amount thereof and shall attach the claim to the certificate. The department of administration shall certify the claim to the state treasurer for payment.

(15) Whenever the commissioner, with a view of restoring the solvency of any bank of which he has taken charge pursuant to law, shall approve a reorganization plan entered into between the depositors and unsecured creditors of such bank and the bank or reorganizers thereof, which represent 80 per cent of the amount of deposits and unsecured claims of such banks, then and in such case all other depositors and unsecured creditors shall be held to be subject to such agreement to the same extent and with the same effect as if they had joined in the execution thereof, and their claims shall be treated in all respects as if they had joined in the execution of such articles or reorganization plan in the event of restoration of such bank to solvency, and the reopening of the same for business. The investment board and the governing board of any county, city, village, town, drainage district, power district, school district, sewer district, or other governmental subdivision, or any commission, committee, board or officer thereof, having any funds on deposit at the time of the closing of the bank are authorized to join in any reorganization plan, if, in the judgment of such investment board or other governing board, the reorganization plan is in the best interests of all persons concerned. All deposits made in any state bank subsequent to June 3, 1927 shall be subject to the conditions hereof.

(16) Whenever the commissioner is informed, within 10 days after he has taken charge of a bank pursuant to law, that a plan for the reorganization of such bank is being considered, the commissioner may refrain from complying with any or all of the provisions of this section for such time as he deems advisable, but for not more than 40 days after he has taken charge of said bank. The approval by the commissioner and the acceptance by the depositors and unsecured creditors of a reorganization plan within the time specified as provided in sub. (15), shall operate to relieve the commissioner of the duties and liabilities provided by this section in the case of liquidation of banks.

(17) Whenever it shall appear to the commissioner that the books and records of any liquidated bank or banking corporation or segregated trust are no longer required by the commissioner, he or she may make application to the circuit court having jurisdiction of such liquidated bank or banking corporation or segregated trust for an order determining what books and records are to be kept and what destroyed, stating in such application his or her recommendations thereon. Said circuit court shall thereupon enter an order determining what books and records shall be kept and what shall be destroyed. The books and records ordered preserved

shall be delivered to the clerk of such court to be kept by him or her until further order of the court. Following the expiration of the retention period provided in SCR chapter 72, the circuit court shall submit to the historical society copies of the commissioner's application and the court order determining what books and records have been kept. On subsequent application of the historical society the court may order delivery to the society of such books and records as the society deems of permanent historical significance and the destruction of the balance, whether or not any such records have been photographed or microphotographed.

(18) Whenever any bank or banking corporation has been completely liquidated, the commissioner shall and he is hereby authorized to cancel the charter of such bank or banking corporation.

(19) Segregated trusts heretofore or hereafter created in connection with the stabilization and readjustment or reorganization of a bank shall be administered and liquidated under the supervision of the commissioner and the circuit court of the county in which the bank is located.

(a) The trustees shall be confirmed by the circuit court of the county wherein such bank is located and shall be subject to removal by said court.

(b) The administration and liquidation of such trust shall be subject to the supervision of the commissioner and as far as practicable shall be subject to the approval of the circuit court of the county wherein such bank is located in the same manner and to the same extent as is the administration of banks in liquidation under the provisions of this section.

(c) The commissioner shall make such examinations of the books, records and assets of such trust as he deems necessary and shall submit copies of such examinations to the trustees and to the circuit court. The cost of such examinations and the cost of the supervision rendered by the commissioner, which cost shall be determined by said commissioner, shall be a charge against the trust and shall be paid as an expense of administration.

(d) The trustees of such trust shall be known collectively as "the trustees of the segregated trust of (name of bank)" and in that name may sue and be sued and perform the duties imposed on them by law and the provisions of the agreement or court order creating such trust. A certificate issued by the commissioner shall be sufficient proof of the creation of such trust, of the appointment and qualification of the persons named therein to act as trustees and of the powers of the trustees.

(20) In the event the commissioner, as statutory receiver of closed state banks or in connection with his supervision of segregated trusts, shall have in his possession any funds or property by reason of any recovery on an official bond or otherwise, and said funds shall not belong to or be attributable to any specific bank or banks in liquidation or to any specific segregated trust or trusts and it shall appear that all or a number of banks in liquidation or all or a number of the segregated trusts supervised by the commissioner or the depositors or other creditors of such banks or trusts, may have an interest in such funds or property, the commissioner may petition the circuit court for Dane county for an order directing the disposition of such funds or property. The court, upon presentation of such a petition, shall direct the commissioner to give such notice of hearing thereon, by publication of a class 3 notice, under ch. 985, or otherwise, as appears reasonable under the circumstances. The expenses of the commissioner in any such proceeding shall be paid out of such funds or property. If it shall appear to the court that the persons to whom such funds or property may ultimately belong cannot be found or ascertained or that the expense of

such ascertainment would in the judgment of the court be excessive or unreasonable under all the circumstances, the court shall enter an order directing the commissioner to transmit such funds or property to the state treasurer to become the property of the state. Any person claiming an interest in any such funds or property so ordered to be transmitted to the state treasury may within 5 years after the entry of such order bring suit against the state for recovery thereof without interest.

