

CHAPTER 53

INDUSTRIAL LOAN AND THRIFT COMPANIES

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NOTE: "Commissioner" means commissioner of commerce. See sections 46.03 and 46.04.

53.01 ORGANIZATION.

It is lawful for three or more persons, who desire to form a corporation for the purpose of carrying on primarily the business of loaning money to persons within the conditions set forth in this chapter, to organize, under this chapter, an industrial loan and thrift company, by filing with the secretary of state articles of incorporation, and upon paying the fees prescribed by sections 301.07 and 301.071 or chapter 302A and upon compliance with the procedure provided for the organization and government of ordinary corporations under the laws of this state, and upon compliance with the additional requirements of this chapter prior to receiving authorization to do business.

History: 1933 c 246 s 1; 1943 c 67 s 1; 1976 c 181 s 2; 1980 c 541 s 2; 1981 c 270 s 126; 1982 c 547 s 1; 1983 c 250 s 19; 1984 c 576 s 19 (7774-25)

53.015 DEFINITIONS.

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

Subd. 2. "Paid-in capital" means consideration received in excess of the par value of preferred or common stock.

Subd. 3. "Invested income" means the net remaining funds resulting from the operation of the corporation and shall include, but not be limited to retained earnings, earned surplus, undivided profits and current earnings.

Subd. 4. "Donated capital" means all funds contributed by the stockholders, other than funds received in connection with the issuance of stock, and such amounts transferred from invested income, either by declaration of a share dividend or by action of the board of directors.

Subd. 5. "Contributed capital" means the sum total of all funds contributed to the corporation by the stockholders and shall include, but not be limited to preferred stock, common stock, paid-in capital and donated capital.

Subd. 6. "Appropriated reserves" means dedicated funds transferred from invested income by action of the board of directors, which dedicated funds shall otherwise be known as a capital reserve.

History: 1971 c 442 s 1

53.02 CAPITAL.

No corporation shall be organized under this chapter or qualified to do business thereunder with a capital represented by shares of common stock of less than \$25,000 in cities with less than 50,000 people; \$50,000 in cities with more than 50,000 people and less than 100,000 people; and \$75,000 in cities with 100,000 people, or more, according to the last official census; each share of that common stock to have a par value of not less than \$1 per share. No corporation shall begin

doing business under this chapter unless the required capital is fully paid, and unless a paid-in capital of no less than ten percent of that required capital shall have also been fully paid and set up. After the required capital of a corporation organized or doing business under this chapter shall have been fully paid and a paid-in capital of not less than ten percent thereof also fully paid and set up, additional capital stock in that corporation may be sold at not less than par, provided, however, that there is always maintained a paid-in capital of at least ten percent of the capital of the corporation represented by shares of common stock.

History: 1933 c 246 s 2; 1943 c 67 s 2; 1947 c 20 s 1; 1971 c 442 s 2 (7774-26)

53.03 CERTIFICATE.

Subdivision 1. Application, fee, notice. Any corporation hereafter organized as an industrial loan and thrift company, shall, after compliance with the requirements set forth in sections 53.01 and 53.02, file a written application with the department of commerce for a certificate of authorization. The application, in duplicate, must be in the form prescribed by the department of commerce. The application must be made in the name of the corporation, executed and acknowledged by two of its officers designated by the board of directors of the corporation for that purpose, requesting a certificate authorizing the corporation to transact business as an industrial loan and thrift company, at the place and in the name stated in the application. At the time of filing the application the applicant shall pay a \$1,000 filing fee and a \$500 investigation fee. The fees must be turned over by the commissioner to the state treasurer and credited to the general fund. The applicant shall also submit a copy of the bylaws of the corporation, its articles of incorporation and all amendments thereto at that time. If the application is contested, 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 state treasurer and credited to the general fund shall be paid by the applicant and 50 percent equally by the intervening parties. A notice of the filing of the application must be published once within 30 days of the receipt of the form prescribed by the department of commerce, at the expense of the applicant, in a newspaper published in the municipality in which the proposed industrial loan and thrift company is to be located, or, if there be none, in a newspaper published at the county seat of the county in which the company is proposed to be located. If the department of commerce receives a written objection to the application from any person within 20 days of the notice having been fully published a contested case hearing must be conducted on the application. The department of commerce may without cause order a contested case hearing on the application. Notice of a hearing in connection with this section must be published once in the form prescribed by the department of commerce, at the expense of the applicant, in the same manner as a notice of application.

