

(f) A rule adopted under this section is effective until repealed by the agency.

Sec. 2. EFFECTIVE DATE.

Section 1 is effective the day following final enactment.

Presented to the governor May 27, 1997

Signed by the governor May 30, 1997, 1:12 p.m.

CHAPTER 222—S.F.No. 501

An act relating to commerce; providing powers and duties to the commissioner; regulating investments by certain licensees; regulating securities; modifying the real estate licensing exemption for closing agents; regulating real property appraisers; regulating residential building contractors and remodelers; requiring a compliance bond for sign contractors; modifying licensing requirements for collection agencies; regulating charitable trusts; regulating notaries public; regulating certificates of release by title insurance companies; making technical changes; amending Minnesota Statutes 1996, sections 45.011, subdivision 1; 45.028, subdivision 1; 67A.231; 80A.02, subdivision 1; 80A.04, subdivisions 3, 4, and by adding a subdivision; 80A.05, subdivisions 4, 5, and by adding a subdivision; 80A.06, subdivisions 1, 2, and 3; 80A.08; 80A.12, by adding a subdivision; 80A.14, subdivisions 3, 4, and by adding subdivisions; 80A.15, subdivisions 1 and 2; 80A.16; 80A.28, subdivisions 1 and 2; 80C.01, subdivision 4; 82.19, by adding a subdivision; 82.20, subdivision 15; 82.22, subdivision 13; 82.24, subdivision 5; 82B.13, subdivisions 1, 4, and 5; 82B.14; 82B.19, subdivision 1; 317A.141, by adding a subdivision; 317A.671; 326.83, subdivisions 11 and 19; 326.84, subdivision 3; 326.85, by adding a subdivision; 326.921; 332.33, subdivision 1, and by adding a subdivision; 332.34; 333.01; 359.061; 359.071; 501B.35, subdivision 3; and 507.401, subdivisions 2 and 3; proposing coding for new law in Minnesota Statutes, chapters 45; 60K; 80A; 325E; and 333; repealing Minnesota Statutes 1996, section 60K.07, subdivision 1.

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

Section 1. Minnesota Statutes 1996, section 45.011, subdivision 1, is amended to read:

Subdivision 1. **SCOPE.** As used in chapters 45 to 83, 155A, 309, 332, 345, and 359, and sections 326.83 to 326.98 326.991, and 386.61 to 386.78, unless the context indicates otherwise, the terms defined in this section have the meanings given them.

Sec. 2. [45.011] TEMPORARY LICENSES.

Subdivision 1. **AUTHORITY.** The commissioner may grant a temporary license to an applicant who can demonstrate successful completion of all requirements for a permanent license. The temporary license will remain in effect until the earliest of:

(1) receipt by the applicant of the permanent license;

(2) the expiration of 45 days from the date on which the temporary license was granted; or

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(3) denial by the commissioner of the permanent license.

Subd. 2. **NONAPPLICATION.** A temporary license as described in this section may not be issued to an applicant for licensure as a:

(1) currency exchange regulated under chapter 53A;

(2) collection agency regulated under sections 332.31 to 332.45;

(3) credit service organization regulated under sections 332.52 to 332.60; or

(4) broker dealer, investment advisor, or agent regulated under chapter 80A.

Sec. 3. [45.0112] STREET ADDRESSES REQUIRED.

Licensees or applicants for licenses issued by the commissioner shall provide to the commissioner a residence telephone number, a street address where the licensee actually resides, and a street address where the licensee's business is physically located. A post office box address is not sufficient to satisfy this requirement. The individual shall notify the department of any change in street address or residence telephone number within ten days.

Sec. 4. Minnesota Statutes 1996, section 45.028, subdivision 1, is amended to read:

Subdivision 1. **REQUIREMENT.** (a) When a person, including any nonresident of this state, engages in conduct prohibited or made actionable by chapters 45 to 83, 155A, 309, and 332, and section 326.83, or any rule or order under those chapters, and the person has not filed a consent to service of process under chapters 45 to 83, 155A, 309, and 332, and section 326.83, that conduct is equivalent to an appointment of the commissioner as the person's attorney to receive service of process in any noncriminal suit, action, or proceeding against the person which is based on that conduct and is brought under chapters 45 to 83, 155A, 309, and 332, and section 326.83, or any rule or order under those chapters.

