

CHAPTER 220.

BANKING DEPARTMENT.

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220.01 Department established. There is established in this state a banking department, which shall have charge of the execution of the laws relating to banks and the banking business in this state. Such department shall be designated as the state banking department, and shall be under the management and control of a commissioner of banks. There is also established as a part of said department a board consisting of 5 appointed members to be known as the banking review board which shall have such powers and perform such duties as are prescribed by law. [*Spl. S. 1931 c. 10 s. 1; 1933 c. 374 s. 3; 1947 c. 411*]

220.02 Commissioner of banks; deputies; appointment. (1) The commissioner of banks shall be appointed by the governor, by and with the consent of the senate, and shall hold his office for the term of 6 years, and until his successor shall have been appointed and qualified. But no person shall be eligible for the office of commissioner without having had actual practical experience for not less than 10 years, either as an executive officer in a Wisconsin bank, or as service in the banking department of the state or as a combination of both. He shall devote full time to the duties of his office.

(2) The commissioner shall appoint a deputy by and with the consent of the governor and in like manner may revoke such appointment at pleasure. Such deputy shall not be subject to the provisions of chapter 16 and shall be appointed on the basis of recognized interest, training and experience in and a knowledge and understanding of finance or banking. He 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, from time to time, such examiners and clerks to assist him and his deputy in the discharge of the several duties imposed upon him by this chapter as he shall find necessary, and who shall perform such other duties as the commissioner may direct.

(3) The commissioner of banks shall enforce all laws relating to banks and banking in this state, including those relating to state banks in chapters 220 and 221, savings banks in chapter 222 and trust company banks in chapter 223; all laws relating to credit unions in chapter 186 and the business done by them in this state; and all laws relating to small loan companies in chapter 214 or other laws relating to the lending of money in sections 115.07 and 115.09 or those relating to finance companies, motor vehicle dealers, adjustment service companies and collection agencies in chapter 218; and all laws relating to investment associations contained in chapter 216 and those relating to persons desiring to or who are engaged in the foreign exchange business contained in chapter 217; and he shall enforce and cause to be enforced every law relating to the supervision or control thereof.

(4) It is the intent of subsection (3) to give the commissioner of banks power and jurisdiction to enforce and carry out all laws relating to banks or banking in this state, including those relating to state banks, savings banks, trust company banks, and also all laws relating to credit unions, small loan companies or other loan companies or agencies, finance companies, motor vehicle dealers, adjustment service companies and collection agencies, investment associations and those relating to persons desiring to or who are engaged in the foreign exchange business as provided in chapter 217, whether doing business as corporations, individuals or otherwise, but to exclude laws relating to savings and loan associations.

(5) Wherever the words "banking commission", "commission" or words of similar import referring to or meaning the state banking commission are used in the statutes, the words "commissioner of banks", "commissioner" or words of similar import referring to the commissioner of banks shall be substituted. The revisor of statutes is directed to make such substitution.

(6) There shall be assigned to said commissioner of banks suitable rooms in the state capitol or state office building for conducting the business of said department. All necessary stationery, printing and supplies shall be furnished to the state banking department upon requisitions therefor, in like manner as other state departments are now supplied.

(7) Except as otherwise provided in section 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.

(8) The commissioner shall employ in the banking department, a competent person as supervisor for the supervision and examination of all consumer credit agencies over which the commissioner has jurisdiction, other than credit unions. Such supervisor shall be subject to the provisions of chapter 16, and shall not be eligible for such position unless he shall have had 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. He shall receive a salary not to exceed that paid to the deputy commissioner of banks, and shall, at the discretion of the commissioner, furnish such corporate surety bond and in such amount as the commissioner may determine. [*Spl. S. 1931 c. 10 s. 1; Spl. S. 1931 c. 15 s. 2; 1933 c. 7; 1933 c. 374 s. 1, 2, 3; 1935 c. 245; 1937 c. 284 s. 3; 1943 c. 302; 1947 c. 411, 612*]

Note: Members of banking commission may at same time be officers or directors of banks or building and loan associations or other corporations subject to supervision of banking commission, or may be officers or directors in corporations not subject to commission's supervision or may hold other position of trust or responsibility and have other interests, provided holding of such positions or maintenance of such interests does not prevent commissioners from devoting their full time to duties of their office within the meaning of that term [in 1941 Stats.] as discussed. 32 Atty. Gen. 65.

220.023 Saving clause; effect of change. (1) No order, rule or regulation heretofore made by the banking commission or banking department which is in effect on the effective date (July 17, 1947) of this section shall be deemed to be vacated or in any other manner affected by its enactment. From and after said date such orders, rules or regulations relating to matters as are by the act creating this section placed under the jurisdiction of the commissioner of banks shall be deemed to be those of the commissioner of banks and such orders, rules or regulations relating to matters which are placed under the jurisdiction of the commissioner of savings and loan associations shall be deemed to be those of the commissioner of savings and loan associations.

(2) All equipment, records and files which are in the custody or possession of the banking commission on July 17, 1947 and which relate to matters which are by the act creating this section placed under the jurisdiction of the commissioner of banks are hereby transferred to the custody and possession of the commissioner of banks. All such equipment, records and files which relate to matters which are placed under the jurisdiction of the commissioner of savings and loan associations are hereby transferred to the custody and possession of the commissioner of savings and loan associations.

(3) Employees of the banking commission or banking department who were on July 17, 1947 employed under the provisions of chapter 16 and who were rendering service or performing duties for the banking commission or banking department which services or duties on July 17, 1947 were taken over by the commissioner of banks are hereby transferred to the employ of the commissioner of banks, and such employees who were rendering service or performing duties for the banking commission or banking department which services or duties were taken over by the commissioner of savings and loan associations are hereby transferred to the employ of the commissioner of savings and loan as-

sociations. Every employe employed by the banking commission or banking department shall, except for such transfers as herein provided, be continued in the position in which they were employed and shall retain the same rights and maintain the same status as they had before. [1947 c. 411, 612]

220.025 Fidelity bonds. (1) The commissioner of banks and the deputy commissioner of banks shall each execute and file an official bond or bonds in the aggregate sum of \$25,000 approved by the governor.

(2) Employes, appointees and agents of the state commissioner of banks whose office or position falls within the designation of such office or position in the schedule appearing next below, shall be required to furnish official bond or bonds in the aggregate sum of not less than the amount set opposite such designation as follows, to wit:

(a) Supervisors of divisions of the state banking department, each, not less than \$10,000.

(b) Examiners of active or delinquent banks and credit unions, each, not less than \$10,000.

(c) Special deputy commissioners, each, not less than \$10,000.

(d) Special assistants to the commissioner of banks, each, not less than \$10,000.

(3) Each employe of the state commissioner of banks not included in the schedule above whose duties involve either special responsibilities or the handling or control of money, securities or other property shall furnish official bond or bonds in such aggregate sum as the discretion of the commissioner may determine.

(4) Other employes whose duties involve no special responsibility or the handling or control of money, securities or other property, need furnish bond only upon demand of the commissioner of banks in such sum as the commissioner may require.

(5) The official bond of every person affiliated with the state commissioner of banks who for services receives compensation in whole or in part from the state treasury, and of whom official bond is required as hereinabove set forth, shall be in compliance with the provisions of section 19.01 (2).

(6) All employes, appointees and agents of the state commissioner of banks (other than special deputy commissioners and special assistants to the commissioner) who do not receive their compensation in whole or in part from the state treasury, shall furnish bonds in such sums and under such form as the commissioner may require.

(7) Each and every bond required under this section shall be underwritten by a surety company duly licensed to do business in the state of Wisconsin.

