

BANKING CODE OF 1999 (EXCERPT)
Act 276 of 1999

PART 7
CONSOLIDATION AND CONVERSION

487.13701 Consolidated bank; formation.

Sec. 3701. (1) Subject to approval by the commissioner, a bank may consolidate with any number of consolidating organizations to form a consolidated bank.

(2) The approval of the commissioner shall be based on an examination or other appropriate analysis of each consolidating organization and the agreement of consolidation. A consolidation shall not be made to defeat or defraud any of the creditors of any of the consolidating organizations.

(3) A majority of the directors of each organization proposing to consolidate may enter into an agreement, signed by them, or by their designated representative or representatives, prescribing the terms and conditions of consolidation, the mode of carrying the consolidation into effect, and stating other terms required or permitted by this act and any laws of the United States, as well as the manner of converting the shares of each of the consolidating organizations into shares of the consolidated organization, with other details and provisions as are considered necessary.

(4) The proposed consolidation agreement shall be submitted to the shareholders of each consolidating organization, at separate meetings of their shareholders. A notice indicating the time, place, and purpose of the meeting shall be mailed to each shareholder of each consolidating organization at his or her last known address as appears from the stock records of the consolidating organizations, by registered or certified mail, at least 10 days prior to the date of the meeting. Notice shall not be required if it is waived by the commissioner, or, in the case of individual notice to a shareholder, by the shareholder.

(5) At the meeting, the proposed consolidation agreement shall be considered and a vote by ballot, in person or by proxy, taken for the adoption or rejection of the agreement. At the meeting, each share of stock shall entitle the holder to 1 vote. If the votes of shareholders of each consolidating organization representing not less than 2/3 of the total number of shares of each class of each consolidating organization's outstanding capital stock are cast for the adoption of the agreement, the vote shall be certified on the agreement by an officer of each of the consolidating organizations.

(6) If an out-of-state bank, national bank, association, or savings bank is a consolidating organization and approval is required by the laws of another state or of the United States, that organization shall furnish a copy of the approval of the appropriate state or federal regulator of the consolidation to the commissioner.

(7) The consolidation agreement required by this section shall be submitted to the commissioner, who shall, upon approval, certify upon the agreement the effective date of the consolidation. The consolidation agreement or a copy certified by the commissioner is evidence of the agreement and act of consolidation of the consolidating organizations and the observance and performance of all necessary acts and conditions precedent to the consolidation.

(8) A bank holding company that is the sole shareholder of all of the outstanding issued stock of a bank, out-of-state bank, or national bank that is a consolidating organization in a proposed consolidation may waive the shareholder meeting requirement of this subsection.

(9) In effecting a consolidation, stock of the consolidated bank may be issued in accordance with this act and as provided by the terms of the consolidation agreement free from any preemptive rights of the shareholders of the respective consolidating organizations.

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

487.13702 Consolidated organization.

Sec. 3702. On an interstate basis, a bank may consolidate with any number of consolidating organizations to form a consolidated organization in accordance with the laws under which the consolidated organization is chartered, if all of the following apply:

(a) Consolidation is permitted by the laws under which each consolidating organization is organized and the appropriate regulator or regulators approve the consolidation.

(b) The consolidating organizations provide notice to the commissioner by filing a copy of the application for consolidation within 10 days after the date the application is filed with the appropriate federal regulator.

(c) The consolidated organization complies with section 3703(3) with respect to notice of consolidation, but that notice is limited to a court, public tribunal, agency, or officer of this state.

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

487.13703 Consolidated bank; rights, privileges, and powers.

Sec. 3703. (1) If approval and certification of the consolidation agreement as required by section 3701 have been completed, the corporate existence of each consolidating organization is merged into and continued in the consolidated bank. To the extent authorized by this act, the consolidated bank possesses all the rights, interests, privileges, powers, and franchises and is subject to all the restrictions, disabilities, liabilities, and duties of each of the consolidating organizations. The title to all property, real, personal, and mixed, is transferred to the consolidated bank, and shall not revert or be in any way impaired by reason of this act.

(2) A consolidated bank holds and enjoys the same and all rights of property, franchises, and interests, including appointments, designations, and nominations and all other rights and interests as a fiduciary, in the same manner and to the same extent as those rights and interests were held or enjoyed by each consolidating organization at the time of the consolidation. If a consolidating organization at the time of consolidation was acting under appointment of any court as a fiduciary, the consolidated bank is subject to removal by a court of competent jurisdiction.

