CHAPTER 13

Bank Loans and Investments

**SECTION 34‑13‑50.** Maximum amounts of loans; generally.

 (A) The total liabilities, direct and indirect, of any one borrower to a bank, including in the liabilities of a company or firm the liabilities of its several members, may never exceed ten percent of the bank's unimpaired capital, except by two‑thirds vote of the directors of the bank, in which case liabilities other than those of officers and directors as described in Section 34‑13‑80 may be extended to fifteen percent of the bank's unimpaired capital. However, liabilities may be extended by an additional amount not to exceed thirty‑five percent of the unimpaired capital of the bank when the additional loans are secured by direct obligations of the United States Government or direct obligations of this State. The discount of bills of exchange drawn in good faith against existing values and the discount of commercial or business paper are not considered money borrowed.

 (B) For purposes of this section, "unimpaired capital" means the total of the amount of:

 (1) unimpaired common stock;

 (2) perpetual preferred stock;

 (3) surplus;

 (4) undivided profits, excluding disallowed intangibles;

 (5) reserve for contingencies and other capital reserves, excluding accrued dividends on perpetual and limited life preferred stock;

 (6) mandatory convertible debt;

 (7) allowance for loan losses; and

 (8) capital debentures or notes, convertible or otherwise, having an average original maturity of at least seven years and having been designated specifically as part of the bank's unimpaired capital by resolution duly adopted by the board of directors of the bank.

 (C) For purposes of this section, "total liabilities" include any credit exposure of a bank to a borrower arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between a bank and that borrower.

 (D) For purposes of this section, "derivative transaction" means any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of any interest in, or any quantitative measure or the occurrence of any event relating to one or more commodities, securities, currencies, interest, or other rates, indices, or assets.

HISTORY: 1962 Code Section 8‑225; 1952 Code Section 8‑225; 1942 Code Section 7857; 1932 Code Section 7869; Civ. C. '22 Section 3999; Civ. C. '12 Section 2661; Civ. C. '02 Section 1776; R. S. 1539a; 1897 (22) 463; 1923 (33) 159; 1936 (39) 1495; 1955 (49) 258; 1975 (59) 142; 1998 Act No. 295, Section 1, eff upon approval (became law without the Governor's signature on April 21, 1998); 2012 Act No. 211, Section 1, eff June 7, 2012.

Effect of Amendment

The 1998 amendment designated the existing text as subsection (A) and rewrote the subsection; and added subsection (B).

The 2012 amendment added subsections (C) and (D).

**SECTION 34‑13‑60.** Maximum amounts of loans; exceptions for certain loans secured by shipping documents and the like.

 Notwithstanding the provisions of Section 34‑13‑50 the obligations of any person in the form of notes or drafts secured by shipping documents, warehouse receipts or other such documents transferring or securing title covering readily marketable nonperishable staples when such property is fully covered by insurance, if it is customary to insure such staples, shall be subject:

 (1) To a limitation of twenty‑five per cent of such capital and surplus when the market value of such staples securing such obligations is not at any time less than one hundred and fifteen per cent of the face amount of such obligations;

 (2) To a limitation of thirty per cent of such capital and surplus when the market value of such staples securing such obligations is not at any time less than one hundred and twenty per cent of the face amount of such obligations; and

 (3) To a limitation in addition to such thirty per cent of such capital and surplus increased by an additional five per cent thereof for each and every additional five per centum of the market value of such staples securing such obligations not in excess, however, of a total limitation of fifty per cent of such capital and surplus.

 But this exception shall not apply to obligations of any one person arising from the same transaction or secured upon the identical staples for more than ten months.

HISTORY: 1962 Code Section 8‑226; 1952 Code Section 8‑226; 1942 Code Section 7857; 1932 Code Section 7869; Civ. C. '22 Section 3999; Civ. C. '12 Section 2661; Civ. C. '02 Section 1776; R. S. 1539a; 1897 (22) 463; 1923 (33) 159; 1936 (39) 1495.

**SECTION 34‑13‑70.** Maximum amounts of loans; another maximum.

 (A) In no case shall a loan be made by any state bank which when added to the then existing total loans to the borrower thereof would increase the total to more than twenty‑five percent of the capital, surplus, and deposits of the bank, less the amount invested in real estate, bonds, or other securities.

