CHAPTER 47

FINANCIAL CORPORATIONS

47.01 DEFINITIONS.

[For text of subd 1, see M.S.1994]

Subd. 2. **Bank.** A bank is a corporation under public control, having a place of business where credits are opened by the deposit or collection of money and currency, subject to be paid or remitted upon draft, check, or order, and where money is advanced, loaned on stocks, bonds, bullion, bills of exchange, and promissory notes, and where the same are received for discount or sale; and all persons and copartnerships, respectively, so operating, are bankers. The term does not include a savings bank.

Subd. 3. **Savings bank.** A savings bank is a corporation authorized to do business under chapter 50.

[For text of subd 4, see M.S.1994]

Subd. 5. **Savings association.** A savings association is a corporation under like control authorized to accumulate funds to be loaned to persons to assist them in acquiring homes and which is organized pursuant to the provisions of chapter 51A and includes savings associations of both mutual and stock organization.

History: *1995 c 171 s 4,5; 1995 c 202 art 1 s 25*

47.015 CLOSING ON CERTAIN DAYS.

Subdivision 1. **Financial institutions.** As used in this section the term "financial institution" shall include banks, trust companies, banks and trust companies, savings banks, industrial loan and thrift companies having outstanding certificates of indebtedness for investment, savings associations, national banking associations, federal reserve banks, federal savings associations, and federal savings banks doing business in this state, and includes any branch or detached facility of any of them.

[For text of subds 2 to 4, see M.S.1994]

History: *1995 c 171 s 6*

47.0151 EMERGENCY SUSPENSION OF BUSINESS, DEFINITIONS.

[For text of subds 1 and 2, see M.S.1994]

Subd. 3. "Financial institution" includes a bank, a savings bank, a trust company, any branch or agency of a foreign banking organization, a person or association of persons lawfully carrying on the business of banking, a savings association, and, so far as the provisions of sections 47.0151 to 47.0155 are consistent with federal law, national banks and federal savings associations, and includes any branch or detached facility of any of them.

[For text of subds 4 to 6, see M.S.1994]

History: *1995 c 202 art 1 sec 25*

47.02 "BANK" AND "SAVINGS BANK."

A "bank" is a corporation having a place of business in this state, where credits are opened by the deposit of money or currency, or the collection of the same, subject to be paid or remitted on draft, check, or order; and where money is loaned or advanced on stocks, bonds, bullion, bills of exchange, or promissory notes, and where the same are received for discount or sale. A "savings bank" is a corporation authorized to do business under chapter 50. Every "bank" or "savings bank" in this state shall at all times be under the supervision and subject to the control of the commissioner of commerce, and when so conducted the business shall be known as "banking."

History: *1995 c 171 s 7*

47.095 [Repealed, 1995 c 171 s 70]

47.10 REAL ESTATE; ACQUISITION, HOLDING.

Subdivision 1. **Authority, approval, limitations.** (a) Except as otherwise specially provided, the net book value of land and buildings for the transaction of the business of the corporation, including parking lots and premises leased to others, shall not be more than as follows:

(1) for a bank, trust company, savings bank, or stock savings association, if investment is for acquisition and improvements to establish a new bank, or is for improvements to existing property or acquisition and improvements to adjacent property, approval by the commissioner of commerce is not required if the total investment does not exceed 50 percent of its existing capital stock and paid–in surplus. Upon written prior approval of the commissioner of commerce, a bank, trust company, savings bank, or stock savings association may invest in the property and improvements in clause (1) or for acquisition of nonadjacent property for expansion or future use, if the aggregate of all such investments does not exceed 75 percent of its existing capital stock and paid–in surplus;

(2) for a mutual savings association, five percent of its net assets.

(b) For purposes of this subdivision, an intervening highway, street, road, alley, other public thoroughfare, or easement of any kind does not cause two parcels of real property to be nonadjacent.

Subd. 2. **Books and records.** With the exception of annual amortization charges which are made in accordance with generally accepted accounting principles, no state bank, trust company, savings bank, or savings association shall decrease the actual cost of the investment as shown on its books by a charge to any of its capital accounts unless approved by the commissioner.

Subd. 3. **Leasehold place of business; approval of certain lease agreements.** No bank, trust company, savings bank, or savings association may acquire real property and improvements of any nature to it for its place of business by lease agreement if the lessor has an existing direct or indirect interest in the management or ownership of the bank, trust compa-

ny, savings bank, or savings association without prior written approval by the commissioner. This includes subsequent amendments and associated leasehold improvements. A lessee's expenditures to maintain the leasehold premises consistent with ordinary business conditions and within the preapproved lease agreement does not constitute an amendment requiring prior written approval.

[For text of subd 4, see M.S.1994]

History: *1995 c 171 s 8; 1995 c 202 art 1 s 25; art 2 s 2*

47.101 PLACE OF BUSINESS; RELOCATION, DISPOSAL.

Subdivision 1. **Approval.** A bank, trust company, savings bank, or savings association may change its location, dispose of its place of business, and acquire another upon the written approval of the commissioner of commerce or otherwise as provided for in this section.

[For text of subds 2 and 3, see M.S.1994]

History: *1995 c 202 art 1 s 25*

47.11 SELECTION OF NAME.

Before execution of the certificate of incorporation of any such corporation or conduct of business under an assumed name, its proposed name or proposed assumed name shall be submitted to the commissioner of commerce, who shall compare it with those of corporations operating in the state, and if it is likely to be mistaken for any of them, or to confuse the public as to the character of its business, or is otherwise objectionable, additional names shall be submitted until a satisfactory one is selected, whereupon the commissioner shall issue a certificate of approval thereof.

History: *1995 c 202 art 1 s 5*

47.12 FINANCIAL CORPORATIONS.

Corporations may be formed for any one of the following purposes:

(1) Carrying on the business of banking, by receiving deposits, buying, selling, and discounting notes, bills, and other evidences of debt legal for investment, domestic or foreign, dealing in gold and silver bullion and foreign coins, issuing circulating notes, and loaning money upon real estate or personal security or upon the creditworthiness of the borrower;

(2) Establishing and conducting clearing houses, for effecting, in one place, the speedy and systematic daily exchange and adjustment of balances between banks and bankers in any municipality, town, or county, establishing and enforcing uniform methods of conducting the banking business in such locality, and adjusting disputes or misunderstandings between members of such clearing house engaged in the banking business;

(3) Creating and conducting savings banks for the reception, on deposit, of money offered for that purpose, the investment thereof, and the declaring, crediting, and paying of dividends or interest thereon, as authorized and provided by law;

(4) Transacting business as a trust company in conformity with the laws relating thereto; and

(5) Carrying on, in accordance with law, the business of savings associations.

History: *1995 c 171 s 9*

47.18 "CORPORATION"; "AGENCY."

For the purpose of this section and section 47.19, the term "corporation" shall be construed to mean any bank, savings bank, trust company, insurance company, or savings association organized under the laws of this state; and the term "agency" shall be construed to mean the federal home loan bank of the district of which this state is a part, or of an adjoining district if convenience shall so require, or other financial corporation, association or agency created by any act of Congress.

History: *1995 c 202 art 1 s 25*

47.19 CORPORATION MAY BE MEMBER OR STOCKHOLDER OF FEDERAL AGENCY.

Any corporation is hereby empowered and authorized to become a member of, or stockholder in, any such agency, and to that end to purchase stock in, or securities of, or deposit money with, such agency and/or to comply with any other conditions of membership or credit; to borrow money from such agency upon such rates of interest, not exceeding the contract rate of interest in this state, and upon such terms and conditions as may be agreed upon by such corporation and such agency, for the purpose of making loans, paying withdrawals, paying maturities, paying debts, and for any other purpose not inconsistent with the objects of the corporation; provided, that the aggregate amount of the indebtedness, so incurred by such corporation, which shall be outstanding at any time shall not exceed 25 percent of the then total assets of the corporation; to assign, pledge and hypothecate its bonds, mortgages or other assets; and, in case of savings associations, to repledge with such agency the shares of stock in such association which any owner thereof may have pledged as collateral security, without obtaining the consent thereunto of such owner, as security for the repayment of the indebtedness so created by such corporation and as evidenced by its note or other evidence of indebtedness given for such borrowed money; and to do any and all things which shall or may be necessary or convenient in order to comply with and to obtain the benefits of the provisions of any act of Congress creating such agency, or any amendments thereto.

History: *1995, c 202 art 1 s 25*

47.20 USE OF FEDERAL ACTS; DEFINITIONS; INTEREST RATES; REQUIRED PROVISIONS; INTEREST ON ESCROW ACCOUNTS.

Subdivision 1. Pursuant to rules the commissioner of commerce finds to be necessary and proper, if any, banks, savings banks, and savings associations organized under the laws of this state or the United States, trust companies, trust companies acting as fiduciaries, and other banking institutions subject to the supervision of the commissioner of commerce, and mortgagees or lenders approved or certified by the secretary of housing and urban development or approved or certified by the administrator of veterans affairs, or approved or certified by the administrator of the farmers home administration, or approved or certified by the federal home loan mortgage corporation, or approved or certified by the federal national mortgage association, are authorized:

(1) To make loans and advances of credit and purchases of obligations representing loans and advances of credit which are insured or guaranteed by the secretary of housing and urban development pursuant to the national housing act, as amended, or the administrator of veterans affairs pursuant to the servicemen's readjustment act of 1944, as amended, or the administrator of the farmers home administration pursuant to the consolidated farm and rural development act, Public Law Number 87–128, as amended, and to obtain the insurance or guarantees;

(2) To make loans secured by mortgages on real property and loans secured by a share or shares of stock or a membership certificate or certificates issued to a stockholder or member by a cooperative apartment corporation which the secretary of housing and urban development, the administrator of veterans affairs, or the administrator of the farmers home administration has insured or guaranteed or made a commitment to insure or guarantee, and to obtain the insurance or guarantees;

(3) To make, purchase, or participate in such loans and advances of credit as would be eligible for purchase, in whole or in part, by the federal national mortgage association or the federal home loan mortgage corporation, but without regard to any limitation placed upon the maximum principal amount of an eligible loan;

(4) To make, purchase or participate in such loans and advances of credit secured by mortgages on real property which are authorized or allowed by the office of thrift supervision or the office of the comptroller of the currency, or any successor to these federal agencies.

