

SENATE
STATE OF MINNESOTA
EIGHTY-SEVENTH LEGISLATURE

S.F. No. 2185

(SENATE AUTHORS: BROWN)

DATE	D-PG	OFFICIAL STATUS
03/01/2012	4076	Introduction and first reading Referred to Commerce and Consumer Protection
03/19/2012		Comm report: To pass as amended Second reading

1.1 A bill for an act
1.2 relating to commerce; regulating industrial loan and thrift companies; amending
1.3 Minnesota Statutes 2010, sections 53.01; 53.015; 53.02; 53.03; 53.04,
1.4 subdivisions 1, 3a; 53.06; 53.08; 53.09, subdivision 1.

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

1.6 Section 1. Minnesota Statutes 2010, section 53.01, is amended to read:

1.7 **53.01 ORGANIZATION.**

1.8 It is lawful for three or more persons, who desire to form a corporation or limited
1.9 liability company for the purpose of carrying on primarily the business of loaning money
1.10 to persons within the conditions set forth in this chapter, to organize, under this chapter,
1.11 an industrial loan and thrift company, by filing with the secretary of state articles of
1.12 incorporation or articles of organization, and upon paying the fees prescribed by chapter
1.13 302A or 322B and upon compliance with the procedure provided for the organization
1.14 and government of ordinary corporations or limited liability companies under the laws
1.15 of this state, and upon compliance with the additional requirements of this chapter prior
1.16 to receiving authorization to do business. If an industrial loan and thrift company is
1.17 owned or controlled by a company, as defined in United States Code, title 12, section
1.18 1467a(a)(1)(C), the industrial loan and thrift company is not authorized, or eligible to
1.19 apply for authorization, to accept deposits under this chapter, unless the company that
1.20 owns or controls the industrial loan and thrift company would qualify to own a federal
1.21 savings association under United States Code, title 12, section 1467a(c)(9).

1.22 Sec. 2. Minnesota Statutes 2010, section 53.015, is amended to read:

1.23 **53.015 DEFINITIONS.**

2.1 Subdivision 1. **Applicability.** For the purposes of this chapter, the terms defined in
2.2 this section ~~shall~~ have the meanings given them.

2.3 Subd. 2. **Surplus.** "Surplus" means the sum total of all funds: (1) received as
2.4 consideration in excess of the par value of preferred or common stock or membership
2.5 interest; and (2) transferred from undivided profits as dedicated funds, by action of the
2.6 board of directors or board of governors.

2.7 Subd. 3. **Undivided profits.** "Undivided profits" means the net remaining funds
2.8 resulting from the operation of the corporation or company and shall include, but not be
2.9 limited to retained earnings, earned surplus, undivided profits and current earnings.

2.10 Subd. 4. **Capital stock.** "Capital stock" means in the case of a corporation
2.11 organized under chapter 302A the par value of preferred or common stock multiplied by
2.12 the respective number of shares of each type of stock or in the case of a limited liability
2.13 company organized under chapter 322B, the par value of membership interests multiplied
2.14 by the respective number of membership interests. For purposes of section 53.05,
2.15 clause (7), capital stock may include an amount of mandatory convertible debentures
2.16 approved by the commissioner. The terms and conditions for redemption of the qualifying
2.17 debentures must include the prior written approval of the commissioner as a condition
2.18 for a redemption, but in no event an amount in excess of 50 percent of total preferred
2.19 or common stock.

