

## CHAPTER 157—H.F.No. 753

*An act relating to financial institutions; authorizing facsimile or electronic filings and certifications; regulating the powers and structure of certain institutions; regulating consumer credit; modifying lending authority; regulating fees and charges; making technical and conforming changes; amending Minnesota Statutes 1996, sections 46.04, by adding a subdivision; 46.044, by adding a subdivision; 46.046, by adding a subdivision; 46.047, subdivision 2; 46.07, subdivision 2; 46.131, subdivision 2; 47.20, subdivisions 9 and 14; 47.206, subdivision 6; 47.55, subdivision 1; 47.56; 47.59, subdivisions 1, 4, 5, 6, and 12; 47.61, subdivision 3; 47.64, by adding a subdivision; 47.75, subdivision 1; 48.01, subdivision 2; 48.09, by adding a subdivision; 48.15, subdivisions 2 and 4; 48.24, subdivision 2, and by adding a subdivision; 48.512, by adding a subdivision; 48.61, subdivision 7, and by adding a subdivision; 49.215, subdivision 3; 49.33; 49.36, subdivision 4; 49.42; 50.245; 51A.38, subdivision 1; 52.04, subdivision 2a, and by adding a subdivision; 52.062, subdivision 1, and by adding a subdivision; 52.063; 52.064, by adding a subdivision; 52.13; 52.201; 53.04, by adding a subdivision; 53.05; 53.09, subdivision 2a; 55.06, subdivision 1; 56.07; 56.10, subdivision 1; 56.131, subdivisions 1 and 4; 59A.08, subdivision 3, and by adding a subdivision; 59A.11, subdivisions 2 and 3; 62B.04, subdivision 1; 300.20, subdivision 2; 303.02, subdivision 4; 303.25, subdivision 5; 325F.68, subdivision 2; 332.21; 332.23, subdivisions 1, 2, and 5; and 332.50, subdivisions 1 and 2; Laws 1996, chapter 414, article 1, section 45; proposing coding for new law in Minnesota Statutes, chapter 48; repealing Minnesota Statutes 1996, sections 13.99, subdivision 13; 47.29; 47.31; 47.32; 49.47; 49.48; 50.03; 50.23; and 59A.14.*

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

Section 1. Minnesota Statutes 1996, section 46.04, is amended by adding a subdivision to read:

**Subd. 4. APPLICATIONS, FACSIMILE OR ELECTRONIC MEDIA.** (a) The commissioner when providing forms and procedural guidance to persons governed by or seeking approval to operate under the chapters referred to in this section may prescribe alternatives to paper forms and delivery in person or by mail. In considering accepting filings by facsimile or electronic media, the commissioner may accept fees and reimbursement for costs associated with the applications and notices by wire transfer and debit card.

(b) Certifications required to authenticate, officiate, or establish standing of the application or notice as a matter of law, rule, or sound business practice may be authenticated in an alternative to paper-based original signatures or notarial seals on facsimile or electronic media submissions in a technically competent means at the discretion of the commissioner, including but not limited to, document imaging meeting the standard in subdivision 3, bar coding, personal identification numbers, or other reliable communicated verification technique.

Sec. 2. Minnesota Statutes 1996, section 46.044, is amended by adding a subdivision to read:

**Subd. 3. SPECIAL PURPOSE BANKS, EXCEPTIONS.** For purposes of applications to organize and operate special purpose banks as defined in section 46.046, subdivision 5, the conditions in subdivision 1, clauses (2) and (4), do not apply.

Sec. 3. Minnesota Statutes 1996, section 46.046, is amended by adding a subdivision to read:

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Subd. 5. **SPECIAL PURPOSE BANK.** Special purpose bank means a bank as defined in subdivision 2 that:

- (1) engages only in credit card operations as authorized in section 47.59;
- (2) does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others;
- (3) does not accept savings or time deposits of less than \$100,000;
- (4) maintains only one office that accepts deposits; and
- (5) does not engage in the business of making commercial loans.

Sec. 4. Minnesota Statutes 1996, section 46.047, subdivision 2, is amended to read:

Subd. 2. **BANKING INSTITUTION.** The term "banking institution" means a bank, trust company, bank and trust company, savings bank, or industrial loan and thrift institution operating under section 53.04, subdivision 5, that is organized under the laws of this state, or a holding company which owns or otherwise controls the banking institution.

Sec. 5. Minnesota Statutes 1996, section 46.07, subdivision 2, is amended to read:

Subd. 2. **CONFIDENTIAL RECORDS.** The commissioner shall divulge facts and information obtained in the course of examining financial institutions under the commissioner's supervision only when and to the extent required or permitted by law to report upon or take special action regarding the affairs of an institution, or ordered by a court of law to testify or produce evidence in a civil or criminal proceeding, except that the commissioner may furnish information as to matters of mutual interest to an official or examiner of the federal reserve system, the Federal Deposit Insurance Corporation, the Federal Office of Thrift Supervision, the Federal Home Loan Bank System, the National Credit Union Administration, comptroller of the currency, a legally constituted state credit union share insurance corporation approved under section 52.24 other state bank supervisory agencies subject to cooperative agreements authorized by section 49.411, subdivision 7, the United States Small Business Administration, for purposes of sections 53.09, subdivision 2a, and 56.10, subdivision 1, or state and federal law enforcement agencies. The commissioner shall not be required to disclose the name of a debtor of a financial institution under the commissioner's supervision, or anything relative to the private accounts, ownership, or transactions of an institution, or any fact obtained in the course of an examination thereof, except as herein provided. For purposes of this subdivision, a subpoena is not an order of a court of law. These records are classified confidential or protected nonpublic for purposes of the Minnesota government data practices act and their destruction, as prescribed in section 46.21, is exempt from the provisions of chapter 138 and Laws 1971, chapter 529, so far as their deposit with the state archives.

Sec. 6. Minnesota Statutes 1996, section 46.131, subdivision 2, is amended to read:

Subd. 2. Each bank, trust company, savings bank, savings association, small loan company regulated lender, industrial loan and thrift company, credit union, motor vehicle sales finance company, debt prorating agency and insurance premium finance company organized under the laws of this state or required to be administered by the commissioner of commerce shall pay into the state treasury its proportionate share of the cost of maintaining the department of commerce.

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Sec. 7. Minnesota Statutes 1996, section 47.20, subdivision 9, is amended to read:

Subd. 9. For purposes of this subdivision the term "mortgagee" shall mean all state banks and trust companies, national banking associations, state and federally chartered savings associations, mortgage banks, savings banks, insurance companies, credit unions or assignees of the above.

(a) Each mortgagee requiring funds of a mortgagor to be paid into an escrow, agency or similar account for the payment of taxes or homeowner's insurance premiums with respect to a mortgaged one-to-four family, owner occupied residence located in this state, unless the account is required by federal law or regulation or maintained in connection with a conventional loan in an original principal amount in excess of 80 percent of the lender's appraised value of the residential unit at the time the loan is made or maintained in connection with loans insured or guaranteed by the secretary of housing and urban development, by the administrator of veterans affairs, or by the administrator of the farmers home administration or any successor, shall calculate interest on such funds at a rate of not less than three percent per annum. Such interest shall be computed on the average monthly balance in such account on the first of each month for the immediately preceding 12 months of the calendar year or such other fiscal year as may be uniformly adopted by the mortgagee for such purposes and shall be annually credited to the remaining principal balance on the mortgage, or at the election of the mortgagee, paid to the mortgagor or credited to the mortgagor's account. If the interest exceeds the remaining balance, the excess shall be paid to the mortgagor or vendee. The requirement to pay interest shall apply to such accounts created in conjunction with mortgage loans made prior to July 1, 1996.

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

"NOTICE OF RIGHT TO DISCONTINUE ESCROW

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

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

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

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1989, the notice required by this paragraph shall be provided to the mortgagor by January 1, 1997.