 (B) For purposes of this section, "loan" includes any credit exposure to a borrower arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between a bank and that borrower.

 (C) For purposes of this section, "derivative transaction" means any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of any interest in, or any quantitative measure or the occurrence of any event relating to one or more commodities, securities, currencies, interest, or other rates, indices, or assets.

HISTORY: 1962 Code Section 8‑227; 1952 Code Section 8‑227; 1942 Code Section 7857; 1932 Code Section 7869; Civ. C. '22 Section 3999; Civ. C. '12 Section 2661; Civ. C. '02 Section 1776; R. S. 1539a; 1897 (22) 463; 1923 (33) 159; 1936 (39) 1495; 2012 Act No. 211, Section 2, eff June 7, 2012.

Effect of Amendment

The 2012 amendment inserted subsection designator (A), added subsections (B) and (C), and made other nonsubstantive changes.

**SECTION 34‑13‑80.** Limitations on loans to directors and officers.

 Directors and officers of any bank incorporated under the laws of this State, members of their families, and entities with which they are associated, may borrow or obtain credit from the bank in the same manner and under the same terms and conditions that directors and officers, members of their families, and entities with which they are associated, of any national bank are permitted to borrow or obtain credit from the national bank as provided by law.

HISTORY: 1962 Code Section 8‑228; 1952 Code Section 8‑228; 1942 Code Section 7858; 1932 Code Section 7872; Civ. C. '22 Section 4000; Civ. C. '12 Section 2662; Civ. C. '02 Section 1777; R. S. 1540; 1885 (19) 212; 1897 (22) 463; 1914 (28) 487; 1918 (30) 880; 1923 (33) 161; 1962 (52) 1716; 1971 (57) 108; 1975 (59) 142; 1975 (59) 586; 1980 Act No. 304, Section 1; 1984 Act No. 391, Section 1; 1990 Act No. 378, Section 1, eff March 19, 1990.

Effect of Amendment

The 1990 amendment revised this section.

**SECTION 34‑13‑90.** Penalty for improper borrowing by directors or officers.

 A person who violates the provisions of Section 34‑13‑80 is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both.

HISTORY: 1962 Code Section 8‑229; 1952 Code Section 8‑229; 1942 Code Section 7874‑1; 1932 Code Section 1361; Cr. C. '22 Section 258; Cr. C. '12 Section 296; Cr. C. '02 Section 218; 1897 (21) 463; 1984 Act No. 391, Section 2; 1993 Act No. 184, Section 64, eff January 1, 1994.

Effect of Amendment

The 1993 amendment rewrote this section so as to change portions from misdemeanors to felonies and the maximum term of imprisonment to conform to the new crime classification system.

**SECTION 34‑13‑100.** Investigation of security consisting of warehouse receipts.

 When warehouse receipts for products are pledged as securities in any State bank under examination the examiner of such bank may go upon the premises of the person issuing the receipts, question the management under oath and, if thought necessary, have the actual product exhibited to him.

HISTORY: 1962 Code Section 8‑230; 1952 Code Section 8‑230; 1942 Code Section 7858; 1932 Code Section 7872; Civ. C. '22 Section 4000; Civ. C. '12 Section 2662; Civ. C. '02 Section 1777; R. S. 1540; 1885 (19) 212; 1897 (22) 463; 1914 (28) 487; 1918 (30) 880; 1923 (33) 161.

**SECTION 34‑13‑110.** Certain discounts are not considered as money borrowed.

 The discount of bills of exchange drawn in good faith against existing values and the discount of commercial business paper shall not be considered as money borrowed.

HISTORY: 1962 Code Section 8‑231; 1952 Code Section 8‑231; 1942 Code Section 7858; 1932 Code Section 7872; Civ. C. '22 Section 4000; Civ. C. '12 Section 2662; Civ. C. '02 Section 1777; R. S. 1540; 1885 (19) 212; 1897 (22) 463; 1914 (28) 487; 1918 (30) 880; 1923 (33) 161.

**SECTION 34‑13‑130.** Repealed by 1995 Act No. 26, Section 1, eff upon approval (became law without the Governor's signature on April 6, 1995).

