CHAPTER 48

BANKS, TRUST COMPANIES

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

48.01 DEFINITIONS.

Subdivision 1. **Words, terms, and phrases.** Unless the language or context clearly indicates that a different meaning is intended, the term defined in subdivision 2, for the purposes of sections 48.56 to 48.59, has that meaning; and the term defined in subdivision 3, for the purposes of this chapter, has that meaning.

Subd. 2. **Banking institution.** The term "banking institution" means any bank, trust company, bank and trust company, or mutual savings bank which is now or may hereafter be organized under the laws of this state.

Subd. 3. **Commissioner.** "Commissioner" means the commissioner of commerce of the state of Minnesota.

History: *(7658-6) 1935 c 319 s 1; 1982 c 473 s 9; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92*

48.02 CAPITAL AND SURPLUS; PREPAYMENT OF CAPITAL.

The capital and surplus of every state bank hereafter organized shall be at least $250,000. In addition thereto undivided profits shall be provided for in such an amount as the commissioner shall determine to be adequate under the circumstances to avoid any possible impairment of capital and surplus. The total of these outlays shall be known as capital funds, and payment thereof shall be made in full, in cash or authorized securities, deposited in an approved custodial bank, and certified to the commissioner, under oath of the president and cashier, as well as the custodial bank, before the proposed state bank shall be authorized to commence business. The capital funds of a proposed bank shall not be less than a total amount which the commissioner considers necessary, having in mind the deposit potential for such a proposed bank and current banking industry standards of capital adequacy.

History: *(7659) RL s 2983; 1965 c 171 s 5; 1977 c 272 s 7*

48.03 STOCK LIST; STOCKHOLDERS' LIABILITY.

Subdivision 1. The president and cashier of any bank of discount and deposit shall at all times keep an accurate verified list of all its stockholders, with the amount of stock held by each, the dates of all transfers and names of transferees, and shall annually file a copy of such list as it appears on the date of the annual stockholders meeting with the commissioner.

Subd. 2. Except as provided in section 300.27, no stockholder in any bank of discount and deposit or in any banking or trust corporation or association shall be personally liable for debts of such bank, corporation or association. Except that the president and cashier of any bank of discount and deposit not insured by the Federal Deposit Insurance Corporation shall keep at all times an accurate list of all its stockholders, with the amount of stock held by each, the dates of all transfers and names of transferees, and on May first, annually, file a copy thereof with the county recorder in the county where said bank is located.

Subd. 3. The stockholders in each bank of discount and deposit whose deposits are not insured by the federal deposit insurance corporation shall be individually liable in an amount equal to the amount of stock owned by them for all the debts of the bank and for all transactions prior to any transfer thereof.

Subd. 4. Whenever a change in the outstanding voting stock of any state bank will result in control or in a change in the control of the bank, the president or cashier of such bank shall file notice of the proposed acquisition of control with the commissioner of commerce at least 30 days prior to 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 bank. A change in ownership of capital stock which would result in direct or indirect ownership by a stockholder or an affiliated group of stockholders of less than 25 percent of the outstanding capital stock shall not be 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 thereof or to effect a change in the control thereof, such doubt shall be resolved in favor of reporting the facts to the commissioner. This requirement to file prior notice does not imply the need for prior approval by the commissioner of commerce.

Subd. 5. The reports required by subdivision 4 shall contain the following information to the extent that it is known by the person making the report: (a) The number of shares involved, (b) the names of the sellers or transferors, (c) the names of the purchasers or transferees, (d) the names of the beneficial owners if the shares are registered in another name, (e) the total number of shares owned by the sellers or transferors, the purchasers, or transferees, and the beneficial owners both immediately before and after the transaction. In addition to the foregoing, such reports shall contain such other information as may be available to inform the commissioner of the effect of the transaction upon control of the bank whose stock is involved.

History: *(7669) RL s 2985; 1907 c 137 s 1; 1955 c 14 s 1,2; 1957 c 601 s 5; 1965 c 171 s 6; 1967 c 102 s 4; 1976 c 181 s 2; 1984 c 576 s 8*

48.033 STATE BANKS, LIABILITY OF STOCKHOLDERS.

Notwithstanding sections 48.03, 49.24, and 300.27, any stockholder of a state bank whose deposits are not insured by the Federal Deposit Insurance Corporation, shall be personally liable for the debts of said bank to the extent of the par value of the stock held by such stockholder.

History: *1955 c 335 s 1*

48.04 INCREASE AND REDUCTION OF CAPITAL.

No increase or reduction of the capital of any such bank 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 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.

History: *(7691) RL s 3003; 1957 c 601 s 6; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444*

48.05 CAPITAL NOT TO BE WITHDRAWN; DIVIDENDS.

No portion of the capital or surplus of any such bank 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.

History: *(7681) RL s 2997; 1957 c 601 s 7*

48.055 ISSUANCE OF PREFERRED STOCK, CONDITIONS.

Subdivision 1. Any state bank may issue preferred stock of one or more classes, with or without voting rights, with the approval of the commissioner of commerce and without change of its certificate of incorporation, when its board of directors is so authorized by a majority vote of its stockholders, at a general or special meeting thereof called for such purpose. Provided, however, that in no event shall the amount of preferred stock exceed 50 percent of the total common stock and surplus of such issuing bank.

Subd. 2. Such preferred stock may be issued to any person, firm, or corporation,

and the holders thereof shall have such rights as are set forth under the terms of issue of such preferred stock. No issue of preferred stock shall be valid until the capital stock shall have been fully paid in, and no dividend shall be paid on the common stock of a bank until all terms of the issue of such preferred stock shall have been satisfied.

Subd. 3. The terms of issue of such preferred stock shall set its rank or priority as between other stock issue, provided that such preferred stock shall be subordinated to all claims of depositors or other creditors in case of the insolvency of the issuing bank. Such preferred stock shall in no case be subject to any assessment, nor shall otherwise be liable for the obligations of the issuing bank. Before any such preferred stock is retired or paid by the issuing bank, it must first obtain the approval of the commissioner of commerce.

Subd. 4. 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 shall be set aside as a surplus fund, if the surplus fund of such bank 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 total capital stock. After these provisions are complied with, the bank may, without prior approval of the commissioner, pay dividends as provided under the terms of issue of such preferred stock. Dividends on preferred stock may be paid out of the undivided profit account without regard to earnings in the last concluded year, if the surplus equals 50 percent of the total capital stock and the undivided profit account would not be thereby reduced to less than 25 percent of the total capital stock.

Subd. 5. Any preferred stock issued by a state bank shall be part of its capital stock structure, and the terms "capital stock" or "capital" in any laws of this state pertaining to state banks shall be deemed to also include and apply to preferred stock.

Subd. 6. The commissioner is authorized to issue such rules and orders as may be necessary to administer and carry out the provisions and purposes of this section.

History: *1957 c 634 s 1; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1985 c 248 s 70; 1987 c 349 art 1 s 12*

48.06 DIRECTORS; QUALIFICATIONS.

If the number of directors exceeds nine, they may designate, semiannually, by resolution, nine of their number, a majority of whom constitutes a quorum for the transaction of business. Every director of a bank shall take and subscribe an oath to faithfully perform the official duties of a director, and not knowingly violate, or permit to be violated, any provision of law. The taking of this oath must be duly certified in the minutes of the records of the bank.

History: *(7670) RL s 2986; 1927 c 260 s 1; 1965 c 171 s 7; 1981 c 220 s 9; 1982 c 473 s 10; 1983 c 250 s 5; 1986 c 444*

48.07 OFFICERS; APPOINTMENT, REMOVAL.

The board of directors of a bank or trust company organized under the laws of this state shall have full power and authority at any time to appoint and remove any officer or employee.

History: *(7699-4) 1927 c 259 s 1*

48.08 DIRECTORS AND OFFICERS, RESTRICTED USE OF BANK FUNDS; DEALINGS WITH BANK.

No director, officer or employee shall, directly or indirectly, in any manner, use the funds of the bank, or any part thereof, except in its regular business transactions, and every loan made to any of its directors, officers, employees, or agents shall be upon the same security required of others and in strict conformity to its rules and regulations. Every such loan, or line of credit for a stated amount and not to run for more than one

year, shall be authorized in advance by the board and acted upon in the absence of the applicant, except that a loan to a director, officer, or employee for an amount which will not increase such a liability to exceed the greater of (a) $25,000 or (b) five percent of the bank's capital and unimpaired surplus or $500,000, whichever is less, may be made without previous approval but shall be acted upon by the board at the next succeeding regular meeting. No cashier or other officer or employee of a bank shall sell to the bank, directly or indirectly, any mortgage, bond, note, stock, or other security without the written approval of the board of directors, filed in the office of the bank or embodied in a resolution adopted by the board. A copy of this written approval or resolution shall immediately be sent to the commissioner of commerce.

History: *(7673) RL s 2989; 1925 c 305 s 1; 1957 c 601 s 8; 1965 c 171 s 8; 1980 c 399 s 1; 1984 c 576 s 9*

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 shall be set aside as a surplus fund, if the surplus fund of such bank 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.

History: *(7671) RL s 2987; 1939 c 38 s 1; 1957 c 601 s 9*

48.10 ANNUAL AUDIT; REPORT.

The board of directors shall annually examine the books of a bank, either in person, or by appointing an examining committee, or an auditor, who may be an independent auditor or accountant. The examining committee or auditor shall be solely responsible to the directors. A report shall be made to the directors as to the scope of the examination or audit, and also to show those assets, excluding marketable securities and fixed assets, which are carried on the books for more than actual value. This report shall be retained as a permanent record or incorporated in the minutes of the meeting, and a copy of the report shall be sent to the commissioner of commerce.

History: *(7672) RL s 2988; 1945 c 94 s 1; 1957 c 601 s 10; 1959 c 88 s 5; 1977 c 272 s 8; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92*

48.11 CONTRACTS, HOW MADE.

Every contract made by any bank, except routine business, shall be first duly authorized by resolution of its board of directors, signed by the president or vice-president and by the cashier or some other officer specially designated by the board, and have its corporate seal impressed thereon.

History: *(7678) RL s 2994*

48.12 BONDS OF OFFICERS AND EMPLOYEES.

Every state bank shall be protected against loss by reason of the unlawful act of any of its officers or employees by a surety bond in an amount approved by the board of directors, issued by a solvent corporate surety in good standing authorized to do business in this state, or by a fidelity insurance policy written by a solvent insurance corporation in good standing authorized to do business in this state. The commissioner of commerce or the board of directors of such bank may require an increase of the amount of such bond whenever either deems it necessary. This shall not require the bonding or insuring of officers or directors of a bank not having active management or control thereof, or employees of a bank not holding positions of trust. Any bond given or contract of insurance secured shall be in favor of the bank.

History: *(7699-1) 1925 c 351 s 1; 1945 c 72 s 1; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92*

48.13 CONDITIONS OF BONDS.

Subdivision 1. **Securities.** If a bond is given, it shall be in favor of the bank and shall have one corporate surety, which shall be a solvent insurance corporation in good standing authorized to do business in Minnesota, or at least five individual sureties, not one of whom shall be an officer, director, or stockholder of the bank, and each of whom shall justify in a sum equal to the penalty of the bond and, in addition thereto, each individual surety shall furnish to the bank, in connection with the bond, a verified financial statement showing solvency and responsibility, which statement shall be renewed and revised annually by each surety. If a contract of insurance is secured, it shall be in favor of the bank and shall be executed by some insurance company possessing the qualifications heretofore specified. No cancellation or termination at the request of the underwriter of a bond or contract of insurance required by section 48.12 shall be effective unless the underwriter gives in advance at least 60 days written notice by registered mail to the commissioner of commerce.

Subd. 2. **Securities in lieu of bond.** With the prior written approval of the commissioner and in lieu of the corporate surety or five individual sureties, there may be posted a deposit in securities of a form and amount acceptable to the commissioner. These funds are under the control of the commissioner for the purposes of section 48.12. All deposits must remain in the custody of the commissioner of finance and pursuant to section 7.19 may be released only upon order from the commissioner. These control and custody requirements must not prevent any interest or dividend earnings accruing on the funds posted to be paid over to pledgor.

History: *(7699-2) 1925 c 351 s 2; 1984 c 576 s 10; 1Sp1985 c 13 s 182; 1986 c 444; 1987 c 384 art 2 s 10*

48.14 EXAMINATIONS, REPORTS TO SHOW NAMES OF BONDED OFFICERS AND EMPLOYEES.

When an examination is made of a bank by the commissioner, or an examiner, the report of the examination made to the commissioner shall state the names of all the officers and employees of the bank so bonded or insured, and the penalty of the bonds or the amount of the insurance covering them. When blanket coverage is provided, the names of all the officers and employees need not be stated. When the commissioner, after an investigation, or upon receipt of a notice of cancellation or other termination required by section 48.13, finds as a fact that any bank is not adequately protected against loss by reason of the unlawful act of any officer or employee thereof, whether through the omission to secure any bond or contract of insurance, or through the insufficiency of the sureties or the insurer on the bond or policy given, or otherwise, the commissioner may require, by written order, that such bonds or contracts of insurance in favor of the bank be obtained as in the commissioner's opinion would adequately protect the bank against loss by reason of the unlawful act of any of its officers or employees, and shall thereupon notify the bank, by certified mail, of the order; and, if the same is not complied with within 30 days after the date of the mailing of the order, the bank may be closed and, if closed, shall not be permitted to resume business until the order has been fully complied with. All such bonds or contracts of insurance shall remain in the custody of the bank protected thereby and shall be available for examination and inspection by the commissioner.

History: *(7699-3) 1925 c 351 s 3; 1969 c 772 s 2; 1978 c 674 s 60; 1984 c 576 s 11; 1986 c 444*

48.15 SPECIAL POWERS.

Subdivision 1. In addition to the inherent and granted powers of corporations in general, any such bank shall have power to exercise, by its board of directors, or duly authorized officers and agents, subject to law, all such powers as shall be necessary to carry on the business of banking by discounting bills, notes, and other evidences of debt, by receiving deposits, by buying and selling gold and silver bullion, foreign coin, promissory notes, mortgages, and other evidences of debt legal for investment, and for-

eign and inland bills of exchange, by lending money on real and personal securities and receiving interest on any of the same in advance, and by exercising all the usual and incidental powers and privileges belonging to the business; but it shall not transact any business, except such as is incidental and necessarily preliminary to its establishment, until authorized by the commissioner to commence business.

Subd. 2. The commissioner of commerce may authorize banks organized under the laws of this state to engage in any banking activity in which banks subject to the jurisdiction of the federal government may hereafter be authorized to engage by federal legislation, ruling, or regulation. The commissioner may not authorize state banks as defined by section 48.01, to engage in any banking activity prohibited by the laws of this state.

Subd. 3. No such bank shall act as paying agent of any municipality or other public issuer of obligations, other than an issuer within whose corporate limits the principal office of the bank is situated, unless the bank is authorized to execute the powers conferred in section 48.38.

Subd. 4. **Retirement accounts.** A state bank may act as trustee or custodian of a self-employed retirement plan under the Federal Self-Employed Individual Tax Retirement Act of 1962, as amended, and of an individual retirement account under the Federal Employee Retirement Income Security Act of 1974, as amended, if the bank's duties as trustee or custodian are essentially ministerial or custodial in nature and the funds are invested only (1) in the bank's own savings or time deposits; or (2) in any other assets at the direction of the customer if the bank does not exercise any investment discretion, invest the funds in collective investment funds administered by it, or provide any investment advice with respect to those account assets.

Affiliated discount brokers may be utilized by the bank acting as trustee or custodian for self-directed IRAs, if specifically authorized and directed in appropriate documents. The relationship between the affiliated broker and the bank must be fully disclosed. Brokerage commissions to be charged to the IRA by the affiliated broker should be accurately disclosed. Provisions should be made for disclosure of any changes in commission rates prior to their becoming effective. The affiliated broker may not provide investment advice to the customer. All funds held in the fiduciary capacity may be commingled by the financial institution in the conduct of its business, but individual records shall be maintained by the fiduciary for each participant and shall show in detail all transactions engaged under authority of this subdivision. The authority granted by this section is in addition to, and not limited by, section 47.75.

History: *(7660) RL s 2984; 1965 c 171 s 9; 1969 c 1129 art 4 s 9; 1976 c 324 s 25; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 353 s 1; 1987 c 349 art 1 s 13*

48.151 ADDITIONAL POWERS.

Any bank, savings bank, or trust company organized under the laws of this state, or any national banking association doing business in this state, shall have the power to advertise for sale and sell for a fee money orders, traveler's checks, cashier's checks, drafts, registered checks, and certified checks and no other person, firm, or corporation, either directly or through agents, shall advertise for sale or shall sell for a fee any evidence of indebtedness on which there appears the words, "money order," "traveler's check," "cashier's check," "draft," "registered check," "certified check," or other words or symbols whether of the same or different character which tend to lead the purchaser to believe that such evidence of indebtedness is other than a personal check, unless such evidence of indebtedness is issued by a person, firm or corporation which is a savings and loan association, or telegraph company, or, in the case of cashier's checks, is issued by an industrial loan and thrift company with deposit liabilities, provided that these instruments are issued in conformity with the Uniform Commercial Code, or is issued by a person, firm, or corporation that has on file in the office of the secretary of state a surety bond in the principal sum of $5,000 issued by a bonding or insurance company authorized to do business in this state, which surety bond shall run to the state of Minnesota and shall be for the benefit of any creditor for any liability insured on account

of the sale or issuance by it or its agent of any such evidence of indebtedness, or has deposited with the secretary of state securities or cash of the value of $5,000; provided, however, that the aggregate liability of the surety to all such creditors shall, in no event, exceed the sum of such bond or deposit. Any person, firm or corporation who shall violate any provision of this section shall be guilty of a misdemeanor.