(b) Subdivision 2 applies in all other cases under chapters 45 to 83, 155A, 309, and 332, and section 326.83, or any rule or order under those chapters, in which a person, including a nonresident of this state, has filed a consent to service of process. This paragraph supersedes any inconsistent provision of law.

(c) Subdivision 2 applies in all cases in which service of process is allowed to be made on the commissioner of commerce.

Sec. 5. [45.0292] LICENSE RECIPROCITY.

The commissioner may waive all or part of the requirements of prelicense education, examination, and continuing education for individuals of other jurisdictions if:

(1) a written reciprocal licensing agreement is in effect between the commissioner and the licensing officials of that jurisdiction;

(2) the individual is licensed in that jurisdiction; and

(3) the licensing requirements of that jurisdiction are substantially similar to the corresponding licensing requirements of the commerce department.

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Sec. 6. [45.0293] REGULATION OF GROUP LIFE INSURANCE.

The commissioner may waive all or part of the requirements of section 61A.09, subdivision 3, if:

- (1) all the premiums under the group policy are paid by the group policyholder;
- (2) the loans insured are first real estate residential mortgage loans owned or guaranteed by the group policyholder; and
- (3) the group policy is in the best interests of insured debtors.

Sec. 7. [60K.20] SOCIAL SECURITY NUMBERS OF LICENSED AGENTS; COMMISSIONER'S AUTHORITY TO PROVIDE TO NAIC.

The commissioner may provide the social security numbers of licensed insurance agents to the National Association of Insurance Commissioners.

Sec. 8. Minnesota Statutes 1996, section 67A.231, is amended to read:

67A.231 DEPOSIT OF FUNDS; INVESTMENT; LIMITATIONS.

The directors of any township mutual insurance company may authorize the treasurer to invest any of its funds and accumulations in:

(a) Bonds, notes, mortgages, or other obligations guaranteed by the full faith and credit of the United States of America and those for which the credit of the United States is pledged to pay principal, interest or dividends, including United States agency and instrumentality bonds, debentures, or obligations;

(b) Bonds, notes, evidence of indebtedness, or other public authority obligations guaranteed by this state;

(c) Bonds, notes, evidence of the indebtedness or other obligations guaranteed by the full faith and credit of any county, municipality, school district, or other duly authorized political subdivision of this state;

(d) Bonds or other interest bearing obligations, payable from revenues, provided that the bonds or other interest bearing obligations are at the time of purchase rated among the highest four quality categories used by a nationally recognized rating agency for rating the quality of similar bonds or other interest bearing obligations, and are not rated lower by any other such agency; or obligations of a United States agency or instrumentality that have been rated in one of the two highest categories established by the Securities Valuation Office of the National Association of Insurance Commissioners. A company may not invest more than 20 percent of its admitted assets in the obligations of any one corporation. This is not applicable to bonds or other interest bearing obligations in default as to principal;

(e) Investments in the obligations stated in paragraphs (a), (b), (c), and (d), may be made either directly or in the form of securities of, or other interests in, an investment company registered under the Federal Investment Company Act of 1940. Investment company shares authorized pursuant to this subdivision shall not exceed 20 percent of the company's surplus. These obligations must be carried at the lower of cost or market on the annual statement filed with the commissioner and adjusted to market on an annual basis;

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(f) Loans upon improved and unencumbered real property in this state worth at least twice the amount loaned thereon, not including buildings, unless insured by property insurance policies payable to and held by the security holder;

(g) Real estate, including land, buildings and fixtures, located in this state and used primarily as home office space for the insurance company;

(h) Demand or time deposits or savings accounts in federally insured depositories located in this state to the extent that the deposit or investment is insured by the Federal Deposit Insurance Corporation, Federal Savings and Loan Corporation, or the National Credit Union Administration. An additional deposit not to exceed 50 percent of the township mutual insurance company's policyholder surplus may be located in these depositories if covered by private deposit insurance written by an insurer licensed by the department of commerce;

(i) Guarantee fund certificates of a mutual insurer which reinsures the business of the township mutual insurance company. The commissioner may by rule limit the amount of guarantee fund certificates which the township mutual insurance company may purchase and this limit may be a function of the size of the township mutual insurance company; and

(j) Up to \$1,500 in stock of an insurer which issues directors and officers liability insurance to township mutual insurance company directors and officers.

