

The attorney general may appoint, and at pleasure remove, six deputy attorneys general and ~~46~~ 35 assistant attorneys general. The appointees shall render such aid as is required of them in the discharge of the official duties of the attorney general. To the extent authorized in writing by the attorney general, they shall have authority to appear before grand juries or in any court of this state, as the attorney general personally might do.

The attorney general shall have power to employ such assistance, whether lay, legal, or expert, as the attorney general deems necessary for the protection of the interests of the state through the proper conduct of its legal business.

Sec. 2. [8.20] DELEGATION OF CONTRACT REVIEW.

The attorney general may delegate the power to approve contracts as to form and execution to any state official if it is determined that the delegation will produce a significant, demonstrable improvement in the efficiency or operation of state government. The attorney general may condition the delegation as the attorney general determines to be necessary to protect the interests of the state.

Sec. 3. EFFECTIVE DATE.

Sections 1 and 2 are effective the day following final enactment.

Approved May 29, 1987

CHAPTER 336—S.F.No. 463

An act relating to commerce; providing enforcement powers; regulating securities; regulating the business of financial planning; restricting certain charges made by investment advisors and broker dealers; providing for the registration of securities; providing for disclosure of interest rate or discount point agreements; providing for the denial, suspension, and revocation of licenses and the censure of licensees; exempting the sale of certain stock of a closely-held corporation; exempting certain industrial revenue bond transactions; regulating real estate brokers and salespersons; prohibiting commission-splitting and rebating on timeshare and other recreational lands; providing for continuing education of brokers; regulating licensees acting as principals; regulating abandoned property; establishing a presumption of abandonment for certain profits or sums held by a cooperative; regulating the transfer and storage of abstracts of title to real property; transferring the powers and duties of the commissioner for the regulation of social and charitable organizations to the attorney general and providing for further regulation of such organizations; appropriating money; amending Minnesota Statutes 1986, sections 60A.17, subdivision 6c; 72A.27; 80A.06, subdivision 5; 80A.07, subdivision 1; 80A.09, subdivision 1; 80A.12, by adding a subdivision; 80A.14, subdivision 18; 80A.15, subdivisions 1 and 2; 80A.19, subdivision 1; 80A.23, subdivision 11; 80A.26, subdivision 3; 80C.17, subdivision 1; 82.17, subdivision 4; 82.21, subdivision 1; 82.22, subdivision 6; 82.24, subdivision 2; 82.34, subdivision 19; 308.12, by adding a subdivision; 309.50, subdivi-

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sion 6; 309.515, subdivision 1; 309.52, subdivisions 1a and 2; 309.53, subdivisions 1a, 3, 4, and by adding a subdivision; 309.531; 309.533, by adding a subdivision; 309.54; 309.55, subdivision 6; 309.556; 309.56, subdivision 1; 309.57; 345.39; and 386.375; proposing coding for new law in Minnesota Statutes, chapters 45, 47, 82, and 508; repealing Minnesota Statutes 1986, sections 72A.23; 72A.24; 72A.28; 80A.20; 80A.21; 80C.15; 80C.16, subdivision 1; 82.25; 82.26; 83.34; 83.35, subdivision 3; 238.085; 309.515, subdivision 3; 309.532; 309.533, subdivisions 2, 3, and 4; 309.534; 309.555; and 309.58.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[45.026] REGULATION OF BUSINESS OF FINANCIAL PLANNING.**

Subdivision 1. DEFINITIONS. For the purposes of this section, the following terms have the meanings given them:

(a) "Person" means an individual, corporation, partnership, joint venture, joint stock association, trust, or unincorporated association.

(b) "Financial planner" means a person who, on advertisements, cards, signs, circulars, letterheads, or in another manner, indicates that the person is a "financial planner," "financial counselor," "financial adviser," "investment counselor," "investment adviser," "financial consultant," or other similar designation, title, or combination is considered to be representing that the person is engaged in the business of financial planning.

(c) "Advertisement" includes:

(1) printed or published material, audiovisual material, and descriptive literature of a financial planner used in direct mail, newspapers, magazines, other periodicals, radio scripts, television scripts, billboards, and other similar displays, excluding advertisements prepared for the sole purpose of obtaining employees, agents, or agencies;

(2) descriptive literature and sales ads of all kinds issued by a financial planner for presentation to members of the public, including but not limited to, circulars, leaflets, booklets, depictions, illustrations, and form letters;

(3) prepared sales talks, presentations, and materials for use by a financial planner and any representations made by a financial planner in accordance with these talks, presentations, and materials; and

(4) statements, written or oral, by a financial planner.

Subd. 2. FIDUCIARY DUTY. Persons who represent that they are financial planners have a fiduciary duty to persons for whom services are performed for compensation. In an action for breach of fiduciary duty, a person may recover actual damages resulting from the breach, together with costs and disbursements.

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Subd. 3. PENALTY. A financial planner is subject to section 2, subdivision 5 in chapter 45.

Sec. 2. [45.027] INVESTIGATIONS AND SUBPOENAS.

Subdivision 1. GENERAL POWERS. In connection with the administration of chapters 45 to 83, 309, and 332, the commissioner of commerce may:

(1) make public or private investigations within or without this state as the commissioner considers necessary to determine whether any person has violated or is about to violate chapters 45 to 83, 309, and 332 or any rule or order under those chapters, or to aid in the enforcement of chapters 45 to 83, 309, and 332, or in the prescribing of rules or forms under those chapters;

(2) require or permit any person to file a statement in writing, under oath or otherwise as the commissioner determines, as to all the facts and circumstances concerning the matter being investigated;

(3) hold hearings, upon reasonable notice, in respect to any matter arising out of the administration of chapters 45 to 83, 309, and 332;

(4) conduct investigations and hold hearings for the purpose of compiling information with a view to recommending changes in chapters 45 to 83, 309, and 332 to the legislature;

(5) examine the books, accounts, records, and files of every licensee under chapters 45 to 83, 309, and 332 and of every person who is engaged in any activity regulated under chapters 45 to 83, 309, and 332; the commissioner or a designated representative shall have free access during normal business hours to the offices and places of business of the person, and to all books, accounts, papers, records, files, safes, and vaults maintained in the place of business;

(6) publish information which is contained in any order issued by the commissioner; and

(7) require any person subject to chapters 45 to 83, 309, and 332 to report all sales or transactions that are regulated under chapters 45 to 83, 309, and 332. The reports must be made within ten days after the commissioner has ordered the report. The report is accessible only to the respondent and other governmental agencies unless otherwise ordered by a court of competent jurisdiction.

Subd. 2. POWER TO COMPEL PRODUCTION OF EVIDENCE. For the purpose of any investigation, hearing, or proceeding under chapters 45 to 83, 309, and 332, the commissioner or a designated representative may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of books, papers, correspondence, memoranda, agreements, or other documents or records that the commissioner considers relevant or material to the inquiry.

Subd. 3. COURT ORDERS. In case of a refusal to appear or a refusal to

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obey a subpoena issued to any person, the district court, upon application by the commissioner, may issue to any person an order directing that person to appear before the commissioner, or the officer designated by the commissioner, there to produce documentary evidence if so ordered or to give evidence relating to the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

Subd. 4. SCOPE OF PRIVILEGE. No person is excused from attending and testifying or from producing any document or record before the commissioner, or from obedience to the subpoena of the commissioner or any officer designated by the commissioner or in a proceeding instituted by the commissioner, on the ground that the testimony or evidence required may tend to incriminate that person or subject that person to a penalty of forfeiture. No person may be prosecuted or subjected to a penalty or forfeiture for or on account of a transaction, matter, or thing concerning which the person is compelled, after claiming the privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

Subd. 5. LEGAL ACTIONS; INJUNCTIONS; CEASE AND DESIST ORDERS. Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of chapters 45 to 83, 309, and 332, or any rule or order adopted under those chapters, the commissioner has the following powers: (1) the commissioner may bring an action in the name of the state in the district court of the appropriate county to enjoin the acts or practices and to enforce compliance with chapters 45 to 83, 309, and 332, or any rule or order adopted or issued under those chapters, or the commissioner may refer the matter to the attorney general or the county attorney of the appropriate county. Upon a proper showing, a permanent or temporary injunction, restraining order, or other appropriate relief must be granted; (2) the commissioner may issue and cause to be served upon the person an order requiring the person to cease and desist from violations of chapters 45 to 83, 309, and 332, or any rule or order adopted or issued under those chapters. The order must be calculated to give reasonable notice of the rights of the person to request a hearing and must state the reasons for the entry of the order. A hearing must be held not later than seven days after the request for the hearing is received by the commissioner, after which and within 20 days after receiving the administrative law judge's report, the commissioner shall issue a further order vacating the cease and desist order or making it permanent as the facts require. If no hearing is requested within 30 days of service of the order, the order will become final and will remain in effect until it is modified or vacated by the commissioner. Unless otherwise provided, all hearings must be conducted in accordance with chapter 14. If the person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, the person is in default, and the proceeding may be determined against that person upon consideration of the cease and desist order, the allegations of which may be considered to be true. The commissioner may adopt rules of procedure concerning all proceedings conducted under this subdivision.

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Subd. 6. VIOLATIONS AND PENALTIES. The commissioner may impose a civil penalty not to exceed \$2,000 per violation upon a person who violates chapters 45 to 83, 309, and 332, unless a different penalty is specified.

Subd. 7. ACTIONS AGAINST LICENSEES. In addition to any other actions authorized by this section, the commissioner may, by order, deny, suspend, or revoke the authority or license of a person subject to chapters 45 to 83, 309, or 332, or censure that person if the commissioner finds that:

- (1) the order is in the public interest; or
- (2) the person has violated chapters 45 to 83, 309, or 332.