History: *1955 c 555 s 1; 1959 c 88 s 6; 1Sp1985 c 1 s 1*

48.152 STATE BANK ACQUISITION AND LEASING OF PERSONAL PROPERTY.

Subdivision 1. A state bank may acquire and lease or participate in the acquisition and leasing of personal property to customers, and may incur such additional obligations as may be incidental to becoming an owner and lessor of such property, subject to the rules of the commissioner and the conditions specified in this section.

Subd. 2. The property must be acquired upon the specific request of and for the use of a customer.

Subd. 3. The lease may not be an operating lease, but must be a "net" lease wherein the bank retains no obligation for maintenance or operation of the property.

Subd. 4. The lease must be a full-payout, noncancelable obligation of the lessee serving the same purpose as other forms of bank financing. For the purposes of this subdivision a full-payout lease is one in which the lessor will realize from the transaction a return of its full investment in the leased property plus the estimated cost to it of financing the property over the term of the lease in rentals, estimated tax benefits, and the estimated residual value of the property at the expiration of the initial term of the lease. In all instances where the bank estimates and uses the residual value of leased property to satisfy the requirements of a full-payout lease, the estimated value must be reasonable so that the bank's primary risk in the overall transaction depends on the credit worthiness of the lessee and not market value of the leased item; provided, that in no event shall the estimated residual value exceed 25 percent of the original cost of the property to the lessor. As an alternative to this test, residual values may be set at any level where the bank receives a guarantee of the residual value from the manufacturer, the lessee, or any third party which is not an affiliate of the bank, and where it has determined that the guarantor has the resources to meet the guarantee. Selection of residual values at unreasonable levels shall be considered an unsafe and unsound banking practice if it cannot be shown that, at the time of such selection, the bank made a good faith effort to be accurate and reasonable.

For purposes of leasing to government entities "full-payout" calculations may be based on reasonably anticipated future renewals.

If, in good faith, the bank believes that there has been a significant unanticipated change in conditions which threatens its financial position by increasing its exposure to loss, and, if its interest in the property is sufficient to justify action, the limitation contained in subdivision 3 shall not prevent the bank from taking any reasonable and appropriate action to salvage or protect the value of the property to prevent loss.

Subd. 5. The terms of the lease shall require periodic rental payments to be made at least annually.

Subd. 6. The terms of the lease shall establish a rental payment schedule by which no individual rental payment shall exceed the average rental payment by more than 50 percent, the average rental payment to be computed by dividing the total dollar amount of rental payments to be made over the term of the lease by the number of payments to be made.

Subd. 7. Except upon the written approval of the commissioner, the term of the lease shall not exceed 12 years, 32 days.

Subd. 8. The total amount of unpaid rental obligations of a customer to a bank on personal property, shall constitute a liability of the customer within the meaning of section 48.24, subdivisions 1 and 4.

Subd. 9. [Repealed, 1983 c 80 s 2]

Subd. 10. The acquisition of personal property for leasing to customers under this section not in conformity with subdivision 4 is authorized if the total investment in this personal property does not exceed 200 percent of the sum of the bank's capital actually paid in cash and its actual surplus fund.

History: *1975 c 300 s 1; 1979 c 321 s 1; 1983 c 80 s 1; 1988 c 631 s 1*

48.153 INSTALLMENT LOANS; FINANCE CHARGES; MINIMUM CHARGES.

Subdivision 1. [Repealed, 1982 c 494 s 5]

Subd. 1a. A bank organized under the laws of this state, or a national banking association doing business in this state, making a loan of money not exceeding $35,000 repayable in installments, may charge, at the time the loan is made, a rate of interest upon the unpaid principal balance of the amount financed of 12 percent a year, or the rate of interest authorized by section 48.195, whichever is greater. If the rate of interest charged is permitted by section 48.195 at the time the loan is made, the rate does not later become usurious because of a fluctuation in the federal discount rate.

Subd. 2. Installment payments on loans made pursuant to this section by a bank or national banking association shall not extend beyond a period of 12 years and 32 days from the date of the loan. The loan may be secured by a mortgage, pledge, or other collateral.

Subd. 3. [Repealed, 1982 c 494 s 5]

Subd. 3a. A savings bank organized under chapter 50, a savings association or savings and loan association subject to the provisions of sections 51A.01 to 51A.57, or a savings and loan association chartered under the laws of the United States, that has its principal place of business in this state, may make a loan for consumer purposes to a natural person in an amount not exceeding $25,000 repayable in installments, and may charge a rate of interest upon the unpaid principal balance of the amount financed of 12 percent a year, or the rate of interest authorized by section 48.195, whichever is greater. If the rate of interest charged is permitted by section 48.195 at the time the loan is made, the rate does not later become usurious because of a fluctuation in the federal discount rate.

Subd. 4. Installment payments on loans made pursuant to this section by a savings bank, a savings association or savings and loan association subject to the provisions of sections 51A.01 to 51A.57, or a savings and loan association chartered under the laws of the United States shall not extend beyond a period of 12 years and 32 days from the date of the loan. The loan may be secured by a mortgage, pledge, or other collateral.

Subd. 5. Charges in reference to installment loans under this section shall be computed and collected only on the unpaid principal balance of the amount financed actually outstanding. One day's finance charge means an amount equal to 1/365 of the per annum rate provided for in an installment loan. If the total finance charge determined on an installment loan, single payment or demand loan shall be less than $10 the amount charged may nevertheless be $10. No loan shall be made pursuant to this section if over 50 percent of the proceeds of the loan are used to finance the purchase of a borrower's primary residence other than a manufactured home.

History: *1945 c 544 s 1; 1947 c 314 s 1; 1955 c 616 s 1; 1957 c 916 s 1; 1961 c 298 s 7; 1963 c 577 s 1; 1973 c 511 s 1; 1976 c 196 s 2; 1977 c 350 s 2; 1980 c 522 s 1; 1980 c 606 s 1; 1981 c 365 s 9; 1982 c 494 s 1,2*

48.154 PREPAYMENT, EXTENSION OF TERMS.

The borrower may repay the entire balance or any portion of the balance of an installment loan in advance without penalty. An installment loan contract may provide that the parties, before or after default, may agree in writing to an extension of all or part of the unpaid installments and collect as an extension fee a finance charge not exceeding that rate agreed to in the original loan contract. No such extension shall be permitted to cause repayment of a loan to exceed those maturities set down in section 48.153. One day's finance charge shall mean an amount equal to 1/365 of the per annum rate provided for in an installment loan.

History: *1945 c 544 s 2; 1965 c 171 s 10; 1976 c 196 s 3*

48.155 ALLOWABLE ADDITIONAL CHARGES.

No charge other than those provided for in sections 48.153 and 48.154 shall be made directly or indirectly for any such installment loan except that there may be charged to the borrower or included in the amount financed:

(a) Any lawful fees paid or to be paid by the lender to any public officer for filing, recording, or releasing in any public office any instrument securing the loan;

(b) Any lawful premium or charge for insurance protecting the lender against the risk of loss from not filing or recording a security agreement or financing statement and in lieu of filing thereof. Such premium or charge shall not exceed the actual premium or charge made by the insurance company to the lender and in no event in excess of the costs if the document were actually filed, recorded, or released in any public office;

(c) The premium on any life, property or other insurance taken as security for the loan; provided, that the borrower has acknowledged by signature that the borrower has been notified in writing that the borrower may, at the borrower's own cost, procure and deposit with the lender such insurance if written by a responsible company. Such premium may be included as part of the loan.

History: *1945 c 544 s 3; 1963 c 153 s 3; 1971 c 33 s 1; 1976 c 196 s 4; 1986 c 444*

48.156 LOAN DUE ON DEFAULT.

Nothing in sections 48.153 to 48.157 shall prohibit the lender from declaring the whole of such loan immediately due and payable upon default if the loan agreement shall so provide.

History: *1945 c 544 s 4*

48.157 COPY OF NOTE TO BORROWER.

At the time of making an installment loan under the provisions of sections 48.153 to 48.157, the borrower shall be furnished a signed copy of the note and also a copy or statement of all charges made by the bank on such loan.

History: *1945 c 544 s 5; 1986 c 444*

48.158 SETTLEMENT OF CHECKS AT LESS THAN PAR.

No bank or trust company organized under the laws of this state shall settle any check drawn on it otherwise than at par. The provisions of this section shall not apply with respect to the settlement of a check sent to such bank or trust company as a special collection item. This section is in effect on and after November 1, 1968.

History: *1967 c 156 s 1*

48.1585 GOVERNMENT CHECKS.

No financial institution with deposits insured by the Federal Deposit Insurance Corporation owned by an interstate bank holding company doing business in this state may refuse to honor a check or draft drawn on the account of the United States treasury, the state of Minnesota, or any county within the state of Minnesota, that is presented by an individual offering sufficient identification.

History: *1986 c 339 s 2*

48.159 Subdivision 1. MS 1980 [Repealed, 1982 c 473 s 30]

Subd. 2. MS 1981 Supp [Repealed, 1982 c 473 s 30]

48.16 BANKS MAY NOT PLEDGE ASSETS; EXCEPTIONS.

No bank or trust company shall pledge, hypothecate, assign, transfer, or create a lien upon or charge against any of its assets except as follows:

(1) to the state;

(2) to secure public deposits;

(3) to secure funds of trustees in bankruptcy;

(4) to secure money borrowed in good faith from other banks, trust companies, or a financial agency created by act of Congress;

(5) to finance the acquisition of real estate to be carried as an asset as provided for in section 47.10;

(6) to secure a liability that arises from a transfer of a direct obligation of, or obligations that are fully guaranteed as to principal and interest by, the United States government or an agency thereof that the bank or trust company is obligated to repurchase.

This section shall not be construed to permit the use of assets as security for public deposits other than the securities made eligible by law for that purpose.

History: *(7699-14) 1927 c 257 s 1; 1931 c 341; 1933 c 149 s 1; 1939 c 46; Ex1967 c 30 s 1; 1982 c 473 s 11*

48.17 POWERS OF OFFICERS OR EMPLOYEES.

No officer or employee of a bank or trust company shall have power or authority to borrow money, execute guaranties or endorse, otherwise than without recourse, pledge or hypothecate any note, bond, or other obligation belonging to the bank or trust company unless the power and authority shall have been given the officer or employee by the board of directors and a written record thereof made in the minute book of the bank and a certified copy of the record delivered to the creditor, guarantee, pledgee, or endorsee of the note, bond, guaranty, or other obligation.

History: *(7699-15) 1927 c 257 s 2*

48.18 PLEDGES OR LIENS OF ASSETS SUBJECT TO PRIOR LIENS.

No bank or trust company shall pledge or hypothecate or create a lien upon or charge against any of its assets subject to a prior lien, hypothecation, or charge.

History: *(7699-16) 1927 c 257 s 3*

48.185 OPEN END LOAN ACCOUNT ARRANGEMENTS.

Subdivision 1. Any bank organized under the laws of this state, any national banking association doing business in this state, any savings bank organized and operated pursuant to chapter 50, any savings association organized under chapter 51A, and any federally chartered savings and loan association, may extend credit through an open end loan account arrangement with a debtor, pursuant to which the debtor may obtain loans from time to time by cash advances, purchase or satisfaction of the obligations of the debtor incurred pursuant to a credit card plan, or otherwise under a credit card or overdraft checking plan.

Subd. 2. [Repealed, 1980 c 599 s 9]

Subd. 3. A financial institution referred to in subdivision 1, may collect a periodic rate of finance charge in connection with extensions of credit under this section, which finance charge does not exceed the equivalent of an annual percentage rate of 18 percent computed on a 365-day year and in accordance with the Truth in Lending Act, United States Code, title 15, section 1601 et seq., and the Code of Federal Regulations, title 12, part 226 (1985).

If credit is extended pursuant to an overdraft checking plan on the day on which an increase in the periodic rate of finance charge is made effective pursuant to this section, the rate in effect prior to the increase shall be the maximum lawful rate chargeable on the amount of credit so extended until that credit is fully repaid according to the terms of the plan.

Subd. 3a. Any periodic statement evidencing an overdraft checking plan loan balance shall clearly state that all or any part of said balance may be prepaid at any time.

Subd. 4. No charges other than those provided for in subdivision 3 shall be made directly or indirectly for any credit extended under the authority of this section, except that there may be charged to the debtor:

(a) annual charges, not to exceed $50 per annum, payable in advance, for the privilege of using a bank credit card;

(b) charges for premiums on credit life and credit accident and health insurance if:

(1) the insurance is not required by the financial institution and this fact is clearly disclosed in writing to the debtor; and

(2) the debtor is notified in writing of the cost of the insurance and affirmatively elects, in writing, to purchase the insurance;

(c) charges for the use of an automated teller machine when cash advances are obtained pursuant to this section through the use of an automated teller machine;

(d) in the case of a financial institution referred to in subdivision 1 that does not charge an annual fee, delinquency and collection charges as follows:

(1) on each payment in arrears for a period not less than ten days, in an amount not in excess of the delinquency and collection charge permitted in section 168.71;

(2) for any monthly or other periodic payment period where the debtor has exceeded or thereby exceeds the maximum approved credit limit under the open-end loan account arrangement, in an amount not in excess of the service charge limitations in section 332.50; and

(3) for any returned check or returned automatic payment withdrawal request, in an amount not in excess of the service charge limitation in section 332.50; and

(e) to the extent not otherwise prohibited by law, charges for other goods or services offered by or through a financial institution referred to in subdivision 1 which the debtor elects to purchase, including, but not limited to, charges for check and draft copies and for the replacement of lost or stolen cards.

Subd. 4a. [Repealed, 1986 c 376 s 4]

Subd. 5. If the balance in a revolving loan account under a credit card plan is attributable solely to purchases of goods or services charged to the account during one billing cycle, and the account is paid in full before the due date of the first statement issued after the end of that billing cycle, no finance charge shall be charged on that balance.

Subd. 6. This section shall apply to all open end credit transactions of a bank or savings bank in extending credit under an open end loan account or other open end credit arrangement to persons who are residents of this state, if the bank or savings bank induces such persons to enter into such arrangements by a continuous and systematic solicitation either personally or by an agent or by mail, and retail merchants and banks or savings banks within this state are contractually bound to honor credit cards issued by the bank or savings bank, and the goods, services and loans are delivered or furnished in this state and payment is made from this state. A term of a writing or credit card device executed or signed by a person to evidence an open end credit arrangement specifying:

(a) that the law of another state shall apply;

(b) that the person consents to the jurisdiction of another state; and

(c) which fixes venue;

is invalid with respect to open end credit transactions to which this section applies. An open end credit arrangement made in another state with a person who was a resident of that state when the open end credit arrangement was made is valid and enforceable in this state according to its terms to the extent that it is valid and enforceable under the laws of the state applicable to the transaction.

Subd. 7. Any bank or savings bank extending credit in compliance with the provisions of this section, which is injured competitively by violations of this section by another bank or savings bank, may institute a civil action in the district court of this state against that bank or savings bank for an injunction prohibiting any violation of this section. The court, upon proper proof that the defendant has engaged in any practice in violation of this section, may enjoin the future commission of that practice.

Proof of monetary damage or loss of profits shall not be required. Costs and attorneys' fees may be allowed to the plaintiff, unless the court directs otherwise. The relief provided in this subdivision is in addition to remedies otherwise available against the same conduct under the common law or statutes of this state.

Service of process shall be as in any other civil suit, except that if a defendant in the action is a foreign corporation or a national banking association with its principal place of business in another state, service of process may also be made by personal service outside the state, or in the manner provided by section 303.13, subdivision 1, clause (3), or in such manner as the court may direct. Process is valid if it satisfies the requirements of due process of law, whether or not defendant is doing business in Minnesota regularly or habitually.

History: *1976 c 196 s 5; 1979 c 101 s 1-3; 1981 c 138 s 1; 1981 c 259 s 2; 1986 c 376 s 1-3; 1987 c 341 s 1*

48.19 [Repealed, 1Sp1985 c 13 s 376]

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 2. A state bank or national bank may extend credit pursuant to the terms and conditions set forth in section 51A.385.

History: *1988 c 666 s 1*

48.195 INTEREST RATES; USURY LIMIT FOR DEPOSITORY INSTITUTIONS.

Notwithstanding any law to the contrary, a bank, savings bank, savings association, savings and loan association, or credit union organized under the laws of this state, or a national bank or federally chartered savings bank, savings and loan association, or credit union, doing business in this state, may charge on any loan or discount made or upon any note, bill or other evidence of debt, except an extension of credit made pursuant to section 48.185, interest at a rate of not more than 4-1/2 percent in excess of the discount rate, including any surcharge thereon, on 90 day commercial paper in effect at the federal reserve bank located in the Ninth Federal Reserve District.

