division 1, paragraph (c). The commissioner of administration must deposit the receipts in the fund established in subdivision 1.

Sec. 2. Minnesota Statutes 1994, section 237.53, subdivision 2, is amended to read:

Subd. 2. **ELIGIBILITY.** To be eligible to obtain a communication device under this section, a person must be:

(1) ~~at least five years of age~~ able to benefit from and use the equipment for its intended purpose;

(2) communication impaired;

(3) a resident of the state;

(4) a resident in a household that has a median income at or below the applicable median household income in the state, except a deaf and blind person applying for a telebraille unit may reside in a household that has a median income no more than 150 percent of the applicable median household income in the state; and

(5) a resident in a household that has telephone service or that has made application for service and has been assigned a telephone number; or a resident in a residential care facility, such as a nursing home or group home where telephone service is not included as part of overall service provision.

Presented to the governor May 22, 1995

Signed by the governor May 22, 1995, 7:28 p.m.

CHAPTER 202—S.F.No. 1134

An act relating to financial institutions; regulating notices, electronic financial terminals, mergers with subsidiaries, the powers and duties of the commissioner of commerce, reporting and records requirements, lending powers, the powers and duties of institutions, detached facilities, and interstate banking; making technical changes; amending Minnesota Statutes 1994, sections 46.04, subdivision 1, and by adding a subdivision; 46.041, subdivision 4; 46.046, subdivision 1; 46.048, subdivision 1, and by adding subdivisions; 47.10, subdivision 3; 47.11; 47.20, subdivisions 5 and 10; 47.28, subdivision 1; 47.52; 47.56; 47.58, subdivision 2; 47.61, subdivision 3; 47.62, subdivisions 2, 3, and by adding subdivisions; 47.67; 47.69, subdivisions 3 and 5; 47.78; 48.16; 48.194; 48.24, subdivision 5; 48.475, subdivision 3; 48.48, subdivisions 1 and 2; 48.49; 48.61, subdivision 7, and by adding a subdivision; 48.65; 48.90, subdivision 1; 48.91; 48.92, subdivisions 1, 2, 6, 7, 8, 9, and by adding a subdivision; 48.93, subdivisions 1, 3, and 4; 48.96; 48.99, subdivision 1; 49.01, subdivision 3; 51A.02, subdivisions 6, 26, and 40; 51A.19, subdivision 9; 51A.50; 51A.58; 52.04, subdivision 2a; 52.05, subdivision 2; 53.015, subdivision 4; 53.04, subdivisions 3a, 3c, 4a, and 5a; 53.09, subdivisions 1,

2, and by adding a subdivision; 56.11; 56.12; 56.125, subdivisions 1, 2, and 3; 56.131, subdivisions 1, 2, 4, and 6; 56.132; 56.14; 56.155, subdivision 1; 56.17; 59A.06, subdivision 2; 62B.04, subdivision 1; 62B.08, subdivision 2; 300.20, subdivision 1; 327B.04, subdivision 1; 327B.09, subdivision 1; 332.23, subdivisions 1 and 2; and 334.011, by adding a subdivision; proposing coding for new law in Minnesota Statutes, chapters 45; 47; 48; 51A; 52; and 334; repealing Minnesota Statutes 1994, sections 46.03; 47.80; 47.81; 47.82; 47.83; 47.84; 47.85; 47.95; 47.98; 48.1585; 48.512, subdivision 6; 48.611; 48.97; 48.991; 51A.385; and 325F.91, subdivision 2.

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

ARTICLE 1

FINANCIAL INSTITUTIONS TECHNICAL CORRECTIONS

Section 1. **[45.014] SEAL OF DEPARTMENT OF COMMERCE.**

The commissioner of commerce shall devise a seal for official use as the seal of the department of commerce. The seal must be capable of being legibly reproduced under photographic methods. A description of the seal, and a copy of it, must be filed in the office of the secretary of state.

Sec. 2. Minnesota Statutes 1994, section 46.04, subdivision 1, is amended to read:

Subdivision 1. The commissioner of commerce, referred to in chapters 46 to ~~59~~ 59A, and sections 332.12 to 332.29, as the commissioner, is vested with all the powers, authority, and privileges which, prior to the enactment of Laws 1909, chapter 201, were conferred by law upon the public examiner, and shall take over all duties in relation to state banks, savings banks, trust companies, savings associations, and other financial institutions within the state which, prior to the enactment of chapter 201, were imposed upon the public examiner. The commissioner of commerce shall exercise a constant supervision, either personally or through the examiners herein provided for, over the books and affairs of all state banks, savings banks, trust companies, savings associations, credit unions, industrial loan and thrift companies, and other financial institutions doing business within this state; and shall, through examiners, examine each financial institution at least once every 18 calendar months. In satisfying this examination requirement, the commissioner may accept reports of examination prepared by a federal agency having comparable supervisory powers and examination procedures. With the exception of industrial loan and thrift companies which do not have deposit liabilities and licensed regulated lenders, it shall be the principal purpose of these examinations to inspect and verify the assets and liabilities of each and so far investigate the character and value of the assets of each institution as to determine with reasonable certainty that the values are correctly carried on its books. Assets and liabilities shall be verified in accordance with methods of procedure which the commissioner may determine to be

adequate to carry out the intentions of this section. It shall be the further purpose of these examinations to assess the adequacy of capital protection and the capacity of the institution to meet usual and reasonably anticipated deposit withdrawals and other cash commitments without resorting to excessive borrowing or sale of assets at a significant loss, and to investigate each institution's compliance with applicable laws and rules. Based on the examination findings, the commissioner shall make a determination as to whether the institution is being operated in a safe and sound manner. None of the above provisions limits the commissioner in making additional examinations as deemed necessary or advisable. The commissioner shall investigate the methods of operation and conduct of these institutions and their systems of accounting, to ascertain whether these methods and systems are in accordance with law and sound banking principles. The commissioner may make requirements as to records as deemed necessary to facilitate the carrying out of the commissioner's duties and to properly protect the public interest. The commissioner may examine, or cause to be examined by these examiners, on oath, any officer, director, trustee, owner, agent, clerk, customer, or depositor of any financial institution touching the affairs and business thereof, and may issue, or cause to be issued by the examiners, subpoenas, and administer, or cause to be administered by the examiners, oaths. In case of any refusal to obey any subpoena issued under the commissioner's direction, the refusal may at once be reported to the district court of the district in which the bank or other financial institution is located, and this court shall enforce obedience to these subpoenas in the manner provided by law for enforcing obedience to subpoenas of the court. In all matters relating to official duties, the commissioner of commerce has the power possessed by courts of law to issue subpoenas and cause them to be served and enforced, and all officers, directors, trustees, and employees of state banks, savings banks, trust companies, savings associations, and other financial institutions within the state, and all persons having dealings with or knowledge of the affairs or methods of these institutions, shall afford reasonable facilities for these examinations, make returns and reports to the commissioner of commerce as the commissioner may require; attend and answer, under oath, the commissioner's lawful inquiries; produce and exhibit any books, accounts, documents, and property as the commissioner may desire to inspect, and in all things aid the commissioner in the performance of duties.

Sec. 3. Minnesota Statutes 1994, section 46.041, subdivision 4, is amended to read:

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 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 pro-

posed 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 bank. If an 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 department of commerce to be deposited in the general fund, must be paid by the applicant and 50 percent equally by the intervening parties.

Sec. 4. Minnesota Statutes 1994, section 46.046, subdivision 1, is amended to read:

Subdivision 1. **WORDS, TERMS, AND PHRASES.** Unless the language or context clearly indicates that a different meaning is intended, the word defined in subdivision 2, for the purposes of sections 46.041 to 46.044, shall be given the meaning subjoined to it; and the word defined in subdivision 3, for the purposes of chapters 46 to ~~77~~ 83, shall be given the meaning subjoined to it.

Sec. 5. Minnesota Statutes 1994, section 47.11, is amended to read:

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.

Sec. 6. Minnesota Statutes 1994, section 47.28, subdivision 1, is amended to read:

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

The savings bank by a two-thirds vote of the entire board of trustees, 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~~, building and loan~~ association, and (b) cause an application in writing to be executed, by such persons as the trustees may direct, in the form prescribed by the department of commerce, requesting a certificate of authorization (charter) as a savings~~, building and loan~~ 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 ~~section 51.08~~ chapter 51A.

Sec. 7. Minnesota Statutes 1994, section 47.58, subdivision 2, is amended to read:

Subd. 2. **AUTHORIZATION.** Pursuant to rules which the commissioner of commerce ~~or commissioner of insurance~~ 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 and loan 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.

Sec. 8. Minnesota Statutes 1994, section 47.62, subdivision 3, is amended to read:

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

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

(b) The applicant is financially sound;

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

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

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

~~(f) The location and placement of the electronic financial terminal is not designed to give or promote an unfair competitive advantage to any financial institution.~~

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

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

Sec. 9. Minnesota Statutes 1994, 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, 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. 10. Minnesota Statutes 1994, section 48.61, is amended by adding a subdivision to read:

Subd. 9. **MERGER WITH SUBSIDIARIES; AUTHORITY.** (a) Notwith-

standing any other law to the contrary, a bank may merge a subsidiary authorized and established according to this section into itself if it owns 100 percent of the outstanding voting stock.

(b) A merger of a subsidiary authorized by subdivision 1 must conform to the procedures in section 302A.621.

(c) Before filing the articles of merger with the secretary of state, the merger plan must be filed with and approved in writing by the commissioner who shall determine that:

(1) the provisions of section 302A.621 are followed; and

(2) the merger will not have an undue adverse effect on the safety and soundness of the bank.

Sec. 11. Minnesota Statutes 1994, section 48.65, is amended to read:

48.65 **TRUST COMPANIES TO COMPLY WITH CERTAIN LAWS.**

No trust company of this state shall conduct a banking business, as defined in section 47.02, without fully complying with the provisions of section ~~48.22~~ 48.221 relating to the reserve requirements of the state banks.

Sec. 12. Minnesota Statutes 1994, section 48.92, subdivision 1, is amended to read:

Subdivision 1. **TERMS.** When used in sections 48.90 to ~~48.991~~ 48.99, the terms defined in this section have the meanings given them, unless their context requires a different meaning.

Sec. 13. Minnesota Statutes 1994, section 49.01, subdivision 3, is amended to read:

Subd. 3. **INVESTMENT COMPANY.** "Investment company" means any person, copartnership, association, or corporation referred to in sections 54.26 to ~~54.29~~ 54.297.

Sec. 14. Minnesota Statutes 1994, section 51A.58, is amended to read:

51A.58 **INTERSTATE BRANCHING.**

An association, whether or not the subsidiary of a savings and loan holding company, may, by acquisition, merger, purchase and assumption of some or all of the assets and liabilities, or consolidation, establish or operate branch offices in any reciprocating state, and a savings and loan association chartered in any reciprocating state may establish or operate branch offices in this state by acquisition, merger, purchase, and assumption of some or all of the assets or liabilities or consolidation. A savings and loan holding company with its headquarters in this state may acquire by direct or indirect ownership or control the voting shares of a savings and loan holding company, savings and loan association, or

savings bank located in any reciprocating state, and a savings and loan holding company with its headquarters in a reciprocating state, may acquire by direct or indirect ownership or control the voting shares of a savings and loan holding company, a savings and loan association, or savings bank located in this state, and may acquire and merge with a savings and loan holding company with its headquarters in this state. For the purposes of this section, "reciprocating state" is a state that authorizes the establishment of branch offices in that state by an association located in this state, and the acquisition of savings and loan associations and savings banks located in that state by a savings and loan holding company with its headquarters in this state, under conditions no more restrictive than those imposed by the laws of Minnesota as determined by the commissioner of commerce.

The commissioner of commerce shall adopt rules to provide that procedural requirements equivalent to those contained in sections 48.90 to ~~48.991~~ 48.99 apply to reciprocal interstate branching and acquisitions by savings and loan associations.

