

Banking

CHAPTER 46

GENERAL BANKING POWERS

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46.01 POWERS.

Subdivision 1. The department of commerce shall have charge of the execution of all laws relating to state banks, savings banks, trust companies, savings associations, and other financial institutions organized under the laws of this state, and the business thereof.

Subd. 2. The commissioner of commerce may promulgate rules as necessary to administer or execute the laws relating to financial institutions subject to the commissioner's supervision or examination.

History: (5320) 1909 c 201 s 1; 1977 c 272 s 1; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444

46.02 [Superseded by Laws 1925 c 426]**46.03 SEAL OF DEPARTMENT OF COMMERCE.**

The commissioner of commerce, in chapters 46 to 59, called the commissioner, shall devise a seal for official use, which shall continue to be the seal of the department of commerce. The seal must be capable of being legibly reproduced under photographic methods. A description of the seal, and a copy of it, shall be filed in the office of the secretary of state.

History: (5322) 1909 c 201 s 3; 1949 c 533 s 1; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444; 1992 c 564 art 4 s 2

46.04 COMMISSIONER; POWERS.

Subdivision 1. The commissioner of commerce, referred to in chapters 46 to 59, as the commissioner, is vested with all the powers, authority, and privileges which, prior to the enactment of Laws 1909, chapter 201, were conferred by law upon the pub-

lic examiner, and shall take over all duties in relation to state banks, savings banks, trust companies, savings associations, and other financial institutions within the state which, prior to the enactment of chapter 201, were imposed upon the public examiner. The commissioner of commerce shall exercise a constant supervision, either personally or through the examiners herein provided for, over the books and affairs of all state banks, savings banks, trust companies, savings associations, credit unions, industrial loan and thrift companies, and other financial institutions doing business within this state; and shall, through examiners, examine each financial institution at least once every 18 calendar months. In satisfying this examination requirement, the commissioner may accept reports of examination prepared by a federal agency having comparable supervisory powers and examination procedures. With the exception of industrial loan and thrift companies which do not have deposit liabilities and licensed regulated lenders, it shall be the principal purpose of these examinations to inspect and verify the assets and liabilities of each and so far investigate the character and value of the assets of each institution as to determine with reasonable certainty that the values are correctly carried on its books. Assets and liabilities shall be verified in accordance with methods of procedure which the commissioner may determine to be adequate to carry out the intentions of this section. It shall be the further purpose of these examinations to assess the adequacy of capital protection and the capacity of the institution to meet usual and reasonably anticipated deposit withdrawals and other cash commitments without resorting to excessive borrowing or sale of assets at a significant loss, and to investigate each institution's compliance with applicable laws and rules. Based on the examination findings, the commissioner shall make a determination as to whether the institution is being operated in a safe and sound manner. None of the above provisions limits the commissioner in making additional examinations as deemed necessary or advisable. The commissioner shall investigate the methods of operation and conduct of these institutions and their systems of accounting, to ascertain whether these methods and systems are in accordance with law and sound banking principles. The commissioner may make requirements as to records as deemed necessary to facilitate the carrying out of the commissioner's duties and to properly protect the public interest. The commissioner may examine, or cause to be examined by these examiners, on oath, any officer, director, trustee, owner, agent, clerk, customer, or depositor of any financial institution touching the affairs and business thereof, and may issue, or cause to be issued by the examiners, subpoenas, and administer, or cause to be administered by the examiners, oaths. In case of any refusal to obey any subpoena issued under the commissioner's direction, the refusal may at once be reported to the district court of the district in which the bank or other financial institution is located, and this court shall enforce obedience to these subpoenas in the manner provided by law for enforcing obedience to subpoenas of the court. In all matters relating to official duties, the commissioner of commerce has the power possessed by courts of law to issue subpoenas and cause them to be served and enforced, and all officers, directors, trustees, and employees of state banks, savings banks, trust companies, savings associations, and other financial institutions within the state, and all persons having dealings with or knowledge of the affairs or methods of these institutions, shall afford reasonable facilities for these examinations, make returns and reports to the commissioner of commerce as the commissioner may require; attend and answer, under oath, the commissioner's lawful inquiries; produce and exhibit any books, accounts, documents, and property as the commissioner may desire to inspect, and in all things aid the commissioner in the performance of duties.

Subd. 2. With respect to specific transactions between a bank holding company and a state bank affiliate, the commissioner of commerce shall have the authority to examine the records of such holding company that directly pertain to such transactions to the same extent such holding company were a state bank or trust company. For purposes of this subdivision, a bank holding company is defined as a company registered as such with the Federal Reserve System pursuant to the Bank Holding Company Act of 1956, as amended.

History: (5323) 1909 c 201 s 4; 1943 c 12 s 1; 1957 c 601 s 25; 1963 c 153 s 1; 1977

c 272 s 2; 1979 c 229 s 1; 1980 c 604 s 1; 1981 c 182 s 1; 1981 c 220 s 1; 1983 c 289 s 114 subd 1; 1984 c 576 s 3; 1984 c 655 art 1 s 92; 1985 c 248 s 70; 1986 c 444

46.041 BANK APPLICATIONS.

Subdivision 1. Filing; fee; public inspection. The incorporators of a bank proposed to be organized under the laws of this state shall execute and acknowledge a written application in the form prescribed by the commissioner of commerce. The application must be signed by two or more of the incorporators and request a certificate authorizing the proposed bank to transact business at the place and in the name stated in the application. The applicant shall file the application with the department with a \$1,000 filing fee and a \$500 investigation fee. The fees must be turned over by the commissioner to the state treasurer and credited to the general fund. The application file must be public, with the exception of financial data on individuals which is private under the Minnesota government data practices act.