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

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

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

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

Sec. 8. Minnesota Statutes 1996, section 47.20, subdivision 14, is amended to read:

Subd. 14. (a) A lender requiring or offering private mortgage insurance shall make available to the borrower or other person paying the insurance premium the same premium payment plans as are available to the lender in paying the private mortgage insurance premium.

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

(c) With regard to first mortgage loans made before, on, or after January 1, 1997, the mortgagor shall have the right to elect, in writing, to cancel borrower-purchased private mortgage insurance if all of the following terms and conditions have been met:

(1) if the current unpaid principal balance of a first mortgage is 75 percent or less of the current fair market appraised value of the property. "Current fair market appraised value" shall be based upon a current appraisal by a real estate appraiser licensed or certified by the appropriate state or federal agency and reasonably acceptable to the lender. The lender may require the mortgagor to pay for the appraisal;

(2) the mortgagor's monthly installments of principal, interest, and escrow obligations have not been more than 30 days past due over the 24-month period immediately preceding the request for cancellation and all accrued late charges have been paid;

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

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

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

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division of the state of Minnesota or of any agency of any political subdivision of the state of Minnesota.

(d) Other than the appraisal fee allowed pursuant to paragraph (c), clause (1), the lender shall not charge the borrower a fee or other consideration for cancellation of the private mortgage insurance.

(e) With respect to all existing or future first mortgage loans, a lender requiring private mortgage insurance shall, after the payment of the 24th monthly premium installment of private mortgage insurance, provide an annual written notice to each mortgagor currently paying premiums for private mortgage insurance. The notice may be included in the annual statement or may be included in other regular mailings to the mortgagor. For mortgage loans made prior to January 1, 1996, the first required annual notice must be provided no later than January 31, 1998. The annual notice shall be on its own page, unless included in a private mortgage insurance notice required under the federal Real Estate Settlement Procedures Act, and shall appear substantially as follows:

“NOTICE OF RIGHT TO CANCEL PRIVATE MORTGAGE INSURANCE

If you currently pay private mortgage insurance premiums, you may have the right to cancel the insurance and cease paying premiums. This would permit you to make a lower total monthly mortgage payment. In most cases, you have the right to cancel private mortgage insurance if the principal balance of your loan is 80 percent or less of the current fair market appraised value of your home. If you wish to learn whether you are eligible to cancel this insurance, please contact us at (address/phone).”

(f) If a mortgage loan governed by paragraph (c) is serviced in accordance with the guidelines of either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, the lender shall cancel private mortgage insurance in accordance with the cancellation guidelines of the applicable entity in effect at the time the request for cancellation is received.

Sec. 9. Minnesota Statutes 1996, section 47.206, subdivision 6, is amended to read:

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

Sec. 10. Minnesota Statutes 1996, section 47.55, subdivision 1, is amended to read:

Subdivision 1. **BANKING FACILITIES IN OPERATION PRIOR TO MAY 1, 1971.** A bank may retain and operate one detached facility as it may have had in operation prior to May 1, 1971 without requirement of approval hereunder, provided that its function is limited as provided in section 47.53 and its location conforms with the provisions of section 47.52. A bank having such a retained detached facility shall be limited to operating five additional detached facilities.

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Sec. 11. Minnesota Statutes 1996, section 47.56, is amended to read:

**47.56 TRANSFER OF LOCATION.**

The location of a detached facility transferred to another location outside of a radius of three miles measured in a straight line is subject to the same procedures and approval as required hereunder for establishing a new detached facility, ~~except that. The location of a detached facility transferred to another location within the lesser of a radius of three miles measured in a straight line from the existing location or the municipality, as defined in section 47.51, in which it is located is subject to the same procedures and approval as are required in section 47.101, subdivision 2.~~ The relocation of a detached facility within a municipality of 10,000 or less population shall not require consent of other banks required in section 47.52.

Sec. 12. Minnesota Statutes 1996, section 47.59, subdivision 1, is amended to read:

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:

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(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;

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

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

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

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ligation, 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.

Sec. 13. Minnesota Statutes 1996, section 47.59, subdivision 4, is amended to read:

**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 a retail installment sale of a mo-

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tor vehicle as defined in section 168.66, the annual percentage rates permitted by subdivision 4a.

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

(1) the total of:

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

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

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

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

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

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

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

(2) an additional charge under subdivision 6; or

(3) a discount, if a financial institution purchases a contract evidencing a credit sale at less than the face amount of the obligation or purchases or satisfies obligations of a

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cardholder according to a credit card and the purchase or satisfaction is made at less than the face amount of the obligation.

Sec. 14. Minnesota Statutes 1996, section 47.59, subdivision 5, is amended to read:

**Subd. 5. EXTENSIONS, DEFERMENTS, AND CONVERSION TO INTEREST BEARING.** (a) The parties may agree in writing, either in the loan contract or credit sale contract or in a subsequent agreement, to a deferment of wholly unpaid installments. For precomputed loans and credit sale contracts, the manner of deferment charge shall be determined as provided for in this section. A deferment postpones the scheduled due date of the earliest unpaid installment and all subsequent installments as originally scheduled, or as previously deferred; for a period equal to the deferment period. The deferment period is that period during which no installment is scheduled to be paid by reason of the deferment. The deferment charge for a one-month period may not exceed the applicable charge for the installment period immediately following the due date of the last undeferred payment. A proportionate charge may be made for deferment periods of more or less than one month. A deferment charge is earned pro rata during the deferment period and is fully earned on the last day of the deferment period. If a loan or credit sale is prepaid in full during a deferment period, the financial institution shall make or credit to the borrower a refund of the unearned deferment charge in addition to any other refund or credit made for prepayment of the loan or credit sale in full.

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

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

- (1) the loan contract or credit sale contract so provides and is subject to a change of the terms of the written agreement between the parties; or
- (2) the loan contract so provides and two or more installments are delinquent one full month or more on any due date.

Thereafter, and in lieu of any other default, extension, or deferment charges, the single annual percentage rate must be determined under the applicable charge provisions of this subdivision the single annual percentage rate and other charges must be determined as provided under this section for interest-bearing transactions.

Sec. 15. Minnesota Statutes 1996, section 47.59, subdivision 6, is amended to read:

**Subd. 6. ADDITIONAL CHARGES.** (a) For purposes of this subdivision, "financial institution" includes a person described in subdivision 4, paragraph (a). In addition to the finance charges permitted by this section, a financial institution may contract for

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and receive the following additional charges that may be included in the principal amount of the loan or credit sale unpaid balances:

(1) official fees and taxes;

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

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

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

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

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

(iv) fees for notarizing deeds and other documents;

(v) appraisal and credit report fees; and

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

(4) a delinquency charge on a payment, including the minimum payment due in connection with 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 principal amount of the loan or credit sale unpaid balances:

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

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

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

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

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

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

(3) charges for any monthly or other periodic payment period in which the borrower has exceeded or, except for the financial institution's dishonor would have exceeded, the maximum approved credit limit, in an amount not in excess of the service charge permitted in section 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 principal balance upon which the finance charge is computed. This paragraph applies only to closed-end credit in an original principal amount of \$4,320 or less. The determination of an original principal amount must exclude the administrative fee contracted for and received according to this paragraph.

Sec. 16. Minnesota Statutes 1996, section 47.59, subdivision 12, is amended to read:

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

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

Sec. 17. Minnesota Statutes 1996, 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.

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

- (1) a telephone;
- (2) an electronic information processing device that is used internally by a financial institution to conduct the business activities of the institution; 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, and which also may be used to obtain cash advances or cash back not to exceed \$25 and only if incidental to the retail sale transactions, through the use of credit cards or debit cards, provided that the payment transactions using debit cards are subject to the federal Electronic Funds Transfer Act, United States Code, title 12, sections 1693 et seq., and Regulation E of the Federal Reserve Board, Code of Federal Regulations, title 12, subpart 205.2; this clause does not exempt the retailer from liability for negligent conduct or intentional misconduct of the operator under section 47.69, subdivision 5;

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

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

Sec. 18. Minnesota Statutes 1996, section 47.64, is amended by adding a subdivision to read:

Subd. 7. **PROHIBITION.** An agreement to share electronic financial terminals may not contain provisions distinguishing between cards issued by United States finan-

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cial institutions and cards issued by Canadian financial institutions relative to a fee that may be charged to a card holder by the owner or operator of an electronic financial terminal, if the terminal is located within 50 miles of the Canadian border, and the enforcement of any such provision is prohibited.