(8) From time to time, at his discretion, the commissioner is authorized to require increases in the amount of any fidelity bonds coming within his jurisdiction. [1943 c. 302; 1947 c. 411]

220.03 Seal. The commissioner of banks shall devise a seal for his use. A description of the seal, with an impression thereof, shall be filed in the office of the secretary of state. [1935 c. 245; 1947 c. 411]

220.035 Banking review board. (1) The 5 members of the banking review board shall be appointed by the governor with the advice and consent of the senate. At least 3 members of the board shall be experienced bankers having at least 5 years' experience in the banking business. There shall be appointed by the governor one member whose term shall expire on the first Monday of January, 1933; a second to expire on the first Monday of January, 1934; a third to expire on the first Monday of January, 1935; a fourth to expire on the first Monday of January, 1936; a fifth to expire on the first Monday of January, 1937. After the expiration of these respective terms the term of each member of said board shall be 5 years expiring on the first Monday of January of the proper year in each case. Vacancies shall be filled by appointment by the governor.

(2) The duties of the board shall be to advise with the commissioner of banks and others in respect to improvement in the condition and service of banks and banking business in this state and to review the acts and decisions of the commissioner of banks, except for such acts and decisions subject to review under section 220.037, and to perform such other review functions in relation to banking as may be provided by law. The board shall have the same powers in respect to subpoenaing witnesses as are possessed by the industrial commission and also the power granted by section 325.01 (4). Any party in interest shall have the right to appear in any proceeding of the board and shall have the right to participate in the examination of witnesses and to present evidence. 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 of witnesses who are called at the instance of the board in the interests of the state 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 banking department. Each member of the board and all employees 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 banks. Three members shall constitute a quorum and a majority vote of those present shall decide. No member of such board shall be qualified to act in any matter involving a bank in which he is an officer, director or stockholder, or to which he is indebted.

(2m) 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 chapter 227.

(4) The said board shall have an office in the quarters of the banking department in the state capitol. Said board shall choose a secretary, who shall keep a record of the meetings of said board and of all hearings, decisions, orders and determinations of the board. The board may make reasonable rules and regulations 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 members of said board shall receive reimbursement from the state for their actual expenses as in case of other state officers. They shall also each receive \$15 per day for each day expended in the work of the board, but such compensation for service shall not exceed in the case of any one member \$900 per year, exclusive of expenses. The expenses of the banking review board including salaries and expenses of members of board and employees thereof shall be paid by the state upon the presentation of properly verified vouchers approved by at least one member of the board and the secretary of the board and shall be charged to the appropriation to the banking department. The board may employ assistance necessary in the performance of its work and fix the reasonable compensation therefor, subject to provisions of 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. [*Spl. S. 1931 c. 10 s. 2; 1933 c. 6 s. 4; 1937 c. 284; 1943 c. 375 s. 93; 1947 c. 411*]

Note: A depositor withholding consent to a bank stabilization agreement approved by the commissioner of banking under 220.07 (16), Stats. 1933, was not entitled, in an action against the bank on certificates of deposit, to attack the stabilization agreement as lacking the consent of the requisite amount of depositors and unsecured creditors, without first having brought the matter before the banking review board for review. *Corstvet v. Bank of Deerfield*, 220 W 209, 263 NW 687.

220.037 Consumer credit review board. (1) There is hereby established as part of the banking department a board consisting of 5 members to be known as the consumer credit review board. Members shall be appointed by the governor with the advice and consent of the senate.

(2) One member shall be an individual holding a license, certificate of authority or permit issued under chapter 214 and with 5 years' practical experience in that field or as executive of a similarly qualified corporation. One member shall be similarly qualified under chapter 115 and one under section 218.01.

(3) On July 17, 1947, the governor shall appoint the 5 initial members to hold for 1, 2, 3, 4 and 5 years, respectively, from such date. Their successors, except those appointed to fill an unexpired term, shall each hold for terms of 5 years.

(4) Members shall receive no compensation for their services as such but shall be reimbursed their necessary and actual expenses.

(5) The board shall select one of their number as chairman, and the commissioner shall delegate a department employe to keep and preserve the board's records.

(6) The board shall meet on call of the commissioner or on call signed by 3 members. The board may establish rules of procedure in accordance with chapter 227.

(7) It shall be the duty of the board to counsel and advise with and to review the acts and decisions of the commissioner of banks under chapters 115, 214, 217 and 218. In performing such review functions, the board shall have all the powers granted to the banking review board under section 220.035 (2) and its final orders and determinations shall be subject to judicial review as provided in chapter 227. [*1947 c. 411*]

220.04 Powers of commissioner. (1) (a) The commissioner of banks or any deputy or examiner shall examine at least once in each year the cash, bills, collaterals, securi-

ties, 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 other than the one required to be made by the commissioner under paragraph (a), 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, provided a copy of said examination is furnished to said commissioner. Said commissioner may also accept any report relative to the condition of any such bank which may have been obtained by said corporation within a reasonable period, in lieu of a report which may be required under the laws of this state, provided a copy of such report is furnished to said 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. Such commissioner may, in the performance of his official duties, issue subpoenas and administer oaths; provided, that in case of any refusal to obey a subpoena issued by him or his deputy, such refusal shall be at once reported to the circuit court of the circuit in which the bank is located, and said court shall enforce obedience to such subpoena in the manner provided by law for enforcing obedience to the subpoenas of said court.

(3) When any banks shall be in the hands of the commissioner and an assessment shall be made against the stockholders thereof to enforce payment of the double liability, the commissioner or his duly appointed deputy or agent shall have the right to prosecute an action in a foreign state to enforce such liability against a stockholder residing in such foreign state.

(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 section 220.035 (3).

(5) The commissioner in connection with the liquidation of any bank, banking corporation or savings and loan association or when called upon to approve any plan of reorganization and stabilization of any bank, banking corporation or savings and loan association or when he is satisfied the interests of the depositors and creditors in assets held under any trust arrangement so require in connection with the reorganization and stabilization of any bank, banking corporation or savings and loan association, may cause such bank, banking corporation or savings and loan association or such trust to be audited. The expense of such audit shall, upon the certificate of the commissioner, be refunded forthwith to the banking department by such bank, banking corporation, savings and loan association or the trustee or trustees of such trust fund out of the assets of such bank, banking corporation, savings and loan association or trust. Such charges shall be a preferred claim against such assets until paid.

(6) (a) The commissioner, with the approval of the banking review board, may establish uniform savings rules which shall be adopted by every bank, savings bank and trust company bank. Such rules may provide the conditions under which banks, savings banks or trust company banks may accept time deposits, and the maximum rate of interest on deposits, whether certificates of deposit or book savings deposits, and the methods of figuring such interest. Such rate of interest may be changed from time to time as economic conditions may require. 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.

(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, savings bank or trust company bank. The commissioner shall publish such order at least once in the official state paper and said order shall be effective upon the first publication thereof unless otherwise provided in said order. The pendency of any proceeding for review of such order shall not stay or suspend the operation of such order.

(c) The commissioner with the approval of the banking review board may classify the several banks, savings banks and trust company banks and may establish uniform rules for each classification fixing reasonable charges to be collected by each bank, savings bank or trust company bank within such classification for banking services rendered, including a maximum service charge in addition to lawful interest on any loan of not to exceed \$1,000, where such interest would be inadequate compensation for making the loan, which maximum service charge shall not exceed \$1.00 for each 90-day period or fraction thereof during the time the loan shall remain unpaid. The renewal of a loan shall not be considered as the payment thereof. The term "loan" as used in this subsection means the aggregate borrowings of any one borrower from any one lender on any one day, whether the borrowing is evidenced by one or more notes.

(d) The commissioner of banks, 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 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. [1933 c. 6 s. 3, 4; 1933 c. 362 s. 1, 2; 1933 c. 369; 1935 c. 245, 458; 1937 c. 284 s. 3; 1943 c. 462; 1947 c. 117, 411, 612]

220.05 Examination fees; assessment by commissioner. (1) The commissioner of banks 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 state banking department 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.