Sec. 15. Minnesota Statutes 1994, section 53.04, subdivision 3a, is amended to read:

Subd. 3a. (a) The right to make loans, secured or unsecured, at the rates and on the terms and other conditions permitted licensees under chapter 56. Loans made under the authority of section 56.125 must be in amounts in compliance with section 53.05, clause (7). All other loans made under the authority of chapter 56 must be in amounts in compliance with section 53.05, clause (7), or 56.131, subdivision 1, paragraph (a), whichever is less. The right to extend credit or lend money and to collect and receive charges therefor as provided by chapter 334, or in lieu thereof to charge, collect, and receive interest at the rate of 21.75 percent per annum, including the right to contract for, charge, and collect all other charges including discount points, fees, late payment charges, and insurance premiums on the loans to the same extent permitted on loans made under the authority of chapter 56, regardless of the amount of the loan. The provisions of sections 47.20 and 47.21 do not apply to loans made under this subdivision, except as specifically provided in this subdivision. Nothing in this subdivision is deemed to supersede, repeal, or amend any provision of section 53.05. A licensee making a loan under this chapter secured by a lien on real estate shall comply with the requirements of section 47.20, subdivision 8.

(b) Loans made under this subdivision at a rate of interest not in excess of that provided for in paragraph (a) may be secured by real or personal property, or both. If the proceeds of a loan secured by a first lien on the borrower's primary residence are used to finance the purchase of the borrower's primary residence, the loan must comply with the provisions of section 47.20.

(c) A loan made under this subdivision that is secured by real estate and that is in a principal amount of ~~$7,500~~ $12,000 or more and a maturity of 60 months or more may contain a provision permitting discount points, if the loan

does not provide a loan yield in excess of the maximum rate of interest permitted by this subdivision. Loan yield means the annual rate of return obtained by a licensee computed as the annual percentage rate is computed under Federal Regulation Z. If the loan is prepaid in full, the licensee must make a refund to the borrower to the extent that the loan yield will exceed the maximum rate of interest provided by this subdivision when the prepayment is taken into account.

(d) An agency or instrumentality of the United States government or a corporation otherwise created by an act of the United States Congress or a lender approved or certified by the secretary of housing and urban development, or approved or certified by the administrator of veterans affairs, or approved or certified by the administrator of the farmers home administration, or approved or certified by the federal home loan mortgage corporation, or approved or certified by the federal national mortgage association, that engages in the business of purchasing or taking assignments of mortgage loans and undertakes direct collection of payments from or enforcement of rights against borrowers arising from mortgage loans, is not required to obtain a certificate of authorization under this chapter in order to purchase or take assignments of mortgage loans from persons holding a certificate of authorization under this chapter.

Sec. 16. Minnesota Statutes 1994, section 53.09, subdivision 1, is amended to read:

Subdivision 1. **FREQUENCY AND EXPENSE.** The commissioner shall make examinations for the purposes set forth in section 46.04, subdivision 1, at least once every 18 calendar months, of each authorized place of business of every industrial loan and thrift company with the right to issue thrift certificates for investment organized or operating under this chapter to satisfy the commissioner that the corporation is in a solvent condition and is complying with the requirements of this chapter and operating according to sound business principles. In order to enforce actions in this connection, the commissioner is hereby vested with the same authority as in the examination and regulation of state banks. The corporation so examined shall pay to the commissioner such fees as may be required under section 46.131. The commissioner may maintain an action for the recovery of such costs in any court of competent jurisdiction.

Sec. 17. Minnesota Statutes 1994, section 53.09, subdivision 2, is amended to read:

Subd. 2. **REPORT TO COMMISSIONER.** (1) Each industrial loan and thrift company shall annually on or before the first day of ~~February~~ March file a report with the commissioner stating in detail, under appropriate heads, its assets and liabilities at the close of business on the last day of the preceding calendar year. This report shall be made under oath in the form prescribed by the commissioner.

(2) Each industrial loan and thrift company which holds authority to accept accounts pursuant to section 53.04, subdivision 5, shall in place of the require-

ment in clause (1) submit the reports and make the publication required of state banks pursuant to section 48.48.

(3) Within 30 days following a change in controlling ownership of the capital stock of an industrial loan and thrift company, it shall file a written report with the commissioner stating in detail the nature of such change in ownership.

Sec. 18. Minnesota Statutes 1994, section 53.09, is amended by adding a subdivision to read:

Subd. 2a. **COMPLIANCE EXAMINATIONS.** For the purpose of discovering violations of this chapter or securing information lawfully required by the commissioner under this chapter, the commissioner may, at any time, either personally or by a person or persons duly designated, investigate the loans and business, and examine the books, accounts, records, and files used in the business, of every licensee and of every person engaged in the business whether or not the person acts or claims to act as principal or agent, or under the authority of this chapter. For the purposes of this subdivision, the commissioner and duly designated representatives have free access to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of all these persons. The commissioner and all persons duly designated may require the attendance of and examine, under oath, all persons whose testimony the commissioner may require relative to the loans or business or to the subject matter of an examination, investigation, or hearing.

Each licensee shall pay to the commissioner the amount required under section 46.131, and the commissioner may maintain an action for the recovery of the costs in a court of competent jurisdiction.

Sec. 19. Minnesota Statutes 1994, section 56.11, is amended to read:

56.11 **BOOKS OF ACCOUNT; ANNUAL REPORT.**

The licensee shall keep and use in the licensee's business such books, accounts, and records as will enable the commissioner to determine whether the licensee is complying with the provisions of this chapter and with the rules lawfully made by the commissioner hereunder. Every licensee shall preserve such books, accounts, and records, including cards used in the card system, if any, for at least two years after making the final entry on any loan recorded therein. Accounting systems maintained in whole or in part by mechanical or electronic data processing methods which provide information equivalent to that otherwise required are acceptable for this purpose.

Each licensee shall annually on or before the ~~fifteenth day of March, except in odd numbered years and then on or before the seventh~~ first day of ~~February~~ March, file a report with the commissioner giving such relevant information as the commissioner reasonably may require concerning the business and operations during the preceding calendar year of each licensed place of business, conducted by such licensee within the state. Such report shall be made under oath

and shall be in the form prescribed by the commissioner, who shall make and publish annually an analysis and recapitulation of such reports.

Sec. 20. Minnesota Statutes 1994, section 56.12, is amended to read:

56.12 **ADVERTISING; TAKING OF SECURITY; PLACE OF BUSINESS.**

No licensee shall advertise, print, display, publish, distribute, or broadcast, or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner any statement or representation with regard to the rates, terms, or conditions for the lending of money, credit, goods, or things in action which is false, misleading, or deceptive. The commissioner may order any licensee to desist from any conduct which the commissioner shall find to be a violation of the foregoing provisions.

The commissioner may require that rates of charge, if stated by a licensee, be stated fully and clearly in such manner as the commissioner may deem necessary to prevent misunderstanding thereof by prospective borrowers. In lieu of the disclosure requirements of this section and section 56.14, a licensee may give the disclosures required by the federal Truth-in-Lending Act.

A licensee may take a lien upon real estate as security for any loan exceeding ~~$2,700~~ $4,320 in principal amount made under this chapter. The provisions of sections 47.20 and 47.21 do not apply to loans made under this chapter, except as provided in this section. No loan secured by a first lien on a borrower's primary residence shall be made pursuant to this section if the proceeds of the loan are used to finance the purchase of the borrower's primary residence, unless:

(1) the proceeds of the loan are used to finance the purchase of a manufactured home or a prefabricated building; or

(2) the proceeds of the loan are used in whole or in part to satisfy the balance owed on a contract for deed.

If the proceeds of the loan are used to finance the purchase of the borrower's primary residence, the licensee 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 licensee 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 loans, including but not limited to the ability of the transferee to make the loan payments and satisfactorily maintain the property used as collateral, and (2) executes an agreement in writing with the licensee 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 licensee may charge a fee not in excess of one-tenth of one percent of the remaining unpaid principal balance in

the event the loan is assumed by the transferee and the existing borrower continues after the transfer to be obligated for repayment of the entire assumed indebtedness. A licensee 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, but in no event shall the fee exceed ~~$150~~ $240.

A licensee making a loan under this chapter secured by a lien on real estate shall comply with the requirements of section 47.20, subdivision 8.

No licensee shall conduct the business of making loans under this chapter within any office, room, or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, if the commissioner finds that the character of the other business is such that it would facilitate evasions of this chapter or of the rules lawfully made hereunder. The commissioner may promulgate rules dealing with such other businesses.

No licensee shall transact the business or make any loan provided for by this chapter under any other name or at any other place of business than that named in the license. No licensee shall take any confession of judgment or any power of attorney. No licensee shall take any note or promise to pay that does not accurately disclose the principal amount of the loan, the time for which it is made, and the agreed rate or amount of charge, nor any instrument in which blanks are left to be filled in after execution. Nothing herein is deemed to prohibit the making of loans by mail or arranging for settlement and closing of real estate secured loans by an unrelated qualified closing agent at a location other than the licensed location.

Sec. 21. Minnesota Statutes 1994, section 56.125, subdivision 2, is amended to read:

Subd. 2. **REAL ESTATE AS SECURITY.** A licensee may take a lien upon real estate as security for any open-end loan at or after such time as the outstanding balance first exceeds ~~$2,700~~ $4,320. A subsequent reduction in the balance below ~~$2,700~~ $4,320 has no effect on the lien. A licensee may retain the security interest until it terminates the open-end account. If there is no outstanding balance in the account and there is no commitment by the licensee to a line of credit in excess of ~~$2,700~~ $4,320, the licensee shall, within 20 days following written demand by the borrower, deliver to the borrower a release of the mortgage on any real property taken as security for the open-end loan agreement. A real estate mortgage authorized for a financial institution secures all advances and obligations thereunder from the date of recording.

Sec. 22. Minnesota Statutes 1994, section 56.131, subdivision 4, is amended to read:

Subd. 4. **ADJUSTMENT OF DOLLAR AMOUNTS.** (a) The dollar amounts in this section, sections 53.04, subdivision 3a, paragraph (c), 56.01, 56.12, and 56.125 shall change periodically, as provided in this section, accord-

ing to and to the extent of changes in the implicit price deflator for the gross ~~national~~ domestic product, ~~1972~~ 1987 = 100, compiled by the United States Department of Commerce, and hereafter referred to as the index. The index for December ~~1980~~ 1991 is the reference base index for adjustments of dollar amounts~~, except that the index for December 1984 is the reference base index for the minimum default charge of $4. The reference base index for subdivision 1, paragraph (a), clause (1), and subdivision 2, paragraph (d), is December 1990~~.

(b) 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 1981, chapter 258~~ this act, on the date of enactment; and

(2) the dollar amounts shall not change if the amounts required by this section are those currently in effect pursuant to ~~Laws 1981, chapter 258~~ this act, as a result of earlier application of this section.

(c) 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.

(d) 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 (b); and

(2) promptly after the changes occur, changes in the index required by paragraph (c) 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.

(e) 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 (b), clause (2) or appearing in the last publication of the commissioner announcing the then current dollar amounts.

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

Sec. 23. Minnesota Statutes 1994, section 56.131, subdivision 6, is amended to read:

Subd. 6. **DISCOUNT POINTS.** A loan made under this section that is secured by real estate and that is in a principal amount of ~~$7,500~~ $12,000 or more and has a maturity of 60 months or more may contain a provision permitting discount points, if the loan does not provide a loan yield in excess of the maximum rate of interest permitted by this section. Loan yield means the annual rate of return obtained by a licensee computed as the annual percentage rate is computed under Federal Regulation Z. If the loan is prepaid in full, the licensee must make a refund to the borrower to the extent that the loan yield will exceed the maximum rate of interest provided by this section when the prepayment is taken into account.

Sec. 24. Minnesota Statutes 1994, section 56.17, is amended to read:

56.17 **LIMITATION; ASSIGNMENT OF WAGES; SECURITY AGREEMENT.**

No assignment of, or order for payment of, any salary, wages, commissions, or other compensation for services earned or to be earned, given to secure any loan made by any licensee under this chapter, shall be valid unless the principal amount of the loan is ~~$1,200 or less and is~~ paid to the borrower simultaneously with its execution; nor shall any assignment or order, or any security agreement or other lien on household furniture then in the possession and use of the borrower, be valid unless it is in writing, signed in person by the borrower~~, nor if the borrower is married, unless it is signed in person by both husband and wife; provided, that written assent of a spouse shall not be required when husband and wife have been living separate and apart for a period of at least five months prior to the making of the assignment, order, security agreement, or lien~~. If the borrower is married, an assignment, order, security agreement, or other lien is not valid without the spouse's written consent, if the spouse's consent would be necessary under applicable law to make the property offered as security available to satisfy the debt in the event of default.