Sec. 19. Minnesota Statutes 1996, section 47.75, subdivision 1, is amended to read:

Subdivision 1. **RETIREMENT AND MEDICAL SAVINGS ACCOUNTS.** A commercial bank, savings bank, savings association, credit union, or industrial loan and thrift company may act as trustee or custodian under the Federal Self-Employed Individual Tax Retirement Act of 1962, as amended, of a medical savings account under the Federal Health Insurance Portability and Accountability Act of 1996, as amended, and also under the Federal Employee Retirement Income Security Act of 1974, as amended. The trustee or custodian may accept the trust funds if the funds are invested only in savings accounts or time deposits in the commercial bank, savings bank, savings association, credit union, or industrial loan and thrift company. All funds held in the fiduciary capacity may be commingled by the financial institution in the conduct of its business, but individual records shall be maintained by the fiduciary for each participant and shall show in detail all transactions engaged under authority of this subdivision.

Sec. 20. Minnesota Statutes 1996, section 48.01, subdivision 2, is amended to read:

Subd. 2. **BANKING INSTITUTION.** The term "banking institution" means any bank, trust company, bank and trust company, or savings bank which is now or may hereafter be organized under the laws of this state. For purposes of sections 48.38, 48.84, and ~~501B.10~~ 501B.151, subdivision 6 11, and to the extent permitted by federal law, "banking institution" includes any national banking association or affiliate exercising trust powers in this state.

Sec. 21. Minnesota Statutes 1996, section 48.09, is amended by adding a subdivision to read:

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

Sec. 22. Minnesota Statutes 1996, section 48.15, subdivision 2, is amended to read:

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

Sec. 23. Minnesota Statutes 1996, section 48.15, subdivision 4, is amended to read:

New language is indicated by underline, deletions by strikeout.

Subd. 4. **RETIREMENT AND MEDICAL SAVINGS ACCOUNTS.** A state bank may act as trustee or custodian of a self-employed retirement plan under the Federal Self-Employed Individual Tax Retirement Act of 1962, as amended, of a medical savings account under the Federal Health Insurance Portability and Accountability Act of 1996, as amended, and of an individual retirement account under the Federal Employee Retirement Income Security Act of 1974, as amended, if the bank's duties as trustee or custodian are essentially ministerial or custodial in nature and the funds are invested only (1) in the bank's own savings or time deposits; or (2) in any other assets at the direction of the customer if the bank does not exercise any investment discretion, invest the funds in collective investment funds administered by it, or provide any investment advice with respect to those account assets.

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

Sec. 24. Minnesota Statutes 1996, section 48.24, subdivision 2, is amended to read:

Subd. 2. Loans not exceeding 25 percent of such capital and surplus made upon first mortgage security on improved real estate in the any state in which the bank or a branch established under section 49.411 is located, or in an adjoining any state within 20 miles of the place where the bank adjoining a state in which the bank or a branch established under section 49.411 is located, shall not constitute a liability of the maker of the notes secured by such mortgages within the meaning of the foregoing provision limiting liability, but shall be an actual liability of the maker. These mortgage loans shall be limited to, and in no case exceed, 50 percent of the cash value of the security covered by the mortgage, except mortgage loans guaranteed as provided by the servicemen's readjustment act of 1944, as now or hereafter amended, or for which there is a commitment to so guarantee or for which a conditional guarantee has been issued, which loans shall in no case exceed 60 percent of the cash value of the security covered by such mortgage. For the purposes of this subdivision, real estate is improved when substantial and permanent development or construction has contributed substantially to its value, and agricultural land is improved when farm crops are regularly raised on such land without further substantial improvements.

Sec. 25. Minnesota Statutes 1996, section 48.24, is amended by adding a subdivision to read:

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

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**Sec. 26. [48.476] REPRESENTATIVE TRUST OFFICE.**

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

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

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

(1) accept or execute trusts, including to:

(i) act as trustee under a written agreement;

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

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

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

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

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

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

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

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

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

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

**Subd. 3. AUTHORITY FOR OUT-OF-STATE TRUST OFFICES; PRIOR WRITTEN NOTICE.** (a) A state trust institution may establish and maintain representative trust office or acquire and maintain an office in a state other than this state. A state

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trust institution desiring to establish or acquire and maintain an office in another state under this section shall file a notice on a form prescribed by the commissioner, which shall set forth the name of the state trust institution, the location of the proposed office, and whether the laws of the jurisdiction where the office will be located permit the office to be maintained by the state trust institution; and furnish a copy of the resolution adopted by the board authorizing the out-of-state office.

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

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

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

Sec. 27. Minnesota Statutes 1996, section 48.512, is amended by adding a subdivision to read:

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

Sec. 28. Minnesota Statutes 1996, 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 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

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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. 29. Minnesota Statutes 1996, section 48.61, is amended by adding a subdivision to read:

**Subd. 10. SUBSIDIARIES ORGANIZED FOR PURPOSES OF CORPORATE REORGANIZATION.** A subsidiary may be organized solely for purposes of liquidating assets in a reorganization subject to the following conditions:

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

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

Sec. 30. Minnesota Statutes 1996, section 49.215, subdivision 3, is amended to read:

**Subd. 3. CERTIFICATE OF LIQUIDATION.** Upon compliance with the foregoing and upon filing with the commissioner an affidavit of the president and cashier or vice president conducting the duties of cashier of said financial institution that the provisions of subdivision 4 have been complied with and that all depositors and other creditors have been paid in full, or, if any dividends or any moneys set apart for the payment of claims remain unpaid and the places of residence of the depositors or other creditors are unknown to the persons making the affidavit, that sufficient funds have been turned over to the commissioner for payment into the state treasury to pay said depositors and other creditors, in the manner provided by subdivision 5, the commissioner shall issue a certificate of liquidation, and, upon the filing for record of said certificate of liquidation in the office of the secretary of state and in the office of the county recorder of the county of the principal place of business of such financial institution immediately prior to its voluntary liquidation, the liquidation of said financial institution shall be complete, and its corporate existence shall thereupon terminate.

Sec. 31. Minnesota Statutes 1996, section 49.33, is amended to read:

**49.33 CONSOLIDATION AND MERGER, WHEN AUTHORIZED.**

Subject to the provisions of sections 49.33 to 49.41, with the written consent of the commissioner of commerce, any bank of discount and deposit, savings bank, or trust company may effect a transfer of its assets and liabilities to another bank, savings bank, or trust company for the purpose of consolidating or merging, but the same shall be without prejudice to the creditors of either.

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Sec. 32. Minnesota Statutes 1996, section 49.36, subdivision 4, is amended to read:

Subd. 4. **NOTICE OF PROPOSED ACQUISITION.** The successor bank shall give reasonable notice of the acquisition to each of the depositors and creditors of an acquired bank or savings association within 30 days after the order is activated at a time and in a form determined in the discretion of the commissioner. This notice may be coordinated to include federal regulator concerns for impact on deposit insurance of accounts and information designed to alert depositors and creditors of any changes in procedures or practices. If detached facilities are to be closed as a result of transactions authorized by this section, adequate notice shall be provided by the bank prior to closing, unless the commissioner has acted to prevent the probable failure of the bank or savings association, and then as soon as practicable after the acquisition date.

Sec. 33. Minnesota Statutes 1996, section 49.42, is amended to read:

**49.42 STATE BANK.**

As used in sections 49.42 to 49.46:

“State bank” means any bank, savings bank, trust company, or bank and trust company which is now or may hereafter be organized under the laws of this state.