Subd. 8. STOP ORDER. In addition to any other actions authorized by this section, the commissioner may issue a stop order denying effectiveness to or suspending or revoking any registration subject to chapters 45 to 83, 309, or 332.

Subd. 9. POWERS ADDITIONAL. The powers contained in subdivisions 1 to 8 are in addition to all other powers of the commissioner.

Sec. 3. [45.028] SERVICE OF PROCESS.

Subdivision 1. REQUIREMENT. When a person, including any nonresident of this state, engages in conduct prohibited or made actionable by chapters 45 to 83, 309, and 332, or any rule or order under those chapters, and the person has not filed a consent to service of process under chapters 45 to 83, 309, and 332, that conduct is equivalent to an appointment of the commissioner as the person's attorney to receive service of process in any noncriminal suit, action, or proceeding against the person which is based on that conduct and is brought under chapters 45 to 83, 309, and 332, or any rule or order under those chapters.

Subd. 2. HOW MADE. Service of process under this section may be made by leaving a copy of the process in the office of the commissioner, and is not effective unless: (1) the plaintiff, who may be the commissioner in an action or proceeding instituted by the commissioner, sends notice of the service and a copy of the process by certified mail to the defendant or respondent at the last known address; and (2) the plaintiff's affidavit of compliance is filed in the action or proceeding on or before the return day of the process, if any, or within further time as the court allows.

Sec. 4. [45.029] FINANCIAL STATEMENT.

Wherever used in chapters 45 to 83, or rules adopted thereunder, the term "certified" as applied to balance sheets, profit and loss statements or other financial statements shall be construed as meaning an audited financial statement prepared in accordance with generally accepted accounting principles that has been examined by an independent certified public accountant for the purpose of expressing an opinion. The opinion by the certified public accountant shall contain a statement that it fairly represents the financial position of the organization or person.

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Sec. 5. [47.206] INTEREST RATE OR DISCOUNT POINT AGREEMENTS.

Subdivision 1. DEFINITIONS. For the purposes of this section, the terms defined in this subdivision have the meanings given them.

(a) "Lender" means a person or entity referred to in section 47.20, subdivision 1, a credit union, or a person making a conventional loan as defined under section 47.20, subdivision 2, clause (3), or cooperative apartment loan as defined under section 47.20, subdivision 2, clause (4), except that conventional loans or cooperative apartment loans include any loan or advance of credit in an original principal balance of less than \$200,000.

(b) "Loan" means loans and advances of credit authorized under section 47.20, subdivision 1, clauses (1) to (4), and conventional loans as defined under section 47.20, subdivision 2, clause (3), or cooperative apartment loans as defined under section 47.20, subdivision 2, clause (4), except that conventional loans or cooperative apartment loans also include all loans and advances of credit in an original principal balance of less than \$200,000. "Loan" does not include a loan or advance of credit secured by a mortgage upon real property containing more than one residential unit or secured by a security interest in shares of more than one residential unit in a building owned or leased by a cooperative apartment corporation.

(c) "Borrower" means a natural person who has submitted an application for a loan to a lender.

(d) "Interest rate or discount point agreement" or "agreement" means a contract between a lender and a borrower under which the lender agrees, subject to the lender's underwriting and approval requirements, to make a loan at a specified interest rate or number of discount points, or both, and the borrower agrees to make a loan on those terms. The term also includes an offer by a lender that is accepted by a borrower under which the lender promises to guarantee or lock in an interest rate or number of discount points, or both, for a specific period of time.

Subd. 2. DISCLOSURES. A lender offering borrowers the opportunity to enter into an agreement in advance of closing shall disclose, in writing, to the borrowers at the time the offer is made: (1) a definite expiration date or term of the agreement, which may not be less than the reasonably anticipated closing date or time required to process, approve, and close the loan; (2) the circumstances, if any, under which the borrower will be permitted to close at a lower rate of interest or points than expressed in the agreement; (3) the steps required to process, approve, and close the loan, including the actions required of the borrower and lender; (4) that the agreement is enforceable by the borrower; and (5) the consideration required for the agreement.

Subd. 3. AGREEMENTS TO BE IN WRITING. A borrower or lender may not maintain an action on an agreement unless the agreement is in writing

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or is permitted by subdivision 4, expresses consideration, sets forth the relevant terms and conditions, and is signed by the borrower and the lender.

Subd. 4. ORAL AGREEMENTS AND ACCEPTANCES PROHIBITED. A lender may not offer or induce a borrower to accept an oral agreement and a borrower may not be permitted to orally accept an agreement, provided that if the borrower and lender have not executed a written agreement, this subdivision does not prohibit the offer and acceptance of an oral agreement which is offered and accepted during a period no greater than ten days before closing.

Subd. 5. STATEMENT OF CURRENT TERMS NOT AN OFFER. An oral or written statement of current loan terms and conditions, including interest rates and number of discount points, is not an offer or an inducement by a lender to enter into an agreement. A written statement of current loan terms and conditions must be accompanied by a disclaimer that the statement is not an offer to enter into an agreement and that an offer may only be made pursuant to subdivisions 3 and 4.

Subd. 6. PROHIBITED ACTS. A person, including a lender, may not advise, encourage, or induce a borrower or third party to misrepresent information that is the subject of a loan application or to violate the terms of the agreement.

Subd. 7. PENALTIES. (a) Except as provided in paragraph (c), a lender who violates this section or who causes unreasonable delay in processing a loan application beyond the expiration date of the agreement is liable to the borrower for a penalty in an amount not to exceed the borrower's actual out-of-pocket damages, including the present value of the increased interest costs over the normal life of the loan, or specific performance of the agreement. This paragraph applies to an agreement entered into after January 1, 1987.

(b) In addition to the penalty in paragraph (a), a lender is liable to the borrower for \$500 for each violation of this section or for unreasonable delay in processing a loan application which causes the agreement to expire before closing.

(c) A lender who violates subdivision 4 is jointly and severally liable to the borrower for specific performance of the agreement or for a penalty in the amount of \$500 or an amount not to exceed the borrower's actual out-of-pocket damages, including the present value of the increased costs over the normal life of the loan, whichever is greater, due to the good faith reliance of the borrower on the lender's oral representation.

(d) For purposes of this subdivision, evidence of unreasonable delay includes, but is not limited to:

(1) failure of the lender to return telephone calls or otherwise respond to the borrower's inquiries concerning the status of the loan;

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(2) the addition by the lender of new requirements for processing or approving the loan that were not disclosed to the borrower under subdivision 2, clause (3), unless the requirements result from governmental agency or secondary mortgage market changes, other than changes in interest rates, that occur after the date of the agreement; or

(3) failure by the lender to take actions necessary to process or approve the loan within a reasonable period of time, if the borrower provided information requested by the lender in a timely manner.

Sec. 6. [47.208] DELIVERY OF SATISFACTION OF MORTGAGE.

Subdivision 1. DELIVERY REQUIRED. Upon written request, a good and valid satisfaction of mortgage in recordable form shall be delivered to any party paying the full and final balance of a mortgage indebtedness that is secured by Minnesota real estate; such delivery shall be in hand or by certified mail post-marked within 45 days of the receipt of the written request to the holder of any interest of record in said mortgage and within 45 days of the payment of all sums due thereon.

Subd. 2. PENALTY. If a lender fails to comply with the requirements of subdivision 1, the lender may be held liable to the party paying the balance of the mortgage debt, for a civil penalty of up to \$500, in addition to any actual damages caused by the violation.

Sec. 7. Minnesota Statutes 1986, section 60A.17, subdivision 6c, is amended to read:

Subd. 6c. REVOCATION OR SUSPENSION OF LICENSE. (a) The commissioner may by order suspend or revoke an insurance agent's or agency's license issued to a natural person or impose a civil penalty appropriate to the offense, not to exceed \$5,000 upon that licensee, or both, if, after notice and hearing, the commissioner finds as to that licensee any one or more of the following conditions:

- (1) any materially untrue statement in the license application;
- (2) any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner at the time of issuance;
- (3) violation of, or noncompliance with, any insurance law or violation of any rule or order of the commissioner or of a commissioner of insurance of another state or jurisdiction;
- (4) obtaining or attempting to obtain any license through misrepresentation or fraud;
- (5) improperly withholding, misappropriating, or converting to the licensee's own use any moneys belonging to a policyholder, insurer, beneficiary, or other person, received by the licensee in the course of the licensee's insurance business;

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(6) misrepresentation of the terms of any actual or proposed insurance contract;

(7) conviction of a felony or of a gross misdemeanor or misdemeanor involving moral turpitude;

(8) that the licensee has been found guilty of any unfair trade practice, as defined in chapters 60A to 72A, or of fraud;

(9) that in the conduct of the agent's affairs under the license, the licensee has used fraudulent, coercive, or dishonest practices, or the licensee has been shown to be incompetent, untrustworthy, or financially irresponsible;

(10) that the agent's license has been suspended or revoked in any other state, province, district, territory, or foreign country;

(11) that the licensee has forged another's name to an application for insurance; or

(12) that the licensee has violated subdivision 6b.

(b) The commissioner may by order suspend or revoke an insurance agent's or insurance agency's license issued to a partnership or corporation or impose a civil penalty not to exceed \$5,000 upon that licensee, or both, if, after notice and hearing, the commissioner finds as to that licensee, or as to any partner, director, shareholder, officer, or employee of that licensee, any one or more of the conditions set forth in paragraph (a).