2.20 Sec. 3. Minnesota Statutes 2010, section 53.02, is amended to read:

2.21 **53.02 CAPITAL.**

2.22 No corporation or limited liability company shall be organized under this chapter
2.23 or qualified to do business thereunder with a capital represented by shares of common
2.24 stock or membership interests of less than \$25,000 in cities with less than 50,000 people;
2.25 \$50,000 in cities with more than 50,000 people and less than 100,000 people; and \$75,000
2.26 in cities with 100,000 people, or more, according to the last official census; each share of
2.27 that common stock or each membership interest to have a par value of not less than \$1
2.28 per share or unit. No corporation or limited liability company shall begin doing business
2.29 under this chapter unless the required capital is fully paid, and unless a surplus of no less
2.30 than ten percent of that required capital shall have also been fully paid and set up. After
2.31 the required capital of a corporation or limited liability company organized or doing
2.32 business under this chapter shall have been fully paid and a surplus of not less than ten
2.33 percent thereof also fully paid and set up, additional capital stock in that corporation or
2.34 additional membership interests in that limited liability company may be sold at not less
2.35 than par, provided, however, that there is always maintained a surplus of at least ten

3.1 percent of the capital of the corporation represented by shares of common stock, or in the
3.2 case of a limited liability company, at least ten percent of the capital of the company
3.3 represented by membership interests in the company.

3.4 Sec. 4. Minnesota Statutes 2010, section 53.03, is amended to read:

3.5 **53.03 CERTIFICATE.**

3.6 Subdivision 1. **Application, fee, notice.** Any corporation or limited liability
3.7 company hereafter organized as an industrial loan and thrift company, shall, after
3.8 compliance with the requirements set forth in sections 53.01 and 53.02, file a written
3.9 application with the Department of Commerce for a certificate of authorization. A
3.10 corporation or limited liability company that will not sell or issue thrift certificates for
3.11 investment as permitted by this chapter need not comply with subdivision 2b. The
3.12 application must be in the form prescribed by the Department of Commerce. The
3.13 application must be made in the name of the corporation or limited liability company,
3.14 executed and acknowledged by an officer designated by the board of directors of the
3.15 corporation or board of governors of the limited liability company, requesting a certificate
3.16 authorizing the corporation or limited liability company to transact business as an
3.17 industrial loan and thrift company, at the place and in the name stated in the application. At
3.18 the time of filing the application the applicant shall pay \$1,500 filing fee if the corporation
3.19 or limited liability company will not sell or issue thrift certificates for investment, and a
3.20 filing fee of \$8,000 if the corporation or limited liability company will sell or issue thrift
3.21 certificates for investment. The fees must be turned over by the commissioner to the
3.22 commissioner of management and budget and credited to the general fund. The applicant
3.23 shall also submit a copy of the bylaws of the corporation or operating agreement of the
3.24 limited liability company, its articles of incorporation or articles of organization and all
3.25 amendments thereto at that time. An application for powers under subdivision 2b must
3.26 also require that a notice of the filing of the application must be published once within
3.27 30 days of the receipt of the form prescribed by the Department of Commerce, at the
3.28 expense of the applicant, in a qualified newspaper published in the municipality in which
3.29 the proposed industrial loan and thrift company is to be located, or, if there be none, in
3.30 a qualified newspaper likely to give notice in the municipality in which the company is
3.31 proposed to be located. If the Department of Commerce receives a written objection to
3.32 the application from any person within 15 days of the notice having been fully published,
3.33 the commissioner shall proceed in the same manner as required under section 46.041,
3.34 subdivisions 3 and 4, relating to state banks.

4.1 Subd. 2. **Department of Commerce; duties.** Upon receiving an application the
4.2 Department of Commerce shall make, or cause to be made, an examination to ascertain
4.3 whether the assets of such corporation or limited liability company, over and above
4.4 all its liabilities, have an actual value of not less than the par value of all of its capital
4.5 represented by shares of common stock or membership interests, which shall not be less
4.6 than the amount prescribed by section 53.02. If upon its investigation or hearing provided
4.7 for in subdivision 1 those facts appear and it further appears that the bylaws and articles
4.8 of incorporation and amendments thereto are in accordance with law or in the case of a
4.9 limited liability company that the operating agreement and articles of organization and
4.10 amendments thereto are in accordance with law; that the shareholders of the corporation
4.11 or the members of the limited liability company are of good moral character and financial
4.12 integrity; that the company reasonably anticipates public demand for the loans it proposes
4.13 to make in the location specified in the application, and that the proposed company will be
4.14 properly and safely managed, the application shall be granted; otherwise it shall be denied.

