

CHAPTER 165—H.F.No. 719

An act relating to economic development; authorizing certain local jurisdictions to contribute to local or regional economic development organizations; proposing coding for new law in Minnesota Statutes, chapter 469.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [469.191] CONTRIBUTIONS TO REGIONAL OR LOCAL ORGANIZATIONS.

A home rule or statutory city or town described in section 368.01, subdivision 1 or 1a, may appropriate not more than \$50,000 annually out of the general revenue fund of the jurisdiction to be paid to any incorporated development society or organization of this state for promoting, advertising, improving, or developing the economic and agricultural resources of the city or town.

Presented to the governor May 18, 1989

Signed by the governor May 19, 1989, 9:04 p.m.

CHAPTER 166—H.F.No. 1323

An act relating to financial institutions; industrial loan and thrifts; regulating capital stock and surplus requirements; regulating the publication of application notices; imposing a residency requirement on directors of certain companies; imposing special dividend conditions for deposit companies; amending Minnesota Statutes 1988, sections 46.041, subdivision 2; 47.015, subdivision 1; 47.101, subdivision 2; 47.16, subdivision 1; 47.54, subdivision 1; 48.475, subdivision 3; 48.48, subdivision 1; 49.33; 49.34, subdivision 1; 49.35; 49.36, subdivision 1; 49.37; 49.38; 49.39; 49.40; 49.41; 53.015; 53.02; 53.03, subdivisions 1 and 5; 53.05; 53.06; 53.08; 53.09, subdivision 3; 54.294, subdivision 1; 56.131, subdivision 1; 56.155, subdivision 2; and 118.01, subdivision 1.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1988, section 46.041, subdivision 2, is amended to read:

Subd. 2. NOTICE OF FILING APPLICATION; PUBLICATION. Upon notice of acceptance of an application as complete in all respects for filing, the applicant shall within 30 days of the receipt of the form prescribed by the commissioner, publish a notice of the filing of the application, in a qualified newspaper published in the municipality in which the proposed bank is to be located, and if there is no such newspaper, then at the county seat of the county in a qualified newspaper likely to give notice in the municipality in which the bank is proposed to be located. The notice must be in the form prescribed by

New language is indicated by underline, deletions by ~~strikeout~~.

the commissioner and, in addition to the publication, the applicant shall mail a copy of the notice by certified mail to every bank located within three miles of the proposed location of the bank.

Sec. 2. Minnesota Statutes 1988, section 47.015, subdivision 1, is amended to read:

Subdivision 1. **FINANCIAL INSTITUTIONS.** As used in this section the term "financial institution" shall include banks, trust companies, banks and trust companies, mutual savings banks, industrial loan and thrift companies having outstanding certificates of indebtedness for investment ~~other than those pledged as security for a loan made contemporaneous therewith~~, savings and loan associations, ~~building and loan associations~~, national banking associations, federal reserve banks and federal savings and loan associations doing business in this state, and includes any branch or detached facility of any of them.

Sec. 3. Minnesota Statutes 1988, section 47.101, subdivision 2, is amended to read:

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 a radius of three miles measured in a straight line shall submit an application in a form prescribed by the commissioner of commerce, an investigation fee of \$500 and additional fees as prescribed in section 46.041 if subsequently processed under subdivision 3. After the application is deemed to be complete and accepted by the commissioner of commerce, the applicant shall publish once in a form prescribed by the commissioner a notice of the filing of the application in a qualified newspaper published in the municipalities where the banking institution is located and relocating if different. ~~If there is~~ are no such paper newspapers, then notice of the filing shall be published ~~at the appropriate county seats of the existing and proposed sites if different in~~ qualified newspapers likely to give notice in the existing and proposed municipalities. The applicant shall cause the notice to be publicly displayed in its lobby and sent by certified mail to all banking institutions within three miles of the proposed location measured in a straight line. Upon expiration of a period of 21 days for comment, the commissioner, after considering the applicable conditions for issuance of the bank charter defined in section 46.044, shall within 60 days approve or disapprove the application.

Sec. 4. Minnesota Statutes 1988, section 47.16, subdivision 1, is amended to read:

Subdivision 1. 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, ~~with proof of publication thereof~~, and the certificate of

New language is indicated by underline, deletions by ~~strikeout~~.

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.

Sec. 5. Minnesota Statutes 1988, section 47.54, subdivision 1, is amended to read:

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. If an application is contested, 50 percent of an additional fee equal to the actual costs incurred by the commissioner in approving or disapproving the application, payable to the state treasurer and credited by the treasurer to the general fund, shall be paid by the applicant and 50 percent equally by the intervening parties. 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 ~~at the county seat of the county in which the~~ in a qualified newspaper likely to give notice in the municipality in which the proposed detached facility is proposed to be located. In addition to the publication, the applicant must mail a copy of the notice by certified mail to every bank located within three miles of the proposed location of the detached facility, measured in the manner provided in section 47.52.

