CHAPTER 47

FINANCIAL CORPORATIONS

GENERAL REGULATION

47.01 DEFINITIONS.

Subdivision 1. **Terms.** Unless the language or context clearly indicates that a different meaning is intended, the following terms, for the purposes of this chapter, shall be given the meanings ascribed to them.

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.

Subd. 4. **Trust company.** A trust company is a corporation under like control authorized, within prescribed limitations, to act as a safe deposit company, trustee or representative for or under any court, public or private corporation, or individual, and as surety or guarantor.

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: *(7635) RL s 2967; 1982 c 473 s 4; 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.

Subd. 2. **Saturday; Monday following holiday.** Any financial institution in the state may remain closed on any Saturday and on any Monday next following a Sunday on which falls a holiday designated by any law of this state. Any Saturday or any Monday on which any financial institution remains closed is a holiday and not a business day with respect to that institution. Any act which by law or contract may be performed on any such Saturday or Monday, at, by, or with respect to any such financial institution remaining closed on such day may be performed on the next succeeding regular business day. No liability or loss of rights on the part of any person or financial institution shall result from such closing.

Subd. 3. **May remain open on Mondays or holidays.** Any financial institution in the state may remain open for the transaction of business on any such Monday or on any holiday designated by any law of this state, and on any such day any financial institution in this state may accept, certify or pay checks, drafts or other instruments, may charge the same against the accounts of customers, and may receive payment of notes, drafts and other instruments, all to the same extent and with the same legal effect as if such day were a regular business day, but nothing herein contained shall affect the due date of any time instrument.

Subd. 4. **Permissive closing on Good Friday.** A financial institution may close for up to three hours on Good Friday. The financial institution shall post on its premises a written notice of the closing.

Subd. 5. **Permissive closing on December 24 or 31.** A financial institution may close at noon on December 24 or on December 31. The financial institution shall post on its premises a written notice of the closing.

History: *1949 c 38 s 1; 1951 c 128 s 1; 1953 c 61 s 1; 1953 c 445 s 1; 1955 c 9 s 1; 1955 c 202 s 1; 1955 c 229 s 1; 1955 c 631 s 1; 1955 c 787 s 1; 1981 c 220 s 5; 1Sp1985 c 13 s 178; 1989 c 166 s 2; 1992 c 587 art 1 s 6; 1995 c 171 s 6; 2003 c 51 s 3*

47.0151 EMERGENCY SUSPENSION OF BUSINESS, DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 47.0151 to 47.0155, the terms defined in this section have the meanings given them, unless the context requires otherwise.

Subd. 2. **Commissioner.** "Commissioner" means the commissioner of commerce.

Subd. 3. **Financial institution.** "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.

Subd. 4. **Officer.** "Officer" means the person designated by the board of directors, board of trustees, or other governing body of a financial institution, to act for the financial institution in carrying out the provisions of sections 47.0151 to 47.0155 or, in the absence of a designation or of the officer or officers designated, the president or any other officer currently in charge of the operations of the financial institution or of the office or offices in question.

Subd. 5. **Office.** "Office" means any place at which a financial institution transacts its business or conducts operations related to its business.

Subd. 6. **Emergency.** "Emergency" means any condition or occurrence which may interfere physically with the conduct of normal business operations at one or more or all of the offices of a financial institution and which poses an imminent or existing threat to the safety or security of persons or property, or both. An emergency includes but is not limited to fire; flood; earthquake; hurricane; wind, rain, or snow storms; labor disputes and strikes; power failures; transportation failures; interruption of communication facilities; shortages of fuel, housing, food, transportation or labor; robbery or attempted robbery; actual or threatened enemy attack; epidemics or other catastrophes, riots; civil commotions; and other acts of lawlessness or violence.

History: *1971 c 318 s 1; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1Sp1985 c 13 s 179; 1995 c 202 art 1 sec 25*

47.0152 POWER OF COMMISSIONER.

Whenever the commissioner is of the opinion that an emergency exists, or is impending, in the state or in a part of it, the commissioner may, by proclamation, authorize financial institutions located in the affected area to close any or all of their offices. In addition, if the commissioner is of the opinion that an emergency exists, or is impending, which affects, or may affect, a particular financial institution or a particular office of it, but not financial institutions located in the area generally, the commissioner may authorize the particular financial institution or office affected, to close or to temporarily relocate. The office closed shall remain closed until the commissioner proclaims that the emergency has ended, or until an earlier time when the officers of the financial institution determine that an office, closed because of the emergency, should reopen, and, in either event, for the further time reasonably necessary to reopen. The provisions of section 47.101 shall be waived for a temporary location established due to an emergency.

History: *1971 c 318 s 2; 1Sp1985 c 13 s 180; 1986 c 444*

47.0153 POWERS OF OFFICERS.

Subdivision 1. **Emergency closings.** When the officers of a financial institution are of the opinion that an emergency exists, or is impending, which affects, or may affect, a financial institution's offices, they shall have the authority, in the reasonable exercise of their discretion, to determine not to open any of its offices on any business day or, if having opened, to

close an office during the continuation of the emergency, even if the commissioner does not issue a proclamation of emergency. The office closed shall remain closed until the time that the officers determine the emergency has ended, and for the further time reasonably necessary to reopen. No financial institution office shall remain closed for more than 48 consecutive hours, excluding other legal holidays, without the prior approval of the commissioner.

Subd. 2. **Special observance closings.** The officers of a financial institution may close the financial institution or one or more of the financial institution's offices on a day designated, by the President of the United States or the governor as a day of national mourning, rejoicing, or other special observance.

History: *1971 c 318 s 3; 1994 c 382 s 2*

47.0154 NOTICE TO COMMISSIONER.

A financial institution closing an office or offices pursuant to the authority granted under section 47.0153, subdivision 1, shall give as prompt notice of its action, as conditions will permit and by any means available, to the commissioner.

History: *1971 c 318 s 4; 1994 c 382 s 3*

47.0155 EFFECT OF CLOSING.

Any day on which a financial institution, or any of its offices, is closed during all or part of its normal business hours pursuant to sections 47.0151 to 47.0155 shall be, with respect to the financial institution or, if not all of its offices are closed, then with respect to the office which is closed, a legal holiday for all purposes with respect to any financial institution business of any character. No liability, or loss of rights of any kind, on the part of any financial institution, or director, officer, or employee thereof, shall accrue or result by virtue of any closing authorized by sections 47.0151 to 47.0155.

The provisions of sections 47.0151 to 47.0155 shall be construed and applied as being in addition to, and not in substitution for or limitation of, any other law of this state or of the United States, authorizing the closing of a financial institution or excusing the delay by a financial institution in the performance of its duties and obligations because of emergencies or conditions beyond the financial institution's control, or otherwise.

History: *1971 c 318 s 5*

47.0156 CLOSING EFFECTING A PERMANENT CESSATION OF BUSINESS.

The permanent closing of a financial institution as defined in section 47.015 or 47.0151 for purposes, or with a result, other than authorized in sections 47.015 to 47.0155 is unlawful unless at least 60 days' written notice is given to the commissioner.

History: *1Sp1985 c 13 s 181; 1993 c 257 s 6; 1999 c 151 s 6*

47.016 DISPOSITION OF CREDIT INSURANCE INCOME.

Subdivision 1. **Definitions.** (a) For the purpose of this section, the following terms have the meanings given them.

(b) "Credit insurance" means credit life, accident and health insurance, and credit involuntary unemployment insurance as defined in section 62B.02.

(c) "Officer," "director," "employee," and "shareholder" include the spouse and minor children of the officer, director, employee, or shareholder.

(d) "Interest" includes ownership through a spouse or minor children; ownership through a broker, nominee, or agent; and ownership through a corporation, partnership, association, joint venture, or proprietorship.

(e) "Financial institution" means any person who lends money and sells credit insurance to the borrower.

Subd. 2. **Scope and purpose.** This section applies to sales of credit insurance by employees, officers, directors, and shareholders of a financial institution and by corporations,

partnerships, associations, and other entities in which these persons have an interest. The purposes of this section are (1) to prohibit employees, officers, directors, members, and shareholders of financial institutions from benefiting personally on the sale of credit insurance to loan customers and (2) to encourage marketing of credit insurance through the use of financial facilities only under arrangements which assure that employees, officers, directors, and shareholders do not receive benefits not shared with all stockholders or members of the financial institution.

Subd. 3. **Distribution of credit insurance income.** No employee, officer, director, or shareholder of a financial institution, nor a corporation, partnership, association, or other entity in which these persons have an interest, may retain commissions or other income from the sale of credit insurance in connection with a loan made by the financial institution. All such income received by these persons or by a corporation, partnership, association, or other entity in which these persons have an interest, must be turned over to the financial institution. Nothing in this section prohibits a financial institution from receiving the income directly in the form of commissions or as compensation for use of its premises, personnel, and good will.

History: *1983 c 250 s 8; 1993 c 343 s 1*

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: *(7636) 1907 c 111 s 1; 1909 c 103 s 1; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1995 c 171 s 7*

47.03 USE OF CERTAIN WORDS PERMITTED.

Subdivision 1. **Bank, banker, banking.** No individual, partnership, unincorporated association, or corporation, except as specifically authorized by the laws of this state, who does not hold an effective certificate of authority, issued by the commissioner of commerce, to engage in the business of banking and is not subject to and complying with all the provisions of law relating to banks shall engage in such business, or make use of the words "bank," "banker," or "banking," or any derivative or compound of any such words, or any word or words in a foreign language having the same or a similar meaning, in its business name or in any sign, symbol, token, letterhead, circular, advertisement, or any other written or printed matter, in such manner as might indicate to any person that such individual, partnership, unincorporated association, or corporation is authorized to engage in the business of banking. This subdivision shall not apply to any holding company affiliate or affiliate as defined in the Act of Congress, known as the Banking Act of 1933, nor to any insurance company authorized to engage in the insurance business in the state of Minnesota.

Subd. 2. **Violations.** Every individual, partnership, unincorporated association, or corporation which shall violate any of the provisions of this section shall forfeit to the state the sum of not to exceed $100 for each day the violation shall continue, as determined by the court, to be recovered in a civil action to be brought by the attorney general in the name of the state at the request of the commissioner of commerce, and may be enjoined from any further violation in an action brought in the name of the state for that purpose.

History: *(7637) 1907 c 111 s 2; 1945 c 133 s 1; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92*

47.04 [Repealed, 1945 c 133 s 3]

47.05 [Repealed, 1945 c 133 s 3]

47.07 COMPANIES SUBJECT TO PROVISIONS.

All companies, associations, and corporations organized under any law of this state, other than those relating to the organization of banks and trust companies, which assume or exercise any of the functions, powers, or privileges conferred upon banks or trust companies under any law of this state, shall be subject to all the limitations, penalties, and requirements incident or pertaining to these functions, powers, or privileges; and the stockholders or persons forming the same shall be liable in the same manner and to the same extent as if these companies, associations, and corporations were organized as banks or trust companies under this chapter.

History: *(7655) RL s 2982*

47.08 ARTICLES OF INCORPORATION FILED WITH COMMISSIONER.

All persons proposing to incorporate and organize any financial institution, whether defined or described as such by the laws of the state, shall, before doing any business in the state as a corporation, and before filing their articles of incorporation with the secretary of state or with any other officer with whom the law requires such articles to be filed or recorded, file a copy of such articles with the commissioner of commerce.

History: *(7656) 1911 c 323 s 1; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92*

47.09 ADVERTISEMENTS.

No such financial institution shall, directly, indirectly, or by inference of any kind, display, represent, hold out or otherwise advertise as its capital, resources, assets or financial strength or ability or availability therefor, any capital, resources, or assets of any other financial institution or institutions, whether or not such other financial institution or institutions are in any way connected with such financial institution through or by way of a holding company or other corporation or similar structure; nor shall any such financial institution, the capital stock of which is, in whole or in part, controlled or owned by any such holding company, other corporation or similar structure, display, represent, hold out or otherwise advertise that it is affiliated with or has any other connection with such company, corporation or similar structure other than that which truly and actually exists; and no such financial institution shall advertise as its capital any amount other or greater than the amount of actual paid–in capital, which it shall have at the time of the appearance of such advertisement, and no such financial institution shall advertise in any way the aggregate or individual responsibility or financial worth of its stockholders, or in any manner seek to convey the impression that the financial resources of its stockholders above the limit provided by law are available for the purpose of meeting its liabilities.

History: *(7657) 1911 c 323 s 2; 1925 c 169; 1931 c 380*

47.095 [Repealed, 1995 c 171 s 70]

47.096 TIME DEPOSITS; NOTICE OF AUTOMATIC RENEWAL.

If a deposit for a term of one year or more, including a savings certificate and a certificate of deposit, is automatically renewable by its own terms if not redeemed at a specified redemption date, the financial corporation receiving the deposit shall give mailed written notice to the owner or holder of the deposit not less than 30 days prior to the redemption date. The written notice shall be sent to the last known address of the owner or holder as filed with the financial corporation, shall state the date of the automatic renewal and shall state any penalty diminution of interest or other consequences to the owner or holder arising out of the failure to redeem prior to automatic renewal. In lieu of complying with the provisions of this section, a financial corporation may comply with the requirements of the Federal Truth in Savings Act and regulations, notwithstanding whether or not that act or those regulations apply to the deposit.

History: *1976 c 187 s 1; 1993 c 257 s 7*

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.

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 company, 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.

Subd. 4. **Approval of certain insider agreements.** No bank, trust company, savings bank, or savings association may purchase, sell, or lease real property, personal property, improvements or equipment of a value of $25,000 or more if the purchaser, seller, lessor, or lessee other than the bank, trust company, savings bank, or savings association has an existing direct or indirect interest in the institution without prior written approval by the commissioner. Each bank, trust company, savings bank, or savings association must maintain documentation of transactions with interested parties, including personal property leases and purchases or sales of under $25,000, which demonstrates the commercial reasonableness and fair market value of the transaction.

