

**286.3-115 Capital notes and debentures may be issued -- Conditions.**

- (1) With the approval of the commissioner a bank or trust company may, at any time, by resolution of its board of directors, which resolution shall have been approved at a stockholders' meeting by two-thirds (2/3) of the outstanding capital stock of the bank, issue and sell its capital notes or debentures in an amount not in excess of one hundred percent (100%) of its unimpaired paid-in capital stock plus fifty percent (50%) of its unimpaired surplus. The aggregate amount of such capital notes or debentures issued or sold by a bank or trust company shall be exempt from the limitations and restrictions on indebtedness, as may be provided in its articles of incorporation.
- (2) Such capital notes and debentures shall be subordinate to the claims of creditors and depositors, and shall be provided in any such capital notes or debentures that in the event of liquidation all depositors and other creditors of the bank shall be entitled to be paid in full, with such interest as may be provided by law, before any payment shall be made on account of principal of or interest on said capital notes or debentures, and may provide that after payment in full of all sums owing to such depositors and creditors the holders of such capital notes shall be entitled to be paid from the remaining assets of the bank, the unpaid principal amount of the capital notes or debentures, plus accrued and unpaid interest thereon, before any payment or other distribution, whether in cash, property or otherwise, shall be made on account of any capital stock of the bank.
- (3) The capital notes or debentures shall in no case be subject to any assessment. The holders of such capital notes or debentures shall not be liable for any debts, contracts, or engagements of such bank, nor for assessments to restore impairments in the capital of such bank, unless the holder is a stockholder in such bank.
- (4) Such capital notes or debentures issued or sold by a bank or trust company shall be considered as a portion of the capital and unimpaired surplus or capital structure of the issuing bank or trust company and shall be considered as such in determining the bank's legal lending or investment limits, and for other purposes, when based upon the capital and unimpaired surplus of the bank or trust company; except that such capital notes and debentures shall not be considered in determining the amount of ad valorem taxes payable by the bank or trust company.
- (5) No such capital notes or debentures may be retired or paid by the bank or trust company if at the time of retirement or payment or immediately after, there be an existing deficiency of the bank's or trust company's capital stock, as determined by the commissioner.
- (6) No such capital notes or debentures shall be issued or sold by a bank or trust company except for cash, and no bank or trust company which issues such capital notes or debentures shall acquire or hold any of its capital notes or debentures in its own assets or in fiduciary capacity. Any of its own notes or debentures acquired by a bank contrary to the provisions of this section shall be forthwith disposed of by sale or charged to its undivided profits account.

- (7) Wherever the terms "capital," "capital stock," or "capital structure" are used in this section, they shall be construed to have reference only to capital actually paid in and capital stock actually issued.

**Effective:** July 15, 2010

**History:** Amended 2010 Ky. Acts ch. 24, sec. 624, effective July 15, 2010. -- Amended 1984 Ky. Acts ch. 324, sec. 15, effective July 13, 1984. -- Created 1970 Ky. Acts ch. 209, sec. 6, effective June 18, 1970.

**Formerly codified as** KRS 287.115.

**Legislative Research Commission Note** (7/12/2006). In accordance with 2006 Ky. Acts ch. 247, secs. 38 and 39, this statute has been renumbered as a section of the Kentucky Financial Services Code, KRS Chapter 286.