[For text of subds 2 to 4b, see M.S.1994]

Subd. 5. **Prepayment penalty.** (a) Unless the mortgagor waives its right to prepay the mortgage loan without penalty, in a uniform written disclosure waiver approved by the com-

missioner and signed by the mortgagor, no conventional loan or loan authorized in subdivision 1 shall contain a provision requiring or permitting the imposition of a penalty in the event the loan or advance of credit is prepaid. The prepayment penalty shall not exceed the lesser of two percent of the unpaid principal balance or 60 days interest on the unpaid principal balance. A lender that offers a mortgage loan with a prepayment penalty shall also offer a mortgage loan without a prepayment penalty.

This section does not permit the imposition of a prepayment penalty in the event that the property securing the mortgage loan is sold or the mortgage loan is prepaid in part. No prepayment penalty may be enforced after 42 months from the date of the mortgage loan.

(b) A precomputed conventional loan or precomputed loan authorized in subdivision 1 shall provide for a refund of the precomputed finance charge according to the actuarial method if the loan is paid in full by cash, renewal or refinancing, or a new loan, one month or more before the final installment due date. The actuarial method for the purpose of this section is the amount of interest attributable to each fully unexpired monthly installment period of the loan contract following the date of prepayment in full, calculated as if the loan was made on an interest–bearing basis at the rate of interest provided for in the note based on the assumption that all payments were made according to schedule. A precomputed loan for the purpose of this section means a loan for which the debt is expressed as a sum comprised of the principal amount and the amount of interest for the entire term of the loan computed actuarially in advance on the assumption that all scheduled payments will be made when due, and does not include a loan for which interest is computed from time to time by application of a rate to the unpaid principal balance, interest–bearing loans, or simple–interest loans. For the purpose of calculating a refund for precomputed loans under this section, any portion of the finance charge for extending the first payment period beyond one month may be ignored. Nothing in this section shall be considered a limitation on discount points or other finance charges charged or collected in advance, and nothing in this section shall require a refund of the charges in the event of prepayment. Nothing in this section shall be considered to supersede section 47.204.

[For text of subds 6 to 8, see M.S.1994]

Subd. 9. (1) For purposes of this subdivision the term "mortgagee" shall mean all state banks and trust companies, national banking associations, state and federally chartered savings associations, mortgage banks, savings banks, insurance companies, credit unions or assignees of the above. Each mortgagee requiring funds of a mortgagor to be paid into an escrow, agency or similar account for the payment of taxes or insurance premiums with respect to a mortgaged one–to–four family, owner occupied residence located in this state, unless the account is required by federal law or regulation or maintained in connection with a conventional loan in an original principal amount in excess of 80 percent of the lender's appraised value of the residential unit at the time the loan is made or maintained in connection with loans insured or guaranteed by the secretary of housing and urban development, by the administrator of veterans affairs, or by the administrator of the farmers home administration, shall calculate interest on such funds at a rate of not less than five percent per annum. Such interest shall be computed on the average monthly balance in such account on the first of each month for the immediately preceding 12 months of the calendar year or such other fiscal year as may be uniformly adopted by the mortgagee for such purposes and shall be annually credited to the remaining principal balance on the mortgage, or at the election of the mortgagee, paid to the mortgagor or credited to the mortgagor's account. If the interest exceeds the remaining balance, the excess shall be paid to the mortgagor or vendee. The requirement to pay interest shall apply to such accounts created prior to June 1, 1976, as well as to accounts created after June 1, 1976.

(2) A mortgagee offering the following option (c) to a mortgagor but not requiring maintenance of escrow accounts as described in clause (1), whether or not the accounts were required by the mortgagee or were optional with the mortgagor, shall offer to each of such mortgagors the following options:

(a) the mortgagor may personally manage the payment of insurance and taxes;

(b) the mortgagor may open with the mortgagee a passbook savings account carrying the current rate of interest being paid on such accounts by the mortgagee in which the mortgagor can deposit the funds previously paid into the escrow account; or

(c) the mortgagor may elect to maintain a noninterest bearing escrow account as described in clause (1) to be serviced by the mortgagee at no charge to the mortgagor.

A mortgagee that is not a depository institution offering passbook savings accounts shall instead of offering option (b) above notify its mortgagors (1) that they may open such accounts at a depository institution and (2) of the current maximum legal interest rate on such accounts.

A mortgagee offering option (c) above to a mortgagor but not requiring the maintenance of escrow accounts shall notify its mortgagor of the options under (a), (b) and (c). The notice shall state the option and state that an escrow account is not required by the mortgagee, that the mortgagor is legally responsible for the payment of taxes and insurance, and that the notice is being given pursuant to this subdivision.

Notice shall be given within 30 days after the effective date of the provisions of Laws 1977, chapter 350 amending the subdivision, as to mortgagees offering option (c) above to mortgagors but not requiring escrow accounts as of the effective date, or within 30 days after a mortgagee's decision to discontinue requiring escrow accounts if the mortgagee continues to offer option (c) above to mortgagors. If no reply is received within 30 days, option (c) shall be selected for the mortgagor but the mortgagor may, at any time, select another option.

A mortgagee making a new mortgage and offering option (c) above to a prospective mortgagor shall, at the time of loan application, notify the prospective mortgagor of options (a), (b) and (c) above which must be extended to the prospective mortgagor. The mortgagor shall select one of the options at the time the loan is made.

Any notice required by this clause shall be on forms approved by the commissioner of commerce and shall provide that at any time a mortgagor may select a different option. The form shall contain a blank where the current passbook rate of interest shall be entered by the mortgagee. Any option selected by the mortgagor shall be binding on the mortgagee.

This clause does not apply to escrow accounts which are excepted from the interest paying requirements of clause (1).

(3) A mortgagee shall be prohibited from charging a direct fee for the administration of the escrow account.

Subd. 10. **Waiver.** Except as provided in subdivision 5, the provisions of this section may not be waived by any oral or written agreement executed by any person.

[For text of subds 13 to 14, see M.S.1994]

History: *1995 c 171 s 10,11; 1995 c 202 art 2 s 3,4*

47.201 GRADUATED PAYMENT MORTGAGES AND COOPERATIVE APARTMENT LOANS.

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

(1) "Financial institution" means a state bank or trust company, a national banking association, a state or federally chartered savings association, a mortgage bank, or savings bank.

(2) "Graduated payment home loan" means a conventional or cooperative apartment loan made pursuant to section 47.20 and subject to the provisions therein, whereunder initial periodic repayments are lower than those under the standard conventional or cooperative apartment loan having equal periodic repayments, and gradually rise to a predetermined point after which they remain constant.

[For text of subds 2 to 6, see M.S.1994]

Subd. 7. **Savings associations; first lien.** Capitalization of interest resulting from any negative amortization of a graduated payment home loan made by a savings and loan association shall not change the status of the mortgage as a first lien against the property se-

curing the loan pursuant to section 51A.38, subdivision 5. The capitalization of interest in a negative amortization shall not be considered as a loan or debt separate from the graduated payment mortgage contracted for at the time of loan origination.

History: *1995 c 171 s 12; 1995 c 202 art 1 s 25*

47.205 ASSIGNMENT OF MORTGAGE; DUTIES; PENALTIES.

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

(a) "Lender" means all state banks and trust companies, national banking associations, state and federally chartered savings associations, mortgage banks, savings banks, insurance companies, credit unions making a loan, or any person making a conventional loan as defined under section 47.20, subdivision 2, clause (3) or cooperative apartment loan as defined under section 47.20, subdivision 2, clause (4). A "selling lender" is a lender who sells, assigns, or transfers the servicing of a loan, to a "purchasing lender or a servicing agent."

(b) "Loan" means all loans and advances of credit authorized under section 47.20, subdivision 1, clauses (1) to (4) and conventional loans as defined under section 47.20, subdivision 2, clause (3) or cooperative apartment loan as defined under section 47.20, subdivision 2, clause (4).

(c) "Escrow account" means escrow, agency, or similar account for the payment of taxes or insurance premiums with respect to a mortgaged one–to–four family, owner occupied residence located in this state.

(d) "Person" means an individual, corporation, business trust, partnership or association, or any other legal entity.

[For text of subds 2 to 4, see M.S.1994]

History: *1995 c 171 s 13*

47.209 MANUFACTURED HOME FINANCING; PROPERTY TAX COLLECTION REQUIREMENT.

Subdivision 1. **Applicability.** This section applies to any agreement entered into after December 31, 1992, for the financing or refinancing of a purchase of a manufactured home. As used in this section and section 277.17, "lender" includes a state bank and trust company, national banking association, state or federally chartered savings association, mortgage bank, savings bank, insurance company, credit union, or a dealer as defined in section 327B.01, subdivision 7, that enters into an agreement for financing or refinancing a purchase of a manufactured home.

[For text of subds 2 and 3, see M.S.1994]

History: *1995 c 171 s 14*

47.27 DEFINITIONS.

[For text of subd 1, see M.S.1994]

Subd. 2. "Savings bank" shall have the meaning set forth in sections 47.01 and 47.02.