(3) A consolidated bank shall file with each court or other public tribunal, agency, or officer in any state by which any of the consolidating organizations have been appointed as a fiduciary, and in the court file of each estate, suit, or any other proceeding in which any of them has been acting as a fiduciary, an affidavit setting forth the fact of consolidation, the name of each consolidating organization, the name of the consolidated bank, the location of its principal office, and the amount of its capital and surplus. This subsection does not require filing of an affidavit related to any consolidating organization that after the consolidation retains the same corporate name, charter, and principal office location.

(4) The liability of any consolidating organization or of a shareholder, director, or officer of a consolidating organization, or the rights or remedies of the creditors of, or other persons transacting business with, the consolidating organization shall not be altered or impaired as the result of a consolidation.

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

487.13704 Service of process.

Sec. 3704. (1) Whether it maintains a presence in this state, a consolidated organization or any of its successors in interest is subject to service of process in a proceeding in this state for enforcement of any obligation incurred in this state by any consolidating organization that is or was a party to a consolidation.

(2) An action or proceeding by or against any of the consolidating organizations in a court or any other public tribunal of this state may be prosecuted to judgment, as if consolidation had not taken place, or the consolidated bank or consolidated organization may be substituted in the place of any consolidating organization whose existence has ceased.

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

487.13705 Notice of operation.

Sec. 3705. (1) A consolidated bank or consolidated organization may operate all branches and principal offices located in this state of the consolidating organizations without providing the notice required by section 3711(1).

(2) A bank, out-of-state bank, national bank, association, or savings bank operating a branch in this state as the result of a consolidation shall provide notice of that operation to the commissioner within 30 days after the effective date of the consolidation.

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

487.13706 Definitions; applicable provisions.

Sec. 3706. (1) As used in this section:

(a) "Existing bank" means a bank engaged in the business of banking before the consolidation provided in this section.

(b) "New bank" means a bank not engaged in the business of banking before the consolidation provided in this section.

(c) "Existing association" means a stock association engaged in the savings and loan business before the consolidation provided in this section.

(d) "Existing savings bank" means a stock savings bank engaged in the savings bank business before the consolidation provided in this section.

(2) Notwithstanding any other provision of this act, both of the following apply:

(a) A new bank may be organized for the sole purpose of effecting its consolidation under section 3701 with an existing bank, existing savings bank, or existing association having its principal office in the same city or village as the new bank and if upon completion of the consolidation a bank holding company becomes

the owner of all of the outstanding voting shares of the consolidated organization. The new bank and existing bank may consolidate under the articles of either bank. The new bank and the existing savings bank or association shall consolidate under the articles of the new bank. Sections 3701, 3703, and 3704 apply to the consolidation, except that the agreement of consolidation may provide that shares of either or both the consolidating organizations will be converted into shares or other securities of the bank holding company.

(b) A shareholder of the existing bank, existing savings bank, or existing association who votes against the consolidation, or who has given notice in writing to that bank or association at or before the meeting called for the purpose of considering the agreement of consolidation that the shareholder dissents from the consolidation, is entitled to receive in cash from the consolidated organization the fair value of all shares held by the shareholder, if and when the consolidation is consummated, upon written request made to the consolidated organization at any time within 30 days after the date of consummation of the consolidation, accompanied by the surrender of the stock voted in dissent by the shareholder. Upon the filing of the written request and the surrender of stock certificates, if any, the shareholder shall cease to have any of the rights of a shareholder except the right to be paid the fair value of the shareholder's shares. The request having been made shall not be withdrawn except with the written consent of the consolidated organization. The fair value of the shares shall be determined, as of the date on which the meeting of shareholders of the existing bank, existing savings bank, or existing association was held adopting the agreement of consolidation, by a qualified and independent appraiser selected by the commissioner upon written request submitted by a dissenting shareholder entitled to receive the fair value of his or her shares. The appraiser selected shall file a written appraisal with the commissioner, who in turn shall forward copies to all interested parties. The valuation determined by the appraiser is final and binding on all parties as to the fair value of the shares. The consolidated organization shall pay to each dissenting shareholder entitled the fair value of his or her shares within 30 days following the receipt of the written appraisal. The fees and expenses of the appraisal, which shall be approved by the commissioner, shall be paid by the consolidated organization. The agreement of consolidation shall provide the manner of disposing of the shares of the existing bank, existing savings bank, or existing association surrendered by the dissenting shareholders.

