

CHAPTER 47

FINANCIAL CORPORATIONS

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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 banking office, 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 100 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.

[For text of subs 2 to 4, see M.S.2004]

History: 2005 c 118 s 1

47.12 FINANCIAL CORPORATIONS.

Subdivision 1. **Purposes.** 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 clearinghouses, 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 clearinghouse 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.

Subd. 2. **Organization.** (a) Three or more persons may form a corporation for any of the purposes specified in this section by applying to the Department of Commerce and complying with all applicable organizational requirements and the conditions set out in clauses (1) to (7). The incorporators must subscribe a certificate specifying:

(1) the corporation's name, which must distinguish it from all other corporations authorized to do business in this state, and must contain the word "company," "corporation," "bank," "trust," "association," or "incorporated";

(2) the general nature of the corporation's business and its principal place of business;

(3) the period of its duration, if limited;

(4) the names and places of residence of the incorporators;

(5) the board in which the management of the corporation will be vested, the date of the annual meeting at which it will be elected, and the names and addresses of the board members until the first election, a majority of whom must always be residents of this state or reside within 50 miles of the main office of the corporation;

(6) the amount of capital stock, if any, how the capital stock is to be paid in, the number of shares into which it is to be divided, and the par value of each share; and, if there is to be more than one class, a description and the terms of issue of each class, and the method of voting on each class; and

(7) the highest amount of indebtedness or liability to which the corporation will at any time be subject. However, a corporation subject to section 48.27 may show its highest amount of indebtedness to be 30 times the amount of its capital and actual surplus.

The certificate may contain any other lawful provision defining and regulating the powers and business of the corporation, its officers, directors, trustees, members, and stockholders.

(b) A person doing business in this state may contest the subsequent registration of a name with the Office of the Secretary of State as provided in section 5.22.

Subd. 3. **Powers.** (a) A corporation formed under this chapter may:

(1) be known by its corporate name for the time stated in its certificate of incorporation;

(2) sue and be sued in any court;

(3) have, use, and alter a common seal, but a seal must not be required;

(4) acquire, by purchase or otherwise, and hold, enjoy, improve, lease, encumber, and convey all real and personal property necessary for the purposes of its organization, subject to the limitations hereafter declared;

(5) elect or appoint in any manner it determines all necessary or proper officers, agents, boards, and committees, to fix their compensation, and to define their powers and duties;

(6) make and amend consistently with law bylaws providing for the management of its property and the regulation and government of its affairs; and

(7) wind up and liquidate its business in the manner provided by law.

(b) A corporation formed under this chapter shall indemnify persons against certain expenses and liabilities only as provided in section 302A.521.

History: 2005 c 69 art 1 s 1

NOTE: The amendment to this section by Laws 2005, chapter 69, article 1, section 1, is effective August 1, 2006. Laws 2005, chapter 69, article 4, section 2.

47.13 APPLICATION OF BUSINESS CORPORATION ACT.

The provisions of chapter 302A, other than sections 302A.471, 302A.473, 302A.671, 302A.673, 302A.675, and 302A.701 to 302A.791, apply to corporations formed for any of the purposes specified in section 47.12, except:

(1) that section 302A.215, subdivisions 2 and 3, only apply if the corporation's certificate of incorporation provides cumulative voting; and

(2) to the extent those provisions are inconsistent with any of the provisions of this chapter and chapters 46 to 50.

History: 2005 c 69 art 1 s 2

NOTE: This section, as added by Laws 2005, chapter 69, article 1, section 2, is effective August 1, 2006. Laws 2005, chapter 69, article 4, section 2.

47.15 BYLAWS; STATEMENTS.

Subdivision 1. **Adoption of bylaws.** Initial bylaws may be adopted pursuant to section 302A.171 by the incorporators. If not adopted by the incorporators, the bylaws must be adopted by the first board. Unless reserved by the articles to the shareholders, the power to adopt, amend, or repeal the bylaws is vested in the board. The power of the board is subject to the power of the shareholders, exercisable in the manner provided in section 302A.181, subdivision 3, to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board. The bylaws may be amended by the shareholders at a regular or special meeting called for that purpose. After the adoption of the initial bylaws, the board shall not adopt, amend, or repeal a bylaw fixing a quorum for meetings of shareholders, prescribing procedures for removing directors or filling vacancies in the board, or fixing the number of directors or their classifications, qualifications, or terms of office, but may adopt or amend a bylaw to increase the number of directors.

Subd. 2. **Filing.** Within 90 days after the adoption of bylaws or any amendment thereof, a certified copy of the same shall be filed with the commissioner of commerce.

History: 2005 c 69 art 1 s 3

NOTE: The amendment to this section by Laws 2005, chapter 69, article 1, section 3, is effective August 1, 2006. Laws 2005, chapter 69, article 4, section 2.

47.16 CERTIFICATION BY COMMISSIONER.

Subdivision 1. **Filing.** The certificate of a corporation must be filed for record with the secretary of state. If the secretary of state finds that it conforms to law and that the required fee has been paid, the secretary of state must record it and certify that fact on it. The secretary of state may not accept a certificate for filing unless the certificate also contains the endorsement of the commissioner of commerce.