Subd. 3. "Savings association" shall have the meaning set forth in section 51.01, subdivision 2.

[For text of subd 4, see M.S.1994]

History: *1995 c 171 s 15; 1995 c 202 art 1 s 25*

47.28 SAVINGS BANKS MAY CONVERT INTO SAVINGS ASSOCIATIONS.

Subdivision 1. Any savings bank organized and existing under and by virtue of the law of this state may amend its articles of incorporation so as to convert itself into a savings association, by complying with the following requirements and procedure:

The savings bank by a two–thirds vote of the entire board of directors, at any regular or special meeting of said board duly called for that purpose, shall (a) pass a resolution declaring their intention to convert the savings bank into a savings association, and (b) cause an application in writing to be executed, by such persons as the directors may direct, in the form prescribed by the department of commerce, requesting a certificate of authorization (charter) as a savings association to transact business at the place and in the name stated in the application. The amendments proposed to the articles of incorporation and bylaws shall be included as part of the application.

The application shall be submitted to, considered and acted upon by the department of commerce in the same manner and by the same standards as applications are submitted, considered and acted upon under chapter 51A.

Subd. 2. If the certificate of authorization (charter) be issued, the articles of incorporation may then be amended so as to convert the savings bank into a savings association by following the procedure prescribed for amending articles of incorporation of savings banks.

Subd. 3. Upon receipt of the fees required for filing and recording amended articles of incorporation of savings banks, the secretary of state shall record the amended articles of incorporation and certify that fact thereon, whereupon the conversion of such savings bank into a savings association shall become final and complete and thereafter said corporation shall have the powers and be subject to the duties and obligations prescribed by the laws of this state applicable to savings associations.

Subd. 4. [Repealed by amendment, 1995 c 171 s 16]

Subd. 5. The resulting association shall as soon as practicable and within such time not extending beyond three years from the date the conversion becomes final and complete and by such methods as the department of commerce shall direct, cause its organization, its securities and investments, the character of its business, and the methods of transacting the same to conform to the laws applicable to savings associations.

History: *1995 c 171 s 16; 1995 c 202 art 1 s 6*

47.29 SAVINGS BANKS MAY CONVERT INTO FEDERAL ASSOCIATIONS.

Subdivision 1. Any savings bank organized and existing under and by virtue of the laws of this state, is hereby authorized and empowered, by a two–thirds vote of the entire board of directors, at any regular or special meeting of said board duly called for that purpose to convert itself into a federal association whenever said conversion is authorized by any act of the Congress of the United States: Provided that such conversion be approved in writing by the commissioner of commerce.

Subd. 2. Upon filing a copy of the federal charter, certified by the issuing federal agency with the secretary of state of this state, the secretary of state shall record said charter and certify that fact thereon, whereupon the conversion shall be final and complete and the savings bank shall at that time cease to be a savings bank supervised by this state, and shall thereafter be a federal association.

History: *1995 c 171 s 17,18*

47.30 SAVINGS ASSOCIATION MAY CONVERT INTO SAVINGS BANK.

Subdivision 1. Any capital stock savings association organized and existing under and by virtue of the laws of this state may amend its articles of incorporation so as to convert itself into a savings bank, by complying with the following requirements and procedure:

A meeting of the shareholders shall be held upon not less than 15 days written notice to each shareholder, served either personally or by mail prepaid, directed to the shareholder's last known post office address according to the records of the association, stating the time, place and purpose of such meeting.

At such meeting, the shareholders may by two–thirds vote (according to the book value of said shares) of those present in person or by proxy pass a resolution declaring their intention to convert such association into a savings bank and setting forth the names of the proposed first board of directors. A copy of the minutes of such meeting verified by the affidavit of the chair and the secretary of the meeting, shall be filed in the office of the department of

commerce within ten days after the meeting. Such copy, when so filed, shall be evidence of the holding of such meeting and of the action taken.

Subd. 2. An application for a certificate authorizing a savings bank to transact business, in the form required by sections 46.041 and 46.046, shall be submitted to, considered and acted upon by the department of commerce in the same manner and by the same standards as applications are submitted, considered and acted upon under sections 46.041, 46.044, 46.046, and 50.01. The fees required by section 46.041 shall be paid and the amendments proposed to the articles of incorporation and bylaws shall be included as part of the application.

Subd. 3. If the department of commerce grants the application, the certificate of authorization (charter) shall be issued as provided by section 46.041, and the articles of incorporation may then be amended so as to convert the savings association into a savings bank by following the procedure prescribed for amending articles of incorporation of savings associations: Provided, that the proposed amended articles shall contain the names of, and be signed by, the proposed first board of directors.

Subd. 4. [Repealed, 1995 c 171 s 70]

Subd. 5. Upon receipt of the fees required for filing and recording amended articles of incorporation of savings associations, the secretary of state shall record the amended articles of incorporation and certify that fact thereon, whereupon the conversion of such savings association into a savings bank shall become final and complete and thereafter the signers of said amended articles and their successors shall be a corporation, and have the powers and be subject to the duties and obligations prescribed by the laws of this state applicable to savings banks.

Subd. 6. [Repealed, 1995 c 171 s 70]

[For text of subd 7, see M.S.1994]

History: *1995 c 171 s 19–22*

47.32 CONVERTING INSTITUTION DEEMED CONTINUANCE; TRANSFER OF PROPERTY AND RIGHTS.

Upon conversion of any savings bank into a savings association or into a federal association, the detached facilities of the savings bank shall become branches of the savings association or federal association. Upon conversion of any savings association or federal association into a savings bank, the branches of the savings association or federal association shall become detached facilities of the savings bank, notwithstanding the limitations on the number of facilities, distance limitations, geographic limitation, notice requirements, and consent requirements contained in sections 47.51 to 47.57.

History: *1995 c 171 s 23*

47.325 APPEAL AND JUDICIAL REVIEW.

A savings bank aggrieved by any action or inaction of the commissioner under sections 47.27 to 47.32 may appeal under sections 14.63 to 14.69. The scope of judicial review in the proceedings is as provided in those sections.

History: *1995 c 171 s 24*

47.52 AUTHORIZATION.

(a) With the prior approval of the commissioner, any bank doing business in this state may establish and maintain not more than five detached facilities provided the facilities are located within the municipality in which the principal office of the applicant bank is located; or within 5,000 feet of its principal office measured in a straight line from the closest points of the closest structures involved; or within 100 miles of its principal office measured in a straight line from the closest points of the closest structures involved, if the detached facility is within any municipality in which no bank is located at the time of application or if the detached facility is in a municipality having a population of more than 10,000, or if the detached facility is located in a municipality having a population of 10,000 or less, as determined by

the commissioner from the latest available data from the state demographer, or for municipalities located in the seven–county metropolitan area from the metropolitan council, and all the banks having a principal office in the municipality have consented in writing to the establishment of the facility.

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

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

(d) A bank is allowed, in addition to other facilities, part–time deposit–taking locations at elementary and secondary schools located within the municipality in which the main banking house or a detached facility is located if they are established in connection with student education programs approved by the school administration and consistent with safe, sound banking practices.

(e) A bank whose home state is Minnesota as defined in section 48.92 is allowed, in addition to facilities otherwise permitted, to establish and operate a de novo detached facility in a location in the host states of Iowa, North Dakota, South Dakota, and Wisconsin not more than 30 miles from its principal office measured in a straight line from the closest points of the closest structures involved and subject to requirements of sections 47.54 and 47.561 and the following additional requirements and conditions:

(1) there is in effect in the host state a law, rule, or ruling that permits Minnesota home state banks to establish de novo branches in the host state under conditions substantially similar to those imposed by the laws of Minnesota as determined by the commissioner; and

(2) there is in effect a cooperative agreement between the home and host state banking regulators to facilitate their respective regulation and supervision of the bank including the coordination of examinations.

For purposes of this paragraph, "host state" means a state other than the home state, as defined in section 48.92.

History: *1995 c 202 art 2 s 5; art 4 s 5*

NOTE: The amendments to this section by Laws 1995, chapter 202, article 4, section 5, expire May 31, 1997. See Laws 1995, chapter 202, article 4, section 24.

47.55 EXISTING BANKING FACILITIES OR BRANCHES OF SAVINGS ASSOCIATIONS.

[For text of subd 1, see M.S.1994]

Subd. 2. **Facilities of banks or branches of savings associations in operation prior to acquisition.** The purchase of assets and assumption of liabilities of an existing detached facility of another bank or branch of a savings association or savings bank must follow the notice and approval procedures in section 47.54 to establish and maintain a new detached facility of the acquiring bank at that location but need not obtain the consent of other banks as required by section 47.52.

History: *1995 c 202 art 1 s 25*

47.56 TRANSFER OF LOCATION.

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

History: *1995 c 202 art 2 s 6*

47.58 REVERSE MORTGAGE LOANS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ment. The service charge shall not exceed one percent of the bona fide committed principal amount of the reverse mortgage loan.

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

Subd. 2. **Authorization.** Pursuant to rules which the commissioner of commerce may find to be necessary and proper, if any, and subject to federal laws and regulations, lenders may make investments in reverse mortgage loans and purchases of obligations representing reverse mortgage loans, provided the aggregate total of committed principal of the investment in reverse mortgage loans by any bank, savings bank, or savings association, does not exceed five percent of that lender's total deposits and savings accounts. This limitation shall be determined at each June 30 and December 31 for the following six-month period. Any decline in the total of deposits and savings accounts subsequent to a determination may be disregarded. Security for loans made under this section shall be a first lien on residential property (a) which the borrower occupies as principal residence and which qualifies for homestead classification pursuant to section 273.13, and (b) to which the borrower alone has title.

