

Section 1 is effective the day following final enactment and applies retroactively to the provision or use of any human body part before, on, or after the effective date.

Presented to the governor May 15, 1993

Signed by the governor May 19, 1993, 3:43 p.m.

CHAPTER 257—S.F.No. 1129

An act relating to financial institutions; regulating institutions, deposits, rates and charges, enforcement provisions; modifying the definition of insurance premium finance licensee; amending Minnesota Statutes 1992, sections 45.025, by adding a subdivision; 46.044; 46.045, by adding a subdivision; 46.048, subdivision 1; 46.09; 47.0156; 47.096; 47.20, subdivision 4a; 47.52; 47.54, subdivision 4; 47.55, subdivision 1; 47.56; 47.58, subdivision 1; 48.04; 48.05; 48.09; 48.194; 48.24, subdivisions 1, 7, and 8; 48.61, subdivisions 2, 3, and 4; 48.64; 48.86; 49.35; 49.36, subdivisions 1 and 4; 51A.02, subdivision 43; 52.04, subdivision 1, and by adding a subdivision; 52.12; 53.03, subdivision 5; 53.04, by adding a subdivision; 53.09, by adding a subdivision; 56.10; 56.12; 56.131, subdivision 1; 56.155, subdivision 1; 59A.02, subdivision 3; 80A.14, subdivisions 4 and 9; 82B.03, subdivision 2; 300.20, subdivision 2; 300.21; 336.4-104; and 540.08; proposing coding for new law in Minnesota Statutes, chapter 56; repealing Minnesota Statutes 1992, sections 46.048, subdivision 2; and 48.24, subdivision 4.

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

Section 1. Minnesota Statutes 1992, section 45.025, is amended by adding a subdivision to read:

Subd. 10. ALTERNATIVE COMPLIANCE. In lieu of complying with the provisions of this section with respect to any deposit or certificate of deposit, a depository institution defined in section 19(b)(1)(A)(i)-(vi) of the Federal Reserve Act, United States Code, title 12, section 461, or a deposit broker defined in section 29(g) of the Federal Deposit Insurance Act, United States Code, title 12, section 1831f(g), may comply with the requirements of the Federal Truth in Savings Act and regulations, notwithstanding whether or not that act or those regulations apply to the deposit or certificate of deposit.

Sec. 2. Minnesota Statutes 1992, section 46.044, is amended to read:

46.044 CHARTERS ISSUED, CONDITIONS.

Subdivision 1. CHARTERS ISSUED, CONDITIONS. If (1) the applicants are of good moral character and financial integrity, (2) there is a reasonable public demand for this bank in this location, (3) the organization expenses being paid by the bank do not exceed those allowed by section 46.043, (4) the probable

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volume of business in this location is sufficient to insure and maintain the solvency of the new bank and the solvency of the then existing bank or banks in the locality without endangering the safety of any bank in the locality as a place of deposit of public and private money, (5) the commissioner of commerce is satisfied that the proposed bank will be properly and safely managed, ~~and~~ (6) the commissioner is satisfied that the capital funds required pursuant to section 48.02 are available and the commissioner may accept any reasonable demonstration including subscription agreements supported by current financial statements, and (7) the applicant, if it is an interstate bank holding company, as defined in section 48.92, has provided developmental loans as required by section 48.991, and has complied with the net new funds reporting requirements of section 48.93, the application must be granted; otherwise it must be denied. In case of the denial of the application, the commissioner of commerce shall specify the grounds for the denial. A person aggrieved, may obtain judicial review of the determination in accordance with chapter 14.

Subd. 2. EXPIRATION AND EXTENSION OF ORDER. If a bank charter is not activated within 18 months from the date of the order, the approval order automatically expires. Upon request of the applicant prior to the automatic expiration date of the order, the commissioner may grant reasonable extensions of time to the applicant to activate the facility as the commissioner deems necessary. The extensions of time shall not exceed a total of an additional 12 months. If the commissioner's order is the subject of an appeal in accordance with chapter 14, the time period referred to in this section for activation of the bank charter and any extensions shall begin when all appeals or rights of appeal from the commissioner's order have concluded or expired.

Sec. 3. Minnesota Statutes 1992, section 46.045, is amended by adding a subdivision to read:

Subd. 4. DEPOSIT INSURANCE. In any case where Minnesota Statutes require, either generally or by reference to a specific program, that deposits in any financial institution be insured, the requirement shall be deemed satisfied if the deposits are insured in the requisite amount by an agency of the federal government insuring deposits.

Sec. 4. Minnesota Statutes 1992, section 46.048, subdivision 1, is amended to read:

Subdivision 1. **REQUIREMENT.** Whenever a change in the outstanding voting stock of a banking institution will result in control or in a change in the control of the banking institution, the person acquiring control of the banking institution shall file notice of the proposed acquisition of control with the commissioner of commerce at least 60 days before the actual effective date of the change. As used in this section, the term "control" means the power to directly or indirectly direct or cause the direction of the management or policies of the banking institution. A change in ownership of capital stock that would result in direct or indirect ownership by a stockholder or an affiliated group of stockhold-

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ers of less than 25 percent of the outstanding capital stock is not considered a change of control. If there is any doubt as to whether a change in the outstanding voting stock is sufficient to result in control or to effect a change in the control, the doubt shall be resolved in favor of reporting the facts to the commissioner. The commissioner shall use the criteria established by the Financial Institution Regulatory and Interest Rate Control Act of ~~1987~~ 1978, United States Code, title 12, section 1817(j), and the regulations adopted under it, when reviewing the acquisition and determining if the acquisition should or should not be disapproved.

Sec. 5. Minnesota Statutes 1992, section 46.09, is amended to read:

46.09 DEPARTMENT OF COMMERCE EXAMINERS OR EMPLOYEES NOT TO MAINTAIN INTEREST IN SUPERVISED INSTITUTIONS.

Subdivision 1. **PROHIBITION.** No person who is an examiner of financial institutions or other officer of the department of commerce directly responsible for the supervision of financial institutions shall be interested, either directly or indirectly, as a stockholder, director, officer, trustee, assignee, employee, or otherwise, in a bank, savings bank, trust company, financial institution, or corporation holding the stock of any such corporation within this state, or which carries on a banking business within this state, either directly or indirectly, or through an affiliated group or chain bank operating within this state. The provisions of this subdivision do not apply to the commissioner of commerce.

Subd. 2. **EXCEPTIONS.** Officers and examiners of the department of commerce referred to in subdivision 1 may:

- (1) maintain a demand or trust account in any financial institution;
- (2) maintain a savings, time or share account in any financial institution;
- (3) transact business with any national bank, federally chartered savings and loan association or federally chartered credit union;
- (4) transact business with any financial institution or licensee subject to the examination by the commissioner of commerce to the extent the transaction is on the same terms, conditions and to the same extent available to all other customers of the financial institution or licensee.

Subd. 3. **LOANS AND CREDIT ADVANCES.** The exceptions created in subdivision 2 do not include a loan or advance of credit from a financial institution or licensee subject to examination by the commissioner of commerce. A transaction not specifically exempt by subdivision 2, clauses (1) to (3), is subject to disclosure to the commissioner of commerce upon request to determine if a conflict of interest exists or interest contemplated by subdivision 1.

Subd. 4. APPLICATION. This section applies to those employees, examiners, and officers of the department of commerce who are directly responsible for the examination and supervision of financial institutions or licensees.

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Sec. 6. Minnesota Statutes 1992, section 47.0156, is amended to read:

47.0156 CLOSING EFFECTING A PERMANENT CESSATION OF BUSINESS.

The permanent closing of a financial institution as defined in section 47.015 or 47.0151 for purposes, or with a result, other than authorized in sections 47.015 to 47.0155 is unlawful unless at least ~~60~~ 90 days' written notice is given to the commissioner.