Subd. 2. Notice of filing application; publication. Upon notice of acceptance of an application as complete in all respects for filing, the applicant shall within 30 days of the receipt of the form prescribed by the commissioner, publish a notice of the filing of the application, in a qualified newspaper published in the municipality in which the proposed bank is to be located, and if there is no such newspaper, then in a qualified newspaper likely to give notice in the municipality in which the bank is proposed to be located. The notice must be in the form prescribed by the commissioner and, in addition to the publication, the applicant shall mail a copy of the notice by certified mail to every bank located within three miles of the proposed location of the bank.

Subd. 3. Comments, requests for hearing. Within 21 days after the notice of application has been published, any person may submit to the commissioner either or both written comments on an application and a written request for a hearing on the application. The request must state the nature of the issues or facts to be presented and the reasons why written submissions would be insufficient to make an adequate presentation to the commissioner. Comments challenging the legality of an application should be submitted separately in writing.

Written requests for hearing must be evaluated by the commissioner who may grant or deny the request. A hearing must generally be granted only if it is determined that written submissions would be inadequate or that a hearing would otherwise be beneficial to the decision-making process. A hearing may be limited to issues considered material by the commissioner.

If a request for a hearing has been denied, the commissioner shall notify the applicant and all interested persons stating the reasons for denial. Interested parties may submit to the commissioner with simultaneous copies to the applicant additional written comments on the application within 14 days after the date of the notice of denial. The applicant shall be provided an additional seven days after the 14-day deadline has expired within which to respond to any comments submitted within the 14-day period. A copy of any response submitted by the applicant shall also be mailed simultaneously by the applicant to the interested parties. The commissioner may waive the additional seven-day comment period if so requested by the applicant.

Subd. 4. Hearing. In any case in which the commissioner grants a request for a hearing or makes the independent determination that a hearing is warranted on the basis of the conditions in subdivision 3, the commissioner shall fix a time for a hearing conducted pursuant to chapter 14 to decide whether or not the application will be granted. A notice of the hearing must be published by the applicant in the form prescribed by the commissioner in a newspaper published in the municipality in which the proposed bank is to be located, and if there is no such newspaper, then at the county seat of the county in which the bank is proposed to be located. The notice must be published once, at the expense of the applicants, not less than 30 days prior to the date of the hearing. At the hearing the commissioner shall consider the application and hear the applicants and witnesses that appear in favor of or against the granting of the application of the proposed bank. If an application is contested, 50 percent of an additional

fee equal to the actual costs incurred by the department of commerce in approving or disapproving the application, payable to the department of commerce to be deposited in the general fund, must be paid by the applicant and 50 percent equally by the intervening parties.

Subd. 5. Approval, disapproval, after hearing. If, upon the hearing or upon other information submitted, it appears to the commissioner that the application should be granted, the commissioner shall, not later than 90 days after the hearing, and after the applicants have otherwise complied with the provisions of law applicable to the organization of a bank, including the provisions herein contained, make and file in the commissioner's office a written order directing the issuance of a certificate of authorization as provided by law. If the certificate of authorization is not activated within a period of 12 months from date of issuance, the commissioner may upon written notice to the applicants request a new hearing. If the commissioner decides that the application should not be granted, the commissioner shall deny the application and make a written order to that effect, file it in the commissioner's office, and forthwith give notice thereof by certified mail to one of the incorporators named in the application for the proposed bank, addressed to the incorporator at the address stated in the application. Thereupon the commissioner shall refuse to issue the certificate of authorization to the proposed bank.

History: (3997) 1919 c 86 s 1; 1921 c 498 s 1; 1951 c 67 s 1; 1957 c 601 s 2; 1959 c 88 s 1; 1969 c 399 s 1; 1969 c 772 s 1; 1978 c 674 s 60; 1983 c 250 s 1; 1983 c 289 s 16,114 subd 2; 1984 c 576 s 1; 1984 c 655 art 1 s 8,9; 1986 c 444; 1987 c 349 art 3 s 1; 1989 c 166 s 1; 1992 c 587 art 1 s 1; 1994 c 382 s 1

46.042 NOTICE AND HEARING, WHEN NOT GIVEN.

The commissioner of commerce may dispense with the notice and hearing provided for by section 46.041 if application is made for the incorporation of a new bank to take over the assets of one or more existing banks or if the application contemplates the reorganization of a national bank into a state bank in the same locality, or where the application 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. This section does not increase the number of banks in the community affected.

History: (3997-1) 1929 c 146 s 1; 1983 c 289 s 17,114 subd 2; 1986 c 444; 1987 c 349 art 1 s 1

46.043 EXPENSES OF ORGANIZATION AND INCORPORATION OF BANKS LIMITED.

The expenses of organization and incorporation to be paid by a bank may not exceed the statutory fees for filing applications as provided in section 46.041 and the necessary legal expenses incurred incident to drawing articles of incorporation, publication, and recording. The incorporators shall, prior to the issuance of the certificate of authorization, file with the commissioner a verified statement showing the total amount of expense incurred in the organization of the bank to be paid by it after commencing operation.