[For text of subds 3 to 8, see M.S.1994]

History: *1995 c 202 art 1 s 7,25*

47.59 FINANCIAL INSTITUTION CREDIT EXTENSION MAXIMUM RATES.

Subdivision 1. **Definitions.** For purposes of this section, the following definitions shall apply.

(a) "Actuarial method" has the meaning given the term in the Code of Federal Regulations, title 12, part 226, and appendix J thereto.

(b) "Annual percentage rate" has the meaning given the term in the Code of Federal Regulations, title 12, part 226, but using the definition of "finance charge" used in this section.

(c) "Borrower" means a debtor under a loan or a purchaser or debtor under a credit sale contract.

(d) "Business purpose" means a purpose other than a personal, family, household, or agricultural purpose.

(e) "Cardholder" means a person to whom a credit card is issued or who has agreed with the financial institution to pay obligations arising from the issuance to or use of the card by another person.

(f) "Consumer loan" means a loan made by a financial institution in which:

(1) the debtor is a person other than an organization;

(2) the debt is incurred primarily for a personal, family, or household purpose; and

(3) the debt is payable in installments or a finance charge is made.

(g) "Credit" means the right granted by a financial institution to a borrower to defer payment of a debt, to incur debt and defer its payment, or to purchase property or services and defer payment.

(h) "Credit card" means a card or device issued under an arrangement pursuant to which a financial institution gives to a cardholder the privilege of obtaining credit from the financial institution or other person in purchasing or leasing property or services, obtaining loans, or otherwise. A transaction is "pursuant to a credit card" only if credit is obtained according to the terms of the arrangement by transmitting information contained on the card or device orally, in writing, by mechanical or electronic methods, or in any other manner. A transaction is not "pursuant to a credit card" if the card or device is used solely in that transaction to:

(1) identify the cardholder or evidence the cardholder's creditworthiness and credit is not obtained according to the terms of the arrangement;

(2) obtain a guarantee of payment from the cardholder's deposit account, whether or not the payment results in a credit extension to the cardholder by the financial institution; or

(3) effect an immediate transfer of funds from the cardholder's deposit account by electronic or other means, whether or not the transfer results in a credit extension to the cardholder by the financial institution.

(i) "Credit sale contract" means a contract evidencing a credit sale. "Credit sale" means a sale of goods or services, or an interest in land, in which:

(1) credit is granted by a seller who regularly engages as a seller in credit transactions of the same kind; and

(2) the debt is payable in installments or a finance charge is made.

(j) "Finance charge" has the meaning given in the Code of Federal Regulations, title 12, part 226, except that the following will not in any event be considered a finance charge:

(1) a charge as a result of default or delinquency under subdivision 6 if made for actual unanticipated late payment, delinquency, default, or other similar occurrence, and a charge made for an extension or deferment under subdivision 5, unless the parties agree that these charges are finance charges;

(2) an additional charge under subdivision 6; or

(3) a discount, if a financial institution purchases a loan at less than the face amount of the obligation or purchases or satisfies obligations of a cardholder pursuant to a credit card and the purchase or satisfaction is made at less than the face amount of the obligation.

(k) "Financial institution" means a state or federally chartered bank, a state or federally chartered bank and trust, a trust company with banking powers, a state or federally chartered saving bank, a state or federally chartered savings association, an industrial loan and thrift company, or a regulated lender.

(l) "Loan" means:

(1) the creation of debt by the financial institution's payment of money to the borrower or a third person for the account of the borrower;

(2) the creation of debt pursuant to a credit card in any manner, including a cash advance or the financial institution's honoring a draft or similar order for the payment of money drawn or accepted by the borrower, paying or agreeing to pay the borrower's obligation, or purchasing or otherwise acquiring the borrower's obligation from the obligee or the borrower's assignee;

(3) the creation of debt by a cash advance to a borrower pursuant to an overdraft line of credit arrangement;

(4) the creation of debt by a credit to an account with the financial institution upon which the borrower is entitled to draw immediately;

(5) the forbearance of debt arising from a loan; and

(6) the creation of debt pursuant to open–end credit.

"Loan" does not include the forbearance of debt arising from a sale or lease, a credit sale contract, or an overdraft from a person's deposit account with a financial institution which is not pursuant to a written agreement to pay overdrafts with the right to defer repayment thereof.

(m) "Official fees" means:

(1) fees and charges which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, terminating, or satisfying a security interest or mortgage relating to a loan or credit sale, and any separate fees or charges which actually are or will be paid to public officials for recording a notice described in section 580.032, subdivision 1; and

(2) premiums payable for insurance in lieu of perfecting a security interest or mortgage otherwise required by a financial institution in connection with a loan or credit sale, if the premium does not exceed the fees and charges described in clause (1), which would otherwise be payable.

(n) "Organization" means a corporation, government, government subdivision or agency, trust, estate, partnership, joint venture, cooperative, limited liability company, limited liability partnership, or association.

(o) "Person" means a natural person or an organization.

(p) "Principal" means the total of:

(1) the amount paid to, received by, or paid or repayable for the account of, the borrower; and

(2) to the extent that payment is deferred:

(i) the amount actually paid or to be paid by the financial institution for additional charges permitted under this section; and

(ii) prepaid finance charges.

Subd. 2. **Application.** This section does not apply to loans and other extensions of credit or purchases of extensions of credit by financial institutions under sections 47.20, 47.21, 47.201, 47.204, 47.58, 47.60, 48.153, 48.185, 48.195, 59A.01, 168.66 to 168.77, 334.01, 334.011, 334.012, 334.06, and 334.061 to 334.19.

Subd. 3. **Finance charge for loans.** (a) With respect to a loan, including a loan pursuant to open–end credit but excluding open–end credit pursuant to a credit card, a financial institution may contract for and receive a finance charge on the unpaid balance of the principal amount not to exceed the greater of:

(1) an annual percentage rate not exceeding 21.75 percent; or

(2) the total of:

(i) 33 percent per year on that part of the unpaid balance of the principal amount not exceeding $750; and

(ii) 19 percent per year on that part of the unpaid balance of the principal amount exceeding $750.

With respect to open–end credit pursuant to a credit card, the financial institution may contract for and receive a finance charge on the unpaid balance of the principal amount at an annual percentage rate not exceeding 18 percent per year.

(b) On a loan where the finance charge is calculated according to the method provided for in paragraph (a), clause (2), the finance charge must be contracted for and earned as provided in that provision or at the single annual percentage rate computed to the nearest .001 of one percent that would earn the same total finance charge at maturity of the contract as would be earned by the application of the graduated rates provided in paragraph (a), clause (2), when the debt is paid according to the agreed terms and the calculations are made according to the actuarial method.

(c) With respect to a loan, the finance charge must be considered not to exceed the maximum annual percentage rate permitted under this section if the finance charge contracted for and received does not exceed the equivalent of the maximum annual percentage rate calculated in accordance with Code of Federal Regulations, title 12, part 226, but using the definition of finance charge provided in this section.

(d) This subdivision does not limit or restrict the manner of calculating the finance charge, whether by way of add–on, discount, discount points, precomputed charges, single annual percentage rate, variable rate, interest in advance, compounding, average daily balance method, or otherwise, if the annual percentage rate does not exceed that permitted by this section.

(e) With respect to a loan secured by real estate, if a finance charge is calculated or collected in advance, or included in the principal amount of the loan, and the borrower prepays the loan in full, the financial institution shall credit the borrower with a refund of the charge to the extent that the annual percentage rate yield on the loan would exceed the maximum rate permitted under paragraph (a), taking into account the prepayment.

(f) With respect to all other loans, if the finance charge is calculated or collected in advance, or included in the principal amount of the loan, and the borrower prepays the loan in full, the financial institution shall credit the borrower with a refund of the charge to the extent the annual percentage rate yield on the loan would exceed the annual percentage rate on the loan as originally determined under paragraph (a) and taking into account the prepayment.

(g) For the purpose of calculating the refund under this subdivision, the financial institution may assume that the contract was paid before the date of prepayment according to the schedule of payments under the loan and that all payments were paid on their due dates.

(h) For loans repayable in substantially equal successive monthly installments, the financial institution may calculate the refund under paragraph (f) as the portion of the finance

charge allocable on an actuarial basis to all wholly unexpired payment periods following the date of prepayment, based on the annual percentage rate on the loan as originally determined under paragraph (a), and for the purpose of calculating the refund may assume that all payments are made on the due date.

(i) The dollar amounts in this subdivision and subdivision 6, clause (4), shall change periodically, as provided in this section, according to and to the extent of changes in the implicit price deflator for the gross domestic product, 1987 = 100, compiled by the United States Department of Commerce, and hereafter referred to as the index. The index for December 1991 is the reference base index for adjustments of dollar amounts.

(j) The designated dollar amounts shall change on July 1 of each even–numbered year if the percentage of change, calculated to the nearest whole percentage point, between the index for December of the preceding year and the reference base index is ten percent or more; but

(1) the portion of the percentage change in the index in excess of a multiple of ten percent shall be disregarded and the dollar amounts shall change only in multiples of ten percent of the amounts appearing in Laws 1995, chapter 202, on May 24, 1995; and

(2) the dollar amounts shall not change if the amounts required by this section are those currently in effect pursuant to Laws 1995, chapter 202, as a result of earlier application of this section.

(k) If the index is revised, the percentage of change pursuant to this section shall be calculated on the basis of the revised index. If a revision of the index changes the reference base index, a revised reference base index shall be determined by multiplying the reference base index then applicable by the rebasing factor furnished by the department of commerce. If the index is superseded, the index referred to in this section is the one represented by the department of commerce as reflecting most accurately changes in the purchasing power of the dollar for consumers.