History: *(7648) RL s 2976; 1941 c 37 s 1; 1955 c 104 s 1; 1957 c 601 s 4; 1982 c 473 s 5; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1987 c 349 art 1 s 5,6; 1992 c 587 art 1 s 7; 1995 c 171 s 8; 1995 c 202 art 1 s 25; art 2 s 2; 1996 c 414 art 1 s 6; 2001 c 56 s 1; 2005 c 118 s 1*

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.

Subd. 2. **Banking institutions; certain relocations, applications, notice, approval.** A banking institution defined in section 48.01, subdivision 2, desiring to relocate its main office within the lesser of a radius of three miles measured in a straight line or the municipali-

ty, as defined in section 47.51, in which it is located shall notify the commissioner of commerce in a form prescribed by the commissioner of commerce. The applicant shall publish once in a form prescribed by the commissioner a notice of the relocation in a qualified newspaper published in the municipality where the banking institution is located. If there are no such newspapers, then notice shall be published in qualified newspapers likely to give notice in the municipality. The applicant shall cause the notice to be publicly displayed in its lobby.

Subd. 3. **Applications to Department of Commerce.** An application by a banking institution to relocate its main office other than those provided for in subdivision 2 shall be accompanied by a filing fee of $3,000 payable to the commissioner of commerce and approved or disapproved by the commissioner of commerce as provided for in sections 46.041 and 46.044.

History: *1982 c 473 s 6; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1985 c 248 s 13,14; 1989 c 166 s 3; 1992 c 587 art 1 s 8; 1995 c 202 art 1 s 25; 1996 c 414 art 3 s 1,2; 1999 c 151 s 7; 2003 c 51 s 4*

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: *(7644) RL s 2972; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444; 1995 c 202 art 1 s 5*

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: *(7441) RL s 2847; 1965 c 171 s 3; 1995 c 171 s 9; 2005 c 69 art 1 s 1*

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*

47.14 CERTIFICATE; HOW ACCOMPANIED.

The certificate of incorporation, when presented to the commissioner of commerce, shall be accompanied, in the case of a bank, with the certificate of a solvent bank in this state of the deposit therein, in cash, to the credit of the proposed bank, and payable upon its order when countersigned by the commissioner of commerce, of an amount equal to its capital stock, surplus and undivided profits. In the case of a reorganization of a former national bank, it shall also be accompanied with the written consent of the holders of a majority of its former

capital stock. In the case of a savings bank, it shall be accompanied with proof of four weeks' published notice of the intention of the incorporators to organize the same, specifying its proposed name and location, and the names of the proposed incorporators, and that a majority thereof reside in the county of its proposed location, and a sworn declaration by each proposed trustee that the trustee will perform the duties as such to the best of that person's ability, according to law, with proof of the record of such declaration with the county recorder; and if there is a savings bank organized and doing business in such county, a copy of such notice shall be served by mail on such bank at least 15 days before the filing of such certificate.

History: *(7645) RL s 2973; 1965 c 171 s 4; 1976 c 181 s 2; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444*

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: *(7647) RL s 2975; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 2005 c 69 art 1 s 3*

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. [Repealed, 1982 c 473 s 30]

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: *(7646) RL s 2974; 1955 c 820 s 11; 1980 c 541 s 1; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444; 1989 c 166 s 4; 2005 c 69 art 1 s 4*

47.17 [Repealed, 1981 c 220 s 18]

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*

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*

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: *(7658–1) 1933 c 101 s 1; 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: *(7658–2) 1933 c 101 s 2; 1995 c 202 art 1 s 25*

LENDING AUTHORITY

47.20 LENDING AUTHORITY OF FINANCIAL INSTITUTIONS.

Subdivision 1. **General authority.** 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 any successor, 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 or any successor pursuant to the Consolidated Farm and Rural Development Act, Public Law 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 or any successor 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; including reverse mortgage loans, notwithstanding anything in subdivision 4b, sections 47.58 and 334.01, and chapter 56 to the contrary; 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.

Subd. 2. **Definitions.** For the purposes of this section the terms defined in this subdivision have the meanings given them:

(1) "Actual closing costs" mean reasonable charges for or sums paid for the following, whether or not retained by the mortgagee or lender:

(a) Any insurance premiums including but not limited to premiums for title insurance, fire and extended coverage insurance, flood insurance, and private mortgage insurance, but excluding any charges or sums retained by the mortgagee or lender as self–insured retention.

(b) Abstracting, title examination and search, and examination of public records.

(c) The preparation and recording of any or all documents required by law or custom for closing a conventional or cooperative apartment loan.

(d) Appraisal and survey of real property securing a conventional loan or real property owned by a cooperative apartment corporation of which a share or shares of stock or a membership certificate or certificates are to secure a cooperative apartment loan.

(e) A single service charge, which includes any consideration, not otherwise specified herein as an "actual closing cost" paid by the borrower and received and retained by the lender for or related to the acquisition, making, refinancing or modification of a conventional or cooperative apartment loan, and also includes any consideration received by the lender for making a borrower's interest rate commitment or for making a borrower's loan commitment, whether or not an actual loan follows the commitment. The term service charge does not include forward commitment fees. The service charge shall not exceed one percent of the original bona fide principal amount of the conventional or cooperative apartment loan, except that in the case of a construction loan, the service charge shall not exceed two percent of the original bona fide principal amount of the loan. That portion of the service charge imposed because the loan is a construction loan shall be itemized and a copy of the itemization furnished the borrower. A lender shall not collect from a borrower the additional one percent service charge permitted for a construction loan if it does not perform the service for which the charge is imposed or if third parties perform and charge the borrower for the service for which the lender has imposed the charge.

(f) Charges and fees necessary for or related to the transfer of real or personal property securing a conventional or cooperative apartment loan or the closing of a conventional or cooperative apartment loan paid by the borrower and received by any party other than the lender.

(2) "Contract for deed" means an executory contract for the conveyance of real estate, the original principal amount of which is less than $100,000. A commitment for a contract for deed shall include an executed purchase agreement or earnest money contract wherein the seller agrees to finance any part or all of the purchase price by a contract for deed.

(3) "Conventional loan" means a loan or advance of credit, other than a loan or advance of credit made by a credit union or made pursuant to section 334.011, to a noncorporate borrower in an original principal amount of less than $100,000, secured by a mortgage upon real property containing one or more residential units or upon which at the time the loan is made it is intended that one or more residential units are to be constructed, and which is not 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, and which is not made pursuant to the authority granted in subdivision 1, clause (3) or (4). The term mortgage does not include contracts for deed or installment land contracts.

(4) "Cooperative apartment loan" means a loan or advance of credit, other than a loan or advance of credit made by a credit union or made pursuant to section 334.011, to a noncorporate borrower in an original principal amount of less than $100,000, secured by a security interest on a share or shares of stock or a membership certificate or certificates issued to a stockholder or member by a cooperative apartment corporation, which may be accompanied by an assignment by way of security of the borrower's interest in the proprietary lease or occupancy agreement in property issued by the cooperative apartment corporation and which is not 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.

(5) "Cooperative apartment corporation" means a corporation or cooperative organized under chapter 308A or 317A, the shareholders or members of which are entitled, solely by reason of their ownership of stock or membership certificates in the corporation or association, to occupy one or more residential units in a building owned or leased by the corporation or association.

(6) "Forward commitment fee" means a fee or other consideration paid to a lender for the purpose of securing a binding forward commitment by or through the lender to make conventional loans to two or more credit worthy purchasers, including future purchasers, of resi-

dential units, or a fee or other consideration paid to a lender for the purpose of securing a binding forward commitment by or through the lender to make conventional loans to two or more credit worthy purchasers, including future purchasers, of units to be created out of existing structures pursuant to chapter 515B, or a fee or other consideration paid to a lender for the purpose of securing a binding forward commitment by or through the lender to make cooperative apartment loans to two or more credit worthy purchasers, including future purchasers, of a share or shares of stock or a membership certificate or certificates in a cooperative apartment corporation; provided, that the forward commitment rate of interest does not exceed the maximum lawful rate of interest effective as of the date the forward commitment is issued by the lender.

(7) "Borrower's interest rate commitment" means a binding commitment made by a lender to a borrower wherein the lender agrees that, if a conventional or cooperative apartment loan is made following issuance of and pursuant to the commitment, the conventional or cooperative apartment loan shall be made at a rate of interest not in excess of the rate of interest agreed to in the commitment, provided that the rate of interest agreed to in the commitment is not in excess of the maximum lawful rate of interest effective as of the date the commitment is issued by the lender to the borrower.

(8) "Borrower's loan commitment" means a binding commitment made by a lender to a borrower wherein the lender agrees to make a conventional or cooperative apartment loan pursuant to the provisions, including the interest rate, of the commitment, provided that the commitment rate of interest does not exceed the maximum lawful rate of interest effective as of the date the commitment is issued and the commitment when issued and agreed to shall constitute a legally binding obligation on the part of the mortgagee or lender to make a conventional or cooperative apartment loan within a specified time period in the future at a rate of interest not exceeding the maximum lawful rate of interest effective as of the date the commitment is issued by the lender to the borrower; provided that a lender who issues a borrower's loan commitment pursuant to the provisions of a forward commitment is authorized to issue the borrower's loan commitment at a rate of interest not to exceed the maximum lawful rate of interest effective as of the date the forward commitment is issued by the lender.

(9) "Finance charge" means the total cost of a conventional or cooperative apartment loan including extensions or grant of credit regardless of the characterization of the same and includes interest, finders fees, and other charges levied by a lender directly or indirectly against the person obtaining the conventional or cooperative apartment loan or against a seller of real property securing a conventional loan or a seller of a share or shares of stock or a membership certificate or certificates in a cooperative apartment corporation securing a cooperative apartment loan, or any other party to the transaction except any actual closing costs and any forward commitment fee. The finance charges plus the actual closing costs and any forward commitment fee, charged by a lender shall include all charges made by a lender other than the principal of the conventional or cooperative apartment loan. The finance charge, with respect to wraparound mortgages, shall be computed based upon the face amount of the wraparound mortgage note, which face amount shall consist of the aggregate of those funds actually advanced by the wraparound lender and the total outstanding principal balances of the prior note or notes which have been made a part of the wraparound mortgage note.

(10) "Lender" means any person making a conventional or cooperative apartment loan, or any person arranging financing for a conventional or cooperative apartment loan. The term also includes the holder or assignee at any time of a conventional or cooperative apartment loan.

(11) "Loan yield" means the annual rate of return obtained by a lender over the term of a conventional or cooperative apartment loan and shall be computed as the annual percentage rate as computed in accordance with sections 226.5 (b), (c), and (d) of Regulation Z, Code of Federal Regulations, title 12, section 226, but using the definition of finance charge provided for in this subdivision. For purposes of this section, with respect to wraparound mortgages, the rate of interest or loan yield shall be based upon the principal balance set forth in the wraparound note and mortgage and shall not include any interest differential or yield differential

between the stated interest rate on the wraparound mortgage and the stated interest rate on the one or more prior mortgages included in the stated loan amount on a wraparound note and mortgage.

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

(13) "Residential unit" means any structure used principally for residential purposes or any portion thereof, and includes a unit in a common interest community, a nonowner occupied residence, and any other type of residence regardless of whether the unit is used as a principal residence, secondary residence, vacation residence, or residence of some other denomination.

(14) "Vendor" means any person or persons who agree to sell real estate and finance any part or all of the purchase price by a contract for deed. The term also includes the holder or assignee at any time of the vendor's interest in a contract for deed.

Subd. 3. **Conventional or cooperative loans and obligations.** Notwithstanding the provisions of section 334.01, lenders are authorized to make conventional or cooperative apartment loans and purchases of obligations representing conventional or cooperative apartment loans pursuant to rules the commissioner of commerce finds to be necessary and proper, if any, at an interest rate not in excess of the maximum lawful interest rate prescribed in subdivision 4a. Contract for deed vendors are authorized to charge interest on contracts for deed at an interest rate not in excess of the maximum lawful interest rate prescribed in subdivision 4a.

Subd. 4. [Repealed, 1981 c 351 s 14]

Subd. 4a. **Maximum interest rate.** (a) No conventional or cooperative apartment loan or contract for deed shall be made at a rate of interest or loan yield in excess of a maximum lawful interest rate in an amount equal to the Federal National Mortgage Association posted yields on 30–year mortgage commitments for delivery within 60 days on standard conventional fixed–rate mortgages published in the Wall Street Journal for the last business day of the second preceding month plus four percentage points.

(b) The maximum lawful interest rate applicable to a cooperative apartment loan or contract for deed at the time the loan or contract is made is the maximum lawful interest rate for the term of the cooperative apartment loan or contract for deed. Notwithstanding the provisions of section 334.01, a cooperative apartment loan or contract for deed may provide, at the time the loan or contract is made, for the application of specified different consecutive periodic interest rates to the unpaid principal balance, if no interest rate exceeds the maximum lawful interest rate applicable to the loan or contract at the time the loan or contract is made.

(c) The maximum interest rate that can be charged on a conventional loan or a contract for deed, with a duration of ten years or less, for the purchase of real estate described in section 83.20, subdivisions 11 and 13, is three percentage points above the rate permitted under paragraph (a) or 15.75 percent per year, whichever is less. This paragraph is effective August 1, 1992.