(4) In the event the annual fees and assessments shall not equal the sum of \$160,000, the commissioner may increase the assessment in an amount not exceeding 10 per centum of the fixed annual assessment for each bank.

(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 department. 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 the provisions of section 220.08.

(6) After January 15, 1932, 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 assessments provided for in subsections (2), (3) and (4) of this section 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 banking department of the books, records and business of said bank or trust company in so far 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. If an examination or part thereof is charged and fully paid for under the provisions of subsection (4) of this section such examination or part thereof shall not be again charged for under provisions of this subsection. [1931 c. 67 s. 172; Spl. S. 1931 c. 10 s. 4; 1933 c. 362 s. 1; 1935 c. 245; 1937 c. 284 s. 3; 1947 c. 411]

Note: Trust account cash of trust company for purpose of levying assessment provided by 220.05 Stats., should not be included in determining resources of trust company for purpose of levying assessment provided by 220.05 Stats., should not be included in determining (2). 26 Atty. Gen. 520.

220.06 Not to disclose information. (1) No commissioner of banks, deputy, assistant deputy or examiner shall examine a bank in which he is interested as a stockholder, officer, employe or otherwise. No commissioner, deputy, assistant deputy or examiner shall examine a bank located in the same village, city or county with any bank in which he is interested as stockholder, officer, employe or otherwise. The commissioner of banks, his deputy, assistant deputies and every clerk in this department, and each member of the banking review board and every employe thereof, shall be bound by oath to keep secret all of the facts and information obtained in the course of such examinations, except so far as the public duty of such officer requires him to report upon or take special action regarding the affairs of any bank, and except when called as a witness in any criminal proceeding or trial in a court of justice; and except that such commissioner, deputy, assistant deputy or examiner, or other person referred to herein, may in his discretion and under such rules and regulations as prescribed by such commissioner compare notes as to names of borrowers, lines of credit, and other matters affecting a bank, with a national bank examiner, a clearing house examiner, or an examiner for an insurance company duly licensed in the state of Wisconsin to insure or guarantee depositors or deposits in banks or trust companies, and having such insurance in force. Said commissioner may furnish to the federal deposit insurance corporation, or to any official or examiner thereof a copy of any examination made of any such bank or of any report made by such bank, and may give access to and disclose to said corporation or to any official or examiner thereof any information possessed by said commissioner with reference to the conditions or affairs of any such insured bank.

(2) If any commissioner, deputy, assistant deputy, examiner or clerk in such department or any member of the banking review board or any employe thereof shall disclose the name of any debtor of any bank, or anything relative to the private account or transactions of such bank, or shall disclose any fact obtained in the course of any examination of any bank, except as herein provided, he shall be subject, upon conviction thereof, to forfeiture of his office, or position and to the payment of a fine of not less than \$100 nor more than \$1,000, or imprisonment in the state prison not less than 6 months nor more than 2 years, or to both such fine and imprisonment. [Spl. S. 1931 c. 10 s. 5; 1935 c. 245; 1947 c. 411]

Note: There was no error in denying the privilege of examining the audits of the commissioner of banking, especially since the court later permitted examination of deputies respecting audits and conditions. *Schwenker v. Teasdale*, 206 W 275, 239 NW 434.

It is not permissible to allow assessor of incomes or any other state auditor to audit books or accounts of delinquent bank or to

furnish him with any of bank records at his request. If order of court is given for such disclosure matter should be submitted to attorney-general for steps to be taken to vacate said order by appeal or otherwise. 22 Atty. Gen. 95.

220.065 Immunity of commissioner. The commissioner of banks 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 chapters 220 to 225. [*Spl. S. 1931 c. 15 s. 3; Spl. S. 1931 c. 26 s. 1; 1947 c. 411*]

220.07 Banks. (1) CAPITAL IMPAIRED; DUTY OF COMMISSIONER; DEFICIENCY. Whenever the commissioner of banks shall become satisfied 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, he shall have the power to require such bank under his 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 shall have become impaired or reduced below the amount required by law or the articles of incorporation, the board of directors of such bank shall have the power to make a pro rata assessment upon all of the stock of said 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 said assessment; provided, that notice to stockholders residing in another state shall be given by registered mail and a return receipt demanded. If any stockholder shall fail or neglect to pay the amount of the assessment against his stock for 10 days after the same shall have become so due and payable, the directors of such bank may offer said stock for sale, and sell the same at public sale upon 10 days' notice to be given by posting copies of such notice of sale in 5 public places in the town, village or city where such bank is located. Upon such sale, the purchaser shall forthwith pay the amount of the assessment against said stock. The amount received from the sale of said stock, less the cost and expenses of such sale, shall be paid to the original owner of such 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. [*Spl. S. 1931 c. 10 s. 6, 7; Spl. S. 1931 c. 15 s. 1, 3; 1933 c. 6 s. 2, 4; 1933 c. 17 s. 2; 1933 c. 362 s. 1, 2; 1933 c. 484 s. 1; Spl. S. 1933 c. 2; 1935 c. 245; 1937 c. 284 s. 3; 1947 c. 411*]

Note: Upon a sale of stock for failure to pay an assessment to repair capital, the bank had no right to stipulate that the sum bid at the sale should be entirely applied upon the assessment. Where such an illegal sale was made and the sale was rescinded by the bidder and the bank, the holder of the stock sold could not recover the proceeds of the sale. *Hanna v. Curtiss S. Bank*, 204 W 174, 235 NW 416.

A prosecution against the commissioner of banking for violating his duty as to closing a bank must be brought in Dane county. *State ex rel. Schwenker v. District Court*, 206 W 600, 240 NW 406.

See note to 221.42 citing *In re Plain State Bank*, 217 W 257, 258 NW 783.

For cases construing 220.07 (16), Stats. 1933, see *Corstvet v. Bank of Deerfield*, 220 W 209, 263 NW 637, and cases annotated in Stats. 1935 under 220.07.

An agreement of bank stockholders to pay a voluntary assessment which was levied by the board of directors pursuant to (1) or, in the event of failure to pay, to sell the stock to trustees for a nominal price and to waive the statutory notice relative to forfeiture of stock for nonpayment of a voluntary assessment, imposed no greater liability than that imposed by the voluntary assessment statute itself, and hence the agreement imposed no personal liability for payment of the assessment. *Estate of White*, 223 W 270, 270 NW 34.

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

Where at time defendant became stockholder in bank, statute imposed liability on stockholders for benefit of creditors to the amount of their stock in addition to the amount invested therein, subsequent statute declaring such liability to accrue upon the commissioner of banking taking possession of the property and business of the bank, or whenever stabilization and readjustment agreement between bank, depositors, and unsecured creditors had been approved by commissioner of banking held not to increase her liability as stockholder so as to impair the contract entered into when she became a stockholder (220.07 (20), 221.42, Stats. 1933). *Cleary v. Brokaw*, 224 W 408, 272 NW 831.

The payment of a voluntary stabilization assessment by a stockholder of the bank does not exempt him from the statutory assessment upon the bank's insolvency. *Banking Commission v. Purves*, 228 W 21, 279 NW 634.

For effect of voluntary payments upon stockholders' double liability in case of failure of the bank, see annotation to section 221.42, citing *Banking Commission v. Prudential Inv. Co.*, 229 W 628, 282 NW 40.

See note to 221.42, citing 22 Atty. Gen. 410.

220.075 Banks, ratio of capital to deposits. (1) Whenever the daily average of the aggregate deposits for a period of one year in any bank shall be in excess of an amount equal to 15 times the capital lawfully paid in and unimpaired plus 15 times the undis-

tributed surplus, such surplus to be computed after eliminating all items classified by the commissioner of banks as doubtful or loss, such bank shall within one year, after notice to this effect from the commissioner, increase its capital or surplus so that such daily average of its aggregate deposits will no longer exceed such amount; provided that no stock dividend shall be declared out of surplus that will reduce the surplus to less than 10 per cent of the capital as increased.