(l) The commissioner shall announce and publish:

(1) on or before April 30 of each year in which dollar amounts are to change, the changes in dollar amounts required by paragraph (j); and

(2) promptly after the changes occur, changes in the index required by paragraph (k) including, if applicable, the numerical equivalent of the reference base index under a revised reference base index and the designation or title of any index superseding the index.

(m) A person does not violate this chapter with respect to a transaction otherwise complying with this chapter if that person relies on dollar amounts either determined according to paragraph (j), clause (2), or appearing in the last publication of the commissioner announcing the then current dollar amounts.

(n) The adjustments provided in this section shall not be affected unless explicitly provided otherwise by law.

Subd. 4. **Finance charge for credit sales made by a third party.** (a) A person may enter into a credit sale contract for sale to a financial institution and a financial institution may purchase and enforce the contract, if the annual percentage rate provided for in the contract does not exceed that permitted in this section, or, in the case of contracts governed by sections 168.66 to 168.77, the rates permitted by those sections.

(b) The annual percentage rate may not exceed the equivalent of the greater of either of the following:

(1) the total of:

(i) 36 percent per year on that part of the unpaid balances of the amount financed that is $300 or less;

(ii) 21 percent per year on that part of the unpaid balances of the amount financed which exceeds $300 but does not exceed $1,000; and

(iii) 15 percent per year on that part of the unpaid balances of the amount financed which exceeds $1,000; or

(2) 19 percent per year on the unpaid balances of the amount financed.

(c) This subdivision does not limit or restrict the manner of calculating the finance charge whether by way of add–on, discount, discount points, single annual percentage rate,

precomputed charges, variable rate, interest in advance, compounding, or otherwise, if the annual percentage rate calculated under paragraph (d) does not exceed that permitted by this section. The finance charge may be contracted for and earned at the single annual percentage rate that would earn the same finance charge as the graduated rates when the debt is paid according to the agreed terms and the finance charge is calculated under paragraph (d). If the finance charge is calculated and collected in advance, or included in the principal amount of the contract, and the borrower prepays the contract in full, the financial institution shall credit the borrower with a refund of the charge to the extent the annual percentage rate yield on the contract would exceed the annual percentage rate on the contract as originally determined under paragraph (d) and taking into account the prepayment. For the purpose of calculating the refund under this subdivision, the financial institution may assume that the contract was paid before the date of prepayment according to the schedule of payments under the contract and that all payments were paid on their due dates. For contracts repayable in substantially equal successive monthly installments, the financial institution may calculate the refund as the portion of the finance charge allocable on an actuarial basis to all wholly unexpired payment periods following the date of prepayment, based on the annual percentage rate on the contract as originally determined under paragraph (d), and for the purpose of calculating the refund may assume that all payments are made on the due date.

(d) The annual percentage rate must be calculated in accordance with Code of Federal Regulations, title 12, part 226, except that the following will not in any event be considered a finance charge:

(1) a charge as a result of delinquency or default under subdivision 6 if made for actual unanticipated late payment, delinquency, default, or other similar occurrence, and a charge made for an extension or deferment under subdivision 5, unless the parties agree that these charges are finance charges;

(2) an additional charge under subdivision 6; or

(3) a discount, if a financial institution purchases a contract evidencing a credit sale at less than the face amount of the obligation or purchases or satisfies obligations of a cardholder according to a credit card and the purchase or satisfaction is made at less than the face amount of the obligation.

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

For the purpose of this subdivision, "applicable charge" means the amount of finance charge attributable to each monthly installment period for the loan or credit sale contract. The applicable charge is computed as if each installment period were one month and any charge for extending the first installment period beyond the one month, or reduction in charge for a first installment less than one month, is ignored. The applicable charge for any installment period is that which would have been made for the period had the loan been made on an interest–bearing basis at the single annual percentage rate provided for in the contract based upon the assumption that all payments were made according to schedule. For convenience in computation, the financial institution may round the single annual rate to the nearest one quarter of one percent.

Subd. 6. **Additional charges.** (a) In addition to the finance charges permitted by this section, a financial institution may contract for and receive the following additional charges that may be included in the amount financed:

(1) official fees and taxes;

(2) charges for insurance as described in paragraph (b);

(3) with respect to a loan or credit sale contract secured by real estate, the following "closing costs," if they are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of this section:

(i) fees or premiums for title examination, abstract of title, title insurance, surveys, or similar purposes;

(ii) fees for preparation of a deed, mortgage, settlement statement, or other documents, if not paid to the financial institution;

(iii) escrows for future payments of taxes, including assessments for improvements, insurance, and water, sewer, and land rents;

(iv) fees for notarizing deeds and other documents;

(v) appraisal and credit report fees; and

(vi) fees for determining whether any portion of the property is located in a flood zone and fees for ongoing monitoring of the property to determine changes, if any, in flood zone status;

(4) a delinquency charge on a payment, including the minimum payment due in connection with the open–end credit, not paid in full on or before the tenth day after its due date in an amount not to exceed five percent of the amount of the payment or $5.20, whichever is greater;

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

(6) charges for other benefits, including insurance, conferred on the borrower that are of a type that is not for credit.

(b) An additional charge may be made for insurance written in connection with the loan or credit sale contract, which may be included in the amount financed:

(1) with respect to insurance against loss of or damage to property, or against liability arising out of the ownership or use of property, if the financial institution furnishes a clear, conspicuous, and specific statement in writing to the borrower setting forth the cost of the insurance if obtained from or through the financial institution and stating that the borrower may choose the person through whom the insurance is to be obtained;

(2) with respect to credit insurance or mortgage insurance providing life, accident, health, or unemployment coverage, if the insurance coverage is not required by the financial institution, and this fact is clearly and conspicuously disclosed in writing to the borrower, and the borrower gives specific, dated, and separately signed affirmative written indication of the borrower's desire to do so after written disclosure to the borrower of the cost of the insurance; and

(3) with respect to the vendor's single interest insurance, but only (i) to the extent that the insurer has no right of subrogation against the borrower; and (ii) to the extent that the insurance does not duplicate the coverage of other insurance under which loss is payable to the financial institution as its interest may appear, against loss of or damage to property for which a separate charge is made to the borrower according to clause (1); and (iii) if a clear, conspicuous, and specific statement in writing is furnished by the financial institution to the borrower setting forth the cost of the insurance if obtained from or through the financial institution and stating that the borrower may choose the person through whom the insurance is to be obtained.

(c) In addition to the finance charges and other additional charges permitted by this section, a financial institution may contract for and receive the following additional charges in connection with open–end credit, which may be included in the amount financed or balance upon which the finance charge is computed:

(1) annual charges, not to exceed $50 per annum, payable in advance, for the privilege of opening and maintaining open–end credit;

(2) charges for the use of an automated teller machine;

(3) charges for any monthly or other periodic payment period in which the borrower has exceeded or, except for the financial institution's dishonor would have exceeded, the maximum approved credit limit, in an amount not in excess of the service charge permitted in section 332.50;

(4) charges for obtaining a cash advance in an amount not to exceed the service charge permitted in section 332.50; and

(5) charges for check and draft copies and for the replacement of lost or stolen credit cards.

(d) In addition to the finance charges and other additional charges permitted by this section, a financial institution may contract for and receive a one–time loan administrative fee not exceeding $25 in connection with closed–end credit, which may be included in the amount financed or principal balance upon which the finance charge is computed. This paragraph applies only to closed–end credit in an original principal amount of $4,320 or less.

Subd. 7. **Advances to perform covenants of borrower or purchaser.** (a) If the agreement with respect to a loan or credit sale contract contains covenants by the borrower or purchaser to perform certain duties pertaining to insuring or preserving collateral and the financial institution according to the agreement pays for performance of the duties on behalf of the borrower or purchaser, the financial institution may add to the debt or contract balance the amounts so advanced. Before or within a reasonable time not less than 30 days after advancing any sums, the financial institution shall state to the borrower or purchaser in writing the amount of sums advanced or to be advanced, any charges with respect to this amount, and any revised payment schedule and, if the duties of the borrower or purchaser performed by the financial institution pertain to insurance, a brief description of the insurance paid for or to be paid for by the financial institution including the type and amount of coverages. Additional information need not be given. The actions of the financial institution pursuant to this subdivision shall not be deemed to cure the borrower's failure to perform covenants in the loan or credit sale contract, unless the loan or credit sale contract expressly provides otherwise.

(b) A finance charge equal to that specified in the loan agreement or credit sale contract may be made for sums advanced under paragraph (a).

Subd. 8. **Attorney's fees.** With respect to a loan or credit sale, the agreement may provide for payment by the borrower of the attorney's fees and court costs incurred in connection with collection or foreclosure. This subdivision is not a limitation on attorney's fees that may be charged to an organization.

Subd. 9. **Right to prepay.** The borrower or purchaser may prepay in full the unpaid balance of a consumer loan or credit sale contract, at any time without penalty.

Subd. 10. **Credit insurance.** (a) The sale of credit insurance or mortgage insurance is subject to chapters 61A, 62A, and 62B, as applicable, and the rules adopted under those chapters, if any. In case there are multiple consumers obligated under a transaction subject to this chapter, no policy or certificate of insurance providing credit life insurance may be procured by or through a financial institution or person described in subdivision 2 upon more than two of the consumers, in which case they may be insured jointly.

(b) A financial institution that provides credit insurance in relation to open–end credit may calculate the charge to the borrower in each billing cycle by applying the current premium rate to the balance in the manner permitted with respect to finance charges by the provisions on finance charge in this section.

(c) Upon prepayment in full of a consumer loan or credit sale contract by the proceeds of credit insurance or mortgage insurance, the consumer or the consumer's estate is entitled to a refund of any portion of a separate charge for insurance that by reason of prepayment is retained by the financial institution or returned to it by the insurer, unless the charge was computed from time to time on the basis of the balances of the consumer's loan or credit sale contract.