History: (3998) 1919 c 86 s 2; 1965 c 171 s 1; 1983 c 289 s 18,114 subd 2

46.044 CHARTERS ISSUED, CONDITIONS.

Subdivision 1. Charters issued, conditions. If (1) the applicants are of good moral character and financial integrity, (2) there is a reasonable public demand for this bank in this location, (3) the organization expenses being paid by the bank do not exceed those allowed by section 46.043, (4) the probable volume of business in this location is sufficient to insure and maintain the solvency of the new bank and the solvency of the then existing bank or banks in the locality without endangering the safety of any bank in the locality as a place of deposit of public and private money, (5) the commissioner of commerce is satisfied that the proposed bank will be properly and safely man-

aged, (6) the commissioner is satisfied that the capital funds required pursuant to section 48.02 are available and the commissioner may accept any reasonable demonstration including subscription agreements supported by current financial statements, and (7) the applicant, if it is an interstate bank holding company, as defined in section 48.92, has provided developmental loans as required by section 48.991, and has complied with the net new funds reporting requirements of section 48.93, the application must be granted; otherwise it must be denied. In case of the denial of the application, the commissioner of commerce shall specify the grounds for the denial. A person aggrieved, may obtain judicial review of the determination in accordance with chapter 14.

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

History: (3999) 1919 c 86 s 3; 1983 c 247 s 23; 1983 c 289 s 19,114 subd 2; 1986 c 339 s 1; 1Sp1986 c 3 art 2 s 23; 1992 c 587 art 1 s 2; 1993 c 257 s 2

46.045 MANDATORY INSURANCE OF ACCOUNTS.

Subdivision 1. Continuing requirement. Every bank shall at all times maintain in effect insurance of its deposits by the federal deposit insurance corporation, an agency of this state or a federal agency established for the purpose of insuring deposits in banking institutions. In the case of fiduciary funds deposited with the bank, this insurance requirement may be met by depositing collateral security under section 48.74. A bank which fails to meet this requirement for insurance of its deposits shall either dissolve, merge or consolidate with another bank which is insured by the federal deposit insurance corporation, an agency of this state or a federal agency established for the purpose of insuring deposits in banks. For purposes of this section, "bank" means a bank defined in section 46.046, subdivision 2, which accepts deposits.

Subd. 2. Application for insurance; uninsured banks. Notwithstanding subdivision 1, a bank which does not have insurance of its deposits or a commitment for insurance of its deposits by the federal deposit insurance corporation, an agency of this state, or a federal agency established for the purpose of insuring deposits in banks or collateral security deposited under section 48.74 on March 19, 1982, must apply for insurance of deposits not later than July 1, 1983. A bank subject to this subdivision which has been denied a commitment for insurance of its deposits shall either dissolve, merge, or consolidate with another bank which is insured or apply in writing within 30 days of denial to the commissioner of commerce for additional time to obtain an insurance commitment. The commissioner shall grant additional time to obtain the insurance commitment upon satisfactory evidence that the bank has made or is making a substantial effort to achieve the conditions precedent to issuance of the commitment. Additional time shall not extend later than July 1, 1984.

Subd. 2a. Certain trust companies; secured deposit exceptions; violations. The requirements of this section may be met by trust companies not exercising banking powers, with the exception of deposit activities as defined in this subdivision, provided the following conditions are met:

- (a) the number of nonfiduciary deposit accounts does not exceed 35, and;
- (b) the total amount held in nonfiduciary deposit accounts does not exceed five percent of the aggregate of the trust company's capital stock, surplus, and undivided profits, and;
- (c) the nonfiduciary funds deposited with the trust company referred to in (a) and (b) shall be secured against loss by the assignment, transfer to, and deposit with the

commissioner of commerce or a designee, of direct obligations of the United States government in an amount, based upon the securities market value, of not less than 110 percent of such deposited funds, with the right of the trust company to collect the income and to substitute other like securities of equal value, and;

(d) each account holder must be disclosed to in writing that the account is not insured by the federal or state governments or their agencies, and;

(e) the determination of the limitations in (a) and (b) shall be made by the trust company from the records of the trust company and based upon statement of financial condition at the close of each business day, and security deposit defined in (c) adjusted if needed within one business day thereafter, and;

(f) any violation of the requirements in (a) to (e) shall be grounds for action by the commissioner under sections 46.24 to 46.33.

Subd. 3. Insurance of accounts in new bank. No bank shall be issued a certificate of authorization after the effective date of Laws 1982, chapter 473, sections 1 to 29 unless the bank has obtained a commitment for insurance of its deposits by the federal deposit insurance corporation, an agency of this state or a federal agency established for the purpose of insuring deposits of banks.

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

History: 1982 c 473 s 1; 1983 c 289 s 20, 114 subd 2; 1984 c 576 s 2; 1986 c 444; 1993 c 257 s 3

46.046 DEFINITIONS.

Subdivision 1. Words, terms, and phrases. Unless the language or context clearly indicates that a different meaning is intended, the word defined in subdivision 2, for the purposes of sections 46.041 to 46.044, shall be given the meaning subjoined to it; and the word defined in subdivision 3, for the purposes of chapters 46 to 77, shall be given the meaning subjoined to it.

Subd. 2. Bank. The word "bank" means any savings bank or bank of discount or deposit or trust company organized under the laws of this state.

Subd. 3. Department. "Department" means the department of commerce of the state of Minnesota.

Subd. 4. Commissioner. "Commissioner" means the commissioner of commerce.

