BANKING CODE OF 1999 (EXCERPT)
Act 276 of 1999

PART 5

OFFICERS AND DIRECTORS

487.13501 Board of directors; election; appointment of officers; meetings.

Sec. 3501. (1) A bank shall be managed by a board of not less than 5 nor more than 25 directors. The first board shall be elected by the incorporators at the meeting held under section 3107 before the bank is authorized to commence business. All subsequent boards shall be elected by the shareholders at the annual meeting of the shareholders or at a meeting called for that purpose as provided in the bylaws of the bank. The board of directors may fill a vacancy on the board for the remainder of the vacated term. Directors shall hold office until their successors are elected and qualified.

(2) The bylaws of the bank shall provide for the shareholder election of directors in 1 of the following methods:

(a) The shareholders annually may elect the full board of directors.

(b) The shareholders annually may elect a board of directors with not more than 2 unfilled directorships. The unfilled directorships are considered vacancies to be filled by the board of directors.

(c) The shareholders may elect directors with staggered terms of office as provided for in subsection (3).

(3) The election of directors with staggered terms of office shall be provided for in the bylaws of the bank as follows:

(a) That the directors will be divided into 2 or 3 classes, each to be as nearly equal in number as possible.

(b) The term of office of directors in the first class shall expire at the first annual meeting of shareholders after their election, that of the second class shall expire at the second annual meeting after their election, and that of the third class, if any, shall expire at the third annual meeting after their election.

(c) At each annual meeting after the classification established under subdivision (b), a number of directors equal to the number of the class whose term expires at the time of the meeting shall be elected to hold office until the second succeeding annual meeting if there are 2 classes, or until the third succeeding annual meeting if there are 3 classes.

(4) The board of directors shall appoint a director as chief executive officer who shall be a full-time employee of the bank and perform duties designated by the board, and who shall serve as the chairperson of the board, unless the board designates another director to be chairperson in lieu of the chief executive officer. The board may appoint officers, who need not be members of the board, define their duties, dismiss them at pleasure, and appoint other officers to fill vacancies.

(5) Except as otherwise provided by this act, the board of directors may appoint committees of its members to perform its duties.

(6) The board of directors shall meet not less than 6 times per fiscal year in person or by means of electronic communication devices that enable all participants in a meeting to communicate with each other. The minutes of each meeting shall be kept and shall be signed by the presiding officer and the secretary of the meeting. A majority of the board of directors constitutes a quorum for the transaction of business.

(7) The commissioner may call a meeting of the board of directors of any bank, for any purpose, by giving a notice of the time, place, and purpose of the meeting at least 3 days before the meeting date to the directors by personal service, by registered or certified mail, or by other appropriate method reasonably designed to provide adequate notice.

History: 1999, Act 276, Eff. Mar. 1, 2000.

487.13502 Board of directors; oath.

Sec. 3502. Every director when elected or appointed shall take and subscribe an oath that he or she will diligently and honestly perform the duties of the office and will not knowingly violate, or permit to be violated, any provisions of this act. The oath shall be transmitted to the commissioner for filing.

History: 1999, Act 276, Eff. Mar. 1, 2000.

487.13503 Sale or purchase of securities or property.

Sec. 3503. (1) A bank may contract for, or purchase from, any of its directors, or from any person of which any of the bank's directors is an officer, director, manager, owner, employee, or agent, any securities or other property, only when the purchase is made in the ordinary course of business upon terms not less favorable to the bank than those offered by others, and the purchase is authorized by a majority of the board of directors not interested in the sale of the securities or property evidenced by their affirmative vote or written assent. If a

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director, or person of which any director is an officer, director, manager, owner, employee, or agent, acting for or on behalf of others, sells securities or other property to a bank, the commissioner may require a full disclosure to be made of all commissions or other considerations received. If a director or person, acting in his, her, or its own behalf, sells securities or other property to the bank, the commissioner may require a full disclosure of all profits realized from the sale.