(c) A revocation of a license shall prohibit the licensee from making a new application for a license for at least one year. Further, the commissioner may, as a condition of relicensure, require the applicant to file a reasonable bond for the protection of the citizens of this state, which bond shall be maintained by the licensee in full force for a period of five years immediately following issuance of the license, unless the commissioner at the commissioner's discretion shall after two years permit the licensee to sooner terminate the maintenance filing of the bond.

(d) ~~Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of chapters 60A to 72A or of any rule or order of the commissioner:~~

~~(1) The commissioner may issue and cause to be served upon the person an order requiring the person to cease and desist from the violation. The order shall give reasonable notice of the time and place of hearing and shall state the reasons for the entry of the order. A hearing shall be held not later than seven days after the issuance of the order unless the person requests a delay. After the hearing and within 30 days of filing of any exceptions to the administrative law judge's report, the commissioner shall issue an order vacating the cease and desist order or making it permanent as the facts require. All hearings shall be conducted in accordance with the provisions of chapter 14. If the person to~~

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whom a cease and desist order is issued fails to appear at the hearing after being duly notified, the person shall be deemed in default, and the proceeding may be determined against the person upon consideration of the cease and desist order, the allegations of which may be deemed to be true;

(2) The commissioner may bring an action in the district court in the appropriate county to enjoin the acts or practices and to enforce compliance with chapters 60A to 72A and any rule or order of the commissioner; and

(3) In any proceeding under chapters 60A to 72A relating to injunction, the request for injunction may be brought on for hearing and disposition upon an order to show cause returnable upon not more than eight days notice to the defendant. The case shall have precedence over other matters on the court calendar and shall not be continued without the consent of the state of Minnesota, except upon good cause shown to the court, and then only for a reasonable length of time as may be necessary in the opinion of the court to protect the rights of the defendant.

(e) The commissioner may, in the manner prescribed by chapter 14, impose a civil penalty not to exceed \$5,000 upon a person whose license has lapsed, or been suspended, revoked, or otherwise terminated, for engaging in conduct prohibited by paragraph (a) before, during, or after the period of licensure.

Sec. 8. Minnesota Statutes 1986, section 72A.27, is amended to read:

72A.27 APPEAL.

Any decree or order of a district court made and entered under section ~~72A.24~~ or 72A.25 is subject to review by appeal as in other civil cases. The appeal must be taken within the time prescribed by law for taking appeals from orders of the district courts.

Sec. 9. Minnesota Statutes 1986, section 80A.06, subdivision 5, is amended to read:

Subd. 5. No investment adviser who shall recommend the purchase or sale of a security to a client, and no licensed broker-dealer acting as a broker-dealer for a customer in the purchase or sale of a security shall take or accept any remuneration or other thing of value from any person other than the client or customer in connection with ~~such~~ the purchase or sale unless, prior to or contemporaneously with ~~such~~ the recommendation in the case of an investment adviser and prior to or contemporaneously with the confirmation of the transaction in the case of a licensed broker-dealer so acting, written disclosure to the client or customer is made of the acceptance or intended acceptance of ~~such~~ the remuneration or other thing of value and of the amount ~~thereof~~ of it. All charges made by an investment adviser for services and all charges by a licensed broker-dealer for services rendered as a broker-dealer or for advice with respect to securities shall be reasonable, and except in compliance with rules adopted by the commissioner, no ~~such~~ charges shall be based upon or measured by profits

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accrued or to accrue from transactions recommended or carried out by an investment adviser, or licensed broker-dealer. This subdivision shall not be construed to prohibit charges by an investment adviser based upon the total value of the assets under management averaged over a definite period, or as of definite dates, or taken as of a definite date, nor charges based upon the performance of the managed assets as compared to an established index in compliance with rules ~~promulgated~~ adopted by the commissioner.

Sec. 10. Minnesota Statutes 1986, section 80A.07, subdivision 1, is amended to read:

Subdivision 1. The commissioner may by order deny, suspend, or revoke any license or may censure the licensee, if the commissioner finds (a) that the order is in the public interest and (b) that the applicant or licensee or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

(1) has filed an application for license which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) has willfully violated or failed to comply with any provision of this chapter or a predecessor law or any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or order under any of these statutes, ~~or any order thereunder~~ of which that person has notice and is subject;

(3) has been convicted, within the past ten years, of any misdemeanor involving a security or any aspect of the securities business, or any felony;

(4) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(5) is the subject of an order of the commissioner denying, suspending, or revoking a license as a broker-dealer, agent or investment adviser;

(6) is the subject of an order entered within the past five years by the securities administrator of any other state or by the securities and exchange commission denying or revoking registration or license as a broker-dealer, agent, or investment adviser, or is the subject of an order of the securities and exchange commission suspending or expelling that person from a national securities exchange or association registered under the Securities Exchange Act of 1934, or is the subject of a United States post office fraud order. The commissioner may not institute a revocation or suspension proceeding under this clause more than one

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year from the date of the order relied on, and may not enter an order under this clause on the basis of an order under another state law unless the order was based on facts which would currently constitute a ground for an order under this section;

(7) has engaged in dishonest or fraudulent practices in the securities business;

(8) has failed to maintain the minimum net capital or to comply with the limitation on aggregate indebtedness which the commissioner by rule prescribes;

(9) is not qualified on the basis of such factors as training, experience, and knowledge of the securities business;

(10) has failed reasonably to supervise agents, investment adviser representatives, or employees to assure their compliance with this chapter;

(11) has failed to pay the proper filing fee, but the commissioner shall vacate the order when the deficiency has been corrected;

(12) has offered or sold securities in this state through any unlicensed agent;

(13) has made any material misrepresentation to the commissioner, or upon request reasonably made by the commissioner, has withheld or concealed information from, or refused to furnish information to, the commissioner; ~~or~~

(14) has failed to reasonably supervise agents, investment adviser representatives, or employees if that person has assumed or has been designated to carry out the supervisory procedures of the broker-dealer or investment adviser; or

(15) has failed, within 20 business days after receiving written instructions from a customer, to do any of the following:

(a) transfer or deliver securities that have been purchased;

(b) transfer or deliver any free credit balances reflecting completed transactions; or

(c) transfer or deliver a customer's account securities positions and balances to another broker-dealer.

This clause shall not serve as a basis for denial, suspension, or revocation of a broker-dealer's or agent's license if: (i) the transfer or delivery is between broker-dealers and meets the rules and requirements established by the New York stock exchange with regard to the transfer or delivery; or (ii) the delivery of securities to a customer cannot be accomplished within 20 business days, and the broker-dealer or agent has notified the customer in writing of the inability to deliver the securities and the reasons for the nondelivery within 20 business days of receiving the customer's written instructions.

Sec. 11. Minnesota Statutes 1986, section 80A.09, subdivision 1, is amended to read:

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Subdivision 1. The following securities may be registered by notification:

(a) ~~any industrial revenue bond issued by the state of Minnesota or any of its political subdivisions, municipalities, governmental agencies, or instrumentalities; and~~

(b) any securities issued by a person organized exclusively for social, religious, educational, benevolent, fraternal, charitable, reformatory, athletic, chamber of commerce, trade, industrial development, or professional association purposes and not for pecuniary gain, and no part of the net earnings of which inures to the benefit of any private stockholder or individual; provided that no securities issued by any person offering and furnishing a burial service or funeral benefit, directly or indirectly for financial consideration, may be registered under this section.

Sec. 12. Minnesota Statutes 1986, section 80A.12, is amended by adding a subdivision to read:

Subd. 11. Within two business days after receipt of an order of the commissioner withdrawing, suspending, or revoking effectiveness of an issuer's registration statement, the issuer must notify all persons making a market in the issuer's securities of the termination of the effectiveness of the registration statement. Failure to provide this notice may result in the imposition of a civil penalty not to exceed \$2,000 per violation.

Sec. 13. Minnesota Statutes 1986, section 80A.14, subdivision 18, is amended to read:

Subd. 18. **SECURITY.** (a) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable shares; investment contract; investment metal contract or investment gem contract; voting trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas or mining right, title or lease or in payments out of production under the right, title or lease; or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, temporary or interim certificate for, receipt for guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include:

(a) any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or for some other specified period; or

(b) stock of a closely-held corporation offered or sold pursuant to a transaction in which 100 percent of the stock of that corporation is sold as a means to effect the sale of the business of the corporation if the transaction has been negotiated on behalf of all purchasers, and if all purchasers have access to inside information regarding the corporation before consummating the transaction.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

Sec. 14. Minnesota Statutes 1986, section 80A.15, subdivision 1, is amended to read:

Subdivision 1. The following securities are exempted from sections 80A.08 and 80A.16:

(a) Any security, including a revenue obligation, ~~issued or~~ guaranteed by the United States, any state, any political subdivision of a state or any corporate or other instrumentality of one or more of the foregoing; but this exemption shall not include any industrial revenue bond. Pursuant to section 106(c) of the Secondary Mortgage Market Enhancement Act of 1984, Public Law Number 98-440, this exemption does not apply to a security that is offered or sold pursuant to section 106(a)(1) or (2) of that act.

(b) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any province, any agency or corporate or other instrumentality of one or more of the foregoing, if the security is recognized as a valid obligation by the issuer or guarantor; but this exemption shall not include any revenue obligation payable solely from payments to be made in respect of property or money used under a lease, sale or loan arrangement by or for a nongovernmental industrial or commercial enterprise.

(c) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution or trust company organized under the laws of any state and subject to regulation in respect of the issuance or guarantee of its securities by a governmental authority of that state.

(d) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan or similar association organized under the laws of any state and authorized to do business in this state.

(e) Any security issued or guaranteed by any federal credit union or any credit union, or similar association organized and supervised under the laws of this state.

(f) Any security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange, the Pacific Stock Exchange, or the Chicago Board Options Exchange; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing.

