§ 609. Resumption of business by bank, trust company or industrial bank; retirement of certificates; applicability to stock-form savings banks and stock-form savings and loan associations. 1. Any bank, trust company, stock-form savings bank or stock-form savings and loan association of which the superintendent has taken possession or which is operating under restrictions imposed by duly constituted authority may be permitted by the superintendent, in his discretion and subject to such conditions as may be approved by him, to resume business in accordance with the provisions of this section.

2. No bank, trust company or industrial bank permitted by the superintendent to resume business in accordance with the provisions of this section shall, without previously obtaining the written permission of the superintendent, pay, on account of any deposit made or debt incurred before such restrictions were imposed or before the superintendent took possession of such bank, trust company or industrial bank, more than that proportion of eighty per centum of the total value of its sound assets, as determined by the superintendent, which such deposit or debt bears to the total of the deposits and debts of such bank, trust company or industrial bank at the time of resuming business: provided that nothing contained in this section shall affect any preference created by any law of this state for the benefit of any depositor or creditor or impair the rights of any secured depositor or creditor in any assets lawfully pledged or assigned as such security. For the purposes of this section, the holder of a judgment against any such bank, trust company or industrial bank for the payment of money arising out of a cause of action arising prior to such resumption of business, whether such judgment was recovered prior or subsequent to such resumption of business, shall have the same rights as if he were a depositor having a balance equal to the amount of such judgment at the time such restrictions were imposed or at the time the superintendent took possession of such bank, trust company or industrial bank. The superintendent shall prepare for each such bank, trust company or industrial bank a list of the assets which, in his judgment, are sound and the value thereof as determined by him.

3. Such bank, trust company or industrial bank shall, immediately upon

resuming business, issue to its depositors and creditors non-negotiable transferable certificates, in a form approved by the superintendent, representing the part of its deposits and debts which it is not authorized to pay at that time under the provisions of subdivision two of this section. Such certificates shall bear interest, if any, at a rate not in excess of three per centum per annum.

4. The superintendent shall from time to time determine the excess of the value of the sound assets of such bank, trust company or industrial bank over the total of the principal amount of such certificates outstanding and of the deposits and debts of such bank, trust company or industrial bank not represented by such certificates, including deposits made and debts incurred after resuming business. The amount by which such excess is greater than the excess of the value of the sound assets of such bank, trust company or industrial bank, determined as provided in subdivision two of this section, over its total deposits and debts at the time of resuming business may, unless the superintendent disapproves, be paid pro rata on account of the principal due on such certificates or, if the principal has been paid in full, on account of the interest, if any, due thereon. No such bank, trust company or industrial bank shall, without previously obtaining the written permission of the superintendent, make any other payment on account of the principal or interest of such certificates.

5. No dividends shall be paid on the stock of such bank, trust company or industrial bank while any such certificates are outstanding, unless, having previously secured the written permission of the superintendent to pay such certificates, it shall set aside and maintain a sum sufficient for the payment of all such outstanding certificates and the interest, if any, accrued thereon and shall publish once a week for two calendar weeks in a newspaper published in the county in which its principal office is located, notice to the effect that it will pay all such certificates and the interest, if any, accrued thereon upon due presentation for payment. If, thereafter, any such certificate together with all interest, if any, accrued thereon, shall not be paid when so presented, the authority of such bank, trust company or industrial bank to pay such dividends shall cease.

6. So long as any of such certificates are outstanding, every holder of such a certificate shall have the same right to notice of all regular or special meetings of the stockholders of such bank, trust company or industrial bank and to attend and to vote in person or by proxy at such meetings as would a holder of stock of the par value of the unpaid principal amount of such certificate, except that no holder of a certificate or certificates shall be entitled to vote upon any change in respect to shares or capital stock pursuant to title eight of article fifteen or to receive notice of or attend a meeting of stockholders specially called for that purpose. Within sixty days after such bank, trust company or industrial bank has resumed business a meeting of its stockholders and holders of such certificates shall be called upon notice prescribed by the superintendent. At such meeting directors shall be elected who shall succeed the former directors, and the directors so elected shall elect officers who shall succeed the former officers. Directors in office at the date of such meeting may be elected at such meeting to succeed themselves and the directors elected at such meeting may elect officers then serving to succeed themselves.

7. If the superintendent shall retake possession of the business and property of such bank, trust company or industrial bank while any such certificates are still outstanding and liquidate its business as elsewhere provided in this chapter, deposits and debts not represented by such certificates, including deposits made and debts incurred after resuming business, shall be entitled to payment of principal and interest in priority to the payment of the principal and interest of such certificates.

