

State of Wisconsin



1997 Assembly Bill 832

Date of enactment: April 20, 1998

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1997 WISCONSIN ACT 146

AN ACT *to repeal* 221.0205 (1) (title) and 221.0205 (2); *to renumber* 221.0205 (1); *to renumber and amend* 221.0901 (3) (c); *to amend* 220.04 (1) (a), 221.0216 (5), 221.0302 (5) (c), 221.0513 (title) and 221.0609 (1) (title); and *to create* 221.06105, 221.0901 (3) (c) 2. and 221.0903 of the statutes; **relating to:** in-state branches of out-of-state banks; examination of state banks and trust company banks by the division of banking; action without a meeting by a bank's board of directors; dividend rights on capital stock; providing an exemption from emergency rule procedures; and granting rule-making authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 220.04 (1) (a) of the statutes is amended to read:

220.04 (1) (a) The division shall examine at least once ~~in each year~~ every 18 months the cash, bills, collaterals, securities, assets, books of account, condition and affairs of each bank and trust company bank doing business in this state, except national banks. For that purpose the division 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 division shall determine the fair valuation of all assets in accordance with the schedules, rules and regulations prescribed by the banking review board.

SECTION 2. 221.0205 (1) (title) of the statutes is repealed.

SECTION 3. 221.0205 (1) of the statutes is renumbered 221.0205.

SECTION 4. 221.0205 (2) of the statutes is repealed.

SECTION 5. 221.0216 (5) of the statutes is amended to read:

221.0216 (5) DIVIDEND RIGHTS. A dividend may not be declared or paid on capital stock if until the cumulative dividends on the preferred stock have been paid in full. If the bank is placed in liquidation, a payment may not be made to the holders of the capital stock if the holders of the preferred stock have not been paid in full the par value of the stock plus all cumulative dividends.

SECTION 6. 221.0302 (5) (c) of the statutes is amended to read:

221.0302 (5) (c) Acting as an agent, or having another bank act as agent, ~~under a contract~~ under s. 221.0301 (8).

SECTION 7. 221.0513 (title) of the statutes is amended to read:

221.0513 (title) ~~Action~~ Shareholder action without a meeting.

SECTION 8. 221.0609 (1) (title) of the statutes is amended to read:

221.0609 (1) (title) ~~HOW FILED~~ FILLED.

SECTION 9. 221.06105 of the statutes is created to read:

221.06105 Board action without a meeting. (1) **WHEN PERMITTED.** Unless the articles of incorporation or bylaws provide otherwise, action required or permitted

* Section 991.11, WISCONSIN STATUTES 1995-96: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

under this chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action shall be evidenced by one or more written consents describing the action taken, signed by each director and retained by the bank.

(2) EFFECTIVE DATE. Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

(3) EFFECT OF ACTION. A written consent signed under this section has the effect of a unanimous vote taken at a meeting at which all directors were present, and may be described as such in any document.

SECTION 10. 221.0901 (3) (c) of the statutes is renumbered 221.0901 (3) (c) 1. and amended to read:

221.0901 (3) (c) 1. In a transaction ~~under par. (b)~~ in which the division's approval is not required under par. (b), the parties shall give written notice to the division at least 15 days before the effective date of the acquisition, unless a shorter period of notice is required under applicable federal law.

SECTION 11. 221.0901 (3) (c) 2. of the statutes is created to read:

221.0901 (3) (c) 2. In a transaction in which the division's approval is not required because the transaction is expressly permitted under federal law, an out-of-state bank that will result from a merger, consolidation or other transaction involving an in-state bank shall give notice to the division of the proposed merger, consolidation or other transaction no later than the date on which it files an application for the proposed merger, consolidation or other transaction with the federal bank supervisory agency. The notification shall include all of the following:

a. A copy of the application submitted to the federal bank supervisory agency.

b. Evidence that the out-of-state bank has complied with any applicable requirements under subch. XV of ch. 180.

c. Any filing fee required by the division.