(20a) After liquidation of the assets of a delinquent bank, any remaining assets, including all unknown and undiscovered assets in the custody of the commissioner, shall, after approval of the circuit court having jurisdiction thereof, be retained by the commissioner who is authorized and empowered to hold such assets, claims and demands with the full right and power to compound, compromise, settle and assign the same with full authority to execute and deliver any legal instruments incidental thereto without further court approval. Any moneys or proceeds received therefrom shall be paid into the general fund of the state of Wisconsin after the commissioner has first deducted therefrom the costs of his services and other expenses incidental thereto.

History: 1983 a. 408, 524; 1985 a. 127; Sup. Ct. Order, 136 W (2d) xx.

Cross Reference: See Chap. 177 for disposition of unclaimed funds.

220.081 Closed insured banks; federal deposit insurance corporation may be receiver. (1) The commissioner of banking may, in the event of the closing of any bank which is a member of the federal deposit insurance corporation or the deposits in which are to any extent insured by said corporation, tender to said corporation the appointment as statutory receiver of such bank and if the corporation accepts said appointment, the corporation shall have and possess all the powers and privileges given by the laws of this state to the commissioner of banking as statutory receiver of a closed bank and be subject to all the duties of the commissioner as such statutory receiver, except insofar as such powers, privileges, or duties are in conflict with the provisions of subsection 1 of section 8 of said banking act of 1933, or any other applicable federal laws.

(2) In the event said federal deposit insurance corporation shall accept the appointment as such receiver, it is hereby authorized and empowered to be and act without bond as such receiver.

(3) Upon the acceptance of the appointment as receiver of any delinquent bank by said federal deposit insurance corporation, the possession of and title to all the assets, business and property of such bank of every kind and nature shall pass to and vest in said corporation without the execution of any instruments of conveyance, assignment, transfer or indorsement.

(4) The commissioner or the federal deposit insurance corporation being in possession of any delinquent bank may, as receiver of such bank and upon the order of the circuit court for the county in which such bank is located, borrow money from the federal deposit insurance corporation and secure the payment of such loan by the mortgage pledge, transfer in trust or hypothecation of any or all of the property and assets of such delinquent bank and upon like order may sell to said federal deposit insurance corporation any or all of the property and assets of such delinquent bank.

220.082 Closed insured banks; subrogation of federal deposit insurance corporation. Whenever any bank whose deposits are in whole or in part insured pursuant to any federal laws, shall have been closed on account of the inability to meet the demands of its depositors, and the federal deposit insurance corporation or its successors shall pay or make

available for payment the insured deposit liabilities of such closed institution, the corporation or its successors, whether or not the same shall have become receiver or liquidator of such closed bank, shall be subrogated to all rights against such closed bank, or the owner of such insured deposits with like force and effect as if the closed bank were a national bank, to the extent now or hereafter necessary to enable said corporation, under federal law, to make insured payments available to depositors of closed insured banks.

220.085 Federal aid to banks. On approval of the banking review board, any state bank or trust company, or the receiver of any insolvent or delinquent state bank or trust company, may take advantage of any act that may be enacted by the congress of the United States for the relief of any state banks or trust companies.

220.086 Receiver of delinquent bank may borrow from federal government agency; court order. The commissioner of banking, having taken possession of any delinquent bank, may, as receiver of such bank, and upon the order of the circuit court for the county in which such bank is located, borrow money from any agency of the federal government, upon such terms and conditions as may be satisfactory to such federal agency, and issue evidences of indebtedness therefor, and secure the payment of such loan by the mortgage, pledge, transfer in trust, or hypothecation of any or all of the property and assets of such delinquent bank.

220.09 Indemnity fund, national bank. Every national bank which has been granted a special permit by the federal reserve board to act in a fiduciary capacity under the provisions of subsection (k) of section 11, of the federal reserve act shall deposit with the state treasurer security, approved by the commissioner of banking, in the manner which is required of trust company banks organized under s. 223.02. Such securities shall be of the same nature as the security designated by the provisions of such section for the deposit by trust companies organized under the laws of this state. Such national bank, so long as it shall continue solvent and comply with the laws of this state applicable thereto, may be permitted by the commissioner to collect the interest on the security so deposited and from time to time withdraw the said securities or any part thereof provided that securities or cash of the amount and value required by this section shall at all times be maintained on deposit.

220.10 Books and accounts; commissioner's control. Whenever it appears to the commissioner that any bank does not keep books and accounts in such manner as to enable him to readily ascertain the true condition of such bank, he may require the officers of such bank to open and keep such books or accounts as he prescribes for the purpose of keeping accurate and convenient records of the transactions and accounts of such bank. Any bank that refuses or neglects to open and keep such books or accounts as the commissioner prescribes shall be subject to a penalty of \$10 for each day it neglects and fails to open and keep such prescribed books and accounts.

220.12 Attorney general, duty of. All proceedings by any bank to enjoin the commissioner of banking in the discharge of his duties shall be had in the county where said bank is located, or in the supreme court of this state. All suits and proceedings arising out of the provisions of the banking laws, in which the state, or any of its officers or agents shall be parties, shall be conducted under the direction and supervision of the attorney general.