8. (a) A plan for the retirement of certificates issued or made available by a bank, trust company or industrial bank pursuant to the provisions of this section may be promulgated in accordance with this subdivision eight in any case where the value of all the assets of such bank, trust company or industrial bank as determined by the superintendent is less than the aggregate of the amounts owing to depositors and other creditors plus the unpaid amount of all such certificates so issued or made available by such bank, trust company or

industrial bank. Such plan may be promulgated by such bank, trust company or industrial bank or by the holders of ten per centum or more in principal amount of all such outstanding certificates or the representative or representatives of such holders.

(b) Such plan may provide for any one or more of the following:

(1) The retirement of certificates by the issuance in exchange therefor of shares of capital stock or debentures or both of such bank, trust company or industrial bank;

(2) The issuance of preferred stock of such bank, trust company or industrial bank and the sale of such preferred stock for cash or its exchange for real or personal property or for outstanding capital notes, debentures or other obligations of such bank, trust company or industrial bank;

(3) The issuance of fractional shares of capital stock of such bank, trust company or industrial bank in exchange for certificates or portions thereof in unpaid amount insufficient to permit the exchange thereof for a full share of capital stock. Such fractional shares of capital stock shall have no voting rights, but, when combined with other fractional shares in sufficient amount, shall be convertible into a full share or shares of capital stock;

(4) The transfer into a separate account upon the books of such bank, trust company or industrial bank or to a separate corporation, of any assets to be liquidated for the pro rata benefit of certificate holders and the issuance to certificate holders of evidences of participation in such assets if transferred into a separate account upon the books of such bank, trust company or industrial bank, or of stock or obligations or both of such separate corporation, if such assets are transferred to a separate corporation;

(5) The organization of a corporation to issue its stock or obligations or both in exchange for certificates and for the exchange of certificates so acquired by such corporation for shares of the capital stock or debentures or both of such bank, trust company or industrial bank;

(6) The amount of capital stock which such bank, trust company or industrial bank shall have upon the plan becoming effective, the classes, if any, into which such capital stock shall be divided, the number of shares in each class and the par value of each share.

In addition to provisions herein specifically authorized to be contained in a plan promulgated pursuant to this subdivision, such plan may also contain any other provisions deemed necessary or convenient to effectuate the general purpose or purposes of the plan.

(c) The person or persons promulgating such plan shall first submit it to the superintendent for his approval. If the plan is approved by the superintendent, such person shall within sixty days of such approval submit it to the supreme court in and for the county in which the principal office of such bank, trust company or industrial bank is located, together with an application for its approval. Such application shall set forth such facts as may be necessary to enable the court to determine the fairness of such plan and shall be made upon an order to show cause which shall provide that notice thereof of a kind which the court deems to be adequate shall be given by such bank, trust company or industrial bank to all holders of such certificates and all other persons whose interests, in the opinion of the court, may be affected by such plan. If the issue is raised in any proceeding involving a plan promulgated pursuant to this subdivision, a certificate executed by the superintendent and filed with the court shall be presumptive evidence of the fact that the value of all of the assets of such bank, trust company or industrial bank is less than the aggregate of the amounts owing to depositors and other creditors plus the unpaid amount of all such certificates issued or made available by such bank, trust company or industrial bank.

(d) The superintendent or the bank, trust company or industrial bank or any person or persons authorized to promulgate a plan hereunder may propose and submit to the court an alternative plan or a modification or modifications of any plan before the court. The court may modify any such plan or may propose a new or alternative plan, provided, however, that a modification or modifications, whether proposed by the court or by any other person or persons, may be made only after a hearing upon notice to all holders of certificates and all other persons whose interests, in the opinion of the court, may be affected thereby, and subject to the right of any person who shall previously have consented to such plan to withdraw such consent within a period to be prescribed by the court and after such notice as the court may direct. If any

person having such right of withdrawal shall not withdraw within the period so prescribed he shall be deemed to have approved such plan as so modified.

(e) After the hearing or hearings above provided the court shall by order approve a plan, with or without modifications, or shall reject all such plans, provided, however, that no order made pursuant to this paragraph approving such plan shall be made or entered unless such plan, in final form, shall first have been approved in writing by the superintendent and such written approval shall have been filed in the proceeding. If at the time of making the order approving such plan, the court is satisfied that the holders of two-thirds in amount of such certificates have approved such plan, the order of the court shall recite such fact and shall declare that such plan shall be effective upon the filing by the superintendent in the office of the clerk of the county in which is located the principal office of such bank, trust company or industrial bank of the certificate required to be filed pursuant to paragraph (k) of this subdivision. If at the time of making such order, such plan shall not have been approved by the holders of two-thirds in amount of such certificates, such order shall provide that upon satisfactory proof of the fact that the holders of two-thirds in amount of such certificates shall have approved the same, a further order may be entered ex parte declaring that such plan shall be effective upon the filing by the superintendent in the office of the clerk of the county in which is located the principal office of such bank, trust company or industrial bank of the certificate required to be filed pursuant to paragraph (k) of this subdivision.