Under any assignment or order for the payment of future salary, wages, commissions, or other compensation for services, given as security for a loan made by any licensee under this chapter, a sum not to exceed ten percent of the borrower's salary, wages, commissions, or other compensation for services shall be collectible from the employer of the borrower by the licensee at the time for each payment to the borrower of salary, wages, commissions, or other compensation for services, from the time that a copy of the assignment, verified by the oath of the licensee or the licensee's agent, together with a similarly verified statement of the amount unpaid upon the loan and a printed copy of this section is served upon the employer; provided, that this section shall not be construed as giving the assignee any greater rights than those under section 181.05.

This section shall control, with respect to licensees, notwithstanding anything in section 47.59, subdivision 12, clause (c), to the contrary.

Sec. 25. **REVISOR INSTRUCTION.**

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

The revisor of statutes shall change the term "building and loan association" or "savings, building and loan association" or "savings and loan association" or similar term to "savings association" or similar term in Minnesota Statutes and Minnesota Rules.

Sec. 26. **REPEALER.**

Minnesota Statutes 1994, sections 46.03; 48.611; and 48.97, subdivisions 2, 3, and 4, are repealed.

Sec. 27. **EFFECTIVE DATE.**

Sections 1 to 21 and 23 to 26 are effective the day following final enactment.

ARTICLE 2

REGULATORY IMPROVEMENT

Section 1. Minnesota Statutes 1994, section 46.04, is amended by adding a subdivision to read:

Subd. 3. **FINANCIAL INSTITUTIONS AND LICENSEE RECORDS.** For purposes of examination and regulation of those entities referred to in subdivisions 1 and 2, records may be maintained on optical image storage systems acceptable to the commissioner. Electronically maintained and stored records must meet the following minimum standards:

(1) a document or record may be transferred to and stored on a nonerasable imaging system and retained only in that format if all documents and records preserved on nonerasable optical imaging systems meet nationally recognized standards for permanent records and are available for retrieval for as long as applicable law requires;

(2) a backup copy of the record is created and stored at a site other than the site where the original is kept. The backup copy must be preserved either: (i) on a nonerasable optical imaging system; or (ii) by another reproduction method approved by the commissioner; and

(3) all contracts for third-party maintenance and storage of those records must include assurance of access by the commissioner consistent with the purposes of this section.

Sec. 2. Minnesota Statutes 1994, section 47.10, subdivision 3, is amended to read:

Subd. 3. **LEASEHOLD PLACE OF BUSINESS; APPROVAL OF CERTAIN LEASE AGREEMENTS.** No bank, trust company, savings bank, or

~~building and loan~~ 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 ~~building and loan~~ 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.

Sec. 3. Minnesota Statutes 1994, section 47.20, subdivision 5, is amended to read:

Subd. 5. **PREPAYMENT PENALTY.** (a) Unless the mortgagor waives its right to prepay the mortgage loan without penalty, in a uniform written disclosure waiver approved by the commissioner and signed by the mortgagor, no conventional loan or loan authorized in subdivision 1 ~~made on or after the effective date of Laws 1977, chapter 350~~ shall contain a provision requiring or permitting the imposition of a penalty in the event the loan or advance of credit is prepaid. The prepayment penalty shall not exceed the lesser of two percent of the unpaid principal balance or 60 days interest on the unpaid principal balance. A lender that offers a mortgage loan with a prepayment penalty shall also offer a mortgage loan without a prepayment penalty.

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

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

collected in advance, and nothing in this section shall require a refund of the charges in the event of prepayment. Nothing in this section shall be considered to supersede section 47.204.

Sec. 4. Minnesota Statutes 1994, section 47.20, subdivision 10, is amended to read:

Subd. 10. **WAIVER.** ~~Notwithstanding any other law~~ 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.

Sec. 5. Minnesota Statutes 1994, section 47.52, is amended to read:

47.52 **AUTHORIZATION.**

(a) With the prior approval of the commissioner, any bank doing business in this state may establish and maintain not more than five detached facilities provided the facilities are located within the municipality in which the principal office of the applicant bank is located; or within 5,000 feet of its principal office measured in a straight line from the closest points of the closest structures involved; or within 100 miles of its principal office measured in a straight line from the closest points of the closest structures involved, if the detached facility is within any municipality in which no bank is located at the time of application or if the detached facility is in a municipality having a population of more than 10,000, or if the detached facility is located in a municipality having a population of 10,000 or less, as determined by the commissioner from the latest available data from the state demographer, or for municipalities located in the seven-county metropolitan area from the metropolitan council, and all the banks having a principal office in the municipality have consented in writing to the establishment of the facility.

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

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

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

Sec. 6. Minnesota Statutes 1994, section 47.56, is amended to read:

47.56 **TRANSFER OF LOCATION.**

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

Sec. 7. Minnesota Statutes 1994, section 47.61, subdivision 3, is amended to read:

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

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

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

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

(1) a telephone ~~or~~;

(2) an electronic information processing device that is used internally by a financial institution to conduct the business activities of the institution, ~~that is established to do either or both of the following:~~

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

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

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

Sec. 8. Minnesota Statutes 1994, section 47.62, subdivision 2, is amended to read:

Subd. 2. **APPROVAL REQUIRED.** No electronic financial terminal shall be established by a person other than a state or federal savings ~~and loan~~ 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.

Sec. 9. Minnesota Statutes 1994, section 47.62, is amended by adding a subdivision to read:

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.

Sec. 10. Minnesota Statutes 1994, section 47.62, is amended by adding a subdivision to read:

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.

Sec. 11. Minnesota Statutes 1994, section 47.67, is amended to read:

47.67 **ADVERTISING.**

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

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

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

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

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

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

(f) promotional advertising displayed on the electronic screen.

Sec. 12. Minnesota Statutes 1994, section 47.69, subdivision 3, is amended to read:

Subd. 3. Every financial institution using an electronic financial terminal shall maintain reasonable procedures to minimize losses from unauthorized withdrawals from its customers' accounts by use of an electronic financial terminal. After a customer makes a bona fide deposit or payment at an electronic financial terminal and has received a receipt, any loss due to theft or other reason shall not be borne by the customer; provided, loss due to the nonpayment or dishonor of a check, or other order for payment, deposited at an electronic financial terminal shall be governed by the applicable provisions of chapter 336. A financial institution shall be liable for all unauthorized withdrawals unless the unauthorized withdrawal was ~~(1) due to the negligent conduct or the intentional misconduct of the operator of an electronic financial terminal or that operator's agent in which case the operator of an electronic financial terminal or the agent shall be liable, or (2)~~ due to the loss or theft of the customer machine readable card in which case the customer shall be liable, subject to a maximum liability of $50, for those unauthorized withdrawals made prior to the time the financial institution is notified of the loss or theft. The limitation on liability ~~contained in clause (2)~~ 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 ~~who does not have actual, implied, or apparent authority for such withdrawal, and from which withdrawal the customer or a member of the customer's family or household receives no benefit.~~ 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.

Sec. 13. Minnesota Statutes 1994, section 47.69, subdivision 5, is amended to read:

Subd. 5. Any customer of a financial institution may bring a civil action against any person violating any subdivision of this section in the district court in the county of the alleged violator's residence or principal place of business or in the county wherein the alleged violation occurred. Upon adverse adjudication, the defendant shall be liable for actual damages, or $500, whichever is greater, punitive damages when applicable, together with the court costs and rea-

sonable 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.

Sec. 14. Minnesota Statutes 1994, section 48.16, is amended to read:

48.16 **BANKS MAY NOT PLEDGE ASSETS; EXCEPTIONS.**

No bank or trust company shall pledge, hypothecate, assign, transfer, or create a lien upon or charge against any of its assets except as follows:

(1) to the state;

(2) to secure public deposits;

(3) to secure funds of trustees in bankruptcy;

(4) to secure money borrowed in good faith from other banks, trust companies, ~~or~~ a financial agency created by act of Congress, or the state in programs specifically authorizing state banks to participate as an eligible local lender;

(5) to finance the acquisition of real estate to be carried as an asset as provided for in section 47.10;

(6) to secure a liability that arises from a transfer of a direct obligation of, or obligations that are fully guaranteed as to principal and interest by, the United States government or an agency thereof that the bank or trust company is obligated to repurchase.

This section shall not be construed to permit the use of assets as security for public deposits other than the securities made eligible by law for that purpose.

Sec. 15. Minnesota Statutes 1994, section 48.24, subdivision 5, is amended to read:

Subd. 5. Loans or obligations shall not be subject under this section to any limitation based upon such capital and surplus to the extent that they are secured or covered by guarantees, or by commitments or agreements to take over or to purchase the same, made by:

(1) the commissioner of agriculture on the purchase of agricultural land;

(2) any Federal Reserve bank;

(3) the United States or any department, bureau, board, commission, or

establishment of the United States, including any corporation wholly owned directly or indirectly by the United States;

(4) the Minnesota energy and economic development authority; ~~or~~

(5) the Minnesota export finance authority; or

(6) a municipality or political subdivision within Minnesota to the extent that the guarantee or collateral is a valid and enforceable general obligation of that political body.

Sec. 16. Minnesota Statutes 1994, 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 or to the commissioner's designee, 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~~ to in the official minutes 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 in the municipality or town in which the bank or trust company is located, 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.~~ That portion of the report constituting the statement of assets, liabilities, and capital and statement of income and expenses must be made available to the public within 45 days of the notice at every location of the bank or trust company including detached facilities and trust service offices.

Sec. 17. Minnesota Statutes 1994, section 48.48, subdivision 2, is amended to read:

Subd. 2. **PENALTIES FOR LATE SUBMISSION.** For failure to send these reports to the commissioner or to the commissioner's designee in the time specified, a bank or trust company shall forfeit to the state the sum of $25 for each day of delay and shall pay the accumulated sum to the commissioner upon a formal demand for payment by the commissioner. If it appears that a report was ~~mailed~~ transmitted by a bank or trust company on or before the end of the 30-day period, ~~or proof of publication mailed on or before the end of the 60-day period,~~ the commissioner shall waive any forfeit. In the event it does not appear that a report was timely ~~mailed~~ transmitted, the commissioner may nevertheless waive forfeit upon a showing by the bank or trust company to the satisfaction of

the commissioner that failure to send the reports was the result of causes beyond the control of the bank or trust company.

Sec. 18. Minnesota Statutes 1994, section 48.49, is amended to read:

48.49 **BOOKS TO BE KEPT.**

Every such bank shall open and keep such books and accounts as the commissioner may prescribe, for the purpose of keeping accurate and convenient records of its transactions; ~~and every bank refusing or neglecting so to do shall forfeit $10 for every day of such neglect or refusal.~~

Sec. 19. Minnesota Statutes 1994, section 48.61, subdivision 7, is amended to read:

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

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

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

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

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

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

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

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

Sec. 20. **[52.211] STUDENT EDUCATION PROGRAMS.**

A credit union is allowed to establish part-time deposit-taking locations at elementary and secondary schools provided that the locations are established in connection with student education programs approved by the school administration and consistent with safe and sound financial institution practices. For purposes of this section, students do not need to be members of the credit union to participate, and the students' parents are not eligible to become members solely by reason of their child's participation.

Sec. 21. Minnesota Statutes 1994, section 53.015, subdivision 4, is amended to read:

Subd. 4. **CAPITAL STOCK.** "Capital stock" means the par value of preferred or common stock multiplied by the respective number of shares of each type of stock. For purposes of section 53.05, clause (7), capital stock may include an amount of mandatory convertible debentures approved by the commissioner. The terms and conditions for redemption of the qualifying debentures must include the prior written approval of the commissioner as a condition for a redemption, but in no event an amount in excess of 50 percent of total preferred or common stock.