“National banking association” means a bank, savings bank, bank and trust company, or bank exclusively exercising trust powers organized under the laws of the United States.

Sec. 34. Minnesota Statutes 1996, section 50.245, is amended to read:

**50.245 BRANCHES; ACQUISITIONS.**

Subdivision 1. **AUTHORITY FOR BRANCH OFFICES.** A savings bank may establish any number of detached facilities as may be approved by the commissioner of commerce pursuant to sections 47.51 to 47.57. The savings bank shall not change the location of a detached facility without prior written approval of the commissioner of commerce. A savings bank may establish a loan production office, without restriction as to geographical location, upon written notice to the commissioner of commerce.

Subd. 2. **AUTHORITY FOR BRANCH OFFICES IN OTHER STATES.** The authorization contained in subdivision 1 is in addition to the authority granted savings banks in section 47.52. A savings bank chartered in this state, whether or not the subsidiary of a savings bank holding company, may, by acquisition, merger, purchase, and assumption of some or all assets and liabilities, consolidation, or de novo formation, establish or operate detached facilities in another state on the same terms and conditions and subject to the same limitations and restrictions as are applicable to the establishment of branches by national banks located in Minnesota, except that approval of the comptroller of the currency shall not be required for such detached facilities has the same authority as a bank to conduct interstate mergers affecting interstate branching under section 49.411. The merger may be between banks and with other banks or savings banks.

Subd. 3. **RECIPROCATING STATE INTERSTATE ACQUISITIONS.** A savings bank chartered in this state and a savings bank holding company with its principal offices in this state may acquire control of a financial institution chartered in a reciprocating state or, subject to applicable federal law, any other state or a financial institution

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holding company with principal offices in a reciprocating state or, subject to applicable federal law, any other state. A savings bank chartered in a reciprocating state or, subject to applicable federal law, any other state and a savings bank holding company with principal offices in a reciprocating state or, subject to applicable federal law, any other state may acquire control of a savings bank chartered in this state or a savings bank holding company with principal offices in this state.

Subd. 4. **PROCEDURAL REQUIREMENTS.** Procedural requirements equivalent to those contained in sections 48.90 to 48.995 48.99 apply to reciprocal interstate branching and acquisitions by savings banks and savings bank holding companies.

Subd. 5. **DEFINITIONS.** For the purpose of this section, the terms defined in this subdivision have the meanings given them.

(a) "Financial institution" means a bank, savings bank, savings association, or trust company, or credit union, whether chartered under the laws of this state, another state or territory, or under the laws of the United States.

(b) "Loan production office" means a place of business at which a savings bank provides lending if the loans are approved at the main office or detached facility of the savings bank, but at which a savings bank may not accept deposits except through a remote service unit.

(c) "Reciprocating state" means a state that authorizes the acquisition of control of financial institutions chartered in that state and financial institution holding companies with principal offices in that state by a savings bank chartered in this state or savings bank holding company with principal offices in this state under conditions substantially similar to those imposed by the laws of Minnesota, as determined by the commissioner of commerce.

(d) "Remote service unit" means an electronic financial terminal as defined in section 47.61.

Subd. 6. **COMMISSIONER'S AUTHORITY.** The authority of the commissioner of commerce to approve a transaction under this section is in addition to that provided for in section 49.48.

Sec. 35. Minnesota Statutes 1996, section 51A.38, subdivision 1, is amended to read:

Subdivision 1. **GENERALLY.** Real estate loans and other loans secured by a mortgage on real estate that are eligible for investment by an association under sections 51A.01 to 51A.57 may be written according to this section and section ~~51A.385~~ 51A.386, or upon any other plan approved by the commissioner.

Sec. 36. Minnesota Statutes 1996, section 52.04, subdivision 2a, is amended to read:

Subd. 2a. **CREDIT SALES OR SERVICE CONTRACTS.** 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 47.59, subdivisions 4 and 6 to 14.

Sec. 37. Minnesota Statutes 1996, section 52.04, is amended by adding a subdivision to read:

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Subd. 3. COMPARABILITY WITH FEDERAL CREDIT UNIONS. The commissioner of commerce may authorize credit union activity in which credit unions subject to the jurisdiction of the federal government may be authorized to engage by federal legislation, ruling, or regulation. The commissioner may not authorize state credit unions subject to this chapter to engage in credit union activity prohibited by the laws of this state.

Sec. 38. Minnesota Statutes 1996, section 52.062, subdivision 1, is amended to read:

Subdivision 1. **REASONS FOR COMMISSIONER'S ACTION.** Whenever the commissioner of commerce shall find that a credit union is engaged in unsafe or unsound practices in conducting its business or that the shares of the members are impaired or are in immediate danger of becoming impaired, or that such credit union has knowingly or negligently permitted any of its officers, directors, committee members, or employees to violate any material provision of any law, bylaw, or rule to which the credit union is subject, the commissioner of commerce may proceed in the manner provided by either subdivision 2 ~~or~~ 3, or 4.

Sec. 39. Minnesota Statutes 1996, section 52.062, is amended by adding a subdivision to read:

Subd. 4. CONSENT CEASE AND DESIST ORDER. In lieu of suspension of the operation of the credit union, the commissioner of commerce and the board of directors of the credit union may agree to execute a consent cease and desist order in which the parties agree to waive the right to a hearing and agree that the credit union shall cease and desist from unsafe or unsound practices, or violations. The order must specify whether credit union operation may continue, and if operation may continue, the conditions under which operation may continue.

Sec. 40. Minnesota Statutes 1996, section 52.063, is amended to read:

**52.063 PROCEEDINGS FOLLOWING SUSPENSION OR CONTINUATION OF SUSPENSION, OR CONSENT CEASE AND DESIST ORDER; APPOINTMENT OF NATIONAL CREDIT UNION ADMINISTRATION BOARD AS RECEIVER.**

Subdivision 1. PROCEEDINGS FOLLOWING SUSPENSION OR CONTINUATION OF SUSPENSION. Upon receipt of the suspension notice or the notice of the continuation of suspension under section 52.062, subdivision 2 or 3, the credit union shall immediately cease or continue cessation of all operations except those operations specifically authorized by the commissioner of commerce. If the notice is given pursuant to determination by the commissioner of commerce after a hearing, the board of directors shall have 60 days from the receipt of said notice in which to file with the commissioner of commerce a proposed plan of corrective actions or to request that a receiver be appointed for the credit union. The commissioner of commerce shall have 30 days from the receipt of the proposed plan of corrective actions to determine if the proposed corrective actions are sufficient to correct the deficiencies which formed the basis for the suspension. If the commissioner of commerce determines that the proposed corrective actions are sufficient, the suspension shall be lifted and the credit union returned to normal operations under its board of directors. If the commissioner of commerce believes the proposed corrective actions insufficient, or if the board has failed to answer the suspension notice, or has requested that a receiver be appointed, then the commissioner of commerce shall

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apply to the district court for appointment of a receiver. The credit union shall have the right, within six months of the receipt of any notice of suspension or continuation of suspension pursuant to a determination by the commissioner of commerce after hearing, to appeal to the district court for a ruling as to the validity of such notice.

**Subd. 2. PROCEEDINGS FOLLOWING CONSENT CEASE AND DESIST ORDER.** If the commissioner of commerce and the board of directors of the credit union execute a consent cease and desist order in lieu of a suspension under section 52.062, subdivision 4, the board of directors of the credit union may request that the commissioner of commerce seek court appointment of a receiver for the credit union. The consent cease and desist order must state that the credit union has requested that the commissioner seek appointment of a receiver.