(d) This section does not require a financial institution to grant a refund to the consumer if all refunds due to the consumer under paragraph (c) amount to less than $5 and, except as provided in paragraph (c), does not require the financial institution to account to the consumer for any portion of a separate charge for insurance because:

(1) the insurance is terminated by performance of the insurer's obligation;

(2) the financial institution pays or accounts for premiums to the insurer in amounts and at times determined by the agreement between them; or

(3) the financial institution receives directly or indirectly under a policy of insurance a gain or advantage not prohibited by law.

(e) Except as provided in paragraph (d), the financial institution shall promptly make or cause to be made an appropriate refund to the consumer with respect to a separate charge made to the consumer for insurance if:

(1) the insurance is not provided or is provided for a shorter term than for which the charge to the borrower for insurance was computed; or

(2) the insurance terminates before the end of the term for which it was written because of prepayment in full or otherwise.

(f) If a financial institution requires insurance, upon notice to the borrower, the borrower has the option of providing the required insurance through an existing policy of insurance owned or controlled by the borrower, or through a policy to be obtained and paid for by the borrower, but the financial institution for reasonable cause may decline the insurance provided by the borrower.

Subd. 11. **Property and liability insurance.** (a) Except as otherwise provided in this section and subject to the provisions on additional charges and maximum finance charges in this section, a financial institution may agree to sell, as an agent, property and liability insurance, and may contract for and receive a charge for this insurance separate from and in addition to other charges. This section does not authorize the issuance of the insurance prohibited under any statute or rule governing the business of insurance nor does it authorize a financial institution to underwrite insurance.

(b) This section does not apply to an insurance premium loan. A financial institution may request cancellation of a policy of property or liability insurance only after the borrower's default or in accordance with a written authorization by the borrower. In either case, the cancellation does not take effect until written notice is delivered to the borrower or mailed to the borrower at the borrower's address as stated by the borrower. The notice must state that the policy may be canceled on a date not less than ten days after the notice is delivered, or, if the notice is mailed, not less than 13 days after it is mailed. A cancellation may not take effect until those notice periods expire.

Subd. 12. **Consumer protections.** (a) Financial institutions shall comply with the requirements of the federal Truth in Lending Act, United States Code, title 15, sections 1601 to 1693, in connection with a consumer loan or credit sale for a consumer purpose where the federal Truth in Lending Act is applicable.

(b) Financial institutions shall comply with the following consumer protection provisions in connection with a consumer loan or credit sale for a consumer purpose: sections 325G.02 to 325G.05; 325G.06 to 325G.11; 325G.15 to 325G.22; and 325G.29 to 325G.36, and Code of Federal Regulations, title 12, part 535, where those statutes or regulations are applicable.

(c) An assignment of a consumer's earnings by the consumer to a financial institution as payment or as security for payment of a debt arising out of a consumer loan or consumer credit sale is unenforceable by the financial institution and revocable by the consumer.

Subd. 13. **Loans and contracts other than consumer loans and contracts.** Loans and credit sale contracts other than consumer loans and consumer credit sale contracts are not subject to the provisions and limitations of subdivisions 9; 10; 11, paragraph (b); and 12.

Subd. 14. **Effect of violations on rights of parties.** (a) If a financial institution has violated any provision of this section applying to collection of finance or other charges, the borrower or purchaser under a credit sale contract may recover from the financial institution actual damages and, in an action other than a class action, a penalty in an amount determined by the court but not less than $100 nor more than $1,000. With respect to violations arising from other than open–end credit transactions, no action may be brought according to this paragraph and no set–off or recoupment may be asserted according to this paragraph more than one year after the making of the debt.

(b) A borrower or purchaser under a credit sale contract is not obligated to pay a charge in excess of that allowed by this section and has a right of refund of any excess charge paid. A refund may not be made by reducing the borrower's or purchaser's obligation by the amount of the excess charge, unless the financial institution has notified the borrower or purchaser that the borrower or purchaser may request a refund and the borrower or purchaser has not so requested within 30 days thereafter. If the borrower or purchaser has paid an amount in excess of the lawful obligation under the agreement, the borrower or purchaser may recover the excess amount from the financial institution that made the excess charge or from an assignee of the financial institution's rights that undertakes direct collection of payments from or enforcement of rights against borrowers or purchasers arising from the debt.

(c) If a financial institution has contracted for or received a charge in excess of that allowed by this section, or if a borrower or purchaser under a credit sale contract is entitled to a refund and a person liable to the borrower or purchaser refuses to make a refund within a reasonable time after demand, the borrower or purchaser may recover from the financial institution or the person liable in an action other than a class action a penalty in an amount determined by the court but not less than $100 nor more than $1,000. With respect to excess charges arising from other than open–end credit transactions, no action according to this paragraph may be brought more than one year after the making of the debt. For purposes of this paragraph, a reasonable time is presumed to be 30 days.

(d) A violation of this section does not impair rights on a debt.

(e) A financial institution is not liable for a penalty under paragraph (a) or (c) if it notifies the borrower or purchaser under a credit sale contract of a violation before the financial institution receives from the borrower or purchaser written notice of the violation or the borrower or purchaser has brought an action under this section, and the financial institution corrects the violation within 45 days after notifying the borrower or purchaser. If the violation consists of a prohibited agreement, giving the borrower or purchaser a corrected copy of the writing containing the violation is sufficient notification and correction. If the violation consists of an excess charge, correction must be made by an adjustment or refund.

(f) A financial institution may not be held liable in an action brought under this section for a violation of this section if the financial institution shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error.

(g) In an action in which it is found that a financial institution has violated this section, the court shall award to the borrower or the purchaser under a credit sale contract the costs of the action and to the borrower's or purchaser's attorneys their reasonable fees.

History: *1995 c 202 art 3 s 1*

47.60 CONSUMER SMALL LOANS.

Subdivision 1. **Definitions.** For purposes of this section, the terms defined have the meanings given them:

(a) "Consumer small loan" is a loan transaction in which cash is advanced to a borrower for the borrower's own personal, family, or household purpose. A consumer small loan is a short–term, unsecured loan to be repaid in a single installment. The cash advance of a consumer small loan is equal to or less than $350. A consumer small loan includes an indebtedness evidenced by but not limited to a promissory note or agreement to defer the presentation of a personal check for a fee.

(b) "Consumer small loan lender" is a financial institution as defined in section 47.59 or a person registered with the commissioner and engaged in the business of making consumer small loans.

Subd. 2. **Authorization, terms, conditions, and prohibitions.** (a) In lieu of the interest, finance charges, or fees in any other law, a consumer small loan lender may charge the following:

(i) on any amount up to and including $50, a charge of $5.50 may be added;

(ii) on amounts in excess of $50, but not more than $100, a charge may be added equal to ten percent of the loan proceeds plus a $5 administrative fee;

(iii) on amounts in excess of $100, but not more than $250, a charge may be added equal to seven percent of the loan proceeds with a minimum of $10 plus a $5 administrative fee;

(iv) for amounts in excess of $250 and not greater than the maximum in subdivision 1, paragraph (a), a charge may be added equal to six percent of the loan proceeds with a minimum of $17.50 plus a $5 administrative fee.

(b) The term of a loan made under this section shall be 30 days.

(c) After maturity, the contract rate must not exceed 2.75 percent per month of the remaining loan proceeds after the maturity date calculated at a rate of 1/30 of the monthly rate in the contract for each calendar day the balance is outstanding.

(d) No insurance charges or other charges must be permitted to be charged, collected, or imposed on a consumer small loan except as authorized in this section.

(e) On a loan transaction in which cash is advanced in exchange for a personal check, a return check charge may be charged as authorized by section 332.50, subdivision 2, paragraph (d).

(f) A loan made under this section must not be repaid by the proceeds of another loan made under this section by the same lender or related interest. The proceeds from a loan made under this section must not be applied to another loan from the same lender or related interest. No loan to a single borrower made pursuant to this section shall be split or divided and no single borrower shall have outstanding more than one loan with the result of collecting a higher charge than permitted by this section or in an aggregate amount of principal exceed at any one time the maximum of $350.

Subd. 3. **Filing.** Before a person other than a financial institution as defined by section 47.59 engages in the business of making consumer small loans, the person shall file with the commissioner as a consumer small loan lender. The filing must be on a form prescribed by the commissioner together with a fee of $150 for each place of business and contain the following information in addition to the information required by the commissioner:

(1) evidence that the filer has available for the operation of the business at the location specified, liquid assets of at least $50,000; and

(2) a biographical statement on the principal person responsible for the operation and management of the business to be certified.

Revocation of the filing and the right to engage in the business of a consumer small loan lender is the same as in the case of a regulated lender license in section 56.09.

Subd. 4. **Books of account; annual report; schedule of charges; disclosures.** (a) A lender filing under subdivision 3 shall keep and use in the business books, accounts, and records as will enable the commissioner to determine whether the filer is complying with this section.

(b) A lender filing under subdivision 3 shall annually on or before March 15 file a report to the commissioner giving the information the commissioner reasonably requires concerning the business and operations during the preceding calendar year.

(c) A lender filing under subdivision 3 shall display prominently in each place of business a full and accurate schedule, to be approved by the commissioner, of the charges to be made and the method of computing those charges; furnish a copy of the contract of loan to a person obligated on it or who may become obligated on it at any time upon the request of that person. This is in addition to any disclosures required by the federal Truth in Lending Act, United States Code, title 15.

(d) A lender filing under subdivision 3 shall, upon repayment of the loan in full, mark indelibly every obligation signed by the borrower with the word "Paid" or "Canceled" within 20 days after repayment.