History: *1980 c 343 s 1; 1981 c 259 s 1; 2Sp1981 c 4 s 1; 1982 c 494 s 3*

48.196 PENALTY FOR USURIOUS INTEREST.

The taking, receiving, reserving or charging by a lender of a rate of interest greater than is allowed by state law shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. In case the greater rate of interest has been paid, the person paying it, or the person's legal representatives, may recover, in an action in the nature of an action of debt, twice the amount of the interest thus paid from the lender taking or receiving the interest, if the action is commenced within two years from the time the usurious transaction occurred. For purposes of this section, the term "lender" means a bank or savings bank organized under the laws of this state, a federally chartered savings and loan association, a savings association organized under chapter 51A, a federally chartered credit union, a credit union organized under chapter 52, an industrial loan and thrift company organized under chapter 53, a regulated lender licensed under chapter 56, or a mortgagee or lender approved or certified by the secretary of housing and urban development or approved or certified by the administrator of veterans affairs.

History: *1980 c 606 s 2; 1983 c 252 s 3; 1986 c 444*

48.20 UNAUTHORIZED PLEDGES, NOTES, LIENS VOID.

Any note, endorsement, guaranty, pledge, hypothecation, lien or other obligation given contrary to the provisions of sections 48.16 to 48.18 shall be null and void.

History: *(7699-18) 1927 c 257 s 5*

48.21 REAL ESTATE; RESTRICTIONS ON HOLDING.

Subdivision 1. A bank may purchase, carry as an asset, and convey real estate only:

(1) As provided for in section 47.10;

(2) If acquired through foreclosure of a mortgage given to it in good faith as security for loans made by or money due to it;

(3) If conveyed to it in satisfaction of debts previously contracted in good faith in the course of its dealings;

(4) If acquired by sale on execution or judgment of a court in its favor; or

(5) If reasonably necessary to mitigate or avoid loss on a loan or investment theretofore made.

Real estate acquired under clauses (2) to (5) shall be carried as an asset only in accordance with rules the commissioner prescribes.

Subd. 2. Real estate owned by a bank as a result of actions authorized in clauses (2) to (5) of subdivision 1 and subsequently sold to any buyer on a contract for deed may not be considered creating a liability to a bank for purposes of section 48.24.

Subd. 3. Notwithstanding any rules of the commissioner to the contrary, if real estate owned by a bank pursuant to clauses (2) to (5) of subdivision 1 is not sold or otherwise disposed of within the maximum period established by rule by the commissioner, the bank may write off any remaining balance at a rate not less than one-fifth of that balance each subsequent calendar year.

History: *(7679) RL s 2995; 1919 c 85 s 1; 1921 c 258 s 1; 1929 c 54 s 1; 1945 c 63 s 1; 1955 c 104 s 2; 1957 c 601 s 12; 1982 c 473 s 12; 1987 c 349 art 1 s 14*

48.22 [Repealed, 1981 c 182 s 6]

48.221 RESERVES.

A state bank or trust 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 any individual state bank or trust company from time to time based upon examination findings or other reports relating to the bank or trust company that are available to the commissioner. The determination by the commissioner of a required amount of reserves for an institution shall not be considered a rule as defined by section 14.02, subdivision 4. Reserves for an individual state bank or trust 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.

History: *1981 c 182 s 2; 1982 c 424 s 130*

48.23 BANK NOT TO LEND ON ITS OWN STOCK OR PURCHASE SAME.

Any such bank shall make no loan or discount on the security of its own capital stock, nor be the purchaser or holder thereof, unless necessary to prevent loss upon a debt previously contracted in good faith, and all stock so acquired shall be disposed of, at public or private sale, within six months after it is so acquired.

History: *(7676) RL s 2992*

48.24 RESTRICTIONS UPON TOTAL LIABILITIES TO A BANK.

Subdivision 1. The total liabilities to any such bank, as principal, guarantor or endorser of any individual, including the liabilities of any corporation which the individual owns or controls a majority interest, any partnership, unincorporated association, or corporation, including the liabilities of the several members of a partnership

or unincorporated association, and in case of a corporation of all subsidiaries thereof in which such corporation 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 of individuals or corporations 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.

Subd. 2. Loans not exceeding 25 percent of such capital and surplus made upon first mortgage security on improved real estate in the state or in an adjoining state within 20 miles of the place where the bank is located, shall not constitute a liability of the maker of the notes secured by such mortgages within the meaning of the foregoing provision limiting liability, but shall be an actual liability of the maker. These mortgage loans shall be limited to, and in no case exceed, 50 percent of the cash value of the security covered by the mortgage, except mortgage loans guaranteed as provided by the servicemen's readjustment act of 1944, as now or hereafter amended, or for which there is a commitment to so guarantee or for which a conditional guarantee has been issued, which loans shall in no case exceed 60 percent of the cash value of the security covered by such mortgage. For the purposes of this subdivision, real estate is improved when substantial and permanent development or construction has contributed substantially to its value, and agricultural land is improved when farm crops are regularly raised on such land without further substantial improvements.

Subd. 3. Conditional sales contracts or other paper evidencing an agreement to purchase or lease personal property owned and guaranteed by the person discounting same, not to exceed 30 percent of the capital stock and surplus, taken from any one person, shall not constitute a liability within the meaning of this section, but the actual liabilities on such agreements are not to be construed as affected by the provisions of this subdivision: Provided, however, if information as to the financial condition of each purchaser or lessee is reasonably adequate by reason of the bank's own records or actual knowledge of an officer of the bank and, upon written certification by an officer appointed by the bank's board of directors for that purpose, that the responsibility of each purchaser or lessee has been evaluated and the bank is relying primarily upon the purchaser or lessee for the payment of the obligation, the limitations of subdivision 1 as to each purchaser or lessee shall be the sole applicable loan limitation.

Subd. 4. Except as provided by subdivision 2, the total liability of any officer of a bank shall never exceed ten percent of the same aggregate amount stated in subdivision 1.

Conditional sales contracts owned and guaranteed by the person discounting same, when such person is an officer of the bank, not to exceed 20 percent of the capital and surplus, taken from any such person, shall not constitute a liability within the meaning of this section, but the actual liabilities on such conditional sales contracts are not to be considered to be otherwise affected thereby.

Subd. 5. Loans or obligations shall not be subject under this section to any limitation based upon such capital and surplus to the extent that they are secured or covered by guarantees, or by commitments or agreements to take over or to purchase the same, made by:

(1) the commissioner of agriculture on the purchase of agricultural land;

(2) any Federal Reserve bank;

(3) the United States or any department, bureau, board, commission, or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States;

(4) the Minnesota energy and economic development authority; or

(5) the Minnesota export finance authority.

Subd. 6. The discount of the following classes of paper shall not be regarded as creating liability within the meaning of this section:

(1) Bonds, orders, warrants, or other evidences of indebtedness of the United States, of federal land banks, of this state or of any county, city, town, hospital district, or school district in this state, or of the bonds, representing general obligation of any other state in the United States, or bonds and obligations of the federal home loan banks established by act of Congress known as the Federal Home Loan Bank Act, approved July 23, 1932, and acts amendatory thereto, or debentures and other obligations of the federal intermediate credit banks established by act of Congress known as the Federal Intermediate Credit Banks Act, approved March 4, 1923, and acts amendatory thereto, in obligations issued by the banks for cooperatives or any of them, and in bonds and obligations of the home owners' loan corporation established by act of Congress, known as the Home Owners' Loan Act of 1933, and acts amendatory thereto, in exchange for mortgages on homes, or contracts for deed, or real estate held by it.

(2) Bills of exchange drawn in good faith against actually existing values, including bills which are secured by shipping documents conveying or securing title to goods shipped, and which are not to be surrendered until such bills are paid in cash or solvent credits. This includes bankers' acceptances or participations in bankers' acceptances of the kind and maturities made eligible by law for rediscount with, or purchase by, federal reserve banks, providing the same are accepted or endorsed by a bank or trust company incorporated under the laws of this state; or by any bank or trust company in the United States which is a member of the Federal Reserve system.

(3) Paper based upon the collateral security of warehouse receipts covering agricultural or manufactured products stored in elevators or warehouses under the following conditions:

First, when the actual market value of the property covered by such receipts at all times exceeds by at least ten percent the amount loaned thereon, and

Second, when the full amount of every such loan is at all times covered by fire insurance in duly authorized companies, within the limit of their ability to cover such amounts, and the excess, if any, in companies having sufficient paid-up capital to authorize their admission, and payable, in case of loss, to the bank or holder of the warehouse receipt.

(4) Total loans to an obligor secured by either certificates of deposit, or savings certificates or both, of any such bank to the extent of the total of such certificates pledged as security.

(5) Debentures issued under the authority of the federal National Mortgage Association.

(6) Obligations representing loans from one business day to the next to any state bank or national banking association of excess reserve balances from time to time maintained under the provisions of section 48.221, or of section 19 of the Federal Reserve Act, as amended, United States Code, title 12, sections 461 et seq.

Subd. 7. Obligations of any person, copartnership, 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.

Subd. 7a. Pursuant to such rules as the commissioner of commerce finds to be necessary and proper, if any, the liability or obligation to a bank of any insurance company admitted and authorized to do business in this state shall not be subject under this section to any limitation based upon such capital and surplus to the extent that such insurance company issues policies or certificates of indemnity of mortgage guaranty insurance.

For the purposes of this subdivision "mortgage guaranty insurance" shall mean insurance against financial loss by reason of nonpayment of principal, interest and other sums agreed to be paid under the terms of any note, bond, mortgage, security agreement, or other instrument constituting a first lien, security interest or charge on real property or manufactured homes.

Subd. 8. When a bank shall allow any individual, partnership, 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.

History: *(7677) RL s 2993; 1907 c 156 s 1; 1911 c 160 s 1; 1919 c 103 s 1; 1927 c 258 s 1; 1931 c 9 s 1; Ex1934 c 70 s 1; 1943 c 23 s 1; 1945 c 62 s 1; 1947 c 82 s 1; 1957 c 601 s 13-16; 1959 c 88 s 8,9,17; 1963 c 153 s 6; 1965 c 171 s 15-17; 1967 c 102 s 7,8; 1969 c 438 s 1,2; 1969 c 772 s 3; 1971 c 100 s 1; 1973 c 35 s 18; 1973 c 123 art 5 s 7; 1976 c 210 s 11; 1980 c 523 s 1; 1981 c 365 s 9; 1983 c 289 s 114 subd 1; 1984 c 576 s 13; 1984 c 655 art 1 s 92; 1985 c 248 s 70; 1986 c 353 s 2; 1986 c 444; 1987 c 349 art 1 s 15; 1987 c 384 art 2 s 1; 1988 c 631 s 2,3*

48.245 WAR VETERAN, MINORITY; CONTRACT FOR LOAN.

The disability of minority of any person otherwise eligible for guaranty or insurance pursuant to the Servicemen's Readjustment Act of 1944, as amended (Public Law Number 346, 78th Congress, as amended), the National Housing Act, as amended (Public Law Number 475, 81st Congress), or the Defense Housing and Community Facilities and Services Act of 1951, (Public Law Number 139, 82nd Congress), and of the minor spouse of any eligible veteran irrespective of age, in connection with any transaction entered into pursuant thereto, is hereby removed for all purposes in connection with such transaction, including but not limited to incurring of indebtedness or obligations and acquiring, encumbering, selling, releasing, or conveying property or any interest therein and litigating or settling controversies arising therefrom, if all or part of any obligations incident to such transaction be guaranteed or insured by the administrator of Veterans Affairs pursuant to any act hereinbefore referred to; provided, that this section shall not be construed to impose any other or greater rights or liabilities than would exist if any such person were under no such disability.

History: *1945 c 177 s 1; 1947 c 178 s 1; 1953 c 699 s 3*

48.25 [Repealed, 1982 c 473 s 30]

48.26 APPLICATION.

The provisions of section 48.88, subdivision 2, shall not apply to any existing contract or to mutual savings banks.

History: *(7699-13 1/2b, 7699-13 1/2c) 1929 c 144 s 3,4; 1987 c 384 art 2 s 11*

48.27 LIMITATION ON AMOUNT OF DEPOSITS.

No bank or trust company organized under the laws of this state shall accept deposits in a sum exceeding 30 times the amount of its capital stock and its actual surplus.

History: *(7699-12) 1927 c 325 s 1; 1943 c 342 s 2; 1945 c 73 s 1; 1947 c 11 s 1; 1949 c 24 s 1; 1959 c 88 s 11*

48.28 LIQUIDATION, UNLESS DEPOSITS ARE REDUCED.

If any such bank or trust company shall violate the provisions of Minnesota Statutes 1945, section 48.27, as amended, the commissioner of commerce may take possession thereof and liquidate such corporation in accordance with law, unless said bank or trust company shall within 90 days after notice from the commissioner of commerce reduce its deposits to the amount allowed by law or increase its capital stock accordingly.

History: *(7699-13) 1927 c 325 s 2; 1943 c 342 s 1; 1945 c 73 s 2; 1947 c 11 s 2; 1949 c 24 s 2; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92*

48.29 [Repealed, 1965 c 811 art 10 s 336.10-102]

48.30 DEPOSITS IN NAME OF MINOR.

Any deposit made in the name of a minor, shall be held for the exclusive right and benefit of the minor, free from the control or lien of all other persons, except creditors, and, together with the dividends or interest thereon, shall be paid to the minor, and the minor's receipt, check, or acquittance in any form shall be a sufficient release and discharge of the depository for the deposit, or any part thereof, until a conservator or guardian appointed for the minor shall have delivered a certificate of appointment to the depository.

History: *(7711) RL s 3019; 1907 c 468 s 6; 1985 c 292 s 1*

48.301 MULTIPARTY ACCOUNTS.

When any deposit is made in the names of two or more persons jointly, or by any person payable on death (P.O.D.) to another, or by any person in trust for another, the rights of the parties and the financial institution are determined by chapter 528.

History: *1985 c 292 s 2*

48.31 STATE BANKS ORGANIZED FROM NATIONAL BANKS.

When any national bank authorized to dissolve has taken the necessary steps for that purpose, a majority of its directors, upon authority, in writing, of the owners of two-thirds of the capital stock and the approval of the commissioner, may execute a certificate of incorporation under the provisions of this chapter, which, in addition to the other requirements of law, shall state the authority derived from the stockholders of the national bank; and, upon recording and publishing this certificate, as provided by law, it shall become a legal state bank. Thereupon the assets, real and personal, of the dissolved bank, subject to its liabilities not liquidated under the federal law before this incorporation, shall vest in and become the property of the state bank.

History: *(7695) RL s 3006*

48.32 STATE BANKS OR TRUST COMPANIES MAY BE MEMBERS OF FEDERAL RESERVE BANKS.

Any incorporated state bank or trust company may become a member of the federal reserve bank of the federal reserve district in which the bank or trust company is located, and may invest in and hold stock therein.

History: *(7649) 1915 c 28 s 1*

48.33 EXECUTION OF TRUST:

When any state bank shall reorganize as a national bank, this national bank shall be regarded as continuing the existence of the state bank, and any officer of the bank elected to a corresponding office in this national bank shall be regarded as holding over as such state bank officer, for the purpose of carrying out any duty or trust reposed in the person holding such office or a successor in the state bank as executor of a will or trustee of any trust; and successors in office in the national bank shall be regarded as that person's successors in office in such state bank for the purpose of executing such will or performing such trust; and the executor of any will, or any trustee thereunder, who by such will has been directed or recommended to deposit the money of such estate or trust in this state bank, may deposit the same in the national bank under the same conditions as that person might have deposited them in the state bank, and with the same immunity from responsibility for its safety.

History: *(7696) RL s 3007; 1986 c 444*

48.34 BRANCH BANKS PROHIBITED.

No bank or trust company organized under the laws of this state shall maintain a branch bank or receive deposits or pay checks within this state, except at its own banking house, and except as authorized by sections 47.51 to 47.57 and 47.61 to 47.74. The commissioner shall take possession of and liquidate the business and affairs of any state bank or trust company violating the provisions of this section, in the manner prescribed by law for the liquidation of insolvent state banks and trust companies.

History: *(7693) 1923 c 170 s 1; 1981 c 220 s 10*

48.35 CLEARING HOUSES.

Clearing houses may make and enforce suitable provisions for effecting, at one place, daily exchanges and the settlement and adjustment of accounts between banks in the same locality and, under appropriate rules, may issue clearing house certificates for those purposes only, and may otherwise act in maintaining and enforcing uniformity of methods and harmonious action in banking business.

History: *(7697) RL s 3008; 1985 c 248 s 70*

48.36 APPLICATION.

Subdivision 1. Any state bank having a capital and surplus of not less than $500,000 may exercise the powers and privileges conferred by sections 48.36 to 48.43, in addition to all other powers granted by law, upon complying with the conditions and requirements of those sections, and receiving the approval of the commissioner of commerce, who may grant or reject, in the commissioner's judgment, the application of any bank to acquire trust authority, and in doing so shall take into consideration the following factors:

(1) The needs of the community for trust service of the kind applied for and the probable volume of such trust business available to the bank;

(2) The general condition of the bank, particularly the adequacy of its net capital and surplus funds in relation to the character and condition of its assets and to its deposit liabilities and other corporate responsibilities, including the proposed exercise of trust powers;

(3) The general character and ability of the management of the bank;

(4) The nature of the supervision to be given to the proposed trust activities, including the qualifications and experience of the members of the proposed trust investment committee;

(5) The qualifications, experience, and character of the proposed executive officer or officers of the trust department;

(6) Whether the bank has available competent legal counsel to advise and pass upon trust matters whenever necessary; and

(7) Any other facts and circumstances that seem proper.