Sec. 22. Minnesota Statutes 1994, section 56.14, is amended to read:

56.14 **DUTIES OF LICENSEE.**

Every licensee shall:

(1) deliver to the borrower (or if there are two or more borrowers to one of them) at the time any loan is made a statement making the disclosures and furnishing the information required by the federal Truth-in-Lending Act, United States Code, title 15, sections 1601 to 1667e, as amended from time to time, with respect to the contract of loan. A copy of the loan contract may be delivered in lieu of a statement if it discloses the required information;

(2) deliver or mail to the borrower without request, a written receipt within 30 days following payment for each payment by coin or currency made on account of any loan wherein charges are computed and paid on unpaid principal balances for the time actually outstanding, specifying the amount applied to charges and the amount, if any, applied to principal, and stating the unpaid principal balance, if any, of the loan; and wherein precomputed charges have been added to the principal of the loan specifying the amount of the payment applied to principal and charges combined, the amount applied to default or extension charges, if any, and stating the unpaid balance, if any, of the precomputed loan contract. A periodic statement showing a payment received by mail complies with this clause;

(3) permit payment to be made in advance in any amount on any contract of loan at any time, but the licensee may apply the payment first to all charges in full at the agreed rate up to the date of the payment;

(4) upon repayment of the loan in full, mark indelibly every obligation and security, other than a mortgage or security agreement which secures a new loan to the licensee, signed by the borrower with the word "Paid" or "Canceled," and release any mortgage or security agreement which no longer secures a loan to the licensee, restore any pledge, and cancel and return any note, and any assignment given to the licensee which does not secure a new loan to the licensee within 20 days after the repayment. For purposes of this requirement, the document including actual evidence of an obligation or security may be maintained, stored, and retrieved in a form or format acceptable to the commissioner under section 46.04, subdivision 3;

(5) display prominently in each licensed 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 the same; furnish a copy of the contract of loan to any person obligated on it or who may become obligated on it at any time upon the request of that person;

(6) show in the loan contract or statement of loan the rate or rates of charge on which the charge in the contract is based, expressed in terms of rate or rates per annum. The rate expression shall be printed in at least 8-point type on the loan statement or copy of the loan contract given to the borrower~~.~~;

(7) if a payment results in the prepayment of three or more installment payments on a precomputed loan, at the same time the receipt required by clause (2) is delivered or mailed, deliver or mail to the borrower a notice in at least eight-point type as part of the receipt or together with the receipt. The notice must contain the following statement:

> "You have substantially prepaid the installment payments on your loan and may experience an interest savings over the remaining term only if you refinance the balance within the next 30 days."

Sec. 23. Minnesota Statutes 1994, section 56.155, subdivision 1, is amended to read:

Subdivision 1. **AUTHORIZATION.** No licensee shall, directly or indirectly, sell or offer for sale any insurance in connection with any loan made under this chapter except as and to the extent authorized by this section. The sale of credit life, credit accident and health, and credit involuntary unemployment insurance is subject to the provisions of chapter 62B, except that the term of the insurance may exceed 60 months if the term of the loan exceeds 60 months. Life, accident, health, and involuntary unemployment insurance, or any of them, may be written upon or in connection with any loan but must not be required as additional security for the indebtedness. If the debtor chooses to procure credit life insurance, credit accident and health insurance, or credit

involuntary unemployment insurance as security for the indebtedness, the debtor shall have the option of furnishing this security through existing policies of insurance that the debtor owns or controls, or of furnishing the coverage through any insurer authorized to transact business in this state. A statement in substantially the following form must be made orally, except for loans by mail pursuant to section 56.12, and provided in writing in bold face type of a minimum size of 12 points to the borrower before the transaction is completed for each credit life, accident and health, and involuntary unemployment insurance coverage sold:

> CREDIT LIFE INSURANCE, CREDIT DISABILITY INSURANCE, AND CREDIT INVOLUNTARY UNEMPLOYMENT INSURANCE ARE NOT REQUIRED TO OBTAIN CREDIT. YOU MAY BUY ANY INSURANCE FROM ANYONE YOU CHOOSE OR YOU MAY USE EXISTING INSURANCE.

The licensee shall disclose whether or not the benefits commence as of the first day of disability or involuntary unemployment and shall further disclose the number of days that an insured obligor must be disabled or involuntarily unemployed, as defined in the policy, before benefits, whether retroactive or nonretroactive, commence. ~~In case there are multiple obligors under a transaction subject to this chapter, no policy or certificate of insurance providing credit unemployment benefits may be procured by or through a licensee upon more than one of the obligors.~~ In case there are multiple obligors under a transaction subject to this chapter, no policy or certificate of insurance providing credit accident and health ~~or~~, credit life insurance, or credit unemployment benefits may be procured by or through a licensee upon more than two of the obligors in which case they shall be insured jointly or in the case of credit unemployment benefits on a basis provided for in rules adopted by the commissioner. The premium or identifiable charge for the insurance must not exceed that filed by the insurer with the department of commerce. The charge, computed at the time the loan is made for a period not to exceed the full term of the loan contract on an amount not to exceed the total amount required to pay principal and charges, may be deducted from the proceeds or may be included as part of the principal of any loan. If a borrower procures insurance by or through a licensee, the statement required by section 56.14 must disclose the cost to the borrower and the type of insurance, and the licensee shall cause to be delivered to the borrower a copy of the policy, certificate, or other evidence thereof, within a reasonable time. No licensee shall decline new or existing insurance which meets the standards set out in this section nor prevent any obligor from obtaining this insurance coverage from other sources. Notwithstanding any other provision of this chapter, any gain or advantage to the licensee or to any employee, affiliate, or associate of the licensee from this insurance or the sale or provision thereof is not an additional or further charge in connection with the loan; nor are any of the provisions pertaining to insurance contained in this section prohibited by any other provision of this chapter.

Sec. 24. Minnesota Statutes 1994, section 59A.06, subdivision 2, is amended to read:

Subd. 2. Every licensee shall preserve its records of premium finance transactions for at least three years after making the final entry in respect to any premium finance agreement. The records may be preserved in photographic form or in a form acceptable to the commissioner under section 46.04, subdivision 3.

Sec. 25. Minnesota Statutes 1994, section 62B.04, subdivision 1, is amended to read:

Subdivision 1. **CREDIT LIFE INSURANCE.** (1) The initial amount of credit life insurance shall not exceed the amount of principal repayable under the contract of indebtedness plus an amount equal to one monthly payment. Thereafter, if the indebtedness is repayable in substantially equal installments according to a predetermined schedule, the amount of insurance shall not exceed the scheduled indebtedness plus one monthly payment or actual amount of indebtedness, whichever is greater.

(2) Notwithstanding clause (1), the amount of credit life insurance written in connection with credit transactions repayable over a specified term exceeding 63 months shall not exceed the greater of: (i) the actual amount of unpaid indebtedness as it exists from time to time; or (ii) where an indebtedness is repayable in substantially equal installments according to a predetermined schedule, the scheduled amount of unpaid indebtedness, less any unearned interest or finance charges, plus an amount equal to two monthly payments.

(3) Notwithstanding clauses (1) and (2), insurance on educational, agricultural, and horticultural credit transaction commitments may be written on a nondecreasing or level term plan for the amount of the loan commitment.

(4) If the contract of indebtedness provides for a variable rate of finance charge or interest, the initial rate or the scheduled rates based on the initial index shall be used in determining the scheduled amount of indebtedness, and subsequent changes to the rate shall be disregarded in determining whether the contract is repayable in substantially equal installments according to a predetermined schedule.

Sec. 26. Minnesota Statutes 1994, section 62B.08, subdivision 2, is amended to read:

Subd. 2. Each individual policy or group certificate shall provide that in the event of termination of the insurance prior to the scheduled maturity date of the indebtedness, any refund of an amount paid by the debtor for insurance shall be paid or credited promptly to the person entitled thereto; provided, however, that ~~the commissioner shall prescribe a minimum refund and no refund which would be less than such minimum need be made~~ a premium refund or credit need not be made if the amount thereof is less than $5. The formula to be used in computing the refund shall be filed with and approved by the commissioner.

Sec. 27. Minnesota Statutes 1994, section 300.20, subdivision 1, is amended to read:

Subdivision 1. **ELECTION.** The business of savings banks must be managed by a board of at least seven trustees, residents of this state, each of whom, before being authorized to act, must file a written acceptance of the trust. The business of other corporations must be managed by a board of at least ~~three~~ five directors, unless a greater number is otherwise required by law, elected by ballot by the stockholders or members. A board of directors of a financial institution referred to in section 47.12 which has less than five members on August 1, 1995, is not subject to this requirement but may be increased to not more than five members by order of the commissioner of commerce.

Sec. 28. Minnesota Statutes 1994, section 327B.04, subdivision 1, is amended to read:

Subdivision 1. **LICENSE AND BOND REQUIRED.** No person shall act as a dealer in manufactured homes, new or used, without a license and a surety bond as provided in this section. No person shall manufacture manufactured homes without a license and a surety bond as provided in this section. The licensing and bonding requirements of this section do not apply to any bank, savings bank, savings ~~and loan~~ association, or credit union, chartered by either this state or the federal government, which acts as a dealer only by repossessing manufactured homes and then offering the homes for resale ~~through the brokering services of a licensed dealer or real estate broker or salesperson~~.

Sec. 29. Minnesota Statutes 1994, section 327B.09, subdivision 1, is amended to read:

Subdivision 1. **LICENSE REQUIRED.** No person shall engage in the business, either exclusively or in addition to any other occupation of manufacturing, selling, offering to sell, soliciting or advertising the sale of manufactured homes, or act as a broker without being licensed as a manufacturer or a dealer as provided in section 327B.04. Any person who manufactures, sells, offers to sell, solicits or advertises the sale of manufactured homes, or acts as a broker in violation of this subdivision shall nevertheless be subject to the duties, prohibitions and penalties imposed by sections 327B.01 to 327B.12. This ~~subdivision~~ chapter does not prohibit either an individual from reselling, without a license, a manufactured home which is or has been the individual's residence or any bank, savings bank, savings association, or credit union, chartered by either this state or the federal government, from reselling, without a license, a repossessed manufactured home.

Sec. 30. Minnesota Statutes 1994, section 332.23, subdivision 1, is amended to read:

Subdivision 1. **ORIGINATION FEE, CREDIT BACKGROUND REPORT COST.** The licensee may charge an origination fee of not more than $25 and collect from the debtor the actual cost of a credit background report obtained from a credit reporting agency not related to or affiliated with the licensee. The costs to the debtor of said origination fee and credit background report may be made from the originating amount paid by the debtor to the licensee. The cost of only one credit background report may be collected from the debtor in any 12-month period.

Sec. 31. Minnesota Statutes 1994, section 332.23, subdivision 2, is amended to read:

Subd. 2. **WITHDRAWAL OF FEE.** The licensee may withdraw and retain as partial payment of the licensee's total fee not more than 15 percent of any sum deposited with the licensee by the debtor for distribution. The remaining 85 percent must be disbursed to listed creditors pursuant to and in accordance with the contract between the debtor and the licensee within 35 days after receipt. Total payment to licensee for services rendered, excluding the origination fee and any credit background report, shall not exceed 15 percent of funds deposited with licensee by debtor for distribution.

Sec. 32. Minnesota Statutes 1994, section 334.011, is amended by adding a subdivision to read:

Subd. 5. **LOANS BY CHARITABLE ORGANIZATIONS TO ASSIST CERTAIN SMALL BUSINESSES.** (a) This subdivision applies to nonprofit charitable organizations recognized as exempt from federal income taxation under section 501(c)(3) of the federal Internal Revenue Code of 1986, as amended, that make loans for business purposes to individuals who are disadvantaged or otherwise unable to access standard sources of business credit, in conjunction with a program of education, training, business counseling, or other assistance to assist borrowers in developing their businesses at no extra charge to the borrowers or at a charge that does not exceed the cost of providing the assistance.

(b) Notwithstanding section 334.01 and subdivisions 1 and 2, an organization described in paragraph (a) may make loans described in that paragraph, in principal amounts not to exceed $10,000, at a rate of interest not to exceed 16 percent per year, and with an origination fee not to exceed two percent of the principal amount.

(c) Prior to beginning to make loans under this subdivision, the lender shall provide written notice to the commissioner of commerce, on a form prescribed by that commissioner. The lender shall at the same time provide a copy of that written notice to the commissioner of trade and economic development.

(d) A lender making loans under this subdivision shall annually file with the commissioner an annual report, on a date and on a form prescribed by the commissioner, summarizing the lender's loans made or outstanding in this state during the preceding year. The lender shall at the same time provide a copy of that annual report to the commissioner of trade and economic development.

Sec. 33. **RECOMMENDATIONS; POINT-OF-SALE TERMINALS.**

The commissioner of commerce shall select and convene an informal workgroup to make recommendations to the commissioner regarding whether there is a need to license electronic point-of-sale terminals operated by a retailer for use with credit cards or debit cards. The informal workgroup must include persons representing retailers, financial institutions, and consumers. The commissioner shall make recommendations to the legislature no later than December 1, 1994.