(2) For the purpose of computing such daily average of aggregate deposits for any such period under this section there shall be deducted from the actual average of deposits an amount equal to the excess of the daily average for the same period of the combined total of cash on hand (including clearings), cash on deposit in approved reserve banks and the par value of direct obligations of the United States and obligations guaranteed as to principal and interest by the United States owned by said bank over 20 per cent of such daily average of aggregate deposits for such yearly period.

(3) On or before April 15 of each year each bank as may be directed by the commissioner of banks shall file with said commissioner in such form as he may require a report covering:

(a) Daily average of aggregate deposits for the year ending at close of business March 31 of same year.

(b) Daily average of the combined total of cash on hand (including clearings), cash in approved reserve banks and the par value of direct obligations of the United States government and obligations guaranteed as to principal and interest by the United States government owned by said bank, for the year ending at close of business March 31 of the same year.

(4) Failure on the part of any bank to comply with an order of the commissioner issued pursuant to this section shall be cause for the forfeiture of the charter of such bank. [1935 c. 245; 1943 c. 27; 1945 c. 65; 1947 c. 411]

220.08 Delinquent banks; commissioner may take possession. (1) Whenever it shall appear to the commissioner of banks 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 section 220.07 of the statutes, 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 employes 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 employes 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 the preceding subsection, 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 subsection (4) shall be binding on the commissioner of banks to the same extent and with like effect as if such acts were done by said commissioner.

(4) The commissioner may, under his hand and official seal, appoint one or more special deputy commissioners, as agent or agents, to assist him in the duty of reorganization, consolidation, liquidation and distribution, 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 incumbrance 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 may deem 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 may deem necessary. The commissioner shall require from special deputy commissioners and from such assistants corporate surety bonds in accordance with the provisions of section 220.025.

(5) The commissioner shall cause notice to be given by advertisement, in such newspapers as he may direct, weekly for 3 consecutive months, calling on all persons who may have claims against such bank or banking corporation, to present the same to the commissioner, and make legal proof thereof at a place and within a time, to be therein specified, but not earlier than the last day of publication. 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 banking department 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 banking department 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 shall have paid to each and every depositor and creditor of such bank or banking corporation (not including stockholders), whose claim or claims as such creditor or depositor shall have been duly proved and allowed, the full amount of such claims, and shall have made proper provision for unclaimed and unpaid deposits or dividends, and shall have 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 for 30 days in one or more newspapers published 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) Dividends and unclaimed deposits which have been provided for and remaining unpaid in the hands of the commissioner for 6 months after the order for final distribution shall be by him deposited 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 entitled thereto. The commissioner shall report to the governor annually in his report 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 over the moneys so held by him to the persons respectively entitled thereto, 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 by the moneys so held by him towards defraying the expenses in the payment and distribution of such unclaimed deposits or dividends to the depositors and creditors entitled to receive the same, and if necessary may draw on the fund to defray such expenses. After one year from the time of the order for final distribution, all unclaimed funds shall be turned over to the state treasury by said commissioner and shall be kept in a separate fund. All claims subsequently arising shall be presented to the commissioner. If the commissioner determines that any claim so presented is a proper claim against said fund he shall certify to the director of budget and accounts the name and address of the person entitled to payment and the amount thereof and shall attach said claim

to said certificate. The director of budget and accounts shall thereupon draw his warrant on the state treasurer for payment of the amount stated in said certificate to the person named thereon.

(14a) (a) Any claims referred to in subsections (13) and (14) not presented within 6 years from the time of an order of final distribution made in the liquidation of any bank or segregated trust shall be deemed to have been abandoned and shall be barred and the amount of the fund against which any claim or claims shall have become barred shall forthwith become the property of the state. The state treasurer shall in the 30-day period preceding the end of each fiscal year ascertain from the commissioner the amount in said fund against which claims shall have become barred during said fiscal year and shall transfer said amount to the general fund.

(b) This subsection shall be applicable to any amounts in said funds on June 21, 1945, as well as to any amounts placed in it subsequent thereto, provided, however, that where an order of final distribution was made in the liquidation of any bank or segregated trust 5 years or more prior to said date, the time for presenting claims against said fund shall not expire until one year from said date.

(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 state board of deposits 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 state board of deposits 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 the passage of this section 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 subsection (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 are no longer required by the commissioner, he may make application to the circuit court having jurisdiction of such liquidated bank or banking corporation for an order determining what books and records are to be kept and what destroyed, stating in such application his 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 until further order of the court.

(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 or otherwise, as may appear 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.

(21) If any part or provision of this section or of any subsection thereof shall be invalid, the remaining parts and provisions shall not be affected thereby but shall stand without such part or provision. [Spl. S. 1931 c. 10 s. 8, 9; Spl. S. 1931 c. 15 s. 2; 1933 c. 6 s. 4; 1933 c. 362 s. 1, 2; 1933 c. 477; 1935 c. 245; 1937 c. 284; 1941 c. 154; 1943 c. 302, 482; 1945 c. 65, 330, 528; 43.08 (2); 1947 c. 9, 411]

Note: As to liability of stockholders and the enforcement of the banking commissioner, see note to 221.51, citing *Schwenker v. Reedal*, 205 W 376, 238 NW 603.

A secured creditor of a bank in liquidation was entitled to receive dividends upon the full amount of its claim without deducting the amount realized by the sale of the collateral security, under a rule of property long established in this state, and not affected, so far as this case is concerned, by chapter 477, Laws 1933, making a different rule applicable to bank liquidations. *First Wis. Nat. Bank v. Kingston*, 213 W 681, 252 NW 153.

The commissioners of banking have not complete discretion as to the bringing of actions upon causes of action belonging to a bank in their hands, but a creditor of the bank cannot, upon the refusal of the commissioners to act, maintain an action upon a cause of action belonging to the bank without a court order authorizing such action. *Pallange v. First Wisconsin Nat. Bank*, 216 W 418, 256 NW 708.

In action on bank stockholder's liability, exclusion of evidence respecting contracts between bank and another bank, alleged to have relieved bank in liquidation of liability to depositors, was proper, since such defense was not available in such action after stockholder's failure to interpose it

at proper time under statute. *Schafer v. Bickel*, 217 W 278, 258 NW 797.

Bank stockholder who failed to contest claim under (8) could not assert, in suit by commissioner to recover statutory assessment, that claim against bank was improperly allowed. *Kingston v. Creedon*, 218 W 252, 260 NW 453.

Under 220.08 (5), Stats. 1933, a claim of a creditor against an insolvent bank in liquidation must be presented to the banking commission in charge before an action thereon can be brought by the claimant against the commission. The supervisory power of the circuit court over the commission may not be invoked by a claimant until the commission has refused to receive the claim as coming too late, in which event the court may, on a proper showing, grant the claimant permission to file his claim. Where a claimant is permitted to file his claim against an insolvent bank in liquidation after the expiration of the time originally fixed by the commission, he can share in the assets by means of dividends only to the extent of assets in the hands of the commission at the time of the filing of his claim and cannot share in past dividends. In re *Bank of Viroqua*, 232 W 644, 288 NW 266.

The banking commission in the liquidation of an insolvent bank, although in some

respects representing a public interest as opposed to a private interest, is in effect a statutory receiver, and the commission as a litigant, as in an action to enforce a stockholder's statutory liability, is subject to the rules of court procedure the same as any other litigant. *Banking Comm. v. Flanagan*, 233 W 405, 289 NW 647.