Sec. 7. Minnesota Statutes 1992, section 47.096, is amended to read:

47.096 TIME DEPOSITS; NOTICE OF AUTOMATIC RENEWAL.

If a deposit for a term of one year or more, including a savings certificate and a certificate of deposit, is automatically renewable by its own terms if not redeemed at a specified redemption date, the financial corporation receiving the deposit shall give mailed written notice to the owner or holder of the deposit not less than 30 days prior to the redemption date. The written notice shall be sent to the last known address of the owner or holder as filed with the financial corporation, shall state the date of the automatic renewal and shall state any penalty diminution of interest or other consequences to the owner or holder arising out of the failure to redeem prior to automatic renewal. In lieu of complying with the provisions of this section, a financial corporation may comply with the requirements of the Federal Truth in Savings Act and regulations, notwithstanding whether or not that act or those regulations apply to the deposit.

Sec. 8. Minnesota Statutes 1992, section 47.20, subdivision 4a, is amended to read:

Subd. 4a. **MAXIMUM INTEREST RATE.** (a) No conventional or cooperative apartment loan or contract for deed shall be made at a rate of interest or loan yield in excess of a maximum lawful interest rate in an amount equal to the Federal National Mortgage Association posted yields on 30-year mortgage commitments for delivery within 60 days on standard conventional fixed-rate mortgages published in the Wall Street Journal for the last business day of the second preceding month plus four percentage points.

~~(b) On or before the last day of each month the commissioner of commerce shall determine, based on available statistics, the maximum lawful rate of interest for conventional or cooperative apartment loans or contracts for deed for the next succeeding month as defined in paragraph (a); and shall cause the maximum lawful rate of interest to be published in a legal newspaper in Ramsey county on or before the first day of each month or as soon thereafter as practicable and in the state register on or before the last day of each month; the maximum lawful rate of interest to be effective on the first day of that month.~~

~~(1) The maximum lawful interest rate applicable to a cooperative apartment loan or contract for deed at the time the loan or contract is made is the maxi-~~

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imum lawful interest rate for the term of the cooperative apartment loan or contract for deed. Notwithstanding the provisions of section 334.01, a cooperative apartment loan or contract for deed may provide, at the time the loan or contract is made, for the application of specified different consecutive periodic interest rates to the unpaid principal balance, if no interest rate exceeds the maximum lawful interest rate applicable to the loan or contract at the time the loan or contract is made.

(c) The maximum interest rate that can be charged on a conventional loan or a contract for deed, with a duration of ten years or less, for the purchase of real estate described in section 83.20, subdivision 13, is three percentage points above the rate permitted under paragraph (a) or 15.75 percent per year, whichever is less. This clause is effective August 1, 1992.

~~(2)~~ (d) Contracts for deed executed pursuant to a commitment for a contract for deed, or conventional or cooperative apartment loans made pursuant to a borrower's interest rate commitment or made pursuant to a borrower's loan commitment, or made pursuant to a commitment for conventional or cooperative apartment loans made upon payment of a forward commitment fee including a borrower's loan commitment issued pursuant to a forward commitment, which commitment provides for consummation within some future time following the issuance of the commitment may be consummated pursuant to the provisions, including the interest rate, of the commitment notwithstanding the fact that the maximum lawful rate of interest at the time the contract for deed or conventional or cooperative apartment loan is actually executed or made is less than the commitment rate of interest, provided the commitment rate of interest does not exceed the maximum lawful interest rate in effect on the date the commitment was issued. The refinancing of ~~(a)~~: (1) an existing conventional or cooperative apartment loan, ~~(b)~~ (2) a loan insured or guaranteed by the secretary of housing and urban development, the administrator of veterans affairs, or the administrator of the farmers home administration, or ~~(c)~~ (3) a contract for deed by making a conventional or cooperative apartment loan is deemed to be a new conventional or cooperative apartment loan for purposes of determining the maximum lawful rate of interest under this subdivision. The renegotiation of a conventional or cooperative apartment loan or a contract for deed is deemed to be a new loan or contract for deed for purposes of ~~clause (1)~~ paragraph (b) and for purposes of determining the maximum lawful rate of interest under this subdivision. A borrower's interest rate commitment or a borrower's loan commitment is deemed to be issued on the date the commitment is hand delivered by the lender to, or mailed to the borrower. A forward commitment is deemed to be issued on the date the forward commitment is hand delivered by the lender to, or mailed to the person paying the forward commitment fee to the lender, or to any one of them if there should be more than one. A commitment for a contract for deed is deemed to be issued on the date the commitment is initially executed by the contract for deed vendor or the vendor's authorized agent.

~~(3)~~ (e) A contract for deed executed pursuant to a commitment for a contract for deed, or a loan made pursuant to a borrower's interest rate commit-

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ment, or made pursuant to a borrower's loan commitment, or made pursuant to a forward commitment for conventional or cooperative apartment loans made upon payment of a forward commitment fee including a borrower's loan commitment issued pursuant to a forward commitment at a rate of interest not in excess of the rate of interest authorized by this subdivision at the time the commitment was made continues to be enforceable in accordance with its terms until the indebtedness is fully satisfied.

Sec. 9. Minnesota Statutes 1992, section 47.52, is amended to read:

47.52 AUTHORIZATION.

(a) With the prior approval of the commissioner, any bank doing business in this state may establish and maintain not more than five detached facilities provided the facilities are located within the municipality in which the principal office of the applicant bank is located; or within 5,000 feet of its principal office measured in a straight line from the closest points of the closest structures involved; or within 100 miles of its principal office measured in a straight line from the closest points of the closest structures involved, if the detached facility is within any municipality in which no bank is located at the time of application or if the detached facility is in a municipality having a population of more than 10,000, ~~as determined by the commissioner from the latest available data from the state demographer~~, or if the detached facility is located in a municipality having a population of 10,000 or less, as determined by the commissioner from the latest available data from the state demographer, or for municipalities located in the seven-county metropolitan area from the metropolitan council, and all the banks having a principal office in the municipality have consented in writing to the establishment of the facility.

(b) A detached facility shall not be closer than 50 feet to a detached facility operated by any other bank and shall not be closer than 100 feet to the principal office of any other bank, the measurement to be made in the same manner as provided above. This clause shall not be applicable if the proximity to the facility or the bank is waived in writing by the other bank and filed with the application to establish a detached facility.

(c) Any bank is allowed, in addition to other facilities, one drive-in or walk-up facility located between 150 to 1,500 feet of the main banking house or within 1,500 feet from a detached facility. The drive-in or walk-up facility permitted by this clause is subject to clause (b) and section 47.53.

Sec. 10. Minnesota Statutes 1992, section 47.54, subdivision 4, is amended to read:

Subd. 4. **HEARING.** In any case in which the commissioner grants a request for a hearing, the commissioner shall fix a time for a hearing conducted pursuant to chapter 14 to decide whether or not the application will be granted. A notice of the hearing must be published by the applicant in the form prescribed by the commissioner in a qualified newspaper published in the municipi-

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pality in which the proposed detached facility is to be located, and if there is no such newspaper, then ~~at the county seat of the county~~ in a qualified newspaper likely to give notice in the municipality in which the ~~proposed~~ detached facility is ~~proposed~~ to be located. The notice must be published once, at the expense of the applicants, not less than 30 days prior to the date of the hearing. At the hearing the commissioner shall consider the application and hear the applicants and witnesses that appear in favor of or against the granting of the application of the proposed detached facility. If an application is contested and a hearing is granted, 50 percent of an additional fee equal to the actual costs incurred by the department of commerce in approving or disapproving the application, payable to the commissioner of commerce to be deposited in the general fund, must be paid by the applicant and 50 percent equally by the intervening parties.

Sec. 11. Minnesota Statutes 1992, section 47.55, subdivision 1, is amended to read:

Subdivision 1. **BANKING FACILITIES IN OPERATION PRIOR TO MAY 1, 1971.** A bank may retain and operate one detached facility as it may have had in operation prior to May 1, 1971 without requirement of approval hereunder, provided that its function is limited as provided in section 47.53 and its location conforms with the provisions of section 47.52. A bank having such a retained detached facility shall be limited to operating ~~two~~ five additional detached facilities.