(f) Upon the entering of an order declaring that such plan shall be effective upon the filing by the superintendent in the office of the county clerk of the certificate required to be filed pursuant to paragraph (k) of this subdivision, such plan shall become binding upon the holders of all certificates of such bank, trust company or industrial bank and all such holders shall be conclusively deemed to have consented to all the terms and conditions of such plan whether or not all of such holders shall actually have consented thereto and whether or not all of them shall have received notice thereof or of the hearing thereon hereinbefore provided.

(g) Every executor, administrator, trustee, guardian, committee,

conservator, receiver, or other fiduciary, and every public and private corporation or association, and every political and public instrumentality or body, including, but not by way of limitation of the generality of the foregoing, boards of education and school districts and other special districts, is hereby authorized and empowered to approve and accept a plan promulgated pursuant to this subdivision and to execute and deliver such papers and documents as may be necessary or proper to evidence such approval and acceptance, and shall not be subject to any liability whatsoever for any such approval or acceptance or any exchange of certificates for stock or other securities or both made pursuant thereto.

(h) A plan promulgated pursuant to this subdivision may be effectuated even though it has not been expressly approved by the holders of two-thirds in amount of all outstanding certificates, provided, as an alternative to such express approval, the provisions of this paragraph have been complied with. After the plan is approved by the superintendent as provided by paragraph (c) of this subdivision, the person or persons promulgating such plan shall file a copy thereof with the clerk of the court and shall prepare and mail to each of the holders of such certificates and to each of the holders of stock of the bank, trust company or industrial bank, addressed by registered mail to him, postage prepaid, to his last known address as the same appears on the records of the bank, trust company or industrial bank, a summary of such plan together with a notice stating in substance that such plan will be presented to the supreme court in and for the county in which the principal office of the bank, trust company or industrial bank is located, and designating a date, which date shall not be less than thirty days after the mailing of such notice, when such court will consider such plan and hear any objection thereto on the part of any holder of a certificate or of stock. Such notice shall also be published by the person or persons promulgating such plan once, at least twenty days before said date, in a daily newspaper of general circulation published in the county where such hearing is to be had and if no such daily newspaper is published in such county, then such notice shall be published in a newspaper of general circulation in said county. Upon the return of such notice or any adjourned date or dates thereof, the court shall hear the parties interested therein and may accept proof in

affidavit form or otherwise as to any facts and circumstances material thereto. The court upon proof by affidavit that the provisions hereof with respect to mailing and publication have been fully complied with shall thereupon approve, modify or disapprove such plan, but in no event shall any such plan, with or without modifications, be approved by the court unless the court deems such plan fair and equitable to the holders of certificates and unless such plan, in final form, shall first have been approved in writing by the superintendent, and such written approval shall have been filed in the proceeding; or if written dissent therefrom, duly executed and acknowledged, shall be filed with the clerk of the court prior to such return date, or prior to such other date as may be fixed by the court, by the holders in the aggregate of more than thirty-three and one-third per centum of the face amount of the certificates affected by such plan. All holders of certificates who have not dissented from the plan in the manner provided by this paragraph and prior to the return date or such other date as may be fixed by the court shall be conclusively deemed to have assented thereto. Such plan shall contain a provision in respect of certificate holders dissenting thereto, to the effect that adequate protection will be provided for the realization by them of the value of their certificates by such method as will in the opinion of the court, under and consistent with the circumstances of the particular case, be equitable and fair to them. When such plan, with or without modifications, shall be approved by the court, the court shall make an order reciting such approval and declaring that such plan shall be effective upon the filing by the superintendent in the office of the clerk of the county in which is located the principal office of such bank, trust company or industrial bank of the certificate required to be filed pursuant to paragraph (k) of this subdivision. The appellate court to which an appeal is taken by any dissenting certificate holder or by any stockholder from any action by the court pursuant to this section shall have the right to impose upon the appellant as part of the costs of the appeal, reasonable fees of counsel for the respondent, and such appellate court may also, in its discretion, require bond therefor before entertaining any such appeal.