(d) Contracts for deed executed pursuant to a commitment for a contract for deed, or conventional or cooperative apartment loans made pursuant to a borrower's interest rate commitment or made pursuant to a borrower's loan commitment, or made pursuant to a commitment for conventional or cooperative apartment loans made upon payment of a forward commitment fee including a borrower's loan commitment issued pursuant to a forward commitment, which commitment provides for consummation within some future time following the issuance of the commitment may be consummated pursuant to the provisions, including the interest rate, of the commitment notwithstanding the fact that the maximum lawful rate of interest at the time the contract for deed or conventional or cooperative apartment loan is actually executed or made is less than the commitment rate of interest, provided the commitment rate of interest does not exceed the maximum lawful interest rate in effect on the date the commitment was issued. The refinancing of: (1) an existing conventional or cooperative apartment loan, (2) a loan insured or guaranteed by the secretary of housing and urban development, the administrator of veterans affairs, or the administrator of the Farmers Home Ad-

ministration, or (3) a contract for deed by making a conventional or cooperative apartment loan is deemed to be a new conventional or cooperative apartment loan for purposes of determining the maximum lawful rate of interest under this subdivision. The renegotiation of a conventional or cooperative apartment loan or a contract for deed is deemed to be a new loan or contract for deed for purposes of paragraph (b) and for purposes of determining the maximum lawful rate of interest under this subdivision. A borrower's interest rate commitment or a borrower's loan commitment is deemed to be issued on the date the commitment is hand delivered by the lender to, or mailed to the borrower. A forward commitment is deemed to be issued on the date the forward commitment is hand delivered by the lender to, or mailed to the person paying the forward commitment fee to the lender, or to any one of them if there should be more than one. A commitment for a contract for deed is deemed to be issued on the date the commitment is initially executed by the contract for deed vendor or the vendor's authorized agent.

(e) A contract for deed executed pursuant to a commitment for a contract for deed, or a loan made pursuant to a borrower's interest rate commitment, or made pursuant to a borrower's loan commitment, or made pursuant to a forward commitment for conventional or cooperative apartment loans made upon payment of a forward commitment fee including a borrower's loan commitment issued pursuant to a forward commitment at a rate of interest not in excess of the rate of interest authorized by this subdivision at the time the commitment was made continues to be enforceable in accordance with its terms until the indebtedness is fully satisfied.

Subd. 4b. **Future appreciation of mortgaged property.** Notwithstanding any other provision of this chapter, including section 47.203, with respect to any conventional loan pursuant to which the mortgagee or lender shall receive any share of future appreciation of the mortgaged property, the following limitations shall apply:

(1) The share of future appreciation of the mortgaged property which the lender or mortgagee may receive shall be limited to the proportionate amount produced by dividing the lesser of the acquisition cost or fair market value of the mortgaged property at the time the conventional loan is made into the original principal amount of the conventional loan; provided that in no event shall the annual rate of return obtained by the lender or mortgagee over the term of the conventional loan exceed the maximum lawful interest rate prescribed in subdivision 4a.

(2) The lender or mortgagee shall not receive any share of future appreciation of the mortgaged property except (a) upon sale or transfer of the mortgaged property or any interest therein, whether by lease, deed, contract for deed or otherwise, whether for consideration or by gift or in the event of death, or otherwise, and whether voluntarily, involuntarily, or by operation of law, provided that if the mortgagor or mortgagors own the mortgaged property as cotenants, the transfer of the mortgaged property or any interest therein from one of such cotenants to another cotenant, whether by reason of death or otherwise, shall not be considered a sale or transfer, and a taking by eminent domain shall not be considered a sale or transfer unless it is a total taking for which payment is made for the full value of the mortgaged property, and a casualty loss shall not be considered a sale or transfer unless the proceeds of any insurance claim made in connection with such casualty loss are applied to prepay the principal of the conventional loan; or (b) upon the stated maturity of the loan, if the loan is made pursuant to or in connection with a specific housing program undertaken by a city, housing and rehabilitation authority, port authority, or other political subdivision or agency of the state.

(3) Before the loan is made, the lender shall disclose to the mortgagor or mortgagors the terms and conditions upon which the lender or mortgagee shall receive any share of future appreciation of the mortgaged property.

Minnesota Statutes, subdivision 6a, shall not be construed to prohibit the lender or mortgagee from declaring the entire debt of a conventional loan subject to this subdivision due and payable upon a sale or transfer of the mortgaged property or any interest therein, as provided in clause (2).

The commissioner may from time to time make, amend and rescind rules, forms and orders necessary to carry out the provisions of this subdivision. The provisions of this subdivision shall not apply to loans made pursuant to the program authorized by Laws 1981, chapter 97.

Subd. 5. **Precomputed loan refunds.** 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.

Subd. 6. **Conventional loans on primary residences; consent to transfer.** If the purpose of a conventional loan is to enable a borrower to purchase a one to four family dwelling for the borrower's primary residence, the lender shall consent to the subsequent transfer of the real estate if the existing borrower continues after transfer to be obligated for repayment of the entire remaining indebtedness. The lender shall release the existing borrower from all obligations under the loan instruments, if the transferee (1) meets the standards of credit worthiness normally used by persons in the business of making conventional loans, including but not limited to the ability of the transferee to make the loan payments and satisfactorily maintain the real estate used as collateral, and (2) executes an agreement in writing with the lender whereby the transferee assumes the obligations of the existing borrower under the loan instruments. Any such agreement shall not affect the priority, validity or enforceability of any loan instrument. A lender may charge a fee not in excess of one–tenth of one percent of the remaining unpaid principal balance in the event the loan or advance of credit is assumed by the transferee and the existing borrower continues after the transfer to be obligated for repayment of the entire assumed indebtedness. A lender may charge a fee not in excess of one percent of the remaining unpaid principal balance in the event the remaining indebtedness is assumed by the transferee and the existing borrower is released from all obligations under the loan instruments. This subdivision applies to all conventional loans made on or after June 1, 1979, and before May 9, 1981.

Subd. 6a. **Loan assumptions.** If the purpose of a conventional loan, or loan made pursuant to the authority granted in subdivision 1, clause (3) or (4), is to enable a borrower to purchase a one to four family dwelling for the borrower's primary residence, the lender shall consent to the subsequent transfer of the real estate and shall release the existing borrower from all obligations under the loan instruments, if the transferee (1) meets the standards of credit worthiness normally used by persons in the business of making conventional loans, including but not limited to the ability of the transferee to make the loan payments and satisfactorily maintain the real estate used as collateral, (2) executes an agreement in writing with the lender whereby the transferee assumes the obligations of the existing borrower under the loan instruments, and (3) executes an agreement in writing to pay interest on the remaining obligation at a new interest rate not to exceed the lender's current market rate of interest on similar loans at the time of the transfer, the most recently published monthly index of the Fed-

eral Home Loan Mortgage Corporation auction yields or the existing interest rate provided for by the terms of the note, whichever is greater. Any such agreement shall not affect the priority, validity or enforceability of any loan instrument.

Subd. 6b. **Delinquency or late payment fees.** A lender making a conventional loan may assess and collect fees for late payments according to the provision of section 47.59.

Subd. 6c. **Extension of certain loan assumptions.** Conventional loans made on or after June 1, 1979, and before May 9, 1981, continue to be assumable under the provisions of Minnesota Statutes 1984, section 47.20, subdivision 6, until October 1, 1990.

Subd. 7. **Discount points prohibited.** (1) No conventional loan made on or after the effective date of Laws 1977, chapter 350 and prior to May 31, 1979 shall contain a provision requiring or permitting the imposition, directly or indirectly, of any discount points, whether or not actually denominated as discount points, on any person. Conventional or cooperative apartment loans made on or after May 31, 1979 may contain provisions permitting discount points, if the loan does not provide a loan yield in excess of that permitted by subdivision 4a. The loan yield is computed using the amount resulting when the discount points are included in the finance charge.

(2) Forward commitment fees are not discount points within the meaning of this subdivision.

(3) No charges, fees, or sums permitted by this section which are paid to and received by a lender may be increased for purposes of evading compliance with this subdivision.

Subd. 8. **Conventional loan provisions.** A lender making a conventional loan shall comply with the following:

(1) The promissory note and mortgage evidencing a conventional loan shall be printed in not less than the equivalent of 8–point type, .075 inch computer type, or elite–size typewritten numerals, or shall be legibly handwritten.

(2) The mortgage evidencing a conventional loan shall contain a provision whereby the lender agrees to furnish the borrower with a conformed copy of the promissory note and mortgage at the time they are executed or within a reasonable time after recordation of the mortgage.

(3) The mortgage evidencing a conventional loan shall contain a provision whereby the lender, if it intends to foreclose, agrees to give the borrower written notice of any default under the terms or conditions of the promissory note or mortgage, by sending the notice by certified mail to the address of the mortgaged property or such other address as the borrower may have designated in writing to the lender. The lender need not give the borrower the notice required by this paragraph if the default consists of the borrower selling the mortgaged property without the required consent of the lender. The mortgage shall further provide that the notice shall contain the following provisions:

(a) the nature of the default by the borrower;

(b) the action required to cure the default;

(c) a date, not less than 30 days from the date the notice is mailed by which the default must be cured;

(d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by the mortgage and sale of the mortgaged premises; and

(e) that the borrower has the right to reinstate the mortgage after acceleration; and

(f) that the borrower has the right to bring a court action to assert the nonexistence of a default or any other defense of the borrower to acceleration and sale.

Subd. 9. **Escrow accounts.** 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.

(a) Each mortgagee requiring funds of a mortgagor to be paid into an escrow, agency or similar account for the payment of taxes or homeowner's 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 or any successor, shall calculate interest on such funds at a rate of not less than three 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 in conjunction with mortgage loans made prior to July 1, 1996.

(b) Unless the account is exempt from the requirements of paragraph (a), a mortgagee shall allow a mortgagor to elect to discontinue escrowing for taxes and homeowner's insurance after the seventh anniversary of the date of the mortgage, unless the mortgagor has been more than 30 days delinquent in the previous 12 months. This paragraph shall apply to accounts created prior to July 1, 1996, as well as to accounts created on or after July 1, 1996. The mortgagor's election shall be in writing. The lender or mortgage broker shall, with respect to mortgages made on or after August 1, 1997, notify an applicant for a mortgage of the applicant's rights under this paragraph. This notice shall be given at or prior to the closing of the mortgage loan and shall read substantially as follows:

"NOTICE OF RIGHT TO DISCONTINUE ESCROW

If your mortgage loan involves an escrow account for taxes and homeowner's insurance, you may have the right in five years to discontinue the account and pay your own taxes and homeowner's insurance. If you are eligible to discontinue the escrow account, you will be notified in five years."

If the escrow account has a negative balance or a shortage at the time the mortgagor requests discontinuance, the mortgagee is not obligated to allow discontinuance until the escrow account is balanced or the shortage has been repaid.

(c) The mortgagee shall notify the mortgagor within 60 days after the seventh anniversary of the date of the mortgage if the right to discontinue the escrow account is in accordance with paragraph (b). For mortgage loans entered into, on or prior to July 1, 1989, the notice required by this paragraph shall be provided to the mortgagor by January 1, 1997.

(d) Effective January 1, 1998, the requirements of paragraph (b), regarding the mortgagor's election to discontinue the escrow account, and paragraph (c), regarding notification to mortgagor, shall apply when the fifth anniversary of the date of the mortgage has been reached.

(e) A mortgagee may require the mortgagor to reestablish the escrow account if the mortgagor has failed to make timely payments for two consecutive payment periods at any time during the remaining term of the mortgage, or if the mortgagor has failed to pay taxes or insurance premiums when due. A payment received during a grace period shall be deemed timely.

(f) The mortgagee shall, subject to paragraph (b), return any funds remaining in the account to the mortgagor within 60 days after receipt of the mortgagor's written notice of election to discontinue the escrow account.

(g) The mortgagee shall not charge a direct fee for the administration of the escrow account, nor shall the mortgagee charge a fee or other consideration for allowing the mortgagor to discontinue 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.

Subd. 11. [Repealed, 1Sp1985 c 13 s 376]

Subd. 12. [Repealed, 1Sp1985 c 13 s 376]

Subd. 13. **Conventional loan usury penalties.** Any conventional loan having an interest rate or loan yield in excess of the maximum lawful interest rate provided for in subdivision 4a shall be usurious and subject to the same penalties as a loan made in violation of section 334.01. Any lender intentionally violating any other provision of this section shall be fined not more than $100 for each offense.

Subd. 13a. **Contract for deed or cooperative apartment loan usury penalties.** Any contract for deed or cooperative apartment loan having an interest rate in excess of the maximum lawful interest rate provided for in subdivision 4a is usurious. No contract for deed or cooperative apartment loan is unenforceable solely because the interest rate thereon is usurious. Persons who have paid usurious interest may recover an amount not to exceed five times the usurious portion of the interest paid under the contract for deed or cooperative apartment loan plus attorneys' fees from the person to whom the interest has been paid. The penalty provisions of chapter 334, do not apply to usurious contracts for deed or cooperative apartment loans.

