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).

CROSS REFERENCES

Acceptance of drafts and bills of exchange, see Section 34‑3‑220.

Limitations and restrictions on purchase and sale of securities, see S.C. Code of Regulations R. 15‑1.

Participation in RFC loans, see S.C. Code of Regulations R. 15‑10.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 107, Limit of Loans.

Attorney General’s Opinions

South Carolina banking institutions may invest their own assets in trust for US Treasury Obligations. 1983 Op Atty Gen, No. 83‑20, p. 35.

The purchases of notes and purchase money security agreements by Andrews Bank and Trust Company from O & W Toyota, Inc., by assignments with recourse against the dealer and with further personal guarantees by the company’s owners, are subject to the maximum loan limitations of 1962 Code Section 8‑225 [1976 Code Section 34‑13‑50]. 1975‑76 Op Atty Gen, No 4413, p 262.

NOTES OF DECISIONS

In general 1

1. In general

Cited in State v Duckett, 133 SC 85, 130 SE 340 (1925). Hodges v Bank of Columbia, 130 SC 115, 125 SE 417 (1924).

**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.

CROSS REFERENCES

Acceptance of drafts and bills of exchange, see Section 34‑3‑220.

Warehouse receipts, bills of lading and other documents of title, see Section 36‑7‑101.

Limitations and restrictions on purchase and sale of securities, see S.C. Code of Regulations R. 15‑1.

Participation in RFC loans, see S.C. Code of Regulations R. 15‑10.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 107, Limit of Loans.

**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.

CROSS REFERENCES

Acceptance of drafts and bills of exchange, see Section 34‑3‑220.

Limitations and restrictions on purchase and sale of securities, see S.C. Code of Regulations R. 15‑1.

Participation in RFC loans, see S.C. Code of Regulations R. 15‑10.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 107, Limit of Loans.

**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.

CROSS REFERENCES

Penalty for violation of this section, see Section 34‑13‑90.

Participation in RFC loans, see S.C. Code of Regulations R. 15‑10.

LIBRARY REFERENCES

9 C.J.S., Banks and Banking Sections 386, 387.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 27, Improper Borrowing by Officers or Directors.

S.C. Jur. Banks and Banking Section 95, Prohibited Loans.

Attorney General’s Opinions

A loan from a bank to one of its directors must be approved by a majority of the Board of Directors prior to making the loan. If such is not done, subsequent approval by the Board will not vitiate the fact that the loan was originally made without the proper approval. 1974‑75 Op Atty Gen, No 3943, p 20.

NOTES OF DECISIONS

In general 1

1. In general

Liability of directors on loans made in good faith. Under this section [Code 1962 Section 8‑228], directors making a loan are not liable for losses incurred, where the loan is made in good faith. Wheeler v. Aiken County Loan & Savings Bank, 1896, 75 F. 781.

Code 1962 section for protection of bank. This section [Code 1962 Section 8‑228] being intended for the protection of the bank, and not of its officers, does not affect the validity of any loan that may be made in violation of the statute; and hence an officer borrowing from the bank cannot escape liability on ground that a note given as evidence of debt was illegal when executed. Waring v. Johnson (S.C. 1929) 152 S.C. 317, 149 S.E. 840.

Cited in State v. Duckett (S.C. 1925) 133 S.C. 85, 130 S.E. 340.

**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.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 27, Improper Borrowing by Officers or Directors.

S.C. Jur. Banks and Banking Section 95, Prohibited Loans.

Attorney General’s Opinions

A loan from a bank to one of its directors must be approved by a majority of the Board of Directors prior to making the loan. If such is not done, subsequent approval by the Board will not vitiate the fact that the loan was originally made without the proper approval. 1974‑75 Op Atty Gen, No 3943, p 20.

NOTES OF DECISIONS

In general 1

1. In general

This section [Code 1962 Section 8‑229] does not impose civil liability on officers who lend the money. Wheeler v. Aiken County Loan & Savings Bank, 1896, 75 F. 781.

Proof necessary to conviction. To convict bank director of unlawfully borrowing money from bank by overdrafts, State must prove that overdrafts were loans consciously and knowingly obtained. State v. Jones (S.C. 1932) 164 S.C. 415, 162 S.E. 466. Banks And Banking 62

Intent of officer to defraud is not essential, and, where director’s approval of loan was in blanket form and not made in contemplation of any particular loan, it was insufficient to protect borrower. State v. Duckett (S.C. 1925) 133 S.C. 85, 130 S.E. 340.

Meaning of “approval.” ‑ Under this section [Code 1962 Section 8‑229] “approval” implies knowledge and the exercise of discretion after knowledge. To approve beforehand would be without knowledge and without the exercise of discretion. State v. Duckett (S.C. 1925) 133 S.C. 85, 130 S.E. 340.

Change of venue. See State v. Harvey (S.C. 1924) 128 S.C. 494, 122 S.E. 860.

**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.

CROSS REFERENCES

Acceptance of drafts and bills of exchange, see Section 34‑3‑220.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 110, Authority to Discount.

**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.

LIBRARY REFERENCES

9 C.J.S., Banks and Banking Section 166.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 109, Collateral for Loans.

**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.

CROSS REFERENCES

Investments by banks in bonds of Home Owners’ Loan Corporation, see Section 31‑19‑40.

Investments by banks in housing obligations, see Sections 31‑19‑10 et seq.

Investment by State or political subdivisions in savings and loan associations, see Section 11‑1‑60.

Investment in and use of obligations of International Bank by public agencies, see Section 11‑1‑70.

Investment of public funds in building and loan associations and banking institutions, see Section 12‑45‑220.

Obligations authorized as investments under Housing Authorities Law, see Section 31‑3‑1630.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 103, Investments by Banks.

**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.

Federal Aspects

Farm Credit Act of 1971, which revises, reenacts and expands repealed provisions of Federal Farm Loan Act, Federal Farm Mortgage Corporation Act, and Federal Farm Credit Act of 1933, see 12 U.S.C.A. Sections 2001 et seq.

NOTES OF DECISIONS

In general 1

1. In general

Complaint based on violation of section must allege loss. A complaint that a minor’s money was invested in a business hazardous in its operation and not in accordance with the provisions of this section [Code 1962 Section 8‑237] may not be made where no loss has been shown and, consequently, no liability revealed on the part of anyone for damages. Matheson v. McCormac (S.C. 1938) 186 S.C. 93, 195 S.E. 122. Guardian And Ward 53

Fiduciary is liable only for rate of interest actually received. The fiduciary is not to be charged with a greater rate of interest than the amount he actually receives on the investments. In re Willcox (S.C. 1933) 170 S.C. 167, 169 S.E. 890.

**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.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 103, Investments by Banks.