History: (4000) 1925 c 261 s 1,2; 1983 c 289 s 21,22,114 subd 2; 1985 c 248 s 12

46.047 DEFINITIONS.

Subdivision 1. Words, terms, and phrases. For the purposes of this section and section 46.048, the terms defined in this section have the meanings given them, unless the language or context clearly indicates that a different meaning is intended.

Subd. 2. Banking institution. The term "banking institution" means a bank, trust company, bank and trust company, mutual savings bank, or thrift institution, that is organized under the laws of this state, or a holding company which owns or otherwise controls the banking institution.

History: 1990 c 491 art 2 s 1; 1992 c 587 art 1 s 3

46.048 NOTICE OF PROPOSED ACQUISITION.

Subdivision 1. Requirement. Whenever a change in the outstanding voting stock of a banking institution will result in control or in a change in the control of the banking institution, the person acquiring control of the banking institution shall file notice of the proposed acquisition of control with the commissioner of commerce at least 60 days before the actual effective date of the change. As used in this section, the term "control" means the power to directly or indirectly direct or cause the direction of the manage-

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

Subd. 2. [Repealed, 1993 c 257 s 49]

Subd. 3. **Background checks.** In addition to any other information the commissioner may be able to obtain pursuant to section 13.82, the Minnesota bureau of criminal apprehension shall, upon the commissioner's request, provide fingerprint and background checks on all persons named in the notice required by subdivision 2 and is authorized to exchange fingerprints with the federal bureau of investigation for the purpose of a criminal background check of the national files.

History: 1990 c 491 art 2 s 2; 1992 c 587 art 1 s 4; 1993 c 257 s 4

46.05 SUPERVISION OVER FINANCIAL INSTITUTIONS.

Every state bank, savings bank, trust company, savings association, and other financial institutions shall be at all times under the supervision and subject to the control of the commissioner of commerce. If, and whenever in the performance of duties, the commissioner finds it necessary to make a special investigation of any financial institution under the commissioner's supervision, and other than a complete examination, the commissioner shall make a charge therefor to include only the necessary costs thereof. Such a fee shall be payable to the commissioner on the commissioner's making a request for payment.

History: (5324) 1909 c 201 s 5; 1965 c 171 s 2; 1977 c 272 s 3; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444

46.06 REFUSAL TO OBEY DIRECTIONS OF COMMISSIONER.

Every person who shall refuse or neglect to obey any lawful direction or order of the commissioner of commerce; withhold any information, book, record, paper or other thing called for by the commissioner for the purpose of examination and ascertaining the true condition of the corporation; willfully obstruct or mislead the commissioner in the execution of duties, or falsely swear concerning any matter stated under oath, shall be guilty of a felony; the minimum penalty thereof shall be a fine of \$3,000, or imprisonment in the Minnesota correctional facility-Stillwater for one year.

History: (5325) 1909 c 201 s 6; 1979 c 102 s 13; 1983 c 289 s 114 subd 1; 1984 c 628 art 3 s 11; 1984 c 655 art 1 s 92; 1986 c 444

46.07 RECORDS.

Subdivision 1. The commissioner of commerce shall keep all proper records and files pertaining to the duties and work of that office.

Subd. 2. **Confidential records.** The commissioner shall divulge facts and information obtained in the course of examining financial institutions under the commissioner's supervision only when and to the extent required or permitted by law to report upon or take special action regarding the affairs of an institution, or ordered by a court of law to testify or produce evidence in a civil or criminal proceeding, except that the commissioner may furnish information as to matters of mutual interest to an official or examiner of the federal reserve system, the Federal Deposit Insurance Corporation, the Federal Office of Thrift Supervision, the Federal Home Loan Bank System, the National Credit Union Administration, comptroller of the currency, a legally constituted state credit union share insurance corporation approved under section 52.24, or

state and federal law enforcement agencies. The commissioner shall not be required to disclose the name of a debtor of a financial institution under the commissioner's supervision, or anything relative to the private accounts, ownership, or transactions of an institution, or any fact obtained in the course of an examination thereof, except as herein provided. For purposes of this subdivision, a subpoena is not an order of a court of law. These records are classified confidential or protected nonpublic for purposes of the Minnesota government data practices act and their destruction, as prescribed in section 46.21, is exempt from the provisions of chapter 138 and Laws 1971, chapter 529, so far as their deposit with the state archives.

Subd. 3. Complaint files. Notwithstanding the provisions of subdivision 2 to the contrary, data gathered and maintained in relation to a complaint filed with the commissioner is private or nonpublic pursuant to the Minnesota government data practices act.

History: (5326) 1909 c 201 s 7; 1921 c 250 s 1; 1955 c 847 s 6; 1967 c 102 s 1; 1969 c 1129 art 4 s 8; 1971 c 9 s 1; 1982 c 473 s 2; 1983 c 250 s 2; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1Sp1985 c 13 s 176,177; 1986 c 444; 1987 c 349 art 1 s 2; 1992 c 587 art 1 s 5

46.08 EMPLOYEES.

Subdivision 1. Assistant commissioner, examiners and other employees. The commissioner of commerce may appoint an assistant commissioner and such examiners, assistant examiners, stenographers, and such other employees as may be necessary to carry out the duties and responsibilities entrusted, subject to such rules as may be established by civil service with regard to qualifications and general fitness. During the absence or disability of the commissioner of commerce said assistant commissioner shall have charge of the office and administer its affairs. Such examiners shall confine their work to those institutions which are subject to the supervision of the commissioner of commerce and may be transferred from one supervisory district to another at the option of said commissioner when it shall appear that the interest of the department of commerce shall be better served by so doing.