**Subd. 3. APPOINTMENT OF NATIONAL CREDIT UNION ADMINISTRATION BOARD AS RECEIVER.** Upon a request by the commissioner of commerce, the court may appoint the National Credit Union Administration Board, created by section 3 of the Federal Credit Union Act, as amended, as receiver of a credit union, without bond, when the deposits of the credit union are to any extent insured by the National Credit Union Administration Board, and the credit union has had its operations suspended or has executed a consent cease and desist order with the commissioner in lieu of a suspension under section 52.062. Notwithstanding any other provisions of law, the commissioner of commerce may, in the event of the suspension or consent cease and desist order, tender to the National Credit Union Administration Board the proposed appointment as receiver of the credit union. If the National Credit Union Administration Board accepts the proposed appointment and the court appoints the National Credit Union Administration Board as receiver upon a request by the commissioner, the National Credit Union Administration Board shall have and possess all the powers and privileges provided by the laws of this state and section 207 of the Federal Credit Union Act, as amended, with respect to a receiver of a credit union, the board of directors of the credit union, and its members.

Sec. 41. Minnesota Statutes 1996, section 52.064, is amended by adding a subdivision to read:

**Subd. 3. WAIVER WHEN CREDIT UNION REQUESTS APPOINTMENT OF NATIONAL CREDIT UNION ADMINISTRATION BOARD AS RECEIVER.** If the board of directors of the credit union has made a request to the commissioner of commerce to seek court appointment of the National Credit Union Administration Board as its receiver, and the commissioner elects to seek this appointment, then the board of directors of the credit union may waive the right to apply to the court for permission to file, and the right to file, a plan of reorganization, merger, or consolidation for the credit union within 90 days of the appointment of the receiver under subdivision 1. The board of directors of the credit union may waive this right on behalf of itself, and on behalf of the members of the credit union, when the board of directors of the credit union determines that such action is in the best interests of the credit union and its members, so that the deposit insurer may proceed expeditiously to wind up the affairs of the credit union upon appointment as receiver.

Sec. 42. Minnesota Statutes 1996, section 52.13, is amended to read:

**52.13 DEPOSITS IN NAME OF MINOR.**

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Any deposit made in the name of a minor, or shares issued in a minor's name, shall be held for the exclusive right and benefit of the minor, free from the control or lien of all other persons except creditors, and together with the dividends or interest thereon shall be paid to the minor; and the minor's receipt, check, or acquittance in any form shall be a sufficient release and discharge of the depository for the deposits or shares, or any part thereof, until a conservator or guardian appointed for the minor shall have delivered a certificate of appointment to the depository. Deposits may be accepted pursuant to the authority set forth in chapter 527, provided that either the custodian or the minor is a member of the credit union accepting the deposit.

Sec. 43. Minnesota Statutes 1996, section 52.201, is amended to read:

**52.201 REORGANIZING FEDERAL CREDIT UNION INTO STATE CREDIT UNION.**

When any federal credit union authorized to convert to a state charter has taken the necessary steps under the federal law for that purpose, seven or more members, upon authority of two-thirds of the members present and entitled to vote and who shall have voted for such conversion at a regular or special meeting upon 14 days mailed written notice to each member at the member's last known address clearly stating that such conversion is to be acted upon, and upon approval of the commissioner of commerce, may execute a certificate of incorporation under the provisions of the state credit union act, which, in addition to the other requirements of law, shall state the authority derived from the shareholders of such federal credit union; and upon recording such certificate as required by law, it shall become a legal state credit union and the members of the federal credit union shall without further action be members of the state credit union. This includes members of the federal credit union on the basis of acceptance of small employer groups provided the commissioner may require contemporaneous filing of applications under section 52.05, subdivision 2. Thereupon the assets of the federal credit union, subject to its liabilities not liquidated under the federal law before such incorporation, shall vest in and become the property of such state credit union and the members upon request shall be entitled to a new passbook showing existing share and loan balances. The commissioner of commerce shall approve or disapprove of the conversion within 60 days of the date the proposal is presented.

Sec. 44. Minnesota Statutes 1996, section 53.04, is amended by adding a subdivision to read:

Subd. 5b. NEGOTIABLE ORDER OF WITHDRAWAL ACCOUNTS. Notwithstanding section 53.05, clause (1), and consistent with United States Code, title 12, section 1832, issue negotiable order of withdrawal accounts, which may not be referred to as checking accounts and may include the following transactions:

(1) automatic (preauthorized) transfers for the purpose of paying loans at the same institution;

(2) transfers or withdrawals made by mail, messenger, automated teller machine, or in person as withdrawals or transfers to another account of the depositor at the same institution;

(3) withdrawals initiated by telephone and consummated by an official check mailed to the depository;

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- (4) automated clearinghouse debits;
- (5) transfers from a customer's account under a preauthorized agreement to cover overdrafts on another transaction account;
- (6) drafts payable to third parties; and
- (7) debit card transactions.

Agreements establishing negotiable order of withdrawal accounts must include a prominent disclosure of the following:

"We reserve the right to at any time require not less than seven days' notice in writing before each withdrawal from this account."

A negotiable order of withdrawal account may be with or without interest and is considered a transaction account for purposes of section 48.512.

Before exercising this power, the company must submit a plan to the commissioner detailing implementation of the power.

Sec. 45. Minnesota Statutes 1996, section 53.05, is amended to read:

#### 53.05 POWERS, LIMITATION.

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

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

(2) have outstanding at any one time certificates of indebtedness, savings accounts, and savings deposits 30 times the sum of capital stock and surplus of the company;

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

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

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

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

(7) lend money in excess of 20 percent of the total of its capital stock and surplus at all its authorized locations to a person primarily liable. Companies not issuing investment certificates of indebtedness under section 53.04 need not comply with the requirement if the amount of money lent does not exceed \$100,000 of principal as defined by section 47.59, subdivision 1, paragraph (p).

However, industrial loan and thrift companies with deposit liabilities must comply with the provisions of section 48.24; or

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

Sec. 46. Minnesota Statutes 1996, section 53.09, subdivision 2a, is amended 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. Upon written agreement with the company, the commissioner may conduct examinations applying the procedures for purposes of subdivision 1, and section 46.04, subdivision 1, to facilitate the qualifications of the company to participate in the United States Small Business Administration loan guarantee or similar programs.

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. 47. Minnesota Statutes 1996, section 55.06, subdivision 1, is amended to read:

Subdivision 1. **PROHIBITION.** No person except a bank, a savings bank, a credit union, a savings association, industrial loan and thrift company issuing investment certificates of indebtedness, or a trust company may let out or rent as lessor, for hire, safe deposit boxes or take or receive valuable personal property for safekeeping and storage, as bailee, for hire, without procuring a license and giving a bond, as required by this chapter, except as otherwise authorized by law so to do.

Sec. 48. Minnesota Statutes 1996, section 56.07, is amended to read:

#### 56.07 CONTROL OVER LOCATION.

Subdivision 1. **GENERAL.** Not more than one place of business shall be maintained under the same license, but the commissioner may issue more than one license to the same licensee upon compliance with all the provisions of this chapter governing an original issuance of a license, for each such new license. To the extent that previously filed applicable information remains substantially unchanged, the applicant need not refile this information, unless requested.

When a licensee shall wish to change a place of business, the licensee shall give written notice thereof 30 days in advance to the commissioner, who shall within 30 days of receipt of such notice, issue an amended license approving the change. No change in the place of business of a licensee to a location outside of its current trade area or more than 25 miles from its present location, whichever distance is greater, shall be permitted under the same license unless all of the requirements of section 56.04 have been met.

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A licensed place of business shall be open during regular business hours each weekday, except for legal holidays and for any weekday the commissioner grants approval to the licensee to remain closed. A licensed place of business may be open on Saturday, but shall be closed on Sunday. A licensed location must be open for business and examination purposes on a schedule provided to and approved by the commissioner. This schedule of regular business must be conspicuously posted at the licensed location.

Subd. 2. INTERACTIVE KIOSK LOCATIONS. Licensed locations providing limited services on an interactive telephone-customer service communications terminal are required to comply with paragraphs (a) to (c).

(a) The licensee must maintain business books, accounts, and records on a suitable alternative system of maintenance approved by the commissioner.

(b) The license required to be posted under section 56.05 may be displayed on the customer service communications terminal screen for a period of no less than 15 seconds.