Sec. 6. Minnesota Statutes 1988, section 48.475, subdivision 3, is amended to read:

Subd. 3. **GENERAL REQUIREMENTS.** If the bank at which a trust service office is to be established has exercised trust powers, then the trust company or bank which is establishing the trust service office shall enter into an agreement respecting those fiduciary powers to which the trust company or bank shall succeed and shall file the agreement with the commissioner. The trust company or bank which is establishing a trust service office under subdivision 1 shall publish a notice of the filing in the form prescribed by the commissioner in a newspaper published in the municipality in which the trust service office is to be located, and if there is no such newspaper, then at the county seat of the county in which the trust service office is to be located. The notice shall be published once in a qualified newspaper in the municipality in which the proposed trust service office 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 trust service office is to be located, and proof of publication shall be filed with the commissioner immediately after publication of the notice of filing. After filing and publication, the trust company or bank establishing the trust service office shall, as of the date the office first opens for business, and without further authorization of any kind, succeed to and be substituted for the bank at which the trust service office is located as to all fiduciary powers, rights, duties, privileges, and liabilities of the bank in its capacity as fiduciary for all estates,

New language is indicated by underline, deletions by ~~strikeout~~.

trusts, conservatorships, guardianships, and other fiduciary relationships of which the bank is then serving as fiduciary, except as may be otherwise specified in the agreement between the bank and the trust company or bank which has established the trust service office. The trust company or bank which has established the trust service office shall also be deemed named as fiduciary in all writings, including, but not limited to, wills, trusts, court orders, and similar documents and instruments, naming the bank at which the trust service office is located signed before the date the trust service office first opens for business, unless expressly negated by the writing or otherwise specified in the agreement between the trust company or bank and the bank at which the trust service office is located. On the effective date of the substitution, the bank at which the trust service office has been established shall be released and absolved from all fiduciary duties and obligations under the writings and shall discontinue its exercise of trust powers on all matters not specifically retained by the agreement. This subdivision does not absolve the bank from liabilities arising out of any breach of fiduciary duty or obligation occurring prior to the date the trust service office first opens for business. This subdivision does not affect the authority, duties, or obligations of a bank with respect to relationships which may be established without trust powers, whether the relationships arise before or after the establishment of the trust service office.

Sec. 7. Minnesota Statutes 1988, section 48.48, subdivision 1, is amended to read:

Subdivision 1. **SUBMISSION AND PUBLICATION.** At least four times in each year, and at any other time when so requested by the commissioner, every bank or trust company shall, within 30 days of the date of notice, make and transmit to the commissioner, in a form the commissioner prescribes, a report, verified by its president or vice-president and by its cashier or treasurer, and attested by at least two of its directors, stating in detail, under appropriate heads, as required by the commissioner, its assets and liabilities at the close of business on the day specified in the request. The commissioner may accept a report made to a federal authority having supervision of banks or trust companies in fulfilling this requirement. This statement shall be published once at the expense of the bank or trust company in a qualified newspaper serving in the municipality or town in which the bank or trust company is located. ~~The newspaper shall be published in the county in which the bank or trust company is located or in an adjoining county, and if there is no such newspaper, then in a qualified newspaper likely to give notice in the municipality or town in which the bank or trust company is located.~~ Proof of publication shall be filed with the commissioner immediately after publication of the report, but no later than 60 days following the date of the notice.

Sec. 8. Minnesota Statutes 1988, section 49.33, is amended to read:

49.33 CONSOLIDATION AND MERGER, WHEN AUTHORIZED.

Subject to the provisions of sections 49.33 to 49.41, with the written consent of the commissioner of commerce, any bank of discount and deposit or

New language is indicated by underline, deletions by ~~strikeout~~.

trust company may effect a transfer of its assets and liabilities to another bank or trust company for the purpose of consolidating ~~therewith~~ or merging, but the same shall be without prejudice to the creditors of either.

Sec. 9. Minnesota Statutes 1988, section 49.34, subdivision 1, is amended to read:

Subdivision 1. **GENERALLY.** Any two or more state banks, operating in the same city, may be consolidated or merged into a consolidated or merged state bank, and any two or more trust companies, operating in the same city, may be consolidated or merged into a consolidated or merged trust company, and any state bank or state banks and any trust company or trust companies, operating in the same city, may be consolidated or merged into a consolidated or merged state bank or consolidated or merged trust company, as the respective boards of directors thereof may determine. ~~All~~ The consolidation or merger shall be effected in the manner provided in sections 49.35 to 49.41 and when so organized, the consolidated or merged corporation shall be governed and conducted in all other respects as provided by the statutes relating to the respective classes of financial corporations.