Subd. 14. [Repealed, 1999 c 151 s 49]

Subd. 15. [Repealed, 1983 c 215 s 16; 1984 c 474 s 7; 1985 c 306 s 26; 1987 c 292 s 36; 1989 c 350 art 16 s 7]

History: *(7658–3) 1935 c 49 s 1; 1937 c 88 s 1; 1969 c 579 s 1; 1976 c 196 s 1; 1976 c 300 s 2; 1977 c 350 s 1; 1978 c 529 s 2–4; 1979 c 48 s 1,3; 1979 c 279 s 1–8; 1980 c 373 s 1–5; 1981 c 137 s 1,2,4–8; 1981 c 351 s 1–9; 1982 c 424 s 7; 1982 c 632 s 1; 1983 c 215 s 1; 1983 c 288 s 1–3; 1983 c 289 s 114 subd 1; 1984 c 474 s 1; 1984 c 655 art 1 s 92; 1985 c 203 s 1; 1985 c 306 s 1; 1Sp1985 c 16 art 2 s 43; 1Sp1985 c 18 s 1; 1986 c 358 s 2; 1986 c 444; 1Sp1986 c 3 art 1 s 6; 1989 c 144 art 2 s 1; 1989 c 304 s 137; 1992 c 587 art 1 s 9–11; 1993 c 257 s 8; 1994 c 382 s 4; 1995 c 171 s 10,11; 1995 c 202 art 2 s 3,4; 1996 c 414 art 1 s 7–9; 1997 c 157 s 7,8; 1999 c 11 art 3 s 1; 1999 c 151 s 8; 2002 c 342 s 1*

MORTGAGE AND LOAN REGULATION

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.

Subd. 2. **Authorization.** Notwithstanding the provisions of sections 334.01, subdivision 1, and 51A.37, subdivision 3, clause (d), any financial institution is authorized to make graduated payment home loans and purchases representing graduated payment home loans pursuant to such rules as the commissioner of commerce finds to be necessary and proper, if any, at an interest rate not in excess of the maximum lawful interest rate prescribed in section 47.20, subdivision 4a. Notwithstanding the provisions of section 334.01, subdivision 1, where initial repayments of a graduated payment home loan are less than the total accrued outstanding interest, the excess accrued and unpaid interest may be added to the outstanding loan balance on which interest accrues at the contracted rate.

Subd. 3. **Graduated payments.** A graduated payment home loan may provide that periodic repayments of principal and interest on graduated payment home loans may increase in amounts not exceeding the following:

(a) 7.5 percent annually during a period of five years or less;

(b) 6.5 percent annually during a period of six years;

(c) 5.5 percent annually during a period of seven years;

(d) 4.5 percent annually during a period of eight years;

(e) 3.5 percent annually during a period of nine years; and

(f) 3 percent annually during a period of ten years.

No graduated payment home loan may provide for principal and interest increases after its first ten years. The increases in payments of principal and interest provided in clauses (a) to (f) are independent and one graduation period may not be used in conjunction with another period.

Subd. 4. **Changes restricted.** Payments of principal and interest may not be changed more than once a year. The first change may not occur until one year after the date of the first payment under the graduated payment home loan.

Subd. 5. **Conversion rights.** Borrowers taking a graduated payment home loan shall have the right to convert, at a time chosen by the borrower, to a standard nongraduated payment conventional loan or cooperative apartment loan. No assessment or penalties shall be made if the borrower chooses to convert at the interest rate and outstanding principal of the graduated payment home loan.

Subd. 6. **Disclosure.** Each prospective borrower shall receive materials explaining in reasonably simple terms the graduated payment home loan offered and a comparable standard conventional loan or cooperative apartment loan instrument with a fixed interest rate and level payments. The material shall include:

(a) A comparison of the terms of the graduated payment home loan and a standard conventional loan or cooperative apartment loan;

(b) Payment schedules for both types of instruments and the total payment in dollars over the full term of the loan;

(c) A description of the conversion option; and

(d) A prominent statement that borrowers have the option to elect a standard conventional loan or cooperative apartment loan instrument.

Subd. 7. **Savings associations; first lien.** Capitalization of interest resulting from any negative amortization of a graduated payment home loan made by a savings association shall not change the status of the mortgage as a first lien against the property securing 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: *1979 c 239 s 1; 1981 c 351 s 10; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1995 c 171 s 12; 1995 c 202 art 1 s 25; 1996 c 414 art 1 s 10,44; 1997 c 157 s 67; 1998 c 260 s 1*

47.202 [Repealed, 1996 c 310 s 1]

47.203 FEDERAL PREEMPTION OVERRIDE.

The provisions of Public Law 96–221, title V, part A, section 501(a)(1) (United States Code, title 12, section 1735f–7a), do not apply with respect to a loan, mortgage, credit sale or advance made in this state after June 2, 1981, nor with respect to a loan, mortgage, credit sale or advance secured by real property located in this state and made after June 2, 1981.

History: *1980 c 599 s 4; 1980 c 604 s 4; 1981 c 351 s 11; 1Sp1981 c 4 art 1 s 47; 1999 c 151 s 9*

47.204 TEMPORARY REMOVAL OF MORTGAGE USURY LIMITS.

Subdivision 1. **Limits on interest and other charges.** Notwithstanding any law to the contrary, except as stated in section 58.137, no limitation on the rate or amount of interest, points, finance charges, fees, or other charges applies to a loan, mortgage, credit sale, or advance as described in United States Code, title 12, section 1735f–7a, as amended, which is made in this state after June 2, 1981.

Subd. 2. **Enforceable throughout term.** If the rate or amount of interest, discount points, finance charges, or other charges are permitted by this section at the time the loan, mortgage, credit sale or advance is made, the rate or amount of interest, discount points, finance charges or other charges are permitted throughout the original term of the agreement and any extension agreed upon by the borrower and the lender or their respective successors in interest.

History: *1981 c 351 s 12; 1984 c 576 s 4; 1987 c 349 art 1 s 7; 1999 c 151 s 10; 2002 c 342 s 2*

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.

Subd. 2. **Assignment or sale of mortgage loans.** If the servicing of mortgage loans financing one–to–four family owner occupied residences located in this state is sold or assigned to another person:

(1) the selling lender shall notify the mortgagor of the sale no more than ten days after the actual date of transfer. The notification must include the name, address, and telephone number of the person who will assume responsibility for servicing and accept payments for the mortgage loan and the notification must also include a detailed written financial breakdown, including but not limited to, interest rate, monthly payment amount, and current escrow balance;

(2) the purchasing lender shall issue corrected coupon or payment books, if used, and shall provide notification to the mortgagor within 20 days after the first payment to the purchasing lender is due, of the name, address, and telephone number of the person from whom the mortgagor can receive information regarding the servicing of the loan, and shall inform the mortgagor of any changes made regarding the mortgage escrow accounts or servicing requirements including, but not limited to, interest rate, monthly payment amount, and current escrow balance; and

(3) the purchasing lender shall respond within 15 business days to a written request for information from a mortgagor. A written response must include the telephone number of the company representative who can assist the mortgagor.

Subd. 3. **Administration of escrow accounts.** Each lender requiring funds of a mortgagor to be paid into an escrow account for payment of taxes or insurance premiums with re-

spect to a mortgaged one–to–four family owner occupied residence located in this state shall make payments for the taxes or insurance from the escrow account in a timely manner as these obligations become due provided that funds paid into the account by the mortgagor are sufficient for the payment. If there is a shortage of funds, the lender shall promptly notify the mortgagor of the shortage. If the lender fails to make timely payments, the lender is liable to the mortgagor for actual damages caused by the failure to pay the amounts when due and is subject to penalties provided in subdivision 4, except that the lender may present any legal defense in any subsequent hearing. The lender is permitted to make a payment on behalf of the mortgagor even though there are not sufficient funds in a particular account to cover the payment.

Subd. 4. **Penalties.** If a lender fails to comply with the requirements of subdivisions 2 and 3, the lender is liable to the mortgagor for actual damages caused by the violation. In addition, the lender is liable to the mortgagor for $500 per occurrence if the violation of subdivision 2 or 3 was due to the lender's failure to exercise reasonable care.

History: *1986 c 358 s 1; 1987 c 349 art 1 s 8,9; 1995 c 171 s 13*

47.206 INTEREST RATE OR DISCOUNT POINT AGREEMENTS.

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

(a) "Lender" means a person or entity referred to in section 47.20, subdivision 1, a credit union, or a 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), except that conventional loans or cooperative apartment loans include any loan or advance of credit in an original principal balance of less than $200,000. "Lender" also means a mortgage broker as defined in paragraph (e).

(b) "Loan" means 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 loans as defined under section 47.20, subdivision 2, clause (4), except that conventional loans or cooperative apartment loans also include all loans and advances of credit in an original principal balance of less than $200,000. "Loan" does not include a loan or advance of credit secured by a mortgage upon real property containing more than one residential unit or secured by a security interest in shares of more than one residential unit in a building owned or leased by a cooperative apartment corporation.

(c) "Borrower" means a natural person who has submitted an application for a loan to a lender.

(d) "Interest rate or discount point agreement" or "agreement" means a contract between a lender and a borrower under which the lender agrees, subject to the lender's underwriting and approval requirements, to make a loan at a specified interest rate or number of discount points, or both, and the borrower agrees to make a loan on those terms. The term also includes an offer by a lender that is accepted by a borrower under which the lender promises to guarantee or lock in an interest rate or number of discount points, or both, for a specific period of time.

(e) "Mortgage broker" includes:

(1) a person who performs or offers to perform the activities of "mortgage brokering" or "soliciting, placing, or negotiating a residential mortgage loan" as defined by chapter 58; or

(2) the employees of a person described in clause (1).

Subd. 2. **Disclosures.** A lender offering borrowers the opportunity to enter into an agreement in advance of closing shall disclose, in writing, to the borrowers at the time the offer is made: (1) a definite expiration date or term of the agreement, which may not be less than the reasonably anticipated closing date or time required to process, approve, and close the loan; (2) the circumstances, if any, under which the borrower will be permitted to close at a lower rate of interest or points than expressed in the agreement; (3) the steps required to process, approve, and close the loan, including the actions required of the borrower and lend-

er; (4) that the agreement is enforceable by the borrower; and (5) the consideration required for the agreement.

Subd. 3. **Agreements to be in writing.** A borrower or lender may not maintain an action on an agreement unless the agreement is in writing or is permitted by subdivision 4, expresses consideration, sets forth the relevant terms and conditions, and is signed by the borrower and the lender.

Subd. 4. **Oral agreements and acceptances prohibited.** A lender may not offer or induce a borrower to accept an oral agreement and a borrower may not be permitted to orally accept an agreement, provided that if the borrower and lender have not executed a written agreement, this subdivision does not prohibit the offer and acceptance of an oral agreement which is offered and accepted during a period no greater than ten days before closing.

Subd. 5. **Statement of current terms not an offer.** An oral or written statement of current loan terms and conditions, including interest rates and number of discount points, is not an offer or an inducement by a lender to enter into an agreement. A written statement of current loan terms and conditions must be accompanied by a disclaimer that the statement is not an offer to enter into an agreement and that an offer may only be made pursuant to subdivisions 3 and 4.

Subd. 6. **Prohibited acts.** A person, including a lender, may not advise, encourage, or induce a borrower or third party to misrepresent information that is the subject of a loan application or to violate the terms of the agreement. Neither a mortgage lender nor a mortgage broker shall advertise mortgage terms, including interest rate and discount points, which were not available from the lender or broker on the date or dates specified in the advertisement. For purposes of this section, "advertisement" shall include a list or sampler of mortgage terms compiled from information provided by the lender or broker, with or without charge to the lender or broker, by a newspaper, and shall also include advertising on the Internet.

Subd. 7. **Penalties.** (a) Except as provided in paragraph (c), a lender who violates this section or who causes unreasonable delay in processing a loan application beyond the expiration date of the agreement is liable to the borrower for a penalty in an amount not to exceed the borrower's actual out–of–pocket damages, including the present value of the increased interest costs over the normal life of the loan, or specific performance of the agreement. This paragraph applies to an agreement entered into after January 1, 1987.

(b) In addition to the penalty in paragraph (a), a lender is liable to the borrower for $500 for each violation of this section or for unreasonable delay in processing a loan application which causes the agreement to expire before closing.

(c) A lender who violates subdivision 4 is jointly and severally liable to the borrower for specific performance of the agreement or for a penalty in the amount of $500 or an amount not to exceed the borrower's actual out–of–pocket damages, including the present value of the increased costs over the normal life of the loan, whichever is greater, due to the good faith reliance of the borrower on the lender's oral representation.

(d) For purposes of this subdivision, evidence of unreasonable delay includes, but is not limited to:

(1) failure of the lender to return telephone calls or otherwise respond to the borrower's inquiries concerning the status of the loan;

(2) the addition by the lender of new requirements for processing or approving the loan that were not disclosed to the borrower under subdivision 2, clause (3), unless the requirements result from governmental agency or secondary mortgage market changes, other than changes in interest rates, that occur after the date of the agreement; or

(3) failure by the lender to take actions necessary to process or approve the loan within a reasonable period of time, if the borrower provided information requested by the lender in a timely manner.

History: *1987 c 336 s 5; 1996 c 439 art 5 s 1; 1997 c 157 s 9; 1998 c 343 art 2 s 1*

47.207 PRIVATE MORTGAGE INSURANCE.

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

(a) "Current fair market value" means the value of the mortgagor's property determined by an appraisal conducted within 90 days of a mortgagor's written request for cancellation of private mortgage insurance. The appraisal shall be conducted by a real estate appraiser, licensed or certified by a state or federal agency, who is reasonably acceptable to the servicer. The appraisal may be conducted at either the request of the lender, mortgagor, or servicer. The mortgagor is responsible for the cost of the appraisal.

(b) "Lender" means a person who makes or holds a residential mortgage loan.

(c) "Private mortgage insurance" means insurance paid for by the mortgagor, including any mortgage guaranty insurance, against the nonpayment of, or default on, a residential mortgage loan, other than mortgage insurance made available under the federal National Housing Act, United States Code, title 38, or title V of the federal Housing Act of 1949. "Private mortgage insurance" does not mean lender–paid mortgage insurance.

(d) "Residential mortgage loan" means a loan secured by either: (1) a mortgage on residential real property; or (2) by certificates of stock or other evidence of ownership interest in and proprietary lease from corporations, partnerships, or other forms of business organizations formed for the purpose of cooperative ownership of residential real property.