(e) A lender filing under subdivision 3 shall display prominently, in each licensed place of business, a full and accurate statement of the charges to be made for loans made under this section. The statement of charges must be displayed in a notice, on plastic or other durable material measuring at least 12 inches by 18 inches, headed "CONSUMER NOTICE REQUIRED BY THE STATE OF MINNESOTA." The notice shall include, immediately above the statement of charges, the following sentence, or a substantially similar sentence approved by the commissioner: "These loan charges are higher than otherwise permitted un-

der Minnesota law. Minnesota law permits these higher charges only because short–term small loans might otherwise not be available to consumers. If you have another source of a loan, you may be able to benefit from a lower interest rate and other loan charges." The notice must not contain any other statement or information, unless the commissioner has determined that the additional statement or information is necessary to prevent confusion or inaccuracy. The notice must be designed with a type size that is large enough to be readily noticeable and legible. The form of the notice must be approved by the commissioner prior to its use.

Subd. 5. **Complaints alleging violation.** A person obligated to or having been obligated to a consumer small loan lender filing under subdivision 3 and having reason to believe that this section has been violated may file with the commissioner a written complaint setting forth the details of the alleged violation. The commissioner, upon receipt of the complaint, may inspect the pertinent books, records, letters, and contracts of the lender and borrower involved. The commissioner may assess against the lender a fee covering the necessary costs of an investigation under this section. The commissioner may maintain an action for the recovery of the costs in a court of competent jurisdiction.

Subd. 6. **Penalties for violation.** A person or the person's members, officers, directors, agents, and employees who violate or participate in the violation of any of the provisions of this section may be liable in the same manner as in section 56.19.

History: *1995 c 202 art 3 s 2*

47.61 ELECTRONIC FUNDS TRANSFER FACILITIES; DEFINITIONS.

[For text of subds 1 and 2, see M.S.1994]

Subd. 3. (a) "Electronic financial terminal" means an electronic information processing device that is established to do either or both of the following:

(1) capture the data necessary to initiate financial transactions; or

(2) through its attendant support system, store or initiate the transmission of the information necessary to consummate a financial transaction.

(b) "Electronic financial terminal" does not include:

(1) a telephone;

(2) an electronic information processing device that is used internally by a financial institution to conduct the business activities of the institution; or

(3) an electronic point–of–sale terminal operated by a retailer that is used to process payments for the purchase of goods and services by consumers through the use of credit cards or debit cards, provided that the payment transactions using debit cards are subject to the federal Electronic Funds Transfer Act, United States Code, title 12, sections 1693 et seq., and Regulation E of the Federal Reserve Board, Code of Federal Regulations, title 12, subpart 205.2; this clause does not exempt the retailer from liability for negligent conduct or intentional misconduct of the operator under section 47.69, subdivision 5.

Subd. 4. "Financial institution" means a national banking association, federal savings and loan association, or federal credit union having its main office in this state, or a bank, savings bank, savings association, credit union, industrial loan and thrift company, or regulated lender under chapter 56 established and operating under the laws of this state.

[For text of subds 4a to 7, see M.S.1994]

History: *1995 c 202 art 1 s 25; art 2 s 7*

47.62 AUTHORIZATION.

[For text of subd 1, see M.S.1994]

Subd. 2. **Approval required.** No electronic financial terminal shall be established by a person other than a state or federal savings association, state or federal savings bank, state or federal credit union, or state bank or national banking association unless the commissioner has approved the establishment of the terminal.

Subd. 3. Application for authorization shall be made in the manner prescribed by rule. The commissioner shall grant authorization for the establishment of an electronic financial terminal if the commissioner finds that:

(a) There is reason to believe that the terminal will be properly and safely managed;

(b) The applicant is financially sound;

(c) The proposed charges for making the services of the terminal available to financial institutions are fair, equitable, and nondiscriminatory;

(d) The applicant has furnished all of the information required by rule;

(e) The terminal applicant will not gain an unfair competitive advantage because the terminal is not operationally available to other financial institutions or their data processors within a reasonable period of time.

If the commissioner has not denied the application within 45 days of its submission, the authorization shall be deemed to be granted.

Subd. 4. When more than one electronic financial terminal is established and maintained at a single place of business by the same person, or if a person wishes to make an application that encompasses more than one place of business or location, a single application and fee shall be sufficient. For each application, a $100 fee shall be paid to the commissioner, and for each application for a change in pricing structure, a $10 fee shall be paid to the commissioner. If the $100 fee or the $10 fee is less than the costs incurred by the commissioner in approving or disapproving the application, the fee shall be equal to those costs.

Subd. 5. **Establishment by notice.** A bank, savings bank, savings association, or credit union organized under the laws of this state may, after completing the notification procedure required by this subdivision, establish and maintain one or more electronic financial terminals. The filing must be on forms provided by the commissioner. No electronic financial terminal may be established under sections 47.61 to 47.74 if disallowed by order of the commissioner within 15 days of the filing of a complete and acceptable notification of the intent to establish an electronic financial terminal.

Subd. 6. **Relocation; procedure.** An application or notification to relocate an existing financial terminal outside a radius of three miles measured in a straight line must be approved by, or a notification must be filed with, the commissioner of commerce as provided for in this section.

History: *1995 c 171 s 25; 1995 c 202 art 1 s 8; art 2 s 8–10*

47.64 OPERATION OF AN ELECTRONIC FINANCIAL TERMINAL.

Subdivision 1. (a) Any person establishing and maintaining an electronic financial terminal located separate and apart from a financial institution's principal office, branch, or detached facility for use by one type of financial institution shall, upon written request, make its services available to any requesting financial institution of similar type on a fair, equitable, and nondiscriminatory basis. A financial institution requesting use of an electronic financial terminal shall be permitted its use only if the financial institution conforms to reasonable technical operation standards which have been established by the electronic financial terminal provider. For purposes of this subdivision, the types of financial institutions are: (1) commercial banks and savings banks; (2) credit unions, industrial loan and thrift companies, and regulated lenders under chapter 56; and (3) savings associations. The services of an electronic financial terminal may be made available to any type of financial institution. After March 1, 1979, or earlier if determined by the commissioner to be technically feasible, an electronic financial terminal which is used by or made available to one type of financial institution shall be made available, upon request, to other types of financial institutions on a fair, equitable, and nondiscriminatory basis. The charges required to be paid to any person establishing and maintaining an electronic financial terminal shall be related to an equitable proportion of the direct costs of establishing, operating, and maintaining the terminal plus a reasonable return on those costs to the owner of the terminal. The charges may provide for amortization of development costs and capital expenditures over a reasonable period of time.

(b) Any person establishing and maintaining an electronic financial terminal located on and as a part of a financial institution's principal office, branch, detached facility, or lending office where deposits are not taken may, at the financial institution's option, (1) maintain the

electronic financial terminal for the exclusive use of the financial institution's customers; or (2) maintain the electronic financial terminal for the use of the financial institution's customers and make some or all of the electronic financial terminal's services available to any other requesting financial institution on a fair, equitable, and nondiscriminatory basis.

Subd. 2. If a person establishing and maintaining an electronic financial terminal makes it available for use by one or more federal savings associations or one or more federal credit unions and their customers, the federal savings association or federal credit union shall agree to grant to any financial institution use of all similar devices owned, maintained, or used by it. A state chartered financial institution or a national bank may participate upon contractual agreement in the use of a device which is capable of performing the functions of an electronic financial terminal and is owned or operated by one or more federal savings and loan associations or federal credit unions.

[For text of subds 3 to 5, see M.S.1994]

Subd. 6. A customer of a bank, savings bank, savings association, or credit union located outside Minnesota may, with the consent of the person establishing an electronic financial terminal, use the terminal for the withdrawal of funds and for the inquiry as to the balance in that customer's accounts maintained with that institution. Nothing in sections 47.61 to 47.74 shall be construed to authorize any person, other than a financial institution, to engage in business which is only legally authorized to be engaged in by financial institutions.

History: *1995 c 171 s 26; 1995 c 202 art 1 s 25*

47.65 TRANSMISSION FACILITY.

Subdivision 1. Any person may establish a transmission facility in this state upon approval by the commissioner pursuant to the provisions of this section, except that a financial institution may establish a transmission facility in this state after giving the commissioner written notice of its intent to do so, provided that the commissioner does not issue an order disallowing such establishment within 15 days after receiving a completed notice. Any such notice must be made using a form prescribed by the commissioner. A transmission facility which is used by, or made available to, any financial institution must be made available to all other financial institutions upon request of such financial institution and agreement by the financial institution to pay fees on a fair, equitable, and nondiscriminatory basis. A person requesting use of a transmission facility shall be permitted its use only if the person conforms to reasonable technical operating standards which have been established by the transmission facility provider. The charges required to be paid to any person establishing a transmission facility shall be related to an equitable proportion of the direct costs of establishing, operating and maintaining such facility plus a reasonable return on those costs to the owner of the facility. The charges may provide for amortization of development costs and capital expenditures over a reasonable period of time.

[For text of subds 1a and 1b, see M.S.1994]

Subd. 2. Before installation and operation, a transmission facility application by a person who is required to submit an application under subdivision 1 shall be submitted to the commissioner on a form provided by the commissioner which states:

(a) The location where the transmission facility will be operated;

(b) The ownership of the transmission facility;

(c) If applicable, the bonding or insurance company which has provided the bond for the transmission facility; and

(d) Such other information as the commissioner requires.