Sec. 10. Minnesota Statutes 1988, section 49.35, is amended to read:

49.35 CONSOLIDATION OR MERGER AGREEMENT.

The respective boards of directors of the consolidating or merging corporations may, by the majority vote of all of the members of each board, make or authorize to be made between the corporations a written ~~consolidation~~ agreement, in duplicate, for the consolidation or merger of the corporations. ~~This~~ The agreement shall specify each corporation to be a party to the ~~consolidation~~ transaction, and shall prescribe the terms and conditions thereof; the mode of carrying it into effect; the authorized capital stock of the consolidated or surviving corporation, which shall not exceed the aggregate authorized capital stock of all of the corporations that are a party thereto; the name of the consolidated or surviving corporation, which may be the name, in whole or in part, of any corporation which is a party to the agreement, and shall specify the city in which it shall have its principal place of business. It shall name the persons who shall constitute the board of directors of the consolidated or surviving corporation, but the number and qualifications of these persons shall be in accordance with the statutes relating to the number and qualifications of directors of that class of corporation.

Sec. 11. Minnesota Statutes 1988, section 49.36, subdivision 1, is amended to read:

Subdivision 1. **REQUIREMENTS.** This consolidation or merger agreement and certified copy of the proceedings of the meetings of the respective boards of directors, at which the making of the agreement was authorized, must be submitted to the commissioner of commerce for approval with a fee of \$250 payable to the commissioner of commerce. The fee must be paid in equal parts by

New language is indicated by underline, deletions by ~~strikeout~~.

the parties to the agreement. ~~The consolidation is, and it shall not be effective until so approved by the commissioner. The commissioner shall take action after the documents are submitted, and shall be is entitled to further information from the consolidated corporation by request any party to the transaction as may be requested by the commissioner, or as may be obtained upon a hearing directed by the commissioner.~~

Sec. 12. Minnesota Statutes 1988, section 49.37, is amended to read:

49.37 STOCKHOLDERS TO APPROVE; CERTIFICATE OF CONSOLIDATION OR MERGER.

Either before or after the consolidation or merger agreement has been approved by the commissioner of commerce, it must be submitted to the stockholders of each corporation at a meeting thereof called ~~for that purpose~~, and it does not become binding upon the corporation until it has been approved at each of the meetings required by this section by the vote or ballot of the stockholders, holding at least a majority of the amount of stock of the respective corporations, or a higher percentage as may be required by the certificate of incorporation of the corporations. Proof of the holding of these meetings and the results thereof must be submitted to the commissioner of commerce. After the ~~consolidation agreement has called for by sections 49.33 to 49.41 has~~ been approved by the stockholders of the respective corporations and by the commissioner of ~~banks~~ commerce, the latter shall issue a certificate reciting that ~~these the~~ corporations have complied with the provisions of sections 49.34 to 49.41; and declaring the consolidation or merger of these corporations; and ~~stating~~ the name of the consolidated or surviving corporation, the amount of capital stock thereof, ~~and~~ the names of the first board of directors, and the place of business of the consolidated or surviving corporation, which must be within the city where any ~~one~~ of the constituent corporations ~~has have~~ been previously authorized to have ~~its place their places~~ of business. Upon the issuing of this certificate and the filing thereof of it for record in the office of the secretary of state, ~~this the~~ incorporation is deemed to be complete in the case of the consolidation, and the assets of the constituent corporations merged into the survivor in the case of a merger, and the consolidated or surviving corporation shall, from the date of this certificate, have the term of corporate existence ~~therein as may be specified in it~~, not exceeding the longest unexpired term of any constituent corporation. The certificate of the commissioner of commerce is prima facie evidence that all of the provisions of sections 49.34 to 49.41 have been complied with, and is conclusive evidence of the existence of the consolidated or surviving corporation.

Sec. 13. Minnesota Statutes 1988, section 49.38, is amended to read:

49.38 CORPORATE EXISTENCE MERGED; RIGHTS, POWERS, OBLIGATIONS.

Upon the consolidation or merger of any such a corporation with or into any one or more corporations; ~~into a consolidated corporation~~, as herein provid-

New language is indicated by underline, deletions by ~~strikeout~~.