Subd. 2. The application required under subdivision 1 shall be in the form prescribed by the commissioner and shall be accompanied with a $250 filing fee, which shall be deposited into the general fund.

History: *(7662) 1923 c 274 s 2; 1959 c 88 s 12; 1965 c 171 s 18; 1977 c 272 s 9; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444*

48.37 CERTIFICATES FROM COMMISSIONER.

In order to exercise the powers herein conferred, any such bank shall invest and keep invested in one or more of the first, second, third, fourth, seventh, and eighth classes of authorized securities, at least 25 percent of its capital, which securities in the amounts above provided shall be duly assigned, transferred to, and deposited with the commissioner, and shall be maintained unimpaired as a guaranty fund for the integrity of its trusts and for the faithful discharge of its duties, in connection therewith, with the right to the bank to collect the income thereof and to substitute other like authorized securities of equal amount and value. The commissioner shall carefully examine the securities offered for deposit and, if they comply with all the provisions of law applicable thereto, and, if the bank making such deposit shall possess the qualifications stated in section 48.36, shall issue to the bank a certificate stating that it is qualified to exercise the powers herein conferred, and, upon the issuance of this certificate and while the same remains in force, the bank may exercise the powers and privileges conferred by sections 48.36 to 48.43.

In case of any increase in the capital of any bank which has qualified hereunder, this certificate shall be and become revoked and the bank shall not thereafter exercise the powers herein conferred until it shall have deposited the required proportion of its capital in authorized securities and received a new certificate that it is qualified hereunder.

History: *(7662) 1923 c 274 s 2; 1977 c 272 s 10; 1986 c 444*

48.38 POWERS AND DUTIES.

Subdivision 1. Any such bank which has complied with the terms of sections 48.36 to 48.43, and holds a certificate as above provided, may exercise the powers and privileges set forth in this section.

Subd. 2. It may take and hold in trust any real or personal property, wherever situated, by order, judgment, or decree of any court, or by gift, grant, assignment, transfer, devise, legacy, or bequest from, or by lawful contract with, any public or private corporation or any individual or copartnership, and manage the same upon the terms and conditions therein declared or imposed; it may act as agent for the signatures, countersignatures, registration, transfer, or redemption of certificates of stock, bonds, coupons, or other evidences of indebtedness, and as trustee under mortgages in the form of trust deeds, and may otherwise act as general or special agent or attorney in fact in the acquisition, management, sale, assignment, transfer, encumbrance, conveyance, or other disposition of any real or personal property, in the collection of rents, payment of taxes, and generally as the representative of any person, corporation, or copartnership; it may guarantee the title to securities sold and transferred by it.

Subd. 3. It may take and hold on deposit or for safekeeping, money, bonds, stocks, or other securities, or personal property, which any public officer or any trustee or other legal representative or any public or private corporation or any person may desire, or may be authorized, ordered, or otherwise required by law to deposit in a safe depository or to pay into any court of record, and the same may, instead thereof, be deposited with such bank, and where the deposit is made pursuant to order of court in such bank as the court shall designate and depositor takes the receipt of such bank therefor, thereupon the depositor and the depositor's sureties shall be relieved from liability thereafter accruing on account thereof, so long as the deposits continue.

Subd. 4. It may act as assignee under any assignment for the benefit of creditors,

or be appointed as a trustee, receiver, guardian, executor, or administrator, and may accept and perform any other lawful trust conferred by any court or by any corporation or individual. In the acceptance and performance of any such trust no oath or security shall be required.

Subd. 5. When any judge or court having jurisdiction deems it expedient, the judge or court may direct any executor, administrator, guardian, assignee, receiver, or other trustee to deposit with the bank any securities belonging to the trust subject to the order of the trustee when countersigned by the judge of the court, and the court may fix the security to be given by the trustee with reference only to the remainder of the trust estate. No such securities shall be withdrawn nor any part of the principal or interest thereof collected, except by an officer of the bank, without the order of a judge of the court duly entered and certified, upon satisfactory proof that additional security has been furnished by the trustee or that the estate or fund has been so reduced that the deposit is no longer required.

Subd. 6. It may invest all moneys received by it in trust, in authorized securities, and shall be responsible to the owner or cestui que trust for the validity, regularity, quality, value, and genuineness of these investments and securities at the time made and for the safekeeping of these securities and the evidences thereof. When special directions are given in any order, judgment, decree, will, or other written instrument as to the particular manner or the particular class or kind of securities or property in which any investment shall be made, it shall follow this direction and, in such case, it shall not be further responsible by reason of the performance of the trust.

It may, in its discretion, retain and continue any investment and security or securities coming into its possession in any fiduciary capacity. For the faithful discharge of its duties and the discharge of its trust, it shall be entitled to reasonable compensation or such amount as has been or may be agreed upon by the parties and all necessary expenses, with legal interest thereon.

No compensation or commission paid or agreed to be paid to it for the negotiation of any loan or the execution of any trust shall be deemed interest within the meaning of the law, nor shall any excess thereof over the legal rate be deemed usury.

Subd. 7. Except as provided in this subdivision, any amount not less than $500 received by it as representative or trustee or by order of the court, not required for the purposes of the trust and not to be accounted for within one year, it shall invest, as above provided, in authorized securities then held by it or specially procured by it. Except as may be otherwise provided in the governing will, trust agreement, court order or other instrument, any amount in any one trust account, may be invested in certificates of deposit or savings accounts in the same bank, or any other bank or banks provided such certificates of deposit or savings accounts are fully insured by the federal deposit insurance corporation and receive the prevailing rate of interest on such certificates or savings accounts.

Subd. 8. It may invest its funds in authorized securities, as defined by law, and the provisions of section 48.24 limiting the amount of liability of any person, corporation, or copartnership, with reference to a percentage of the capital and surplus of the bank, shall not apply to its investments in authorized securities.

History: *(7663) 1923 c 274 s 3; 1957 c 601 s 17; 1963 c 153 s 7; 1965 c 171 s 19; 1967 c 229 s 1; 1986 c 444*

48.39 TRUST ACCOUNTS RECORDED.

Besides its general books of account, it shall keep separate books of account for all fiduciary accounts. All funds and property held by it in a fiduciary capacity shall at all times be kept separate from its own funds and property, and all fiduciary funds deposited or held as fiduciary by the bank awaiting investment shall be carried in a separate account, and shall not be used by the bank in the conduct of its business, unless the bank, under authorization by its board of directors, first delivers to the commissioner of commerce, as collateral security: (1) bonds, notes, bills, certificates of indebtedness

or other direct obligations of the United States or its instrumentalities, or obligations fully guaranteed by the United States as to principal and interest; or (2) other readily marketable securities of the classes in which said trust companies or state banks exercising trust powers are authorized or permitted to invest trust funds under the laws of this state. The securities so deposited as collateral shall be owned by the bank and shall at all times be at least equal in market value to the amount of the trust funds so used in the conduct of the bank's business, and all deposits made by it of such funds in any other banking institutions shall be deposited as fiduciary funds, to its credit as fiduciary, and not otherwise. Every security or property in which the funds held by it as trustee, executor, administrator, guardian, receiver, or assignee, or in any other fiduciary capacity are invested, shall at once upon receipt thereof be immediately entered in the proper books as belonging to the particular fiduciary account whose funds have been invested therein. Any change in such investment shall be fully specified in and under the account of the particular fiduciary account to which it belongs so that all fiduciary funds and property can be readily identified at any time by any person. It shall be unlawful for any bank to lend any officer, director or employee any funds held as fiduciary under the powers conferred by sections 48.36 to 48.43. Any officer, director or employee to whom such a loan is made shall be guilty of theft of the amount of such loan from the time of the making thereof. Any state bank, when acting in a fiduciary capacity, either alone or jointly with an individual or individuals, may, with the consent of such individual fiduciary or fiduciaries, who are hereby authorized to give such consent, cause any stocks, securities, or other property now held or hereafter acquired in such capacity to be registered and held in the name of a nominee or nominees of such state bank without mention of the fiduciary relationship. Any such state bank shall be liable for any loss occasioned by the acts of any of its nominees with respect to such stocks, securities or other property so registered.

History: *(7664) 1923 c 274 s 4; 1943 c 338 s 1; 1957 c 311 s 1; 1965 c 35 s 2; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92*

48.40 SUBJECT TO ORDERS OF COURT.

Every such bank shall be subject at all times to the orders of any court from which it shall have accepted any trust or appointment and shall render to the court such itemized and verified accounts and reports as may be required by law or the court. In addition to other reports required by law, it shall render to the commissioner, at such times as the commissioner may direct, full and itemized reports of investments, trust funds, and other business performed under the provisions hereof, and a condensed statement of the report, either separately stated or consolidated with the other reports required of it by law, shall be published as required by law.

History: *(7665) 1923 c 274 s 5; 1986 c 444*

48.41 CORPORATE NAME.

Any such bank which has qualified and obtained a certificate, as provided in sections 48.36 to 48.43, may use in its corporate name or title, in addition to the word "bank" or other words now permitted by law, the words "trust" or "trust company," and may display and make use of signs, symbols, tokens, letterheads, cards, circulars and advertisements stating or indicating that it is authorized to transact the business authorized by said sections, and any such bank using the words "trust" or "trust company" is not required to use the word "state" in its corporate name.

History: *(7666) 1923 c 274 s 6*

48.42 BANK MAY BE DESIGNATED AS SAVINGS BANK.

Any state bank which has qualified under sections 48.36 to 48.43 and obtained the certificate therein provided, and which has established and maintains a savings department, may use in its name or title, in addition to other words permitted by law, the words "savings" or "savings bank." Savings deposits received by any such state bank using the words "savings" or "savings bank" in its corporate name or title, shall be

invested only in authorized securities, as defined by law, and the bank shall keep in hand at all times, in addition to the securities required to be deposited under the provisions of section 48.37, such securities as deposits in savings banks may be invested in to an amount at least equal to the savings deposits, and these securities to the amount of these deposits shall be representative of and the fund for and applicable first and exclusively to the payment of the savings deposits. Deposits received by the bank subject to its right to require notice of withdrawal evidenced by pass books, shall be deemed savings deposits.

History: *(7667) 1923 c 274 s 7*

48.43 BANKS MAY CEASE OPERATIONS; DUTIES OF COMMISSIONER.

Any state bank which has qualified hereunder may at any time notify the commissioner, in writing, that it intends to cease to operate under the provisions of sections 48.36 to 48.43, and thereupon the certificate issued to it, as provided in sections 48.36 to 48.43, shall be canceled and revoked, and the bank shall thereafter exercise no power or privilege except those permitted to state banks which have not qualified hereunder, and the securities deposited with the commissioner, as provided in section 48.37, shall forthwith be reassigned and returned to the bank; provided, that no part of the deposited securities shall be so returned until the bank shall have eliminated from its corporate name the words "trust," "trust company," or "savings," nor until it has ceased to hold any trust or trust office authorized by sections 48.36 to 48.43, nor until all its accounts in any such trust shall have been settled and allowed and all property held in trust by it delivered to the persons entitled thereto, nor until all liabilities incurred by it as trustee, agent, or otherwise, under the provisions of sections 48.36 to 48.43, and which it could not have incurred unless qualified thereunder, shall have been discharged; provided, further, that if the amount of all these liabilities, or the maximum limit thereof, has been or can be definitely ascertained, the commissioner may retain only such part of the deposited securities as shall be at least equal to and as shall be in the commissioner's opinion sufficient to liquidate the same. If any such bank so surrendering its powers hereunder shall have heretofore used the word "savings" in its corporate name, the provisions of section 48.42, relating to the investment of savings deposits and the rights of such depositors, shall remain operative as to all savings deposits on hand at the date of surrendering such certificate and until the savings deposits shall have been paid to the persons entitled thereto.

History: *(7668) 1923 c 274 s 8; 1986 c 444*

48.44 BANKS MAY ORGANIZE AS TRUST COMPANY.

Hereafter state banks which may be organized in the manner now provided by law may be organized with the additional authority to exercise the fiduciary powers and privileges set out in section 48.38; provided, that the capital and surplus of any such bank shall not be less than $500,000.

History: *(7661-1) 1931 c 267 s 1; 1969 c 772 s 5; 1977 c 272 s 11*

48.45 CORPORATE NAMES.

Any such bank may be organized with a corporate name which may include the words "trust" or "trust company," in addition to the word "bank" or other words now permitted by law, and the word "state" shall not be a required part of the corporate name of any such state bank.

History: *(7661-2) 1931 c 267 s 2*

48.46 AUTHORIZED SECURITIES PURCHASED.

No state bank hereafter organized with authority to exercise fiduciary powers pursuant to the provisions of sections 48.44 to 48.46, the corporate name of which contains the words "trust" or "trust company," shall transact any banking or trust company business until it shall have invested in and assigned, transferred to, and deposited with the

commissioner the authorized securities described in and required by section 48.37, relating to the authorization of existing state banks to exercise such fiduciary powers, and until the commissioner of commerce has issued the certificate provided by section 47.16, and a certificate stating that such bank is qualified to exercise the fiduciary powers set forth in section 48.38.

History: *(7661-3) 1931 c 267 s 3; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92*

48.47 BANKING AND TRUST COMPANY BUSINESS.

After the application of the corporation shall have been favorably acted on by the department in compliance with section 45.03, and upon compliance with the terms hereof and the issuance of such certificates, the bank may commence the transaction of banking and trust company business and may exercise, in addition to all the powers and privileges conferred by law on state banks, the powers and privileges set forth in section 48.38, and the bank shall thereafter comply with and be subject to all of the provisions of law relating to state banks exercising such fiduciary powers and privileges.

History: *(7661-4) 1931 c 267 s 4*

48.475 TRUST SERVICE OFFICES.

Subdivision 1. **Authorization.** Any trust company organized under the laws of this state and any state bank which is permitted to exercise trust powers under the provisions of Minnesota Statutes, sections 48.37 to 48.47 may, after completing the notification procedure required by this subdivision, establish and maintain a trust service office at any office in this state of any other state or national bank. Any state bank may, after completing the notification procedure required by this subdivision, permit any trust company organized under the laws of this state or any state bank which is permitted to exercise trust powers under the provisions of sections 48.37 to 48.47 or any national bank in this state which is authorized to exercise trust powers to establish and maintain a trust service office at any of its banking offices.

Any trust company or state bank permitted to exercise trust powers and a state bank at which a trust service office is to be established pursuant to this section shall jointly file, on forms provided by the commissioner, a notification of intent to establish a trust service office. The notification shall be accompanied by a filing fee of $100 payable to the commissioner, to be deposited in the general fund of the state. No trust service office shall be established pursuant to this section if disallowed by order of the commissioner within 45 days of the filing of a complete and acceptable notification of intent to establish a trust service office. Any proceedings for judicial review of an order of the commissioner to disallow the establishment of a trust service office under this section shall be conducted pursuant to the provisions of the administrative procedure act relating to judicial review of agency decisions, sections 14.63 to 14.69, and the scope of judicial review in such proceedings shall be as provided therein.

Subd. 2. **Services permitted.** Any trust company or bank which establishes a trust service office under subdivision 1 may conduct at the office any trust business and business incidental thereto which it is permitted to conduct at its principal office, but it may not accept deposits except as incidental to trust business.

Subd. 3. **General requirements.** If the bank at which a trust service office is to be established has exercised trust powers, then the trust company or bank which is establishing the trust service office shall enter into an agreement respecting those fiduciary powers to which the trust company or bank shall succeed and shall file the agreement with the commissioner. The trust company or bank which is establishing a trust service office under subdivision 1 shall publish a notice of the filing in the form prescribed by the commissioner in a newspaper published in the municipality in which the trust service office is to be located, and if there is no such newspaper, then at the county seat of the county in which the trust service office is to be located. The notice shall be published once in a qualified newspaper in the municipality in which the proposed trust service office is to be located, and if there is no such newspaper, then in a qualified news-

paper likely to give notice in the municipality in which the proposed trust service office is to be located, and proof of publication shall be filed with the commissioner immediately after publication of the notice of filing. After filing and publication, the trust company or bank establishing the trust service office shall, as of the date the office first opens for business, and without further authorization of any kind, succeed to and be substituted for the bank at which the trust service office is located as to all fiduciary powers, rights, duties, privileges, and liabilities of the bank in its capacity as fiduciary for all estates, trusts, conservatorships, guardianships, and other fiduciary relationships of which the bank is then serving as fiduciary, except as may be otherwise specified in the agreement between the bank and the trust company or bank which has established the trust service office. The trust company or bank which has established the trust service office shall also be deemed named as fiduciary in all writings, including, but not limited to, wills, trusts, court orders, and similar documents and instruments, naming the bank at which the trust service office is located signed before the date the trust service office first opens for business, unless expressly negated by the writing or otherwise specified in the agreement between the trust company or bank and the bank at which the trust service office is located. On the effective date of the substitution, the bank at which the trust service office has been established shall be released and absolved from all fiduciary duties and obligations under the writings and shall discontinue its exercise of trust powers on all matters not specifically retained by the agreement. This subdivision does not absolve the bank from liabilities arising out of any breach of fiduciary duty or obligation occurring prior to the date the trust service office first opens for business. This subdivision does not affect the authority, duties, or obligations of a bank with respect to relationships which may be established without trust powers, whether the relationships arise before or after the establishment of the trust service office.