Sec. 12. Minnesota Statutes 1992, section 47.56, is amended to read:

47.56 TRANSFER OF LOCATION.

The location of a detached facility may be transferred to another location, subject to the same procedures and approval as required hereunder for establishing a new detached facility, except that the relocation of a detached facility within a municipality of 10,000 or less population shall not require consent of other banks required in section 47.52.

Sec. 13. Minnesota Statutes 1992, section 47.58, subdivision 1, is amended to read:

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

(a) "Reverse mortgage loan" means a loan:

(1) Made to a borrower wherein the committed principal amount is paid to the borrower in equal or unequal installments over a period of months or years, interest is assessed, and authorized closing costs are incurred as specified in the loan agreement;

(2) Which is secured by a mortgage on residential property owned solely by the borrower; and

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(3) Which is due when the committed principal amount has been fully paid to the borrower, or upon sale of the property securing the loan, or upon the death of the last surviving borrower, or upon the borrower terminating use of the property as principal residence so as to disqualify the property from the homestead credit given in chapter 290A.

(b) "Lender" means any bank subject to chapter 48, credit union subject to chapter 52, savings bank organized and operated pursuant to chapter 50, savings and loan association subject to chapter 51A, or any insurance company as defined in section 60A.02, subdivision 4. "Lender" also includes any federally chartered bank supervised by the comptroller of the currency or federally chartered savings and loan association supervised by the federal home loan bank board or federally chartered credit union supervised by the National Credit Union Administration, to the extent permitted by federal law.

(c) "Borrower" includes any natural person holding an interest in severalty or as joint tenant or tenant-in-common in the property securing a reverse mortgage loan.

(d) "Outstanding loan balance" means the current net amount of money owed by the borrower to the lender whether or not that sum is suspended pursuant to the terms of the reverse mortgage loan agreement or is immediately due and payable. The outstanding loan balance is calculated by adding the current totals of the items described in clauses (1) to (5) and subtracting the current totals of the item described in clause (6):

(1) The sum of all payments made by the lender which are necessary to clear the property securing the loan of any outstanding mortgage encumbrance or mechanics or material supplier's lien.

(2) The total disbursements made by the lender to date pursuant to the loan agreement as formulated in accordance with subdivision 3.

(3) All taxes, assessments, insurance premiums and other similar charges paid to date by the lender pursuant to subdivision 6, which charges were not reimbursed by the borrower within 60 days.

(4) All actual closing costs which the borrower has deferred, if a deferral provision is contained in the loan agreement as authorized by subdivision 7.

(5) The total accrued interest to date, as authorized by subdivision 5.

(6) All payments made by the borrower pursuant to subdivision 4.

(e) "Actual closing costs" mean reasonable charges or sums ordinarily paid at the time of closing for the following, whether or not retained by the lender:

(1) Any insurance premiums on policies covering the mortgaged property including but not limited to premiums for title insurance, fire and extended coverage insurance, flood insurance, and private mortgage insurance.

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(2) Abstracting, title examination and search, and examination of public records related to the mortgaged property.

(3) The preparation and recording of any or all documents required by law or custom for closing a reverse mortgage loan agreement.

(4) Appraisal and survey of real property securing a reverse mortgage loan.

(5) A single service charge, which service charge shall include any consideration, not otherwise specified in this section as an "actual closing cost," paid by the borrower to the lender for or in relation to the acquisition, making, refinancing or modification of a reverse mortgage loan, and shall also include any consideration received by the lender for making a commitment for a reverse mortgage loan, whether or not an actual loan follows the commitment. The service charge shall not exceed one percent of the bona fide committed principal amount of the reverse mortgage loan.

(6) Charges and fees necessary for or related to the transfer of real property securing a reverse mortgage loan or the closing of a reverse mortgage loan agreement paid by the borrower and received by any party other than the lender.

Sec. 14. Minnesota Statutes 1992, section 48.04, is amended to read:

48.04 INCREASE AND REDUCTION OF CAPITAL.

No increase or reduction of the capital of any ~~such bank~~ banking institution shall be valid until the entire new capital has been paid in cash, and certified to the commissioner under oath of the president, vice-president, or cashier. The commissioner shall thereupon issue a certificate of that fact and of approval thereof. No reduction of the surplus of any ~~such bank~~ banking institution shall be valid until such reduction has been approved by the commissioner of commerce. No reduction shall affect the liability of any stockholder for any indebtedness incurred prior thereto.

Sec. 15. Minnesota Statutes 1992, section 48.05, is amended to read:

48.05 CAPITAL NOT TO BE WITHDRAWN; DIVIDENDS.

No portion of the capital or surplus of any ~~such bank~~ banking institution shall ever be withdrawn by any person or in any way, either in dividends or otherwise, except upon reduction as provided by law. No dividend on common stock shall be made except as provided in section 48.09.

Sec. 16. Minnesota Statutes 1992, section 48.09, is amended to read:

48.09 DIVIDENDS; SURPLUS.

At the end of each dividend period, after deducting all necessary expenses, losses, amounts receivable more than one year overdue and not well secured, interest, and taxes due or levied, all of the remaining net profits for the period

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shall be set aside as a surplus fund, if the surplus fund of ~~such bank~~ the banking institution is not then equal to one-fifth of the capital stock. If the surplus fund is more than one-fifth of the capital stock, ten percent of the remaining net profits for the period shall be set aside as a surplus fund until it equals 50 percent of the capital stock. The directors may then declare a dividend of so much of the remainder as they may think expedient, subject to the commissioner's approval. When in any way impaired the surplus fund shall be raised to this percentage in like manner.

Sec. 17. Minnesota Statutes 1992, section 48.194, is amended to read:

48.194 INSTALLMENT SALES CONTRACTS; LOANS.

A person may enter into a credit sale or service contract for sale to a state or national bank doing business in this state, and a bank may purchase and enforce the contract under the terms and conditions set forth in section 51A.385, ~~subdivision~~ subdivisions 2 and 5 to 13. A state bank or national bank may extend credit pursuant to the terms and conditions set forth in section 51A.385.

Sec. 18. Minnesota Statutes 1992, section 48.24, subdivision 1, is amended to read:

Subdivision 1. The total liabilities to any such bank, as principal, guarantor or endorser of any individual, including the liabilities of any corporation or limited liability company which the individual owns or controls a majority interest, any partnership, unincorporated association, limited liability company, or corporation, including the liabilities of the several members of ~~a partnership or an~~ unincorporated association and including the liabilities of the general partners but not the limited partners of a partnership, and in case of a corporation or limited liability company of all subsidiaries thereof in which such corporation or limited liability company owns or controls a majority interest, shall never exceed 20 percent of its capital actually paid in cash and of its actual surplus fund, except that obligations not to exceed 25 percent of said capital and surplus to any one borrower shall not be included as liabilities for the purposes of this section, but shall be liabilities of the borrowers, provided they are secured by not less than a like amount of any one of the various types of obligations of the United States or which are fully guaranteed as to principal and interest by the United States, and providing that such bonds or obligations have a market value of at least ten percent in excess of the amount loaned thereon at the time each loan is made.

For the purpose of this section the members of a family living together in one household, if borrowed funds are to be used in the conduct of a common enterprise, shall be regarded as one person and the total liabilities of the members of the family shall be limited as herein provided. The endorser or guarantor of any obligation which is exempt from loaning limits according to the provisions of this section shall also be exempt from such loaning limits to the extent of the amount of liability on such obligations for the purposes of this section but shall be liable thereon. Individual extensions of credit which result in liabilities

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of individuals ~~or~~, corporations, or limited liability companies exceeding the limitations set forth in this section shall be construed to conform to the provisions of this subdivision upon reduction in an amount sufficient to reduce the total liability to not more than the legal amount, but until paid in full shall not exempt the officer or employee of the bank from being personally liable to the bank for the amount of the original excess portion of the loan as set forth in subdivision 8.