An order of the circuit court, overruling objections made by the banking commission to the account of the trustees of a segregated trust in response to an order to show cause why the account should not be approved, is not appealable under 274.09 (2), giving the right of appeal to the supreme court from final orders and judgments "rendered upon appeals to review the proceedings of tribunals, boards and commissions" without regard to whether those proceedings involve new remedies or old ones, since the order in question was not rendered on an appeal to review the commission's proceedings, and the circuit court, in its consideration of the matters raised by the commission's objections, exercised the jurisdiction conferred on it by 220.08 (19), which jurisdiction is original and not appellate. *In re Farmers Exchange Bank*, 242 W 574, 8 NW (2d) 535.

A bond of a special deputy commissioner of banking, for the faithful discharge of the duties of his office in assisting in liquidating and distributing the assets of a delinquent bank under 220.08 is an "official bond." *Banking Comm. v. National Surety Corp.* 243 W 542, 11 NW (2d) 171.

Special deputy commissioners of banking have no power to issue subpoenas. 20 Atty. Gen. 439.

Commissioner of banking is required to get his order for sale of real estate and personal property of banking corporation for liquidation from circuit court. 20 Atty. Gen. 623.

Where stockholder in bank taken over by commissioner claims right to rescind his subscription on ground of fraud and files claim for deposit which had been offset against his subscription note, commissioner should reject claim under (5). 20 Atty. Gen. 396.

Commissioner may pay liquidating dividends to shareholders on account of their deposit. Subsection (10) does not change general rule in regard to payment of liquidating dividends. 20 Atty. Gen. 994.

Reorganization plan may include consolidation with another reorganizing bank, waiver of stockholders' statutory liability, and organization of new corporation, but plan must be agreed to by necessary percentage of creditors of each bank, may not waive statutory liability of stockholders in reorganized bank. 21 Atty. Gen. 443.

Plan whereby, after what is known as technical closing by commissioner of banking and making of statutory one hundred per cent assessment of stock, institution should reopen with fifty per cent of capital stock and upon deferred payment of deposits

plan, funds secured by assessment to be used in institution in ordinary course of business, is irregular. 21 Atty. Gen. 449.

Creditors of closed bank are entitled to interest if assets are sufficient to pay claims in full. Interest is computed from time of suspension of bank and at legal rate. It is immaterial that it will be necessary to use funds derived from statutory assessments collected from stockholders. 24 Atty. Gen. 503.

Section 220.08 (19), Stats. 1935, applies to all segregated trusts, including those created previously to its enactment, and trustees thereof are liable for expenses of banking commission in examining and supervising trust. 26 Atty. Gen. 363.

Trustees of segregated trusts created in connection with stabilization and readjustment or reorganization of state banks may, upon approval of banking commission and court, enter into certain agreement with Wisconsin Properties Bureau, Inc., non-profit corporation. 30 Atty. Gen. 193.

Manner of signing petitions by banking commission and court in bank liquidations and segregated trusts discussed. 30 Atty. Gen. 195.

Where bank was stabilized under provisions of 220.08 (15), Stats. 1931, action of commissioner of banking in approving stabilization cannot lawfully be reviewed either by banking commission as his successor or by banking review board. Facts disclose that during period in question stabilized institution operated upon basis of completed reorganization, and it is to be assumed that important rights must have become fixed upon supposition that there had been completed reorganization. 30 Atty. Gen. 448.

Segregated trusts created in connection with the stabilization and readjustment or reorganization of state banks are liable to the banking commission for services rendered by the commission in the supervision of the same, for expenses incidental thereto and for expenses of examination of such trusts. 33 Atty. Gen. 2.

The RFC as holder of "A" debentures in a state bank is treated as a creditor and not as a stockholder in liquidation proceedings under 220.08, Stats. 1943. The RFC is entitled to be paid the principal amount of such debentures in full before the FDIC (as subrogee of the depositors under 220.082) or any other creditors are entitled to receive interest from the date of closing of the bank. 33 Atty. Gen. 93.

Holder of "B" debentures in a state bank being liquidated by the banking commission are not entitled to receive the principal amount of those debentures until the RFC as holder of "A" debentures is paid interest in full from the date of closing to date of payment, this matter being governed by contract between the "A" and "B" holders. 33 Atty. Gen. 124.

220.081 Closed insured banks; federal deposit insurance corporation may be receiver. (1) The commissioner of banks 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 banks as statutory receiver of a closed bank and be subject to all the duties of the commissioner as such statutory receiver, except in so far 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. [1935 c. 469; 1937 c. 284 s. 1; 1945 c. 445; 1947 c. 411]

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. [1935 c. 469; 1937 c. 284 s. 1]

Note: Interest is properly allowable in this state as incident to the claims of depositors in state bank liquidations, where there is a surplus available for that purpose after creditors have been paid in full, and such interest must be paid before any payment can be made to the stockholders of the bank, and the rate of interest is the statutory rate of 6 per cent, except, perhaps, as to certificates of deposit bearing a specified rate, computed on demand deposits from the date the banking commission took over the bank, and on time deposits from the due date thereof. In re Oconto County State Bank, 241 W 369, 6 NW (2d) 353.

The Federal Deposit Insurance Corporation, promptly paying the claims of depositors

in a closed state bank to the extent that their deposits were insured, is entitled, as assignee and subrogee of the rights of such depositors, to interest on the amount of deposits paid by it, at the rate of 6 per cent, from the date of the closing of the bank to the date of the repayment of the principal amount, where there is a surplus available for the payment of such interest, as against a contention that interest should be allowed on the time deposits only at the contractual rate of 2 per cent. In re Oconto County State Bank, 245 W 245, 14 NW (2d) 3. In re Farmers Bank of Lone Rock, 248 W 269, 21 NW (2d) 410.

[220.083 Stats. 1931 repealed by 1935 c. 245]

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. [Spl. S. 1931 c. 26 s. 2]

Note: In so far as 221.33 is inconsistent with terms and conditions of loan determined by Reconstruction Finance Corporation and adequate security required, it does not apply to such loans. 21 Atty. Gen. 381.

220.086 Receiver of delinquent bank may borrow from federal government agency; court order. The commissioner of banks, 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. [Spl. S. 1933 c. 19; 1947 c. 411]

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 banks, in the manner which is required of trust company banks organized under the provisions of section 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. [1935 c. 245; 1947 c. 411]

220.10 Books and accounts; commissioner's control. (1) Whenever it shall appear to the commissioner of banks 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 shall have power to require the officers of such bank, or any of them, to open and keep such books or accounts as he may in his discretion determine and prescribe 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 may be prescribed by the commissioner, shall be subject to a penalty of \$10 for each day it neglects and fails to open and keep such prescribed books and accounts. [1937 c. 284 s. 3; 1947 c. 411]

220.11 Location of bank, how removed. In the event that any 2 banks shall be doing business in the same building, upon the same floor, and in such close proximity as to interfere with the proper examination of either bank, the commissioner of banks may require either of said banks to remove its banking office to some other location within such reasonable time as may be fixed by the commissioner. [1937 c. 284 s. 3; 1947 c. 411]

220.12 Attorney-general, duty of. All proceedings by any bank to enjoin the commissioner of banks 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 this act, 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. [1937 c. 284 s. 3; 1947 c. 411]

220.13 Copies as evidence. Copies of all records and papers in the office of the commissioner of banks, certified by him and authenticated by his seal of office, shall be evidence in all cases equally and of like effect as the original. [1937 c. 284 s. 3; 1947 c. 411]

220.14 Annual report. On or before April 1 of each year, the commissioner of banks shall make an annual report to the governor of the state, which report shall be published and shall 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; and such report shall 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, and shall give a tabulated statement of the resources and liabilities of each bank, and such other information as in its judgment may be required. Such report shall also contain a statement of the banks whose business has been closed during the year, the amount of their resources and liabilities, and the amount paid to the creditors thereof; also a statement of any banks organized during the year; and the names of the directors and officers of each bank. It shall also report the names and compensation of the clerks employed by it, and the whole amount of the expense of the banking department during the year preceding. Such report shall include a report by the banking review board containing the names and compensation of members and employes during the preceding year and a summary of the acts and services of such board during such year. [Spl. S. 1931 c. 10 s. 10; 1937 c. 284 s. 3; 1947 c. 134, 411]

220.15 Bank collection code. (1) DEFINITIONS. For the purposes of this section:

(a) The term "bank" shall include any person, firm or corporation engaged in the business of receiving and paying deposits of money within this state. A branch or office of any such bank shall be deemed a bank for the purpose of this act.