(2) A bank may sell securities or other property to any of its directors, or to an entity of which any of its directors is an officer, director, manager, owner, employee, or agent in the ordinary course of business on terms not more favorable to the director or person than those offered to others, when the sale is authorized by a majority of the board of directors of a bank evidenced by their affirmative vote or written assent.

(3) This section shall not be construed as authorizing banks to purchase or sell securities or other property that banks are not otherwise authorized by law to purchase or sell.

History: 1999, Act 276, Eff. Mar. 1, 2000.

487.13504 Discharge of duties; liability; commencement of action; violation; statute of limitations.

Sec. 3504. (1) A director or an officer of a bank shall discharge the duties of his or her position in good faith and with that degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position. In discharging his or her duties, a director or an officer, when acting in good faith, may rely upon the opinion of legal counsel for the bank, upon the report of an independent appraiser selected with reasonable care by the board or by an officer of the bank, or upon financial statements of the bank certified to him or her to be correct by an officer of the bank, or as stated in a written report by an independent public or certified public accountant or firm of accountants to reflect fairly the financial condition of the bank.

(2) The articles of incorporation of a bank may provide that a director is not personally liable to the bank or its shareholders for monetary damages for a breach of the director's fiduciary duty. The provision does not eliminate or limit the liability of a director for any of the following:

(a) A breach of the director's duty of loyalty to the bank or its shareholders.

(b) Acts or omissions not in good faith or that involve intentional misconduct or knowing violation of law.

(c) A violation of section 2312.

(d) A transaction from which the director derived an improper personal benefit.

(3) An action against a director or officer for failure to perform the duties imposed by this section shall be commenced within 3 years after the cause of action has accrued, or within 2 years after the time when the cause of action is discovered, or should reasonably have been discovered, by the complainant, whichever occurs first.

(4) If a director or officer of a bank knowingly violates, or knowingly permits any of the agents, officers, directors, or employees of the bank to violate, this act, rules promulgated under this act, or an order or declaratory ruling of the commissioner, every director and officer who participated in or assented to the violation shall be held liable in his or her personal and individual capacity for all damages that the bank, any shareholder, or any other person sustains as a result of the violation. An action to recover damages under this section shall be brought within 3 years from the time of the violation.

History: 1999, Act 276, Eff. Mar. 1, 2000.

487.13505 Removal of director.

Sec. 3505. (1) The shareholders may remove 1 or more directors with or without cause unless the articles provide that directors may be removed only for cause. The vote for removal shall be by a majority of shares entitled to vote at an election of directors, except that the articles may require a higher vote for removal without cause. This section shall not invalidate any bylaw adopted before the effective date of this act that applies to removal without cause.

(2) In the case of a bank having cumulative voting, if less than the entire board is to be removed, a director shall not be removed if the votes cast against his or her removal would be sufficient to elect him or her if then cumulatively voted at an election of the entire board of directors, or, if there are classes of directors, at an election of the class of directors of which he or she is a part.

(3) If holders of a class or series of stock are entitled by the articles to elect 1 or more directors, this section applies, with respect to removal of a director so elected, to the vote of the holders of the outstanding shares of that class or series of stock.

History: 1999, Act 276, Eff. Mar. 1, 2000.

487.13506 Sale of stock or securities; officer or employee as agent prohibited.

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Sec. 3506. An officer or employee of any bank, in his or her individual capacity, shall not act as agent in the sale of stock or other securities to any person or receive directly or indirectly any consideration or commission resulting from the sale of stock or other securities by others to the bank by which he or she is employed.

History: 1999, Act 276, Eff. Mar. 1, 2000.

487.13507 Procurement of loan; receipt of gratuity or consideration prohibited.

Sec. 3507. An officer, director, or employee of a bank shall not receive, or consent, or agree to receive from a customer of the bank any consideration or gratuity in return for the procurement of a loan or other service from the bank.

History: 1999, Act 276, Eff. Mar. 1, 2000.

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