Sec. 19. Minnesota Statutes 1992, section 48.24, subdivision 7, is amended to read:

Subd. 7. Obligations of any person, copartnership, limited liability company, association, or corporation in the form of notes or drafts secured by shipping documents or instruments transferring or securing title covering feeder livestock which is free from all other encumbrances, when the market value of the livestock securing the obligation at the time of the making of the loan is not less than 115 percentum of the face amount of the notes covered by such documents, shall be subject under this subdivision to a limitation of 20 percent of capital and surplus in addition to 20 percent of capital and surplus as included in provisions of subdivision 1. Feeder livestock loans as referred to in this subdivision is defined to include only obligations secured by liens or giving title to cattle, sheep, goats, hogs or poultry being fattened for market, but excluding dairy cattle, milk goats, poultry used for production of eggs, or barnyard or work animals.

Sec. 20. Minnesota Statutes 1992, section 48.24, subdivision 8, is amended to read:

Subd. 8. When a bank shall allow any individual, partnership, limited liability company, unincorporated association, or corporation, or any officer or director of the bank, to become indebted to it, directly or indirectly, in excess of the amount, exclusive of interest permitted by the laws of this state, the officer or employee of the bank willfully permitting or approving the loan shall be guilty of a gross misdemeanor and, in addition thereto, shall be personally liable to the bank for the amount of the loan in excess of the statutory limit.

Sec. 21. Minnesota Statutes 1992, section 48.61, subdivision 2, is amended to read:

Subd. 2. Any such bank or trust company may invest not to exceed ~~two~~ five percent of its capital and surplus in shares of stock in small business investment companies organized under the provisions of the small business investment act of 1958.

Sec. 22. Minnesota Statutes 1992, section 48.61, subdivision 3, is amended to read:

Subd. 3. The bank or trust company may invest not to exceed ten percent of its capital and surplus in shares of stock in any banks or bank holding compa-

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nies wherein the ~~ownership~~ of stock ~~in~~ of the banks or bank holding companies is ~~restricted to~~ (1) owned exclusively by bank holding companies or banks, and (2) at least 51 percent of the voting stock is owned or controlled by bank holding companies or banks authorized to do business in the state of Minnesota.

Sec. 23. Minnesota Statutes 1992, section 48.61, subdivision 4, is amended to read:

Subd. 4. Any such bank or trust company may make equity or debt investments in limited partnerships, limited liability companies, corporations, or projects designed primarily to promote community welfare, such as the rehabilitation or development of economically depressed residential, commercial, or industrial areas. A bank or trust company investment in any one limited partnership, limited liability company, corporation, or project shall not exceed ~~two~~ five percent of its capital and surplus and its aggregate investment in all such limited partnerships, limited liability companies, corporations, or projects shall not exceed ~~five~~ ten percent of its capital and surplus.

Sec. 24. Minnesota Statutes 1992, section 48.64, is amended to read:

48.64 DEPOSITS OF TRUST FUNDS.

Any person, firm, or corporation appointed by a court of competent jurisdiction as representative of the estate of a deceased person, or as guardian, or any trustee of a firefighters' relief association, or any referee, receiver, or trustee appointed by a court of record in this state, may deposit funds for safekeeping and disbursing, unless otherwise directed by the court, in any bank, credit union, if the beneficial owner is a member, or trust company, however organized, the deposits of which are insured, in whole or in part, by ~~the Federal Deposit Insurance Corporation~~ an agency of the federal government insuring deposits, to the extent that the funds so deposited are fully insured.

Sec. 25. Minnesota Statutes 1992, section 48.86, is amended to read:

48.86 TRUST FUNDS; INVESTMENT OF ACCUMULATIONS.

Any amount not less than \$500 received by any trust company as executor, administrator, guardian, or other trustee, or by order of court, not required for the purposes of such trust, or not to be accounted for within one year, it shall invest as soon as practicable in authorized securities either then held by it or specially procured by it; and the income, less its proper charges, shall become part of the trust estate, and the net accumulations thereon shall be likewise invested, accounted for, and allowed in the settlement of such trust.

Except as may be otherwise provided in the governing will, trust agreement, court order or other instrument, any amount in a trust account may be invested in certificates of deposit, share certificates, or savings accounts in any bank or banks, or credit union, if the beneficial owner is a member, provided that such certificates of deposit, share certificates, or savings accounts are fully insured by ~~the federal deposit insurance corporation~~ an agency of the federal government

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insuring deposits and receive the prevailing rate of interest on such certificates or savings accounts.

Sec. 26. Minnesota Statutes 1992, section 49.35, is amended to read:

49.35 CONSOLIDATION OR MERGER AGREEMENT.

The respective boards of directors of the consolidating or merging corporations may, by the majority vote of all of the members of each board, make or authorize to be made between the corporations a written agreement, in duplicate, for the consolidation or merger of the corporations. The agreement shall specify each corporation to be a party to the transaction, and shall prescribe the terms and conditions thereof; the mode of carrying it into effect; the authorized capital stock of the consolidated or surviving corporation, ~~which shall not exceed the aggregate authorized capital stock of all of the corporations that are a party thereto;~~ the name of the consolidated or surviving corporation, which may be the name, in whole or in part, of any corporation which is a party to the agreement, and shall specify the city in which it shall have its principal place of business. It shall name the persons who shall constitute the board of directors of the consolidated or surviving corporation, but the number and qualifications of these persons shall be in accordance with the statutes relating to the number and qualifications of directors of that class of corporation.

Sec. 27. Minnesota Statutes 1992, section 49.36, subdivision 1, is amended to read:

Subdivision 1. **REQUIREMENTS.** This consolidation or merger agreement and certified copy of the proceedings of the meetings of the respective boards of directors, at which the making of the agreement was authorized, must be submitted to the commissioner of commerce for approval with a fee of \$250 payable to the commissioner of commerce. ~~The fee must be paid in equal parts by the parties to~~ The agreement, ~~and~~ it shall not be effective until so approved by the commissioner. The commissioner shall take action after the documents are submitted, and is entitled to further information from any party to the transaction as may be requested by the commissioner, or as may be obtained upon a hearing directed by the commissioner.

Sec. 28. Minnesota Statutes 1992, section 49.36, subdivision 4, is amended to read:

Subd. 4. **NOTICE OF ACQUISITION.** The successor bank shall give reasonable notice of the acquisition to each of the depositors and creditors of an acquired bank or savings association within 30 days after the order is activated. If detached facilities are to be closed as a result of transactions authorized by this section, adequate notice shall be provided by the bank prior to closing, unless the commissioner has acted to prevent the probable failure of the bank or savings association.

Sec. 29. Minnesota Statutes 1992, section 51A.02, subdivision 43, is amended to read:

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Subd. 43. **ORGANIZATION.** "Organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, joint venture, cooperative, limited liability company, or association.

Sec. 30. Minnesota Statutes 1992, section 52.04, subdivision 1, is amended to read:

Subdivision 1. A credit union has the following powers:

(1) to offer its members and other credit unions various classes of shares, share certificates, deposits, or deposit certificates;

(2) to receive the savings of its members either as payment on shares or as deposits, including the right to conduct Christmas clubs, vacation clubs, and other thrift organizations within its membership. Trust funds received by a real estate broker or the broker's salespersons in trust may be deposited in a credit union;

(3) to make loans to members for provident or productive purposes as provided in section 52.16;

(4) to make loans to a cooperative society or other organization having membership in the credit union;

(5) to deposit in state and national banks and trust companies authorized to receive deposits;

(6) to invest in any investment legal for savings banks or for trust funds in the state and, notwithstanding clause (3), to invest in and make loans of unsecured days funds (federal funds or similar unsecured loans) to financial institutions insured by an agency of the federal government and a member of the Federal Reserve System or required to maintain reserves at the Federal Reserve;

(7) to borrow money as hereinafter indicated;

(8) to adopt and use a common seal and alter the same at pleasure;