(b) The term "item" means any check, note or other instrument providing for the payment of money.

(2) BANK AS AGENT OF DEPOSITOR. Except as otherwise provided by agreement and except as to subsequent holders of a negotiable instrument payable to bearer or indorsed specially or in blank, where an item is deposited or received for collection, the bank of deposit shall be agent of the depositor for its collection and each subsequent collecting bank shall be subagent of the depositor but shall be authorized to follow the instructions of its immediate forwarding bank and any credit given by any such agent or subagent bank therefor shall be revocable until such time as the proceeds are received in actual money or an unconditional credit given on the books of another bank, which such agent has requested or accepted. Where any such bank allows any revocable credit for an item to be withdrawn, such agency relation shall nevertheless continue except the bank shall have all the rights of an owner thereof against prior and subsequent parties to the extent of the amount withdrawn.

(3) CREDIT PROVISIONAL. A credit given by a bank for an item drawn on or payable at such bank shall be provisional, subject to revocation at or before the end of the day on which the item is deposited in the event the item is found not payable for any reason. Whenever a credit is given for an item deposited after banking hours such right of revocation may be exercised during the following business day.

(4) INDORSEMENT, EFFECT. (a) An indorsement of an item by the payee or other depositor "for deposit" shall be deemed a restrictive indorsement and indicate that the indorsee bank is an agent for collection and not owner of the item.

(b) An indorsement "pay any bank or banker" or having equivalent words shall be deemed a restrictive indorsement and shall indicate the creation of an agency relation in any subsequent bank to whom the paper is forwarded unless coupled with words indicating the creation of a trustee relationship; and such indorsement or other restrictive indorsement whether creating an agency or trustee relationship shall constitute a guaranty by the indorser to all subsequent holders and to the drawee or payor of the genuineness of and the authority to make prior indorsements and also to save the drawee or payor harmless in the event any prior indorsement appearing thereon is defective or irregular in any respect unless such indorsement is coupled with appropriate words disclaiming such liability as guarantor.

(c) Where a deposited item is payable to bearer or indorsed by the depositor in blank or by special indorsement, the fact that such item is so payable or indorsed shall not change the relation of agent of the bank of deposit to the depositor, but subsequent holders shall have the right to rely on the presumption that the bank of deposit is the owner of the item. The indorsement of an item by the bank of deposit or by any subsequent holder in blank or by special indorsement or its delivery when payable to bearer, shall carry the presumption that the indorsee or transferee is owner provided there is nothing upon the face of the paper or in any prior indorsement to indicate an agency or trustee relation of any prior party. But where an item is deposited or is received for collection indorsed specially or in blank, the bank may convert such an indorsement into a restrictive indorsement by writing over the signature of the indorser the words "for deposit" or "for collection," or other restrictive words to negative the presumption that such bank of deposit or indorsee bank is owner; and in the case of an item deposited or received for collection payable to bearer, may negative such presumption by indorsing thereon the words "received for deposit" or "received for collection" or words of like import.

(5) DUTY OF AGENT, LIABILITY. It shall be the duty of the initial or any subsequent agent collecting bank to exercise ordinary care in the collection of an item and when such duty is performed such agent bank shall not be responsible if for any cause payment is not received in money or an unconditional credit given on the books of another bank, which such agent bank has requested or accepted. An initial or subsequent agent collecting bank shall be liable for its own lack of exercise of ordinary care but shall not be liable for the neglect, misconduct, mistakes or defaults of any other agent bank or of the drawee or payor bank.

(6) PLACE OF PAYMENT. (a) Where an item is received on deposit or by a subsequent agent bank for collection, payable in another town or city, it shall be deemed the exercise of ordinary care to forward such item by mail, not later than the business day next following its receipt either (1) direct to the drawee or payor in the event such drawee or payor is a bank or (2) to another bank collecting agent according to the usual banking custom, either located in the town or city where the item is payable or in another town or city.

(b) Where an item is received on deposit or by a subsequent agent bank for collection, payable by or at another bank in the same town or city in which such agent bank is located, it shall be deemed the exercise of ordinary care to present the item for payment at any time not later than the next business day following the day on which the item is received either (1) at the counter of the drawee or payor by agent or messenger or (2) through the local clearing house under the regular established procedure, or according to the usual banking custom where the collecting or payor bank is located in an outlying district.

(c) The designation of the above methods shall not exclude any other method of forwarding or presentment which under existing rules of law would constitute ordinary care.

(7) MAIL RECEIPT. Where the item is received by mail by a solvent drawee or payor bank, it shall be deemed paid when the amount is finally charged to the account of the maker or drawer.

(8) BILLS FORWARDED. Where an agent bank forwards an item for collection, it shall not be responsible for its loss or destruction in transit, or, when in the possession of others, for its inability to repossess itself thereof, provided there has been no lack of ordinary care on its part.

(9) ORDINARY CARE. Where ordinary care is exercised, any agent collecting bank may receive in payment of an item without becoming responsible as debtor therefor, whether presented by mail, through the clearing house or over the counter of the drawee or payor, in lieu of money, either (a) the check or draft of the drawee or payor upon another bank or (b) the check or draft of any other bank upon any bank other than the drawee or payor of the item or (c) such method of settlement as may be customary in a local clearing house or between clearing banks or otherwise; provided that whenever such

agent collecting bank shall request or accept in payment an unconditional credit which has been given to it on the books of the drawee or payor or on the books of any other bank, such agent collecting bank shall become debtor for such item and shall be responsible therefor as if the proceeds were actually received by it in money.

(10) **ORDINARY CARE.** Where ordinary care is exercised, any agent collecting bank may receive from any subsequent bank in the chain of collection in remittance for an item which has been paid, in lieu of money, the check or draft of the remitting bank upon any bank other than itself or the drawee or payor of the item or such other method of settlement as may be customary; provided that whenever such agent collecting bank shall request or accept an unconditional credit which has been given to it on the books of the remitting bank or on the books of any other bank, such agent collecting bank shall become debtor for such item and shall be responsible therefor as if the proceeds were actually received by it in money.

(11) **PRESENTMENT BY MAIL.** Where an item is duly presented by mail to the drawee or payor, whether or not the same has been charged to the account of the maker or drawer thereof or returned to such maker or drawer, the agent collecting bank so presenting may, at its election, exercised with reasonable diligence, treat such item as dishonored by nonpayment and recourse may be had upon prior parties thereto in any of the following cases:

(a) Where the check or draft of the drawee or payor bank upon another bank received in payment therefor shall not be paid in due course;

(b) Where the drawee or payor bank shall without request or authority tender as payment its own check or draft upon itself or other instrument upon which it is primarily liable;

(c) Where the drawee or payor bank shall give an unrequested or unauthorized credit therefor on its books or the books of another bank; or

(d) Where the drawee or payor shall retain such item without remitting therefor on the day of receipt or on the day of maturity if payable otherwise than on demand and received by it prior to or on such day of maturity.

Provided, however, that in any case where the drawee or payor bank shall return any such item unpaid not later than the day of receipt or of maturity as aforesaid in the exercise of its right to make payment only at its own counter, such item cannot be treated as dishonored by nonpayment and the delay caused thereby shall not relieve prior parties from liability.