SECTION 12. 221.0903 of the statutes is created to read:

221.0903 In-state branches maintained by out-of-state banks. (1) DEFINITIONS. In this section:

(a) "Bank supervisory agency" means any of the following:

1. An agency of another state with primary responsibility for chartering and supervising banks.

2. The U.S. office of the comptroller of the currency.

3. The Federal Deposit Insurance Corporation.

4. The system of governors of the federal reserve board.

(b) "Home state" means:

1. With respect to a state-chartered bank, the state in which the bank is chartered.

2. With respect to a national bank, the state in which the main office of the bank is located.

3. With respect to a foreign bank, the state determined to be the home state of the foreign bank under 12 USC 3103 (c).

(c) "In-state branch" means a branch under s. 221.0302 located in this state.

(d) "Out-of-state bank" means a bank with a home state other than this state.

(dm) "Out-of-state state bank" means a bank chartered under the laws of any state other than this state.

(e) "State bank" means a bank chartered under this chapter.

(2) NOTICE AND FILING REQUIREMENTS. Each out-of-state state bank that has an in-state branch shall give the division notice of any merger, consolidation or other transaction that would cause a change of control with respect to the out-of-state state bank or a bank holding company of the out-of-state state bank, such that a filing would be required under 12 USC 1817 (j) or 12 USC 1841 to 1850. The notice required under this subsection shall be provided at least 30 days prior to date that the transaction is to become effective, unless the division determines that a transaction is an emergency transaction.

(3) REPORTING REQUIREMENTS. The division may promulgate rules establishing periodic reporting requirements for out-of-state banks maintaining an in-state branch. Any reporting requirements established by rules promulgated under this subsection shall be consistent with all of the following:

(a) Reporting requirements applicable to state banks.

(b) The division's regulatory responsibilities with respect to that out-of-state bank and its in-state branch.

(4) EXAMINATIONS. (a) *Examination power of division.* The division may examine an in-state branch maintained by an out-of-state state bank, if the division considers the examination necessary to determine whether the in-state branch is being operated in compliance with the laws of this state and in accordance with safe and sound banking practices. The provisions of ch. 220, as they apply to examinations of state banks, apply to the examinations of in-state branches of out-of-state banks.

(b) *Contracts for examination services.* The division may enter into contracts with any bank supervisory agency with concurrent jurisdiction over a state bank or an in-state branch of an out-of-state state bank to engage the services of the agency's examiners at a reasonable rate of compensation, or to provide the services of the division's examiners to the agency at a reasonable rate of compensation. Contracts entered into under this paragraph are exempt from ss. 16.70 to 16.76 and 16.767 to 16.82.

(5) ENFORCEMENT. If the division determines that an in-state branch of an out-of-state state bank is being operated in violation of the laws of this state or is being

operated in an unsafe or unsound manner, the division may take any enforcement action against the in–state branch that it would be able to take if the in–state branch were a state bank.

(6) **JOINT EXAMINATION AND ENFORCEMENT ACTIONS.** The division may enter into joint examinations and joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over a state bank with an out–of–state branch, or an in–state branch of an out–of–state state bank. This subsection does not prevent the division from making examinations or taking enforcement actions independently, if the division considers it appropriate to carry out its responsibilities or to ensure compliance with the laws of this state.

(7) **ASSESSMENTS.** The division may promulgate rules establishing assessments for in–state branches of out–of–state state banks.

SECTION 13. Nonstatutory provisions.

(1) **EMERGENCY RULE–MAKING AUTHORITY.** Using the procedure under section 227.24 of the statutes, the division of banking shall promulgate rules required under section 221.0903 (3) and (7) of the statutes, as created by this act, for the period before permanent rules become effective, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a) and (2) (b) of the statutes, the division need not provide evidence of the necessity of preservation of the public peace, health, safety or welfare in promulgating rules under this subsection.