(9) to make payments on shares of and deposit with any other credit union chartered by this or any other state or operating under the provisions of the federal Credit Union Act, in amounts not exceeding in the aggregate 25 percent of its unimpaired assets. However, payments on shares of and deposit with credit unions chartered by other states are restricted to credit unions insured by the National Credit Union Administration. The restrictions imposed by this clause do not apply to share accounts and deposit accounts of the Minnesota corporate credit union in United States central credit union or to share accounts and deposit accounts of credit unions in the Minnesota corporate credit union;

(10) to contract with any licensed insurance company or society to insure the lives of members to the extent of their share accounts, in whole or in part, and to pay all or a portion of the premium therefor;

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(11) to indemnify each director, officer, or committee member, or former director, officer, or committee member against all expenses, including attorney's fees but excluding amounts paid pursuant to a judgment or settlement agreement, reasonably incurred in connection with or arising out of any action, suit, or proceeding to which that person is a party by reason of being or having been a director, officer, or committee member of the credit union, except with respect to matters as to which that person is finally adjudged in the action, suit, or proceeding to be liable for negligence or misconduct in the performance of duties. The indemnification is not exclusive of any other rights to which that person may be entitled under any bylaw, agreement, vote of members, or otherwise;

(12) upon written authorization from a member, retained at the credit union, to make payments to third parties by withdrawals from the member's share or deposit accounts or through proceeds of loans made to such member, or by permitting the credit union to make those payments from the member's funds prior to deposit; to permit draft withdrawals from member accounts, but a credit union proposing to permit draft withdrawals shall notify the commissioner of commerce, in the form prescribed, of its intent not less than 90 days prior to authorizing draft withdrawals. The board of directors of a credit union may restrict one class of shares to the extent that it may not be redeemed, withdrawn, or transferred except upon termination of membership in the credit union;

(13) to inform its members as to the availability of various group purchasing plans which are related to the promotion of thrift or the borrowing of money for provident and productive purposes by means of informational materials placed in the credit union's office, through its publications, or by direct mailings to members by the credit union;

(14) to facilitate its members' voluntary purchase of types of insurance incidental to promotion of thrift or the borrowing of money for provident and productive purposes including, but not limited to the following types of group or individual insurance: Fire, theft, automobile, life and temporary disability; to be the policy holder of a group insurance plan or a subgroup under a master policy plan and to disseminate information to its members concerning the insurance provided thereunder; to remit premiums to an insurer or the holder of a master policy on behalf of a credit union member, if the credit union obtains written authorization from the member for remittance by share or deposit withdrawals or through proceeds of loans made by the members, or by permitting the credit union to make the payments from the member's funds prior to deposit; and to accept from the insurer reimbursement for expenses incurred or in the case of credit life and accident and health insurance within the meaning of chapter 62B commissions for the handling of the insurance. The amount reimbursed or the commissions received may constitute the general income of the credit union. The directors, officers, committee members and employees of a credit union shall not profit on any insurance sale facilitated through the credit unions;

(15) to contract with another credit union to furnish services which either

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could otherwise perform. Contracted services under this clause are subject to regulation and examination by the commissioner of commerce like other services;

(16) in furtherance of the twofold purpose of promoting thrift among its members and creating a source of credit for them at legitimate rates of interest for provident purposes, and not in limitation of the specific powers hereinbefore conferred, to have all the powers enumerated, authorized, and permitted by this chapter, and such other rights, privileges and powers incidental to, or necessary for, the accomplishment of the objectives and purposes of the credit union;

(17) to rent safe deposit boxes to its members if the credit union obtains adequate insurance or bonding coverage for losses which might result from the rental of safe deposit boxes;

(18) notwithstanding the provisions of section 52.05, to accept deposits of public funds in an amount secured by insurance or other means pursuant to chapter 118 or section 9.031 or other applicable law and to receive deposits of trust funds provided that either the provider or the beneficial owner of the funds is a member of the credit union accepting the deposit;

(19) to accept and maintain treasury tax and loan accounts of the United States and to pledge collateral to secure the treasury tax or loan accounts, in accordance with the regulations of the Department of Treasury of the United States;

(20) to accept deposits pursuant to section 149.12, notwithstanding the provisions of section 52.05, if the deposits represent funding of prepaid funeral plans of members;

(21) to sell, in whole or in part, real estate secured loans provided that:

(a) the loan is secured by a first lien;

(b) the board of directors approves the sale;

(c) if the sale is partial, the agreement to sell a partial interest shall, at a minimum:

(i) identify the loan or loans covered by the agreement;

(ii) provide for the collection, processing, remittance of payments of principal and interest, taxes and insurance premiums and other charges or escrows, if any;

(iii) define the responsibilities of each party in the event the loan becomes subject to collection, loss or foreclosure;

(iv) provide that in the event of loss, each owner shall share in the loss in proportion to its interest in the loan or loans;

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(v) provide for the distribution of payments of principal to each owner proportionate to its interest in the loan or loans;

(vi) provide for loan status reports;

(vii) state the terms and conditions under which the agreement may be terminated or modified; and

(d) the sale is without recourse or repurchase unless the agreement:

(i) requires repurchase of a loan because of any breach of warranty or misrepresentation;

(ii) allows the seller to repurchase at its discretion; or

(iii) allows substitution of one loan for another;

(22) in addition to the sale of loans secured by a first lien on real estate, to sell, pledge, discount, or otherwise dispose of, in whole or in part, to any source, a loan or group of loans, other than a self-replenishing line of credit; provided, that within a calendar year beginning January 1 the total dollar value of loans sold, other than loans secured by real estate or insured by a state or federal agency, shall not exceed 25 percent of the dollar amount of all loans and participating interests in loans held by the credit union at the beginning of the calendar year, unless otherwise authorized in writing by the commissioner;

(23) to designate the par value of the shares of the credit union by board resolution;

(24) to exercise by resolution the powers set forth in United States Code, title 12, section 1757, as amended through ~~August 4, 1985~~ December 31, 1992. Before exercising each power, the board must submit a plan to the commissioner of commerce detailing implementation of the power to be used;

(25) to offer self-directed individual retirement accounts and Keogh accounts and act as custodian and trustee of these accounts if:

(1) all contributions of funds are initially made to a deposit, share or share certificate account in the credit union;

(2) any subsequent transfer of funds to other assets is solely at the direction of the member and the credit union exercises no investment discretion and provides no investment advice with respect to plan assets; and

(3) the member is clearly notified of the fact that National Credit Union Share Insurance Fund coverage is limited to funds held in deposit, share or share certificate accounts of National Credit Union Share Insurance Fund-insured credit unions.

Sec. 31. Minnesota Statutes 1992, section 52.04, is amended by adding a subdivision to read:

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Subd. 2a. A person may enter into a credit sale or service contract for sale to a state or federal credit union doing business in this state, and a credit union may purchase and enforce the contract under the terms and conditions set forth in section 51A.385, subdivisions 2 and 5 to 13.

Sec. 32. Minnesota Statutes 1992, section 52.12, is amended to read:

52.12 CAPITAL; ENTRANCE FEES; UNION TO HAVE LIEN.

The capital of a credit union includes shares, share certificates, any special class of shares, undivided earnings, reserves, and any entrance or membership fees. The credit union shall have a lien on the shares and deposits of a member for any sum due to the credit union from the member, or for any loan endorsed by that member. In addition to any other statutory right of setoff or lien and subject to any contractual provision, if any party to an account is indebted to a credit union, the credit union has a right to setoff against any account in which the party has or had immediately before death a present right of withdrawal. A credit union may, at its discretion, charge an entrance or annual membership fee if authorized by the bylaws.

