

CHAPTER 48

BANKS, TRUST COMPANIES

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48.01 DEFINITIONS.

[For text of subd 1, see M.S.1996]

Subd. 2. Banking institution. The term “banking institution” means any bank, trust company, bank and trust company, or savings bank which is now or may hereafter be organized under the laws of this state. For purposes of sections 48.38, 48.84, and 501B.151, subdivision 11, and to the extent permitted by federal law, “banking institution” includes any national banking association or affiliate exercising trust powers in this state.

[For text of subd 3, see M.S.1996]

History: 1997 c 157 s 20

48.09 DIVIDENDS; SURPLUS.

[For text of subds 1 and 2, see M.S.1996]

Subd. 3. Qualified subchapter S subsidiary. A bank that has met the eligibility requirements under title I, subtitle C of the Small Business Job Protection Act of 1996 or related state of Minnesota tax law may apply to the commissioner for approval of a plan and agreement for a distribution of earnings to the shareholder(s) of the bank on a basis other than a dividend under subdivisions 1 and 2. Approval of a plan of distribution under this subdivision may be rescinded by the commissioner upon 90-day prior notice to the bank. Failure to comply with this notice or qualification of a distribution under subdivisions 1 and 2 is considered a violation subject to the commissioner’s action under section 45.027 or 46.24.

History: 1997 c 157 s 21

48.15 SPECIAL POWERS.

[For text of subd 1, see M.S.1996]

Subd. 2. The commissioner of commerce may authorize banks, bank and trust companies, or trust companies organized under the laws of this state to engage in any banking or trust activity in which banks subject to the jurisdiction of the federal government may hereafter be authorized to engage by federal legislation, ruling, or regulation and those activities authorized in section 48.61, subdivision 7, paragraph (a), clause (3). The commissioner may not authorize state banks as defined by section 48.01, to engage in any activity prohibited by the laws of this state.

[For text of subds 2a and 3, see M.S.1996]

Subd. 4. Retirement and medical savings accounts. A state bank may act as trustee or custodian of a self-employed retirement plan under the Federal Self-Employed Individual Tax Retirement Act of 1962, as amended, of a medical savings account under the Federal Health Insurance Portability and Accountability Act of 1996, as amended, and of an individual retirement account under the Federal Employee Retirement Income Security Act of 1974, as amended, if the bank’s duties as trustee or custodian are essentially ministerial or custodial in nature and the funds are invested only (1) in the bank’s own savings or time deposits; or (2) in any other assets at the direction of the customer if the bank does not exercise

any investment discretion, invest the funds in collective investment funds administered by it, or provide any investment advice with respect to those account assets.

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

History: 1997 c 157 s 22,23

48.221 RESERVES.

A state bank or trust company shall maintain reserves in the form of liquid assets at a level reasonably necessary to meet anticipated withdrawals, commitments, and loan demand. Reserves shall be in cash, cash items in process of collection, short term obligations of or demand balances with other insured financial institutions in the United States and its territories, or short term, direct obligations of or guaranteed by the United States government. Obligations must mature within one year to be considered short term. The commissioner may prescribe the required amount of reserves in relation to liabilities for any individual state bank or trust company from time to time based upon examination findings or other reports relating to the bank or trust company that are available to the commissioner. Reserves for an individual state bank or trust company as prescribed by the commissioner pursuant to this section shall be enforced in accordance with sections 46.24 and 46.30 to 46.33.

History: 1997 c 187 art 3 s 8

48.24 RESTRICTIONS UPON TOTAL LIABILITIES TO A BANK.

[For text of subd 1, see M.S.1996]

Subd. 2. Loans not exceeding 25 percent of such capital and surplus made upon first mortgage security on improved real estate in any state in which the bank or a branch established under section 49.411 is located, or in any state adjoining a state in which the bank or a branch established under section 49.411 is located, shall not constitute a liability of the maker of the notes secured by such mortgages within the meaning of the foregoing provision limiting liability, but shall be an actual liability of the maker. These mortgage loans shall be limited to, and in no case exceed, 50 percent of the cash value of the security covered by the mortgage, except mortgage loans guaranteed as provided by the Servicemen's Readjustment Act of 1944, as now or hereafter amended, or for which there is a commitment to so guarantee or for which a conditional guarantee has been issued, which loans shall in no case exceed 60 percent of the cash value of the security covered by such mortgage. For the purposes of this subdivision, real estate is improved when substantial and permanent development or construction has contributed substantially to its value, and agricultural land is improved when farm crops are regularly raised on such land without further substantial improvements.