(e) "Servicer" means a person who, through any medium or mode of communication, engages in the collection or remittance for, or the right or obligation to collect or remit for, a lender, mortgagee, note owner, noteholder, or for a person's own account, of payments, interest, principal, and escrow items such as insurance and taxes for property subject to a residential mortgage loan.

Subd. 2. **Right to cancel private mortgage insurance.** With respect to an existing or future residential mortgage loan, a mortgagor shall have the right to elect, in writing, to cancel private mortgage insurance in connection with a residential mortgage loan if all of the following terms and conditions have been met:

(1) the current unpaid principal balance of the mortgage is 80 percent or less of the current fair market value of the property;

(2) the mortgagor has not:

(i) been 60 days or longer past due on a mortgage payment during the 12–month period beginning 24 months before the date on which the servicer receives the mortgagor's written request for cancellation; or

(ii) been 30 days or longer past due on a mortgage payment during the 12 months preceding the date on which the servicer receives the mortgagor's written request for cancellation;

(3) the mortgage was made at least 24 months prior to the receipt of a request for cancellation;

(4) the property securing the mortgage loan is owner–occupied; and

(5) the mortgage has not been pooled with other mortgages in order to constitute, in whole or in part, collateral for bonds issued by the state of Minnesota or any political subdivision of the state of Minnesota or of any agency of any political subdivision of the state of Minnesota.

Subd. 3. **Notice of right to cancel private mortgage insurance.** (a) With respect to each existing or future residential mortgage loan, a servicer must provide an annual written notice to the mortgagor currently paying premiums for private mortgage insurance. The notice must be in 12–point type or greater and appear substantially as follows:

NOTICE OF RIGHT TO CANCEL PRIVATE MORTGAGE INSURANCE

If you currently pay private mortgage insurance premiums, you may have the right under federal law or Minnesota law to cancel the insurance and stop paying premiums. This would **reduce your total monthly payment**.

You may have the right to cancel private mortgage insurance if the principal balance of your loan is 80 percent or less of the current market value of your home. Under Minnesota law, the value of your property can be determined by a professional appraisal. You need to pay for this appraisal, but in most cases you will be able to recover this cost in less than a year if your mortgage insurance is canceled.

If you wish to learn whether you are eligible to cancel this insurance, please contact us at (enter address and phone number of servicer).

(b) The notice required by this subdivision must be on its own page, but a disclosure notice concerning private mortgage insurance required by federal law may be included on the same page as the disclosure notice required by this subdivision. The page containing the notice required by this subdivision may be included with other disclosures or notices required by federal law that are sent to the mortgagor.

(c) If the mortgage has been pooled with other mortgages in order to constitute, in whole or in part, collateral for bonds issued by the state of Minnesota or any political subdivision of the state of Minnesota or of any agency of any political subdivision of the state of Minnesota and notice of right to cancel private mortgage insurance is required under federal law, no notice under this subdivision is required.

Subd. 4. **Servicer response to cancellation request.** (a) Within 30 days of receipt of a mortgagor's written request to cancel private mortgage insurance, a servicer shall:

(1) provide a written notice to the insurer to cancel the private mortgage insurance and written notice to the mortgagor that a request for cancellation has been sent to the insurer if the servicer determines that the private mortgage insurance should be canceled;

(2) provide a written response to the mortgagor identifying all additional information needed from the mortgagor if the servicer reasonably needs more information from the mortgagor to determine whether the mortgagor is eligible for cancellation of private mortgage insurance; or

(3) provide a written notice to the mortgagor of the reasons for the servicer's refusal to cancel the private mortgage insurance if the servicer determines that the mortgagor does not meet the requirements for cancellation of private mortgage insurance.

(b) If a lender, or any other person involved in the mortgage transaction, receives a written request for cancellation of private mortgage insurance, the lender or other person shall promptly forward the mortgagor's request for cancellation to the servicer, if the servicer is known to the lender or other person. If the servicer is not known to the lender or other person, the lender or other person shall advise the mortgagor to contact the company to which the mortgagor sends the monthly payment.

Subd. 5. **Lender charges; return of unearned premium.** (a) A lender requiring or offering private mortgage insurance shall make available to the borrower or other person paying the insurance premium the same premium payment plans as are available to the lender in paying the private mortgage insurance premium.

(b) Any refund or rebate for unearned private mortgage insurance premiums shall be paid to the mortgagor or other person actually providing the funds for payment of the premium.

(c) A lender or servicer shall not charge the mortgagor a fee or other consideration for cancellation of the private mortgage insurance or for any of the acts required by this section, except that the lender or servicer shall have the right to recover the cost of an appraisal if the mortgagor elects to have the lender or servicer perform or arrange for the appraisal.

Subd. 6. **Interpretation.** Nothing in this section shall be deemed to be inconsistent with the federal Homeowner's Protection Act of 1998, codified at United States Code, title 12, sections 4901 to 4910, within the meaning of "inconsistent" as used in section 9 of that act, codified at United States Code, title 12, section 4908.

History: *1999 c 151 s 11*

47.208 DELIVERY OF SATISFACTION OF MORTGAGE.

Subdivision 1. **Delivery required.** Upon written request, a good and valid satisfaction of mortgage in recordable form shall be delivered to any party paying the full and final balance of a mortgage indebtedness that is secured by Minnesota real estate; such delivery shall be in hand or by certified mail postmarked within 45 days of the receipt of the written request to the holder of any interest of record in said mortgage and within 45 days of the payment of all sums due thereon.

Subd. 2. **Penalty.** If a lender fails to comply with the requirements of subdivision 1, the lender may be held liable to the party paying the balance of the mortgage debt, for a civil penalty of up to $500, in addition to any actual damages caused by the violation.

History: *1987 c 336 s 6*

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.

Subd. 2. **Condition of financing agreement.** Each agreement must contain a statement that it is a condition of the agreement that the borrower must agree to pay all taxes on the manufactured home when due.

Subd. 3. **Collection of delinquent taxes.** Within 30 days of receipt of a notice of delinquency from a county under section 277.17, the lender must notify the mortgagor that the tax must be paid in full no later than 60 days from the date of issuance of the notice. The notice must inform the mortgagor that if the tax is not paid by that date, the lender may pay the delinquent tax, together with any penalty and interest then due, in full to the county. The notice may inform the mortgagor of the lender's option to begin foreclosure proceedings. The county may only request payment and collection of taxes that have been delinquent for no longer than one year under this section. The county must notify the lender if the owner of the manufactured home pays the delinquent taxes at any time during the 60 days after the notice has been issued.

History: *1991 c 291 art 15 s 1; 1992 c 511 art 2 s 1; 1995 c 171 s 14*

47.21 INAPPLICABLE LAWS; AUTHORIZED INVESTMENTS.

Subdivision 1. **Limits relating to loans.** No other law in this state, except as stated in section 58.137, prescribing the nature, amount or form of security or requiring security upon which loans or advances of credit may be made, or prescribing or limiting interest rates upon loans or advances of credit, or prescribing or limiting the period for which loans or advances of credit may be made, shall be deemed to apply to loans, advances of credit or purchases made pursuant to section 47.20, subdivisions 1, 3 and 4a.

Subd. 2. **Investments.** (a) The institutions described in section 47.20, subdivision 1, may invest in notes or bonds secured by mortgages, trust deeds, or security interests insured or guaranteed as described in section 47.20, subdivision 1, clause (2), and in securities issued by national mortgage associations.

(b) The notes, bonds, and other securities described in paragraph (a) may be used wherever security is required by statute or rule for the deposit of public funds or other funds; or wherever deposits are required by statute or rule to be made with any public official or public department; or wherever an investment of capital or surplus, or a reserve or other fund, is required by statute or rule to be maintained consisting of designated securities.

History: *(7658–4) 1935 c 49 s 2; 1937 c 88 s 2; 1976 c 300 s 3; 1981 c 351 s 13; 2002 c 342 s 3*

SAVINGS DEPARTMENTS

47.23 USE OF CERTAIN WORDS PERMITTED.

Subdivision 1. **Savings, trust, safe deposit.** Except as specifically authorized by other laws of this state, no individual, partnership, unincorporated association, or corporation, other than a savings bank, safe deposit company, or trust company, holding an effective certificate of authority or license issued by the commissioner of commerce and subject to and complying with all of the provisions of law relating to such savings banks, safe deposit companies, and trust companies, respectively, shall in any manner display or make use of any sign, symbol, token, letterhead, card, circular, or advertisement stating, representing, or indicating authorization to transact the business which a savings bank, safe deposit company, or trust company usually does, or under these provisions is authorized to do; nor shall any such individual, partnership, unincorporated association, or corporation use the words "savings" or "trust" or "safe deposit" alone or in combination in title or name or otherwise, or in any manner solicit business or make loans or solicit or receive deposits or transact business as a savings bank, safe deposit company, or trust company; except that a state bank, or trust company, regularly incorporated and authorized to do business under the laws of this state, may establish and maintain a savings department under the supervision of the commissioner of commerce, and may solicit and receive deposits in this savings department and advertise the same as such, and every such trust company having a savings department shall use in its name or title, in addition to the word "trust", the word "savings". Savings deposits received by such a trust company shall be invested only in authorized securities, as defined by law, and the trust company shall keep on hand, at all times, such securities in an amount at least equal to the amount of the deposits, and these securities shall be the representative of, and the fund for, applicable first and exclusively to the payments of, the savings deposits. Deposits received by the trust company subject to its right to require notice of withdrawal evidenced by passbooks or by written receipt or agreement shall be deemed savings deposits.

Subd. 2. **Use of "trust" by life insurance company.** Any old line life insurance company which does not in any manner display or make use of any sign, symbol, token, letterhead, card, circular, or advertisement representing or indicating that it is authorized to transact any business which a savings bank, safe deposit company, or trust company usually does and which does not attempt to do any such business; and which uses the word "trust" in its name in combination with other words in such a manner that it is apparent that the company is not either a savings bank, safe deposit company, or trust company, and does not attempt to do any of the business which a savings bank, safe deposit company, or trust company usually does, shall not be prohibited from so using such word "trust" in its name.

Subd. 3. **Violations.** Every individual, partnership, unincorporated association, or corporation which shall violate any of the provisions of this section shall forfeit to the state the sum of not to exceed $100 for each day the violation shall continue, to be recovered in a civil action to be brought by the attorney general in the name of the state at the request of the commissioner of commerce, and may be enjoined from any further violation in an action brought in the name of the state for that purpose.

History: *(7651) RL s 2978; 1909 c 178 s 1; 1915 c 236 s 1; 1929 c 77 s 1; 1945 c 133 s 2; 1961 c 298 s 1; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444*

REPORTS

47.24 FAILURE TO REPORT; FORFEITURES.

Every corporation which shall fail to make and transmit to the commissioner of commerce, within ten days after the time prescribed by law therefor, any report required by the provisions of this chapter, or by other lawful authority, or shall fail to include therein any matter required by the commissioner of commerce, shall forfeit to the state the sum of $100 for every day that the report is withheld or delayed or that it shall fail to report any such omitted matter.

History: *(7652) RL s 2979; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92*

MEETINGS

47.25 NOTICE OF MEETINGS.

At least 30 days prior to any annual, and at least ten days prior to any special, meeting of its stockholders, mailed notice shall be given to each stockholder, specifying the time, place, and purpose thereof; also a notice of any resolution or proposition on which action is proposed to be taken.

History: *(7653) RL s 2980*

VIOLATIONS

47.26 VIOLATIONS.

Every officer, agent, or employee of any corporation or copartnership, and every other individual, who shall knowingly and willfully do or omit anything, the doing or omission of which on the part of any corporation, copartnership, or individual is in violation of any of the provisions of this chapter and who continues or repeats such act or omission for or during more than ten successive days, shall be guilty of a felony.

History: *(7654) RL s 2981*

CONVERSIONS

47.27 DEFINITIONS.

Subdivision 1. **Scope.** Unless the language or context clearly indicates that a different meaning is intended, the words, terms, and phrases defined in subdivisions 2, 3 and 4, shall, for the purposes of sections 47.27 to 47.30, be given the meanings subjoined to them.

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

Subd. 3. **Savings association.** "Savings association" shall have the meaning set forth in section 51A.02, subdivision 7.

Subd. 4. **Federal association.** "Federal association" means a savings association, savings and loan association or savings bank organized under that certain act of Congress known as The Home Owners Loan Act of 1933, and acts amendatory thereof.

History: *1949 c 337 s 1; 1984 c 592 s 1; 1995 c 171 s 15; 1995 c 202 art 1 s 25; 1996 c 414 art 1 s 45; 1997 c 157 s 67; 1998 c 254 art 1 s 9; 1998 c 260 s 1; 1999 c 151 s 12*

47.28 SAVINGS BANKS MAY CONVERT INTO SAVINGS ASSOCIATIONS.

Subdivision 1. **Procedure.** 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. **Amendment of articles.** 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. **Recording.** 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. **Conformance to applicable laws.** 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: *1949 c 337 s 2; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1985 c 248 s 70; 1986 c 444; 1995 c 171 s 16; 1995 c 202 art 1 s 6*

47.29 [Repealed, 1997 c 157 s 72]

47.30 SAVINGS ASSOCIATION MAY CONVERT INTO SAVINGS BANK.

Subdivision 1. **Procedure.** 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. **Application.** 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. **Amendment of articles.** 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. **Recording.** 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]

Subd. 7. **Conformance to applicable laws.** The resulting savings bank 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 commissioner 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 banks.