Subd. 2. Examiner in charge of liquidation. The commissioner of commerce may appoint an examiner in charge of liquidation and such special deputy examiners and other employees as are needed in the liquidation of banks. The certificates of appointment of the examiner in charge of liquidation, and of such special deputy examiners shall be filed in the office of the commissioner of commerce and a certified copy thereof shall be filed in the office of the secretary of state and in the office of the court administrator of the district court of the county in which the principal office of the bank concerned was located. The qualifications of such examiner in charge of liquidation and special deputy examiners shall be the same as prescribed in subdivision 1 for examiners. The commissioner of commerce may from time to time authorize any such special deputy examiner to perform such duties connected with such liquidation and distribution as the commissioner may deem proper. The commissioner of commerce shall require from the examiner in charge of liquidation and each special deputy examiner such bond for the faithful discharge of duties as the commissioner may deem proper. The commissioner of commerce may procure such expert assistance as may be necessary in the liquidation and distribution of the assets of such bank and may retain such of its officers or employees as the commissioner may deem necessary.

Subd. 3. Examiners not to examine institutions in which they have a financial interest. No examiner shall have the right to examine any bank, savings bank or other financial corporation in which the examiner may have an interest, either directly or indirectly.

History: (5327) 1909 c 201 s 8; 1919 c 121; 1921 c 42; 1923 c 371 s 1; 1943 c 442 s 1; 1957 c 601 s 3; 1959 c 88 s 2; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1985 c 248 s 70; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1991 c 326 s 3

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

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

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

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

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

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

History: (5328) 1915 c 164 s 1; 1931 c 43 s 1; 1977 c 272 s 4; 1981 c 31 s 1; 1982 c 473 s 3; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444; 1993 c 257 s 5

46.10 PENALTY FOR VIOLATION.

Any person violating the provisions of section 46.09 shall be disqualified from holding any office or employment in the department of commerce and shall be removed from such office or employment by the commissioner of commerce immediately upon knowledge of the violation.

History: (5328-1) 1931 c 43 s 2; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92

46.11 EXAMINERS' DISTRICTS.

For the purpose of the better administration of the department, the commissioner of commerce shall divide the counties of the state into as many districts for the purpose of supervision as may be practical, taking into consideration the volume of work represented and the number of examiners or assistants available, and shall also designate the district in which each of the examiners or assistants appointed under the provisions of section 46.08 shall make examinations. In arranging the districts, the commissioner of commerce shall also consider the matter of convenience and economy as much as possible in covering the same by examiners.

History: (5329) 1909 c 201 s 9; 1959 c 88 s 3; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444

46.12 REPORTS OF EXAMINERS.

Each examiner appointed under Laws 1909, chapter 201, as amended, shall make

report to the commissioner of commerce immediately after the completion of an examination of the actual financial condition of the institution examined, with such recommendations and suggestions as the examiner may deem advisable.

History: (5330) 1909 c 201 s 10; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444

46.13 [Repealed, 1965 c 475 s 4]

46.131 EXAMINATION FEES FOR FINANCIAL INSTITUTIONS.

Subdivision 1. Examination fees of the department of commerce shall be assessed against financial institutions in accordance with the provisions of this section.

Subd. 2. Each bank, trust company, savings bank, savings association, small loan company, industrial loan and thrift company, credit union, motor vehicle sales finance company, debt prorating agency and insurance premium finance company organized under the laws of this state or required to be administered by the commissioner of commerce shall pay into the state treasury its proportionate share of the cost of maintaining the department of commerce.

Subd. 3. A proportionate share of all annual office expenses of the commissioner of commerce and the portion of the general support costs of the department of commerce and of the cost of services provided by the attorney general that is attributable to the commissioner of commerce, as well as all actual expenses of the examiners in the field, excepting salaries, shall be allocated to each industry affected, and referred to in subdivision 4, as assessments and on the basis of the total time devoted to each.

Subd. 4. Assessments shall be made by the commissioner against each institution within the industry on an equitable basis, according to the total assets of each institution as of the end of the previous calendar year.

Subd. 5. If the income from the fees provided for herein during any fiscal year shall be more than 103 percent of such expenditures for that year, any excess above such sum of 103 percent may be carried over to succeeding years in order to cover any deficit below 103 percent which may occur in such succeeding years. If the income from the fees provided for herein during any fiscal year shall produce less than the expenditures for that year, the department of commerce in adjusting its schedule of fees for use in the next fiscal year shall fix the fees so as to produce income in the amount of the expenditures for the latter year plus the amount of the difference between the expenditures for the first year referred to herein and the total income from such fees during the year and plus three percent of the total expenditures for both the latter and the first year referred to herein.

Subd. 6. [Repealed, 1981 c 220 s 18]

Subd. 7. Such assessments shall be levied on July 1, 1965, and at the beginning of each fiscal period beginning July 1 and ending June 30 thereafter, and shall be based on the total estimated expense as herein referred to during such period.

Subd. 8. In addition to such assessments, each institution referred to in subdivision 2, with the exception of credit unions under \$25,000, shall pay an examination fee upon the request of the commissioner and to be based on the salary cost of examiners or assistants, and at such an average rate per day or fraction thereof so as to provide for the total cost of such examinations.