Sec. 33. Minnesota Statutes 1992, section 53.03, subdivision 5, is amended to read:

Subd. 5. PLACE OF BUSINESS. Not more than one place of business may be maintained under any certificate of authorization issued subsequent to the enactment of Laws 1943, chapter 67, pursuant to the provisions of this chapter, but the department of commerce may issue more than one certificate of authorization to the same corporation upon compliance with all the provisions of this chapter governing an original issuance of a certificate of authorization. To the extent that previously filed applicable information remains unchanged, the applicant need not refile this information, unless requested. The filing fee for a branch application shall be \$500 and the investigation fee \$250. ~~If a corporation has been issued more than one certificate of authorization, the corporation shall allocate a portion of capital stock to each office for which a certificate has been issued, in order to comply with the capital requirements of sections 53.02 and 53.05, clause (2); which sections are applicable to each office and the capital allocated thereto in the same manner as if each certificate had been issued to a separate corporation.~~ An industrial loan and thrift corporation with deposit liabilities may change one or more of its locations upon the written approval of the commissioner of commerce. A fee of \$100 must accompany each application to the commissioner for approval to change the location of an established office. An industrial loan and thrift corporation that does not sell and issue thrift certificates for investment may change one or more locations by giving 30 days' written notice to the department of commerce which shall promptly amend the certificate of authorization accordingly. No change in place of business of a company to a location outside of its current trade area or more than 25 miles from its present location, whichever distance is greater, shall be permitted under the same certificate unless all of the applicable requirements of this section have been met.

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Sec. 34. Minnesota Statutes 1992, section 53.04, is amended by adding a subdivision to read:

Subd. 5a. A person may enter into a credit sale or service contract for sale to an industrial loan and thrift company operating under this chapter in this state, and an industrial loan and thrift company may purchase and enforce the contract under the terms and conditions set forth in section 51A.385, subdivisions 2 and 5 to 13.

Sec. 35. Minnesota Statutes 1992, section 53.09, is amended by adding a subdivision to read:

Subd. 4. The commissioner may honor requests from interested parties for interpretive opinions in connection with the administration of this chapter. No provision of this chapter or of any other chapter to which this chapter refers which imposes any penalty shall apply to any act done or not done in conformity with any written interpretive opinion of the commissioner, notwithstanding that such written interpretive opinion may, after such act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

Sec. 36. Minnesota Statutes 1992, section 56.10, is amended to read:

56.10 EXAMINATIONS.

Subdivision 1. For the purpose of discovering violations of this chapter or securing information lawfully required by the commissioner hereunder, the commissioner may, at any time, either personally or by a person or persons duly designated, investigate the loans and business and examine the books, accounts, records, and files used therein, of every licensee and of every person who shall be engaged in the business described in section 56.01, whether the person shall act or claim to act as principal or agent, or under or without the authority of this chapter. For that purpose the commissioner and a duly designated representative shall have free access to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of all such persons. The commissioner and all persons duly designated shall have authority to require the attendance of and to examine, under oath, all persons whomsoever whose testimony the commissioner may require relative to the loan or the business or to the subject matter of any examination, investigation, or hearing.

Each licensee shall pay to the commissioner such amount as may be required under section 46.131, and the commissioner may maintain an action for the recovery of such costs in any court of competent jurisdiction.

Subd. 2. The commissioner may honor requests from interested parties for interpretive opinions in connection with the administration of this chapter. No provision of this chapter or of any other chapter to which this chapter refers which imposes any penalty shall apply to any act done or omitted to be done in conformity with any written interpretive opinion of the commissioner, notwith-

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standing that such written interpretive opinion may, after such act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

Sec. 37. Minnesota Statutes 1992, section 56.12, is amended to read:

56.12 ADVERTISING; TAKING OF SECURITY; PLACE OF BUSINESS.

No licensee shall advertise, print, display, publish, distribute, or broadcast, or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner any statement or representation with regard to the rates, terms, or conditions for the lending of money, credit, goods, or things in action which is false, misleading, or deceptive. The commissioner may order any licensee to desist from any conduct which the commissioner shall find to be a violation of the foregoing provisions.

The commissioner may require that rates of charge, if stated by a licensee, be stated fully and clearly in such manner as the commissioner may deem necessary to prevent misunderstanding thereof by prospective borrowers. In lieu of the disclosure requirements of this section and section 56.14, a licensee may give the disclosures required by the federal Truth-in-Lending Act.

A licensee may take a lien upon real estate as security for any loan exceeding \$2,700 in principal amount made under this chapter. The provisions of sections 47.20 and 47.21 do not apply to loans made under this chapter, except as provided in this section. No loan secured by a first lien on a borrower's primary residence shall be made pursuant to this section if the proceeds of the loan are used to finance the purchase of the borrower's primary residence, unless:

(1) the proceeds of the loan are used to finance the purchase of a manufactured home or a prefabricated building; or

(2) the proceeds of the loan are used in whole or in part to satisfy the balance owed on a contract for deed.

If the proceeds of the loan are used to finance the purchase of the borrower's primary residence, the licensee shall consent to the subsequent transfer of the real estate if the existing borrower continues after transfer to be obligated for repayment of the entire remaining indebtedness. The licensee shall release the existing borrower from all obligations under the loan instruments, if the transferee (1) meets the standards of credit worthiness normally used by persons in the business of making loans, including but not limited to the ability of the transferee to make the loan payments and satisfactorily maintain the property used as collateral, and (2) executes an agreement in writing with the licensee whereby the transferee assumes the obligations of the existing borrower under the loan instruments. Any such agreement shall not affect the priority, validity or enforceability of any loan instrument. A licensee may charge a fee not in excess of one-tenth of one percent of the remaining unpaid principal balance in

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the event the loan is assumed by the transferee and the existing borrower continues after the transfer to be obligated for repayment of the entire assumed indebtedness. A licensee may charge a fee not in excess of one percent of the remaining unpaid principal balance in the event the remaining indebtedness is assumed by the transferee and the existing borrower is released from all obligations under the loan instruments, but in no event shall the fee exceed \$150.

A licensee making a loan under this chapter secured by a lien on real estate shall comply with the requirements of section 47.20, subdivision 8.

No licensee shall conduct the business of making loans under this chapter within any office, room, or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, if the commissioner finds that the character of the other business is such that it would facilitate evasions of this chapter or of the rules lawfully made hereunder. The commissioner may promulgate rules dealing with such other businesses.

No licensee shall transact the business or make any loan provided for by this chapter under any other name or at any other place of business than that named in the license. No licensee shall take any confession of judgment or any power of attorney. No licensee shall take any note or promise to pay that does not accurately disclose the principal amount of the loan, the time for which it is made, and the agreed rate or amount of charge, nor any instrument in which blanks are left to be filled in after execution. Nothing herein is deemed to prohibit the making of loans by mail or arranging for settlement and closing of real estate secured loans by an unrelated qualified closing agent at a location other than the licensed location.

Sec. 38. Minnesota Statutes 1992, section 56.131, subdivision 1, is amended to read:

Subdivision 1. **INTEREST RATES AND CHARGES.** (a) On any loan in a principal amount not exceeding \$35,000 or 15 percent of a Minnesota corporate licensee's capital stock and surplus as defined in section 53.015, if greater, a licensee may contract for and receive interest, calculated according to the actuarial method, not exceeding the equivalent of the greater of any of the following:

(1) the total of: (i) 33 percent per year on that part of the unpaid balance of the principal amount not exceeding \$750; and (ii) 19 percent per year on that part of the unpaid balance of the principal amount exceeding \$750; or

(2) 21.75 percent per year on the unpaid balance of the principal amount.

(b) On any loan where interest has been calculated according to the method provided for in paragraph (a), clause (1), interest must be contracted for and earned as provided in that provision or at the single annual percentage rate computed to the nearest 1/100 of one percent that would earn the same total interest at maturity of the contract as would be earned by the application of the graduated rates provided in paragraph (a), clause (1), when the debt is paid according

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to the agreed terms and the calculations are made according to the actuarial method.

(c) Loans may be interest-bearing or precomputed.

(d) To compute time on interest-bearing and precomputed loans, including, but not limited to the calculation of interest, a day is considered 1/30 of a month when calculation is made for a fraction of a calendar month. A year is 12 calendar months. A calendar month is that period from a given date in one month to the same numbered date in the following month, and if there is no same numbered date, to the last day of the following month. When a period of time includes a whole month and a fraction of a month, the fraction of a month is considered to follow the whole month.