Subd. 2. **Certificate of authority.** If the commissioner of commerce is satisfied that the corporation has been organized for legitimate purposes, and under such conditions as to merit and have public confidence, and that all provisions of law applicable to every branch of business in which, by the terms of its certificate, it is authorized to engage, have been complied with, the commissioner shall so certify. When the original certificate and the certificate of incorporation from the secretary of state is filed with the commissioner of commerce, the commissioner shall, within 60 days thereafter, execute and deliver to it a certificate of authority.

History: 2005 c 69 art 1 s 4

NOTE: The amendment to this section by Laws 2005, chapter 69, article 1, section 4, is effective August 1, 2006. Laws 2005, chapter 69, article 4, section 2.

47.171 CERTIFICATES OF INCORPORATION, AMENDMENT; EXCEPTIONS.

The certificate of incorporation of a financial corporation organized and existing under the laws of this state may be amended to change its name; to increase or decrease its capital stock; to change the number and, subject to section 48.02, the par value of the shares of its capital stock; to eliminate or limit a director's personal liability; or in respect to another matter which an original certificate of a corporation of the same kind might lawfully have contained. The change must be accomplished by the adoption of a resolution specifying the proposed amendment at a regular meeting or at a special meeting called for that expressly stated purpose, in either of the following ways:

- (1) by a majority vote of all its shares; or

(2) by a majority vote of its entire board of directors within one year after authorization by specific resolution duly adopted at a meeting of shareholders. The resolution must be included in a certificate duly executed by its president and secretary, or other presiding and recording officers, and approved and filed in the manner prescribed for the execution, approval, and filing of a like original certificate.

History: 2005 c 69 art 1 s 5

NOTE: This section, as added by Laws 2005, chapter 69, article 1, section 5, is effective August 1, 2006. Laws 2005, chapter 69, article 4, section 2.

47.172 RESTATED CERTIFICATES OF INCORPORATION.

Subdivision 1. Procedure. A financial corporation may by action taken in the same manner required for amendment of certificates of incorporation adopt a restated certificate of incorporation consisting of the certificate of incorporation as amended to date. The restated certificate of incorporation may be adopted in connection with an amendment to the certificate of incorporation. The restated certificate of incorporation must contain all the statements required by section 47.12, subdivision 2, to be included in the original certificate of incorporation except that: in lieu of setting forth the names and addresses of the first board of directors, the restated certificate of incorporation must include the names and addresses of the directors at the time of the adoption of the restated certificate of incorporation; and no statement need be made with respect to the names and addresses of the incorporators.

Subd. 2. Effect. The certificate to be filed to accomplish a restated certificate of incorporation must be entitled "restated certificate of incorporation of (name of financial corporation)" and must contain a statement that the restated certificate supersedes and takes the place of the existing certificate of incorporation and all amendments to it. The restated certificate of incorporation when executed, filed and recorded in the manner prescribed for certificate of amendment supersedes and takes the place of an existing certificate of incorporation and amendments to it. The secretary of state upon request must certify the restated certificate of incorporation.

History: 2005 c 69 art 1 s 6

NOTE: This section, as added by Laws 2005, chapter 69, article 1, section 6, is effective August 1, 2006. Laws 2005, chapter 69, article 4, section 2.

47.59 FINANCIAL INSTITUTION CREDIT EXTENSION MAXIMUM RATES.

[For text of subd 1, see M.S.2004]

Subd. 2. Application. 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 to 59A.15, 334.01, 334.011, 334.012, 334.022, 334.06, and 334.061 to 334.19 may, but need not, be made according to those sections in lieu of the authority set forth in this section to the extent those sections authorize the financial institution to make extensions of credit or purchase extensions of credit under those sections. If a financial institution elects to make an extension of credit or to purchase an extension of credit under those other sections, the extension of credit or the purchase of an extension of credit is subject to those sections and not this section, except this subdivision, and except as expressly provided in those sections. A financial institution may also charge an organization a rate of interest and any charges agreed to by the organization and may calculate and collect finance and other charges in any manner agreed to by that organization. Except for extensions of credit a financial institution elects to make under section 334.01, 334.011, 334.012, 334.022, 334.06, or 334.061 to 334.19, chapter 334 does not apply to extensions of credit made according to this section or the sections listed in this subdivision. This subdivision does not authorize a financial institution to extend credit or purchase an extension of credit under any of the sections listed in this subdivision if the financial institution is not authorized to do so under those sections. A financial institution extending credit under any of the sections listed in this subdivision shall specify in the promissory note, contract, or other loan document the section under which the extension of credit is made.

[For text of subds 3 to 14, see M.S.2004]

History: 2005 c 10 art 1 s 13

47.75 LIMITED TRUSTEESHIP.

Subdivision 1. **Retirement, health savings, and medical savings accounts.** (a) A commercial bank, savings bank, savings association, credit union, or industrial loan and thrift company may act as trustee or custodian:

(1) under the Federal Self-Employed Individual Tax Retirement Act of 1962, as amended;

(2) of a medical savings account under the Federal Health Insurance Portability and Accountability Act of 1996, as amended;

(3) of a health savings account under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, as amended; and

(4) under the Federal Employee Retirement Income Security Act of 1974, as amended.

(b) 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: 2005 c 118 s 2