(g) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of the paper which is

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likewise limited, or any guarantee of the paper or of any renewal which are not advertised for sale to the general public in newspapers or other publications of general circulation or otherwise, or by radio, television or direct mailing.

(h) Any interest in any employee's savings, stock purchase, pension, profit sharing or similar benefit plan, or a self-employed person's retirement plan.

(i) Any security issued or guaranteed by any railroad, other common carrier or public utility which is subject to regulation in respect to the issuance or guarantee of its securities by a governmental authority of the United States.

(j) Any interest in a common trust fund or similar fund maintained by a state bank or trust company organized and operating under the laws of Minnesota, or a national bank wherever located, for the collective investment and reinvestment of funds contributed thereto by the bank or trust company in its capacity as trustee, executor, administrator, or guardian; and any interest in a collective investment fund or similar fund maintained by the bank or trust company, or in a separate account maintained by an insurance company, for the collective investment and reinvestment of funds contributed thereto by the bank, trust company or insurance company in its capacity as trustee or agent, which interest is issued in connection with an employee's savings, pension, profit sharing or similar benefit plan, or a self-employed person's retirement plan.

(k) Any security which meets all of the following conditions:

(1) If the issuer is not organized under the laws of the United States or a state, it has appointed a duly authorized agent in the United States for service of process and has set forth the name and address of the agent in its prospectus;

(2) A class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934, and has been so registered for the three years immediately preceding the offering date;

(3) Neither the issuer nor a significant subsidiary has had a material default during the last seven years, or for the period of the issuer's existence if less than seven years, in the payment of (i) principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for borrowed money, or (ii) rentals under leases with terms of three years or more;

(4) The issuer has had consolidated net income, before extraordinary items and the cumulative effect of accounting changes, of at least \$1,000,000 in four of its last five fiscal years including its last fiscal year; and if the offering is of interest bearing securities, has had for its last fiscal year, net income, before deduction for income taxes and depreciation, of at least 1-1/2 times the issuer's annual interest expense, giving effect to the proposed offering and the intended use of the proceeds. For the purposes of this clause "last fiscal year" means the most recent year for which audited financial statements are available, provided that such statements cover a fiscal period ended not more than 15 months from the commencement of the offering;

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(5) If the offering is of stock or shares other than preferred stock or shares, the securities have voting rights and the rights include (i) the right to have at least as many votes per share, and (ii) the right to vote on at least as many general corporate decisions, as each of the issuer's outstanding classes of stock or shares, except as otherwise required by law; and

(6) If the offering is of stock or shares, other than preferred stock or shares, the securities are owned beneficially or of record, on any date within six months prior to the commencement of the offering, by at least 1,200 persons, and on that date there are at least 750,000 such shares outstanding with an aggregate market value, based on the average bid price for that day, of at least \$3,750,000. In connection with the determination of the number of persons who are beneficial owners of the stock or shares of an issuer, the issuer or broker-dealer may rely in good faith for the purposes of this clause upon written information furnished by the record owners.

(l) Any certificate of indebtedness sold or issued for investment, other than a certificate of indebtedness pledged as a security for a loan made contemporaneously therewith, and any savings account or savings deposit issued, by an industrial loan and thrift company.

Sec. 15. Minnesota Statutes 1986, section 80A.15, subdivision 2, is amended to read:

Subd. 2. The following transactions are exempted from sections 80A.08 and 80A.16:

(a) Any isolated sales, whether or not effected through a broker-dealer, provided that no person shall make more than ten sales of securities of the same issuer pursuant to this exemption during any period of 12 consecutive months; provided further, that in the case of sales by an issuer, except sales of securities registered under the Securities Act of 1933 or exempted by section 3(b) of that act, (1) the seller reasonably believes that all buyers are purchasing for investment, and (2) the securities are not advertised for sale to the general public in newspapers or other publications of general circulation or otherwise, or by radio, television, electronic means or similar communications media, or through a program of general solicitation by means of mail or telephone.

(b) Any nonissuer distribution of an outstanding security if (1) either Moody's, Fitch's, or Standard & Poor's Securities Manuals, or other recognized manuals approved by the commissioner contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date not more than 18 months prior to the date of the sale, and a profit and loss statement for the fiscal year preceding the date of the balance sheet, and (2) the issuer or its predecessor has been in active, continuous business operation for the five-year period next preceding the date of sale, and (3) if the security has a fixed maturity or fixed interest or dividend provision, the issuer has not, within the three preceding fiscal years, defaulted in payment of principal, interest, or dividends on the securities.

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(c) The execution of any orders by a licensed broker-dealer for the purchase or sale of any security, pursuant to an unsolicited offer to purchase or sell; provided that the broker-dealer acts as agent for the purchaser or seller, and has no direct material interest in the sale or distribution of the security, receives no commission, profit, or other compensation from any source other than the purchaser and seller and delivers to the purchaser and seller written confirmation of the transaction which clearly itemizes the commission, or other compensation.

(d) Any nonissuer sale of notes or bonds secured by a mortgage lien if the entire mortgage, together with all notes or bonds secured thereby, is sold to a single purchaser at a single sale.

(e) Any judicial sale, exchange, or issuance of securities made pursuant to an order of a court of competent jurisdiction.

(f) The sale, by a pledge holder, of a security pledged in good faith as collateral for a bona fide debt.

(g) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity.

(h) Any sales by an issuer to the number of persons that shall not exceed 25 persons in this state, or 35 persons if the sales are made in compliance with Regulation D promulgated by the Securities and Exchange Commission, Code of Federal Regulations, title 17, sections 230.501 to 230.506, (other than those designated in paragraph (a) or (g)), whether or not any of the purchasers is then present in this state, if (1) the issuer reasonably believes that all of the buyers in this state (other than those designated in clause (g)) are purchasing for investment, and (2) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state (other than those designated in clause (g)), except reasonable and customary commissions paid by the issuer to a broker-dealer licensed under this chapter, and (3) the issuer has, ten days prior to any sale pursuant to this paragraph, supplied the commissioner with a statement of issuer on forms prescribed by the commissioner, containing the following information: (i) the name and address of the issuer, and the date and state of its organization; (ii) the number of units, price per unit, and a description of the securities to be sold; (iii) the amount of commissions to be paid and the persons to whom they will be paid; (iv) the names of all officers, directors and persons owning five percent or more of the equity of the issuer; (v) a brief description of the intended use of proceeds; (vi) a description of all sales of securities made by the issuer within the six-month period next preceding the date of filing; and (vii) a copy of the investment letter, if any, intended to be used in connection with any sale. Sales that are made more than six months before the start of an offering made pursuant to this exemption or are made more than six months after completion of an offering made pursuant to this

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exemption will not be considered part of the offering, so long as during those six-month periods there are no sales of unregistered securities (other than those made pursuant to paragraph (a) or (g)) by or for the issuer that are of the same or similar class as those sold under this exemption. The commissioner may by rule or order as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase the number of offers and sales permitted, or waive the conditions in clause (1), (2), or (3) with or without the substitution of a limitation or remuneration.

(i) Any offer (but not a sale) of a security for which a registration statement has been filed under sections 80A.01 to 80A.31, if no stop order or refusal order is in effect and no public proceeding or examination looking toward an order is pending; and any offer of a security if the sale of the security is or would be exempt under this section. The commissioner may by rule exempt offers (but not sales) of securities for which a registration statement has been filed as the commissioner deems appropriate, consistent with the purposes of sections 80A.01 to 80A.31.

(j) The offer and sale by a cooperative association organized under chapter 308, of its securities when the securities are offered and sold only to its members, or when the purchase of the securities is necessary or incidental to establishing membership in such association, or when such securities are issued as patronage dividends.

(l) The issuance and delivery of any securities of one corporation to another corporation or its security holders in connection with a merger, exchange of shares, or transfer of assets whereby the approval of stockholders of the other corporation is required to be obtained, provided, that the commissioner has been furnished with a general description of the transaction and with other information as the commissioner by rule prescribes not less than ten days prior to the issuance and delivery.

(m) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters.

(n) The distribution by a corporation of its or other securities to its own security holders as a stock dividend or as a dividend from earnings or surplus or as a liquidating distribution; or upon conversion of an outstanding convertible security; or pursuant to a stock split or reverse stock split.

(o) Any offer or sale of securities by an affiliate of the issuer thereof if: (1) a registration statement is in effect with respect to securities of the same class of the issuer and (2) the offer or sale has been exempted from registration by rule or order of the commissioner.

(p) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if: (1) no commission or

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other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state; and (2) the commissioner has been furnished with a general description of the transaction and with other information as the commissioner may by rule prescribe no less than ten days prior to the transaction.

(g) Any nonissuer sales of industrial revenue bonds issued by the state of Minnesota or any of its political or governmental subdivisions, municipalities, governmental agencies, or instrumentalities.

Sec. 16. Minnesota Statutes 1986, section 80A.19, subdivision 1, is amended to read:

Subdivision 1. This chapter shall be administered by the commissioner of commerce. ~~The commissioner shall appoint two deputy commissioners and shall file with the secretary of state an order delegating authority to one of such deputy commissioners to exercise all of the rights and powers and perform all of the duties of the commissioner during the disability of the commissioner; the commissioner's absence from the office or during a vacancy in the office of the commissioner pending the filling thereof as provided by law.~~

Sec. 17. Minnesota Statutes 1986, section 80A.23, subdivision 11, is amended to read:

Subd. 11. The rights and remedies promulgated by sections 80A.01 to 80A.31 are in addition to any other right or remedy that may exist at law or in equity, but sections 80A.01 to 80A.31 do not create any cause of action not specified in this section or section 80A.05, subdivision 5. No civil cause of action may be based solely upon the failure of a broker-dealer or agent to comply with the requirements of section 80A.04, subdivision 1 or 3, except a cause of action arising under section ~~80A.21~~ 2.