History: *1949 c 337 s 4; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1985 c 248 s 16,17,70; 1986 c 444; 1995 c 171 s 19–22*

47.31 [Repealed, 1997 c 157 s 72]

47.32 [Repealed, 1997 c 157 s 72]

47.325 APPEAL AND JUDICIAL REVIEW.

A savings bank aggrieved by any action or inaction of the commissioner under sections 47.27 to 47.30 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; 1998 c 254 art 1 s 10*

FACSIMILE SIGNATURES

47.41 NEGOTIABLE INSTRUMENTS, FACSIMILE SIGNATURES, DISBURSEMENT OF PUBLIC FUNDS.

Any public officer or other person who is authorized singly or in conjunction with another or others, to sign checks, drafts, warrants, warrant–checks, vouchers or other orders on public funds on deposit in a depository bank may authorize the bank to honor any such instrument bearing a facsimile of that person's signature and to charge the same to the account upon which drawn, as fully as though it bore a manually written signature. Instruments so honored shall be wholly operative and binding in favor of the bank although such facsimile signature shall have been affixed without authority of such officer or other person. Any one or more or all of the signatures upon any such instrument may be facsimile as herein provided. As here used "public funds" means funds of the state or of any county, city, town, school district, any political subdivision of the state, or of any commission, board, department or agency of any thereof.

History: *1955 c 96 s 1; 1973 c 123 art 5 s 7; 1986 c 444*

47.42 FACSIMILE SIGNATURES, OFFICER NOT LIABLE.

If the governing body of the depositor political subdivision, or of any commission, board, department or agency thereof, by resolution approves the action of the public officer or other person in the use of such facsimile, and shall have insured the depositor with an insurance company authorized to do business in this state, in such amount and form as the governing body approves, against loss of any public funds withdrawn upon unauthorized use of such facsimile signature, such public officer or other person shall not be personally liable for loss, if any, resulting from the use of any such facsimile signature unless the loss occurs by reason of that person's own wrongful act.

History: *1955 c 96 s 2; 1986 c 444*

DETACHED FACILITIES

47.51 DETACHED BANKING FACILITIES; DEFINITIONS.

As used in sections 47.51 to 47.57:

"Extension of the main banking house" means any structure or stationary mechanical device serving as a drive–in or walk–up facility, or both, which is located within 1,500 feet of

the main banking house or detached facility, the distance to be measured in a straight line from the closest points of the closest structures involved and which performs one or more of the functions described in section 47.53. An unstaffed after–hour depository drop box located anywhere within the municipality where the bank's main office or detached facility is located is also considered an extension of the main banking house even if it is not located within 1,500 feet of the main banking house or detached facility.

"Detached facility" means any permanent structure, office accommodation located within the premises of any existing commercial or business establishment, stationary automated remote controlled teller facility, stationary unstaffed cash dispensing or receiving device, located separate and apart from the main banking house which is not an "extension of the main banking house" as above defined, that serves as a drive–in or walk–up facility, or both, with one or more tellers windows, or as a remote controlled teller facility or a cash dispensing or receiving device, and which performs one or more of those functions described in section 47.53.

"Bank" means a bank as defined in section 46.046 and any banking office established prior to the effective date of Laws 1923, chapter 170, section 1.

"Commissioner" means the commissioner of commerce.

"Municipality" means the geographical area encompassing the boundaries of any home rule charter or statutory city located in this state, and any detached area, pursuant to section 473.625, operated as a major airport by the Metropolitan Airports Commission pursuant to sections 473.601 to 473.679. When a bank is located in a township, the term municipality is expanded to mean the geographical area encompassing the boundaries of the township.

History: *1971 c 855 s 1; 1977 c 378 s 1; 1979 c 220 s 1; 1981 c 220 s 6; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1985 c 248 s 18; 1986 c 444; 1996 c 414 art 3 s 3; 2001 c 56 s 2*

47.52 AUTHORIZATION.

(a) With the prior approval of the commissioner, any bank doing business in this state may establish and maintain detached facilities provided the facilities are located within: (1) the municipality in which the principal office of the applicant bank is located; or (2) 5,000 feet of its principal office measured in a straight line from the closest points of the closest structures involved; or (3) a municipality in which no bank is located at the time of application; or (4) a municipality having a population of more than 10,000; or (5) 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) 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.

(d) In addition to other facilities, a bank may operate part–time locations at nursing homes and senior citizen housing facilities located within the municipality in which the main banking house or a detached facility is located, or within the seven–county metropolitan area if the bank's main banking facility or a detached facility is located within the seven–county metropolitan area, if they are operated in a manner consistent with safe, sound banking practices.

History: *1971 c 855 s 2; 1974 c 221 s 1; 1977 c 378 s 2; 1980 c 444 s 1; 1981 c 220 s 7; 1987 c 161 s 1; 1993 c 257 s 9; 1995 c 202 art 2 s 5; art 4 s 5; 1996 c 305 art 1 s 129; 1996 c 414 art 3 s 4; 1999 c 151 s 13; 2000 c 427 s 1*

47.521 CLOSED BANK LOCATION; AUTHORIZATION.

Where the commissioner has determined that an existing state bank or national banking association is about to fail or has failed and it is in the public interest to prevent the loss of banking services in the community affected, the limitations on location and number of detached facilities in section 47.52 do not apply to an application to establish a detached facility in the same locality. In the event the commissioner has determined that it is necessary and in the public interest to act immediately on the application, the commissioner may waive the requirements of section 47.54.

History: *1983 c 242 s 2*

47.53 FUNCTIONS OF A FACILITY.

A detached facility may provide any service or perform any function that may be offered or performed at the bank's main banking house.

History: *1971 c 855 s 3; 1977 c 378 s 3; 1980 c 468 s 1*

47.54 NOTICES AND APPROVAL PROCEDURES.

Subdivision 1. **Application.** Any bank desiring to establish a detached facility shall execute and acknowledge a written application in the form prescribed by the commissioner and shall file the application in the commissioner's office with a fee of $500. The applicant shall within 30 days of the receipt of the form prescribed by the commissioner publish a notice of the filing of the application in a qualified newspaper published in the municipality in which the proposed detached facility is to be located, and if there is no such newspaper, then in a qualified newspaper likely to give notice in the municipality in which the proposed detached facility is to be located.

Subd. 2. **Approval order.** If no objection is received by the commissioner within 15 days after the publication of the notice, the commissioner shall issue an order approving the application without a hearing if it is found that (a) the applicant bank meets current industry standards of capital adequacy, management quality, and asset condition, (b) the establishment of the proposed detached facility will improve the quality or increase the availability of banking services in the community to be served, and (c) the establishment of the proposed detached facility will not have an undue adverse effect upon the solvency of existing financial institutions in the community to be served. Otherwise, the commissioner shall deny the application. Any proceedings for judicial review of an order of the commissioner issued under this subdivision without a contested case hearing shall be conducted pursuant to the provisions of the Administrative Procedure Act relating to judicial review of agency decisions, sections 14.63 to 14.69, and the scope of judicial review in such proceedings shall be as provided therein. Nothing herein shall be construed as requiring the commissioner to conduct a contested case hearing if no written objection is timely received by the commissioner from a bank within three miles of the proposed location of the detached facility.

Subd. 3. **Objections; hearing.** If any bank within three miles of the proposed location of the detached facility objects in writing within 15 days, the commissioner shall consider the objection. If the objection also requests a hearing, the objector must include the nature of the issues or facts to be presented and the reasons why written submissions would be insufficient to make an adequate presentation to the commissioner. Comments challenging the legality of an application should be submitted separately in writing.

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

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

Subd. 4. **Hearing.** In any case in which the commissioner grants a request for a hearing, or makes the independent determination that a hearing is warranted on the basis of the conditions in subdivision 3, the commissioner shall fix a time for a hearing conducted pursuant to chapter 14 to decide whether or not the application will be granted. A notice of the hearing must be published by the applicant in the form prescribed by the commissioner in a qualified newspaper published in the municipality in which the proposed detached facility is to be located, and if there is no such newspaper, then in a qualified newspaper likely to give notice in the municipality in which the proposed detached facility is to be located. The notice must be published once, at the expense of the applicants, not less than 30 days prior to the date of the hearing. At the hearing the commissioner shall consider the application and hear the applicants and witnesses that appear in favor of or against the granting of the application of the proposed detached facility. If an application is contested and a hearing is granted, 50 percent of an additional fee equal to the actual costs incurred by the Department of Commerce in approving or disapproving the application, payable to the commissioner of commerce to be deposited in the general fund, must be paid by the applicant and 50 percent equally by the intervening parties.

Subd. 5. **Decision after hearing.** If upon the hearing, it appears to the commissioner that the requirements for approval contained in subdivision 2 have been met, the commissioner shall, not later than 90 days after the hearing, issue an order approving the application. If the commissioner shall decide that the application should not be granted, the commissioner shall issue an order to that effect and forthwith give notice by certified mail to the applicant.

Subd. 6. **Expiration and extension of order.** If a facility is not activated within 18 months from the date of the order, the approval order automatically expires. Upon request of the applicant prior to the automatic expiration date of the order, the commissioner may grant reasonable extensions of time to the applicant to activate the facility as the commissioner deems necessary. The extensions of time shall not exceed a total of an additional 12 months. If the commissioner's order is the subject of an appeal in accordance with chapter 14, the time period referred to in this section for activation of the facility and any extensions shall begin when all appeals or rights of appeal from the commissioner's order have concluded or expired.

History: *1971 c 855 s 4; 1977 c 378 s 4; 1979 c 64 s 1; 1981 c 220 s 8; 1982 c 424 s 130; 1983 c 247 s 25; 1983 c 250 s 3; 1984 c 576 s 7; 1986 c 444; 1987 c 384 art 2 s 1; 1989 c 166 s 5; 1990 c 422 s 10; 1992 c 587 art 1 s 12; 1993 c 257 s 10; 1994 c 382 s 5; 1999 c 151 s 14,15; 2002 c 342 s 4,5*

47.55 EXISTING BANKING FACILITIES OR BRANCHES OF SAVINGS ASSOCIATIONS.

Subdivision 1. **Banking facilities in operation prior to May 1, 1971.** A bank may retain and operate one detached facility as it may have had in operation prior to May 1, 1971 without requirement of approval hereunder.

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 facili-

ty of the acquiring bank at that location but need not obtain the consent of other banks as required by section 47.52.

History: *1971 c 855 s 5; 1977 c 378 s 5; 1992 c 587 art 1 s 13; 1993 c 257 s 11; 1995 c 202 art 1 s 25; 1997 c 157 s 10*

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. The location of a detached facility transferred to another location within the lesser of a radius of three miles measured in a straight line from the existing location or the municipality, as defined in section 47.51, in which it is located is subject to the same procedures and approval as are required in section 47.101, subdivision 2. 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: *1971 c 855 s 6; 1993 c 257 s 12; 1995 c 202 art 2 s 6; 1997 c 157 s 11*

47.561 IDENTIFICATION OF DETACHED FACILITY.

A detached facility must be properly identified at its location in a manner which includes the name of the parent bank. A detached facility in existence on March 19, 1982 must comply with this section by December 31, 1982.

History: *1982 c 473 s 7*

47.57 VIOLATION; PENALTIES.

A violation of sections 47.51 to 47.57 shall be subject to penalties applicable to violations of laws affecting banks. In addition, a violation of sections 47.51 to 47.57 may be enjoined by a civil action for injunction by any aggrieved bank.

History: *1971 c 855 s 7*

REVERSE MORTGAGE LOANS

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 commitment. 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.

Subd. 3. **Payment; repayment; amount.** The committed principal amount of a reverse mortgage loan shall be paid to the borrower over the period of months or years as specified in the loan agreement. The borrower and lender may, by written agreement, amend the loan

agreement from time to time. Pursuant to the terms of the contract the borrower shall make repayment to the lender:

(a) upon payment to the borrower of the final installment unless, by written agreement between the borrower and lender whereunder the borrower agrees to periodically pay the lender interest accruing on the outstanding loan balance, repayment of the outstanding loan balance is postponed until default in payment of interest or until the occurrence of any of the events specified in clauses (b) to (e);

(b) upon sale of the property securing the loan;

(c) upon the death of the last surviving borrower;

(d) upon the borrower terminating use of the property as principal residence so as to disqualify the property from homestead classification under section 273.13; or

(e) upon renegotiation of the terms of the reverse mortgage loan agreement, unless the parties agree in writing to postpone repayment.

Except as otherwise provided in this subdivision, the outstanding loan balance as projected by the lender to the anticipated time of payment to the borrower of the final installment of committed principal shall not exceed 80 percent of the appraised value of the property at inception of the loan. If upon reappraisal of the property made at any time during the term of the loan, the projected outstanding loan balance does not exceed 70 percent of the reappraised value of the property, the schedule of the lender's installment payments may be extended and the amount of the committed principal amount increased, provided the revised outstanding loan balance at payment of the lender's final installment of committed principal does not exceed 80 percent of the reappraised value of the property.

Subd. 4. **Extension; early repayment.** The installments may be extended by written agreement of the parties and repayment or partial repayment of the outstanding loan balance may be made at any time without penalty, except that partial repayment may be made not more often than once per year and in no amount less than $1,000. The borrower may cancel the reverse mortgage loan at any time without penalty by payment of the outstanding loan balance.

Subd. 5. **Interest.** Notwithstanding the provisions of section 334.01, subdivision 1, lenders may make reverse mortgage loans and purchases of obligations representing reverse mortgage loans, at an interest rate or loan yield not in excess of the maximum lawful interest rate prescribed for conventional loans by section 47.20, subdivision 4a. If section 47.20, subdivision 4a expires, the interest rate last published pursuant to the provisions of section 47.20, subdivision 4a shall be the maximum lawful interest rate for reverse mortgage loans. A contract rate within the maximum lawful interest rate applicable to a reverse mortgage loan at the time the loan is made shall be the maximum lawful interest rate for the term of the reverse mortgage loan.