Subd. 2. Department of commerce; duties. Upon receiving an application the department of commerce shall make, or cause to be made, an examination to ascertain whether the assets of such corporation, over and above all its liabilities, have an actual value of not less than the par value of all of its capital represented by shares of common stock, which shall not be less than the amount prescribed by section 53.02. If upon its investigation or hearing provided for in subdivision 1 those facts appear and it further appears that the bylaws and articles of incorporation and amendments thereto are in accordance with law; that the shareholders of the corporation are of good moral character and financial integrity; that there is a reasonable public demand for that company in the location specified in the application, and that the probable volume of business in that location is sufficient to insure and maintain the solvency of such company and the solvency of any then existing

industrial loan and thrift companies or banks in that locality, without endangering the safety of any such company or bank in the locality as a place for investing or depositing public and private money, and that the proposed company will be properly and safely managed, the application shall be granted; otherwise it shall be denied.

Subd. 2a. Selection, change of name. Before filing the certificate of incorporation or an amendment to it the proposed name of the industrial loan and thrift company shall be submitted to the commissioner, who shall compare it with those of other corporations operating in the state. If it is likely to be mistaken for any of them, or to confuse the public as to the character of its business, or is otherwise objectionable, additional names shall be submitted. When a satisfactory name is selected, the commissioner shall give written approval of it and issue an amended certificate of authorization.

Subd. 3. [Repealed, 1977 c 346 s 14]

Subd. 3a. If the application be granted without hearing the department of commerce shall, not later than 60 days after the notice of application has been fully published, issue a certificate authorizing the corporation to transact business as an industrial loan and thrift company as provided in this chapter. If the application be denied without hearing the department of commerce shall, not later than 60 days after the notice of application has been fully published, notify the corporation of the denial and the reasons for the denial. The applicant may request within 30 days of receiving the notice of denial, and shall be granted, a contested case hearing on the application which shall then be conducted as if no order of denial had been issued. If the commission approves the application after a hearing the commission shall, not later than 30 days after a hearing, issue a certificate authorizing the corporation to transact business as an industrial loan and thrift company as provided in this chapter. If the application be denied after a hearing the commission shall, not later than 30 days after a hearing, notify the corporation of the denial.

Subd. 4. Filing certificate. The certificate of authorization granted shall be filed in the places specified for filing the articles of incorporation in section 53.01. The corporation shall thereupon become an industrial loan and thrift company.

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. 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 contributed capital to each office for which a certificate has been issued, in order to comply with the capital requirements of section 53.02 and section 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. Each additional certificate of authorization issued pursuant to the provisions of this subdivision must be filed with the secretary of state. A corporation 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.

Subd. 6. Amended certificates, thrift certificates for investment, application, fee, notice. Upon approval by the commissioner of banks of a commitment for insurance or guarantee of certificates to be held for investment as required in section 53.10, subdivision 3, an industrial loan and thrift company may apply to the

department of commerce for an amended certificate of authorization and consent to sell and issue thrift certificates for investment.

The application, in triplicate, must be in the form prescribed by the department of commerce and filed in its office. At the time of filing the application, the applicant shall pay a filing fee of \$500 and if an application is contested, 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 state treasurer and credited by the treasurer to the general fund, must be paid by the applicant and 50 percent equally by the intervening parties. A notice of the filing of the application must be published once within 30 days of the receipt of the form prescribed by the department of commerce, at the expense of the applicant, in a newspaper published in the municipality in which the place of business under the application is located, or if there is none, in a newspaper published at the county seat of the county in which the place of business is located. Not more than one place of business maintained under a certificate of authorization may be the subject of an application.

Subd. 7. Objection to application. Upon receiving written objection to the application from any person within 20 days of the notice having been fully published, the department of commerce shall order a contested case hearing to be conducted on the application. The department of commerce may without cause order a contested case hearing to be conducted on the application.

Subd. 8. Investigation. Upon receiving an application, the department of commerce shall make or cause to be made, an investigation of the application to determine that the corporation is in a solvent condition, meets current thrift industry standards of management quality and asset condition, is in compliance with the requirements of this chapter and that the approval of the application will not have an adverse effect upon the solvency of any existing industrial loan and thrift company selling and issuing certificates for investment or banks in the locality, or endanger the safety of any company or bank in the locality as a place for investing or depositing public and private money. If upon completion of its investigation and any hearing provided for in subdivision 7, it appears to the department of commerce that the requirements for approval contained in this subdivision have been met, the application shall be approved. In all other cases, the application shall be denied. As a condition of approval, the capital funds of the applicant corporation shall not be less than the total amount which the department of commerce considers necessary having in mind the potential for the issuance of certificates for investment by the applicant. The procedure in subdivision 3a shall be followed in decisions, notice, and hearing of applications for consent to sell and issue thrift certificates for investment by issuance of an amended certificate of authorization.