Sec. 18. Minnesota Statutes 1986, section 80A.26, subdivision 3, is amended to read:

Subd. 3. All information contained in or filed with any registration statement, application, or report, except such information as to which the commissioner, upon request and for good cause shown, grants confidential treatment, and except as to reports of sales provided for in section ~~80A.20, subdivision 1, clause (F) 2, subdivision 1, clause (7)~~, shall be a matter of public record and shall be made available to the public under such rules as the commissioner prescribes.

Sec. 19. Minnesota Statutes 1986, section 80C.17, subdivision 1, is amended to read:

Subdivision 1. A person who violates any provision of sections 80C.01 to 80C.13 and ~~80C.15~~ 80C.16 to 80C.22 or any rule or order thereunder shall be liable to the franchisee or subfranchisor who may sue for damages caused thereby, for rescission, or other relief as the court may deem appropriate.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

Sec. 20. Minnesota Statutes 1986, section 82.17, subdivision 4, is amended to read:

Subd. 4. "Real estate broker" or "broker" means any person who:

(a) for another and for commission, fee or other valuable consideration or with the intention or expectation of receiving the same directly or indirectly lists, sells, exchanges, buys or rents, manages, or offers or attempts to negotiate a sale, option, exchange, purchase or rental of an interest or estate in real estate, or advertises or holds out as engaged in these activities;

(b) for another and for commission, fee or other valuable consideration or with the intention or expectation of receiving the same directly or indirectly negotiates or offers or attempts to negotiate a loan, secured or to be secured by a mortgage or other encumbrance on real estate;

(c) for another and for commission, fee or other valuable consideration or with the intention or expectation of receiving the same directly or indirectly lists, sells, exchanges, buys, rents, manages, offers or attempts to negotiate a sale, option, exchange, purchase or rental of any business opportunity or business, or its good will, inventory, or fixtures, or any interest therein;

(d) for another and for commission, fee or other valuable consideration or with the intention or expectation of receiving the same directly or indirectly offers, sells or attempts to negotiate the sale of property that is subject to the registration requirements of chapter 83, concerning subdivided land;

(e) engages in the business of charging an advance fee or contracting for collection of a fee in connection with any contract whereby the person undertakes to promote the sale of real estate through its listing in a publication issued primarily for this purpose;

(f) engages wholly or in part in the business of selling real estate to the extent that a pattern of real estate sales is established, whether or not the real estate is owned by the person. A person shall be presumed to be engaged in the business of selling real estate if the person engages as principal in five or more transactions during any 12-month period, unless the person is represented by a licensed real estate broker or salesperson;

(g) offers or makes more than five ~~conventional~~ loans ~~under section 47.20 secured by real estate~~ during any 12-month period and who is not a bank, savings bank, mutual savings bank, building and loan association, or savings and loan association organized under the laws of this state or the United States, trust company, trust company acting as a fiduciary, or other financial institution subject to the supervision of the commissioner of commerce, or mortgagee or lender approved or certified by the secretary of housing and urban development or approved or certified by the administrator of veterans affairs, or approved or certified by the administrator of the Farmers Home Administration, or approved or certified by the Federal Home Loan Mortgage Corporation, or approved or certified by the Federal National Mortgage Association.

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Sec. 21. **[82.175] MORTGAGEE OR LENDER BROKER IN CERTAIN CASES.**

(a) Notwithstanding section 82.17, subdivision 4, clause (g), for purposes of this chapter, the term "real estate broker" includes a mortgagee or lender approved or certified by the secretary of Housing and Urban Development, the administrator of Veterans Affairs, the administrator of the Farmers Home Administration, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association if the commissioner finds after a hearing that the mortgagee or lender, or an officer, director, partner, employee, or agent of the mortgagee or lender, or a person directly or indirectly controlling the mortgagee or lender: (1) has engaged in a fraudulent, deceptive, or dishonest practice, or (2) has violated section 47.206.

(b) Prior to the hearing under paragraph (a), the commissioner shall issue an order that requires the mortgagee or lender to show cause why the mortgagee or lender should not be determined to be a real estate broker under this section. The order must be calculated to give reasonable notice of the time and place for the hearing and must state the reasons for the entry of the order to show cause. Hearings must be conducted under chapter 14.

Sec. 22. Minnesota Statutes 1986, section 82.21, subdivision 1, is amended to read:

Subdivision 1. **AMOUNTS.** The following fees shall be paid to the commissioner:

(a) A fee of \$50 for each initial individual broker's license, and a fee of \$25 for each annual renewal thereof;

(b) A fee of \$25 for each initial salesperson's license, and a fee of \$10 for each annual renewal thereof;

(c) A fee of \$50 for each initial corporate or partnership license, and a fee of \$25 for each annual renewal thereof;

(d) A fee not to exceed \$40 per year for payment to the education, research and recovery fund in accordance with section 82.34;

(e) A fee of \$10 for each transfer;

(f) A fee of \$25 for a corporation or partnership name change;

(g) A fee of \$5 for an agent name change;

(h) A fee of \$10 for a license history;

(i) A fee of \$15 for a NSF check;

(j) A fee of \$50 for an initial course approval;

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- ~~(k)~~ A fee of \$10 for notices of repeat course offerings;
- ~~(l)~~ A fee of \$50 for instructor or coordinator approval; and
- ~~(m)~~ A fee of \$5 for a duplicate license; and

(j) A fee of \$5 for each hour or fraction of one hour of course approval sought.

Sec. 23. Minnesota Statutes 1986, section 82.22, subdivision 6, is amended to read:

Subd. 6. **INSTRUCTION; NEW LICENSES.** (a) After January 1, 1987, every applicant for a salesperson's license shall be required to successfully complete a course of study in the real estate field consisting of 30 hours of instruction approved by the commissioner before taking the examination specified in subdivision 1. After January 1, 1987, every applicant for a salesperson's license shall be required to successfully complete an additional course of study in the real estate field consisting of 60 hours of instruction approved by the commissioner before filing an application for the license. Every salesperson licensed after January 1, 1987, shall, within one year of licensure, be required to successfully complete a course of study in the real estate field consisting of 30 hours of instruction approved by the commissioner.

(b) After December 31, 1983, and before January 1, 1987, every applicant for a salesperson's license shall be required to successfully complete a course of study in the real estate field consisting of 30 hours of instruction approved by the commissioner before taking the examination specified in subdivision 1. After December 31, 1983, and before January 1, 1987, every applicant for a salesperson's license shall be required to successfully complete an additional course of study in the real estate field consisting of 30 hours of instruction approved by the commissioner before filing an application for the license. Every salesperson licensed after December 31, 1983, and before January 1, 1987, shall, within one year of the date a license was first issued, be required to successfully complete a course of study in the real estate field consisting of 30 hours of instruction approved by the commissioner.

(c) The commissioner may approve courses of study in the real estate field offered in educational institutions of higher learning in this state or courses of study in the real estate field developed by and offered under the auspices of the national association of realtors, its affiliates, or private real estate schools. The commissioner shall not approve any course offered by, sponsored by, or affiliated with any person or company licensed to engage in the real estate business. The commissioner may by rule prescribe the curriculum and qualification of those employed as instructors.

(d) After January 1, 1988, an applicant for a broker's license must successfully complete a course of study in the real estate field consisting of 30 hours of instruction approved by the commissioner. The course must have been completed within six months prior to the date of application for the broker's license.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

Sec. 24. Minnesota Statutes 1986, section 82.24, subdivision 2, is amended to read:

Subd. 2. **LICENSEE ACTING AS PRINCIPAL.** ~~Any licensed A real estate broker or salesperson licensee acting in the capacity of principal in the sale or rental of interests in a real estate owned or rented by the licensee transaction where the seller retains any liability, contingent or otherwise, for the payment of an obligation on the property shall deposit in a Minnesota bank or trust company, any foreign bank which authorizes the commissioner to examine its records of the deposits, or an industrial loan and thrift company organized under chapter 53 with deposit liabilities, in a trust account, those parts of all payments received on contracts that are necessary to meet any amounts concurrently due and payable on any existing mortgages, contracts for deed or other conveyancing instruments, and reserve for taxes and insurance or any other encumbrance on the receipts. The deposits must be maintained until disbursement is made under the terms of the encumbrance and proper accounting on the property made to the parties entitled to an accounting. The provisions of this subdivision relating to rental of interests in real estate apply only to single-family residential property.~~

Sec. 25. Minnesota Statutes 1986, section 82.34, subdivision 19, is amended to read:

Subd. 19. ~~The commissioner shall include in the annual report of the department of commerce pursuant to section 45.033, on or before October 1 in each even-numbered year, prepare and file in the office of the governor for the preceding two fiscal years ending June 30 a report on the activities of the real estate education, research and recovery fund; noting the amount of money received by the fund, the amount of money expended and the purposes therefor.~~

Sec. 26. Minnesota Statutes 1986, section 308.12, is amended by adding a subdivision to read:

Subd. 5. Notwithstanding the provisions of section 345.43, a cooperative association organized under the laws of this state may, in lieu of paying or delivering to the commissioner of commerce the unclaimed property specified in its report of unclaimed property, distribute the unclaimed property to a corporation or organization which is exempt from taxation under section 290.05, subdivision 1, paragraph (b), or 2. A cooperative association making this election shall, within 20 days after the time specified in section 345.42 for claiming the property from the holder, file with the commissioner a verified written explanation of the proof of claim of any owner establishing a right to receive the abandoned property; any error in the presumption of abandonment; and the name, address, and exemption number of the corporation or organization to which the property was or is to be distributed and the approximate date of distribution. Nothing in this subdivision alters the procedure provided in sections 345.41 and 345.42 whereby cooperative associations report unclaimed property to the commissioner and claims of owners are made to the cooperative

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associations for a period of 65 days following the publication of lists of abandoned property. The rights of an owner to unclaimed property held by a cooperative association is extinguished upon the disbursement of the property by the cooperative association to a tax-exempt organization in accordance with this section.