220.13 Copies as evidence. Copies of all records and papers in the office of the commissioner of banking, certified by him and authenticated by his seal of office, shall be evidence in all cases equally and of like effect as the original.

220.14 Commissioner's report. The commissioner shall publish an annual report and submit the report to the governor and the chief clerk of each house of the legislature for distribution to the legislature under s. 13.172 (2). The report shall:

(1) Exhibit the condition of the various banks of the state as of the day of the last report made to the commissioner by such banks.

(2) Contain a statement of the condition of every bank from which reports have been received, with an abstract of the whole amount of capital returned by them, the whole amount of their liabilities, the total amount of resources, and specifying the amount of lawful money held by banks at the time of their several returns.

(3) Give a tabulated statement of the resources and liabilities of each bank.

(4) Contain a statement of the banks whose business has been closed during the year, the amount of their resources and liabilities, the amount paid to the creditors thereof and a statement of any banks organized during the year.

(7) Give such other information as the commissioner deems necessary.

History: 1977 c. 196 s. 131; 1983 a. 524.

220.17 Effect of consolidating banks and trust companies.

(1) Whenever 2 or more banks or trust companies, including national banks, authorized to do a banking business in the state of Wisconsin, shall be consolidated under the charter of one of the consolidating banks or trust companies, or under a new charter issued to such consolidated institution, the rights, interests and franchises of any bank or trust company joining in or party to such consolidation in and to every species of property, real, personal and mixed and choses in action thereto belonging, shall be deemed transferred to and vested in the consolidated bank or trust company without any deed, indorsement or other instrument of transfer, and the consolidated bank or trust company shall take, hold and enjoy the same and all rights of property, franchises and interests in the same manner and to the same extent as were held and enjoyed by such consolidating banks or trust companies or both at the time of such consolidation.

(2) And such consolidated bank or trust company, if authorized to perform fiduciary services, as of the time of the taking effect of such consolidation shall succeed to all rights, obligations, relations and trusts, and the duties and liabilities connected therewith, held by any bank or trust company party to such consolidation, and without further appointment shall act as trustee, executor, administrator or in any other fiduciary capacity in which any such consolidating bank or trust company was acting at the time of such consolidation, and shall execute and perform each and every such trust or relation in the same manner as if the consolidated bank or trust company itself had assumed the trust or relation, including the obligations and liabilities connected therewith. And such consolidated bank or trust company shall be entitled to be appointed or to act as trustee or executor or other fiduciary to the same extent and with the same effect as would any bank or trust company party to such consolidation if prior thereto any bank or trust company party to such consolidation has been designated as trustee or any other fiduciary in any trust deed or other writing, or has been nominated as executor in any will.

History: 1983 a. 36.

220.18 Bank or corporation notaries; permitted acts. It shall be lawful for any notary public who is a stockholder, director, officer or employe of a bank or other corporation to take the acknowledgment of any party to any written instrument executed to or by such corporation, or to administer an oath to any other stockholder, director, officer, employe or agent of such corporation, or to protest for nonacceptance or nonpayment bills of exchange, drafts, checks, notes and other negotiable instruments which may be owned or held for collection by such corporation, if such notary is not a party to such instrument, either individually or as a representative of such corporation.

220.28 Destruction of obsolete records by state banks. Any state bank may destroy or dispose of such of its records as may have become obsolete after first obtaining the written consent of the commissioner of banking.

History: 1985 a. 127.

220.285 Reproduction and destruction of records; evidence. (1) Any state bank, mutual savings bank, trust company bank, licensees under ss. 138.09 and 218.01 or credit union may cause any or all records kept by such bank, licensees under ss. 138.09 and 218.01 or credit union to be recorded, copied or reproduced by any photostatic, photographic or miniature photographic process which correctly, accurately and permanently copies, reproduces or forms a medium for copying or reproducing the original record on a film or other durable material, and such bank, licensees under

ss. 138.09 and 218.01 or credit union may thereafter dispose of the original record after first obtaining the written consent of the commissioner of banking. This section, excepting that part of it which requires written consent of the commissioner of banking, is applicable to national banking associations insofar as it does not contravene federal law.

(2) Any photographic, photostatic or miniature photographic copy or reproduction or copy reproduced from a film record made from a bank record, record of a licensee under ss. 138.09 and 218.01 or credit union record is deemed to be an original record for all purposes and shall be treated as an original record in all courts or administrative agencies for the purpose of its admissibility in evidence. A facsimile, exemplification or certified copy of any such photographic copy or reproduction or copy reproduced from a film record shall, for all purposes, be deemed a facsimile, exemplification or certified copy of the original record.

History: 1971 c. 239; 1973 c. 3.

220.30 Closing in emergencies. No liability shall be incurred by a bank because the bank is closed during an emergency. If a bank closes during an emergency, the closing shall be noted in the minutes of the next meeting of the bank's board of directors. A bank may not declare in default for nonpayment any obligation which became due while the bank was closed during the emergency if timely payment on the obligation was tendered but not accepted because the bank was closed.

History: 1971 c. 120; 1987 a. 252.