Sec. 34. **EFFECTIVE DATE.**

Sections 1 to 2, 5 to 15, 17 to 21, 23 to 31, and 33 are effective the day following final enactment. Sections 3 and 4 are effective September 1, 1995. Section 16 is effective for reports filed for close of business beginning June 30, 1995.

ARTICLE 3

INTEREST RATE SIMPLIFICATION AND SMALL DOLLAR CREDIT AVAILABILITY

Section 1. **[47.59] FINANCIAL INSTITUTION CREDIT EXTENSION MAXIMUM RATES.**

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

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

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

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

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

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

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

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

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

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

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

(h) "Credit card" means a card or device issued under an arrangement pursuant to which a financial institution gives to a cardholder the privilege of obtaining credit from the financial institution or other person in purchasing or

leasing property or services, obtaining loans, or otherwise. A transaction is "pursuant to a credit card" only if credit is obtained according to the terms of the arrangement by transmitting information contained on the card or device orally, in writing, by mechanical or electronic methods, or in any other manner. A transaction is not "pursuant to a credit card" if the card or device is used solely in that transaction to:

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

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

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

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

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

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

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

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

(2) an additional charge under subdivision 6; or

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

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

(l) "Loan" means:

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

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

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

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

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

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

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

(m) "Official fees" means:

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

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

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

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

(p) "Principal" means the total of:

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

(2) to the extent that payment is deferred:

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

(ii) prepaid finance charges.

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

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

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

(2) the total of:

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

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

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

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

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

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

(e) With respect to a loan secured by real estate, if a finance charge is calculated or collected in advance, or included in the principal amount of the loan, and the borrower prepays the loan in full, the financial institution shall credit

the borrower with a refund of the charge to the extent that the annual percentage rate yield on the loan would exceed the maximum rate permitted under paragraph (a), taking into account the prepayment.

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

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

(h) For loans repayable in substantially equal successive monthly installments, the financial institution may calculate the refund under paragraph (f) as the portion of the finance charge allocable on an actuarial basis to all wholly unexpired payment periods following the date of prepayment, based on the annual percentage rate on the loan as originally determined under paragraph (a), and for the purpose of calculating the refund may assume that all payments are made on the due date.

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

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

(1) the portion of the percentage change in the index in excess of a multiple of ten percent shall be disregarded and the dollar amounts shall change only in multiples of ten percent of the amounts appearing in this act, on the date of enactment; and

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

(k) If the index is revised, the percentage of change pursuant to this section shall be calculated on the basis of the revised index. If a revision of the index changes the reference base index, a revised reference base index shall be determined by multiplying the reference base index then applicable by the rebasing

factor furnished by the department of commerce. If the index is superseded, the index referred to in this section is the one represented by the department of commerce as reflecting most accurately changes in the purchasing power of the dollar for consumers.

(l) The commissioner shall announce and publish:

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

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

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

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

Subd. 4. **FINANCE CHARGE FOR CREDIT SALES MADE BY A THIRD PARTY.** (a) A person may enter into a credit sale contract for sale to a financial institution and a financial institution may purchase and enforce the contract, if the annual percentage rate provided for in the contract does not exceed that permitted in this section, or, in the case of contracts governed by sections 168.66 to 168.77, the rates permitted by those sections.

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

(1) the total of:

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

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

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

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

(c) This subdivision does not limit or restrict the manner of calculating the finance charge whether by way of add-on, discount, discount points, single annual percentage rate, precomputed charges, variable rate, interest in advance, compounding, or otherwise, if the annual percentage rate calculated under para-

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

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

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

(2) an additional charge under subdivision 6; or

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

Subd. 5. **EXTENSIONS AND DEFERMENTS.** The parties may agree in writing, either in the loan contract or credit sale contract or in a subsequent agreement, to a deferment of wholly unpaid installments. For precomputed loans and credit sale contracts, the manner of deferment charge shall be determined as provided for in this section. A deferment postpones the scheduled due date of the earliest unpaid installment and all subsequent installments as originally scheduled, or as previously deferred, for a period equal to the deferment period. The deferment period is that period during which no installment is scheduled to be paid by reason of the deferment. The deferment charge for a one-month period may not exceed the applicable charge for the installment period immediately following the due date of the last undeferred payment. A proportionate charge may be made for deferment periods of more or less than

one month. A deferment charge is earned pro rata during the deferment period and is fully earned on the last day of the deferment period. If a loan or credit sale is prepaid in full during a deferment period, the financial institution shall make or credit to the borrower a refund of the unearned deferment charge in addition to any other refund or credit made for prepayment of the loan or credit sale in full.

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

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

(1) official fees and taxes;

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

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

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

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

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

(iv) fees for notarizing deeds and other documents;

(v) appraisal and credit report fees; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subd. 10. **CREDIT INSURANCE.** (a) The sale of credit insurance or mortgage insurance is subject to chapters 61A, 62A, and 62B, as applicable, and the rules adopted under those chapters, if any. In case there are multiple consumers obligated under a transaction subject to this chapter, no policy or certificate or insurance providing credit life insurance may be procured by or through a finan-

cial institution or person described in subdivision 2 upon more than two of the consumers, in which case they may be insured jointly.

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

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

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

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

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

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

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

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

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

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

Subd. 11. **PROPERTY AND LIABILITY INSURANCE.** (a) Except as otherwise provided in this section and subject to the provisions on additional charges and maximum finance charges in this section, a financial institution may agree to sell, as an agent, property and liability insurance, and may contract for and receive a charge for this insurance separate from and in addition to other

charges. This section does not authorize the issuance of the insurance prohibited under any statute or rule governing the business of insurance nor does it authorize a financial institution to underwrite insurance.

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

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

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

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

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

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

(b) A borrower or purchaser under a credit sale contract is not obligated to pay a charge in excess of that allowed by this section and has a right of refund of any excess charge paid. A refund may not be made by reducing the borrower's or purchaser's obligation by the amount of the excess charge, unless the financial

institution has notified the borrower or purchaser that the borrower or purchaser may request a refund and the borrower or purchaser has not so requested within 30 days thereafter. If the borrower or purchaser has paid an amount in excess of the lawful obligation under the agreement, the borrower or purchaser may recover the excess amount from the financial institution that made the excess charge or from an assignee of the financial institution's rights that undertakes direct collection of payments from or enforcement of rights against borrowers or purchasers arising from the debt.

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

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

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

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

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

Sec. 2. **[47.60] CONSUMER SMALL LOANS.**

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

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

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

Subd. 2. **AUTHORIZATION, TERMS, CONDITIONS, AND PROHIBITIONS.** (a) In lieu of the interest, finance charges, or fees in any other law, a consumer small loan lender may charge the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

Subd. 4. **BOOKS OF ACCOUNT; ANNUAL REPORT; SCHEDULE OF CHARGES; DISCLOSURES.** (a) A lender filing under subdivision 3 shall keep and use in the business books, accounts, and records as will enable the commissioner to determine whether the filer is complying with this section.

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

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

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

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

Sec. 3. Minnesota Statutes 1994, section 48.194, is amended to read:

48.194 **INSTALLMENT SALES CONTRACTS; LOANS.**

A person may enter into a credit sale or service contract for sale to a state or national bank doing business in this state, and a bank may purchase and enforce the contract under the terms and conditions set forth in ~~section 51A.385, subdivisions 2 and 5 to 13~~ sections 47.59, subdivisions 2 and 4 to 14; and 51A.386, subdivision 4. A state bank or national bank may extend credit pursuant to the terms and conditions set forth in ~~section 51A.385~~ sections 47.59, 47.60, and 51A.386, subdivision 4.

Sec. 4. Minnesota Statutes 1994, section 51A.02, subdivision 6, is amended to read:

Subd. 6. **ANNUAL PERCENTAGE RATE.** "Annual percentage rate" has the meaning given the term in the Code of Federal Regulations, title 12, part 226, but using the definition of "finance charge" used in this section.

Sec. 5. Minnesota Statutes 1994, section 51A.02, subdivision 26, is amended to read:

Subd. 26. **FINANCE CHARGE.** "Finance charge" has the meaning given the term in the Code of Federal Regulations, title 12, part 226, except that the following will not in any event be considered a finance charge:

(1) a charge as a result of default or delinquency under section ~~51A.385~~ 47.59 if made for actual unanticipated late payment, delinquency, default, or other similar occurrence, and a charge for an extension or deferment under section 47.59, unless the parties agree that these charges are finance charges;

(2) any additional charge under section ~~51A.385~~ 47.59, subdivision ~~5~~ 6; or

(3) a discount, if an association purchases a contract evidencing a ~~contract~~ credit sale or 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.

Sec. 6. Minnesota Statutes 1994, section 51A.02, subdivision 40, is amended to read:

Subd. 40. **OFFICIAL FEES.** "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 related 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 an association 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.

Sec. 7. Minnesota Statutes 1994, section 51A.19, subdivision 9, is amended to read:

Subd. 9. **MAINTENANCE OF LOAN AND INVESTMENT RECORDS.** Every association shall maintain complete loan and investment records, and shall do so in a manner satisfactory to the commissioner. Detailed records necessary to make determinations of compliance by an association with the requirements of sections 47.59 and 51A.35 to ~~51A.385~~ 51A.386, and other provisions of sections 51A.01 to 51A.57 shall be maintained consistently and at all times, the record of each real estate loan or other secured loan or investment containing documentation to the satisfaction of the commissioner of the type, adequacy, and complexion of the security.

Sec. 8. **[51A.386] TERMS AND CONDITIONS OF LOANS, CONTRACTS, AND EXTENSIONS OF CREDIT.**

Subdivision 1. **APPLICATION.** Except as otherwise provided in this section, this section applies to loans made and contracts purchased by federal and state associations, and "association" as used in this section applies to federal and state associations.

Subd. 2. **FINANCE CHARGE FOR CREDIT SALES MADE BY A THIRD PARTY.** A person may enter into a credit sale contract for sale to an association and an association may purchase and enforce a contract evidencing the sale, if the annual percentage rate provided for in the contract does not exceed that permitted in section 47.59 or, in the case of contracts governed by sections 168.66 to 168.77, the rates permitted by those sections.

Subd. 3. **FINANCE CHARGE FOR LOANS.** An association may make loans and extend credit at the rates and on the terms provided for in section 47.59.

Subd. 4. **ADDITIONAL AUTHORITY.** Extensions of credit, and purchases of extensions of credit, authorized by sections 47.20, subdivision 1, 3, or 4a; 47.204; 47.21; 47.58; 47.60; 47.69; 48.153; 48.185; 48.195; 59A.01 to 59A.15; 168.66 to 168.77; 334.01; 334.011; and 334.012 may, but need not, be made according to those sections in lieu of the authority set forth in subdivisions 1 to 3, and if so, are subject to those sections, and not this section, except this subdivision. An association 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 the association elects to make under section 334.01, 334.011, or 334.012, chapter 334 does not apply to extensions of credit made according to this section or the sections mentioned in this subdivision.

Subd. 5. **ADDITIONAL CHARGES.** In addition to the finance charges permitted by this section, an association, or a person described in subdivision 2, to the extent not otherwise prohibited by law, may contract for and receive the additional charges that may be included in the amount financed provided for in section 47.59.

Sec. 9. Minnesota Statutes 1994, section 51A.50, is amended to read:

51A.50 **FEDERAL ASSOCIATIONS.**

The following sections apply to federal associations, except to the extent they are inconsistent with federal law or regulations: sections 47.59; 51A.01; 51A.02; 51A.065; 51A.15, subdivision 6; 51A.21, subdivisions 6a, 15, 16, 22, 25, 27, and 28; 51A.23, subdivision 1; 51A.24; 51A.251; 51A.261; 51A.262; 51A.27; 51A.28; 51A.29; 51A.30; 51A.31; 51A.37, subdivisions 1, 2, 3, paragraphs (a), (c), (d), 4, 5, 6, 7, 8, 9, 10, 11, and 12; 51A.38; ~~51A.385~~ 51A.386; 51A.40; 51A.50; 51A.52; 51A.56; and 51A.57.