In the alternative, for interest-bearing loans, a licensee may charge interest at the rate of 1/365 of the agreed annual rate for each actual day elapsed.

(e) With respect to interest-bearing loans:

(1) Interest must be computed on unpaid principal balances outstanding from time to time, for the time outstanding. Each payment must be applied first to the accumulated interest and the remainder of the payment applied to the unpaid principal balance; provided however, that if the amount of the payment is insufficient to pay the accumulated interest, the unpaid interest continues to accumulate to be paid from the proceeds of subsequent payments and is not added to the principal balance.

(2) Interest must not be payable in advance or compounded. However, if part or all of the consideration for a new loan contract is the unpaid principal balance of a prior loan, then the principal amount payable under the new loan contract may include any unpaid interest which has accrued. The unpaid principal balance of a precomputed loan is the balance due after refund or credit of unearned interest as provided in paragraph (f), clause (3). The resulting loan contract is deemed a new and separate loan transaction for all purposes.

(f) With respect to precomputed loans:

(1) Loans must be repayable in substantially equal and consecutive monthly installments of principal and interest combined, except that the first installment period may be more or less than one month by not more than 15 days, and the first installment payment amount may be larger than the remaining payments by the amount of interest charged for the extra days and must be reduced by the amount of interest for the number of days less than one month to the first installment payment; and monthly installment payment dates may be omitted to accommodate borrowers with seasonal income.

(2) Payments may be applied to the combined total of principal and pre-computed interest until the loan is fully paid. Payments must be applied in the order in which they become due.

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(3) When any loan contract is paid in full by cash, renewal or refinancing, or a new loan, one month or more before the final installment due date, a licensee shall refund or credit the borrower with the total of the applicable charges for all fully unexpired installment periods, as originally scheduled or as deferred, which follow the day of prepayment; if the prepayment is made other than on a scheduled payment date, the nearest scheduled installment payment date must be used in the computation; provided further, if the prepayment occurs prior to the first installment due date, the licensee may retain 1/30 of the applicable charge for a first installment period of one month for each day from the date of the loan to the date of prepayment, and shall refund or credit the borrower with the balance of the total interest contracted for. If the maturity of the loan is accelerated for any reason and judgment is entered, the licensee shall credit the borrower with the same refund as if prepayment in full had been made on the date the judgment is entered.

(4) If an installment, other than the final installment, is not paid in full within ten days of its scheduled due date, a licensee may contract for and receive a default charge not exceeding five percent of the amount of the installment, but not less than \$4.

A default charge under this subdivision may not be collected on an installment paid in full within ten days of its scheduled due date, or deferred installment due date with respect to deferred installments, even though a default or deferral charge on an earlier installment has not been paid in full. A default charge may be collected at the time it accrues or at any time thereafter.

(5) If the parties agree in writing, either in the loan contract or in a subsequent agreement, to a deferment of wholly unpaid installments, a licensee may grant a deferment and may collect a deferment charge as provided in this section. A deferment postpones the scheduled due date of the earliest unpaid installment and all subsequent installments as originally scheduled, or as previously deferred, for a period equal to the deferment period. The deferment period is that period during which no installment is scheduled to be paid by reason of the deferment. The deferment charge for a one-month period may not exceed the applicable charge for the installment period immediately following the due date of the last undeferred payment. A proportionate charge may be made for deferment for periods of more or less than one month. A deferment charge is earned pro rata during the deferment period and is fully earned on the last day of the deferment period. Should a loan be prepaid in full during a deferment period, the licensee shall make or credit to the borrower a refund of the unearned deferment charge in addition to any other refund or credit made for prepayment of the loan in full.

(6) If two or more installments are delinquent one full month or more on any due date, and if the contract so provides, the licensee may reduce the unpaid balance by the refund credit which would be required for prepayment in full on the due date of the most recent maturing installment in default. Thereafter, and in lieu of any other default or deferment charges, the single annual per-

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centage rate permitted by this subdivision may be charged on the unpaid balance until fully paid.

(7) Following the final installment as originally scheduled or deferred, the licensee, for any loan contract which has not previously been converted to interest-bearing under clause (6), may charge interest on any balance remaining unpaid, including unpaid default or deferment charges, at the single annual percentage rate permitted by this subdivision until fully paid.

(8) With respect to a loan secured by an interest in real estate, and having a maturity of more than 60 months, the original schedule of installment payments must fully amortize the principal and interest on the loan. The original schedule of installment payments for any other loan secured by an interest in real estate must provide for payment amounts that are sufficient to pay all interest scheduled to be due on the loan.

Sec. 39. Minnesota Statutes 1992, section 80A.14, subdivision 4, is amended to read:

Subd. 4. **BROKER-DEALER.** "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for that person's own account. "Broker-dealer" does not include:

(1) an agent;

(2) an issuer;

(3) a trust company; or

(4) a bank, savings institution, savings and loan association, credit union:

(i) acting for the account of others, provided that such activities are conducted in compliance with such rules as may be adopted by the commissioner;

(ii) acting for its own account; or

(iii) acting in a fiduciary capacity pursuant to the powers and privileges described by sections 48.36 to 48.49 or United States Code, title 12, section 92(a);

(5) a person who has no place of business in this state if that person effects transactions in this state exclusively with or through (i) the issuers of the securities involved in the transactions, (ii) other broker-dealers, or (iii) banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit sharing trusts, or other financial institutions or institutional buyers, or to broker-dealers, whether the purchaser is acting for itself or in some fiduciary capacity; or

(6) other persons not within the intent of this subsection whom the commissioner by rule or order designates.

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Sec. 40. Minnesota Statutes 1992, section 80A.14, subdivision 9, is amended to read:

Subd. 9. **INVESTMENT ADVISER.** "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications, writings or electronic means, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include:

- (1) a bank, savings institution, credit union, or trust company;
- (2) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of that person's profession;
- (3) a broker-dealer whose performance of these services is solely incidental to the conduct of the business as a broker-dealer and who receives no special compensation for them;
- (4) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client; or
- (5) other persons not within the intent of this subdivision as the commissioner may by rule or order designate.

Sec. 41. **[56.132] INSTALLMENT SALES CONTRACTS.**

A person may enter into a credit sale or service contract for sale to a licensee under this chapter doing business in this state, and a licensee may purchase and enforce the contract under the terms and conditions set forth in section 51A.385, subdivisions 2 and 5 to 13.

Sec. 42. Minnesota Statutes 1992, section 56.155, subdivision 1, is amended to read:

Subdivision 1. **AUTHORIZATION.** No licensee shall, directly or indirectly, sell or offer for sale any insurance in connection with any loan made under this chapter except as and to the extent authorized by this section. The sale of credit life and credit accident and health insurance is subject to the provisions of chapter 62B, except that the term of the insurance may exceed 60 months if the term of the loan exceeds 60 months. Life, accident, and health insurance, or any of them, may be written upon or in connection with any loan but must not be required as additional security for the indebtedness. If the debtor chooses to procure credit life insurance or credit accident and health insurance as security for the indebtedness, the debtor shall have the option of furnishing this security through existing policies of insurance that the debtor

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owns or controls, or of furnishing the coverage through any insurer authorized to transact business in this state. A statement in substantially the following form must be made orally, except for loans by mail pursuant to section 56.12, and provided in writing in bold face type of a minimum size of 12 points to the borrower before the transaction is completed for each credit life and accident and health insurance coverage sold:

CREDIT LIFE INSURANCE AND CREDIT DISABILITY INSURANCE ARE NOT REQUIRED TO OBTAIN CREDIT. YOU MAY BUY ANY INSURANCE FROM ANYONE YOU CHOOSE OR YOU MAY USE EXISTING INSURANCE.