4.15 Subd. 2a. **Selection, change of name.** Before filing the articles of incorporation or
4.16 articles of organization or an amendment to them, the proposed name of the industrial loan
4.17 and thrift company shall be submitted to the commissioner. If it is likely to confuse the
4.18 public as to the character of its business, or is otherwise objectionable, additional names
4.19 shall be submitted. When a satisfactory name is selected, the commissioner shall give
4.20 written approval of it and issue an amended certificate of authorization.

4.21 Subd. 2b. **Additional duties; thrift certificates for investment.** If an application
4.22 includes the right to issue thrift certificates for investment, the Department of Commerce
4.23 must, in addition to the duties in subdivision 2, make a determination that there is a
4.24 reasonable public demand for that company and that the probable volume of business in
4.25 that location is sufficient to insure the solvency of any then existing industrial loan and
4.26 thrift companies or banks in that locality, without endangering the safety of the company
4.27 or bank in the locality as a place for investing or depositing public and private money.

4.28 Subd. 3a. **Actions on applications.** If the application be granted without hearing
4.29 the Department of Commerce shall, not later than 60 days after the application has been
4.30 accepted, issue a certificate authorizing the corporation or limited liability company to
4.31 transact business as an industrial loan and thrift company as provided in this chapter. If
4.32 the application be denied without hearing the Department of Commerce shall, not later
4.33 than 60 days after the application has been accepted, notify the corporation or limited
4.34 liability company of the denial and the reasons for the denial. The applicant may request
4.35 within 30 days of receiving the notice of denial, and shall be granted, a contested case
4.36 hearing on the application which shall then be conducted as if no order of denial had been

5.1 issued. If the commissioner approves the application after a hearing the commissioner
5.2 shall, not later than 30 days after a hearing, issue a certificate authorizing the corporation
5.3 to transact business as an industrial loan and thrift company as provided in this chapter. If
5.4 the application be denied after a hearing the commissioner shall, not later than 30 days
5.5 after a hearing, notify the corporation or limited liability company of the denial.

5.6 Subd. 5. **Place of business.** Not more than one place of business may be maintained
5.7 under any certificate of authorization issued subsequent to the enactment of Laws 1943,
5.8 chapter 67, pursuant to the provisions of this chapter, but the Department of Commerce
5.9 may issue more than one certificate of authorization to the same corporation or limited
5.10 liability company upon compliance with all the provisions of this chapter governing
5.11 an original issuance of a certificate of authorization. To the extent that previously filed
5.12 applicable information remains unchanged, the applicant need not refile this information,
5.13 unless requested. The filing fee for a branch application shall be \$500 and the investigation
5.14 fee \$250. An industrial loan and thrift corporation with deposit liabilities may change one
5.15 or more of its locations upon the written approval of the commissioner of commerce. A
5.16 fee of \$100 must accompany each application to the commissioner for approval to change
5.17 the location of an established office. An industrial loan and thrift corporation or limited
5.18 liability company that does not sell and issue thrift certificates for investment may change
5.19 one or more locations by giving 30 days' written notice to the Department of Commerce
5.20 which shall promptly amend the certificate of authorization accordingly. No change in
5.21 place of business of a company to a location outside of its current trade area or more than
5.22 25 miles from its present location, whichever distance is greater, shall be permitted under
5.23 the same certificate unless all of the applicable requirements of this section have been met.

5.24 Subd. 6. **Amended certificates, thrift certificates for investment, application,**
5.25 **fee, notice.** Upon approval by the commissioner of commerce of a commitment for
5.26 insurance or guarantee of certificates to be held for investment as required in section
5.27 53.10, subdivision 3, an industrial loan and thrift company may apply to the Department
5.28 of Commerce for an amended certificate of authorization and consent to sell and issue
5.29 thrift certificates for investment.

