

CHAPTER 48

BANKS

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48.02 CAPITAL AND SURPLUS; PREPAYMENT OF CAPITAL.

(a) The capital and surplus of every state bank hereafter organized shall be at least \$250,000. The capital stock of a state bank must be divided into shares of not less than \$1. In addition thereto undivided profits shall be provided for in such an amount as the commissioner shall determine to be adequate under the circumstances to avoid any possible impairment of capital and surplus. The total of these outlays shall be known as capital funds, and payment thereof shall be made in full, in cash or authorized securities, deposited in an approved custodial bank, and certified to the commissioner, under oath of the president, and cashier or other chief financial officer, as well as the custodial bank, before the proposed state bank shall be authorized to commence business. The capital funds of a proposed bank shall not be less than a total amount which the commissioner considers necessary, having in mind the deposit potential for such a proposed bank and current banking industry standards of capital adequacy.

(b) The directors of a state bank may issue shares of its unissued, authorized capital stock and may fix the amount of money or the actual value of the consideration for which the stock is issued.

History: 2005 c 69 art 1 s 7

NOTE: The amendment to this section by Laws 2005, chapter 69, article 1, section 7, is effective August 1, 2006. Laws 2005, chapter 69, article 4, section 2.

48.03 SHARES.

Subdivision 1. **Shareholder list.** The president and cashier of any bank of discount and deposit shall at all times keep an accurate verified list of all its shareholders, with the amount of shares held by each, the dates of all transfers and names of transferees.

Subd. 2. **Shareholder liability.** Except as provided in section 302A.425, no shareholder in any bank of discount and deposit or in any banking or trust corporation or association shall be personally liable for debts of such bank, corporation or association.

Subd. 3a. **Effect of transfer; share books.** The transfer of shares is not binding upon the company until it is regularly entered on the books of the company to show the names of the persons by and to whom transferred, the number or other designation of the shares, and the date of the transfer. The books of the company must be kept to show intelligibly the original shareholders, their respective interests, the amount which has been paid in on their shares, and all transfers of the shares.

Subd. 4a. **Record of shares.** The directors must cause accurate and complete records to be kept of all corporate proceedings and of all shares subscribed, transferred, canceled, or retired and proper books, accounts, files, and records of all other business transacted.

History: 2005 c 69 art 1 s 8

NOTE: The amendment to this section by Laws 2005, chapter 69, article 1, section 8, is effective August 1, 2006. Laws 2005, chapter 69, article 4, section 2.

48.032 PREEMPTIVE RIGHTS.

(a) Unless otherwise denied or limited in the certificate of incorporation or by the board pursuant to section 302A.401, subdivision 2, paragraph (b), a shareholder of a banking institution has the preemptive rights provided in section 302A.413.

(b) If preemptive rights are denied or limited pursuant to paragraph (a) after a shareholder has acquired shares, the shareholder has the rights of a dissenting shareholder under paragraph (c).

(c) A shareholder may dissent from and obtain payment for the value of the shareholder's shares in the event that preemptive rights are denied or limited pursuant to paragraph (a) by objecting to the action and demanding payment for the shareholder's shares at a meeting of the shareholders held on the action or within 20 days after the meeting. If the denial or limitation of preemptive rights takes effect at any time after this demand, the shareholder may, at any time within 60 days after the demand, apply to the district court in the county of the banking institution's principal place of business for the appointment of three persons to appraise the value of that person's shares. The court shall appoint the appraisers and designate the time and the place of their first meeting, give directions with regard to their proceedings the court considers proper, and direct the time and manner in which payment must be made of the value of that person's shares to the shareholder. The appraisers shall meet at the time and place designated, after being duly sworn to discharge their duties honestly and faithfully, make and certify a written estimate of the value of the stock at the time of the appraisal, and deliver one copy to the banking institution and another to the shareholder. The shareholder and the banking institution shall each pay one-half of the charges and expenses of the appraisers.

History: 2005 c 69 art 1 s 9

NOTE: This section, as added by Laws 2005, chapter 69, article 1, section 9, is effective August 1, 2006. Laws 2005, chapter 69, article 4, section 2.

48.033 STATE BANKS, LIABILITY OF SHAREHOLDERS.

Notwithstanding sections 48.03 and 49.24, any shareholder of a state bank whose deposits are not insured by the Federal Deposit Insurance Corporation, shall be personally liable for the debts of said bank to the extent of the par value of the shares held by the shareholder.

History: 2005 c 69 art 3 s 1

NOTE: The amendment to this section by Laws 2005, chapter 69, article 3, section 1, is effective August 1, 2006. Laws 2005, chapter 69, article 4, section 2.

48.04 INCREASE AND REDUCTION OF CAPITAL.

No increase or reduction of the capital of any banking institution shall be valid until the entire new capital has been paid in cash, and certified to the commissioner under oath of the president, vice-president, or cashier. The commissioner shall thereupon issue a certificate of that fact and of approval thereof. No reduction of the surplus of any banking institution shall be valid until such reduction has been approved by the commissioner of commerce. No reduction shall affect the liability of any shareholder for any indebtedness incurred prior thereto.

For purposes of this section, directors have the authority granted under section 48.02; paragraph (b).