The licensee shall disclose whether or not the benefits commence as of the first day of disability and shall further disclose the number of days that an insured obligor must be disabled, as defined in the policy, before benefits, whether retroactive or nonretroactive, commence. In case there are multiple obligors under a transaction subject to this chapter, no policy or certificate of insurance providing credit accident and health benefits may be procured by or through a licensee upon more than one of the obligors. In case there are multiple obligors under a transaction subject to this chapter, no policy or certificate of insurance providing credit life insurance may be procured by or through a licensee upon more than two of the obligors in which case they shall be insured jointly. The premium or identifiable charge for the insurance must not exceed that filed by the insurer with the department of commerce. The charge, computed at the time the loan is made for a period not to exceed the full term of the loan contract on an amount not to exceed the total amount required to pay principal and charges, may be deducted from the proceeds or may be included as part of the principal of any loan. If a borrower procures insurance by or through a licensee, the statement required by section 56.14 must disclose the cost to the borrower and the type of insurance, and the licensee shall cause to be delivered to the borrower a copy of the policy, certificate, or other evidence thereof, within a reasonable time. No licensee shall decline new or existing insurance which meets the standards set out in this section nor prevent any obligor from obtaining this insurance coverage from other sources. Notwithstanding any other provision of this chapter, any gain or advantage to the licensee or to any employee, affiliate, or associate of the licensee from this insurance or the sale or provision thereof is not an additional or further charge in connection with the loan; nor are any of the provisions pertaining to insurance contained in this section prohibited by any other provision of this chapter.

Sec. 43. Minnesota Statutes 1992, section 59A.02, subdivision 3, is amended to read:

Subd. 3. **LICENSEE.** "Licensee" means a person licensed by the commissioner to engage in the business of insurance premium financing. The term does not include a person in the business of insurance premium financing exclusively financing premiums for business, agricultural, or corporate purposes.

Sec. 44. Minnesota Statutes 1992, section 82B.03, subdivision 2, is amended to read:

New language is indicated by underline, deletions by ~~strikeout~~.

Subd. 2. **LICENSE NOT REQUIRED.** (a) An officer or employee of a corporation, partnership, or other business entity may act as a real estate appraiser without obtaining a license under this chapter if the corporation, partnership, or other business entity in which the person is employed or is an officer has an interest in the real estate that is the subject of the appraisal as owners, lenders, investors, or insurers.

(b) ~~As~~ Notwithstanding licensure under this chapter any appraisal conducted by a person exempt under this subdivision is only subject to the guidelines for real estate appraisal policies and review procedures of the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation Office of Thrift Supervision, the Federal Reserve Board, the Farm Credit Administration, the National Credit Union Administration, or the comptroller of the currency, if the appraisal was conducted only within the scope and purpose of this subdivision.

(c) If a real estate appraisal is made by a person who is exempt from licensing under this subdivision, the person for whom the appraisal is conducted must be given written notice that the appraisal was not conducted by a licensed appraiser, and the appraisal report must clearly state that it was conducted by an interested party and not by a licensed real estate appraiser.

Sec. 45. Minnesota Statutes 1992, section 300.20, subdivision 2, is amended to read:

Subd. 2. **VACANCIES.** If the certificate of incorporation or the bylaws so provides, a vacancy in the board of directors may be filled by the remaining directors. Not more than one-third of the members of the board may be so filled in any one year except any number may be appointed to provide for at least three directors until any subsequent meeting of the stockholders.

Sec. 46. Minnesota Statutes 1992, section 300.21, is amended to read:

300.21 OFFICERS.

Every domestic corporation, except when otherwise specially provided, must have a president, secretary, and treasurer, and may have one or more vice-presidents and other officers, as its certificate of incorporation or bylaws may provide. The time and manner of their election and their respective duties must be prescribed in the certificate of incorporation or in the bylaws. Only one president of record may act on behalf of the corporation; however, additional officers may be titled president for purposes of empowering those additional officers to function as managing officers of detached facilities of banks.

Sec. 47. Minnesota Statutes 1992, section 336.4-104, is amended to read:

336.4-104 DEFINITIONS AND INDEX OF DEFINITIONS.

(a) In this article, unless the context otherwise requires:

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(1) "Account" means any deposit or credit account with a bank, including a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;

(2) "Afternoon" means the period of a day between noon and midnight;

(3) "Banking day" means ~~the~~ that part of ~~a~~ any day, excluding Saturday, Sunday, and holidays, on which a bank is open to the public for carrying on substantially all of its banking functions;

(4) "Clearinghouse" means an association of banks or other payors regularly clearing items;

(5) "Customer" means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank;

(6) "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities (section 336.8-102) or instructions for uncertificated securities (section 336.8-308), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft;

(7) "Draft" means a draft as defined in section 336.3-104 or an item, other than an instrument, that is an order;

(8) "Drawee" means a person ordered in a draft to make payment;

(9) "Item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by article 4A or a credit or debit card slip;

(10) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(11) "Settle" means to pay in cash, by clearinghouse settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final;

(12) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over, or that it ceases or refuses to make payments in the ordinary course of business.

(b) Other definitions applying to this article and the sections in which they appear are:

"Agreement for electronic presentment," section 336.4-110

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- "Bank," section 336.4-105
- "Collecting bank," section 336.4-105
- "Depository bank," section 336.4-105
- "Intermediary bank," section 336.4-105
- "Payor bank," section 336.4-105
- "Presenting bank," section 336.4-105
- "Presentment notice," section 336.4-110

(c) The following definitions in other articles apply to this article:

- "Acceptance," section 336.3-409
- "Alteration," section 336.3-407
- "Cashier's check," section 336.3-104
- "Certificate of deposit," section 336.3-104
- "Certified check," section 336.3-409
- "Check," section 336.3-104
- "Good faith," section 336.3-103
- "Holder in due course," section 336.3-302
- "Instrument," section 336.3-104
- "Notice of dishonor," section 336.3-503
- "Order," section 336.3-103
- "Ordinary care," section 336.3-103
- "Person entitled to enforce," section 336.3-301
- "Presentment," section 336.3-501
- "Promise," section 336.3-103
- "Prove," section 336.3-103
- "Teller's check," section 336.3-104
- "Unauthorized signature," section 336.3-403

(d) In addition, article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

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Sec. 48. Minnesota Statutes 1992, section 540.08, is amended to read:

540.08 INJURY TO CHILD OR WARD; SUIT BY PARENT OR GUARDIAN.

A parent may maintain an action for the injury of a minor son or daughter. A general guardian may maintain an action for an injury to the ward. A guardian of a dependent, neglected, or delinquent child, appointed by a court having jurisdiction, may maintain an action for the injury of the child. If no action is brought by the father or mother, an action for the injury may be brought by a guardian ad litem, either before or after the death of the parent. Before a parent receives property as a result of the action, the parent shall file a bond as the court prescribes and approves as security therefor. In lieu of this bond, upon petition of the parent, the court may order that the property received be invested in securities issued by the United States, which shall be deposited pursuant to the order of the court, or that the property be invested in a savings account, savings certificate, ~~or~~ certificate of deposit, or share certificate, in a bank, savings and loan association, ~~or~~ trust company, credit union in which either the depositor or beneficiary is a member, or an annuity or other form of structured settlement, subject to the order of the court. A copy of the court's order and the evidence of the deposit shall be filed with the court administrator. Money or assets in an account established by the court under this section are not available to the minor child or the child's parent or guardian until released by the court to the child or the child's parent or guardian. No settlement or compromise of the action is valid unless it is approved by a judge of the court in which the action is pending.

Sec. 49. REPEALER.

Minnesota Statutes 1992, sections 46.048, subdivision 2; and 48.24, subdivision 4, are repealed.

Sec. 50. EFFECTIVE DATE.

Sections 1 to 17, 21 and 22, 24 to 28, 30 to 37, 39 to 42, and 44 to 49, are effective the day following final enactment. Section 6 is effective October 1, 1993, and section 43 is effective June 1, 1993. Sections 18, 19, 20, and 29 are effective retroactive to January 1, 1993. Section 23 is effective the day following final enactment, except that the changes relating to limited liability companies are effective retroactive to January 1, 1993.

Presented to the governor May 15, 1993

Signed by the governor May 19, 1993, 8:23 a.m.

New language is indicated by underline, deletions by ~~strikeout~~.