[For text of subs 3 to 8, see M.S.1996]

Subd. 9. **Right to act to avoid loss.** This section does not prohibit the bank from advancing funds that may be reasonably necessary to avoid loss on a loan or investment made subject to this section or an obligation created in good faith. The rights under this subdivision are in addition to and not inconsistent with section 48.21.

History: 1997 c 157 s 24,25

48.476 REPRESENTATIVE TRUST OFFICE.

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

(a) "Representative trust office" means an office at which a trust company or bank with trust powers has been authorized by the commissioner to engage in a trust business other than acting as a fiduciary.

(b) "Acting as a fiduciary" means to:

(1) accept or execute trusts, including to:

(i) act as trustee under a written agreement;

(ii) receive money or other property in its capacity as a trustee for investment in real or personal property;

(iii) act as trustee and perform the fiduciary duties committed or transferred to it by order of a court of competent jurisdiction;

(iv) act as trustee of the estate of a deceased person; or

(v) act as trustee for a minor or incapacitated person;

(2) administer in any other fiduciary capacity real or personal property; or

(3) act according to order of a court of competent jurisdiction as executor or administrator of the estate of a deceased person or as a guardian or conservator for a minor or incapacitated person.

Subd. 2. Authority for representative trust offices; prior written notice. (a) A state trust institution may establish or acquire and maintain representative trust offices anywhere in this state. A state trust institution desiring to establish or acquire and maintain such an office shall file a written notice with the commissioner setting forth the name of the state trust institution and the location of the proposed additional office and furnish a copy of the resolution adopted by the board authorizing the additional office.

(b) The state trust institution may begin business at the additional office on the 31st day after the date the commissioner receives the notice, unless the commissioner specifies an earlier or later date.

(c) The 30-day period of review may be extended by the commissioner on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the state trust institution may establish the additional office only on prior written approval by the commissioner.

(d) The commissioner may deny approval of the additional office if the commissioner finds that the state trust institution lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office would be contrary to the public interest.

Subd. 3. Authority for out-of-state trust offices; prior written notice. (a) A state trust institution may establish and maintain a representative trust office or acquire and maintain an office in a state other than this state. A state trust institution desiring to establish or acquire and maintain an office in another state under this section shall file a notice on a form prescribed by the commissioner, which shall set forth the name of the state trust institution, the location of the proposed office, and whether the laws of the jurisdiction where the office will be located permit the office to be maintained by the state trust institution; and furnish a copy of the resolution adopted by the board authorizing the out-of-state office.

(b) The state trust institution may begin business at the additional office on the 31st day after the date the commissioner receives the notice, unless the commissioner specifies an earlier or later date.

(c) The 30-day period of review may be extended by the commissioner on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the state trust institution may establish the additional office only on prior written approval by the commissioner.

(d) The commissioner may deny approval of the additional office if the commissioner finds that the state trust institution lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office would be contrary to the public interest. In acting on the notice, the commissioner shall consider the views of the appropriate bank supervisory agencies.

History: 1997 c 157 s 26

48.512 PROCEDURES FOR OPENING CHECKING ACCOUNTS.

[For text of subs 1 to 4, see M.S.1996]

Subd. 4a. **Identification not required for debit card transactions.** The identification requirements of subdivision 4 do not apply to a transaction account that is accessible exclusively by debit card. A debit card activates a transaction account at a financial intermediary by means of an electronic information processing device and contemporaneously completes the debt to the account only on the condition that funds are available and confirmed.

[For text of subs 5 to 9, see M.S.1996]

History: 1997 c 157 s 27

48.61 AUTHORIZED INVESTMENTS FOR STATE BANKS AND TRUST COMPANIES.

[For text of subs 1 to 6, see M.S.1996]

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

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

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

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

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

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

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

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

[For text of subs 8 and 9, see M.S.1996]

Subd. 10. **Subsidiaries organized for purposes of corporate reorganization.** A subsidiary may be organized solely for purposes of liquidating assets in a reorganization subject to the following conditions:

(1) the subsidiary must be a bank holding company whose assets and liabilities and subsidiary bank control have been removed; and

(2) the operations of the subsidiary must be limited to the time period reasonably related to the completion of the reorganization.

History: 1997 c 157 s 28,29