ed, the corporate existence of each former corporation shall be merged into that of the consolidated or merged corporation, and all and singular its rights, privileges, and franchises, and its right, title, and interest in and to all property of whatsoever kind, whether real, personal, or mixed, and all things in action, and every right, privilege, interest, or asset of conceivable value or benefit then existing which would inure to it under an unmerged or unconsolidated existence, shall be deemed fully and finally transferred to and vested in the consolidated or surviving corporation without further act or deed, and the last mentioned corporation shall have and hold the same in its own right as fully as the same was possessed and held by the former corporation from which it was, by operation of sections 49.34 to 49.41, transferred. Its rights, obligations, and relations to any person, creditor, depositor, trustee, or beneficiary of any trust shall remain unimpaired and the corporation into which it shall have been consolidated or merged shall succeed to these relations, obligations, trusts, and liabilities and shall execute and perform all such trusts in the same manner as though it had itself assumed the relation or trust, or incurred the obligation or liability; and its liabilities and obligations to creditors existing for any cause shall not be impaired by the consolidation or merger, nor shall any obligation or liability of any stockholder, in any corporation which is a party to the consolidation or merger, be affected by any such consolidation or merger, but these obligations and liabilities shall continue as fully and to the same extent as existed before the consolidation or merger. The consolidated or surviving corporation shall become, without further act or deed, the successor of the consolidating or constituent corporations in any and all fiduciary capacities, in which each consolidated or constituent corporation may be acting at the time of the consolidation or merger, and shall be liable to all beneficiaries as fully as if the consolidating or merging corporations had continued its separate corporate existence. If any consolidating or merging corporation shall be nominated and appointed, or shall have been nominated or appointed, as executor, guardian, administrator, agent, or trustee, or in any other trust ~~relation~~ relationship of fiduciary capacities in any will, trust agreement, trust conveyance, or any other conveyance, order, or judgment of any court, or any other instrument prior to the consolidation or merger, even though the will or other instrument shall not ~~become~~ be operative or effective until after the consolidation or merger shall have become effective, every such office, trust relationship, fiduciary capacity, and all of the rights, powers, privileges, duties, discretions, and responsibilities so provided to devolve upon, vest in, or inure to the corporation so nominated or appointed, shall fully and in every respect devolve upon, vest in, and inure to, and be exercised by, the consolidated or surviving corporation, whether there be one or more successive mergers or consolidations.

Sec. 14. Minnesota Statutes 1988, section 49.39, is amended to read:

49.39 CONSOLIDATION OR MERGER OF BANKS AND TRUST COMPANIES.

Upon the consolidation or merger of a trust company with a national banking corporation into a consolidated or merged banking corporation, as provided

New language is indicated by underline, deletions by ~~strikeout~~.

by any existing act of Congress of the United States, the corporate existence of that trust company shall be consolidated or merged into that of the consolidated or merged banking corporation to the same extent and with the same effect provided in section 49.38, relating to the consolidation or merger of two or more state banks or trust companies.

Sec. 15. Minnesota Statutes 1988, section 49.40, is amended to read:

49.40 PENDING ACTIONS OR PROCEEDINGS NOT AFFECTED.

Any pending action or other judicial proceeding in which any consolidating or merging corporation is a party shall not be deemed to have abated or to have discontinued by reason of the consolidation or merger but may be prosecuted to final judgment, order, or decree in the same manner as if the consolidation or merger had not been made, or the consolidated or merged corporation may be substituted as a party to the action or proceeding, and any judgment, order, or decree may be rendered for or against it that might have been rendered for or against that corporation if the consolidation or merger had not occurred.

Sec. 16. Minnesota Statutes 1988, section 49.41, is amended to read:

49.41 RIGHTS OF DISSENTING STOCKHOLDERS.

Any stockholder not voting in favor of the agreement of consolidation or merger at the meeting prescribed in section 49.37 may, at that meeting, or within 20 days thereafter, object to the consolidation or merger and demand payment for that person's stock. If the consolidation or merger takes effect at any time after this demand, the stockholder may, at any time within 60 days thereafter, apply to the district court in the county wherein is situated the principal place of business of the corporation with which the other or others are consolidated or merged, for the appointment of three persons to appraise the value of that person's stock. The court shall thereupon appoint these appraisers and designate the time and place of their first meeting, with such directions in regard to their proceedings as shall be deemed proper, and also direct the time and manner in which payment shall be made of the value of that person's stock to the stockholder. The appraisers shall meet at the time and place designated, after being duly sworn to discharge their duties honestly and faithfully, make and certify a written estimate of the value of the stock at the time of the appraisal, and deliver one copy to the corporation and another to the stockholder, if demanded. The charges and expenses of the appraisers shall be paid one-half by the stockholder and one-half by the corporation. When the corporation shall have paid the appraised value of this stock, the stock shall be canceled and this stockholder shall cease to be a member of the corporation or to have any interest in this stock or in the corporation or in the corporate property, and this stock may be held and disposed of by the corporation for its own benefit.

Sec. 17. Minnesota Statutes 1988, section 53.015, is amended to read:

53.015 DEFINITIONS.

New language is indicated by underline, deletions by ~~strikeout~~.

Subdivision 1. **APPLICABILITY.** For the purposes of this chapter, the terms defined in this section shall have the meanings given them.

Subd. 2. **PAID-IN CAPITAL SURPLUS.** "Paid-in capital Surplus" means the sum total of all funds: (1) received as consideration received in excess of the par value of preferred or common stock; and (2) transferred from undivided profits as dedicated funds, by action of the board of directors.

Subd. 3. **INVESTED INCOME UNDIVIDED PROFITS.** "Invested income Undivided profits" means the net remaining funds resulting from the operation of the corporation and shall include, but not be limited to retained earnings, earned surplus, undivided profits and current earnings.

Subd. 4. **DONATED CAPITAL STOCK.** "Donated capital" means all funds contributed by the stockholders, other than funds received in connection with the issuance of stock, and such amounts transferred from invested income, either by declaration of a share dividend or by action of the board of directors.