Sec. 10. Minnesota Statutes 1994, section 52.04, subdivision 2a, is amended to read:

Subd. 2a. A person may enter into a credit sale or service contract for sale to a state or federal credit union doing business in this state, and a credit union may purchase and enforce the contract under the terms and conditions set forth in section ~~51A.385~~ 47.59, subdivisions ~~2~~ 4 and ~~5~~ 6 to ~~13~~ 14.

Sec. 11. Minnesota Statutes 1994, section 53.04, subdivision 3a, is amended to read:

Subd. 3a. (a) The right to make loans, secured or unsecured, at the rates and on the terms and other conditions permitted ~~licensees under chapter 56. Loans made under the authority of section 56.125~~ in section 47.59. Loans made

under this authority must be in amounts in compliance with section 53.05, clause (7). ~~All other loans made under the authority of chapter 56 must be in amounts in compliance with section 53.05, clause (7), or 56.131, subdivision 1, paragraph (a), whichever is less.~~ The right to extend credit or lend money and to collect and receive charges therefor as provided by chapter 334~~, or in lieu thereof to charge, collect, and receive interest at the rate of 21.75 percent per annum, including the right to contract for, charge, and collect all other charges including discount points, fees, late payment charges, and insurance premiums on the loans to the same extent permitted on loans made under the authority of chapter 56, regardless of the amount of the loan~~. The provisions of sections 47.20 and 47.21 do not apply to loans made under this subdivision, except as specifically provided in this subdivision. Nothing in this subdivision is deemed to supersede, repeal, or amend any provision of section 53.05. A licensee making a loan under this chapter secured by a lien on real estate shall comply with the requirements of section 47.20, subdivision 8.

(b) Loans made under this subdivision at a rate of interest not in excess of that provided for in paragraph (a) may be secured by real or personal property, or both. If the proceeds of a loan secured by a first lien on the borrower's primary residence are used to finance the purchase of the borrower's primary residence, the loan must comply with the provisions of section 47.20.

(c) A loan made under this subdivision that is secured by real estate and that is in a principal amount of $7,500 or more and a maturity of 60 months or more may contain a provision permitting discount points, if the loan does not provide a loan yield in excess of the maximum rate of interest permitted by this subdivision. ~~Loan yield means the annual rate of return obtained by a licensee computed as the annual percentage rate is computed under Federal Regulation Z. If the loan is prepaid in full, the licensee must make a refund to the borrower to the extent that the loan yield will exceed the maximum rate of interest provided by this subdivision when the prepayment is taken into account.~~

(d) An agency or instrumentality of the United States government or a corporation otherwise created by an act of the United States Congress or a lender approved or certified by the secretary of housing and urban development, or approved or certified by the administrator of veterans affairs, or approved or certified by the administrator of the farmers home administration, or approved or certified by the federal home loan mortgage corporation, or approved or certified by the federal national mortgage association, that engages in the business of purchasing or taking assignments of mortgage loans and undertakes direct collection of payments from or enforcement of rights against borrowers arising from mortgage loans, is not required to obtain a certificate of authorization under this chapter in order to purchase or take assignments of mortgage loans from persons holding a certificate of authorization under this chapter.

Sec. 12. Minnesota Statutes 1994, section 53.04, subdivision 3c, is amended to read:

Subd. 3c. The right to extend credit and make loans under ~~chapter 51A~~ sections 47.59 and 47.60 on the same terms and subject to the same conditions as apply to other lenders under ~~that chapter~~ those sections. This subdivision does not authorize an industrial loan and thrift company to make loans under ~~a credit card or~~ an overdraft checking plan.

Sec. 13. Minnesota Statutes 1994, section 53.04, subdivision 4a, is amended to read:

Subd. 4a. **DISCLOSURE, AUTHORIZED INTEREST, AND OTHER CHARGES.** The documentation of loans made pursuant to this section must include in the promissory note clear reference to the provisions of Minnesota Statutes under which the rate of interest and other charges are authorized. The references must be to the ~~chapter number in the case of this chapter or chapter 56, or to the~~ particular section or sections ~~in the case of chapter 47 or 334. On loans made under the authority of subdivision 3a and not under the authority of chapter 334, other charges including discount points, fees, late payment charges, and insurance premiums not specifically authorized by this chapter or any other state statute are controlled by chapter 56.~~

Sec. 14. Minnesota Statutes 1994, section 53.04, subdivision 5a, is amended to read:

Subd. 5a. A person may enter into a credit sale or service contract for sale to an industrial loan and thrift company operating under this chapter in this state, and an industrial loan and thrift company may purchase and enforce the contract under the terms and conditions set forth in section ~~51A.385, subdivisions 2 and 5 to 13~~ 47.59, subdivisions 2 and 4 to 14.

Sec. 15. Minnesota Statutes 1994, section 56.125, subdivision 1, is amended to read:

Subdivision 1. **AUTHORIZATION.** A licensee may make open-end loans under this chapter other than loans under ~~a credit card or~~ an overdraft checking plan and may charge a daily, monthly, or other periodic rate of finance charge on unpaid balances not in excess of the maximum rate of interest permitted by section 56.131, subdivision 1, paragraph (a), ~~clause (2)~~ under section 47.59, subdivision 3, paragraph (a), clause (1). For purposes of this section "open-end loan" means an agreement whereby: (1) the licensee pursuant to written agreement permits the borrower to obtain advances of money from the licensee from time to time or the licensee advances money on behalf of the borrower from time to time as directed by the borrower; (2) the borrower has the option of paying the balance in full at any time without penalty; (3) the amount of each advance and permitted charges and costs are debited to the borrower's account and payments and other credits are credited to the same account; and (4) the charges are computed on the unpaid principal balance of the account from time to time. A finance charge imposed on a transaction subject to this section must be computed on: (1) the previous balance after deducting all payments on accounts received by the licensee during the cycle and all credits to the account

during the cycle applicable to any transaction reflected in the previous balance; (2) the average daily balance determined by adding the daily balances on the account for each day in the billing cycle and dividing the total by the number of days in the billing cycle; or (3) daily balances. The daily balance is figured by taking the beginning balance of the account each day, adding any new advances, subtracting any principal payments or credits, and any unpaid interest. The average daily balance is calculated by adding together all of the daily balances for the billing cycle, and the sum is then divided by the total number of days in the billing cycle. A billing cycle is considered to be monthly if the billing dates are on the same day of each month or do not vary by more than four days from that day. If a licensee makes loans under a credit card plan, it may do so only on the same terms and subject to the same conditions as apply to lenders under section 47.59.

Sec. 16. Minnesota Statutes 1994, section 56.125, subdivision 3, is amended to read:

Subd. 3. **CHARGES.** In addition to the charges authorized in subdivision 1, a licensee may contract for and receive in connection with an open-end loan agreement the additional charges, fees, costs, and expenses with respect to the line of credit limit permitted by sections 47.59, subdivisions 5 and 6, paragraph (a), clause (4); 56.131, subdivisions ~~1, paragraph (f), clauses (4) and (5),~~ 2, 5, and 6; and 56.155 with respect to other loans, with the following variations:

(1) If credit life, disability, or involuntary unemployment insurance is provided and if the insured dies, becomes disabled, or becomes involuntarily unemployed when there is an outstanding open-end loan indebtedness, the amount of the insurance may not exceed the total balance of the loan due on the date of the borrower's death or on the date of the last billing statement in the case of credit life insurance, or all minimum payments which become due on the loan during the covered period of disability in the case of credit disability insurance, or during the covered period of involuntary unemployment in the case of credit involuntary unemployment insurance. The additional charge for credit life insurance, credit disability insurance, or credit involuntary unemployment insurance must be calculated in each billing cycle by applying the current monthly premium rate for the insurance to the unpaid balances in the borrower's account.

(2) The amount, terms, and conditions of any credit insurance against loss or damage to property must be reasonable in relation to the character and value of the property insured.

Sec. 17. Minnesota Statutes 1994, 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~~ $56,000 or 15 percent of a Minnesota corporate licensee's capital stock and 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 $750; and (ii) 19 percent per year on that part of the unpaid balance of the principal amount exceeding $750; or~~

~~(2)~~ 21.75 ~~percent per year on the unpaid balance of the principal amount~~ finance charges, and other charges as provided in section 47.59.

~~(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)~~ (b) Loans may be interest-bearing or precomputed.

~~(d)~~ (c) Notwithstanding section 47.59 to the contrary, 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.

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)~~ (d) With respect to interest-bearing loans and notwithstanding section 47.59:

(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)~~ (e), clause (3). The resulting loan contract is deemed a new and separate loan transaction for all purposes.

~~(f)~~ (e) With respect to precomputed loans and notwithstanding section 47.59 to the contrary:

(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.

~~(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)~~ (4) 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)~~ (5) 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 clause ~~(6)~~ (4), 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.

~~(8)~~ (6) With respect to a loan secured by an interest in real estate, and having a maturity of more than 60 months, the original schedule of installment payments must fully amortize the principal and interest on the loan. The original schedule of installment payments for any other loan secured by an interest in real estate must provide for payment amounts that are sufficient to pay all interest scheduled to be due on the loan.

Sec. 18. Minnesota Statutes 1994, section 56.131, subdivision 2, is amended to read:

Subd. 2. **ADDITIONAL CHARGES.** In addition to the charges provided for by this section and section 56.155, and notwithstanding section 47.59, subdivision 5, to the contrary, no further or other amount whatsoever, shall be directly or indirectly charged, contracted for, or received for the loan made, except actual out of pocket expenses of the licensee to realize on a security after default, and except for the following additional charges which may be included in the principal amount of the loan:

(a) lawful fees and taxes paid to any public officer to record, file, or release security;

(b) with respect to a loan secured by an interest in 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; provided the costs do not exceed one percent of the principal amount or ~~$250~~ $400, whichever is greater:

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

(2) fees, if not paid to the licensee, an employee of the licensee, or a person related to the licensee, for preparation of a mortgage, settlement statement, or other documents, fees for notarizing mortgages and other documents, and appraisal fees;

(c) the premium for insurance in lieu of perfecting and releasing a security interest to the extent that the premium does not exceed the fees described in paragraph (a);

(d) discount points and appraisal fees may not be included in the principal amount of a loan secured by an interest in real estate when the loan is a refinancing for the purpose of bringing the refinanced loan current and is made within 24 months of the original date of the refinanced loan. For purposes of this paragraph, a refinancing is not considered to be for the purpose of bringing the refinanced loan current if new funds advanced to the customer, not including closing costs or delinquent installments, exceed $1,000.

Sec. 19. Minnesota Statutes 1994, section 56.132, is amended to read:

56.132 **INSTALLMENT SALES CONTRACTS.**

A person may enter into a credit sale or service contract for sale to a licensee under this chapter doing business in this state, and a licensee may purchase and enforce the contract under the terms and conditions set forth in section ~~51A.385, subdivisions 2 and 5 to 13~~ 47.59, subdivisions 2 and 4 to 14.

Sec. 20. Minnesota Statutes 1994, section 56.155, subdivision 1, is amended to read:

Subdivision 1. **AUTHORIZATION.** Notwithstanding section 47.59 to the contrary, no licensee shall, directly or indirectly, sell or offer for sale any insurance in connection with any loan made under this chapter except as and to the extent authorized by this section. The sale of credit life, credit accident and health, and credit involuntary unemployment insurance is subject to the provisions of chapter 62B, except that the term of the insurance may exceed 60 months if the term of the loan exceeds 60 months. Life, accident, health, and involuntary unemployment insurance, or any of them, may be written upon or in connection with any loan but must not be required as additional security for the indebtedness. If the debtor chooses to procure credit life insurance, credit accident and health insurance, or credit involuntary unemployment insurance as security for the indebtedness, the debtor shall have the option of furnishing this security through existing policies of insurance that the debtor owns or controls, or of furnishing the coverage through any insurer authorized to transact business in this state. A statement in substantially the following form must be made orally, except for loans by mail pursuant to section 56.12, and provided in writing in bold face type of a minimum size of 12 points to the borrower before the transaction is completed for each credit life, accident and health, and involuntary unemployment insurance coverage sold:

CREDIT LIFE INSURANCE, CREDIT DISABILITY INSURANCE, AND CREDIT INVOLUNTARY UNEMPLOYMENT INSURANCE ARE NOT REQUIRED TO OBTAIN CREDIT. YOU MAY BUY ANY INSURANCE FROM ANYONE YOU CHOOSE OR YOU MAY USE EXISTING INSURANCE.