Subd. 9. These assessments or fees shall be paid by the institution examined within 20 days after a statement of the amount has been submitted to the institution examined by the commissioner of commerce and, if not so paid, shall bear interest at the rate of interest provided for by section 549.09. The penalty shall be payable to the commissioner on request.

Subd. 10. Each financial institution described in subdivision 2 shall pay a fee of \$25 to the commissioner of commerce upon application to the commissioner for approval of a change in its certificate, charter, articles of incorporation, bylaws, powers or license. Money collected by the commissioner under this subdivision shall be deposited in the general fund.

History: 1965 c 475 s 1; 1967 c 102 s 2,3; 1977 c 272 s 5,6; 1981 c 220 s 2,3; 1981

c 357 s 29; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444; 1987 c 349 art 1 s 3

46.14 EXAMINERS' POWERS ENLARGED.

The examiner in charge of liquidation in the department of commerce is hereby authorized to sign the name of the commissioner of commerce and to act for the commissioner in all matters connected with the liquidation of insolvent corporations under the supervision and control of the commissioner of commerce, with the same force and effect as though the commissioner had signed or acted; provided, that the examiner shall have no authority to order an assessment against the stockholders of an insolvent state bank or trust company under the provisions of Laws 1927, chapter 254, as amended.

History: *(5332-1) 1931 c 137; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444*

46.15 [Repealed, 1Sp1985 c 13 s 376]

46.16 [Repealed, 1951 c 713 s 37]

46.17 SALARY OF EXAMINER IN CHARGE OF LIQUIDATION.

The commissioner of commerce shall fix the salary of the examiner in charge of liquidation appointed by the commissioner, but not to exceed the salary of a bank examiner in the classified service of the state and the same shall be paid out of the funds of banks in the hands of the commissioner of commerce for liquidation.

History: *(252(9)) 1913 c 400 s 1; 1933 c 232 s 2; 1959 c 88 s 4; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444*

46.21 DESTRUCTION OF CERTAIN RECORDS.

Subdivision 1. Reports, correspondence. After ten years, the commissioner of commerce may dispose of any examination report, call report of the condition of state banks, earnings and dividend report, oath of office of director, examining committee report, or any correspondence with reference to any examination report. After a period of two years the commissioner of commerce need not retain the examiner's original pencil copy of any examination report.

Subd. 2. Upon liquidation. At any time after ten years from the date of payment of the final dividend in liquidation, the commissioner of commerce may destroy the records, documents, or correspondence of any financial corporation of which the commissioner has taken possession or any records, documents, or correspondence relating to liquidation of any financial corporation which has been liquidated.

History: *1957 c 505 s 1,2; 1981 c 220 s 4; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444*

46.22 RURAL CREDIT RECORDS.

The commissioner of natural resources shall have charge of the records of the former department of rural credit and shall provide the public with appropriate access to and copies of the records.

History: *1973 c 87 s 2; 1973 c 494 s 4; 1983 c 289 s 32; 1986 c 444*

46.221 ISSUANCE OF QUITCLAIM DEEDS.

The commissioner of natural resources is empowered to issue quitclaim deeds in connection with loans made by the now defunct department of rural credit, a former state agency. The commissioner shall issue the quitclaim deeds upon reasonable evidence the state of Minnesota no longer has a valid claim of title to the property involved. No fee shall be charged for the issuance of a quitclaim deed.

History: *1980 c 543 s 11; 1983 c 289 s 33*

46.23 UNSAFE PRACTICES; DEFINITIONS.

Subdivision 1. For purposes of sections 46.23 to 46.33, the following terms shall have the meaning here given them.

Subd. 2. "Cease and desist order which has become final" and "order which has become final" mean a cease and desist order, or an order issued by the commissioner with the consent of the institution or the director, trustee, officer, or other person concerned, with respect to which no timely petition for review of the action of the commissioner has been filed in a district court as specified in section 46.30, subdivision 2, or with respect to which the action of the court in which a petition for review has been filed is not subject to further review by the courts of the state.

Subd. 3. "Commissioner" means the commissioner of commerce.

Subd. 4. "Institution" means a bank, savings bank, savings association, trust company, credit union, industrial loan and thrift company, small loan company, safe deposit company, investment company, debt prorating agency, insurance premium finance company, or motor vehicle retail installment sales finance company subject to the supervision of the commissioner.

Subd. 5. "Violation" includes without limitation any action, alone or with others, toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