History: 2005 c 69 art 1 s 10

NOTE: The amendment to this section by Laws 2005, chapter 69, article 1, section 10, is effective August 1, 2006. Laws 2005, chapter 69, article 4, section 2.

48.06 BOARD OF DIRECTORS.

Subdivision 1. **Size.** The business of a bank must be managed by a board of at least five directors, unless a greater number is otherwise required by law. A board of directors of a financial institution referred to in section 47.12 which has fewer than five members on August 1, 1995, is not subject to this requirement but may be increased to not more than five members by order of the commissioner of commerce.

If the number of directors exceeds nine, they may designate, semiannually, by resolution, nine of their number, a majority of whom constitutes a quorum for the transaction of business. Every director of a bank shall take and subscribe an oath to

faithfully perform the official duties of a director, and not knowingly violate, or permit to be violated, any provision of law. The taking of this oath must be duly certified in the minutes of the records of the bank.

Subd. 2. **Classes.** In its certificate of incorporation, a corporation may establish classes of its directors and the terms for each class. No class may be elected for a term of less than one year, or more than five years, and the term of office of at least one class must expire each year.

Subd. 3. **Vacancies.** If the certificate of incorporation or the bylaws so provides, a vacancy in the board of directors may be filled by the remaining directors. Not more than one-third of the members of the board may be so filled in any one year except any number may be appointed to provide for at least five directors until any subsequent meeting of the shareholders.

Subd. 4. **Quorum to do business.** Except as otherwise provided in subdivision 1, a majority of the directors constitutes a quorum for the transaction of business.

Subd. 5. **Action without meeting.** Any action which might be taken at a meeting of the board of directors may be taken without a meeting if done in writing signed by all of the directors.

History: 2005 c 69 art 1 s 11

NOTE: The amendment to this section by Laws 2005, chapter 69, article 1, section 11, is effective August 1, 2006. Laws 2005, chapter 69, article 4, section 2.

48.07 OFFICERS; APPOINTMENT, REMOVAL.

The board of directors of a bank or trust company organized under the laws of this state shall have full power and authority at any time to appoint and remove any officer or employee.

Every bank or trust company organized under the laws of this state, except when otherwise specially provided, must have a president, secretary, and treasurer, and may have one or more vice-presidents and other officers, as its certificate of incorporation or bylaws may provide. Their respective duties must be prescribed in the certificate of incorporation or in the bylaws. Only one president of record may act on behalf of the bank or trust company; however, additional officers may be titled president for purposes of empowering those additional officers to function as managing officers of detached facilities of banks.

History: 2005 c 69 art 1 s 12

NOTE: The amendment to this section by Laws 2005, chapter 69, article 1, section 12, is effective August 1, 2006. Laws 2005, chapter 69, article 4, section 2.

48.10 ANNUAL AUDIT; REPORT.

The board of directors of a bank, bank and trust, or trust company shall annually examine its books, either in person, or by appointing an examining committee, or an auditor, who may be an independent auditor or accountant. The examining committee or auditor shall be solely responsible to the directors. A report shall be made to the directors as to the scope of the examination or audit, and also to show those assets, excluding marketable securities and fixed assets, which are carried on the books for more than actual value. This report shall be retained as a permanent record or incorporated in the minutes of the meeting.

History: 2005 c 118 s 3

48.15 SPECIAL POWERS.

[For text of subs 1 to 3, see M.S.2004]

Subd. 4. **Retirement, health savings, and medical savings accounts.** (a) A state bank may act as trustee or custodian:

(1) of a self-employed retirement plan under the Federal Self-Employed Individual Tax Retirement Act of 1962, as amended;

(2) of a medical savings account under the Federal Health Insurance Portability and Accountability Act of 1996, as amended;

(3) of a health savings account under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, as amended; and

(4) of an individual retirement account under the Federal Employee Retirement Income Security Act of 1974, as amended, if the bank's duties as trustee or custodian are essentially ministerial or custodial in nature and the funds are invested only (i) in the bank's own savings or time deposits; or (ii) in any other assets at the direction of the customer if the bank does not exercise any investment discretion, invest the funds in collective investment funds administered by it, or provide any investment advice with respect to those account assets.

(b) Affiliated discount brokers may be utilized by the bank acting as trustee or custodian for self-directed IRAs, if specifically authorized and directed in appropriate documents. The relationship between the affiliated broker and the bank must be fully disclosed. Brokerage commissions to be charged to the IRA by the affiliated broker should be accurately disclosed. Provisions should be made for disclosure of any changes in commission rates prior to their becoming effective. The affiliated broker may not provide investment advice to the customer.

(c) All funds held in the fiduciary capacity may be commingled by the financial institution in the conduct of its business, but individual records shall be maintained by the fiduciary for each participant and shall show in detail all transactions engaged under authority of this subdivision.

(d) The authority granted by this section is in addition to, and not limited by, section 47.75.

History: 2005 c 118 s 4

48.512 PROCEDURES FOR OPENING CHECKING ACCOUNTS.

[For text of subs 1 to 9, see M.S.2004]

Subd. 10. **Federal law compliance.** In lieu of the identification rules in subdivision 2, a financial intermediary may choose to comply with the federal customer identification standards set forth in United States Code, title 31, section 5318, and its implementing regulation, Code of Federal Regulations, title 31, section 103.121, as amended from time to time.

History: 2005 c 118 s 5