(3) The commissioner shall approve or disapprove an application submitted under this section in writing within 30 days after acceptance of the application or the last amendment or supplement to the application.

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

487.13707 Definitions; consolidation agreement; approval of terms and conditions.

Sec. 3707. (1) As used in this section:

(a) "Consolidation agreement" means an agreement entered into among an existing bank, existing savings bank, or an existing association, and a new bank, and a new holding company that provides both of the following:

(i) That the existing bank, existing savings bank, or existing association and the new bank will be consolidated or merged.

(ii) That upon consummation of the consolidation or merger, the shares of capital stock of the existing bank, existing savings bank, or existing association will be converted into or exchanged for shares of the capital stock or other securities of the new holding company.

(b) "Existing association" means a stock association that is a party to a consolidation agreement and is engaged in the savings and loan business before the consolidation or merger provided for in the consolidation agreement.

(c) "Existing bank" means a bank or national banking association that is a party to a consolidation agreement and is engaged in the business of banking before the consolidation or merger provided for in the consolidation agreement.

(d) "Existing savings bank" means a stock savings bank that is a party to a consolidation agreement and is engaged in the savings bank business before the consolidation or merger provided for in the consolidation agreement.

(e) "New bank" means a bank or national banking association that is a party to a consolidation agreement and is not engaged in the business of banking before the consummation of the consolidation or merger provided for in the consolidation agreement.

(f) "New holding company" means a corporation that is not a bank, association, or national banking association and as to which all of the following apply:

(i) The corporation is a party to a consolidation agreement.

(ii) Before its acquisition of an existing bank, existing savings bank, or existing association pursuant to the consolidation agreement, the corporation does not have control of a bank, savings bank, association, or national banking association and has not transacted any business except business incidental to its organization

and to the entering into, and performance of, the consolidation agreement.

(iii) Upon consummation of the consolidation or merger provided for in the consolidation agreement, the corporation will become a bank holding company as defined in section 2 of the bank holding company act.

(iv) Immediately after its acquisition of an existing bank, existing savings bank, or existing association under the consolidation agreement, the corporation will not have control of more than 1 bank or 1 national banking association.

(v) Before the acquisition of an existing bank, existing savings bank, or existing association under the consolidation agreement, the corporation is not, and immediately after acquisition of control of the existing bank, existing savings bank, or existing association shall not be, controlled by a bank holding company as defined in section 2(a)(2) of the bank holding company act.

(g) "Control" means control as defined in section 2 of the bank holding company act.

(2) A new holding company may apply to the commissioner for approval of the terms and conditions of the issuance of the shares or other securities of the new holding company into which the shares of an existing bank, existing savings bank, or existing association are to be converted, or for which the shares of the existing bank, existing savings bank, or existing association are to be exchanged, under a consolidation agreement, and for approval of the terms and conditions of the conversion or exchange. The application for approval shall be in a form, contain information, and be accompanied by documents as required by the commissioner. Within 30 days after the application is filed, the commissioner shall conduct a hearing upon the fairness of the terms and conditions at which all persons to whom it is proposed to issue the securities in the conversion or exchange shall have the right to appear. Within 20 days after the hearing, the commissioner shall either approve or disapprove the terms and conditions of the issuance and of the conversion or exchange. This subsection does not apply to the terms and conditions of the issuance and conversion or exchange of securities provided for in a consolidation agreement or to make unlawful any transaction that is lawful without regard to this subsection.

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

487.13708 Conversion of bank into stock association, stock savings bank, or national banking association.

Sec. 3708. (1) Upon the affirmative vote of the shareholders representing more than 50% of the total number of shares of each class of its outstanding capital stock, a bank may be converted under the laws of this state into a stock association or stock savings bank or under the laws of the United States into a national banking association. The conversion of a bank into a stock association, stock savings bank, or national banking association shall not release the bank from its obligations to pay and discharge either of the following:

(a) All the liabilities created by law or incurred by the bank before becoming a stock association, stock savings bank, or a national banking association.

(b) Any tax imposed by this state up to the date of its becoming a stock association, stock savings bank, or national banking association in proportion to the time that has elapsed since the last preceding payment or assessment, penalty, or forfeiture imposed or incurred up to the date of its becoming a stock association, stock savings bank, or a national banking association.

(2) A conversion shall not be made to defeat or defraud any of the creditors of the bank.

(3) A certified copy of all resolutions relating to the proposed conversion adopted by the directors and shareholders of the bank shall be submitted to the bureau. If consent or approval is required by federal law, the bank shall provide the bureau with a certified copy of consent or approval of the appropriate federal regulator to the conversion.