History: 1933 c 246 s 3; 1943 c 67 s 3; 1947 c 20 s 2; 1951 c 70 s 1; 1969 c 347 s 2; 1969 c 399 s 1; 1969 c 1129 art 4 s 10; 1971 c 442 s 3; 1976 c 181 s 2; 1976 c 235 s 1; 1977 c 346 s 5-7; 1978 c 674 s 12; 1981 c 132 s 1-4; 1983 c 250 s 20-22; 1983 c 252 s 4; 1984 c 576 s 20-22; 1984 c 655 art 1 s 12 (7774-27)

53.04 SPECIAL POWERS.

Subdivision 1. Industrial loan and thrift companies, in addition to the general and usual powers incidental to ordinary corporations in this state, which are not specifically restricted in this chapter, shall have the special powers enumerated in subdivisions 2 to 5.

Subd. 2. The right to discount or purchase notes, bills of exchange, acceptances or other choses in action.

Subd. 3. [Repealed, 1981 c 258 s 23]

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Subd. 3a. (a) The right to make loans, secured or unsecured, at the rates and on the terms and other conditions permitted licensees under chapter 56. Loans made under the authority of section 56.125 must be in amounts in compliance with section 53.05, clause (7). All other loans made under the authority of chapter 56 must be in amounts in compliance with section 53.05, clause (7), or 56.131, subdivision 1, paragraph (a), whichever is less. The right to extend credit or lend money and to collect and receive charges therefor as provided by chapter 334, or in lieu thereof to charge, collect, and receive interest at the rate of 21.75 percent per annum. The provisions of sections 47.20 and 47.21 do not apply to loans made under this subdivision, except as specifically provided in this subdivision. Nothing in this subdivision is deemed to supersede, repeal, or amend any provision of section 53.05. 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.

(b) Loans made under this subdivision at a rate of interest not in excess of that provided for in paragraph (a) may be secured by real or personal property, or both. If the proceeds of a loan made after August 1, 1987 are used in whole or in part to satisfy the balance owed on a contract for deed, the rate of interest charged on the loan must not exceed the rate provided in section 47.20, subdivision 4a. If the proceeds of a loan secured by a first lien on the borrower's primary residence are used to finance the purchase of the borrower's primary residence, the loan must comply with the provisions of section 47.20.

(c) A loan made under this subdivision that is secured by real estate and that is in a principal amount of \$7,500 or more and a maturity of 60 months or more may contain a provision permitting discount points, if the loan does not provide a loan yield in excess of the maximum rate of interest permitted by this subdivision. Loan yield means the annual rate of return obtained by a licensee computed as the annual percentage rate is computed under Federal Regulation Z. If the loan is prepaid in full, the licensee must make a refund to the borrower to the extent that the loan yield will exceed the maximum rate of interest provided by this subdivision when the prepayment is taken into account.

Subd. 3b. The right to make loans under chapter 47 on the same terms and subject to the same conditions as apply to other lenders under that chapter.

Subd. 4. [Repealed, 1981 c 258 s 23]

Subd. 5. The right, with the consent of the department of commerce, to (1) sell and issue for investment certificates of indebtedness, under any descriptive name, which may bear interest, if any, as their terms provide, and which may require the payment to the company of amounts, from time to time as their terms provide, and permit the withdrawal of amounts paid on them, in whole or in part, from time to time, and the credit of amounts thereon upon conditions set forth therein; and (2) receive savings accounts or savings deposits. No certificate of indebtedness shall have a surrender value which is less than the total amount paid to the company therefor.