Provided further that no agent collecting bank shall be liable to the owner of an item where, in the exercise of ordinary care in the interest of such owner, it makes or does not make the election above provided or takes such steps as it may deem necessary in cases (b), (c) and (d) above.

(12) **DISHONOR, NOTICE.** In case of the dishonor of an item duly presented by mail as provided for in the next preceding section, notice of dishonor of such item to prior parties shall be sufficient if given with reasonable diligence after such dishonor; and further in the event of failure to obtain the return of any such item notice of dishonor may be given upon a copy or written particulars thereof, and delay in giving notice of dishonor caused by an attempt with reasonable diligence to obtain return of such item shall be excused.

(13) **CLOSED BANKS, PROCEDURE.** (a) When the drawee or payor, or any other agent collecting bank shall fail or be closed for business by the commissioner of banks or by action of the board of directors or by other proper legal action, after an item shall be mailed or otherwise entrusted to it for collection or payment but before the actual collection or payment thereof, it shall be the duty of the receiver or other official in charge of its assets to return such item, if same is in his possession, to the forwarding or presenting bank with reasonable diligence.

(b) Except in cases where an item or items is treated as dishonored by nonpayment as provided in subsection (11), when a drawee or payor bank has presented to it for payment an item or items drawn upon or payable by or at such bank and at the time has on deposit to the credit of the maker or drawer an amount equal to such item or items and such drawee or payor shall fail or close for business as above, after having charged such item or items to the account of the maker or drawer thereof or otherwise discharged his liability thereon but without such item or items having been paid or settled for by the drawee or payor either in money or by an unconditional credit given on its books or on the books of any other bank, which has been requested or accepted so as to constitute such drawee or payor or other bank debtor therefor, the assets of such drawee or payor shall be impressed with a trust in favor of the owner or owners of such item or items for the amount thereof, or for the balance payable upon a number of items which have been exchanged, and such owner or owners shall be entitled to a preferred claim upon such assets, irre-

spective of whether the fund representing such item or items can be traced and identified as part of such assets or has been intermingled with or converted into other assets of such failed bank.

(c) Where an agent collecting bank other than the drawee or payor shall fail or be closed for business as above, after having received in any form the proceeds of an item or items entrusted to it for collection, but without such item or items having been paid or remitted for by it either in money or by an unconditional credit given on its books or on the books of any other bank which has been requested or accepted so as to constitute such failed collecting or other bank debtor therefor, the assets of such agent collecting bank which has failed or been closed for business as above shall be impressed with a trust in favor of the owner or owners of such item or items for the amount of such proceeds and such owner or owners shall be entitled to a preferred claim upon such assets, irrespective of whether the fund representing such item or items can be traced and identified as part of such assets or has been intermingled with or converted into other assets of such failed bank.

(14) EXCEPTIONS. The provisions of this section shall not apply to transactions taking place prior to the time when it takes effect.

(15) EXCEPTIONAL CASES, RULE. In any case not provided for in this section the rules of law and equity, including the law merchant and those rules of law and equity relating to trusts, agency, negotiable instruments and banking, shall continue to apply.

(16) INTERPRETATION. This section shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(17) CITATION. This section may be cited as the "Bank Collection Code."

(18) REPEALS. All sections or parts of sections inconsistent with this section are hereby repealed. [1937 c. 284 s. 3; 1947 c. 411]

Note: The provisions of (13) (c), constituting part of the bank collection code, are construed as meaning that the collecting bank remains the agent of the customer until (a) it has paid or remitted for the items to the customer in money, or (b) has given an unconditional credit on its books to the customer, or (c) the customer has requested a credit on the books of some other bank, or has accepted such credit so as to constitute such other bank the debtor of the customer. State v. Kingston. 215 W 30, 254 NW 126. See note to 116.27, citing National Surety Corp. v. City Bank & Trust Co. 248 W 32, 20 NW (2d) 559.

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 and/or trust companies 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. [1931 c. 395]

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. [1933 c. 167; 1935 c. 245]

220.19 Demand instruments presented one year after date; option to refuse payment. Where a check or other instrument payable on demand at any bank or trust company doing business in this state is presented for payment more than one year from its date, such bank or trust company may, unless expressly instructed by the drawer or maker to pay the same, refuse payment thereof and no liability shall thereby be incurred to the drawer or maker for dishonoring the instrument by nonpayment. [1937 c. 191]

220.192 Time limit on stop payment. (1) No revocation, countermand or stop payment order relating to the payment of any check or draft against an account of a depositor in any bank or trust company doing business in this state shall remain in effect for more than 6 months after the service thereof on the bank, unless the same be renewed, which renewals shall be in writing and which renewals shall be in effect for not more than 6 months from date of service thereof on the bank or trust company, but such renewals may be made from time to time.

(2) No notice affecting a check upon which revocation, countermand or stop payment order has been made at the time of the taking effect of this section [April 25, 1945] shall be deemed to continue for a period of more than 6 months thereafter, but renewals may be had in the manner and for periods as provided in subsection (1). [1945 c. 65]

220.194 Nonpayment of check through error. No bank or trust company doing business in this state shall be liable to a depositor because of the nonpayment through mistake or error and without malice of a check which should have been paid unless the depositor shall allege and prove actual damage by reason of such nonpayment and in such event the liability shall not exceed the amount of damage so proved. [1945 c. 65]

220.196 Final adjustment of statements of account. When a statement of account has been rendered by a bank to a depositor accompanied by vouchers, if any, which are the basis for debit entries in such account, or the depositor's passbook has been written up by the bank showing the condition of the depositor's account and delivered to such depositor with like accompaniment of vouchers, if any, such account shall, after the period of 5 years from the date of its rendition, in the event no objection thereto has been theretofore made by the depositor, be deemed finally adjusted and settled and its correctness conclusively presumed and such depositor shall thereafter be barred from questioning the correctness of such account for any cause. [1945 c. 65]

220.20 Redemption of bank scrip. All moneys deposited with the commissioner of banks for the redemption of bank scrip shall be turned over to the state treasury by said commissioner and shall be kept in a separate fund. All bank scrip to be redeemed shall be presented to the commissioner. If the commissioner determines that the scrip so presented is a proper claim against the redemption fund, he shall certify to the director of budget and accounts the name and address of the person entitled to redemption and the amount thereof and shall attach such scrip to said certificate. The director of budget and accounts shall thereupon draw his warrant on the state treasurer for payment of the amount stated in said certificate to the person named therein. After the lapse of 30 days from the date of such payment, the director of budget and accounts shall promptly destroy the scrip so redeemed. [1935 c. 245; 1947 c. 9, 411]

[220.21 and 220.22 Stats. 1933 repealed by 1935 c. 245]

220.225 City scrip. In an emergency a city may issue scrip for the purpose of paying current expenses. The amount of scrip issued shall not exceed the interest of such city in delinquent real estate taxes for the preceding 3 years. Until such scrip has been redeemed in full, all money received by such city from such delinquent taxes after the issuance of such scrip shall be used for the sole purpose of redeeming such scrip. This section shall not be construed as amending or affecting in any manner the provisions of subsection (9) of section 67.12. The amount of scrip issued under this section shall not be considered an indebtedness of such city and shall not be included in arriving at the 5 per centum debt limitation under section 3 of article XI of the constitution. [1935 c. 331; 1937 c. 115]

[220.23 Stats. 1933 repealed by 1935 c. 245]

[220.24 Stats. 1933 renumbered section 220.18 by 1935 c. 245]

220.25 Escheat of bank deposits. (1) When any person shall die intestate, without heirs, leaving on deposit or otherwise any fund, funds or property of any kind with any banking institution, or shall abandon such fund, funds or property, the same shall escheat to and become the property of the state, to be disposed of in the same manner as other escheated property. The term "banking institution" shall include every banker, bank, branch bank or trust company within the state.