Subd. 5. **CONTRIBUTED CAPITAL.** "Contributed capital" means the sum total of all funds contributed to the corporation by the stockholders and shall include, but not be limited to preferred stock, common stock, paid-in capital and donated capital.

Subd. 6. **APPROPRIATED RESERVES.** "Appropriated reserves" means dedicated funds transferred from invested income by action of the board of directors, which dedicated funds shall otherwise be known as a capital reserve. "Capital stock" means the par value of preferred or common stock multiplied by the respective number of shares of each type of stock.

Sec. 18. Minnesota Statutes 1988, section 53.02, is amended to read:

53.02 CAPITAL.

No corporation shall be organized under this chapter or qualified to do business thereunder with a capital represented by shares of common stock of less than \$25,000 in cities with less than 50,000 people; \$50,000 in cities with more than 50,000 people and less than 100,000 people; and \$75,000 in cities with 100,000 people, or more, according to the last official census; each share of that common stock to have a par value of not less than \$1 per share. No corporation shall begin doing business under this chapter unless the required capital is fully paid, and unless a paid-in capital surplus of no less than ten percent of that required capital shall have also been fully paid and set up. After the required capital of a corporation organized or doing business under this chapter shall have been fully paid and a paid-in capital surplus of not less than ten percent thereof also fully paid and set up, additional capital stock in that corporation may be sold at not less than par, provided, however, that there is always maintained a paid-in capital surplus of at least ten percent of the capital of the corporation represented by shares of common stock.

New language is indicated by underline, deletions by ~~strikeout~~.

Sec. 19. Minnesota Statutes 1988, section 53.03, subdivision 1, is amended to read:

Subdivision 1. **APPLICATION, FEE, NOTICE.** Any corporation hereafter organized as an industrial loan and thrift company, shall, after compliance with the requirements set forth in sections 53.01 and 53.02, file a written application with the department of commerce for a certificate of authorization. A corporation that will not sell or issue thrift certificates for investment as permitted by this chapter need not comply with subdivision 2b. The application must be in the form prescribed by the department of commerce. The application must be made in the name of the corporation, executed and acknowledged by an officer designated by the board of directors of the corporation, requesting a certificate authorizing the corporation to transact business as an industrial loan and thrift company, at the place and in the name stated in the application. At the time of filing the application the applicant shall pay a \$1,000 filing fee and a \$500 investigation fee. The fees must be turned over by the commissioner to the state treasurer and credited to the general fund. The applicant shall also submit a copy of the bylaws of the corporation, its articles of incorporation and all amendments thereto at that time. If the application is contested, 50 percent of an additional fee equal to the actual costs incurred by the department of commerce in approving or disapproving the application, payable to the state treasurer and credited to the general fund shall be paid by the applicant and 50 percent equally by the intervening parties. A notice of the filing of the application must be published once within 30 days of the receipt of the form prescribed by the department of commerce, at the expense of the applicant, in a qualified newspaper published in the municipality in which the proposed industrial loan and thrift company is to be located, or, if there be none, in a qualified newspaper published at the county seat of the county likely to give notice in the municipality in which the company is proposed to be located. If the department of commerce receives a written objection to the application from any person within 20 days of the notice having been fully published a contested case hearing must be conducted on the application. Notice of a hearing in connection with this section must be published once in the form prescribed by the department of commerce, at the expense of the applicant, in the same manner as a notice of application.

Sec. 20. Minnesota Statutes 1988, section 53.03, subdivision 5, is amended to read:

Subd. 5. **PLACE OF BUSINESS.** Not more than one place of business may be maintained under any certificate of authorization issued subsequent to the enactment of Laws 1943, chapter 67, pursuant to the provisions of this chapter, but the department of commerce may issue more than one certificate of authorization to the same corporation upon compliance with all the provisions of this chapter governing an original issuance of a certificate of authorization. To the extent that previously filed applicable information remains unchanged, the applicant need not refile this information, unless requested. The filing fee for a branch application shall be \$500 and the investigation fee \$250. If a

New language is indicated by underline, deletions by ~~strikeout~~.

corporation has been issued more than one certificate of authorization, the corporation shall allocate a portion of ~~contributed capital stock~~ to each office for which a certificate has been issued, in order to comply with the capital requirements of sections 53.02 and 53.05, clause (2), which sections are applicable to each office and the capital allocated thereto in the same manner as if each certificate had been issued to a separate corporation. An industrial loan and thrift corporation with deposit liabilities may change one or more of its locations upon the written approval of the commissioner of commerce. A fee of \$100 must accompany each application to the commissioner for approval to change the location of an established office. An industrial loan and thrift corporation that does not sell and issue thrift certificates for investment may change one or more locations by giving 30 days' written notice to the department of commerce which shall promptly amend the certificate of authorization accordingly.