5.30 The application, in triplicate, must be in the form prescribed by the Department of
5.31 Commerce and filed in its office. At the time of filing the application, the applicant shall
5.32 pay a filing fee of \$8,000 and if an application is contested, 50 percent of an additional
5.33 fee equal to the actual costs incurred by the Department of Commerce in approving or
5.34 disapproving the application, payable to the commissioner of management and budget
5.35 and credited by the commissioner of management and budget to the general fund, must
5.36 be paid by the applicant and 50 percent equally by the intervening parties. A notice of

6.1 the filing of the application must be published once within 30 days of the receipt of the
6.2 form prescribed by the Department of Commerce, at the expense of the applicant, in
6.3 a newspaper published in the municipality in which the place of business under the
6.4 application is located, or if there is none, in a newspaper published at the county seat of
6.5 the county in which the place of business is located. Not more than one place of business
6.6 maintained under a certificate of authorization may be the subject of an application.

6.7 Subd. 7. **Objection to application.** Upon receiving written objection to the
6.8 application from any person within 15 days of the notice having been fully published,
6.9 the Department of Commerce shall order a contested case hearing to be conducted on
6.10 the application.

6.11 Subd. 8. **Investigation.** Upon receiving an application, the Department of
6.12 Commerce shall make or cause to be made, an investigation of the application to determine
6.13 that the corporation or limited liability company is in a solvent condition, meets current
6.14 thrift industry standards of management quality and asset condition, is in compliance
6.15 with the requirements of this chapter. If upon completion of its investigation and any
6.16 hearing provided for in subdivision 7, it appears to the Department of Commerce that the
6.17 requirements for approval contained in this subdivision have been met, the application
6.18 shall be approved. In all other cases, the application shall be denied. As a condition of
6.19 approval, the capital funds of the applicant corporation or limited liability company shall
6.20 not be less than the total amount which the Department of Commerce considers necessary
6.21 having in mind the potential for the issuance of certificates for investment by the applicant.
6.22 The procedure in subdivision 3a shall be followed in decisions, notice, and hearing of
6.23 applications for consent to sell and issue thrift certificates for investment by issuance of
6.24 an amended certificate of authorization.

6.25 Sec. 5. Minnesota Statutes 2010, section 53.04, subdivision 1, is amended to read:

6.26 Subdivision 1. **Authorization.** Industrial loan and thrift companies, in addition
6.27 to the general and usual powers incidental to ordinary corporations or limited liability
6.28 companies in this state, which are not specifically restricted in this chapter, shall have the
6.29 special powers enumerated in subdivisions 2 to 5.

6.30 Sec. 6. Minnesota Statutes 2010, section 53.04, subdivision 3a, is amended to read:

6.31 Subd. 3a. **Loans.** (a) The right to make loans, secured or unsecured, at the rates
6.32 and on the terms and other conditions permitted under chapters 47, 325J, and 334. Loans
6.33 made under this authority must be in amounts in compliance with section 53.05, clause

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

7.3 (b) Loans made under this subdivision may be secured by real or personal property,
7.4 or both. If the proceeds of a loan secured by a first lien on the borrower's primary
7.5 residence are used to finance the purchase of the borrower's primary residence, the loan
7.6 must comply with the provisions of section 47.20.

7.7 (c) An agency or instrumentality of the United States government or a corporation
7.8 otherwise created by an act of the United States Congress or a lender approved or
7.9 certified by the secretary of housing and urban development, or approved or certified
7.10 by the administrator of veterans affairs, or approved or certified by the administrator
7.11 of the Farmers Home Administration, or approved or certified by the Federal Home
7.12 Loan Mortgage Corporation, or approved or certified by the Federal National Mortgage
7.13 Association, that engages in the business of purchasing or taking assignments of mortgage
7.14 loans and undertakes direct collection of payments from or enforcement of rights
7.15 against borrowers arising from mortgage loans, is not required to obtain a certificate of
7.16 authorization under this chapter in order to purchase or take assignments of mortgage
7.17 loans from persons holding a certificate of authorization under this chapter.