History: 1978 c 544 s 1; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92

46.24 CEASE AND DESIST PROCEEDINGS; INJUNCTIVE RELIEF.

Subdivision 1. **Notice of charges, issuance, contents; hearing; cease and desist order, issuance, service, contents.** If in the opinion of the commissioner any institution or a director, officer, employee, agent or other person participating in the conduct of the affairs of the institution is engaging, or has engaged, or the commissioner has reasonable cause to believe that the institution is about to engage, in an unsafe or unsound practice in conducting the business of such institution or is violating, has violated, or the commissioner has reasonable cause to believe that the institution or a director, officer, employee, agent or other person participating in the conduct of the affairs of the institution is about to violate a law or rule, or a condition imposed in writing by the commissioner in connection with the granting of any application or other request by the institution or any written agreement entered into with the commissioner, the commissioner may issue and serve upon the institution or director, officer, employee, agent or other person, a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged unsafe or unsound practice or violation, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the institution or a director, officer, employee, agent or other person participating in the conduct of the affairs of the institution. The hearing shall be not earlier than ten days nor later than 30 days after service of the notice unless an earlier or a later date is set by the commissioner at the request of any party so served. Unless the party or parties so served appear at the hearing by a duly authorized representative, they are deemed to have consented to the issuance of the cease and desist order. In the event of consent, or if upon the record made at any hearing the commissioner finds that any unsafe or unsound practice or violation specified in the notice of charges has been established, the commissioner may issue and serve upon the institution or a director, officer, employee, agent or other person participating in the conduct of the affairs of the institution an order to cease and desist from the practice or violation. By provisions which may be mandatory or otherwise, the order may require the institution or its directors, officers, employees, agents and other persons participating in the conduct of the affairs of the institution to cease and desist from the same and to take affirmative action to correct the conditions resulting from the practice or violation.

Subd. 2. **Effective date.** A cease and desist order is effective at the expiration of 30 days after the service of the order upon the institution or other person concerned,

except in the case of an order issued upon consent which is effective at the time specified therein, and remains effective and enforceable as provided therein, except to the extent it is stayed, modified, terminated or set aside by the action of the commissioner or a reviewing court.

Subd. 3. Temporary cease and desist orders. (1) Whenever the commissioner of commerce determines that the violation or threatened violation or the unsafe or unsound practice or practices, specified in the notice of charges served upon the institution or a director, officer, employee, agent, or other person participating in the conduct of the affairs of the institution pursuant to subdivision 1, or the continuation thereof, is likely to cause insolvency or substantial dissipation of assets or earnings of the institution, or is likely to seriously weaken the condition of the institution or otherwise seriously prejudice the interests of the institution's depositors prior to the completion of the proceedings conducted pursuant to subdivision 1, the commissioner may issue a temporary order requiring the institution or a director, officer, employee, agent, or other person to cease and desist from the violation or practice and to take affirmative action to prevent insolvency, dissipation, condition, or prejudice pending completion of the proceedings. The order becomes effective upon service upon the institution or a director, officer, employee, agent, or other person participating in the conduct of the affairs of the institution and, unless set aside, limited, or suspended by a court in proceedings authorized by clause (2), remains effective and enforceable pending the completion of the administrative proceedings pursuant to the notice and until the time the commissioner dismisses the charges specified in the notice, or if a cease and desist order is issued against the institution or a director, officer, employee, agent or other person, until the effective date of the order.

(2) Within ten days after the institution concerned or a director, officer, employee, agent, or other person participating in the conduct of the affairs of the institution has been served with a temporary cease and desist order, the institution or a director, officer, employee, agent, or other person may apply to the appropriate district court for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the institution or a director, officer, employee, agent, or other person under subdivision 1, and the court has jurisdiction to issue an injunction.

History: 1978 c 544 s 2; 1980 c 604 s 2; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92

46.26 DIRECTORS, TRUSTEES AND OFFICERS, NOTICE OF INTENTION TO REMOVE FROM OFFICE OR TO PROHIBIT PARTICIPATION, SUSPENSION OR PROHIBITION.

Subdivision 1. Whenever in the opinion of the commissioner any director, trustee or officer of an institution has committed any violation of law; has violated a cease and desist order which has become final; has engaged or participated in any unsafe or unsound practice in connection with the institution; or has committed or engaged in any act, omission, or practice which constitutes a breach of a fiduciary duty as a director, trustee or officer of the institution, and the commissioner determines that the institution has suffered or will probably suffer substantial financial loss or other damage or that the interest of its depositors could be seriously prejudiced by reason of the violation, practice, or breach of fiduciary duty, the commissioner may serve a written notice of intent to remove from office upon the director, trustee or officer.

Subd. 2. Whenever in the opinion of the commissioner any director, trustee or officer of an institution, by conduct or practice with respect to another institution or business organization which has resulted in substantial financial loss or other damage to that institution or business organization, has evidenced a personal disability and unfitness to continue as a director, trustee or officer of the institution, and whenever in the opinion of the commissioner any other person participating in the conduct of the affairs of an institution, by conduct or practice with respect to such institution,

another institution, or other business organization which has resulted in substantial financial loss or other damage to the institution or business organization, has evidenced a personal disability and unfitness to participate in the conduct of the affairs of such institution, the commissioner may serve a written notice upon the director, trustee, officer, or other person of the commissioner's intent to remove that person from office or to prohibit further participation in any manner in the conduct of the affairs of the institution.

Subd. 3. Whenever any director, trustee or officer of an institution, or other person participating in the conduct of the affairs of an institution, is convicted in any state or federal court of a felony involving dishonesty or breach of trust the commissioner may serve upon the director, trustee, officer, or other person a written notice of the commissioner's intention to remove the person from office or to prohibit further participation in any manner in the conduct of the affairs of the institution.

Subd. 4. A notice of intention to remove a director, trustee, officer, or other person from office or to prohibit participation in the conduct of the affairs of an institution shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. The hearing shall be held not earlier than 10 days nor later than 30 days after the date of service of the notice, unless an earlier or later date is set by the commissioner at the request of the director, trustee, officer, or other person and for good cause shown. Unless the director, trustee, officer, or other person appears at the hearing in person or by a duly authorized representative, that person shall be deemed to have consented to the issuance of an order of removal or prohibition. In the event of consent, or if upon the record made at the hearing the commissioner finds that any of the grounds specified in the notice has been established, the commissioner may issue such orders of suspension, removal from office, or prohibition from participation in the conduct of the affairs of the institution as the commissioner deems appropriate. The order shall become effective at the expiration of 30 days after service upon the institution and the director, trustee, officer, or other person concerned, except in the case of an order issued upon consent which shall become effective at the time specified therein. The order shall remain effective and enforceable until it is stayed, modified, terminated, or set aside by action of the commissioner or a reviewing court.