(c) The full and accurate schedule of charges required by section 56.14, clause (5), may be displayed on the customer service communications terminal screen for no less than 20 seconds.

Sec. 49. Minnesota Statutes 1996, section 56.10, subdivision 1, is amended to read:

Subdivision 1. For the purpose of discovering violations of this chapter or securing information lawfully required by the commissioner hereunder, 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 therein, of every licensee and of every person who shall be engaged in the business described in section 56.01, whether the person shall act or claim to act as principal or agent, or under or without the authority of this chapter. For that purpose the commissioner and a duly designated representative shall have free access to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of all such persons. The commissioner and all persons duly designated shall have authority to require the attendance of and to examine, under oath, all persons whomsoever whose testimony the commissioner may require relative to the loan or the business or to the subject matter of any examination, investigation, or hearing. Upon written agreement with the licensee, the commissioner may conduct examinations applying the procedures for purposes of this subdivision and section 46.04, subdivision 1, to facilitate the qualifications of the licensee to participate in the United States Small Business Administration loan guarantee or similar programs.

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

Sec. 50. Minnesota Statutes 1996, 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 ~~\$56,000~~ \$100,000 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, finance charges, and other charges as provided in section 47.59.

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

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(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.

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

(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) 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 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 delinquent charges, the single annual percentage rate permitted by this subdivision may be charged on the unpaid balance until fully paid.~~

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(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 (4) (7), 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.

(6) (5) 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.

(6) A delinquency charge as provided for in section 47.59, subdivision 6, paragraph (a), clause (4).

(7) Grant extensions, deferments, or conversions to interest-bearing as provided in section 47.59, subdivision 5.

Sec. 51. Minnesota Statutes 1996, section 56.131, subdivision 4, is amended to read:

Subd. 4. **ADJUSTMENT OF DOLLAR AMOUNTS.** The dollar amounts in this section subdivisions 2 and 6, sections 53.04, subdivision 3a, paragraph (c), 56.01, 56.12, and 56.125 shall change periodically, as provided in section 47.59, subdivision 3.

Sec. 52. Minnesota Statutes 1996, section 59A.08, subdivision 3, is amended to read:

Subd. 3. ~~The information required by subdivision 1 shall only be required in the initial insurance premium finance agreement entered into if said agreement is open end. An insurance premium finance agreement is open end if it provides that additional or subsequent insurance premiums may be financed and added to the initial insurance premium finance agreement from time to time.~~

Additional or subsequent premiums may be added to an open end insurance premium finance agreement from time to time, provided that:

(a) The additional or subsequent insurance premium to be added results from additional premiums required under policies presently being financed under the open end insurance premium finance agreement or from a renewal of a policy or from other policies owned or purchased by the insured.

(b) The insurance premium finance company receives written notice or advice from an insurer authorized to do business in this state or from an insurance agent licensed in this state acknowledging that the premium on an existing financed policy has been increased or that a policy has been renewed or that additional policies have or will be issued to the insured. The notice or advice shall contain the amount of the additional premium, the down payment collected by the insurer or agent, if any, and the amount of premium to be added to the open end insurance premium finance agreement.

(c) If the additional premiums to be added to the open end insurance premium finance agreement result from additional premiums required on policies presently financed under the agreement ~~which are to be financed beyond the scheduled maturity of the original financing, the renewal of a policy or from an additional policy owned or pur-~~

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chased by the insured, the insurance premium finance company shall mail a notice to the insured at the address shown in the policy. Said notice shall contain:

(1) The information required by subdivision 1, notwithstanding that the notice is not signed by, nor on behalf of the insured;

(2) A conspicuous statement to the insured stating that the insured may tender the premiums in full or disaffirm the financing of the premium on the renewal or additional policies by mailing to the insurance premium finance company notice of intention to do so within ten days after the insurance premium finance company mails to the insured the notice required by this subdivision;

(3) A conspicuous statement to the insured that the insurance premium finance company may, in event of default in payment of the additional premium, or any installment thereof, cause the insured's insurance contract or contracts to be canceled as provided in section 59A.11.

(d) At the time the notice of additional premium to be added to the open end insurance premium finance agreement is mailed to the insured as provided in clause (c), an employee of the insurance premium finance company shall prepare and sign a certificate or affidavit of mailing setting forth the following:

(1) The name of the employee who mailed the notice of the additional premium to be financed.

(2) That the employee mailing the notice is over 18 years of age.

(3) The date and place of the deposit of the notice in the mail.

(4) The name and address of the person to whom the notice was mailed as shown on the envelope containing the notice.

(5) That the envelope containing the notice was sealed and deposited in the mail with the proper postage thereon.

A certificate or affidavit of mailing, prepared and signed as prescribed in this subdivision shall raise rebuttable presumption that the notice was mailed to the insured at the address shown in the certificate or affidavit of mailing.

(e) The insurance premium finance company may make a finance charge in accordance with section 59A.09 for additional premiums financed and added to an open end insurance premium finance agreement; however, only one flat rate service fee may be made or charged for each insurance premium finance agreement entered into and no additional flat service fee may be made or charged for adding additional or subsequent premiums to an open end insurance premium finance agreement for which a flat service fee was previously made or charged. or from a renewal of a policy or from other policies owned or purchased by the insured, a written notice must be mailed, faxed, or delivered to the insured outlining any changes to the information required by subdivision 1 along with a conspicuous statement to the insured that the insured may tender the premiums in full or affirm the proposed changes by tendering either an additional down payment or tendering the proposed revised installment amount, or disaffirm the financing of the additional premium by continuing the original payment amount as agreed to in the initial agreement.

If the proposed revisions in paragraph (c) are affirmed by the insured, the finance company may make an additional finance charge according to section 59A.09 for the

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additional premium financed and added to the open-end agreement; however, no additional flat service fee may be made or charged for adding additional or subsequent premiums to an open-end insurance premium finance agreement for which a flat service fee was previously made or charged.

Sec. 53. Minnesota Statutes 1996, section 59A.08, is amended by adding a subdivision to read:

Subd. 5. COMPETITIVE EQUALITY. No insurance agent, insurance broker, or insurer may require a person to use a particular insurance premium finance company or other installment payment plan for which a finance charge or other fee in connection with an installment payment has been or will be imposed or refuse to accept premium payment from a company licensed under sections 59A.01 to 59A.15.

Sec. 54. Minnesota Statutes 1996, section 59A.11, subdivision 2, is amended to read:

Subd. 2. Not less than ten days' written notice shall be mailed to the insured setting forth the intent of the insurance premium finance company to cancel the insurance contract unless the default is cured prior to the date stated in the notice. The insurance agent or insurance broker indicated on the premium finance agreement shall also be mailed given ten days' notice of this action in a manner agreed upon between the insurance premium finance company and insurance agent or insurance broker.

Sec. 55. Minnesota Statutes 1996, section 59A.11, subdivision 3, is amended to read:

Subd. 3. (a) Pursuant to the power of attorney or other authority referred to above, the insurance premium finance company may cancel on behalf of the insured by mailing to the insurer written notice stating when thereafter the cancellation shall be effective, and the insurance contract shall be canceled as if such notice of cancellation had been submitted by the insured personally, but without requiring the return of the insurance contract. In the event that the insurer or its agent does not provide the insurance premium finance company with a specific mailing address for the purposes of receipt of the above notice, then mailing by the insurance premium finance company to the insurer at the address which is on file and of record with the commissioner of commerce pursuant to the provisions of chapters 60A and 72A shall be considered sufficient notice under this section. The notice requirements of this paragraph only apply if an insurance premium finance company and an insurer have not agreed on a method of providing notice of cancellation.

(b) The insurance premium finance company shall also mail a notice of cancellation to the insured at the insured's last known address and.

(c) Written notice of the cancellation must also be given to the insurance agent or insurance broker indicated on the premium finance agreement. Written notice to the insurance agent or broker required by this paragraph may be given in a manner agreed upon between the insurance premium finance company, insurer, agent, or broker.