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

487.13709 Conversion of depository institution.

Sec. 3709. (1) With the approval of the commissioner and upon the affirmative vote of the shareholders representing more than 50% of the total number of shares of each class of its outstanding capital stock, a national banking association, stock association, or stock savings bank doing business in this state and having capital and surplus sufficient to entitle it to become a bank under this act may be converted into a bank if the conversion is not in contravention of any laws of the United States.

(2) A depository institution converting under subsection (1) may submit articles of incorporation executed by a majority of the directors of the national banking association, stock association, or stock savings bank. A majority of the directors, after executing the articles of incorporation, shall have the power to execute all other papers and to do whatever is required to complete its organization as a bank. The shares of the bank may continue to be for the same amount as they were before the conversion, and the directors may continue to be

directors of the bank until others have been elected or appointed under the laws of this state.

(3) The approval of the commissioner shall be based on an examination of the national banking association, stock association, or stock savings bank and on the action taken by its directors and shareholders with respect to the conversion. A conversion shall not be made to defeat or defraud any creditors. The commissioner may permit the converted bank to retain and carry assets of the converting national banking association, stock association, or stock savings bank which do not conform to the legal requirements relative to assets acquired and held by banks.

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

487.13710 Effect of conversion.

Sec. 3710. If a conversion becomes effective under section 3708 or 3709, all of the following shall apply:

(a) The converted organization shall be considered a continuation of the body corporate of the converting organization.

(b) The title to all property, real or personal, including any rights that may be attached to the property, or any thing in action, is immediately transferred and vested in the converted organization to the same extent as it was in the converting organization.

(c) All assets, rights, privileges, or interests belonging or attributed to the converting organization are immediately transferred and vested in the converted organization to the same extent as they were in the converting organization.

(d) All liabilities, restrictions, and disabilities of the converting organization, its shareholders, or its officers are immediately transferred to the converted organization to the same extent as they were in the converting organization.

(e) If the converting organization is acting in any fiduciary capacity under the laws of this state, the following apply:

(i) All rights, privileges, and obligations of the converting organization shall remain unimpaired and shall continue in the converted organization irrespective of the date when the fiduciary relationship was created.

(ii) If the converting organization had been appointed by a court or governmental tribunal, agency, or officer, the converted organization shall file an affidavit with the appointing authority setting forth the fact of conversion, the name of the converted organization, the location of its principal office, and the amount of its capital and surplus.

(iii) The converted organization acting as a fiduciary by appointment of a court is subject to removal by a court of competent jurisdiction.

(f) The converted organization may retain and continue to operate any existing branch, or open any approved branch, of the converting organization.

(g) Any rights or remedies of the depositors, creditors, or other persons transacting business with the converting organization shall not be reduced or impaired as the result of a conversion.

(h) Whether or not it maintains a presence in this state, a converted organization or any of its successors in interest is subject to service of process in a proceeding in this state for enforcement of any obligation incurred in this state by the converting organization.

(i) An action or proceeding against the converting organization in a court or other governmental tribunal may be prosecuted to judgment as if the conversion had not taken place, or the converted organization may be substituted in place of the converting organization. This subsection shall not create any new cause of action against the converting organization as a result of the conversion.

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

487.13711 Branch services.

Sec. 3711. (1) A bank may establish and operate a branch or branches within any state, the District of Columbia, a territory or protectorate of the United States, or a foreign country, unless the commissioner objects in writing within 30 days after receipt of a written notice from the bank of its intent to establish a branch. The commissioner may issue a written statement of intent not to object at any time before the expiration of the 30 days.

(2) The written notice of intent to establish a mobile branch shall contain a statement by the applying bank that it intends to move the location of the physical structure of the branch from time to time.

(3) Except for a mobile branch, a branch of a bank shall not be moved from 1 location to another without prior written notice to the commissioner.

(4) Unless the commissioner objects in writing within 30 days after receipt of written notice from a bank of its intent to contract for branch services, a bank may contract with 1 or more banks, out-of-state banks, national banks, associations, or savings banks for the depository institution or institutions to act as branches to

provide services to the customers of the contracting bank. The commissioner may issue a written statement of intent not to object at any time prior to the expiration of the 30 days. This subsection shall not be construed to limit the powers granted to a bank under section 4101(1)(d).