Sec. 21. Minnesota Statutes 1988, section 53.05, is amended to read:

53.05 POWERS, LIMITATION.

No industrial loan and thrift company may do any of the following:

(1) carry demand banking accounts; use the word "savings" unless the institution's investment certificates, savings accounts, and savings deposits are insured by the Federal Deposit Insurance Corporation and then only if the word is not followed by the words "and loan" in its corporate name; use the word "bank" or "banking" in its corporate name; operate as a savings bank;

(2) have outstanding at any one time certificates of indebtedness, savings accounts, and savings deposits; ~~exclusive of those held by the company; as security for loans made by it of more than seven times the sum of the contributed capital and appropriated reserves of the company until July 1, 1985; or the date an industrial loan and thrift company obtains a commitment for insurance or guarantee of accounts acceptable to the commissioner as required by section 53.10; whichever is earlier; and thereafter 15~~ 30 times the sum of contributed capital stock and appropriated reserves surplus of the company;

(3) accept trusts, except as provided in section 47.75, subdivision 1, or act as guardian, administrator, or judicial trustee in any form;

(4) deposit any of its funds in any banking corporation, unless that corporation has been designated by vote of a majority of directors or of the executive committee present at a meeting duly called, at which a quorum was in attendance;

(5) change any allocation of capital made pursuant to section 53.03 or reduce or withdraw in any way any portion of the ~~contributed capital stock~~ and ~~appropriated reserves~~ surplus without prior written approval of the commissioner of commerce;

New language is indicated by underline, deletions by ~~strikeout~~.

(6) take any instrument in which blanks are left to be filled in after execution;

(7) lend money in excess of 45 20 percent of the total of its ~~contributed capital and appropriated reserves stock and surplus at all its authorized locations~~ to a person primarily liable. "~~Contributed capital and appropriated reserves~~" means the total of the company's ~~contributed capital and appropriated reserves at all its authorized locations~~.

If a loan has been made to a person primarily liable and payments have been made on a certificate of indebtedness securing it, the amount of the payments may be added to the limitation contained in this clause for the purpose of determining whether additional loans may be made to that person. However, industrial loan and thrift companies with deposit liabilities must comply with the provisions of section 48.24; or

(8) issue cashier's checks pursuant to section 48.151, unless and at all times the aggregate liability to all creditors on these instruments is protected by a special fund in cash or due from banks to be used solely for payment of the cashier's checks.

Sec. 22. Minnesota Statutes 1988, section 53.06, is amended to read:

53.06 DIRECTORS, RESIDENCE.

At least three-fourths of the directors of any industrial loan and thrift company holding a certificate that includes the right to issue thrift certificates for investment must be residents of the county in which the industrial loan and thrift company maintains its principal place of business, an adjacent county or any county in which the industrial loan and thrift company maintains a place of business pursuant to this chapter Minnesota.

Sec. 23. Minnesota Statutes 1988, section 53.08, is amended to read:

53.08 DIVIDENDS.

Subdivision 1. GENERAL CONDITIONS FOR DIVIDENDS. When an industrial loan and thrift company is organized under this chapter or operating thereunder, the board of directors may declare a dividend of so much of the net profits of the corporation, after providing for all expenses, reserves, interest, and taxes accrued or due from the corporation, as they shall judge expedient, but before any dividend is declared, not less than one-tenth of the net profits of the industrial loan and thrift company of the preceding half year, or for such period as is covered by the dividend, shall be carried to an ~~invested income fund or appropriated reserves surplus~~ until the aggregate of ~~invested income undivided profits and appropriated reserves surplus~~ shall amount to 20 percent of its capital represented by shares of common stock.

Subd. 2. SPECIAL CONDITIONS FOR DEPOSIT COMPANIES. In addition to the conditions in subdivision 1, industrial loan and thrift companies

New language is indicated by underline, deletions by ~~strikeout~~.

having outstanding time certificates of indebtedness, savings accounts, or savings deposits must comply with the following special conditions:

(1) the dividend period for the purpose of declaring dividends shall be the period beginning on January 1 and ending as of the close of business December 31 of each calendar year and the net income for this period shall be determined from the consolidated report of income of each company;

(2) the department of commerce will supply each company with forms to be completed with information called for. The forms must be mailed or delivered to the commissioner within ten days of the date of declaration of any dividend and at least 15 days before the proposed payment date of any dividend. The forms shall contain a statement by the commissioner providing that if certain requirements as set forth in the statement are met, the company may pay a cash dividend or dividends without specific approval of the commissioner in the year after the dividend period in amounts so as not to reduce the company's capital, surplus, undivided profits, and reserves below these requirements;

(3) declared dividends shall be deducted from undivided profits and carried on the books as another liability entitled "dividends payable." The other liability account shall be reversed upon payment or nonapproval by the commissioner; and

(4) except as provided in clause (2), no company shall pay a cash dividend to its stockholders until written approval for the dividend has been obtained from the commissioner.