Subd. 4. **Supervision.** Every trust company or state bank permitted to exercise trust powers establishing and operating one or more trust service offices pursuant to this section shall at all times maintain records acceptable to the commissioner regarding transactions originating at such trust service offices and available at its principal office for examination pursuant to sections 46.04 and 46.05.

Subd. 5. **National banks; requirements.** If a trust service office is established by a national bank at the banking office of another national bank, then the agreement respecting fiduciary powers required by subdivision 3 shall be filed with the comptroller of the currency of the United States and the notice required by subdivision 3 shall be in the form prescribed by the comptroller of the currency.

Subd. 6. **Notice of substitutions; denial of substitution.** Not less than 60 days prior to the effective date of the proposed substitution under subdivision 3 or 5, the parties to the substitution shall send written notice of the proposed substitution to each cofiduciary, each surviving settlor of a trust, each conservatee or ward under a conservatorship or guardianship, each person who alone or in conjunction with others has the power to remove the fiduciary being substituted, and each adult beneficiary currently receiving or entitled to receive a distribution of principal or income from a trust or estate with respect to which the substitution is to be effected. Intentional failure to send the notice to any party at the party's current address as shown on the fiduciary's records shall render ineffective the substitution of fiduciaries with respect to the fiduciary relationship, but an unintentional failure to give notice shall not impair the validity or effect of any substitution of fiduciaries under subdivision 3 or 5. A trust company or bank which is substituted or about to be substituted as fiduciary with respect to a trust, estate, conservatorship, or guardianship under subdivision 3 or 5 may be removed as fiduciary, or the substitution may be denied, upon petition by a cofiduciary, by a beneficiary of a trust or estate, by the settlor of a trust or on behalf of a conservatee or ward under a conservatorship or guardianship if the trust company or bank files a written consent to its removal or a written declination to act, or if the court having jurisdiction over the fiduciary relationship, upon notice and hearing, approves the petition as in the best interests of the petitioner and all other parties interested in the trust, estate, conservatorship, or guardianship. This subdivision applies in addition to any applicable provision for removal of a fiduciary or appointment of a successor fiduciary in any other statute or in the instrument creating the fiduciary relationship.

History: *1984 c 506 s 1; 1989 c 166 s 6*

48.48 REPORTS TO COMMISSIONER.

Subdivision 1. **Submission and publication.** At least four times in each year, and at any other time when so requested by the commissioner, every bank or trust company shall, within 30 days of the date of notice, make and transmit to the commissioner, in a form the commissioner prescribes, a report, verified by its president or vice-president and by its cashier or treasurer, and attested by at least two of its directors, stating in detail, under appropriate heads, as required by the commissioner, its assets and liabilities at the close of business on the day specified in the request. The commissioner may accept a report made to a federal authority having supervision of banks or trust companies in fulfilling this requirement. This statement shall be published once at the expense of the bank or trust company in a qualified newspaper in the municipality or town in which the bank or trust company is located, and if there is no such newspaper, then in a qualified newspaper likely to give notice in the municipality or town in which the bank or trust company is located. Proof of publication shall be filed with the commissioner immediately after publication of the report, but no later than 60 days following the date of the notice.

Subd. 2. **Penalties for late submission.** For failure to send these reports to the commissioner in the time specified, a bank or trust company shall forfeit to the state the sum of $25 for each day of delay and shall pay the accumulated sum to the commissioner upon a formal demand for payment by the commissioner. If it appears that a report was mailed by a bank or trust company on or before the end of the 30-day period, or proof of publication mailed on or before the end of the 60-day period, the commissioner shall waive any forfeit. In the event it does not appear that a report was timely mailed, the commissioner may nevertheless waive forfeit upon a showing by the bank or trust company to the satisfaction of the commissioner that failure to send the reports was the result of causes beyond the control of the bank or trust company.

History: *(7674) RL s 2990; 1949 c 35 s 1; 1951 c 65 s 1; 1961 c 298 s 3; 1963 c 153 s 8; 1979 c 98 s 1; 1981 c 220 s 11; 1982 c 473 s 13; 1984 c 543 s 2; 1984 c 576 s 14,15; 1986 c 444; 1989 c 166 s 7*

48.49 BOOKS TO BE KEPT.

Every such bank shall open and keep such books and accounts as the commissioner may prescribe, for the purpose of keeping accurate and convenient records of its transactions; and every bank refusing or neglecting so to do shall forfeit $10 for every day of such neglect or refusal.

History: *(7675) RL s 2991*

48.50 DEMAND DEPOSITS; INTEREST.

No bank shall, directly or indirectly, by any device, pay any interest on any deposit which is payable on demand.

History: *(7697-10) 1937 c 403 s 1; 1957 c 601 s 19*

48.51 DEMAND DEPOSITS DEFINED.

For the purpose of this section and section 48.50, all deposits are payable on demand except:

(1) Those deposits which are evidenced by a negotiable or nonnegotiable instrument which provides on its face that the amount of the deposit is payable:

(a) on a certain date, specified in the instrument, not less than 14 days after the date of the deposit; or (b) at the expiration of a specified period not less than 14 days after the date of the instrument; or (c) upon written notice to be given not less than 14 days before the date of repayment.

(2) Those deposits which may not be withdrawn within 14 days of the making thereof.

(3) Those deposits which may not be withdrawn within 14 days of the giving of notice of an intended withdrawal.

(4) Those deposits in which the above 14-day minimums are in conflict with federal law or regulations.

History: *(7697-11) 1937 c 403 s 2; 1981 c 220 s 12; 1984 c 576 s 16; 1987 c 349 art 1 s 16*

48.511 [Repealed, 1983 c 225 s 11]

48.512 PROCEDURES FOR OPENING CHECKING ACCOUNTS.

Subdivision 1. **Definitions.** For the purpose of this section the following terms have the meanings given:

(a) "Financial intermediary" means any person doing business in this state who offers transaction accounts to the public.

(b) "Transaction account" means a deposit or account established and maintained by a natural person or persons under an individual or business name for personal, household, or business purposes, on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instruments, payment orders of withdrawal, or other similar device for the purpose of making payments or transfers to third persons or others, including demand deposits or accounts subject to check, draft, negotiable order of withdrawal, share draft, or other similar item. A transaction account does not include the deposit or account of a partnership having more than three partners, the personal representative of an estate, the trustee of a trust or a limited partnership.

Subd. 2. **Required information.** Before opening or authorizing signatory power over a transaction account, a financial intermediary shall require one applicant to provide the following information on an application document signed by the applicant:

(a) full name;

(b) birth date;

(c) address of residence;

(d) address of current employment, if employed;

(e) telephone numbers of residence and place of employment, if any;

(f) social security number;

(g) driver's license or identification card number issued pursuant to section 171.07. If the applicant does not have a driver's license or identification card, the applicant may provide an identification document number issued for identification purposes by any state, federal, or foreign government if the document includes the applicant's photograph, full name, birth date, and signature. A valid Wisconsin driver's license without a photograph may be accepted in satisfaction of the requirement of this paragraph until January 1, 1985;

(h) whether the applicant has had a transaction account at the same or another financial intermediary within 12 months immediately preceding the application, and if so, the name of the financial intermediary;

(i) whether the applicant has had a transaction account closed by a financial intermediary without the applicant's consent within 12 months immediately preceding the application, and if so, the reason the account was closed; and

(j) whether the applicant has been convicted of a criminal offense because of the use of a check or other similar item within 24 months immediately preceding the application.

A financial intermediary may require an applicant to disclose additional information.

An applicant who makes a false material statement that the applicant does not believe to be true in an application document with respect to information required to be provided by this subdivision is guilty of perjury. The financial intermediary shall notify the applicant of the provisions of this paragraph.

Subd. 3. **Confirm no involuntary closing.** Before opening or authorizing signatory

power over a transaction account, the financial intermediary shall attempt to verify the information disclosed for subdivision 2, clause (i). The financial intermediary may not open or authorize signatory power over a transaction account if (i) the applicant had a transaction account closed by a financial intermediary without consent because of issuance by the applicant of dishonored checks within 12 months immediately preceding the application, or (ii) the applicant has been convicted of a criminal offense because of the use of a check or other similar item within 24 months immediately preceding the application.

If the transaction account is refused pursuant to this subdivision, the reasons for the refusal shall be given to the applicant in writing and the applicant shall be allowed to provide additional information.

Subd. 4. **Identification is required.** A financial intermediary shall not open or authorize signatory power over a transaction account if none of the applicants provides a driver's license, identification card, or identification document as required by subdivision 2. When a minor is the applicant and the minor does not have a driver's license or identification card issued pursuant to section 171.07, the identification requirements of subdivision 2, clause (g), and this subdivision are satisfied if the minor's parent or guardian provides identification of that person's own that meets the identification requirement. The financial intermediary may waive the identification requirement if the applicant has had another type of account with the financial intermediary for at least one year immediately preceding the time of application.

Subd. 5. **No liability.** The requirements of this section do not impose any liability on financial intermediaries offering transaction accounts or, except as provided in subdivisions 3 and 4, limit a financial intermediary's discretion as to whether to grant or deny an application subject to this section.

Subd. 6. **Basic services transaction account.** A financial intermediary owned by an interstate bank holding company shall offer a basic services transaction account to eligible individuals. For purposes of this subdivision:

(a) "basic services transaction account" means a transaction account that has no initial or periodic service fees, allows at least six checks per month to be drawn on the account without charge, and allows at least six free financial transactions per month on an electronic financial terminal; and

(b) "eligible individual" means a person whose annual family income is less than the federal poverty income guidelines as published annually in the Federal Register, or a person receiving income maintenance and support services as defined in section 268.0111, subdivision 5.

Subd. 7. **Transaction account service charges.** The establishment of transaction account service charges and the amounts of the charges not otherwise limited or prescribed by law or rule is a business decision to be made by each financial intermediary according to sound business judgment and safe, sound financial institution operational standards. In establishing transaction account service charges, the financial intermediary may consider, but is not limited to considering:

(1) costs incurred by the institution, plus a profit margin, in providing the service;

(2) the deterrence of misuse by customers of financial institution services;

(3) the establishment of the competitive position of the financial institution in accordance with the institution's marketing strategy; and

(4) maintenance of the safety and soundness of the institution.

Transaction account service charges must be reasonable in relation to these considerations and should be arrived at by each financial intermediary on a competitive basis and not on the basis of any agreement, arrangement, undertaking, or discussion with other financial intermediaries or their officers.

History: *1983 c 225 s 5; 1984 c 436 s 32; 1984 c 576 s 12; 1986 c 339 s 3; 1986 c 444; 1989 c 129 s 1*

48.515 [Repealed, 1965 c 811 art 10 s 336.10-102]
48.518 [Repealed, 1965 c 811 art 10 s 336.10-102]
48.521 [Repealed, 1969 c 725 s 32]
48.522 [Repealed, 1969 c 725 s 32]
48.523 [Repealed, 1969 c 725 s 32]
48.524 [Repealed, 1969 c 725 s 32]
48.525 [Repealed, 1969 c 725 s 32]
48.526 [Repealed, 1969 c 725 s 32]
48.527 [Repealed, 1969 c 725 s 32]
48.528 [Repealed, 1969 c 725 s 32]
48.53 [Repealed, 1943 c 620 s 9]
48.54 [Repealed, 1943 c 620 s 9]
48.55 [Repealed, 1943 c 620 s 9]

48.56 BANKING INSTITUTIONS MAY USE FEDERAL BANKING ACT.

Any banking institution now or hereafter organized under the laws of this state is hereby empowered, on the authority of its board of directors, or a majority thereof, to enter into such contracts, incur such obligations and generally to do and perform any and all such acts and things as may be necessary or appropriate in order to take advantage of any and all memberships, loans, subscriptions, contracts, grants, rights, or privileges which may at any time be available or enure to banking institutions or to their depositors, creditors, stockholders, receivers, or liquidators, by virtue of those provisions of Section 8 of the federal "Banking Acts of 1933" (Section 12B of the Federal Reserve Act, as amended (Mason's United States Code Annotated, title 12, s 264)), which establish the Federal Deposit Insurance Corporation and provide for the insurance of deposits, or of any other provisions of that or of any other act or resolution of Congress to aid, regulate, or safeguard banking institutions and their depositors, including any amendments of the same or any substitutions therefor; and to subscribe for and acquire any stock, debentures, bonds, or other types of securities of the Federal Deposit Insurance Corporation, and to comply with the lawful regulations and requirements from time to time issued or made by such corporation.

History: *(7658-7) 1935 c 319 s 2*

48.57 [Repealed, 1Sp1985 c 13 s 376]
48.58 [Repealed, 1Sp1985 c 13 s 376]

48.59 COMMISSIONER MAY ACCEPT EXAMINATIONS AND REPORTS OF CORPORATION.

Subdivision 1. The commissioner may accept, in lieu of any examination authorized by the laws of this state to be conducted by the department of a banking institution, the examination that may have been made of same within a reasonable period by the federal deposit insurance corporation, or the federal reserve bank, provided a copy of this examination is furnished to the commissioner. The commissioner also has the discretionary authority to accept any report relative to the condition of a banking institution which may have been obtained by the corporation within a reasonable period, in lieu of a report authorized by the laws of this state to be required of the institution by the department, provided a copy of this report is furnished to the commissioner.

Subd. 2. The commissioner may furnish to the corporation, or to any official or examiner thereof, a copy or copies of any or all examinations made of any such banking institutions any deposits of which are insured by the corporation and of any or all reports made by same, and shall give access to and disclose to the corporation, or any official or examiner thereof, any and all information possessed by the office of the commissioner with reference to the conditions or affairs of any such insured institution.

Subd. 3. Nothing in this section shall be construed to limit the duty of any banking

institution in this state, deposits of which are to any extent insured under the provisions of Section 8 of the "Banking Act of 1933" (Section 12B of the Federal Reserve Act, as amended (Mason's United States Code Annotated, title 12, section 264)), or of any amendment of or substitution for the same, to comply with the provisions of that act, its amendments or substitutions, or requirements of the corporation relative to examinations and reports, nor to limit the powers of the commissioner with reference to examinations and reports under any law of this state.

History: *(7658-9) 1935 c 319 s 4; 1957 c 601 s 20; 1986 c 444*

48.60 [Repealed, 1987 c 349 art 1 s 40]

48.605 STATE BANKS, EMPLOYEE STOCK OPTION AND STOCK PURCHASE PLANS.

Subdivision 1. Any state bank may grant options to purchase, sell, or enter into agreements to sell shares of its capital stock to its employees, for a consideration of not less than 100 percent of the fair market value of the shares on the date the option is granted or, if pursuant to a stock purchase plan, 85 percent of the fair market value on the date the purchase price is fixed, pursuant to the terms of an employee restricted stock option plan or employee stock purchase plan which has been adopted by the board of directors of the bank and approved by the holders of at least three-fourths of the outstanding shares of the bank entitled to vote and by the commissioner of commerce. Stock options issued hereunder shall not extend beyond a period of ten years from date of issuance and shall otherwise qualify as restricted stock options under the Internal Revenue Code, and acts amendatory thereof.

Subd. 2. Employee stock options and stock purchase agreements may provide that options may be exercisable or that shares may be purchased on any business day.

Subd. 3. Any state bank to carry out the provisions of this section, may increase its capital stock as provided by law and upon approval of the commissioner of commerce as provided by Minnesota Statutes 1961, section 48.04, except that the provisions of said section requiring the entire new capital to be immediately paid in cash shall not apply. Notwithstanding any law to the contrary the bank may hold such authorized but unissued new capital stock but only for the purpose of disposing of the same by the issuing of shares to its employees as authorized by this section. All proceeds from the issuance and sale of such shares shall be paid into the capital and surplus of the bank. Stock and options issued pursuant to this section shall not increase the capital or surplus of the bank until the stock is paid for in full in cash and certified to the commissioner.

History: *1965 c 369 s 1; 1969 c 6 s 8; 1983 c 216 art 1 s 14; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92*

48.61 AUTHORIZED INVESTMENTS FOR STATE BANKS AND TRUST COMPANIES.

Subdivision 1. Any bank or trust company organized under the laws of this state is authorized to invest not to exceed 20 percent of its capital and surplus in the capital stock of any agricultural credit corporation organized under the laws of this state, and entitled to discount privileges with any federal intermediate bank organized under the laws of the United States.

Subd. 2. Any such bank or trust company may invest not to exceed two 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.

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 companies wherein the ownership of stock in the banks or bank holding companies is restricted to bank holding companies or banks authorized to do business in the state of Minnesota.

Subd. 4. Any such bank or trust company may make equity or debt investments

in 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 corporation or project shall not exceed two percent of its capital and surplus and its aggregate investment in all such corporations or projects shall not exceed five percent of its capital and surplus.

Subd. 5. In the absence of an express provision to the contrary, whenever any statute, rule, charter, trust indenture, authorizing resolution, or other instrument governing the investment of funds of a banking institution, as defined in section 48.01, subdivision 2, directs, requires, authorizes, or permits direct investment in certain obligations, investment in these obligations may be made either directly or in the form of securities of, or other interests in, an investment company registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933.