(2) Any person who shall have on deposit or otherwise with any banking institution any fund, funds or property of any kind, and shall not deal therewith for a period of 20 years by adding to or withdrawing therefrom, and shall not have asserted any claim to such fund, funds or property for such period, shall be presumed, unless shown to the contrary, to have died intestate, without heirs, or to have abandoned such fund, funds or property.

(3) (a) It shall be the duty of every banking institution which holds on deposit or otherwise any fund, funds or property of any kind, known by such banking institution to have escheated to the state, to inform the attorney-general of such fact within 30 days after it becomes known to such banking institution.

(b) The cashier or managing officer of every banking institution shall, within 30 days after the first of January, annually return to the secretary of state a sworn statement in duplicate showing the names of persons who have left on deposit or otherwise any fund, funds or property of the value of \$10, or more, and have not dealt with respect thereto for a period of 20 years by adding to or withdrawing therefrom, or asserting any claim to such fund, funds or property for such period, unless known to such officer to be living. Such statement shall show the amount of such deposit, including interest, or the value and nature of such property, and the depositor's or owner's last known place of residence or business. Such subscribing officer shall certify that said report is a complete and correct statement of all such unclaimed funds and property to the best of his knowledge, after diligent inquiry. The duplicate copy of such report shall be delivered by the secretary of state to the attorney-general immediately upon its receipt.

(c) The cashier or managing officer of every banking institution shall, within 30 days after the first day of January, every 5 years commencing January 1, 1936, return to the secretary of state, a sworn statement showing the names of persons who have left on deposit or otherwise any fund, funds or property of the value of \$10, or more, and have not dealt with respect thereto for a period of 10 years by adding to or withdrawing therefrom, or asserting any claim to such fund, funds or property for such period. Such statement shall show the amount of such deposit, including interest, or the value and nature of such property and the depositor's or owner's last known place of residence or business; such subscribing officer shall certify that said report is a complete and correct statement of all such unclaimed funds and property to the best of his knowledge, after diligent inquiry.

(d) The secretary of state shall have the aforementioned reports permanently bound with an alphabetical index of the depositors, or owners, with an appropriate reference to the bound reports, and such bound reports and index shall be open to public inspection.

(e) A copy of the reports required by paragraphs (c) and (d), together with a notice directed to whom it may concern, stating that such deposits or property have been unclaimed for a period of 10 or 20 years, as the case may be, and requesting all persons having knowledge or information relative to the whereabouts of such depositors or other possible claimants to give such information to the subscribing officer, shall be displayed in a prominent place in such bank for a period of 30 days from the date of the filing of such report, and in cases provided by paragraph (c), a copy of such report and notice shall be published once each week for 4 consecutive weeks in a newspaper of general circulation in the county where such bank is located, and the expense of publication shall be deducted proportionately from such deposits.

[(3a) Omitted because unconstitutional. *Marine Nat. Exchange Bank v. State*, 248 W 410, 22 NW (2d) 156.]

(4) If, upon investigation, the attorney-general shall conclude or have reason to believe that any fund, funds or other property have escheated to the state, he shall institute proper proceedings under the provisions of this section to have such funds or property adjudged the property of the state and transmitted to the state treasurer. Such suit shall be commenced by the attorney-general in the name of the state in the circuit court of Dane county, and the bank or banks in which the funds or property are deposited, and the names of the depositors or owners, as reported, shall be joined as parties.

(5) (a) Service of process in such action or actions shall be made by the delivery of a copy of the summons and complaint to an officer of each of the defendant banks and by publication of a copy of such summons once each week for 4 consecutive weeks in a newspaper of general circulation published in the county in which the depository is located. With the summons, a notice shall also be published, giving the title of such action and referring to the complaint therein, and directed to all persons other than those named as defendants therein, claiming any interest in any deposit or property mentioned in said complaint, and requiring them to appear within 60 days after the first publication of such summons and show cause, if any they have, why it shall not be adjudged that the owners of such deposits or property have died intestate without heirs, or have abandoned such deposits or property, and why such funds or property have not escheated and should

not be deposited with the state treasurer as herein provided, and notifying them that if they do not so appear and show cause, the state will apply to the court for the relief demanded in the complaint. At the end of such notice there shall be a statement of the date of the first publication of said summons and notice.

(b) Any person interested may appear in such action and become a party thereto. Upon the service of the summons and complaint upon the defendant bank or banks, and upon the completion of the publication of the summons and notice and the elapse of 60 days from the date of the first publication of said summons and notice, the court shall have full and complete jurisdiction over such deposits and property and of the person of every one having or claiming any interest in said deposits or property, and shall have full and complete jurisdiction to hear and determine the issues therein and render the appropriate judgment thereon.

(c) If, upon the trial of such action, it shall adjudge that the lawful owner of such funds or property has died intestate without heirs, or has abandoned such funds or property, it shall be adjudged that such funds or property has escheated to the state, and the banking institution in which such funds or property are on deposit shall forthwith deliver same to the state treasurer to be received by such treasurer and be dealt with in the same manner as other escheated property.

(d) Any person not appearing in such action can sue the state to recover such funds or property, with interest thereon at such rate as would have been received had said property been permitted to remain in the original depository, for a period of 5 years after the entry of such judgment, and in case such person be an infant or under disability, the period of limitation is extended to one year after the removal of such disability.

(6) Any person or banking institution which shall violate any of the provisions of this section shall forfeit to the state the sum of \$100 for every day that such violation continues. [1935 c. 294; 1945 c. 70]

Note: This section, in referring to "fund, funds or property" left or had "on deposit or otherwise," applies as well to unclaimed cashier's checks, certified checks and drafts as to unclaimed deposits, and the statute is not unconstitutional as thus applied, since all such unclaimed items, in a banking institution having its place of business within the state, are intangible property subject, like tangible property, to the dominion of the state. That the statute of limitations may have destroyed the depositor's or other person's right of action to recover the funds from the bank does not give the bank a right to retain the unclaimed funds as against the state. *State v. Marshall & Hsley Bank*, 234 W 375, 291 NW 361.

In an action under this section by the state against a bank, to have abandoned deposits escheat to the state and to require the bank to deliver over the funds, the bank could not be allowed therefrom a sum to

reimburse it for attorney fees incurred in appearing in the action. [Statement in *State v. Marshall & Hsley Bank*, 234 W 375, implying to the contrary, withdrawn.] *State v. First Wisconsin Nat. Bank*, 250 W 107, 26 NW (2d) 161.

This section applies to national banks in receivership. 25 Atty. Gen. 303.

Trust company holding unclaimed funds deposited more than ten years ago, for payment of interest on bonds, must file report under (3) (c) even though identity of some of bondholders is known. 25 Atty. Gen. 420.

In construing this section bank deposits escheated to state can be deposited with state treasurer by secretary of state without legal proceedings. (3) (a) applies only to bank deposits known to have escheated to state where person dies intestate. 26 Atty. Gen. 64.

See note to 14.42, citing 26 Atty. Gen. 390.

220.27 Destruction of obsolete records of the commissioner. Whenever necessary to gain needed vault space, the commissioner of banks may turn over to the director of purchases for destruction obsolete records which have been in his possession for a period of 10 years or more. [1945 c. 285; 1947 c. 411]

220.28 Destruction of obsolete records by state banks. Any state bank, savings and loan or building and savings association or credit union may destroy or dispose of such of its records as may have become obsolete after first obtaining the written consent of the state commissioner of banks. [1945 c. 315; 1947 c. 411, 612]

220.29 Closing on legal holidays. No state bank, trust company bank, mutual savings bank or savings and loan association shall transact business or be open for the purpose of transacting business on Sunday or any legal holiday under section 256.17 designated by the commissioner of banks. [1947 c. 134, 411, 612]