Sec. 24. Minnesota Statutes 1988, section 53.09, subdivision 3, is amended to read:

Subd. 3. **PENALTIES.** The penalties for violation of this chapter, or for any wrongdoing in connection therewith, shall be the same as those applied to state banks under the laws of this state. In addition to being subject to the penalties in section 48.28, a company in violation of section 53.05, clause (2), may cure this violation in the manner provided in section 48.28.

Sec. 25. Minnesota Statutes 1988, section 54.294, subdivision 1, is amended to read:

Subdivision 1. **DOCUMENTS FILED FOR EXAMINATION.** Notwithstanding the examination frequency prescribed by section 46.04, the examination of the face amount certificate companies described in Minnesota Statutes 1974, section 54.26, shall be carried out on an annual basis by the commissioner. In conducting such examination, the commissioner may utilize reports which have been audited and attested to by independent certified public accountants. The procedures employed by the independent certified public accountants shall conform to generally accepted auditing standards. Each face amount certificate investment company shall file with the commissioner copies of its prospectuses, semiannual and annual reports to shareholders, S-1 registration statements and

New language is indicated by underline, deletions by ~~strikeout~~.

amendments thereto, and annual reports to the United States Securities and Exchange Commission, all as filed pursuant to the requirements of the Securities Act of 1933, as amended and the rules and regulations adopted pursuant thereto, the Securities Exchange Act of 1934, as amended and the rules and regulations adopted pursuant thereto, and the Investment Company Act of 1940, as amended and the rules and regulations adopted pursuant thereto. The commissioner may accept as filed copies of the foregoing material previously filed with the commissioner of commerce. Other face amount certificate investment companies described in Minnesota Statutes 1974, section 54.26, shall file with the commissioner copies of their semiannual and annual reports, which annual reports have been audited and attested to by independent certified public accountants as to assets maintained on deposit and the value thereof, and semiannual and annual reports, which annual reports have been certified by independent certified public accountants, as to certificate liabilities.

Sec. 26. Minnesota Statutes 1988, section 56.131, subdivision 1, is amended to read:

Subdivision 1. **INTEREST RATES AND CHARGES.** (a) On any loan in a principal amount not exceeding \$35,000 or ten percent of a corporate licensee's ~~contributed capital stock and appropriated reserves~~ surplus as defined in section 53.015, if greater, a licensee may contract for and receive interest, calculated according to the actuarial method, not exceeding the equivalent of the greater of any of the following:

(1) the total of: (i) 33 percent per year on that part of the unpaid balance of the principal amount not exceeding \$350; and (ii) 19 percent per year on that part of the unpaid balance of the principal amount exceeding \$350; or

(2) 21.75 percent per year on the unpaid balance of the principal amount.

(b) On any loan where interest has been calculated according to the method provided for in paragraph (a), clause (1), interest must be contracted for and earned as provided in that provision or at the single annual percentage rate computed to the nearest 1/100 of one percent that would earn the same total interest at maturity of the contract as would be earned by the application of the graduated rates provided in paragraph (a), clause (1), when the debt is paid according to the agreed terms and the calculations are made according to the actuarial method.

(c) Loans may be interest-bearing or precomputed.

(d) To compute time on interest-bearing and precomputed loans, including, but not limited to the calculation of interest, a day is considered 1/30 of a month when calculation is made for a fraction of a calendar month. A year is 12 calendar months. A calendar month is that period from a given date in one month to the same numbered date in the following month, and if there is no same numbered date, to the last day of the following month. When a period of time includes a whole month and a fraction of a month, the fraction of a month is considered to follow the whole month.

New language is indicated by underline, deletions by ~~strikeout~~.

In the alternative, for interest-bearing loans, a licensee may charge interest at the rate of 1/365 of the agreed annual rate for each actual day elapsed.

(e) With respect to interest-bearing loans:

(1) Interest must be computed on unpaid principal balances outstanding from time to time, for the time outstanding. Each payment must be applied first to the accumulated interest and the remainder of the payment applied to the unpaid principal balance; provided however, that if the amount of the payment is insufficient to pay the accumulated interest, the unpaid interest continues to accumulate to be paid from the proceeds of subsequent payments and is not added to the principal balance.

(2) Interest must not be payable in advance or compounded. However, if part or all of the consideration for a new loan contract is the unpaid principal balance of a prior loan, then the principal amount payable under the new loan contract may include any unpaid interest which has accrued. The unpaid principal balance of a precomputed loan is the balance due after refund or credit of unearned interest as provided in paragraph (f), clause (3). The resulting loan contract is deemed a new and separate loan transaction for all purposes.

(f) With respect to precomputed loans:

(1) Loans must be repayable in substantially equal and consecutive monthly installments of principal and interest combined, except that the first installment period may be more or less than one month by not more than 15 days, and the first installment payment amount may be larger than the remaining payments by the amount of interest charged for the extra days and must be reduced by the amount of interest for the number of days less than one month to the first installment payment; and monthly installment payment dates may be omitted to accommodate borrowers with seasonal income.