Sec. 56. Minnesota Statutes 1996, 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 in-

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debtedness plus an amount equal to one monthly payment. Thereafter, if the indebtedness scheduled plus an amount equal to one monthly payment is equal to or not exceed the amount of insurance or which the premium is equal to or not exceed the amount of insurance plus one monthly payment or actual amount of indebtedness, whichever is greater. If the contract of indebtedness provides for a variable rate of finance charge or interest, the initial rate or the scheduled amount of unpaid indebtedness and subsequent changes to the rate must be disregarded in determining whether the contract is repayable in substantially equal installments according to a predetermined schedule.

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

(3) Notwithstanding clauses (1) and (2), insurance on educational, agricultural, and horticultural credit transactions 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. 57. Minnesota Statutes 1996, section 300.20, subdivision 2, is amended to read:

Subd. 2. **VACANCIES.** If the certificate of incorporation or the bylaws so provides, a vacancy in the board of directors may be filled by the remaining directors. Not more than one-third of the members of the board may be so filled in any one year except any number may be appointed to provide for at least three five directors until any subsequent meeting of the stockholders.

Sec. 58. Minnesota Statutes 1996, section 303.02, subdivision 4, is amended to read:

Subd. 4. **FOREIGN CORPORATION.** "Foreign corporation" does not include any corporation which, under the constitution and statutes of the United States, may transact business in this state without first obtaining a certificate of authority so to do, insurance companies as defined by section 60A.02, and any banking or trust association or corporation or national banking association acting in this state as an executor, administrator, trustee, or guardian, or conservator under section 303.25.

Sec. 59. Minnesota Statutes 1996, section 303.25, subdivision 5, is amended to read:

Subd. 5. **SOLICITATION OF BUSINESS.** A foreign trust association may not maintain an office within this state, but it may solicit business within this state if banking

or trust associations or corporations organized under the laws of this state or national banking associations maintaining their principal offices in this state may solicit business in the state in which the foreign trust association maintains its principal office. For purposes of this subdivision, solicitation of business includes the activities authorized for state or national banking associations exercising fiduciary powers maintaining their principal offices in this state considered a representative trust office established under section 48.476.

Sec. 60. Minnesota Statutes 1996, section 325F.68, subdivision 2, is amended to read:

Subd. 2. "Merchandise" means any objects, wares, goods, commodities, intangibles, real estate, loans, or services.

Sec. 61. Minnesota Statutes 1996, section 332.21, is amended to read:

### 332.21 CONTRACTS.

(a) Each contract entered into by the licensee and the debtor shall be in writing and signed by both parties. The licensee shall furnish the debtor with a copy of the signed contract. Each such contract shall set forth:

(1) the dollar charges agreed upon for the services of the licensee, clearly disclosing to such debtor the total amount which may be retained by licensee for services if the contract is fully performed, which maximum amount would be the origination fee together with 15 percent of the amount scheduled to be liquidated by such contract, This disclosure must state that if the amount of debt owed is increased by interest, late fees, over the limit fees, and other amounts imposed by the creditor or by reason of the events under paragraph (c), the length of the contract would be extended and remain in force and that the total dollar charges agreed upon may increase at the rate agreed upon in the original contract;

(2) the terms upon which the debtor may cancel the contract as set out in section 332.23<sub>2</sub>;

(3) all debts which are to be managed by the licensee, including the name of the creditor and the amount of the debt<sub>2</sub>; and

(4) such other matter as the commissioner may require by rule.

(b) A contract shall not be effective until a payment has been made to the licensee for distribution to creditors or until three business days after the signing thereof, whichever is later. Within such period an individual may disaffirm said contract and upon such disaffirmance said contract shall be null and void.

(c) Total fees contained in the contract may be exceeded in relation to creditors under open-end agreements if it is agreed to in the contract and the additional debts so contracted to be prorated do not exceed ten percent of the original debts in the contract or written revisions to the original contract.

Sec. 62. Minnesota Statutes 1996, 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

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the debtor the actual cost of a credit background report obtained from a credit reporting agency not related to or affiliated with the licensee or if affiliated, the total cost of the report may not exceed \$8. 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. 63. Minnesota Statutes 1996, 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 unless the reasonable payment of one or more of the debtor's obligations requires that the funds be held for a longer period so as to accumulate a sum certain or where the debtor's payment is returned for nonsufficient funds, then no longer than 42 days. 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. 64. Minnesota Statutes 1996, section 332.23, subdivision 5, is amended to read:

Subd. 5. **ADVANCE PAYMENTS.** Notwithstanding anything herein to the contrary no fees or charges shall be received or retained for any payments by the debtor made more than the following number of days in advance of the date specified in the contract on which they are due: (a) ~~30~~ 42 days in the case of contracts requiring monthly payments; (b) 15 days in the case of contracts requiring biweekly payments; or (c) seven days in the case of contracts requiring weekly payments. For those contracts which do not require payments in specified amounts, a payment shall be deemed an advance payment to the extent it exceeds twice the average regular payment theretofore made by the debtor pursuant to that contract. This subdivision shall not apply when it is the intention of the debtor to use such advance payments to satisfy future payment of obligations due within 30 days under the contract.

Sec. 65. Minnesota Statutes 1996, section 332.50, subdivision 1, is amended to read:

Subdivision 1. **DEFINITIONS.** "Check" means a check, draft, order of withdrawal, or similar negotiable or nonnegotiable instrument.

"Credit" means an arrangement or understanding with the drawee for the payment of the check.

"Dishonor" has the meaning given in section 336.3-502, but does not include dishonor due to a stop payment order requested by an issuer who has a good faith defense to payment on the check. "Dishonor" does include a stop payment order requested by an issuer if the account did not have sufficient funds for payment of the check at the time of presentment, except for stop payment orders on a check found to be stolen.

Sec. 66. Minnesota Statutes 1996, section 332.50, subdivision 2, is amended to read:

Subd. 2. **ACTS CONSTITUTING.** (a) Whoever issues any check that is dishonored and is not paid within 30 days after mailing a notice of dishonor that includes a citation to this section and section 609.535, and a description of the penalties contained in

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these sections, in compliance with subdivision 3, is liable to the payee, holder, or agent of the holder for the following penalties: (1) the amount of the check plus a civil penalty of up to \$100 or up to 100 percent of the value of the check, whichever is greater; (2) interest at the rate payable on judgments pursuant to section 549.09 on the face amount of the check from the date of dishonor; and (3) reasonable attorney fees if the aggregate amount of dishonored checks issued by the issuer to all payees within a six-month period is over \$1,250.

(b) If the amount of the dishonored check plus any service charges that have been incurred under paragraph (d) or (e) have not been paid within 30 days after having mailed a notice of dishonor in compliance with subdivision 3 but before bringing an action, a payee, holder, or agent of the holder may make a written demand for payment for the liability imposed by paragraph (a) by sending a copy of this section and a description of the liability contained in this section to the issuer's last known address.

(c) After notice has been sent but before an action under this section is heard by the court, the plaintiff shall settle the claim if the defendant gives the plaintiff the amount of the check plus court costs, any service charge owed under paragraph (d), and reasonable attorney fees if provided for under paragraph (a), clause (3).

(d) A service charge may be imposed immediately on any dishonored check, regardless of mailing a notice of dishonor, if written notice of the service charge was conspicuously displayed on the premises when the check was issued. The service charge may not exceed \$20, except that if the payee uses the services of a law enforcement agency to obtain payment of a dishonored check, a service charge of up to \$25 may be imposed if the service charge is used to reimburse the law enforcement agency for its expenses. A payee may impose only one service charge under this paragraph for each dishonored check.

(e) This subdivision prevails over any provision of law limiting, prohibiting, or otherwise regulating service charges authorized by this subdivision, but does not nullify charges for dishonored checks, which do not exceed the charges in paragraph (d) or the actual cost of collection, but in no case more than \$30, or terms or conditions for imposing the charges which have been agreed to by the parties to an express contract.