Editor's Note

Former Section 34‑13‑130 was derived from 1962 Code Section 8‑234; 1952 Code Section 8‑234; 1942 Code Section 7843; 1932 Code Section 7862; Civ. C. '22 Section 3992; Civ. C. '12 Section 2654; Civ. C. '02 Section 1774; R. S. 1538; 1887 (19) 860; 1913 (28) 37; 1919 (31) 41.

Former Section 34‑13‑130 pertained to the maximum investment of banking corporation in real estate mortgages.

**SECTION 34‑13‑140.** Restrictions on loan on or purchase of bank's own stock.

 It shall be unlawful for any banking association to make any loan or discount on the security of the shares of its own capital stock or to be the purchaser or holder of any such shares unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith.

HISTORY: 1962 Code Section 8‑235; 1952 Code Section 8‑235; 1942 Code Section 7860; 1932 Code Section 7873; 1930 (36) 1093.

**SECTION 34‑13‑150.** Investment of funds in Federal savings and loan associations, building and loan associations, and the like.

 It shall be lawful for any building and loan association, bank, trust company or other financial institution operating or doing business in the State or under the laws of the State or the United States, any national bank or the receiver of any bank, trust company, building and loan association or other financial institution operating under the laws of this State or of the United States to invest its funds or the moneys in its custody or possession eligible for investment in the shares of any Federal savings and loan association or in the shares of any building and loan association organized and existing under the laws of this State when such shares are insured by the Federal Savings and Loan Insurance Corporation and also in the bonds or debentures issued by any Federal home loan bank or in the consolidated bonds or debentures issued by the Federal Home Loan Bank Board.

HISTORY: 1962 Code Section 8‑236; 1952 Code Section 8‑236; 1942 Code Section 9051‑2; 1935 (39) 287.

**SECTION 34‑13‑160.** Investment in farm loan bonds and the like; accountability for interest thereon.

 Any banking institution or trust company organized under the laws of this State may invest in, or lend money on the security of: Federal farm loan bonds issued by Federal land banks pursuant to the Federal Farm Loan Act as amended, bonds issued by the Federal Farm Mortgage Corporation pursuant to the provisions of an act of Congress known as the "Federal Farm Mortgage Corporation Act," Federal Intermediate Credit Bank debentures issued pursuant to the Federal Farm Loan Act as amended, and debentures issued by the Central Bank for Cooperatives and regional banks for cooperatives, organized under the Farm Credit Act of 1933, and any notes, bonds, debentures, or other similar obligations, consolidated or otherwise, issued by farm credit institutions pursuant to authorities contained in the Farm Credit Act of 1971 (Public Law 92‑181) or by any of such banks. A banking institution or trust company organized under the laws of this State making an investment or loan authorized by this section shall not be chargeable in its account for a greater rate of interest than the amount actually received on the investment or loan.

HISTORY: 1962 Code Section 8‑237; 1952 Code Section 8‑237; 1942 Code Section 9049; 1932 Code Section 9049; Civ. C. '22 Section 5461; 1918 (30) 763; 1919 (31) 133; 1934 (38) 1493; 1952 (47) 1893; 1955 (49) 152; 1973 (58) 335.

**SECTION 34‑13‑170.** Investment in bank service corporations.

 (1) Citation of section. ‑ This section shall be cited as the "Bank Service Corporation Act."

 (2) Definitions. ‑ For the purposes of this section‑

 (a) The term "bank service corporation" means a corporation whose primary purpose is to perform for two or more banks having an investment in the corporation services such as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of statements, notices, and similar items, or any other similar clerical or bookkeeping function.

 (b) The terms "invest" and "investment" include any advance of funds to a bank service corporation, whether by purchase of stock, the making of a loan, or otherwise, except a payment for earned rent, goods sold and delivered, or services rendered prior to the making of such payment.

 (3) Investments. ‑ Notwithstanding any contrary provision of law relating to banks, a bank may at any time have outstanding investments in a bank service corporation not exceeding ten per cent of the bank's capital and surplus at such time.

HISTORY: 1962 Code Section 8‑238; 1962 (52) 1978.