Notwithstanding the provisions of section 334.01, subdivision 1, a reverse mortgage loan agreement may provide that interest will be added to the outstanding loan balance monthly as it accrues, with interest accruing on the outstanding loan balance at a rate not to exceed the rate of interest permitted under this subdivision at the time of the signing of the original loan agreement or any subsequent extension agreement.

Subd. 6. **Taxes; insurance.** The borrower shall pay real estate taxes, assessments and insurance premiums on the property securing the loan, and the lender may require the borrower to provide evidence of payment. Mortgage registry tax required under sections 287.01 to 287.12 must be paid at the time of the recording or registering of the original reverse mortgage. If the borrower does not make timely payment the lender may pay taxes, assessments, insurance premiums and other similar charges for the protection of the property securing its loan and may add these payments to the outstanding loan balance if not repaid by the borrower within 60 days after the borrower receives notice that the lender has made the payment.

Subd. 7. **Loan closing.** The lender may require the borrower to pay no more than actual closing costs incurred in connection with the making, closing, disbursing or extending of a reverse mortgage loan. A reverse mortgage loan agreement or extension agreement may pro-

vide for deferral of payment of any portion of actual closing costs. Deferred closing costs shall be added to the outstanding loan balance as provided in subdivision 1, clause (e). Unless the agreement provides for deferral, actual closing costs shall be paid by the borrower at the time of signing the agreement.

Upon signing a reverse mortgage loan agreement or extension agreement the lender shall furnish to the borrower:

(a) A schedule showing the projected pattern of the outstanding loan balance over the period of the agreement;

(b) A statement indicating in detail the charges and fees the borrower has paid or is obligated to pay to the lender or to any other person in connection with the loan; and

(c) Any other information required by state or federal law.

Subd. 8. **Counseling; requirement; penalty.** A lender, mortgage banking company, or other mortgage lender not related to the mortgagor must keep a certificate on file documenting that the borrower, prior to entering into the reverse mortgage loan, received counseling as defined in this subdivision from an organization that meets the requirements of section 462A.209 and is a housing counseling agency approved by the Department of Housing and Urban Development. The certificate must be signed by the mortgagor and the counselor and include the date of the counseling, the name, address, and telephone number of both the mortgagor and the organization providing counseling. A failure by the lender to comply with this subdivision results in a $1,000 civil penalty payable to the mortgagor. For the purposes of this subdivision, "counseling" means the following services are provided to the borrower:

(1) a review of the advantages and disadvantages of reverse mortgage programs;

(2) an explanation of how the reverse mortgage affects the borrower's estate and public benefits;

(3) an explanation of the lending process;

(4) a discussion of the borrower's supplemental income needs; and

(5) an opportunity to ask questions of the counselor.

History: *1979 c 265 s 1; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1Sp1985 c 14 art 4 s 5,6; 1986 c 444; 1Sp1986 c 3 art 1 s 7; 1991 c 201 s 1; 1991 c 291 art 20 s 1; 1993 c 257 s 13; 1995 c 202 art 1 s 7,25; 2000 c 260 s 11*

CREDIT EXTENSION RATES

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 Code of Federal Regulations, title 12, part 226, and appendix J thereto.

(b) "Annual percentage rate" has the meaning given the term in 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 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;

(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;

(4) fees paid by a borrower to a broker, provided the financial institution or a person described in subdivision 4 does not require use of the broker to obtain credit; or

(5) a commission, expense reimbursement, or other sum received by a financial institution or a person described in subdivision 4 in connection with insurance described in subdivision 6.

(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 organized under chapter 53, a regulated lender organized under chapter 56, or an operating subsidiary of any such institution.

(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.** 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.

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 insti-

tution 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 one–tenth 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. Discount points permitted by this paragraph and not collected but included in the principal amount must not be included in the amount on which credit insurance premiums are calculated and charged.

(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. The refund need not be made if it would be less than $5.

(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. The refund need not be made if it would be less than $5.

(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, paragraph (a), 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 a retail installment sale of a motor vehicle as defined in section 53C.01, the annual percentage rates permitted by subdivision 4a.

(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. 4a. **Finance charge for motor vehicle retail installment sales.** A retail installment contract evidencing the retail installment sale of a motor vehicle as defined in section 53C.01 is subject to the finance charge limitations in paragraphs (a) and (b).

(a) The finance charge authorized by this subdivision in a retail installment sale may not exceed the following annual percentage rates applied to the principal balance determined in the same manner as in section 53C.08, subdivision 2, clause (5):

(1) Class 1. A motor vehicle designated by the manufacturer by a year model of the same or not more than one year before the year in which the sale is made, 18 percent per year.

(2) Class 2. A motor vehicle designated by the manufacturer by a year model of two to three years before the year in which the sale is made, 19.75 percent per year.

(3) Class 3. Any motor vehicle not in Class 1 or Class 2, 23.25 percent per year.

(b) A sale of a manufactured home made after July 31, 1983, is governed by this subdivision for purposes of determining the lawful finance charge rate, except that the maximum finance charge for a Class 1 manufactured home may not exceed 14.5 percent per year. A retail installment sale of a manufactured home that imposes a finance charge that is greater than the rate permitted by this subdivision is lawful and enforceable in accordance with its terms until the indebtedness is fully satisfied if the rate was lawful when the sale was made.

Subd. 5. **Extensions, deferments, and conversion to interest bearing.** (a) 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.

(b) Subject to a refund of unearned finance or deferment charge required by this section, a financial institution may convert a loan or credit sale contract to an interest bearing balance, if:

(1) the loan contract or credit sale contract so provides and is subject to a change of the terms of the written agreement between the parties; or

(2) the loan contract so provides and two or more installments are delinquent one full month or more on any due date.

Thereafter, the single annual percentage rate and other charges must be determined as provided under this section for interest–bearing transactions.

Subd. 6. **Additional charges.** (a) For purposes of this subdivision, "financial institution" includes a person described in subdivision 4, paragraph (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 principal amount of the loan or credit sale unpaid balances:

(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 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 604.113; 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 principal amount of the loan or credit sale unpaid balances:

(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 principal amount of the loan 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 604.113;

(4) charges for obtaining a cash advance in an amount not to exceed the service charge permitted in section 604.113; 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 onetime loan administrative fee not exceeding $25 in connection with closed–end credit, which may be included in the 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. The determination of an original principal amount must exclude the administrative fee contracted for and received according to this paragraph.

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 more than 30 days after advanc-

ing 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. 9a. **Prompt crediting of payments.** (a) A financial institution shall credit a payment to the consumer's account as of the date of receipt except when a delay in crediting does not result in a finance or other charge or except as provided in paragraph (b).

(b) If a financial institution, in the loan agreement or, in the case of open–end credit, on or with a periodic statement or similar document, specifies requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements, the creditor shall credit the payment within five days of receipt.

(c) If a financial institution fails to credit a payment, as required by paragraph (a) or (b) in time to avoid the imposition of finance or other charges, the financial institution shall adjust the consumer's account so that the charges imposed are credited to the consumer's account promptly or, in the case of open–end credit, no later than during the next billing cycle.

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 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, as the same may be amended from time to time, in connection with a consumer loan or credit sale for a consumer purpose where the federal Truth in Lending Act is applicable. A financial institution shall give the following disclosure to the borrower in writing at the time an open–end credit account is established if the financial institution imposes a loan fee, points, or similar charge that relates to the opening of the account which is not included in the annual percentage rate given pursuant to the federal Truth in Lending Act: "YOU HAVE BEEN ASSESSED FINANCE CHARGES, OR POINTS, WHICH ARE NOT INCLUDED IN THE ANNUAL PERCENTAGE RATE. THESE CHARGES MAY BE REFUNDED, IN WHOLE OR IN PART, IF YOU DO NOT USE YOUR LINE OF CREDIT OR IF YOU REPAY YOUR LINE OF CREDIT EARLY. THESE CHARGES INCREASE THE COST OF YOUR CREDIT."

(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 except where the assignment: (1) by its terms is revocable at the will of the consumer; (2) is a payroll deduction plan or preauthorized payment plan, beginning at the time of the transaction, in which the consumer authorizes a series of wage deductions as a method of making each payment; or (3) applies only to wages or other earnings already earned at the time of the assignment.

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; 1996 c 414 art 2 s 1–6; 1997 c 157 s 12–16; 1999 c 151 s 16; 2000 c 427 s 2–5; 2002 c 342 s 6; 2003 c 51 s 5; 2003 c 128 art 14 s 1; 2005 c 10 art 1 s 13; 2005 c 19 s 1*

CONSUMER SMALL LOANS

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:

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

(2) 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;

(3) 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;

(4) 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 for no more than 30 calendar 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 604.113, subdivision 2, paragraph (a).

(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 $250 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. A lender shall 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 under 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; 1996 c 305 art 1 s 14; 1996 c 414 art 2 s 7; 1999 c 151 s 17; 2000 c 427 s 6*

LOAN SOLICITATIONS

47.605 LOAN SOLICITATION; UNREQUESTED CHECKS REGULATED.

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

(b) "Facsimile check" means a document that resembles a negotiable check, money order, draft, or other instrument.

(c) "Live check" means a negotiable check, money order, draft, or other instrument that may be used by a consumer to activate a loan.

Subd. 2. **Unrequested checks.** No financial institution or other lender may offer to make a loan by mailing to a Minnesota resident a live check payable to the addressee, which the addressee is requested to endorse and then cash, deposit, or otherwise negotiate as a means of accepting the loan offered, except as provided in subdivision 3. This section does not apply if the addressee already has an open–end credit arrangement or business relationship with the financial institution or other lender or if the addressee has requested in writing that the live check be mailed to the addressee.

Subd. 3. **Effect of live checks.** (a) The addressee is not liable for any loan contracted or allegedly contracted by means of a live check that violates subdivision 2, unless the live check is offered in compliance with the requirements in paragraphs (b) to (g).

(b) The live check, regardless of its form, must not be negotiable after a period no longer than 30 days after the date shown on the live check. Printed material accompanying the live check must advise the consumer to void and destroy the live check if it is not going to be negotiated, and must be substantially similar to the following disclosure:

"THIS IS A SOLICITATION FOR A LOAN—READ THE ENCLOSED DISCLOSURES BEFORE SIGNING AND CASHING THIS CHECK."

(c) Notification of the loan agreement must be on the back of the live check so that the consumer is advised that by signing the back of the live check the consumer will have activated a loan transaction. The following disclosure must appear on the back of the live check:

"By endorsing this instrument, you agree to repay this loan according to the terms of the Loan Agreement, which you acknowledge receiving and which provides you with the contract terms in connection with this loan transaction."

(d) Opt–out provisions of United States Code, title 15, section 1681b(e), must be noted by reference in printed materials that accompany the live check.

(e) Live check loan solicitations must be mailed in envelopes with no indication that a negotiable instrument is contained in the mailing. Envelopes must be marked with instructions to the postal service stating that the item is not to be forwarded if the intended addressee is no longer at the location.

(f) The creditor who receives a negotiated live check must execute the following steps consistent with the structure of the creditor's business:

(1) ensure that the instrument is placed in the consumer's loan folder, record, or other filing procedure consistent with the creditor's business which will enable recovery of the item, or an exact facsimile of the original document; and

(2) provide to the customer a coupon book or billing statement or other medium consistent with the creditor's business practice as confirmation of the activation of the loan.

(g) In the event that a live check is stolen or incorrectly received by someone other than the intended payee, and the live check is fraudulently cashed or otherwise negotiated, the following safeguards for the consumer must be triggered:

(1) the creditor, upon receipt of notification that the consumer did not negotiate the live check, shall provide, and the consumer may complete, a statement confirming that the consumer did not deposit, cash, or otherwise negotiate the live check;

(2) completion of the confirmation statement must be facilitated by the creditor by providing the consumer the opportunity to fill it out at a local location of the creditor, by mail, or both, and by explaining that the consumer is relieved from any liability on the loan. The creditor shall also provide the consumer with a contact person to provide assistance if required; and

(3) upon submitting a completed confirmation statement to the creditor, the consumer who was the intended payee shall have no liability for the loan obligation, absent any fraud by that consumer.

Subd. 4. **Facsimile checks.** No financial institution or other lender shall mail to a Minnesota resident a solicitation for a cash loan that includes a facsimile check payable to the addressee unless:

(1) the facsimile check contains on the front and back, in at least a 30–point bold font, the words:

"This is not a check";

(2) the opt–out provisions of United States Code, title 15, section 1681b(e), are noted by reference in printed materials that accompany the facsimile check; and

(3) the solicitation is mailed in an envelope that does not make it appear that a negotiable instrument is contained in the mailing.

History: *1998 c 335 s 1*

ELECTRONIC FUNDS TRANSFER FACILITIES

47.61 ELECTRONIC FUNDS TRANSFER FACILITIES; DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 47.61 to 47.74, unless the context requires otherwise, the following terms shall have the meanings given them.

Subd. 2. **Commissioner.** "Commissioner" means the commissioner of commerce.

Subd. 3. **Electronic financial terminal.** (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;

(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, and which also may be used to obtain cash advances or cash back not to exceed $25 and only if incidental to the retail sale transactions, 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;

(4) stored–value cards to only process transactions other than those authorized by this section. Stored–value cards are transaction cards having magnetic stripes or computer chips that enable electronic value to be added or deducted as needed; or

(5) a personal computer possessed by and operated exclusively by the account holder.

Subd. 4. **Financial institution.** "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, credit union, industrial loan and thrift company, or regulated lender under chapter 56 established and operating under the laws of this state.