(a) A service charge of up to \$20, or actual costs of collection not to exceed \$30, may be imposed immediately on any dishonored check, regardless of mailing a notice of dishonor, if notice of the service charge was conspicuously displayed on the premises when the check was issued. If a law enforcement agency obtains payment of a dishonored check, a service charge not to exceed \$25 may be imposed if the service charge is retained by the law enforcement agency for its expenses. Only one service charge may be imposed under this paragraph for each dishonored check.

(b) If the amount of the dishonored check is not paid within 30 days after the payee or holder has mailed notice of dishonor pursuant to section 609.535 and a description of the penalties contained in this subdivision, whoever issued the dishonored check is liable to the payee or holder of the check for:

(1) the amount of the check, the service charge as provided in paragraph (a), plus a civil penalty of up to \$100 or the value of the check, whichever is greater. The civil penalty may not be imposed until 30 days following the mailing of the notice of dishonor. A payee or holder of the check may make a written demand for payment of the civil liability by sending a copy of this section and a description of the liability contained in this section

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to the issuer's last known address. Notice as provided in paragraph (a) must also include notification that additional civil penalties will be imposed for dishonored checks for non-payment after 30 days;

(2) interest at the rate payable on judgments pursuant to section 549.09 on the face amount of the check from the date of dishonor; and

(3) reasonable attorney fees if the aggregate amount of dishonored checks issued by the issuer to all payees within a six-month period is over \$1,250.

(c) This subdivision prevails over any provision of law limiting, prohibiting, or otherwise regulating service charges authorized by this subdivision, but does not nullify charges for dishonored checks, which do not exceed the charges in paragraph (a) or terms or conditions for imposing the charges which have been agreed to by the parties in an express contract.

(d) A sight draft may not be used as a means of collecting the civil penalties provided in this section without prior consent of the issuer.

Sec. 67. Laws 1996, chapter 414, article 1, section 45, is amended to read:

**Sec. 45. EFFECTIVE DATE.**

Sections 1 to 5, 7 to 9, 11, 12, 16, 20 to 27, 30, 33, 35, 42, 43, and 44, paragraphs (b) and (c), are effective the day following final enactment. Section 44, paragraph (a), is effective July 1, 1998 1999.

Sections 10, 14, 15, 19, and 36 are effective on the effective date of the repeals in section 44, paragraph (a).

**Sec. 68. TOWN OF HASSAN; DETACHED BANKING FACILITY.**

With the prior approval of the commissioner of commerce, a bank operating its main banking office within six miles of the town of Hassan may establish and maintain not more than one detached facility in the town of Hassan. A bank desiring to establish a detached facility must follow the approval procedure prescribed in Minnesota Statutes, section 47.54. The establishment of a detached facility according to this section is subject to the provisions of Minnesota Statutes, sections 47.51 to 47.57, except to the extent those sections are inconsistent with this section.

**Sec. 69. TOWN OF THOMSON; DETACHED BANKING FACILITY.**

With the prior approval of the commissioner of commerce, a bank operating its main office within 20 miles of the town of Thomson may establish and maintain not more than one detached facility in the town of Thomson. A bank desiring to establish a detached facility must follow the approval procedure prescribed in Minnesota Statutes, section 47.54. The establishment of a detached facility pursuant to this section is subject to the provisions of Minnesota Statutes, sections 47.51 to 47.57, except to the extent those sections are inconsistent with this section.

**Sec. 70. TRANSACTION ACCOUNT CUSTOMER INFORMATION; INFORMAL WORKING GROUP.**

The commissioner of commerce shall select and convene an informal working group to make recommendation to financial intermediaries for notices to transaction account customers regarding:

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(1) risks and effects of account closing due to misuse by customers as a means to enforce the deterrence objectives of Minnesota Statutes, section 48.512, subdivision 7;

(2) risks related to providing account identification to third parties for purposes of or resulting in their issuance of sight drafts; and

(3) informing the customers of the privacy terms related to the financial intermediaries' use of customer information.

The informal working group must include persons representing financial intermediaries, transaction account clearing organizations, retailers, and consumers. The commissioner shall accept recommendations from the working group for distribution to financial intermediaries to effect voluntary implementation of transaction account customer information notices prior to September 1, 1997.

#### **Sec. 71. SCHOOL BANK PILOT PROJECT.**

(a) A school bank sponsored by independent school district No. 31, Bemidji, that meets all requirements of paragraph (b) is not subject to Minnesota Statutes, section 47.03, subdivision 1, or to any other statute or rule that regulates banks, other financial institutions, or currency exchanges.

(b) To qualify under paragraph (a), the school bank must:

(1) be operated as part of a high school educational program and under guidelines adopted by the school board;

(2) be advised on a regular basis by a state-chartered or federally-chartered financial institution, but not owned or operated by that financial institution;

(3) be located on school premises and have as customers only students enrolled in, or employees of, the school in which it is located; and

(4) have a written commitment from the school board, guaranteeing reimbursement of any depositor's funds lost due to insolvency of the school bank.

(c) Funds of a school bank that meets the requirements of this section are not school district or other public funds for purposes of any state law governing the use or investment of school district or other public funds.

(d) The school district shall annually file with the commissioner of commerce a report, prepared by the students and teachers involved, summarizing the operation of the school bank.

(e) This section expires June 30, 2000. The commissioner of commerce shall, no later than December 15, 1999, provide a written report to the legislature regarding this pilot project and any recommended legislation regarding school banks.

#### **Sec. 72. REPEALER.**

Minnesota Statutes 1996, sections 13.99, subdivision 13; 47.29; 47.31; 47.32; 49.47; 49.48; 50.03; 50.23; and 59A.14, are repealed.

#### **Sec. 73. EFFECTIVE DATE; APPLICABILITY.**

Sections 1, 4 to 6, 8, 10, 11, 17, 19 to 25, 28 to 31, 33 to 56, 59, 61, 63, 64, 71, and 72 are effective the day following final enactment.

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

Section 68 takes effect the day after compliance by the town board of the town of Hassan with Minnesota Statutes, section 645.021, subdivision 3.

Section 69 takes effect the day after compliance by the town board of the town of Thomson with Minnesota Statutes, section 645.021, subdivision 3.

Section 70 is effective June 1, 1997.

Presented to the governor May 15, 1997

Signed by the governor May 16, 1997, 2:15 p.m.

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### CHAPTER 158—H.F.No. 1409

*An act relating to agriculture; legislative review of feedlot permit rules; amending Minnesota Statutes 1996, section 116.07, subdivision 7.*

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

Section 1. Minnesota Statutes 1996, section 116.07, subdivision 7, is amended to read:

Subd. 7. **COUNTIES; PROCESSING OF APPLICATIONS FOR ANIMAL LOT PERMITS.** Any Minnesota county board may, by resolution, with approval of the pollution control agency, assume responsibility for processing applications for permits required by the pollution control agency under this section for livestock feedlots, poultry lots or other animal lots. The responsibility for permit application processing, if assumed by a county, may be delegated by the county board to any appropriate county officer or employee.

(a) For the purposes of this subdivision, the term "processing" includes:

- (1) the distribution to applicants of forms provided by the pollution control agency;
- (2) the receipt and examination of completed application forms, and the certification, in writing, to the pollution control agency either that the animal lot facility for which a permit is sought by an applicant will comply with applicable rules and standards, or, if the facility will not comply, the respects in which a variance would be required for the issuance of a permit; and
- (3) rendering to applicants, upon request, assistance necessary for the proper completion of an application.

(b) For the purposes of this subdivision, the term "processing" may include, at the option of the county board, issuing, denying, modifying, imposing conditions upon, or revoking permits pursuant to the provisions of this section or rules promulgated pursuant to it, subject to review, suspension, and reversal by the pollution control agency. The pollution control agency shall, after written notification, have 15 days to review, suspend, modify, or reverse the issuance of the permit. After this period, the action of the county board is final, subject to appeal as provided in chapter 14.

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