The licensee shall disclose whether or not the benefits commence as of the first day of disability or involuntary unemployment and shall further disclose the number of days that an insured obligor must be disabled or involuntarily unemployed, as defined in the policy, before benefits, whether retroactive or nonretroactive, commence. In case there are multiple obligors under a transaction subject to this chapter, no policy or certificate of insurance providing credit unemployment benefits may be procured by or through a licensee upon more than one of the obligors. In case there are multiple obligors under a transaction subject to this chapter, no policy or certificate of insurance providing credit accident and health or credit life insurance may be procured by or through a licensee upon more than two of the obligors in which case they shall be insured jointly. The premium or identifiable charge for the insurance must not exceed that filed by the insurer with the department of commerce. The charge, computed at the time the loan is made for a period not to exceed the full term of the loan contract on an amount not to exceed the total amount required to pay principal and charges, may be deducted from the proceeds or may be included as part of the principal of any loan. If a borrower procures insurance by or through a licensee, the statement required by section 56.14 must disclose the cost to the borrower and the type of insurance, and the licensee shall cause to be delivered to the borrower a copy of the policy, certificate, or other evidence thereof, within a reasonable time. No licensee shall decline new or existing insurance which meets the standards set out in this section nor prevent any obligor from obtaining this insurance coverage from other sources. Notwithstanding any other provision of this chapter, any gain or advantage to the licensee or to any employee, affiliate, or associate of the licensee from this insurance or the sale or provision thereof is not an additional or further charge in connection with the loan; nor are any of the provisions pertaining to insurance contained in this section prohibited by any other provision of this chapter.

Sec. 21. **[334.171] OPEN END CREDIT PLANS; DELINQUENCIES AND COLLECTION CHARGES.**

If an open end credit plan, agreement, or arrangement between the buyer and seller so provides, a seller or holder may collect a delinquency and collection charge on each installment in arrears for a period of not less than ten days in an amount not in excess of any such charge which may be imposed on residents of this state by any institution defined in subsection (c)(2)(F) of section 101(a) of the Competitive Equality Amendments of 1987 and the Bank Holding Company Act of 1956, United States Code, title 12, section 1841(c)(2)(F), by any national banking association under section 85 of the National Bank Act of 1864, United States Code, title 12, section 85, or by any state chartered insured depository institution under section 521 of the Depository Institutions Deregulation and Monetary Control Act of 1980, United States Code, title 12, section 1813d(a).

Sec. 22. **REPEALER.**

Minnesota Statutes 1994, sections 51A.385; and 325F.91, subdivision 2, are repealed.

ARTICLE 4

INTERSTATE MARKET DEVELOPMENT AND FEDERALIZATION OF INTERSTATE BANKING

Section 1. Minnesota Statutes 1994, section 46.048, subdivision 1, is amended to read:

Subdivision 1. **REQUIREMENT.** Whenever a change in the outstanding voting stock of a banking institution will result in control or in a change in the control of the banking institution, the person acquiring control of the banking institution, including an out-of-state bank holding company, shall file notice of the proposed acquisition of control with the commissioner of commerce at least 60 days before the actual effective date of the change, except that the commissioner may extend the 60-day period an additional 30 days if in the commissioner's judgment any material information submitted is substantially inaccurate or the acquiring party has not furnished all the information required. As used in this section, the term "control" means the power to directly or indirectly direct or cause the direction of the management or policies of the banking institution. A change in ownership of capital stock that would result in direct or indirect ownership by a stockholder or an affiliated group of stockholders of less than 25 percent of the outstanding capital stock is not considered a change of control. If there is any doubt as to whether a change in the outstanding voting stock is sufficient to result in control or to effect a change in the control, the doubt shall be resolved in favor of reporting the facts to the commissioner. The commissioner shall use the criteria established by the Financial Institution Regulatory and Interest Rate Control Act of 1978, United States Code, title 12, section 1817(j), and the regulations adopted under it, when reviewing the acquisition and determining if the acquisition should or should not be disapproved. Within three days after making the decision to disapprove a proposed acquisition, the commissioner shall notify the acquiring party in writing of the disapproval. The notice must provide a statement of the basis for the disapproval.

Sec. 2. Minnesota Statutes 1994, section 46.048, is amended by adding a subdivision to read:

Subd. 2a. **CONTENTS.** The notice required by subdivision 1 must contain the following information to the extent that it is known by the person making the notice:

(1) the identity, personal history, business background, and experience of each person by whom or on whose behalf the acquisition is to be made, including the person's material business activities and affiliations during the past five

years, and a description of any material pending legal or administrative proceedings in which the person is a party and any criminal indictment or conviction of that person by a state or federal court;

(2) a statement of the assets and liabilities of each person by whom or on whose behalf the acquisition is to be made, as of the end of the fiscal year for each of the five years immediately preceding the date of the notice, together with related statements of income, sources, and application of funds for each of the fiscal years then concluded, all prepared in accordance with generally accepted accounting principles consistently applied, and an interim statement of the assets and liabilities for each person, together with related statements of income, source, and application of funds as of a date not more than 90 days before the date of the filing of the notice;

(3) the terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made;

(4) the identity, source, and amount of the funds or other consideration to be used in making the acquisition, and if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and any arrangements, agreements, or understandings with those persons;

(5) any plans or proposals that a party making the acquisition may have to liquidate the bank, to sell its assets or merge it, or make any other major change in its business or corporate structure or management;

(6) the identity of any person employed, retained, or to be compensated by the acquiring party, or by any person on the acquiring party's behalf, to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition, and a brief description of the terms of the employment, retainer, or arrangement for compensation;

(7) copies of all invitations, tenders, or advertisements making tender offers to stockholders for purchase of their stock to be used in connection with the proposed acquisition; and

(8) any additional relevant information in the form the commissioner requires by rule or by specific request in connection with any particular notice.

Sec. 3. Minnesota Statutes 1994, section 46.048, is amended by adding a subdivision to read:

Subd. 2b. **NOTICE.** Upon the filing of an application:

(1) an applicant shall publish once in a newspaper of general circulation notice of the proposed acquisition in a form acceptable to the commissioner; and

(2) the commissioner shall accept public comment on an application for a period of not less than 30 days from the date of the publication required by clause (1).

Sec. 4. Minnesota Statutes 1994, section 46.048, is amended by adding a subdivision to read:

Subd. 4. **HEARINGS.** Within ten days of receipt of notice of disapproval according to subdivision 1, the acquiring party may request a department hearing on the proposed acquisition. At the hearing, all issues must be determined on the record according to chapter 14 and the rules adopted by the commissioner. At the conclusion of the hearing, the commissioner shall by order approve or disapprove the proposed acquisition on the basis of the record made at the hearing.

Sec. 5. Minnesota Statutes 1994, section 47.52, is amended to read:

47.52 **AUTHORIZATION.**

(a) With the prior approval of the commissioner, any bank doing business in this state may establish and maintain not more than five detached facilities provided the facilities are located within the municipality in which the principal office of the applicant bank is located; or within 5,000 feet of its principal office measured in a straight line from the closest points of the closest structures involved; or within 100 miles of its principal office measured in a straight line from the closest points of the closest structures involved, if the detached facility is within any municipality in which no bank is located at the time of application or if the detached facility is in a municipality having a population of more than 10,000, or if the detached facility is located in a municipality having a population of 10,000 or less, as determined by the commissioner from the latest available data from the state demographer, or for municipalities located in the seven-county metropolitan area from the metropolitan council, and all the banks having a principal office in the municipality have consented in writing to the establishment of the facility.

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

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

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

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

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

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

Sec. 6. Minnesota Statutes 1994, section 47.78, is amended to read:

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 ~~and loan~~ association, or federal credit union having its main office in this state, or a bank, savings bank, savings ~~and loan~~ 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.

Sec. 7. Minnesota Statutes 1994, section 48.90, subdivision 1, is amended to read:

Subdivision 1. **SEVERABILITY.** It is the express intention of the Minne-

sota legislature to act pursuant to the United States Code, title 12, section 1842(d) ~~to provide an orderly transition to interstate banking by initially permitting limited interstate banking on a regional basis~~ as amended by title I of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 to provide for interstate banking on a nationwide basis and to preserve certain state law, policy, and practices. ~~Therefore, notwithstanding the provisions of section 645.20, if any provision of Laws 1986, chapter 339, other than Laws 1986, chapter 339, sections 1 to 3, and 14, providing for the supervisory powers of the commissioner or limiting expansion into this state to bank holding companies located in states defined as "reciprocating states" is determined by final, nonappealable order of any Minnesota or federal court of competent jurisdiction to be invalid or unconstitutional, Laws 1986, chapter 339, is null and void and of no further force and effect from the effective date of the final determination.~~

Sec. 8. Minnesota Statutes 1994, section 48.91, is amended to read:

48.91 **TITLE.**

~~Laws 1986, chapter 339~~ Sections 48.90 to 48.99 may be cited as the "~~reciprocal~~ interstate banking act."

Sec. 9. Minnesota Statutes 1994, section 48.92, subdivision 2, is amended to read:

Subd. 2. **CONTROL.** "Control," ~~means,~~ with respect to a bank holding company, bank, or bank to be organized pursuant to chapters 46, 47, 48, and 300, ~~(1) the ownership, directly or indirectly or acting through one or more other persons, control of or the power to vote 25 percent or more of any class of voting securities; (2) control in any manner over the election of a majority of the directors; or (3) the power to exercise, directly or indirectly, a controlling influence over management and policies~~ means that term as defined in section 46.048, subdivision 1.

Sec. 10. Minnesota Statutes 1994, section 48.92, subdivision 6, is amended to read:

Subd. 6. ~~**LOCATED IN THIS**~~ **HOME STATE.** "~~Located in this~~ Home state" means: (1) ~~a bank whose organizational certificate identifies an address in this state as the principal place of conducting the business of banking; or (2) a bank holding company as defined in the Bank Holding Company Act of 1956, as amended, with banking subsidiaries, the majority of whose deposits are in Minnesota.~~ with respect to a national bank, the state in which the main office of the bank is located; (2) with respect to a state bank, the state by which the bank is chartered; and (3) with respect to a bank holding company, the state in which the total deposits of all banking subsidiaries of the company are the largest on the later of (i) July 1, 1966, or (ii) the date on which the company becomes a bank holding company under the Bank Holding Company Act of 1956, as amended, United States Code, title 12, section 1842.

Sec. 11. Minnesota Statutes 1994, section 48.92, subdivision 7, is amended to read:

Subd. 7. ~~**RECIPROCATING**~~ **HOST STATE.** "~~Reciprocating~~ Host state" is a state ~~that authorizes the acquisition, directly or indirectly, or control of, banks in that state by a bank or bank holding company located in this state under conditions substantially similar to those imposed by the laws of Minnesota as determined by the commissioner.~~ other than the home state of the bank holding company, in which the company controls, or seeks to control, a bank subsidiary.

Sec. 12. Minnesota Statutes 1994, section 48.92, subdivision 8, is amended to read:

Subd. 8. ~~**RECIPROCATING STATE**~~ **OUT-OF-STATE BANK HOLDING COMPANY.** "~~Reciprocating state~~ Out-of-state bank holding company" means a bank holding company as defined in the Bank Holding Company Act of 1956, as amended, whose ~~operations are principally conducted in a reciprocating~~ home state is a state other than Minnesota ~~and is that state in which the operations of its banking subsidiaries are the largest in terms of total deposits~~.

Sec. 13. Minnesota Statutes 1994, section 48.92, subdivision 9, is amended to read:

Subd. 9. **INTERSTATE BANK HOLDING COMPANY.** "Interstate bank holding company" means (a) a bank holding company ~~located in this state,~~ whose home state is Minnesota and that is engaging in interstate banking ~~under reciprocal legislation~~, and (b) ~~a reciprocating state~~ an out-of-state bank holding company engaged in banking in this state~~, and (c) other out-of-state bank holding companies operating an institution located in this state having deposits insured by the Federal Deposit Insurance Corporation~~.

Sec. 14. Minnesota Statutes 1994, section 48.92, is amended by adding a subdivision to read:

Subd. 11. **OUT-OF-STATE BANK.** "Out-of-state bank" means a bank whose home state is other than Minnesota.