Sec. 27. Minnesota Statutes 1986, section 309.50, subdivision 6, is amended to read:

Subd. 6. "Professional fund raiser" means any person who for financial compensation or profit ~~participates in public solicitation in this state of contributions for, or on behalf of any charitable organization performs for a charitable organization any service in connection with which contributions are, or will be, solicited in this state by the compensated person or by any compensated person the person employs, procures, or engages to solicit; or any person who for compensation or profit plans, manages, advises, consults, or prepares material for, or with respect to, the solicitation in this state of contributions for a charitable organization.~~ No investment adviser, investment adviser representative, broker-dealer, or agent licensed pursuant to chapter 80A, or lawyer, accountant, or banker who advises a person to make a charitable contribution or who provides legal, accounting, or financial advice in the ordinary course of a profession or business shall be deemed, as a result of the advice, to be a professional fund raiser. A bona fide ~~salaried officer or, employee, or volunteer~~ of a charitable organization is not a professional fund raiser ~~unless the officer's or employee's salary or other compensation is computed on the basis of funds to be raised, or actually raised.~~

Sec. 28. Minnesota Statutes 1986, section 309.515, subdivision 1, is amended to read:

Subdivision 1. Subject to the provisions of subdivisions 2 and 3, sections 309.52 and 309.53 shall not apply to any of the following:

(a) Charitable organizations:

(1) which did not receive total contributions in excess of \$10,000 \$25,000, exclusive of the direct cost of prizes given to the public by the charitable organization in connection with lawful gambling conducted in compliance with chapter 349, from the public within or without this state during the accounting year last ended, and

(2) which do not plan to receive total contributions in excess of such amount from the public within or without this state during any accounting year, and

(3) whose functions and activities, including fund raising, are performed wholly by persons who are unpaid for their services, and

(4) none of whose assets or income inure to the benefit of or are paid to any officer.

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For purposes of this chapter, a charitable organization shall be deemed to receive in addition to contributions solicited from the public by it, the contributions solicited from the public by any other person and transferred to it. Any organization constituted for a charitable purpose receiving an allocation from a community chest, united fund or similar organization shall be deemed to have solicited that allocation from the public.

(b) A religious society or organization which is exempt from filing a federal annual information return pursuant to Internal Revenue Code, section 6033(a)(2)(A)(i) and (iii), and Internal Revenue Code, section 6033(a)(2)(C)(i).

(c) Any educational institution which is under the general supervision of the state board of education, the state university board, the state board for community colleges, or the University of Minnesota or any educational institution which is accredited by the University of Minnesota or the North Central association of colleges and secondary schools, or by any other national or regional accrediting association.

(d) A fraternal, patriotic, social, educational, alumni, professional, trade or learned society which limits solicitation of contributions to persons who have a right to vote as a member. The term "member" shall not include those persons who are granted a membership upon making a contribution as the result of a solicitation.

(e) A charitable organization soliciting contributions for any person specified by name at the time of the solicitation if all of the contributions received are transferred to the person named with no restrictions on the person's expenditure of it and with no deductions whatsoever.

(f) A private foundation, as defined in section 509(a) of the Internal Revenue Code of 1954, which did not solicit contributions from more than 100 persons during the accounting year last ended.

Sec. 29. Minnesota Statutes 1986, section 309.52, subdivision 1a, is amended to read:

Subd. 1a. A charitable organization whose total contributions received during any accounting year are in excess of ~~\$10,000~~ \$25,000, exclusive of the direct cost of prizes given to the public by the charitable organization in connection with lawful gambling conducted in compliance with chapter 349, shall file a registration statement with the ~~department~~ attorney general within 30 days after the date on which the organization's total contributions exceeded ~~\$10,000~~ \$25,000, exclusive of the direct cost of prizes given to the public by the charitable organization in connection with lawful gambling conducted in compliance with chapter 349. The registration shall exist unless revoked by a court of competent jurisdiction, or the ~~department~~ attorney general, or as provided in subdivision 7. This subdivision shall not apply to a charitable organization which had filed a registration statement pursuant to this section for the accounting year last ended or to organizations described in section 309.515, subdivision 1.

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Sec. 30. Minnesota Statutes 1986, section 309.52, subdivision 2, is amended to read:

Subd. 2. The first registration statement filed by a charitable organization shall include a registration fee of \$25 if the organization raised or expended, exclusive of the direct cost of prizes given to the public by the charitable organization in connection with lawful gambling conducted in compliance with chapter 349, more than \$25,000 during the previous 12-month period, and a financial statement of its the organization's operation for its most recent 12 months period immediately preceding the filing of the first registration statement.

Sec. 31. Minnesota Statutes 1986, section 309.53, subdivision 1a, is amended to read:

Subd. 1a. A charitable organization may, but need not, file an annual report pursuant to this section if the organization:

(a) Did not receive total contributions in excess of ~~\$10,000~~ \$25,000, exclusive of the direct cost of prizes given to the public by the charitable organization in connection with lawful gambling conducted in compliance with chapter 349, from the public within or without this state during the accounting year last ended.

(b) Does not plan to receive total contributions in excess of ~~\$10,000~~ \$25,000, exclusive of the direct cost of prizes given to the public by the charitable organization in connection with lawful gambling conducted in compliance with chapter 349, from the public within or without this state during any accounting year, and

(c) Does not employ a professional fund raiser.

Sec. 32. Minnesota Statutes 1986, section 309.53, subdivision 3, is amended to read:

Subd. 3. The financial statement shall include a balance sheet, statement of income and expense, and statement of functional expenses, shall be consistent with forms furnished by the ~~department~~ attorney general, and shall be prepared in accordance with generally accepted accounting principles so as to make a full disclosure of the following, including necessary allocations between each item and the basis of such allocations:

- (a) Total receipts and total income from all sources;
- (b) Cost of management and general;
- (c) Cost of fund raising;
- (d) Cost of public education;

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(e) Funds or properties transferred out of state, with explanation as to recipient and purpose;

(f) Total net amount disbursed or dedicated within this state, broken down into total amounts disbursed or dedicated for each major purpose, charitable or otherwise;

(g) Names of professional fund raisers used during the accounting year and the financial compensation or profit resulting to each professional fund raiser. Unless otherwise required by this subdivision, the financial statement need not be certified.

A financial statement of a charitable organization which has solicited from the public within or outside this state total contributions in excess of \$50,000 \$100,000 for the 12 months of operation covered by the statement shall be accompanied by ~~an opinion signed by a certified public accountant that such statement fairly represents the financial operations of the charitable organization in sufficient detail to permit public evaluation of its operations~~ an audited financial statement prepared in accordance with generally accepted accounting principles that has been examined by an independent certified public accountant for the purpose of expressing an opinion. In ~~giving such opinion preparing the audit~~ the certified public accountant shall take into consideration capital, endowment or other reserve funds, if any, controlled by the charitable organization. ~~The opinion need not conform to the wording of the opinion form of the annual report forms provided by the department.~~

Sec. 33. Minnesota Statutes 1986, section 309.53, subdivision 4, is amended to read:

Subd. 4. Where a registration statement has been filed by a parent organization or affiliate as provided in section 309.52, subdivision 4, the registered parent organization may file the annual report required under this section on behalf of the chapter, branch, area office, similar affiliate or person in addition to or as part of its own report or the registered affiliate may file the annual report required under this section on behalf of the parent organization in addition to or as part of its own report. The accounting information required under this section shall be set forth separately and not in consolidated form with respect to every chapter, branch, area office, similar affiliate or person within the state which raises or expends more than ~~\$10,000~~ \$25,000, exclusive of the direct cost of prizes given to the public by the charitable organization in connection with lawful gambling conducted in compliance with chapter 349. ~~The department of commerce~~ attorney general may permit any chapter, branch, area office, similar affiliate or person to file a consolidated statement with any other chapter, branch, area office, similar affiliate or person or parent organization if ~~the attorney general determines that~~ the interests of the charitable beneficiaries will not be prejudiced thereby and ~~that~~ separate accounting information is not required for proper supervision.

Sec. 34. Minnesota Statutes 1986, section 309.53, is amended by adding a subdivision to read:

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Subd. 8. A reregistration fee of \$25 shall be paid by every charitable organization submitting the annual report required by this section if the organization raised or expended, exclusive of the direct cost of prizes given to the public by the charitable organization in connection with lawful gambling conducted in compliance with chapter 349, more than \$25,000 during the previous 12-month period.

Sec. 35. Minnesota Statutes 1986, section 309.531, is amended to read:

309.531 LICENSING REGISTRATION OF PROFESSIONAL FUND RAISERS; BOND REQUIRED.

Subdivision 1. No person shall act as a professional fund raiser unless licensed by registered with the department attorney general. Applications for a license The registration statement as hereinafter described shall be in writing, under oath, in the form prescribed by the department attorney general and shall be accompanied by an application fee of \$25 \$50. Each license registration shall be effective for a period of not more than 12 months from the date of issuance, and in any event shall expire on July 30 next following the date of issuance. The registration may be renewed for additional one-year periods upon application and payment of the fee.