(2) Payments may be applied to the combined total of principal and precomputed interest until the loan is fully paid. Payments must be applied in the order in which they become due.

(3) When any loan contract is paid in full by cash, renewal or refinancing, or a new loan, one month or more before the final installment due date, a licensee shall refund or credit the borrower with the total of the applicable charges for all fully unexpired installment periods, as originally scheduled or as deferred, which follow the day of prepayment; if the prepayment is made other than on a scheduled payment date, the nearest scheduled installment payment date must be used in the computation; provided further, if the prepayment occurs prior to the first installment due date, the licensee may retain 1/30 of the applicable charge for a first installment period of one month for each day from the date of the loan to the date of prepayment, and shall refund or credit the borrower with the balance of the total interest contracted for. If the maturity of the loan is accelerated for any reason and judgment is entered, the licensee shall credit the borrower with the same refund as if prepayment in full had been made on the date the judgment is entered.

New language is indicated by underline, deletions by ~~strikeout~~.

(4) If an installment, other than the final installment, is not paid in full within ten days of its scheduled due date, a licensee may contract for and receive a default charge not exceeding five percent of the amount of the installment, but not less than \$4.

A default charge under this subdivision may not be collected on an installment paid in full within ten days of its scheduled due date, or deferred installment due date with respect to deferred installments, even though a default or deferral charge on an earlier installment has not been paid in full. A default charge may be collected at the time it accrues or at any time thereafter.

(5) If the parties agree in writing, either in the loan contract or in a subsequent agreement, to a deferment of wholly unpaid installments, a licensee may grant a deferment and may collect a deferment charge as provided 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 for 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. Should a loan be prepaid in full during a deferment period, the licensee 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 in full.

(6) If two or more installments are delinquent one full month or more on any due date, and if the contract so provides, the licensee may reduce the unpaid balance by the refund credit which would be required for prepayment in full on the due date of the most recent maturing installment in default. Thereafter, and in lieu of any other default or deferment charges, the single annual percentage rate permitted by this subdivision may be charged on the unpaid balance until fully paid.

(7) Following the final installment as originally scheduled or deferred, the licensee, for any loan contract which has not previously been converted to interest-bearing under ~~paragraph (f)~~, clause (6), may charge interest on any balance remaining unpaid, including unpaid default or deferment charges, at the single annual percentage rate permitted by this subdivision until fully paid.

Sec. 27. Minnesota Statutes 1988, section 56.155, subdivision 2, is amended to read:

- Subd. 2. **PROPERTY INSURANCE.** A licensee may require the obligors to provide insurance on real or personal property security against reasonable risks of loss, damage, and destruction. The amount and term of the insurance shall be reasonable in relation to the value of the security; ~~but the amount and~~

New language is indicated by underline, deletions by ~~strikeout~~.

term of the insurance and shall not exceed the principal amount of the loan and term of the loan less any existing insurance, including homeowner's insurance as defined by section 65A.27, subdivision 4, on the secured property as to which the lender has been provided a loss payable clause, except that the lender may insure or arrange for insurance not to exceed the reasonable value of any motor vehicle collateral less any existing insurance on the motor vehicle as to which the lender has been provided a loss payable clause. The term of the insurance shall also be reasonable in relation to the value of the security and shall not exceed the term of the loan. The restrictions contained in this subdivision shall not apply to the sale or provision of homeowner's insurance as defined in section 65A.27. In all cases when insurance is offered the obligor shall be informed that the obligor has the option of providing insurance through existing policies of insurance that the obligor owns or controls, or by procuring and furnishing the offered coverage through any insurer authorized to transact an insurance business within this state. The purchase of such insurance through the licensee or from an agent, broker, or insurer specified by the licensee shall not be required.

Sec. 28. Minnesota Statutes 1988, section 118.01, subdivision 1, is amended to read:

Subdivision 1. Any bank, trust company or thrift institution authorized to do business in this state may, in lieu of the corporate or personal surety bond required to be furnished to secure deposited funds, deposit with the custodian of the funds as collateral security: (1) certificates of deposit that are fully insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation; (2) notes secured by first mortgages of future maturity, upon which interest is not past due, on improved real estate free from delinquent taxes, within the county wherein the depository is located, or within counties immediately adjoining the county in the state of Minnesota; ~~the;~~ (3) obligations which are legally authorized investments for debt service funds under section 475.66, subdivision 3; and (4) qualified state or local government obligations acceptable to the treasurer or chief financial officer. Qualified obligations must be general obligations rated "A" or better by Moody's Investors Service, Inc. or Standard & Poor's Corporation.

Presented to the governor May 16, 1989

Signed by the governor May 17, 1989, 6:20 p.m.

CHAPTER 167—H.F.No. 30

An act relating to employment; requiring meal breaks during the work day; proposing coding for new law in Minnesota Statutes, chapter 177.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

New language is indicated by underline, deletions by ~~strikeout~~.