If the commissioner finds that (a) the facility will be properly and safely managed, (b) the applicant is financially sound, (c) there is a reasonable probability of success for the facility, (d) the proposed charges for making the services of the facility available to financial institutions are fair, equitable and nondiscriminatory, and (e) all information has been furnished by the applicant, the commissioner shall approve the application within 90 days. If the commissioner has not denied the application within 90 days of the submission of the application, the authorization shall be deemed granted. For each application, a $500 fee shall be paid to

the commissioner. For each application for change in pricing structure, a $50 fee shall be paid to the commissioner. If the $500 fee or the $50 fee is less than the costs incurred by the commissioner in approving or disapproving the application, the application fee shall be equal to those costs.

[For text of subd 3, see M.S.1994]

History: *1995 c 171 s 27,28*

47.67 ADVERTISING.

No advertisement by a person which relates to an electronic financial terminal may be inaccurate or misleading with respect to such a terminal. Except with respect to direct mailings by financial institutions to their customers, the advertising of rate of interest paid on accounts in connection with electronic financial terminals is prohibited. Any advertisement, either on or off the site of an electronic financial terminal, promoting the use or identifying the location of an electronic financial terminal, which identifies any financial institution, group or combination of financial institutions, or third parties as owning or providing for the use of its services is prohibited. The following shall be expressly permitted:

(a) a simple directory listing placed at the site of an electronic financial terminal identifying the particular financial institutions using its services;

(b) the use of a generic name, either on or off the site of an electronic financial terminal, which does not promote or identify any particular financial institution, group or combination of financial institutions, or any third parties;

(c) media advertising or direct mailing of information by a financial institution or retailer identifying locations of electronic financial terminals and promoting their usage;

(d) any advertising, whether on or off the site, relating to electronic financial terminals, or the services performed at the electronic financial terminals located on the premises of the main office, or any office or detached facility of any financial institution;

(e) a coupon or other promotional advertising that is printed upon the reverse side of the receipt or record of each transaction required under section 47.69, subdivision 6; and

(f) promotional advertising displayed on the electronic screen.

History: *1995 c 202 art 2 s 11*

47.69 CONSUMER PRIVACY.

[For text of subds 1 and 2, see M.S.1994]

Subd. 3. Every financial institution using an electronic financial terminal shall maintain reasonable procedures to minimize losses from unauthorized withdrawals from its customers' accounts by use of an electronic financial terminal. After a customer makes a bona fide deposit or payment at an electronic financial terminal and has received a receipt, any loss due to theft or other reason shall not be borne by the customer; provided, loss due to the nonpayment or dishonor of a check, or other order for payment, deposited at an electronic financial terminal shall be governed by the applicable provisions of chapter 336. A financial institution shall be liable for all unauthorized withdrawals unless the unauthorized withdrawal was due to the loss or theft of the customer machine readable card in which case the customer shall be liable, subject to a maximum liability of $50, for those unauthorized withdrawals made prior to the time the financial institution is notified of the loss or theft. The limitation on liability is effective only if the issuer is notified of unauthorized charges contained in a bill within 60 days of receipt of the bill by the person in whose name the card is issued. For purposes of this subdivision, "unauthorized withdrawal" means a withdrawal by a person other than the customer without actual authority to initiate the withdrawal and from which the customer receives no benefit. The term does not include any withdrawal that is: (1) initiated by a person who was furnished with the card by the customer, unless the customer has notified the financial institution involved that transfers by that person are no longer authorized; (2) initiated with fraudulent intent by the customer or any person acting in concert with the customer; or (3) initiated by the financial institution or its employee.

[For text of subd 4, see M.S.1994]

Subd. 5. Any customer of a financial institution may bring a civil action against any person violating any subdivision of this section in the district court in the county of the alleged violator's residence or principal place of business or in the county wherein the alleged violation occurred. Upon adverse adjudication, the defendant shall be liable for actual damages, or $500, whichever is greater, punitive damages when applicable, together with the court costs and reasonable attorneys' fees incurred by the plaintiff. The court may provide such equitable relief as it deems necessary or proper, including enjoining the defendant from further violations. If the unauthorized withdrawal was due to the negligent conduct or the intentional misconduct of an operator or person establishing and maintaining an electronic financial terminal other than a financial institution or agent of a financial institution, that operator or person establishing and maintaining an electronic financial terminal or its agent is liable and subject to a civil action under this subdivision by the financial institution considered liable under subdivision 3 that has reimbursed the customer.

[For text of subd 6, see M.S.1994]

History: *1995 c 202 art 2 s 12,13*

47.71 RULES.

[For text of subd 1, see M.S.1994]

Subd. 2. [Deleted, 1995 c 202 art 1 s 25]

47.72 CEASE AND DESIST ORDER; INJUNCTION; PENALTIES.

Subdivision 1. If the commissioner determines that a person, other than a national bank, federal savings association, or federal credit union, is violating or about to violate sections 47.61 to 47.74 or any rule promulgated thereunder or is engaged or about to engage in an unsafe, unsound, unfair, or discriminatory practice, the commissioner may:

(a) issue and serve on such person a cease and desist order which shall become effective at the time specified therein, and remain effective and enforceable as provided therein, except to the extent that it is stayed, modified, terminated, or set aside by action of the commissioner or review in court;

(b) serve notice on such person who has established and maintains a transmission facility or an electronic financial terminal of intent to revoke or suspend its approval to establish and maintain the transmission facility or electronic financial terminal.

When acting pursuant to this subdivision, the commissioner shall furnish the person against whom the action is being taken with a statement of alleged violations or practices.

[For text of subds 2 and 3, see M.S.1994]

History: *1995 c 202 art 1 s 25*

47.74 FEDERAL INSTITUTIONS; APPLICATION.

The provisions of sections 47.61 to 47.74 shall apply to national banks, federal savings associations, and federal credit unions to the extent permitted by federal law.

History: *1995 c 202 art 1 s 25*

47.75 LIMITED TRUSTEESHIP.

Subdivision 1. **Retirement accounts.** A commercial bank, savings bank, savings association, credit union, or industrial loan and thrift company may act as trustee or custodian under the Federal Self-Employed Individual Tax Retirement Act of 1962, as amended, and also under the Federal Employee Retirement Income Security Act of 1974, as amended. The trustee or custodian may accept the trust funds if the funds are invested only in savings accounts or time deposits in the commercial bank, savings bank, savings association, credit union, or industrial loan and thrift company. 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.

History: *1995 c 202 art 1 s 25*

47.76 REQUIRED SAVINGS ACCOUNT.

A federal or state chartered financial institution, including, but not limited to, a bank, savings association, savings bank, or credit union, shall offer to a Minnesota resident a savings account to promote thrift that has no service charge or fee, if such an account has an average monthly balance of more than $50.

History: *1995 c 202 art 1 s 25*

47.77 TRANSFER OF ACCOUNTS PROHIBITED; NOTICE ON CLOSING.

(a) No financial institution shall initiate a transfer of a deposit account to another deposit account bearing different identification information without sending at least 30 days prior notice to at least one of the deposit account holders at the last known address on file with the financial institution. If the new account is subject to different terms, the financial institution must obtain the written consent of at least one of the deposit account holders before the new terms become effective.

(b) No financial institution shall initiate a closure of a deposit account without first sending at least one of the deposit account holders a notice of intent to close the deposit account. The notice must be sent to the deposit account holder's last known address on file with the financial institution at least 30 days before the financial institution closes the deposit account; except that, if the financial institution has reasonable suspicion to believe that account is being used in connection with a check–related fraud or other crime or that funds will not be available to pay items drawn on the account, the notice may be sent the same day as the account is closed.

(c) As used in this section, the following terms have the meanings given them. "Deposit account" means a contract of deposit of funds between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit share account, and other like arrangement. "Financial institution" means any organization authorized to do business under state or federal laws relating to financial institutions, including, without limitation, banks and trust companies, savings banks, savings associations, industrial loan and thrift companies, and credit unions.

History: *1995 c 202 art 1 s 25*

47.78 CONTRACTS TO ACCEPT AND RECEIVE DEPOSITS–HONOR AND PAY WITHDRAWALS.

(a) Notwithstanding any other law to the contrary, a financial institution, the "customer institution," may contract with another financial institution, the "service institution," to grant the service institution the authority to render services to the customer institution's depositors, borrowers or other customers, provided notice of the proposed contract is given to the commissioner and the commissioner does not object to the contract within 30 days of the notice.

(b) For purposes of this section: "Financial institution" means a national banking association, federal savings association, or federal credit union having its main office in this state, or a bank, savings bank, savings association, or credit union established and operating under the laws of this state; and "services" means accepting and receiving deposits, honoring and paying withdrawals, issuing money orders, cashiers' checks, and travelers' checks or similar instruments, cashing checks or drafts, receiving loan payments, receiving or delivering cash and instruments and securities, disbursing loan proceeds by machine, and any other transactions authorized by section 47.63.

The term also includes a bank subsidiary of a bank holding company or affiliated savings association to the extent agency activities are permitted under section 18 of the Federal Deposit Insurance Act, United States Code, title 12, section 1828, as amended, effective September 29, 1995, and title I, Riegle–Neal Interstate Banking and Branching Efficiency Act of 1994.

(c) A contract entered into pursuant to this section may include authority to conduct transactions at or through any principal office, branch, or detached facility of either financial institution which is a party to the contract, and the service institution is not considered a branch of the customer institution for purposes of section 48.34.

History: *1995 c 202 art 4 s 6*

47.80 [Repealed, 1995 c 202 art 4 s 26]

47.81 [Repealed, 1995 c 202 art 4 s 26]

47.82 [Repealed, 1995 c 202 art 4 s 26]

47.83 [Repealed, 1995 c 202 art 4 s 26]

47.84 [Repealed, 1995 c 202 art 4 s 26]

47.85 [Repealed, 1995 c 202 art 4 s 26]