Subd. 2. The department shall have the power, in connection with any application for license as a professional fund raiser, to require the applicant to file a surety bond in such amount, not exceeding \$20,000, and containing such terms and conditions as the department determines are necessary and appropriate for the protection of the public. The applicant may deposit cash in and with a depository acceptable to the department in such amount and in such a manner as may be prescribed and approved by the department in lieu of the bond. The registration statement of the professional fund raiser shall consist of the following:

(a) If the professional fund raiser at any time has custody of contributions from a solicitation, the registration statement shall include a bond, in which the professional fund raiser shall be the principal obligor. The bond shall be in the sum of \$20,000, with one or more responsible sureties whose liability in the aggregate as the sureties will at least equal that sum. In order to maintain the registration, the bond shall be in effect for the full term of the registration. The bond, which may be in the form of a rider to a larger blanket liability bond, shall run to the state and to any person who may have a cause of action against the principal obligor of the bond for any liabilities resulting from the obligor's conduct of any activities subject to sections 309.50 to 309.61 or arising out of a violation of the statutes or a rule adopted under the statutes.

(b) If the professional fund raiser, or any person the professional fund raiser employs, procures, or engages, solicits in this state, the registration statement shall include a completed "solicitation notice" on a form provided by the attorney general. The solicitation notice shall include a copy of the contract described in paragraph (c), the projected dates when soliciting will commence and termi-

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nate, the location and telephone number from where the solicitation will be conducted, the name and residence address of each person responsible for directing and supervising the conduct of the campaign, a statement as to whether the professional fund raiser will at any time have custody of contributions, and a description of the charitable program for which the solicitation campaign is being carried out. The charitable organization on whose behalf the professional fund raiser is acting shall certify that the solicitation notice and accompanying material are true and complete to the best of its knowledge.

(c) The professional fund raiser shall also include, as part of the registration statement, a copy of the contract between the charitable organization and the professional fund raiser. The contract shall:

(1) be in writing;

(2) contain information as will enable the attorney general to identify the services the professional fund raiser is to provide, including whether the professional fund raiser will at any time have custody of contributions; and

(3) if the professional fund raiser or any person the professional fund raiser employs, procures, or engages, directly or indirectly, solicits in this state, the contract shall disclose the percentage or a reasonable estimate of the percentage of the total amount solicited from each person which shall be received by the charitable organization for charitable purposes.

The stated percentages required by this section and section 309.556, subdivision 2, shall exclude any amount which the charitable organization is to pay as expenses of the solicitation campaign, including the cost of merchandise or services sold or events staged.

(d) The registration statement shall also include the financial report for previous campaigns conducted by the professional fund raiser in this state as set forth in subdivision 4 of this section.

Subd. 3. No professional fund raiser shall ~~solicit in use~~ the name of or ~~in solicit on~~ behalf of any charitable organization unless such solicitor has written authorization from two officers of such organization, a copy of which shall be filed with the ~~department~~ attorney general. Such written authorization shall bear the signature of the ~~solicitor and shall expressly state on its face the period for which it is valid, which shall not exceed one year from the date issued conform to the requirements of the contract described in subdivision 2, clause~~ (c).

Subd. 4. The department may require that any licensed professional fund raiser submit financial reports, not more frequently than quarterly, in such form and containing such information as the department by rule or order requires. Within 90 days after a solicitation campaign has been completed, and on the anniversary of the commencement of a solicitation campaign lasting more than one year, the professional fund raiser who solicited contributions in this state in conjunction with a charitable organization shall file with the attorney general a

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financial report for the campaign, including gross revenue and an itemization of all expenses incurred. The report shall be completed on a form prescribed by the attorney general. The report shall be signed by an authorized official of the professional fund raiser and an authorized official from the charitable organization and they shall certify, under oath, that it is true to the best of their knowledge.

Sec. 36. Minnesota Statutes 1986, section 309.533, is amended by adding a subdivision to read:

Subd. 5. In connection with an investigation under this section, the attorney general may obtain discovery from any person regarding any matter, fact, or circumstance, not privileged, that is relevant to the subject matter involved in the investigation, in accordance with the provisions of section 8.31.

Sec. 37. Minnesota Statutes 1986, section 309.54, is amended to read:

309.54 PUBLIC RECORD.

Subdivision 1. Registration statements, annual reports, and other documents required to be filed shall become public records in the office of the ~~department~~ attorney general. Investigative data obtained by the attorney general in anticipation of or in connection with litigation or an administration proceeding are nonpublic data under section 13.02, subdivision 9.

Subd. 2. Every person subject to sections 309.50 to 309.61 shall maintain, for not less than three years from the date of preparation, accurate and detailed books and records to provide the information required by sections 309.50 to 309.61. All such books and records shall be open to inspection at all reasonable times by ~~the department or~~ by the attorney general.

Subd. 3. Every charitable organization which is required to file an annual report under section 309.53 shall keep and maintain ~~within Minnesota,~~ at the place designated in its registration statement, the original books and records, or true copies thereof, pertaining to all money or other property collected from residents of this state and to the disbursement of such money or property. Such books and records shall be preserved for a period of not less than ~~40~~ three years from the date of preparation thereof.

Sec. 38. Minnesota Statutes 1986, section 309.55, subdivision 6, is amended to read:

Subd. 6. No person shall, either as an individual or as agent, officer or employee of a charitable organization sell or otherwise furnish for a consideration to any other person any list of contributors unless the contributor has consented to the transaction.

Sec. 39. Minnesota Statutes 1986, section 309.556, is amended to read:

309.556 PUBLIC DISCLOSURE REQUIREMENTS.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

Subdivision 1. **IDENTITY OF ORGANIZATION AND; PERCENTAGE OF DEDUCTIBILITY; DESCRIPTION OF PROGRAM.** In connection with any charitable solicitation, the following information shall be clearly disclosed:

(a) The name, address and telephone number of each charitable organization on behalf of which the solicitation is made;

(b) The percentage of the contribution which may be deducted as a charitable contribution under both federal and state income tax laws;

(c) A description of the charitable program for which the solicitation campaign is being carried out; and, if different, a description of the programs and activities of the organization on whose behalf the solicitation campaign is being carried out.

If the solicitation is made by direct contact, the required information shall be disclosed prominently on a card which shall be exhibited to the person solicited. If the solicitation is made by radio, television, letter, telephone or any other means not involving direct personal contact, the required information shall be clearly disclosed in the solicitation.

Subd. 2. **PERCENTAGE RECEIVED FOR CHARITABLE PURPOSES.** In addition to the disclosures required by subdivision 1, any professional fund raiser soliciting contributions in this state shall also disclose the percentage or a reasonable estimate of the percentage of the total amount solicited from each person which shall be received by the charitable agency for charitable purposes. A professional fund raiser shall also disclose the name of the professional fund raiser as on file with the attorney general and that the solicitation is being conducted by a "professional fund raiser." The ~~disclosure~~ disclosures required by this subdivision shall be given in the same manner as the disclosures required by subdivision 1.

Sec. 40. Minnesota Statutes 1986, section 309.56, subdivision 1, is amended to read:

Subdivision 1. Any charitable organization or professional fund raiser which solicits contributions in this state, but does not maintain an office within the state shall be subject to service of process, as follows:

(a) By service thereof on its registered agent within the state, or if there be no such registered agent, then upon the person, if any, who has been designated in the registration statement as having custody of books and records within this state; where service is effected upon the person so designated in the registration statement a copy of the process shall, in addition, be mailed to the charitable organization or professional fund raiser at its last known address;

(b) When a charitable organization or professional fund raiser has solicited contributions in this state, but maintains no office within the state, has no registered agent within the state, and no designated person having custody of its

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books and records within the state, or when a registered agent or person having custody of its books and records within the state cannot be found as shown by the return of the sheriff of the county in which such registered agent or person having custody of books and records has been represented by the charitable organization or professional fund raiser as maintaining an office, service may be made by leaving a copy of the process in the office of the commissioner. Service upon the commissioner is not effective unless (a) the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by the commissioner, forthwith sends notice of the service and a copy of the process by certified mail to the defendant or respondent at that person's last known address or takes other steps which are reasonably calculated to give actual notice; and (b) the plaintiff's affidavit of compliance with this subdivision is filed in the case on or before the return day of the process, if any, or within a further time the court allows as in any other civil suit, or in the manner provided by section 303.13, subdivision 1, clause (3), or in a manner as the court may direct.

Sec. 41. Minnesota Statutes 1986, section 309.57, is amended to read:

309.57 DISTRICT COURT JURISDICTION, PENALTIES, ENFORCEMENT.

Subdivision 1. GENERAL. Upon the application of the attorney general the district court is vested with jurisdiction to restrain and enjoin violations of sections 309.50 to 309.61. The court may make any necessary order or judgment including, but not limited to, injunctions, restitution, appointment of a receiver for the defendant or the defendant's assets, denial, revocation, or suspension of the defendant's registration, awards of reasonable attorney fees, and costs of investigation and litigation, and may award to the state civil penalties up to \$25,000 for each violation of sections 309.50 to 309.61. In ordering injunctive relief, the attorney general shall not be required to establish irreparable harm but only a violation of statute or that the requested order promotes the public interest. The court may, as appropriate, enter a consent judgment or decree without the finding of illegality.

Subd. 2. ASSURANCE OF DISCONTINUANCE. The attorney general may accept an assurance of discontinuance of any method, act, or practice in violation of sections 309.50 to 309.61 from any person alleged to be engaged or to have been engaged in the method, act, or practice. The assurance may, among other terms, include a stipulation for the voluntary payment by the person of the costs of investigation, or of an amount to be held in escrow pending the outcome of an action or as restitution to aggrieved persons, or both. Any assurance of discontinuance shall be in writing and be filed with the district court of the county of the violator's residence or principal place of business or in Ramsey county. An assurance shall not be considered an admission of a violation for any purpose. Failure to comply with the assurance of discontinuance shall be punishable as contempt.