Subd. 6. [Repealed, 1981 c 258 s 23]

Subd. 7. [Repealed, 1981 c 258 s 23]

History: 1933 c 246 s 4; 1945 c 439 s 1; 1953 c 133 s 1; 1963 c 596 s 1; 1971 c 906 s 1; 1975 c 373 s 1; 1976 c 235 s 2; 1980 c 551 s 3; 1981 c 258 s 20; 1982 c 473 s 20; 1982 c 547 s 2,3; 1983 c 250 s 23; 1983 c 252 s 5,6; 1984 c 473 s 2-4; 1984 c 576 s 5; 1984 c 655 art 1 s 13; 1984 c 655 art 2 s 3 subd 1 (7774-28)

53.05 POWERS, LIMITATION.

No industrial loan and thrift company may do any of the following:

(1) carry commercial or demand banking accounts; use the word "bank" or "banking" in its corporate name; operate as a savings bank;

(2) have outstanding at any one time certificates of indebtedness, savings accounts, and savings deposits, exclusive of those held by the company, as security for loans made by it of more than seven times the sum of the contributed capital and appropriated reserves of the company until July 1, 1985, or the date an industrial loan and thrift company obtains a commitment for insurance or guarantee of accounts acceptable to the commissioner as required by section 53.10, whichever is earlier, and thereafter 15 times the sum of contributed capital and appropriated reserves of the company;

(3) accept trusts, except as provided in section 47.75, subdivision 1, or act as guardian, administrator, or judicial trustee in any form;

(4) deposit any of its funds in any banking corporation, unless that corporation has been designated by vote of a majority of directors or of the executive committee present at a meeting duly called, at which a quorum was in attendance;

(5) change any allocation of capital made pursuant to section 53.03 or reduce or withdraw in any way any portion of the contributed capital and appropriated reserves without prior written approval of the commissioner of commerce;

(6) take any instrument in which blanks are left to be filled in after execution;

or

(7) lend money in excess of ten percent of its contributed capital and appropriated reserves to a person primarily liable. "Contributed capital and appropriated reserves" means the total of the company's contributed capital and appropriated reserves at all its authorized locations.

If a loan has been made to a person primarily liable and payments have been made on a certificate of indebtedness securing it, the amount of the payments may be added to the limitation contained in this clause for the purpose of determining whether additional loans may be made to that person.

History: 1933 c 246 s 5; 1947 c 20 s 3; 1971 c 442 s 4; 1975 c 373 s 2; 1976 c 235 s 3; 1983 c 250 s 24; 1983 c 252 s 7; 1983 c 289 s 114 subd 1; 1984 c 473 s 5; 1984 c 655 art 1 s 92 (7774-29)

53.051 [Repealed, 1981 c 258 s 23]

53.06 DIRECTORS, RESIDENCE.

At least three-fourths of the directors of any industrial loan and thrift company must be residents of the county in which the industrial loan and thrift company maintains its principal place of business, an adjacent county or any county in which the industrial loan and thrift company maintains a place of business pursuant to this chapter.

History: 1933 c 246 s 6; 1943 c 67 s 3; 1947 c 20 s 4; 1971 c 442 s 6; 1980 c 503 s 1; 1983 c 250 s 25 (7774-30)

53.07 RESERVE.

Subdivision 1. Liquidity requirement. An industrial loan and thrift company shall maintain reserves in the form of liquid assets at a level reasonably necessary to meet anticipated withdrawals, commitments, and loan demand. Reserves shall be in cash, cash items in process of collection, short term obligations of or demand balances with other insured financial institutions in the United States and its territories, or short term, direct obligations of or guaranteed by the United States government. Obligations must mature within one year to be considered short term.

The commissioner may prescribe the required amount of reserves in relation to liabilities for an individual industrial loan and thrift company from time to time based upon examination findings or other reports relating to the industrial loan and thrift company that are available to the commissioner. The determination by the commissioner of a required amount of reserves for an industrial loan and thrift company shall not be considered a rule as defined by section 15.0411, subdivision 3. Reserves for an individual industrial loan and thrift company as prescribed by the commissioner pursuant to this section shall be enforced in accordance with sections 46.24 and 46.30 to 46.33.

Subd. 2. Temporary reserve minimum. Until an industrial loan and thrift company obtains a commitment for insurance or guarantee of accounts acceptable to the commissioner as required by section 53.10, it shall establish a minimum reserve against the certificates of indebtedness, savings accounts, and savings deposits described in section 53.04, subdivision 5, of not less than ten percent of the amount of indebtedness thus created. Three percent of this indebtedness shall be in cash in the actual possession of the industrial loan company or on demand deposit in approved banks of this state, and seven percent of the total indebtedness may be in bonds admissible for investment by mutual savings banks under the laws of this state.