Shares of investment companies whose portfolios contain investments which are subject to limits under other state law or rule as direct investments may only be held in an amount not in excess of 20 percent of the banks' capital stock and paid in surplus in each such investment company. These obligations shall be carried at the lower of cost or market on the banks' books and adjusted to market on a quarterly basis.

Subd. 6. Any bank may invest in the voting stock of the Federal Agricultural Mortgage Corporation created pursuant to the Agricultural Credit Act of 1987, Public Law Number 100-233, in an amount not to exceed the greater of ten percent of the bank's capital and surplus or the amount required by the Federal Agricultural Mortgage Corporation for the bank to qualify for its participation in the corporation's programs.

Subd. 7. **Subsidiaries.** (a) A state bank or trust company may organize, acquire, or invest in a subsidiary located in this state for the purposes of engaging in one or more of the following activities, subject to the prior written approval of the commissioner:

(1) any activity, not including receiving deposits, lending money, or paying checks that a state bank is authorized to engage in under state law or rule or under federal law or regulation unless the activity is prohibited by the laws of this state;

(2) any activity that a bank clerical service corporation is authorized to engage in under section 48.89; and

(3) any other activity authorized for a national bank, a bank holding company, or a subsidiary of a national bank or bank holding company under federal law or regulation of general applicability, and approved by the commissioner by rule.

(b) A bank or trust company subsidiary may engage in an activity under this section only upon application together with a filing fee of $250 and with the prior written approval of the commissioner. In approving or denying a proposed activity, the commissioner shall consider the financial and management strength of the bank or trust company, the current written operating plan and policies of the proposed subsidiary corporation, the bank or trust company's community reinvestment record, and whether the proposed activity should be conducted through a subsidiary of the bank or trust company.

(c) The aggregate amount of funds invested in either an equity or loan capacity in all of the subsidiaries of the bank or trust company authorized under this subdivision shall not exceed 25 percent of the capital stock and paid in surplus of the bank or trust company.

(d) A subsidiary organized or acquired under this subdivision is subject to the examination and enforcement authority of the commissioner under chapters 45 and 46 to the same extent as a state bank or trust company.

(e) For the purposes of this section, "subsidiary" means a corporation of which more than 50 percent of the voting shares are owned or controlled by the bank or trust company.

Subd. 8. **Parity with national banks.** A state bank or trust company may invest in any securities that are authorized investments for national banks on May 27, 1989, sub-

ject to the same restrictions as apply to national banks. The commissioner may authorize a state bank or trust company to invest in any securities that become authorized investments for national banks after May 27, 1989, subject to the same restrictions as apply to national banks. This authority is in addition to the investment authority granted to state banks under other provisions of state law.

History: *(7677-1) 1935 c 174; 1963 c 153 s 9; 1969 c 772 s 6; 1974 c 421 s 1; 1980 c 445 s 1; 1981 c 116 s 1; 1982 c 632 s 2; 1985 c 187 s 1; 1985 c 248 s 70; 1987 c 349 art 1 s 17,18; 1988 c 631 s 4; 1989 c 129 s 2; 1989 c 341 art 2 s 1*

48.62 BANKS MAY ISSUE NOTES OR DEBENTURES.

With the approval of the commissioner any banking institution may, at any time, through action of its board of directors and without requiring any action of its stockholders, issue and sell its capital notes or debentures. These capital notes or debentures shall be subordinate and subject to the claims of depositors and may be subordinated and subjected to the claims of other creditors.

In determining whether the capital of any banking institution is impaired, outstanding capital notes or debentures, legally issued by the institution and sold by it to the reconstruction finance corporation, shall not be considered as liabilities of the institutions, but for all other purposes they shall be, and shall be considered as, liabilities of the institution.

No capital notes, or debentures, shall be retired or paid by any such institutions if this retirement or payment would impair the capital of the institution.

These capital notes or debentures shall in no case be subject to any assessment. The holders of the capital notes or debentures shall not be held individually responsible, as holders, for any debts, contracts, or engagements of the institutions, and shall not be held liable for assessments to restore impairments in the capital of the institution.

Any required reserve established for the retirement of capital notes or debentures may be considered as surplus, and the term "surplus" in any laws of this state pertaining to state banks shall be deemed to include such reserve, if an agreement is filed with the commissioner to transfer such reserve to surplus upon the request of the commissioner after the capital notes or debentures have matured.

History: *(7697-7) 1935 c 305 s 1; 1967 c 102 s 9*

48.63 BANKS NEED NOT GIVE SECURITY FOR DEPOSITS.

Notwithstanding any provisions of law of this state requiring security for deposits in any bank or trust company in the form of collateral, surety bond or any other form, security for such deposits shall not be required to the extent the deposits are insured under the provisions of Section 12B of the Federal Reserve Act, as amended (Mason's United States Code Annotated, title 12, section 264), or any amendments thereto.

History: *(7697-8) 1935 c 317 s 1*

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 or trust company, however organized, the deposits of which are insured, in whole or in part, by the Federal Deposit Insurance Corporation, to the extent that the funds so deposited are fully insured.

History: *(7697-9) 1937 c 318 s 1; 1977 c 429 s 63; 1986 c 444*

48.65 TRUST COMPANIES TO COMPLY WITH CERTAIN LAWS.

No trust company of this state shall conduct a banking business, as defined in section 47.02, without fully complying with the provisions of section 48.22 relating to the reserve requirements of the state banks.

History: *(7726) 1919 c 117 s 1*

48.66 NATIONAL BANKS MAY ACT AS FIDUCIARIES.

Any national bank in this state granted a special permit by the federal reserve board to act in a fiduciary capacity under the provisions of subsection K of section 11 of the federal reserve act, as amended by the act of September 26, 1918, may assign, transfer to, and deposit with the commissioner, and procure a certificate therefor, the kinds and amounts of authorized securities required of a trust company in a city wherein the national bank is located, by section 48.67; provided, that such national bank which has a capital of $500,000 or over shall not be required to deposit these securities for more than ten percent of this capital. The securities so deposited shall be held and maintained as a guaranty fund for the national bank for the performance of its duties in such fiduciary capacity.

When such national bank has complied with section 48.67, no oath or security shall be required of it in the acceptance and performance of any such trust, as provided in section 48.79.

History: *(7727) 1921 c 490 s 1; 1973 c 123 art 5 s 7; 1986 c 444*

48.67 CAPITAL OF TRUST COMPANIES.

The capital of every trust company hereafter organized shall be not less than $500,000. There shall also be provided a surplus of at least 20 percent of capital in addition to such capital amounts in each case and neither the capital nor the surplus so provided shall be reduced without the approval of the commissioner of commerce. No trust company hereafter organized shall transact any business until all of its authorized capital stock and required surplus have been paid in, in cash, and at least 25 percent of the capital has been invested in one or more of the first, second, third, and fourth classes of authorized securities and railroad bonds, as described by that statute, and also in the farm loan bonds issued by the federal land banks, federal intermediate credit banks, and the banks for cooperatives duly assigned and transferred to and deposited with the state treasurer. The state treasurer shall submit the securities deposited to the commissioner, who shall carefully examine the securities offered for deposit and ascertain that they comply with all the provisions of law applicable thereto. Upon receipt of an order of the commissioner, the state treasurer shall issue a receipt therefor. This deposit shall be maintained unimpaired as a guaranty fund for depositors and creditors and for the faithful discharge of its duties, with the right to collect the income thereof and to substitute other like authorized securities, of equal amount and value, upon approval and order of the commissioner.

If the securities comply with the law, the commissioner shall issue a certificate of authorization for the trust company to commence business.

The capital stock of any trust company may be reduced with the approval of the commissioner, but not below the minimum amounts aforesaid, and no assets shall be returned to the stockholders unless its deposits of authorized securities after such return equal one-fourth of the reduced capital, in no event less than $125,000; nor shall the liability of any stockholder upon any existing contract be affected thereby.

When two or more trust companies have been or shall hereafter be consolidated under and pursuant to the provisions of sections 49.34 to 49.41, the capital of the consolidated trust company shall be considered as substituted for the capital of the several trust companies entering into the consolidation, and the aggregate of the securities of these trust companies on deposit with the state treasurer, pursuant to the provisions of this section, shall be increased or diminished accordingly; provided, that any company may hereafter be organized, with its principal place of business at any place within the state, with a capital of not less than $10,000, to be paid in cash, of which 50 percent shall be invested in authorized securities and deposited with the state treasurer, as provided in this section. The powers and business of the company so organized shall be to act as assignee under any assignment for the benefit of creditors, or be appointed and act as a trustee or receiver, as a guardian, as executor of any will, or administrator of any estate, and the company so organized may accept and perform any other lawful trust over which any court, either state or federal, has jurisdiction. This company,

before entering upon the duties of its trust, shall give a corporate surety bond in such sum as the court directs, with sufficient surety, conditioned for the faithful performance of its duties. The business of any company so organized shall be limited to the above matters; provided, that the company so organized with a capital stock of $10,000 shall not use the word "trust" in the title or name of the company.

History: *(7728) RL s 3033; 1907 c 225 s 1; 1911 c 314 s 1; 1927 c 323 s 1; 1931 c 375 s 1; 1935 c 339 s 1; 1965 c 171 s 20; 1973.c 438 s 1; 1973 c 497 s 1; 1977 c 272 s 12; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444*

48.68 DIRECTORS; QUALIFICATIONS; VACANCIES, HOW FILLED.

A majority of the directors of a trust company must be residents of this state. Each shall take and subscribe an oath to diligently and honestly perform the official duties of a director and not knowingly violate, or permit to be violated, any provision of law relating to trust companies. The taking of this oath must be noted on the minutes of the records of the corporation and filed with the commissioner. Failure of any person selected as director to qualify creates a vacancy in the board, and all vacancies in the board must be filled by the qualified members. However, not more than one-third of the membership of the board may be so filled in any one year.

History: *(7729) RL s 3034; 1919 c 30 s 1; 1965 c 171 s 21; 1Sp1981 c 4 art 4 s 62; 1983 c 250 s 7; 1986 c 444*

48.69 CERTAIN TRUST COMPANIES MAY ASSUME POWERS OF STATE BANKS.

Any trust company organized under the laws of this state, and having a capital of not less than $500,000, may exercise the powers and privileges conferred by sections 48.69 to 48.73, in addition to all other powers granted by law, upon complying with the conditions and requirements specified in sections 48.69 to 48.73.

History: *(7733-1) 1929 c 90 s 1; 1977 c 272 s 13*

48.70 CERTIFICATES TO BE AMENDED.

In order to exercise such powers as may be granted in sections 48.69 to 48.73, any such trust company may amend its certificate of incorporation so as to assume the additional powers of a state banking corporation. This amendment may include the change of the corporate name of the trust company so as to include the words "state bank" therein. Such trust company shall display in its place of business, the certificate of such authorization issued by the commissioner of commerce.

History: *(7733-2) 1929 c 90 s 2; 1945 c 91 s 1; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92*

48.71 DEPARTMENT TO APPROVE CERTIFICATES.

Amendments to the certificate of incorporation shall be made in accordance with section 300.45 and before becoming effective these amendments must be approved by the department and the approval endorsed upon the certificate of amendment.

History: *(7733-3) 1929 c 90 s 3*

48.72 APPLICATION.

In considering the application of a trust company to assume the powers of a state bank, the department shall proceed in the same manner and be governed by the same laws which are now applicable to application for charters for new state banks.

History: *(7733-4) 1929 c 90 s 4*

48.73 POWERS AND DUTIES OF TRUST COMPANIES.

Upon complying with the terms of sections 48.69 to 48.73, the trust company shall have all the powers and privileges of a state bank not heretofore granted to trust compa-

nies, and shall become subject to and comply with all the provisions of the laws of this state in relation to state banks.

History: *(7733-5) 1929 c 90 s 5*

48.74 FUNDS AND PROPERTY HELD IN FIDUCIARY CAPACITY.

Besides its general books of account, it shall keep separate books for all fiduciary accounts. All funds and property held by it in a fiduciary capacity shall at all times be kept separate from its own funds and property, and all fiduciary funds deposited or held as fiduciary by the bank awaiting investment shall be carried in a separate account, and shall not be used by the bank in the conduct of its business, unless the bank, under authorization by its board of directors, first delivers to the commissioner of commerce, as collateral security: (1) Bonds, notes, bills, certificates of indebtedness, or other direct obligations of the United States or its instrumentalities, or obligations fully guaranteed by the United States as to principal and interest; or (2) other readily marketable securities of the classes in which said trust companies or state banks exercising trust powers are authorized or permitted to invest trust funds under the laws of this state. Every security or property in which the funds held by it as trustee, executor, administrator, guardian, receiver, or assignee, or in any other fiduciary capacity are invested, shall at once upon receipt thereof be immediately entered in the proper books as belonging to the particular fiduciary account whose funds have been invested therein. Any change in such investment shall be fully specified in and under the account of the particular fiduciary account to which it belongs, so that all fiduciary funds and property can be readily identified at any time, by any person. Any trust company incorporated under the laws of this state and any national banking association authorized to act in a fiduciary capacity in this state, when acting in a fiduciary capacity, either alone or jointly with an individual or individuals, may, with the consent of such individual fiduciary or fiduciaries, who are hereby authorized to give such consent, cause any stocks, securities, or other property now held or hereafter acquired in such capacity to be registered and held in the name of a nominee or nominees of such corporate fiduciary without mention of the fiduciary relationship. Any such corporate fiduciary shall be liable for any loss occasioned by the acts of any of its nominees with respect to such stocks, securities or other property so registered.

History: *(7739) RL s 3044; 1943 c 339 s 1; 1959 c 88 s 14; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92*

48.75 PROHIBITED DEALINGS AND INDEBTEDNESS.

Trust companies shall not engage in any banking, mercantile, manufacturing, or other business, except such as is herein expressly authorized for such a corporation. It shall not lend its funds, moneys, capital, trust funds, or any other property whatsoever, to any director, officer, agent, or employee, nor shall any such director, officer, agent, or employee become in any manner indebted to it by means of any overdraft, promissory note, account, endorsement, guaranty, or any other contract; and any such director, officer, agent, or employee who shall become so indebted to it shall be guilty of theft of the amount of such indebtedness from the time of its creation.

History: *(7740) RL s 3045; 1965 c 35 s 3*

48.76 POWERS OF COURT; ANNUAL REPORT TO THE COURT AND TO THE COMMISSIONER.

Every trust company shall be subject at all times to the further orders, judgments, and decrees of a court of record from which it has accepted a trust, appointment, or commission as to the trust, and shall render to the court itemized and verified accounts, statements, and reports required by law, or as the court orders as to a particular trust. The trust company shall also be subject to the general jurisdiction and authority of the district court of the county of its principal place of business.

History: *(7741) RL s 3046; 1982 c 473 s 14*

48.77 PROCEDURE UPON VIOLATION OF LAW OR INSOLVENCY.

The directors and managing officers of any such corporation, when satisfied that it is, or is about to become, insolvent, shall immediately report that fact to the commissioner; and when the commissioner shall be satisfied from that report, or from any examination made, that it is conducting its business in an unlawful or unsafe manner, or that it is insolvent, the commissioner may at once take possession of its books, records, and assets, which shall not be subject to any levy or attachment, nor shall any application for a receiver be entertained by any court, during such reasonable time as may be necessary for further examination. If, upon this examination, it shall appear to the commissioner that its business is being conducted in a safe and lawful manner and that all creditors, except those represented by stock, can be paid in full from the assets, the commissioner may relinquish possession of its assets to its directors and officers; otherwise the commissioner shall apply to a court for the appointment of a receiver, who shall take possession of all its books, records, and assets, and close up its affairs under the direction of the court; provided, that if at any stage of the proceedings the directors or stockholders shall satisfy the court that the corporation is able to pay all creditors, other than themselves, if the showing is approved, after investigation by the commissioner, the court may order the return of the assets to the company for liquidation or such other course as the stockholders, in compliance with law, may determine; and in such case the receiver shall be discharged.

History: *(7742) RL s 3047; 1986 c 444*

48.78 AGENT OR ATTORNEY IN FACT, ACTING AS.

Any trust company may take and hold in trust any real or personal property, wherever situated, by order, judgment, or decree of any court of record, or by gift, grant, assignment, transfer, devise, legacy, or bequest from, or by lawful contract with, any public or private corporation or individual, and manage the same upon the terms, conditions, limitations, and restrictions therein declared or imposed. The trust company may also act as agent for the signature, countersignature, registration, transfer, or redemption of certificates of stock, bonds, coupons, or other evidences of indebtedness of any such corporation or individual, or otherwise act as general or special agent or attorney in fact in the acquisition, management, sale, assignment, transfer, incumbrance, conveyance, or other disposition of any real or personal property, the collection of rents, payment of taxes, and generally as the representative of any such corporation or individual.

History: *(7731) RL s 3036*

48.79 ACTING AS ASSIGNEE, RECEIVER, OR EXECUTOR.

Any trust company may act as assignee under any assignment for the benefit of creditors, or be appointed and act as a trustee or receiver, as a guardian, as executor of any will, or administrator of any estate, and may accept and perform any other lawful trust conferred by any court, or by any corporation or individual. In the acceptance and performance of any such trust, no oath or security shall be required.