(i) Upon the entering of an order declaring that such plan shall be effective upon the filing by the superintendent in the office of the county clerk of the certificate required to be filed pursuant to

paragraph (k) of this subdivision, such steps shall be taken by the superintendent and all other persons, and all acts shall be done as may be required by such plan and as may be necessary or desirable to make such plan operative. Within ten days after the entering of such order, the superintendent shall issue an order pursuant to article two of this chapter directing that such bank, trust company or industrial bank shall forthwith make good the impairment of its capital. Upon receipt of such order, the directors of the bank, trust company or industrial bank shall give notice to each stockholder of such requisition and of the amount of the assessment he must pay, which amount shall be the aggregate par value of his shares. Such notice shall be mailed to each stockholder at his address appearing on the records of the bank, trust company or industrial bank or shall be served personally upon him. Notwithstanding any provision of section one hundred fourteen or section three hundred six of this chapter, all outstanding stock certificates of the bank, trust company or industrial bank shall be canceled of record not less than thirty days after notice of assessment is given to stockholders as herein provided, and thereupon such stock certificates shall be null and void for all purposes and the rights of the holders thereunder shall cease and determine; provided, however, that each stockholder who pays the full amount of such assessment within thirty days after notice of assessment is given as herein provided shall receive, in lieu of the stock on account of which such assessment was paid, new stock in the amount to which he would be entitled if he held certificates issued by such bank, trust company or industrial bank pursuant to the provisions of this section in an aggregate unpaid principal and interest amount equal to the assessment so paid.

(j) Not less than thirty nor more than sixty days after notice of assessment is given to stockholders as provided in paragraph (i) of this subdivision, the superintendent shall, if the plan so provides, cause any assets of such bank, trust company or industrial bank which are to be liquidated for the pro rata benefit of certificate holders, to be set aside in a special account upon the books of such bank, trust company or industrial bank or transferred to a separate corporation.

(k) Upon the completion of the acts required to be done pursuant to paragraph (i) and paragraph (j) of this subdivision and not more than sixty days after notice of assessment is given to stockholders as

provided in paragraph (i) of this subdivision, the superintendent shall execute in triplicate a certificate declaring such plan to be effective and stating the amount of capital stock which such bank, trust company or industrial bank shall thereafter have, the classes, if any, into which such capital stock shall be divided, the number of shares in each class and the par value of each such share. The amount of capital stock stated in such certificate shall be not less than the amount of capital stock required to be issued to certificate holders pursuant to such plan, plus the amount of capital stock required, pursuant to paragraph (i) of this subdivision, to be issued to stockholders who shall have paid the full amount of the assessments levied pursuant to such paragraph (i). The amount of capital stock, the number of shares and the par value of each such share as stated in such certificate shall be the amount of capital stock, the number of shares and the par value thereof which such bank, trust company or industrial bank shall thereafter be authorized to have, provided that nothing herein contained shall be deemed to limit the power of any such bank, trust company or industrial bank subsequently to change the amount of its capital stock, the number of its shares or the par value of its shares pursuant to subdivision two of section eight thousand one. One of such triplicate certificates shall be transmitted forthwith by the superintendent to such bank, trust company or industrial bank, another shall be filed in the office of the superintendent and the third shall be filed by the superintendent in the office of the clerk of the county in which is located the principal office of such bank, trust company or industrial bank. Upon such filing in the office of the county clerk, the plan shall become effective and all certificates theretofore issued by such bank, trust company or industrial bank pursuant to the provisions of this section shall be null and void and shall not be deemed to be outstanding for any purpose. Thereupon such bank, trust company or industrial bank shall issue and make available to the holders of such certificates shares of stock or debentures or both of such bank, trust company or industrial bank, and if the plan so provides, evidences of participation in the assets aside in a special account or stock or other securities or both of a separate corporation, in the proportions and amounts specified in such plan.

(l) Within sixty days after a plan pursuant to this subdivision has

become effective with respect to any bank, trust company or industrial bank, there shall be called in accordance with its by-laws a meeting of its stockholders who shall elect directors who shall succeed the former directors. The directors so elected shall elect officers who shall succeed the former officers. Directors in office at the date of such meeting may be elected at such meeting to succeed themselves and the directors elected at such meeting may elect officers then serving to succeed themselves. Notwithstanding the requirements as to ownership of capital stock contained in section one hundred sixteen or section three hundred three of this chapter, the directors of such bank, trust company or industrial bank holding office at the time that such plan becomes effective may continue to hold office as directors, until their successors are elected and shall have qualified.

(m) The supreme court in and for the county in which is located the principal office of such bank, trust company or industrial bank is hereby vested with jurisdiction and authority to determine the fairness of, and to approve or disapprove, any plan, or modification or modifications thereof, which may be promulgated hereunder and to determine the fairness of, and to approve or disapprove, the terms and conditions of the issuance and exchange of stock or other securities, or both, of any corporation for certificates issued pursuant to the provisions of this section and to make such orders and do such other things as may be required by this subdivision or as may be necessary or convenient to carry out the purposes hereof.

9. If there be in article fifteen of this chapter a provision which conflicts with any provision of this section six hundred nine, the provision of this section six hundred nine shall prevail, and the conflicting provision of article fifteen shall not apply in such case. If there be in article fifteen a provision relating to a matter embraced in this section six hundred nine, but not in conflict therewith, both provisions shall apply.