History: 1978 c 544 s 3; 1986 c 444

46.29 BOARD OF DIRECTORS OR TRUSTEES, LACK OF QUORUM, TEMPORARY DIRECTORS OR TRUSTEES.

If at any time because of the suspension or removal of one or more directors or trustees pursuant to sections 46.23 to 46.33, the board of directors or trustees of an institution has less than a quorum of directors or trustees not so suspended or removed, all powers and functions vested in, or exercisable by, the board shall vest in and be exercisable by the directors or trustees of the board not so suspended or removed until such time as there is a quorum of the board of directors or trustees. If all of the directors or trustees of an institution have been suspended or removed, the commissioner shall appoint persons to serve temporarily as directors or trustees, pending the termination of the suspensions or removals, or until such time as their successors are duly elected and take office.

History: 1978 c 544 s 4

46.30 HEARINGS, DECISION; REVIEW, MODIFICATION, TERMINATION OR STAY OF ORDERS.

Subdivision 1. Any hearing provided for in sections 46.23 to 46.33 shall be conducted in accordance with the provisions of chapter 14, provided, the hearing shall be private unless the commissioner after fully considering the views of the party afforded the hearing determines that a public hearing is necessary to protect the public interest. After the hearing and within 90 days after the commissioner has notified the parties that the case has been submitted for final decision, the commissioner shall render a

decision which shall include findings of fact upon which the decision is predicated and shall issue and serve upon each party to the proceeding an order consistent with the provisions of this section.

Subd. 2. Any party to the hearing, or any person required by an order issued under sections 46.23 to 46.33 to cease and desist from any of the violations or practices stated therein or to be suspended, removed, or prohibited from participation in the conduct of the affairs of an institution may obtain a review of any order, other than a consent order, which review shall be pursuant to chapter 14. Unless a petition for review is timely filed as provided in chapter 14, the commissioner, at any time, upon such notice and in such manner as the commissioner deems proper may modify, terminate, or set aside the order. Upon the timely filing of a petition for review, the commissioner may modify, terminate, or set aside the order with the permission of the court.

Subd. 3. No order issued under sections 46.23 to 46.33 shall be subject to review by the commissioner of commerce.

History: 1978 c 544 s 5; 1982 c 424 s 130; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444

46.31 ENFORCEMENT OF NOTICES OR ORDERS.

The commissioner may apply to the district court of the county in which the home office of the institution is located or to the district court for Ramsey county for the enforcement of any effective and outstanding notice or order issued under sections 46.23 to 46.33, and the court shall have jurisdiction to require compliance therewith.

History: 1978 c 544 s 6

46.32 VIOLATION OF NOTICE OR FINAL ORDER, PENALTIES.

Any director, trustee or officer, or former director, trustee or officer, of an institution or any other person against whom there is outstanding and effective any notice or final order served upon the director, trustee, officer, or other person pursuant to section 46.26 who (1) participates in any manner in the conduct of the affairs of such institution; (2) directly or indirectly solicits, procures, transfers, or attempts to transfer, votes, or attempts to vote any proxies, consents, or authorizations in respect to any voting rights in such institution; or (3) without the prior written approval of the commissioner, votes for a director or trustee or serves as a director, trustee, officer, or employee of such institution is guilty of a gross misdemeanor and may be fined not more than \$10,000 or imprisoned for not more than one year, or both.

History: 1978 c 544 s 7; 1984 c 628 art 3 s 11

46.33 MANNER OF SERVICE; COPIES TO FEDERAL AUTHORITIES; CEASE AND DESIST ORDERS.

Any service required or authorized to be made by the commissioner pursuant to sections 46.23 to 46.33 may be made by registered or certified mail to the last known address of the person or principal Minnesota office of the institution to whom service is directed, or in such other manner reasonably calculated to give actual notice as the commissioner by rule or otherwise may provide. Copies of any notice or order served by the commissioner upon any institution or any director, trustee or officer thereof or other person participating in the conduct of its affairs, pursuant to the provisions of sections 46.23 to 46.33, may also be sent to the appropriate federal supervisory authorities.

History: 1978 c 544 s 8

46.34 CERTAIN SECURITIES DEPOSITED WITH THE STATE TREASURER.

All securities required or permitted by law to be assigned to and deposited with the commissioner of commerce for any purpose must, after June 2, 1987, be assigned to and deposited with the state treasurer, who shall give a receipt therefor. This receipt must be filed with the commissioner, in lieu of the securities, and in this case neither the commissioner nor the commissioner's bonding agents are responsible for the safe-

keeping of these securities. The state treasurer shall perform all the duties with regard to the safekeeping of these securities which the commissioner is now required to perform. The state treasurer is subject to the same obligations and under the same liability, with reference to the safekeeping of these securities, as the commissioner. The state treasurer shall accept, release, surrender, and permit substitutions of securities assigned to and deposited with the state treasurer under the provisions of Laws 1923, chapter 155, upon order of the commissioner.

History: 1987 c 349 art 1 s 4