History: *(7733) RL s 3038*

48.80 COMPENSATION; COMMISSION NOT DEEMED INTEREST.

For the faithful performance of its duties and discharge of its trust, any trust company shall be entitled to reasonable compensation, or such amount as has been or may be agreed upon by the parties, and all necessary expenses, with legal interest thereon, unless otherwise agreed upon. No compensation or commission paid or agreed to be paid by it for the negotiation of any loan, or the execution of any trust, shall be deemed interest within the meaning of the law, nor shall any excess thereof over the legal rate be deemed usury.

History: *(7737) RL s 3042*

48.81 INVESTMENT POWERS; LIMITATION.

Any trust company may acquire, use, and improve, and for that purpose mortgage, lease, sell, and convey, such real and personal property as may be necessary for the transaction of its business. Any estate or interest in real estate which it may acquire by virtue of the foreclosure of any mortgage, trust deed, or other security, or by the settlement of any obligation or otherwise, in the course of its legitimate business, it may sell or continue to hold and use as deemed for its interests or those of the estate or trust to which the same belongs, and to that end it may become the purchaser at any foreclosure or judicial sale to which it is a party as trustee or otherwise. It may also accept or make any deed, mortgage, or other instrument necessary for the transaction of its business, may loan money and secure such loans by mortgage, trust deed or pledge, purchase notes, bonds, mortgages, and other evidences of indebtedness, and securities, and sell and assign the same, and convert them into cash or into other authorized securities, or securities and property not herein expressly prohibited, provided that the investment of funds owned by a trust company, as distinguished from funds held by it in trust, shall be restricted to authorized securities. It may guarantee a title to securities sold and transferred by it; may become sole surety upon any bond provided that, as to trust companies organized after April 10, 1965, such pertain to its own fiduciary activities and may maintain and operate safe deposit vaults. It shall invest none of its capital or surplus in real estate except as herein authorized, nor any of its deposits, trust funds or property therein except as so authorized, or under or by virtue of an express contract, judgment, or other instrument conferring or imposing special power and authority so to do.

History: *(7730) RL s 3035; 1965 c 171 s 22; 1969 c 772 s 7*

48.82 DEPOSITS OF TRUST AND OTHER FUNDS RECEIVED.

Any trust company may act as a depository or accept for safekeeping money, bonds, stocks, and other securities or personal property which any public officer, or any trustee or other legal representative, or any public or private corporation or person, shall be authorized, ordered, or otherwise required by law to deposit in a bank or other safe depository, or to pay into any court of record; and the same may, instead thereof, be paid into or deposited with any such trust company, and, where such deposit is made pursuant to order of court, in such as the court shall designate, and take the receipt of the trust company therefor; and thereupon the depositor and the depositor's sureties shall be relieved from liability thereafter accruing so long as these deposits continue. Such deposits shall not include checking or savings accounts, certificates of deposit or other liabilities not relating to its fiduciary activities, except as may be authorized by section 47.23 and sections 48.69 to 48.73 inclusive.

History: *(7732) RL s 3037; 1961 c 298 s 4; 1986 c 444*

48.83 DEPOSIT WITH TRUST COMPANY INSTEAD OF A LARGER BOND.

When new or additional security shall be required from any executor, administrator, guardian, assignee, receiver, or other trustee, if the judge or court having jurisdiction deems it expedient, because of the magnitude of the estate or fund or otherwise, to require the maximum security prescribed by law, it may direct any securities belonging thereto to be deposited with any trust company, subject to the order of the trustee, when countersigned by the judge, and fix the amount of the security with reference only to the remainder. No such security shall be withdrawn, nor any part of the principal or interest thereof collected, except by an officer of the company, without the order of the judge duly entered and certified, upon satisfactory proof that additional security has been furnished, or that the estate or fund has been so reduced that the deposit is no longer required.

History: *(7734) RL s 3039*

48.84 CORPORATE TRUSTEE; TRUST FUNDS, INVESTMENT, COMMINGLING.

Any trust company or state bank which is permitted to exercise trust powers under the provisions of sections 48.37 to 48.47 inclusive may invest all moneys received by it in trust in authorized securities, and shall be responsible to the owner or cestui que trust for the validity, regularity, quality, value, and genuineness of these investments and securities so made, and for the safekeeping of the securities and evidences thereof. When special directions are given in any order, judgment, decree, will, or other written instrument as to the particular manner or the particular class or kind of securities or property in which any investment shall be made, it shall follow such directions, and in such case it shall not be further responsible by reason of the performance of such trust. In all other cases it may invest funds held in any trust capacity in authorized securities using its best judgment in the selection thereof, and shall be responsible for the validity, regularity, quality, and value thereof at the time made, and for their safekeeping. Whether it be the sole trustee or one of two or more cotrustees, it may invest in fractional parts of, as well as in whole, securities, or may commingle funds for investment. If it invests in fractional parts of securities or commingles funds for investment, all of the fractional parts of such securities, or the whole of the funds so commingled shall be owned and held by the trust company or state bank in its several trust capacities, and it shall be liable for the administration thereof in all respects as though separately invested; provided, that not more than $100,000, at the cost price of such investments, shall be so invested for any one trust at any one time in fractional parts or as commingled funds for investment by a trust company or state bank having capital and surplus of less than $500,000, unless the authority to invest in fractional parts or as commingled funds be given in the order, judgment, decree, will, or other written instrument governing such trust. Funds so commingled for investment shall be designated collectively as a common trust fund. Such trust company or state bank shall maintain such common trust fund in conformity with the rules and regulations prevailing from time to time of that federal governmental agency which regulates the collective investment of trust funds by national banks. It may, in its discretion, retain and continue any investment and security or securities coming into its possession in any fiduciary capacity. The foregoing shall apply as well whether a corporate trustee is acting alone or with an individual cotrustee.

History: *(7735) RL s 3040; 1941 c 298 s 1; 1947 c 234 s 1; 1951 c 165 s 1; 1965 c 171 s 23*

48.841 COMMON TRUST FUNDS, AFFILIATES.

Subdivision 1. Notwithstanding the provisions of section 48.84, any trust company or state bank which is permitted to exercise trust powers under the provisions of sections 48.37 to 48.47 inclusive may:

(a) Establish and maintain common trust funds for the collective investment of funds held in any fiduciary capacity by it or by another bank or trust company which is owned or controlled by a corporation which owns or controls such bank or trust company; and

(b) As a fiduciary or cofiduciary, invest funds which it holds for investment in common trust funds established and maintained pursuant to clause (a) if such investment is not prohibited by the instrument, judgment, decree or order creating such fiduciary relationship. This subdivision applies to fiduciary relationships now in existence or hereafter created.

Subd. 2. To the extent not inconsistent with the provisions of this section, the provisions of section 48.84 relating to common trust funds shall apply to the establishment and maintenance of common trust funds under this section.

History: *1974 c 6 s 1*

48.845 SUBSTITUTION IN FIDUCIARY CAPACITIES FOR AFFILIATED OR OTHER BANKS; DEFINITIONS.

Subdivision 1. For purposes of this section and section 48.846, the terms defined in this section have the meanings given them.

Subd. 2. "Bank" means any state bank permitted to exercise trust powers under the provisions of sections 48.37 to 48.47, and any national bank authorized to exercise fiduciary powers under the laws of the United States, including a national bank whose operations are limited to those of a trust company and related activities.

Subd. 3. "Trust company" means any trust company incorporated under the laws of this state which is duly authorized to exercise fiduciary powers.

Subd. 4. "Affiliated bank" with respect to another bank or a trust company means any bank which is owned or controlled by the corporation which owns or controls that other bank or trust company.

Subd. 5. "Fiduciary capacity" means a capacity resulting from a bank undertaking to act alone or jointly with others primarily for the benefit of another in all matters connected with its undertaking and includes, but is not limited to, the capacities of trustee, including trustee of a common trust fund; executor; administrator; personal representative; registrar or transfer agent with respect to stocks, bonds or other evidences of indebtedness of any corporation, association, municipality, state or public authority; guardian of estates; conservator; receiver; escrow agent; agent for the investment of money; attorney-in-fact; or any other similar capacity.

History: *1980 c 383 s 1*

48.846 SUBSTITUTION; APPLICATION; NOTICE; HEARING; COURT ORDER; FILING.

Subdivision 1. Any bank or trust company may file an application with the district court in the county in which an affiliated bank or other bank or trust company for which it seeks to be substituted is located requesting that it be substituted, except as may be expressly excluded in the application, in every fiduciary capacity held by the affiliated bank or other bank or trust company for which substitution is sought and which is specified in the application. The affiliated bank or other bank or trust company for which substitution is sought shall join in the application. The application need not list the fiduciary capacities in which substitution is requested.

Subd. 2. When the application is filed with the district court, the court shall make an order fixing a date and time for hearing and directing that notice of the hearing be given as provided in this subdivision. The applicant shall cause a copy of the notice to be published at least once a week for two consecutive weeks in a legal newspaper in the county where the hearing is to be held, the last publication of which is to be at least ten days before the time set for the hearing. The court may require additional notice as it reasonably deems necessary. No defect in giving notice shall limit or affect the validity of any order entered pursuant to this section.

Subd. 3. Upon finding that the applicant is duly authorized to exercise fiduciary powers, the district court shall enter an order substituting the applicant bank or trust company in every fiduciary capacity held by the affiliated bank or other bank or trust company for which substitution is sought and which joined in the application, except as may be otherwise specified in the application, and except for fiduciary capacities in any account with respect to which a person beneficially interested in the account has filed objection to the substitution and has appeared and been heard in support of the objection. Upon entry of the order, or at a later date as may be specified in the order, the applicant bank or trust company shall, without further act, and notwithstanding any other law to the contrary, be substituted in every such fiduciary capacity. The substitution may be made a matter of record in any county of this state by filing a certified copy of the order of substitution in the office of the court administrator of any district, county or probate court in this state, or by filing a certified copy of the order in the office of the county recorder of any county in this state.

Subd. 4. Each designation in a will or other instrument heretofore or hereafter executed of an affiliated bank as fiduciary shall be deemed a designation of the bank or trust company substituted for the affiliated bank pursuant to this section except where the will or other instrument is executed after the substitution and expressly negates the application of this section. Except as otherwise provided in this subdivision any grant in any will or other instrument of any discretionary power shall be deemed conferred upon the bank or trust company substituted as the fiduciary pursuant to this section.

Subd. 5. An affiliated bank or other bank or trust company shall account jointly with the substituted bank or trust company for the accounting period during which the substitution occurred. Upon substitution pursuant to this section, the affiliated bank or other bank or trust company shall deliver to the substituted bank or trust company all assets held by the affiliated bank or other bank or trust company as fiduciary, except assets held for fiduciary accounts with respect to which no substitution occurs pursuant to this section. Upon substitution all assets become the property of the substituted bank or trust company without the necessity of any instrument of transfer or conveyance.

History: *1980 c 383 s 2; 1Sp1986 c 3 art 1 s 82*

48.85 TRANSFER OF TRUSTS TO COMPANY; CONDITION.

The trustees of any estate or property may surrender and resign such trust in favor of such trust company which will accept the same, and convey and deliver to it all property and assets of such trust, upon condition that the grantor, cestui que trust, and all parties in any manner interested in the execution and performance of such trust shall execute, acknowledge, and deliver an instrument in writing, whereby they shall consent to such transfer and the release and discharge of the original trustee, and the appointment of such trust company as successor. If either party to the original trust is dead, or does not join in such written consent, or if such original trust was created under a last will, or an order or decree of a court of record, then such transfer shall not be valid except upon the judgment or decree of such court as would have jurisdiction of an action to remove the acting trustee, and full compliance with the terms and conditions of such judgment or decree.

History: *(7736) RL s 3041; 1986 c 444*

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 or savings accounts in any bank or banks, provided that such certificates of deposit or savings accounts are fully insured by the federal deposit insurance corporation and receive the prevailing rate of interest on such certificates or savings accounts.

History: *(7738) RL s 3043; 1957 c 601 s 18; 1965 c 171 s 24; 1967 c 102 s 10*

48.87 [Repealed, 1Sp1985 c 13 s 376]

48.88 VIOLATIONS; PENALTIES.

Subdivision 1. Any officer or employee of a bank or trust company who violates the provisions of sections 48.15 and 48.16 to 48.20, or who consents thereto or connives thereat, shall be guilty of a gross misdemeanor.

Subd. 2. Any person or officer of a state bank or trust company who knowingly or willfully accepts deposits with an agreement or understanding, either directly or indi-

rectly, on the part of the bank or trust company to pay a larger rate of interest than that provided in section 48.25 shall be guilty of a misdemeanor.

History: *(7699-13 1/2a, 7699-19) 1927 c 257 s 6; 1929 c 144 s 2; 1Sp1981 c 4 art 2 s 5*

48.89 CLERICAL SERVICE CORPORATION.

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

(a) The term commissioner means the commissioner of commerce.

(b) The term clerical services means services such as check and deposit, sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices, and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a bank.

(c) The term clerical service corporation means a corporation organized as a business corporation to perform clerical services for two or more banks, each of which owns part of the capital stock of such corporation.

(d) The term invest includes any advance of funds to a clerical service corporation, whether by the purchase of stock, the making of a loan, or otherwise, except a payment for rent earned, goods sold and delivered, or services rendered prior to the making of such payment.

(e) The term banks is defined as prescribed in section 46.046.

Subd. 2. (a) No limitation or prohibition otherwise imposed by any provision of state law exclusively relating to banks shall prevent any two or more banks from investing not more than ten percent of the paid-in and unimpaired capital and unimpaired surplus of each of them in a clerical service corporation if in stock of such a corporation and 15 percent of unimpaired capital and unimpaired surplus if in the making of a loan or extending credit to such a corporation. In no event shall the aggregate of the investments in stock and loans exceed 15 percent of the unimpaired capital and unimpaired surplus of the investing bank.

(b) If stock in a clerical service corporation has been held by two banks, and one of such banks ceases to utilize the services of the corporation and ceases to hold stock in it, and leaves the other as the sole stockholding bank, the corporation may nevertheless continue to function as such and the other bank may continue to hold stock in it.

Subd. 3. Whenever a bank, referred to in this section as an "applying bank," applies for a type of clerical services for itself from a clerical service corporation which supplies the same type of clerical services to another bank, and the applying bank is competitive with any bank, referred to in this section as a "stockholding bank," which holds stock in such corporation, the corporation must offer to supply such services by either:

(1) Issuing stock to the applying bank and furnishing clerical services to it on the same basis as to the other banks holding stock in the corporation; or

(2) Furnishing clerical services to the applying bank at rates no higher than necessary to fairly reflect the cost of such services, including the reasonable cost of the capital provided to the corporation by its stockholders,

at the corporation's option, unless comparable services at competitive overall cost are available to the applying bank from another source, or unless the furnishing of the services sought by the applying bank would be beyond the practical capacity of the corporation. In any action or proceeding to enforce the duty imposed by this section, or for damages for the breach thereof, the burden shall be upon the clerical service corporation to show such availability.

Subd. 4. No clerical service corporation may engage in any activity other than the performance of clerical services for banks.

Subd. 5. No bank may cause to be performed, by contract or otherwise, any clerical services for itself from a clerical service corporation, whether on or off its premises,

unless assurances satisfactory to the commissioner are furnished to the commissioner by both the bank and the party performing such services that the performance thereof will be subject to regulation and examination by the commissioner to the same extent as if such services were being performed by the bank itself on its own premises.

Subd. 6. A clerical service corporation shall not be considered a branch of any bank owning shares in such corporation.

History: *1963 c 140 s 1; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1985 c 248 s 19*

48.892 CLERICAL SERVICES OFFICES.

A bank may perform clerical services, as defined in section 48.89, subdivision 1, for itself at an off-premises data processing and storage center located within the state if the bank furnishes assurances satisfactory to the commissioner that the performances of those services will be subject to regulation and examination by the commissioner to the same extent as if the services were being performed at the bank's main office or detached facility. A data processing and storage center is not considered a branch or detached facility, as defined in section 47.51. The establishment of a data processing and storage center may include acquiring real and personal property, which shall be subject to section 47.10.

History: *1989 c 129 s 3*

RECIPROCAL INTERSTATE BANKING ACT

48.90 LEGISLATIVE INTENT.

Subdivision 1. **Severability.** It is the express intention of the Minnesota legislature to act pursuant to the United States Code, title 12, section 1842(d) to provide an orderly transition to interstate banking by initially permitting limited interstate banking on a regional basis. Therefore, notwithstanding the provisions of section 645.20, if any provision of Laws 1986, chapter 339, other than Laws 1986, chapter 339, sections 1 to 3, and 14, providing for the supervisory powers of the commissioner or limiting expansion into this state to bank holding companies located in states defined as "reciprocating states" is determined by final, nonappealable order of any Minnesota or federal court of competent jurisdiction to be invalid or unconstitutional, Laws 1986, chapter 339, is null and void and of no further force and effect from the effective date of the final determination.

Subd. 2. **Nonaffected activities.** Laws 1986, chapter 339 should not be construed to limit the power granted to a bank in this state to conduct its business or to limit the conduct of business by any bank holding company in which the operation of its banking subsidiaries are principally conducted in this state.

Subd. 3. **Prohibited activities.** Laws 1986, chapter 339 does not authorize:

(1) the establishment in this state of branch offices of a banking subsidiary of any out-of-state bank holding company making an acquisition pursuant to Laws 1986, chapter 339 if the banking subsidiary does not have its principal place of business in this state; or

(2) the establishment in this state of branch offices of a bank having its principal place of business in this state unless authorized by sections 47.51 to 47.57.