(5) Unless the commissioner objects in writing within 30 days after receipt of written notice from a contracting depository institution of its intent to contract for branch services, 1 or more out-of-state banks, national banks, associations, or savings banks may contract with a bank for the bank to provide services to the customers of the contracting out-of-state bank, national bank, association, or savings bank. The commissioner may issue a written statement of intent not to object at any time prior to the expiration of the 30 days. This subsection shall not be construed to limit the powers granted to a bank under section 4101(1)(d).

(6) Subject to the requirements, limitations, and restrictions of subsections (1) to (3), a state agency or state foreign bank branch organized under this act may establish and operate additional offices in the United States and its territories and protectorates.

(7) An out-of-state bank or national bank located in a state, the District of Columbia, or a territory or protectorate of the United States whose laws permit the establishment in that state, district, territory, or protectorate of a branch by a bank may establish and operate 1 or more branches in this state.

(8) An out-of-state bank may apply to organize a branch in this state under this act by providing to the commissioner proof that its deposits are insured by an agency of the United States government. If the commissioner determines that the out-of-state bank is safe and sound, that the out-of-state bank is subject to regulation, and that there exists an agreement for exchange of supervisory information between the bureau and the out-of-state bank's regulator, the commissioner shall provide to the out-of-state bank a certificate of organization and eligibility to accept deposits and investments of public funds of the state and local units of government.

(9) A foreign bank branch that has designated a home state other than this state may establish and operate 1 or more additional offices in this state.

(10) Prior to commencing operations at a branch in this state, an out-of-state bank, foreign bank, or national bank shall provide written notice to the commissioner of the name of the bank, the street address and mailing address, if different, of the bank's principal office, the street address of the branch office, and the date when the branch is to commence operations in this state.

(11) Each bank, out-of-state bank, foreign bank, and national bank operating in this state shall do both of the following:

(a) Designate and maintain an agent located in this state upon whom process for judicial and administrative matters may be served and shall provide written notice containing the name and address of its agent to the commissioner before commencing operations in this state.

(b) Notify the commissioner in writing of any change in its designated agent or the agent's address within 10 days following the effective date of the change.

(12) For purposes of this section, the designated agent of a bank or a national bank is its chief executive officer.

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

487.13712 Discontinuing branch operations; transfer of functions to principal office.

Sec. 3712. (1) If a bank or foreign bank permanently discontinues the operations of any branch, foreign bank agency, or foreign bank branch, all functions of the branch, foreign bank agency, or foreign bank branch shall be considered transferable to, and treated as a part of, the principal office of the bank or, in the case of a foreign bank, the principal office in this country.

(2) A bank, out-of-state bank, national bank, or foreign bank shall notify the commissioner in writing before discontinuing operations of a branch, foreign bank agency, or foreign bank branch.

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

487.13713 Principal office; relocation.

Sec. 3713. (1) Upon prior written notice to the commissioner, a bank may change the location of its principal office to any existing branch location of the bank within this state.

(2) Unless the commissioner objects in writing within 60 days after receipt of written notice from the bank of its intent to relocate its principal office, a bank may change the location of its principal office to any other location within this state which is not an existing branch location of the bank. The commissioner may issue a written statement of intent not to object at any time before expiration of the 60 days.

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

487.13714 Branch office in foreign country; applicable provisions.

Sec. 3714. Notwithstanding section 1105 of the uniform commercial code, both of the following apply:

(a) A bank which has 1 or more branch offices in a foreign country shall be liable for contracts to be performed and for deposits to be repaid at any branch office in that foreign country to no greater extent than a bank, banking corporation, or other organization or association for banking purposes organized and existing under the laws of the foreign country would be liable under its laws. The laws of the foreign country for the purpose of this section are considered to include all acts, decrees, regulations, and orders promulgated or enforced by a dominant authority asserting governmental, military, or police power of any kind at the place where the branch office is located, whether or not the dominant authority is recognized as a de facto or de jure government.

(b) If by action of a dominant authority that is not recognized by the United States as the de jure government of the foreign territory concerned, any property situated in or any amount to be received in the foreign territory and carried as an asset of a branch office of the bank in the foreign territory is seized, destroyed, or canceled, the liability of the bank for any deposit received and to be repaid by it, and for any contract made and to be performed by it, at any branch office in the foreign territory shall be reduced pro tanto by the proportion that the value, as shown by the books or other records of the bank at the time of the seizure, destruction, or cancellation of the assets bears to the aggregate of all the deposit and contract liabilities of the branch offices of the bank in the foreign territory, as shown at the time by the books or other records of the bank.

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