Sec. 42. Minnesota Statutes 1986, section 345.39, is amended to read:

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

345.39 MISCELLANEOUS PERSONAL PROPERTY HELD FOR ANOTHER PERSON.

Subdivision 1. PRESUMED ABANDONMENT. All intangible personal property, not otherwise covered by sections 345.31 to 345.60, including any income or increment thereon, but excluding any charges that may lawfully be withheld, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than five years after it became payable or distributable is presumed abandoned. Property covered by this section includes, but is not limited to: (a) unclaimed wages or worker's compensation; (b) deposits or payments for repair or purchase of goods or services; (c) credit checks or memos, or customer overpayments; (d) unidentified remittances, unrefunded overcharges; (e) unpaid claims, unpaid accounts payable or unpaid commissions; (f) unpaid mineral proceeds, royalties or vendor checks; and (g) credit balances, accounts receivable and miscellaneous outstanding checks. This section does not include money orders.

Subd. 2. COOPERATIVE PROPERTY. Notwithstanding subdivision 1, any profit, distribution, or other sum held or owing by a cooperative for or to a participating patron of the cooperative is presumed abandoned only if it has remained unclaimed by the owner for more than seven years after it became payable or distributable.

Sec. 43. Minnesota Statutes 1986, section 386.375, is amended to read:

386.375 TRANSFER AND STORAGE OF ABSTRACTS.

Subdivision 1. DEFINITIONS. For the purposes of this section, "lender" means all state banks and trust companies; national banking associations; state and federally chartered savings and loan associations; mortgage banks; mutual savings banks; insurance companies; credit unions making a loan; or any person making a conventional loan as defined under section 47.20, subdivision 2, clause (3); or cooperative apartment loan as defined under section 47.20, subdivision 2, clause (4). A "selling lender" is a lender who sells, assigns, or transfers a loan and/or the servicing of a loan to a "purchasing lender" or "servicing agent."

Subd. 2. RESPONSIBILITY FOR STORAGE. Any title company, lender, or anyone other than the mortgagor or fee simple owner holding an abstract of title to Minnesota real estate shall transfer the abstract of title to the mortgagor or fee simple owner of the real estate to which the abstract pertains before August 1, 1987. After August 1, 1987, the abstract of title shall be provided to the mortgagor or fee simple owner at the time of closing. This section does not apply if the holder of the abstract of title is the mortgagor or fee simple owner of the real estate to which the abstract pertains.

Subd. 3. PENALTIES. If a title company or lender fails to comply with the requirements of subdivision 2, the mortgagor or fee simple owner has the right to have an abstract made at the expense of the lender or title company holding the abstract.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

Subdivision 1. RESPONSIBILITY TO TRANSFER. (a) A person holding an abstract of title to real estate located in Minnesota shall, at a closing of a sale of the property to which the abstract pertains, make a written offer to transfer the abstract of title to the mortgagor or fee owner at no charge to the mortgagor or fee owner. If the offer is accepted, the abstract must be transferred at the closing unless the abstract of title is being held after the closing for issuance of a final title opinion or policy of title insurance in which case the holder has a reasonable period of time to transfer the abstract.

(b) A person holding an abstract of title to real estate located in Minnesota shall, within ten days of receipt of a written request from the mortgagor or fee owner of the property to which the abstract pertains, transfer the abstract of title to the mortgagor or fee owner at no charge, other than postage, to the mortgagor or fee owner. If the abstract of title is being held after a closing for issuance of a final title opinion or policy of title insurance, the holder has a reasonable period of time to transfer the abstract.

(c) If a person holding an abstract of title to real estate located in Minnesota fails to comply with the requirements of this subdivision, the mortgagor or fee owner of the property may have an abstract of title made at the expense of the last known person holding the abstract of title, and is also entitled to collect actual civil damages of up to \$500 from the person last known to hold the abstract of title.

Subd. 2. STORAGE OF ABSTRACTS. Before a person holding an abstract of title to real estate located in Minnesota may impose a charge or fee to store the abstract, the person shall first make a written offer to the mortgagor or fee owner to transfer the abstract at no charge, other than postage, to the fee owner or mortgagor. This subdivision does not apply to a person who holds an abstract pursuant to a written contract with the fee owner or mortgagor. A person violating this subdivision is subject to a penalty of \$100 for each violation.

Subd. 3. CONSUMER EDUCATION INFORMATION. (a) A person other than the mortgagor or fee owner who transfers or offers to transfer an abstract of title shall present to the mortgagor or fee owner basic information in plain English about abstracts of title. This information must be sent in a form prepared and approved by the commissioner of commerce and must contain at least the following items:

- (1) a definition and description of abstracts of title;
- (2) an explanation that holders of abstracts of title must maintain it with reasonable care;
- (3) an approximate cost or range of costs to replace a lost or damaged abstract of title;
- (4) an explanation that abstracts of title may be required to sell, finance, or refinance real estate; and

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(5) an explanation of options for storage of abstracts.

(b) The commissioner shall prepare the form for use under this subdivision as soon as possible. This subdivision does not apply until 60 days after the form is approved by the commissioner.

(c) A person violating this subdivision is subject to a penalty of \$100 for each violation.

Subd. 4. STORAGE IN MINNESOTA. After August 1, 1987, abstracts of title to real estate located in Minnesota must be stored within the state of Minnesota. Failure to comply with this subdivision entitles a mortgagor or fee owner to civil damages of up to \$500.

Subd. 5. EXCEPTIONS. This section does not apply if the person holding the abstract of title is the mortgagor or fee owner of the real estate to which the abstract pertains.

Subd. 6. OFFER TO TRANSFER. Any person holding an abstract of title pertaining to real estate located in Minnesota shall, before March 1, 1988, make a reasonable effort to contact the mortgagor or fee owner of the property and make a written offer to transfer the abstract of title to the mortgagor or fee owner. A person holding an abstract of title has made a reasonable effort to contact the mortgagor or fee owner if the person has sent an offer by United States mail, postage prepaid, to the last address of the mortgagor or fee owner shown in the person's records.

Sec. 44. [508.405] TRANSFER OF OWNER'S DUPLICATE.

Subdivision 1. TRANSFER. Any lender, title company, or person other than the fee simple owner or county registrar holding an owner's duplicate certificate of title to Minnesota real estate shall transfer the owner's duplicate certificate of title to the fee simple owner of the real estate to which the duplicate certificate pertains before August 1, 1987. After August 1, 1987, no person other than the fee simple owner or county registrar may hold an owner's duplicate certificate of title except for settlement processing.

Subd. 2. PENALTIES. If any holder fails to comply with the requirements of subdivision 1, the registered owner may apply to the district court for an order directing the holder withholding the duplicate certificate of title to surrender it at the expense of the holder.

Sec. 45. APPROPRIATIONS.

\$65,066 is appropriated from the general fund to the attorney general to be available for fiscal year 1988. The sum of \$34,414 is appropriated from the general fund to the attorney general to be available for fiscal year 1989. The general fund complement of the attorney general is increased by one.

Sec. 46. INSTRUCTION TO REVISOR.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

The revisor of statutes shall substitute the term "attorney general" for the term "commissioner" or "commissioner of commerce" or "department" in Minnesota Statutes, sections 309.52, subdivisions 1 and 7; 309.53, subdivisions 1 and 2; 309.533, subdivision 1; 309.591; and 309.60.

The revisor of statutes shall delete all references to the "department" in Minnesota Statutes, section 309.581.

Sec. 47. **REPEALER.**

Minnesota Statutes 1986, sections 72A.23; 72A.24; 72A.28; 80A.20; 80A.21; 80C.15; 80C.16, subdivision 1; 82.25; 82.26; 83.34; 83.35, subdivision 3; 238.085; 309.515, subdivision 3; 309.532; 309.533, subdivisions 2, 3, and 4; 309.534; 309.555; and 309.58, are repealed.

Sec. 48. **EFFECTIVE DATE.**

Section 5 is effective June 1, 1987. Section 26 is effective June 30, 1987. Section 44 is effective the day following final enactment.

Approved June 1, 1987

CHAPTER 337—S.F.No. 478

An act relating to insurance; requiring notification of group life or health coverage changes; allowing mandatory temporary insurance agent licenses; requiring those who solicit insurance to act as agent for the insurer; regulating insurance continuing education; providing for the definition of an ineligible surplus lines insurer; regulating rates and forms; regulating insurance plan administrators; regulating trust funds; regulating the renewal, nonrenewal, and cancellation of commercial liability and property insurance policies; authorizing employers to jointly self-insure for property or casualty liability and regulating these plans; providing continued group life coverage upon termination or layoff; providing for the establishment and operation of the insurance guaranty association and the life and health guaranty association; regulating accident and health insurance; regulating joint self-insurance employee health plans; requiring the treatment of pregnancy-related conditions in the same manner as other illnesses; mandating certain coverages; clarifying coverage for handicapped dependents; providing continued group accident and health coverage upon termination or layoff; requiring coverage of current spouse and children; imposing surety bond or security requirements on certain health benefit plans; regulating Medicare supplement plan premium refunds; regulating long-term care policies; providing for the establishment and operation of the comprehensive health association, the medical joint underwriting association, and the joint underwriting association; providing comprehensive health insurance coverage for certain employees not eligible for Medicare; regulating fraternal benefit associations; regulating automobile insurance; providing for exemption from certain legal process of cash value, proceeds, or benefits under certain life insurance or annuity contracts; limiting the cancellation of fire insurance binders and policies; providing for administration of the FAIR

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