

HOUSE BILL No. 4520

March 22, 1989, Introduced by Reps. Stabenow, Van Regenmorter, Pitoniak, Gire, DeBeaussiaert, DeMars, Varga, Camp and Munsell and referred to the Committee on Economic Development and Energy.

A bill to amend sections 79, 85, and 105 of Act No. 319 of the Public Acts of 1969, entitled as amended

"Banking code of 1969,"

sections 79 and 105 as amended by Act No. 177 of the Public Acts of 1985, being sections 487.379, 487.385, and 487.405 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 79, 85, and 105 of Act No. 319 of the
2 Public Acts of 1969, sections 79 and 105 as amended by Act
3 No. 177 of the Public Acts of 1985, being sections 487.379,
4 487.385, and 487.405 of the Michigan Compiled Laws, are amended
5 to read as follows:

6 Sec. 79. (1) With the approval of the commissioner, and by
7 a vote of shareholders owning $\frac{2}{3}$ of each class of the stock
8 entitled to vote, a bank may increase its capital stock to any

1 sum approved by the commissioner, either by an increase in the
2 par value of the existing stock or by the issuance of new stock,
3 including preferred stock. An increase in capital shall not be
4 valid until the whole amount of the increase is paid in and
5 notice ~~thereof, duly acknowledged before a notary public~~ OF THE
6 INCREASE, SIGNED by the president, vice-president, cashier, or
7 assistant cashier of the bank, has been transmitted to the com-
8 missioner and his or her certificate obtained specifying the
9 amount of the increase in capital stock and that it has been duly
10 paid in as a part of the capital of the bank. The certificate
11 shall be conclusive evidence that the stock has been duly and
12 validly issued. In the case of the issuance of new stock, in
13 voting upon the increase of capital stock, the shareholders enti-
14 tled to vote shall have power, by the same statutory majority, to
15 fix the value of ~~—~~ and the price at which the increase of the
16 capital stock shall be subscribed and paid for by the sharehold-
17 ers, but not less than par, as well as the time and manner of the
18 subscription and payment, and to authorize the directors to sell
19 the capital stock.

20 (2) Notwithstanding the provisions of this section, any
21 bank, with the approval of the commissioner and by a vote of
22 shareholders owning $\frac{2}{3}$ of each class of the stock entitled to
23 vote, for the stated purpose of providing stock options for 1 or
24 more employees, may increase its capital stock in an aggregate
25 par value amount not to exceed at any one time 5% of the par
26 value of its then outstanding common capital stock. The
27 additional capital stock, when duly authorized, may be issued by

1 the bank from time to time for such purpose but for no other
2 purpose, as options are exercised and payment for the stock is
3 received, free from any preemptive rights to subscribe for
4 stock.

5 Sec. 85. (1) From time to time, the board of directors of a
6 bank may declare and pay dividends on the common stock of the
7 bank subject to the following restrictions:

8 (a) A cash dividend or dividend in kind shall not be
9 declared or paid unless the bank will have a surplus amounting to
10 not less than 20% of its capital after the payment of the
11 dividend.

12 (b) A cash dividend or dividend in kind shall not be
13 declared by any bank except out of net profits then on hand after
14 deducting ~~therefrom~~ FROM NET PROFITS its losses and bad debts.
15 All debts due the bank on which interest is past due and unpaid
16 for a period of 6 months, unless the debts are well secured and
17 in process of collection or the debts constitute claims against
18 solvent estates in probate, shall be considered bad debts within
19 the meaning of this section.

20 (c) A cash dividend or dividend in kind shall not be
21 declared or paid until the cumulative dividends on preferred
22 stock, if any, have been paid in full.

23 (d) If at any time the surplus of a bank is less than the
24 amount of its capital, before the declaration of a cash dividend
25 or dividend in kind, it shall transfer to surplus not less than
26 10% of its net profits of the preceding half-year in the case of
27 quarterly or semiannual dividends, or not less than 10% of its

1 net profits of the preceding 2 consecutive half-year periods in
2 the case of annual dividends. For the purpose of this section,
3 any amounts transferred to a reserve account for the retirement
4 of any preferred stock of any bank out of its net profits for
5 such periods shall be deemed to be additions to its surplus, if,
6 upon the retirement of the preferred stock, the amounts so cred-
7 ited into the retirement reserve may then properly be carried to
8 surplus. In any such case the bank shall be obligated to credit
9 to surplus the amounts transferred into the retirement reserve on
10 account of the preferred stock as ~~such~~ THAT stock is retired.

11 (e) For the purpose of this section the term "net profits"
12 means the remainder of all earnings from operations plus actual
13 recoveries on loans and investments and other assets, after
14 deducting from the total thereof all operating expenses, actual
15 losses, accrued dividends on preferred stock, if any, and all
16 taxes.

17 (f) Without regard to the foregoing limitations of this sec-
18 tion, any bank, with the approval of the commissioner, and by
19 vote of shareholders owning 2/3 of the stock entitled to vote,
20 may increase its capital stock by declaration of a stock dividend
21 on ~~such~~ THAT capital stock. After the increase the surplus of
22 the bank shall be at least equal to 20% of the capital stock as
23 increased. ~~No such SUCH AN increase shall be~~ IS NOT effec-
24 tive until a certificate of ~~such~~ THE declaration of dividend,
25 signed by the president, vice-president, cashier, or assistant
26 cashier of the bank, ~~and duly acknowledged before a notary~~
27 ~~public, shall have been~~ IS transmitted to the commissioner and

1 his OR HER certificate obtained specifying the amount of the
2 increase of capital stock by stock dividend and his OR HER
3 approval ~~thereof~~ OF THE INCREASE.

4 (2) Any bank may pay dividends on its preferred stock at
5 ~~such~~ A rate as may be applicable without regard to any of the
6 limitations of this section.

7 Sec. 105. (1) With the approval of the commissioner, and by
8 vote of shareholders owning a majority of voting shares of the
9 bank, a bank may amend its articles of incorporation in any
10 manner not inconsistent with the provisions of this act. An
11 amendment ~~shall be~~ IS operative when certified copies ~~thereof~~
12 OF THE AMENDMENT, in ~~such~~ THE form as the commissioner may
13 require, signed in the name of the bank by the president or a
14 vice-president and the cashier or an assistant cashier, ~~and~~
15 ~~acknowledged before a notary public by the president or~~
16 ~~vice president signing the same, have been~~ ARE submitted to the
17 commissioner and ~~have been~~ ARE approved and filed by the com-
18 missioner as in the case of original articles of incorporation.

19 (2) Notwithstanding subsection (1), an amendment that pro-
20 vides solely for a change in the name of the bank is not subject
21 to the approval of the commissioner and ~~shall be~~ IS effective
22 on the date it is filed with the commissioner or at a later date
23 specified in the amendment.