History: *1986 c 339 s 4*

48.91 TITLE.

Laws 1986, chapter 339 may be cited as the "reciprocal interstate banking act."

History: *1986 c 339 s 5*

INTERSTATE BANKING

48.92 DEFINITIONS.

Subdivision 1. **Terms.** When used in sections 48.90 to 48.991, the terms defined in this section have the meanings given them, unless their context requires a different meaning.

Subd. 2. **Control.** "Control" means, with respect to a bank holding company, bank, or bank to be organized pursuant to chapters 46, 47, 48, and 300, (1) the ownership, directly or indirectly or acting through one or more other persons, control of or the power to vote 25 percent or more of any class of voting securities; (2) control in any manner over the election of a majority of the directors; or (3) the power to exercise, directly or indirectly, a controlling influence over management and policies.

Subd. 3. **Bank.** "Bank" means any bank, or bank and trust company which is now or may hereafter be organized under the laws of this state that is an insured institution as the term is defined in section 3(h) of the Federal Deposit Insurance Act, United States Code, title 12, section 1813(h), that:

(1) accepts deposits that the depositor has a legal right to withdraw on demand; and

(2) engages in the business of making commercial loans.

Subd. 4. **Commissioner.** "Commissioner" means the commissioner of commerce of the state of Minnesota.

Subd. 5. **Department.** "Department" means the department of commerce of the state of Minnesota.

Subd. 6. **Located in this state.** "Located in this state" means: (1) a bank whose organizational certificate identifies an address in this state as the principal place of conducting the business of banking; or (2) a bank holding company as defined in the Bank Holding Company Act of 1956, as amended, with banking subsidiaries, the majority of whose deposits are in Minnesota.

Subd. 7. **Reciprocating state.** "Reciprocating state" is: (1) a state that authorizes the acquisition, directly or indirectly, or control of, banks in that state by a bank or bank holding company located in this state under conditions substantially similar to those imposed by the laws of Minnesota as determined by the commissioner; and (2) limited to the states of Iowa, North Dakota, South Dakota, Wisconsin, Colorado, Idaho, Illinois, Indiana, Kansas, Missouri, Montana, Nebraska, Washington, and Wyoming.

Subd. 8. **Reciprocating state bank holding company.** "Reciprocating state bank holding company" means a bank holding company as defined in the Bank Holding Company Act of 1956, as amended, whose operations are principally conducted in a reciprocating state other than Minnesota and is that state in which the operations of its banking subsidiaries are the largest in terms of total deposits.

Subd. 9. **Interstate bank holding company.** "Interstate bank holding company" means (a) a bank holding company located in this state, engaging in interstate banking under reciprocal legislation, (b) a reciprocating state bank holding company engaged in banking in this state, and (c) other out-of-state bank holding companies operating an institution located in this state having deposits insured by the Federal Deposit Insurance Corporation.

Subd. 10. **Equity capital.** "Equity capital" means the sum of common stock, preferred stock, paid in surplus, reserves for loss loans and undivided profits.

History: *1986 c 339 s 6; 1Sp1986 c 3 art 2 s 24; 1987 c 349 art 1 s 19; 1988 c 616 s 1; 1990 c 491 art 4 s 1*

48.93 ACQUISITION PROCEDURE.

Subdivision 1. **Application.** A reciprocating state bank holding company may, through a purchase of stock or assets of a bank, or through a purchase of stock or assets of or merger with a bank holding company, acquire an interest in an existing bank or

banks located in this state if it meets the conditions in this section and, if the interest will result in control of the bank or banks, it files an application in writing with the commissioner on forms provided by the department. The commissioner, upon receipt of the application, shall act upon it within 30 days of the end of the public comment period provided by section 48.98, and, unless the proposed acquisition is disapproved within that period of time, it becomes effective without approval, except that the commissioner may extend the 30-day period an additional 30 days if in the commissioner's judgment any material information submitted is substantially inaccurate or the acquiring party has not furnished all the information required by subdivision 3 or the commissioner. No application for approval required by this section is complete unless accompanied by an application fee of $5,000 payable to the state treasurer. Compliance with the requirements of this section satisfies the requirements of section 48.03, subdivision 4. Within three days after making the decision to disapprove any proposed acquisition, the commissioner shall notify the acquiring party in writing of the disapproval. The notice must provide a statement of the basis for the disapproval.

Subd. 2. **Hearings.** Within ten days of receipt of notice of disapproval pursuant to subdivision 1, the acquiring party may request an agency hearing on the proposed acquisition. At the hearing, all issues must be determined on the record pursuant to chapter 14 and the rules issued by the department. At the conclusion of the hearing, the commissioner shall by order approve or disapprove the proposed acquisition on the basis of the record made at the hearing.

Subd. 3. **Criteria for approval.** Except as otherwise provided by rule of the department, an application filed pursuant to subdivision 1 must contain the following information:

(1) the identity, personal history, business background, and experience of each person by whom or on whose behalf the acquisition is to be made, including the person's material business activities and affiliations during the past five years, and a description of any material pending legal or administrative proceedings in which the person is a party and any criminal indictment or conviction of that person by a state or federal court;

(2) a statement of the assets and liabilities of each person by whom or on whose behalf the acquisition is to be made, as of the end of the fiscal year for each of the five years immediately preceding the date of the notice, together with related statements of income, sources, and application of funds for each of the fiscal years then concluded, all prepared in accordance with generally accepted accounting principles consistently applied, and an interim statement of the assets and liabilities for each person, together with related statements of income, source, and application of funds as of a date not more than 90 days prior to the date of the filing of the notice;

(3) the terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made;

(4) the identity, source, and amount of the funds or other consideration to be used in making the acquisition, and if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and any arrangements, agreements, or understandings with those persons;

(5) any plans or proposals which an acquiring party making the acquisition may have to liquidate the bank, to sell its assets or merge it, or make any other major change in its business or corporate structure or management;

(6) the identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on the acquiring party's behalf, to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition, and a brief description of the terms of the employment, retainer, or arrangement for compensation;

(7) copies of all invitations, tenders, or advertisements making tender offers to stockholders for purchase of their stock to be used in connection with the proposed acquisition;

(8) a statement of how the acquisition will bring "net new funds" to Minnesota. The description of net new funds must be filed with the application stating the amount of capital funds, including the increase in equity capital that will result from the acquisition or establishment of a bank. The level of total equity capital must exceed $3,000,000 for a new chartered bank and $1,000,000 for an acquired bank. The description must state the net increase in loanable funds expressed as an increase in the total loan to asset ratio of Minnesota loans and assets. The statement must also include a discussion of initial capital investments, loan policy, investment policy, dividend policy, and the general plan of business, including the full range of consumer and business services which will be offered; and

(9) any additional relevant information in the form the commissioner requires by rule or by specific request in connection with any particular notice.

Subd. 4. **Disapproval.** The commissioner shall disapprove any proposed acquisition if:

(1) the financial condition of any acquiring person is such as might jeopardize the financial stability of the bank or prejudice the interests of the depositors of the bank;

(2) the competence, experience, integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of the bank, or in the interest of the public to permit the person to control the bank;

(3) the acquisition will result in undue concentration of resources or substantial lessening of competition in this state;

(4) the application fails to adequately demonstrate that the acquisition proposal would bring net new funds into Minnesota;

(5) the application is incomplete or any acquiring party neglects, fails, or refuses to furnish all the information required by the commissioner;

(6) a subsidiary of the acquiring bank holding company has failed to meet the requirements set forth in the federal Community Reinvestment Act; or

(7) the acquisition will result in over 30 percent of Minnesota's total deposits in financial institutions as defined in section 13A.01, subdivision 2, being held by banks located in this state owned by reciprocating state bank holding companies. This limitation does not apply to consideration for approval pursuant to section 48.99, special acquisitions.

Subd. 5. **Appeals.** The court of appeals of the state of Minnesota will have exclusive original jurisdiction of any judicial review of an order issued under this section. The bank holding company that is the subject of the order may seek judicial review at any time within 90 days of the date of an order lawfully issued pursuant to this section.

History: *1986 c 339 s 7; 1986 c 444; 1988 c 616 s 2; 1990 c 491 art 1 s 7*

48.94 NEW BANK APPLICATION.

Any application to organize a bank pursuant to chapter 46 may include control by a reciprocating state bank holding company if, in addition to the conditions in section 46.041, the application does not present any facts which would be grounds for disapproval in section 48.93, subdivision 4, and if the application would result in the acquisition and operation of no more than one bank in this state by the same reciprocating state bank holding company.

History: *1986 c 339 s 8; 1Sp1986 c 3 art 2 s 25*

48.95 VIOLATIONS.

Subdivision 1. **Divestiture; cease and desist.** In the event a reciprocating state bank holding company makes an acquisition other than in full compliance with the requirements and procedures of Laws 1986, chapter 339, the commissioner may:

(1) by order immediately require the reciprocating state bank holding company to divest itself of its direct or indirect ownership or control of any bank located in this state;

(2) by order require the reciprocating state bank holding company to cease and desist the violations by a date certain. The order would be subject to the procedures applicable to cease and desist proceedings pursuant to sections 46.23 to 46.33 and any applicable rules; or

(3) in the event control of a bank located in this state is acquired by a bank holding company that is not a reciprocating state bank holding company as a result of change of control of a reciprocating state bank holding company, the acquiring bank holding company shall divest itself of control of the bank located in this state within two years of the date of its acquisition of control of the bank.

Subd. 2. **Net new funds; misrepresentation.** If the commissioner determines that at any time subsequent to the acquisition of a bank located in this state by a reciprocating state bank holding company it has materially misrepresented or substantially failed to conform to the statement submitted in the application required by section 48.93, subdivision 3, clause (8), the determination shall be considered prima facie evidence of a violation subject to the divestiture or cease and desist procedures in subdivision 1. In any proceeding under this section, the burden of proving compliance with the requirements of Laws 1986, chapter 339 is upon the reciprocating state bank holding company.

History: *1986 c 339 s 9; 1988 c 616 s 3*

48.96 SUPERVISION.

The department may enter into cooperative and reciprocal agreements with federal or bank regulatory authorities of reciprocating states for exchange or acceptance of reports of examination and other records from the authorities in lieu of conducting its own examinations. The department may enter into joint actions with federal or bank regulatory authorities of reciprocating states to carry out its responsibilities under Laws 1986, chapter 339 and assure compliance with the laws of this state.

History: *1986 c 339 s 10*

48.97 REPORTS.

Subdivision 1. **Regular and periodic reports.** Any reciprocating state bank holding company that directly or indirectly, through any subsidiary, acquires a bank pursuant to Laws 1986, chapter 339, shall file with the commissioner copies of all regular and periodic reports which the bank holding company is required to file under section 13 or 15(d) of the Securities and Exchange Act of 1934, as amended, excluding any portions not available to the public, and such other reports as the commissioner may require by rule.

Subd. 2. **Investment; reporting requirements.** Each financial institution located in this state owned by an interstate bank holding company shall fully and accurately disclose in an annual report to the commissioner of commerce for each calendar year the dollar value and volume of loans by zip code or census tract beginning with the year ending December 31, 1987, approved in the previous year in nonreal estate commercial and farm lending categories established by the commissioner. Lending categories must be delineated in sufficient detail to evaluate the lender's loan performance. Loan categories may include: demand or accrual notes, installment loans, equipment loans, inventory or accounts receivable loans, small business administration loans, and FmHA guaranteed loans. Housing loans must be disclosed statewide in the same manner and form as required by the Federal Home Mortgage Disclosure Act. The annual report must also disclose by zip code or census tract the dollar value and volume of deposits received during the previous year. The annual report must also disclose information by the categories required in section 48.991 demonstrating that developmental loans of a sufficient quantity are being made. The report must be accompanied by a copy of the most recent disclosures required under the Federal Community Reinvestment Act and the most recent Quarterly Statement of Income and Conditions.

Subd. 3. **Rating.** On the basis of the reports required in this section, the commis-

sioner of commerce shall annually rate each financial institution owned by an interstate bank holding company on its lending performance. The commissioner shall adopt by rule a five point rating scale based on the financial institution's performance in meeting the credit needs of the community and its performance in reaching its targeted level of developmental loans. A rating may be contested under the contested case proceedings of chapter 14.

Subd. 4. **Rating reports.** The commissioner of commerce shall make all ratings and reports available to the public upon request as provided by section 48.98. The ratings must be accompanied by an explanation of the rating assigned to each bank and the rationale behind the rating system.

History: *1986 c 339 s 11; 1987 c 349 art 1 s 20*

48.98 PUBLIC PARTICIPATION.

Subdivision 1. **Public information.** Notwithstanding the Minnesota government data practices act, chapter 13, and consistent with federal law, the commissioner shall make available to the public at reasonable cost copies of all applications, including supporting documents and any other information required to be submitted to the commissioner.

Subd. 2. **Notice.** Upon the filing of an application:

(1) an applicant shall publish in a newspaper of general circulation notice of the proposed acquisition as prescribed by the commissioner by rule;

(2) the commissioner shall prepare and update with each new application a bulletin listing all pending applications. The bulletin must be published and mailed without charge to any person upon request; and

(3) the commissioner shall accept public comment on an application for a period of not less than 30 days from the date of the final publication required by clause (1), or 30 days after the date of the availability of the first periodic bulletin required by clause (2), whichever is later.

History: *1986 c 339 s 12; 1987 c 349 art 1 s 21*

48.99 SPECIAL ACQUISITIONS AUTHORIZED.

Subdivision 1. **Application criteria for approval.** Pursuant to the present requirement of the United States Code, title 12, section 1842(d) and notwithstanding any other provision of state law, a reciprocating state bank holding company, or any subsidiary of a bank holding company, may acquire a bank located in this state where the commissioner has determined that a merger, consolidation, or purchase of assets and assumption of liabilities is necessary and in the public interest to prevent the probable failure of a bank or is made for the incorporation of a new bank in the same locality coincidental with the closing of an existing bank by the commissioner or federal authorities and does not increase the number of banks in the community affected. The acquisition is subject to the prior written approval of the commissioner of an application submitted under this section and after the following considerations:

(1) the financial and managerial resources of the applicant;

(2) the future prospects of the applicant and the state bank or its subsidiary whose assets, interest in, or shares it will acquire;

(3) the financial history of the applicant;

(4) whether the acquisition or holding may result in undue concentration of resources or substantial lessening of competition in this state;

(5) the convenience and needs of the public of this state; and

(6) whether the acquisition or holding will strengthen the financial condition of the state bank.

Subd. 2. **Intrastate priority.** In determining the priority of applications submitted to seek approval to acquire a bank located in this state which meets the criteria in subdivision 1, the commissioner shall give first consideration to the approval of applications

from applicants located in this state, then to reciprocating state bank holding companies.

Subd. 3. **Supervision.** The department may enter into cooperative and reciprocal agreements with federal or bank regulatory authorities of other states for exchange or acceptance of reports of examination and other records from the authorities in lieu of conducting its own examinations of acquiring reciprocating state bank holding companies. The department may enter into joint actions with federal or bank regulatory authorities of other states to carry out its responsibilities under Laws 1986, chapter 339 and assure compliance with the laws of this state.

Subd. 4. **Reports.** A reciprocating state bank holding company that directly or indirectly, through any subsidiary, acquires a bank pursuant to Laws 1986, chapter 339 shall file with the commissioner copies of all regular and periodic reports which the bank holding company is required to file under section 13 or 15(d) of the Securities and Exchange Act of 1934, as amended, but excluding any portions not available to the public, and such other reports as the commissioner may require by rule.

History: *1986 c 339 s 13; 1987 c 349 art 1 s 22*

48.991 DEVELOPMENTAL LOANS.

A bank located in this state owned by an interstate bank holding company shall provide a level of developmental loans as defined by the commissioner by rule. In establishing the developmental loan levels for banks, the commissioner may consider the developmental loan performance of financially stable banks of comparable or smaller size that have above average levels of activity in developmental loans in reciprocating states as defined in section 48.92, subdivision 7. A "developmental loan" includes, but is not limited to, (1) loans for low and moderate income housing, loans to community development corporations, loans to woman and minority owned businesses, student education loans, and alternative energy or energy conservation loans, and (2) loans within distressed areas and on any Indian reservation for any commercial nonreal estate purpose, home loans, home improvement loans, and operating loans to family farmers. The commissioner of commerce shall annually designate distressed areas. A distressed area may be made for a geographic region smaller than a county within the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington. The determination of a distressed area should be made on the area's unemployment rate, economic conditions, and credit needs.

History: *1986 c 339 s 14; 1988 c 616 s 4*

48.992 EXEMPTION.

Subdivision 1. **Resolution.** The board of directors of a bank or a bank holding company located in this state may adopt a resolution before July 1, 1987, to exempt the bank or bank holding company from section 48.93. If the board of directors adopts the resolution and files a certified copy of it as required by subdivision 2, the bank or bank holding company may not be acquired under section 48.93.

Subd. 2. **Filing.** If a resolution is adopted under this section, the board of directors shall file a certified copy of the resolution with the department in person or by certified mail. The board of directors may revoke the resolution by notifying the department in writing of its decision to revoke the resolution.

History: *1986 c 339 s 15; 1Sp1986 c 3 art 2 s 26*