Sec. 15. Minnesota Statutes 1994, section 48.93, subdivision 1, is amended to read:

Subdivision 1. **APPLICATION.** ~~A reciprocating state~~ An out-of-state bank holding company may, through a purchase of stock or assets of a bank, or through a purchase of stock or assets of or merger with a bank holding company, acquire ~~an interest~~ control in an existing bank or banks ~~located in this~~ whose home state is Minnesota if it meets the conditions in this section, sections 46.047 and 46.048 and~~, if the interest will result in control of the bank or banks,~~ it files an application in writing with the commissioner on forms provided by the department. The commissioner, upon receipt of the application, shall act upon it ~~within 30 days of the end of the public comment period provided by section 48.98, and, unless the proposed acquisition is disapproved within that period of time, it becomes effective without approval~~ in the manner provided

for in sections 46.047 and 46.048, except that the commissioner may extend the ~~30-day~~ 60-day period an additional 30 days if in the commissioner's judgment any material information submitted is substantially inaccurate or the acquiring party has not furnished all the information required by ~~subdivision 3~~ statute, rule, or the commissioner. ~~No application for approval required by this section is complete unless accompanied by an application fee of $5,000 payable to the state treasurer. Compliance with the requirements of this section satisfies the requirements of section 48.03, subdivision 4.~~ Within three days after making the decision to disapprove any proposed acquisition, the commissioner shall notify the acquiring party in writing of the disapproval. The notice must provide a statement of the basis for the disapproval.

Sec. 16. Minnesota Statutes 1994, section 48.93, subdivision 3, is amended to read:

Subd. 3. **CRITERIA FOR APPROVAL.** Except as otherwise provided by rule of the department, an application filed pursuant to subdivision 1 must contain the ~~following~~ information: required by sections 46.047 and 46.048.

~~(1) the identity, personal history, business background, and experience of each person by whom or on whose behalf the acquisition is to be made, including the person's material business activities and affiliations during the past five years, and a description of any material pending legal or administrative proceedings in which the person is a party and any criminal indictment or conviction of that person by a state or federal court;~~

~~(2) a statement of the assets and liabilities of each person by whom or on whose behalf the acquisition is to be made, as of the end of the fiscal year for each of the five years immediately preceding the date of the notice, together with related statements of income, sources, and application of funds for each of the fiscal years then concluded, all prepared in accordance with generally accepted accounting principles consistently applied, and an interim statement of the assets and liabilities for each person, together with related statements of income, source, and application of funds as of a date not more than 90 days prior to the date of the filing of the notice;~~

~~(3) the terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made;~~

~~(4) the identity, source, and amount of the funds or other consideration to be used in making the acquisition, and if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and any arrangements, agreements, or understandings with those persons;~~

~~(5) any plans or proposals which an acquiring party making the acquisition may have to liquidate the bank, to sell its assets or merge it, or make any other major change in its business or corporate structure or management;~~

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

~~(6) the identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on the acquiring party's behalf, to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition, and a brief description of the terms of the employment, retainer, or arrangement for compensation;~~

~~(7) copies of all invitations, tenders, or advertisements making tender offers to stockholders for purchase of their stock to be used in connection with the proposed acquisition;~~

~~(8) a statement of how the acquisition will bring "net new funds" to Minnesota. The description of net new funds must be filed with the application stating the amount of capital funds, including the increase in equity capital that will result from the acquisition or establishment of a bank. The level of total equity capital must exceed $3,000,000 for a new chartered bank and $1,000,000 for an acquired bank. The description must state the net increase in loanable funds expressed as an increase in the total loan to asset ratio of Minnesota loans and assets. The statement must also include a discussion of initial capital investments, loan policy, investment policy, dividend policy, and the general plan of business, including the full range of consumer and business services which will be offered; and~~

~~(9) any additional relevant information in the form the commissioner requires by rule or by specific request in connection with any particular notice.~~

Sec. 17. Minnesota Statutes 1994, section 48.93, subdivision 4, is amended to read:

Subd. 4. **DISAPPROVAL.** The commissioner shall disapprove any proposed acquisition if:

(1) the financial condition of any acquiring person is such as might jeopardize the financial stability of the bank or prejudice the interests of the depositors of the bank;

(2) the competence, experience, integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of the bank, or in the interest of the public to permit the person to control the bank;

(3) the acquisition will result in undue concentration of resources or substantial lessening of competition in this state;

~~(4) the application fails to adequately demonstrate that the acquisition proposal would bring net new funds into Minnesota;~~

~~(5)~~ the application is incomplete or any acquiring party neglects, fails, or refuses to furnish all the information required by the commissioner;

~~(6)~~ (5) a subsidiary of the acquiring bank holding company has failed to meet the requirements set forth in the federal Community Reinvestment Act; or

~~(7) the acquisition will result in over 30 percent of Minnesota's total deposits in financial institutions as defined in section 13A.01, subdivision 2, being held by banks located in this state owned by reciprocating state bank holding companies. This limitation does not apply to consideration for approval pursuant to section 48.99, special acquisitions.~~

(6) the bank to be acquired has not been in existence for at least five years. For purposes of this paragraph, a bank that has been chartered solely for the purpose of, and does not open for business before, acquiring control of, or acquiring all or substantially all of the assets of, an existing bank is considered to have been in existence for the same period of time as the bank to be acquired. For determining the time period of existence of a bank, the time period begins after the issuance of a certificate of authorization and from the date the approved bank actually opens for business.

Sec. 18. Minnesota Statutes 1994, section 48.96, is amended to read:

48.96 **SUPERVISION.**

The department may enter into cooperative and reciprocal agreements with federal or ~~bank~~ state regulatory authorities ~~of reciprocating states~~ responsible for supervision of out-of-state bank holding companies for exchange or acceptance of reports of examination and other records from the authorities in lieu of conducting its own examinations. The department may enter into joint actions with federal or ~~bank~~ state regulatory authorities ~~of reciprocating states~~ responsible for supervision of out-of-state bank holding companies to carry out its responsibilities ~~under Laws 1986, chapter 339~~ and assure compliance with the laws of this state.

Sec. 19. Minnesota Statutes 1994, section 48.99, subdivision 1, is amended to read:

Subdivision 1. **APPLICATION CRITERIA FOR APPROVAL.** Pursuant to the present requirement of the United States Code, title 12, section 1842(d) and notwithstanding any other provision of state law, ~~a reciprocating state~~ an out-of-state bank holding company, or any subsidiary of a bank holding company, may acquire a bank located in this state where the commissioner has determined that a merger, consolidation, or purchase of assets and assumption of liabilities is necessary and in the public interest to prevent the probable failure of a bank or is made for the incorporation of a new bank in the same locality coincidental with the closing of an existing bank by the commissioner or federal authorities and does not increase the number of banks in the community affected. The acquisition is subject to the prior written approval of the commissioner of an application submitted under this section and after the following considerations:

(1) the financial and managerial resources of the applicant;

(2) the future prospects of the applicant and the state bank or its subsidiary whose assets, interest in, or shares it will acquire;

(3) the financial history of the applicant;

(4) whether the acquisition or holding may result in undue concentration of resources or substantial lessening of competition in this state, but any deposit concentration limitations imposed on the acquisition by Public Law Number 103-328, title 1, section 101, (a)(2), may be waived by order of the commissioner;

(5) the convenience and needs of the public of this state; and

(6) whether the acquisition or holding will strengthen the financial condition of the state bank.

Sec. 20. **[48.993] RECIPROCAL INTERSTATE BRANCHING.**

With the prior approval of the commissioner, a bank doing business in the state of Iowa, North Dakota, South Dakota, or Wisconsin may establish a de novo detached facility in this state not more than 30 miles from its principal office measured in a straight line from the closest points of the closest structures provided further that:

(a) There is in effect in the home state a statute, rule, or ruling that permits Minnesota home state banks to establish de novo branches in the state under conditions substantially similar to those imposed by the laws of Minnesota as determined by the commissioner.

(b) There is in effect a cooperative agreement between the home state and host state banking regulator to facilitate their respective regulation and supervision of the bank including application and approval process, and the coordination of examinations. The agreement must at a minimum provide:

(1) common form and information requirements to be completed by the applicant bank;

(2) common form and procedure required to publish the application in the location of the branch in the host state;

(3) a fee for the application to the state of Minnesota, department of commerce, for filing and approval as the host state of the application of $500;

(4) the requirements and limitations on the location and operations of an interstate branch must be the same as for host state branches in sections 47.51 to 47.55. Transfer of location under section 47.56 is limited by this section;

(5) the branch is subject to the laws of the host state relating to banking in resolution of conflicts of laws between the home and host state; and

(6) the deposits of the bank must be insured by the Federal Deposit Insurance Corporation.

(c) The home state banking regulator has granted any and all necessary approvals.

(d) Beginning one year following establishment of a detached facility in a host state, the home state bank's level of lending in the host state relative to the deposits from the host state shall not be less than half of the level of the bank's loan to deposit ratio in its home state operations. The bank shall maintain sufficient records to permit an examination to determine compliance with this requirement by the host state banking regulator. If the bank is found to be in noncompliance, the home state or host state banking regulator may order that an interstate branch of the bank in the host state be closed.

(e) For purposes of this section, "home state" has the meaning given in section 48.92, and "host state" means a state other than the home state.

Sec. 21. **[48.995] FOREIGN CORPORATION FILING.**

Subdivision 1. **TRUST POWERS.** A bank that holds trust powers may conduct the activity through a host state branch provided it complies with section 303.25.

Subd. 2. **FILING WITH SECRETARY OF STATE.** Notwithstanding section 303.03, the branch in a host state must operate under a certificate of authority filed with the Minnesota secretary of state.

Subd. 3. **DEFINITION.** For purposes of this section, "host state" means a state other than the home state, as defined in section 48.92.

Sec. 22. Minnesota Statutes 1994, section 52.05, subdivision 2, is amended to read:

Subd. 2. **APPLICATION.** Any 25 ~~residents of the state~~ persons representing a group may apply to the commissioner, advising the commissioner of the common bond of the group and its number of potential members, for a determination whether it is feasible for the group to form a credit union. Upon a determination that it is not feasible to organize because the number of potential members is too small, the applicants will be certified by the commissioner as eligible to petition for membership in an existing credit union capable of serving the group. If the credit union so petitioned resolves to accept the group into membership, it shall follow the bylaw amendment and approval procedure set forth in section 52.02.

The commissioner shall adopt rules to implement this subdivision. These rules must provide that:

(1) for the purpose of this subdivision, groups with a potential membership of less than 1,500 will be considered too small to be feasible as a separate credit union, unless there are compelling reasons to the contrary, relevant to the objectives of this subdivision;

(2) groups with a potential membership in excess of 1,500 will be considered in light of all circumstances relevant to the objectives of this subdivision; and

(3) all group applications, except for applications from groups made up of members of existing credit unions or groups made up of people who have a common employer which qualifies them for membership in an existing credit union, will be considered separately from any consideration of the membership provisions of existing credit unions; except that, groups made up of members of an existing credit union may be certified under this subdivision with the agreement of the credit union.

Sec. 23. **NONSEVERABILITY.**

Notwithstanding Minnesota Statutes, section 645.20, if any section, subdivision, clause, phrase, or word of section 5, paragraph (d), section 20, or section 21 is for any reason determined by a final nonappealable order or judgment of a court of competent jurisdiction to be unconstitutional, in violation of federal law, or to constitute opting-in to de novo interstate branching under section 103 of the federal Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, the determination shall cause the remaining portions of those sections, subdivisions, clauses, and phrases to be null and void from the effective date of the final determination.

Sec. 24. **SUNSET.**

Sections 5, 20, and 21 expire May 31, 1997.

Sec. 25. **IMMEDIATE REPEALER.**

Minnesota Statutes 1994, sections 48.1585; 48.512, subdivision 6; 48.97; and 48.991, are repealed.

Sec. 26. **DELAYED REPEALER.**

Minnesota Statutes 1994, sections 47.80; 47.81; 47.82; 47.83; 47.84; 47.85; 48.95; and 48.98, are repealed.

Sec. 27. **EFFECTIVE DATE.**

Sections 1, 5, 20 to 22, and 25 are effective the day following final enactment. Sections 2 to 4 and 6 to 19 are effective September 29, 1995, except that the portions of section 17 that strike existing clauses (4) and (7) are effective the day following final enactment.

Presented to the governor May 22, 1995

Signed by the governor May 24, 1995, 10:20 a.m.