7.18 (d) This subdivision does not authorize an industrial loan and thrift company to
7.19 make loans under an overdraft checking plan.

7.20 Sec. 7. Minnesota Statutes 2010, section 53.06, is amended to read:

7.21 **53.06 DIRECTORS, RESIDENCE.**

7.22 At least three-fourths of the directors or governors of any industrial loan and
7.23 thrift company holding a certificate that includes the right to issue thrift certificates for
7.24 investment must be residents of Minnesota.

7.25 Sec. 8. Minnesota Statutes 2010, section 53.08, is amended to read:

7.26 **53.08 DIVIDENDS AND DISTRIBUTIONS.**

7.27 Subdivision 1. **General conditions for dividends.** When an industrial loan and
7.28 thrift company is organized under this chapter or operating thereunder, the board of
7.29 directors or board of governors may declare a dividend or distribution of so much of
7.30 the net profits of the corporation or limited liability company, after providing for all
7.31 expenses, reserves, interest, and taxes accrued or due from the corporation or limited
7.32 liability company, as they shall judge expedient, but before any dividend or distribution is
7.33 declared, not less than one-tenth of the net profits of the industrial loan and thrift company
7.34 of the preceding half year, or for such period as is covered by the dividend or distribution,

8.1 shall be carried to surplus until the aggregate of undivided profits and surplus shall amount
8.2 to 20 percent of its capital represented by shares of common stock or membership interest.

8.3 Subd. 2. **Special conditions for deposit companies.** In addition to the conditions in
8.4 subdivision 1, industrial loan and thrift companies having outstanding time certificates
8.5 of indebtedness, savings accounts, or savings deposits must comply with the following
8.6 special conditions:

8.7 (1) the dividend or distribution period for the purpose of declaring dividends or
8.8 distributions shall be the period beginning on January 1 and ending as of the close of
8.9 business December 31 of each calendar year and the net income for this period shall be
8.10 determined from the consolidated report of income of each company;

8.11 (2) the Department of Commerce will supply each company with forms to be
8.12 completed with information called for. The forms must be mailed or delivered to the
8.13 commissioner within ten days of the date of declaration of any dividend and at least 15
8.14 days before the proposed payment date of any dividend or distribution. The forms shall
8.15 contain a statement by the commissioner providing that if certain requirements as set
8.16 forth in the statement are met, the company may pay a cash dividend or distribution or
8.17 dividends or distributions without specific approval of the commissioner in the year after
8.18 the dividend or distribution period in amounts so as not to reduce the company's capital,
8.19 surplus, undivided profits, and reserves below these requirements;

8.20 (3) declared dividends or distributions shall be deducted from undivided profits and
8.21 carried on the books as another liability entitled "dividends payable." The other liability
8.22 account shall be reversed upon payment or nonapproval by the commissioner; and

8.23 (4) except as provided in clause (2), no company shall pay a cash dividend or
8.24 distribution to its stockholders or members until written approval for the dividend or
8.25 distribution has been obtained from the commissioner.

8.26 Sec. 9. Minnesota Statutes 2010, section 53.09, subdivision 1, is amended to read:

8.27 Subdivision 1. **General examinations.** The commissioner shall make examinations
8.28 for the purposes set forth in section 46.04, subdivision 1, at least once every 18 calendar
8.29 months, of each authorized place of business of every industrial loan and thrift company
8.30 with the right to issue thrift certificates for investment organized or operating under this
8.31 chapter to satisfy the commissioner that the corporation or limited liability company is in a
8.32 solvent condition and is complying with the requirements of this chapter and operating
8.33 according to sound business principles. In order to enforce actions in this connection,
8.34 the commissioner is hereby vested with the same authority as in the examination and
8.35 regulation of state banks. The corporation or limited liability company so examined

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9.1 shall pay to the commissioner such fees as may be required under section 46.131. The
9.2 commissioner may maintain an action for the recovery of such costs in any court of
9.3 competent jurisdiction.