Subd. 4a. **Minnesota transmission facility.** "Minnesota transmission facility" means: (1) a transmission facility which is owned or controlled by financial institutions located in Minnesota; (2) a transmission facility owned or controlled by a bank holding company or savings and loan holding company if domiciled or headquartered in Minnesota; or (3) a transmission facility established in Minnesota and approved by the commissioner under section 47.65, subdivision 1, as of August 1, 1990.

Subd. 5. [Repealed, 1983 c 102 s 3]

Subd. 6. **Retailer.** "Retailer" means a person primarily engaged in the business of selling goods or services to consumers or a person who owns or operates a mall area.

Subd. 7. **Transmission facility.** "Transmission facility" means the electronic system which is used to forward from one financial institution, its affiliate, or agent, to one or more financial institutions, their affiliates, or agents, financial transaction data originating from an electronic financial terminal and its attendant support system.

History: *1978 c 469 s 1; 1983 c 252 s 1; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1987 c 41 s 1; 1990 c 491 art 3 s 1; 1995 c 202 art 1 s 25; art 2 s 7; 1996 c 414 art 1 s 11; 1997 c 157 s 17*

47.62 AUTHORIZATION.

Subdivision 1. **General authority.** Any person may establish and maintain one or more electronic financial terminals. Any financial institution may provide for its customers the use of an electronic financial terminal by entering into an agreement with any person who has established and maintains one or more electronic financial terminals if that person authorizes use of the electronic financial terminal to all financial institutions on a nondiscriminatory basis pursuant to section 47.64. Electronic financial terminals to be established and maintained in this state by financial institutions located in states other than Minnesota must file a notification to the commissioner as required in this section. The notification may be in the form lawfully required by the state regulator responsible for the examination and supervision of that financial institution. If there is no such requirement, then notification must be in the form required by this section for Minnesota financial institutions.

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 and required findings.** 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. **Multiple terminals.** 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: *1978 c 469 s 2; 1983 c 102 s 1; 1986 c 444; 1995 c 171 s 25; 1995 c 202 art 1 s 8; art 2 s 8–10; 1996 c 414 art 3 s 5*

47.63 FUNCTIONS OF AN ELECTRONIC FINANCIAL TERMINAL.

Financial transactions which may be performed by an electronic financial terminal shall be limited to the disbursement of funds under a preauthorized credit agreement, the withdrawal of funds from a customer's account, the deposit of funds in a customer's account, the receiving of cash or checks, the disbursement of cash, the payment of loan payments, and the transfer of funds to or from one or more accounts in one or more financial institutions. All permitted transactions must be made pursuant to a preexisting contractual agreement between the financial institution and an account holder. Accounts may not be opened at an electronic financial terminal located separate and apart from a financial institution's principal office, branch, or detached facility. Any retailer may also operate a device which is capable of performing the functions of an electronic financial terminal for any internal business activity of that retailer.

History: *1978 c 469 s 3; 1987 c 41 s 2*

47.64 OPERATION OF AN ELECTRONIC FINANCIAL TERMINAL.

Subdivision 1. **Request to use.** (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. **Use by federal savings association or federal credit union.** 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 finan-

cial 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 associations or federal credit unions.

Subd. 3. **Use agreement or charge.** Any agreement or charge between a person establishing an electronic financial terminal and the person at whose location the terminal is established shall be upon such commercially reasonable terms and conditions as are agreed to by the parties. A person at whose location an electronic financial terminal is established and maintained may limit the kind of financial transaction functions which the terminal may perform. If the electronic financial terminal is not located on the premises of a financial institution's principal office, branch, or detached facility, the person shall make available upon request every financial transaction function which the terminal does perform to all financial institutions, their affiliates, or agents on a nondiscriminatory basis. A function involving either a bank credit card authorized pursuant to section 48.185 or other credit card authorized under any other similar open end consumer credit sales plan need not be made so available.

Subd. 4. **Staffing.** An electronic financial terminal located separate and apart from a financial institution's principal office, branch, or detached facility, if staffed, shall be operated exclusively by a person who is not employed by any financial institution, any financial institution holding company, or subsidiary thereof. However, persons assisting customers of financial institutions at the site of the terminal may be trained by employees of a financial institution, financial institution holding company, or subsidiary thereof, and nothing in this section shall be construed to prohibit periodic servicing of an electronic financial terminal by an employee of a financial institution, financial institution holding company, or subsidiary thereof.

Subd. 5. **Bond, security, or financial statement.** To insure payment to any person who suffers loss due to negligence or intentional misconduct in the operation of an electronic financial terminal any person seeking to establish an electronic financial terminal shall, at the option of the commissioner, file with the commissioner's office either a financial statement in an acceptable form, or a bond, rider to an existing bond, or other collateral security acceptable to and in an amount set by the commissioner. The commissioner shall permit the filing of a financial statement in lieu of a bond or other security only if the financial statement demonstrates that the person seeking to establish the electronic financial terminal has the financial ability to insure payment to any person who suffers loss due to negligence or intentional misconduct in the operation of the electronic financial terminal. If the filing of a financial statement is permitted, additional periodic financial information shall be filed as required by the commissioner.

Subd. 6. **Use by customers of institutions located outside Minnesota.** 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.

Subd. 7. **Prohibition.** An agreement to share electronic financial terminals may not contain provisions distinguishing between cards issued by United States financial institutions and cards issued by Canadian financial institutions relative to a fee that may be charged to a card holder by the owner or operator of an electronic financial terminal, if the terminal is located within 50 miles of the Canadian border, and the enforcement of any such provision is prohibited.

History: *1978 c 469 s 4; 1983 c 102 s 2; 1983 c 250 s 4; 1983 c 252 s 2; 1986 c 444; 1987 c 41 s 3–5; 1995 c 171 s 26; 1995 c 202 art 1 s 25; 1997 c 157 s 18*

47.65 TRANSMISSION FACILITY.

Subdivision 1. **Establishment.** 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.

Subd. 1a. **Use by other facilities.** A Minnesota transmission facility which is used by, or made available to, any other Minnesota transmission facility must be made available on fair, equitable, and nondiscriminatory terms to all other Minnesota transmission facilities upon request of such Minnesota transmission facility. Such person requesting use of a Minnesota transmission facility shall be permitted its use only if the person conforms to reasonable technical operating standards which have been established by the Minnesota transmission facility.

The charges required to be paid to any Minnesota transmission facility shall be related to the costs of establishing, operating, and maintaining such facility plus a reasonable return on those costs to the owner of the facility and may provide for amortization of development costs and capital expenditures over a reasonable period of time; provided such charges as may be separately determined and established from time to time by each Minnesota transmission facility are fair, equitable, and nondiscriminatory.

Subd. 1b. **State and local government contracts.** Nothing in subdivision 1a shall prevent a corporation contracting with Minnesota state and local governmental units to provide electronic benefits transfer or electronic fund transfer services from utilizing their point of service terminals, networks, or attendant support systems for commercial purposes.

Subd. 2. **Application.** 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.

Subd. 3. **Bond, security, or financial statement.** To insure payment to any person who suffers loss due to negligence or intentional misconduct in the operation of a transmission facility any person seeking to establish a transmission facility shall, at the option of the com-

missioner, file in the commissioner's office either a financial statement in an acceptable form, or a bond, rider to an existing bond, or other collateral security acceptable to and in an amount set by the commissioner. The commissioner shall permit the filing of a financial statement in lieu of a bond or other security only if the financial statement demonstrates that the person seeking to establish the transmission facility has the financial ability to insure payment to any person who suffers loss due to negligence or intentional misconduct in the operation of the transmission facility. If the filing of a financial statement is permitted, additional periodic financial information shall be filed as required by the commissioner.

History: *1978 c 469 s 5; 1986 c 444; 1990 c 491 art 3 s 2,3; 1995 c 171 s 27,28*

47.66 EXAMINATION.

An electronic financial terminal or a transmission facility may be examined by the commissioner to the extent permitted by law as to any financial transaction by, with, or involving a financial institution solely for the purpose of reconciling accounts and verifying the security and accuracy of such electronic financial terminals or transmission facilities, including any supporting equipment, structures, or systems. All facts and information obtained in the course of such examination shall not be disclosed except as otherwise provided by law. The person examined shall pay examination fees as determined by the commissioner.

History: *1978 c 469 s 6*

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.

History: *1978 c 469 s 7; 1987 c 41 s 6; 1995 c 202 art 2 s 11; 2003 c 51 s 6*

47.68 ELECTRONIC FINANCIAL TERMINAL SECURITY.

Every person establishing and maintaining an electronic financial terminal and every financial institution using an electronic financial terminal shall adopt and maintain safeguards to insure the safety of funds, items, and other information, which safeguards shall include security devices consistent with the appropriate requirements specified under the federal Bank Protection Act of 1968, Public Law 90–389, or such alternative security precautions as are approved by the commissioner.

History: *1978 c 469 s 8*

47.69 CONSUMER PRIVACY.

Subdivision 1. **General requirements.** To protect the privacy of customers using electronic financial terminals, including any supporting equipment, structures or systems, information received by or processed through such terminals, supporting equipment, structures or systems shall be treated and used only in accordance with applicable law relating to the dissemination and disclosure of such information. The person establishing and maintaining an electronic financial terminal, including any supporting equipment, structures or systems, shall take such steps as are reasonably necessary to restrict disclosure of information to that necessary to complete the transaction and to safeguard any information received or obtained about a customer or that customer's account from misuse by any person staffing an electronic financial terminal, including any supporting equipment, structures or systems.

Subd. 2. **Rulemaking.** The commissioner shall have the authority by rule to require each person operating pursuant to sections 47.61 to 47.74 to supply information to customers using electronic financial terminals of the person's consumer protection policies including the rights and liabilities of the consumer and protection against wrongful and unnecessary or accidental disclosure of confidential information.

Subd. 3. **Liability.** 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, including a debit 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. With respect to debit card transactions, this subdivision applies to unauthorized withdrawals made from an electronic financial terminal or from an electronic point–of–sale terminal operated by a retailer, described in section 47.61, subdivision 3, paragraph (b), clause (3). 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.

Subd. 4. **Limitation on use of Social Security number.** No person's Social Security number shall be used as the personal identification number or as any code to activate any electronic financial terminal.

Subd. 5. **Remedies.** 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.

Subd. 6. **Transaction receipt.** Every financial institution using an electronic financial terminal shall provide its customers a receipt or record of each transaction initiated at the terminal, and shall provide its customers a transaction statement at least quarterly specifying types, dates, and amounts of all electronic financial terminal transactions for the previous statement period.

History: *1978 c 469 s 9; 1986 c 444; 1987 c 349 art 1 s 10; 1995 c 202 art 2 s 12,13; 1998 c 295 s 1*

47.70 ANTITRUST.

No person engaged in electronic financial terminal or transmission facility activities shall contract, combine, or conspire to restrain trade in the market for electronic financial terminals, or engage in any anticompetitive practices to the detriment of the public interest. Notwithstanding section 325D.55, subdivision 2, the provisions of sections 325D.49 to 325D.66 shall apply to persons engaged in electronic financial terminal or transmission facility activities.

Nothing in sections 47.61 to 47.74 shall operate or be construed to create an exception to the antitrust laws of the United States for any contract or combination required or authorized by sections 47.61 to 47.74.

History: *1978 c 469 s 10*

47.71 RULES.

Subdivision 1. **Authorization.** The commissioner may promulgate such rules as are reasonably necessary to carry out and make effective the provisions and purposes of sections 47.61 to 47.74.

Subd. 2. [Deleted, 1995 c 233 art 2 s 56]

History: *1978 c 469 s 11; 1980 c 486 s 1; 1982 c 424 s 130; 1984 c 640 s 32*

47.72 CEASE AND DESIST ORDER; INJUNCTION; PENALTIES.

Subdivision 1. **Authorization.** 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.

Subd. 2. **Revocation or suspension of approval.** If the violation or the unsound, unsafe, unfair or discriminatory practice continues 15 days after service of a notice of intention to revoke or suspend a person's approval to establish and maintain a transmission facility or electronic financial terminal, the commissioner may revoke or suspend such approval.

Subd. 3. **Enforcement authority.** The commissioner may bring an action in district court to enjoin violations of sections 47.61 to 47.74 or any rule promulgated thereunder, or to enforce compliance with the provisions of sections 47.61 to 47.74 or any rule promulgated thereunder, and may refer the matter to the attorney general. The court may also impose a penalty not exceeding $5,000 per violation.

History: *1978 c 469 s 12; 1985 c 248 s 70; 1986 c 444; 1995 c 202 art 1 s 25*

47.73 HEARING.

Any person aggrieved with a cease and desist order, revocation, suspension, or denial of an application to establish an electronic financial terminal or transmission facility may request a hearing. Within seven days after receipt of a written request with respect to a cease and desist order, revocation, or suspension, or 45 days with respect to a denial of an application, the commissioner shall hold a formal hearing which shall be conducted pursuant to chapter 14. No revocation or suspension shall be effective until after a hearing if a hearing is requested. Notwithstanding section 14.53, all costs of the hearing shall be paid by the aggrieved party.

History: *1978 c 469 s 13; 1982 c 424 s 130*

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: *1978 c 469 s 14; 1995 c 202 art 1 s 25*

ACCOUNTS

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.

Subd. 2. [Repealed, 1984 c 576 s 27]

History: *1982 c 473 s 8; 1984 c 473 s 1; 1995 c 202 art 1 s 25; 1997 c 157 s 19; 2005 c 118 s 2*

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: *1987 c 161 s 2; 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: *1987 c 349 art 1 s 11; 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: *1993 c 52 s 1; 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]