History: 1933 c 246 s 7; 1976 c 235 s 4; 1982 c 473 s 21; 1983 c 252 s 8 (7774-31)

53.08 DIVIDENDS.

When an industrial loan and thrift company is organized under this chapter or operating thereunder, the board of directors may declare a dividend of so much of the net profits of the corporation, after providing for all expenses, reserves, interest, and taxes accrued or due from the corporation, as they shall judge expedient, but before any dividend is declared, not less than one-tenth of the net profits of the industrial loan and thrift company of the preceding half year, or for such period as is covered by the dividend, shall be carried to an invested income fund or appropriated reserves until the aggregate of invested income and appropriated reserves shall amount to 20 percent of its capital represented by shares of common stock.

History: 1933 c 246 s 8; 1947 c 20 s 5; 1971 c 442 s 5 (7774-32)

53.09 EXAMINATIONS.

Subdivision 1. Frequency and expense. The commissioner shall make examinations, at least once every 18 calendar months, of each authorized place of business of every industrial loan and thrift company organized or operating under this chapter, at which time he shall satisfy himself that the corporation is in a solvent condition and is complying with the requirements of this chapter and operating according to sound business principles. In order to enforce his actions in this connection, the commissioner is hereby vested with the same authority as in his examination and regulation of state banks. The corporation so examined shall pay to the commissioner such fees as may be required under section 46.131. The commissioner may maintain an action for the recovery of such costs in any court of competent jurisdiction.

Subd. 2. Report to commissioner. (1) Each industrial loan and thrift company shall annually on or before the first day of February file a report with the commissioner stating in detail, under appropriate heads, its assets and liabilities at the close of business on the last day of the preceding calendar year. This report shall be made under oath in the form prescribed by the commissioner and published once, at the expense of the industrial loan and thrift company, in a newspaper of the

county of its location, and proof thereof filed immediately with the commissioner of commerce.

(2) Within 30 days following a change in controlling ownership of the capital stock of an industrial loan and thrift company, it shall file a written report with the commissioner stating in detail the nature of such change in ownership.

Subd. 3. Penalties. The penalties for violation of this chapter, or for any wrongdoing in connection therewith, shall be the same as those applied to state banks under the laws of this state.

History: 1933 c 246 s 9; 1943 c 67 s 4; 1947 c 20 s 6; 1965 c 475 s 2; 1980 c 503 s 2; 1983 c 289 s 114 subd 1; 1984 c 576 s 23; 1984 c 655 art 1 s 92 (7774-33)

53.10 MANDATORY INSURANCE OR GUARANTEE.

Subdivision 1. Requirement. Not later than July 1, 1983, every industrial loan and thrift company operating under this chapter with consent or holding a certificate of authorization, which includes the right to sell and issue for investment certificates of indebtedness, savings accounts, and savings deposits, other than those to be pledged as security for a loan made contemporaneously therewith, shall obtain a commitment for insurance or guarantee of the certificates, accounts, or deposits by or through an insurance company or guarantee fund acceptable to the commissioner of commerce. The insurance or guarantee shall provide for the redemption of the investment of certificate, account, or deposit holders in the event of liquidation, insolvency or bankruptcy of the industrial loan and thrift company. The amount of insurance or guarantee benefit to each certificate, account, or deposit holder, as an individual or multiparty account, shall at all times be in full force and equal to the lesser of the industrial loan and thrift company's liability under a certificate, account, or deposit or \$100,000. For purposes of this section, an insurance company or guarantee fund includes an insurance company authorized to do business in this state, an insurance or guarantee fund organized under the laws of the United States, this state or any other state with the expressed purpose or authority to guarantee the accounts of industrial loan and thrift companies or any other person who contracts with industrial loan and thrift companies to guarantee accounts.

Subd. 2. The commissioner of commerce shall grant additional time or times to obtain the commitment for insurance or guarantee upon satisfactory evidence that the industrial loan and thrift company has made or is making a substantial effort to achieve the conditions precedent to issuance of the commitment. Additional time or times shall not extend later than July 1, 1985.

Subd. 3. No industrial loan and thrift company shall hereafter be granted consent, or issued a certificate of authorization which includes the right to issue for investment certificates of indebtedness, savings accounts, and savings deposits, other than those to be pledged as security for a loan made contemporaneously therewith, unless the industrial loan and thrift company has obtained a commitment for insurance or guarantee of such certificates which meets the conditions of subdivision 1.

History: 1980 c 503 s 3; 1981 c 132 s 5; 1983 c 252 s 9; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92