Sec. 9. Minnesota Statutes 1996, section 80A.02, subdivision 1, is amended to read:

Subdivision 1. **ADVISORY ACTIVITIES AND PRINCIPAL TRANSACTIONS.** (a) It is unlawful for any person who receives, directly or indirectly, any consideration from another primarily for advising the other as to the value of securities or their purchase or sale:

~~(a)~~ (1) to employ any device, scheme, or artifice to defraud the other; or

~~(b)~~ (2) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other; or

~~(c)~~ (b) It is unlawful for an investment adviser to knowingly sell any security to or purchase any security from a client while acting as principal for the person's own account or knowingly effect any sale or purchase of any security for the account of a client while acting as broker for one other than the client, unless the person discloses to the client in writing before the execution of the transaction the capacity in which the person is acting and obtains the consent of the client to the transaction.

Sec. 10. Minnesota Statutes 1996, section 80A.04, subdivision 3, is amended to read:

Subd. 3. It is unlawful for any person to transact business in this state as an investment adviser unless that person is so licensed or licensed as a broker-dealer under this chapter or unless: (1) that person's only clients in this state are investment companies as defined in the Investment Company Act of 1940, other investment advisers, broker-dealers, banks, trust companies, savings associations, federal covered advisers insurance companies, employee benefit plans, corporations with a class of equity securities registered under section 12(b) or 12(g) of the Securities Exchange Act of 1934, small business

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investment companies, and government agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rule or order of the commissioner; buyers; or (2) that person has no place of business in this state and during the preceding 12-month period has had fewer than six clients who are residents of this state.

Sec. 11. Minnesota Statutes 1996, section 80A.04, subdivision 4, is amended to read:

Subd. 4. Every license shall expire or notice filing expires on December 31 of each year unless an application for renewal has been received by the commissioner by November 15.

Sec. 12. Minnesota Statutes 1996, section 80A.04, is amended by adding a subdivision to read:

Subd. 5. Except with respect to advisers whose only clients are those described in subdivision 3, clause (2), it is unlawful for a federal covered adviser to conduct advisory business in this state unless the person complies with section 80A.05, subdivision 1a.

Sec. 13. Minnesota Statutes 1996, section 80A.05, is amended by adding a subdivision to read:

Subd. 1a. **FEDERAL COVERED ADVISERS.** Except with respect to federal covered advisers whose only clients are those described in section 80A.04, subdivision 3, clause (2), a federal covered adviser shall file with the commissioner, before acting as a federal covered adviser in this state, all documents required by the commissioner that have been filed with the Securities and Exchange Commission. Notwithstanding any other provision of this section, until October 10, 1999, the commissioner may require the registration of any federal covered investment adviser who has failed to promptly pay the fees required by section 80A.28 after being notified in writing by the commissioner of the nonpayment or underpayment of such fees. A person shall be considered to have promptly paid such fees if the fees are remitted to the commissioner within 15 days following the receipt of written notification from the commissioner.

Sec. 14. Minnesota Statutes 1996, section 80A.05, subdivision 4, is amended to read:

Subd. 4. The commissioner may by rule require a minimum capital for broker-dealers, subject to the limitations of section 15 of the Securities Act of 1934, and establish minimum financial requirements for investment advisers and establish limitations on aggregate indebtedness of broker-dealers in relation to net capital, subject to the limitations of section 222 of the Investment Advisers Act of 1940 which may include different requirements for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over the funds or securities and those investment advisers who do not.

Sec. 15. Minnesota Statutes 1996, section 80A.05, subdivision 5, is amended to read:

Subd. 5. The commissioner may by rule require licensed broker-dealers, agents and investment advisers who have custody of or discretionary authority over client funds or securities, to post surety bonds in amounts up to \$25,000, as the commissioner may pre-

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scribe subject to the limitations of section 15 of the Securities Exchange Act of 1934 for broker-dealers and section 222 of the Investment Advisers Act of 1940 for investment advisers and may by rule or order determine their conditions. Any appropriate deposit of cash or securities shall be accepted in lieu of any bond so required. No bond may be required of any broker-dealer whose net capital, which may be defined by rule, exceeds \$25,000 the amounts required by the commissioner. Every bond shall provide for suit thereon by any person who has a cause of action under section 80A.23 and, if the commissioner by rule or order requires, by any person who has a cause of action not arising under sections 80A.01 to 80A.31. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within three years after the sale or other act upon which it is based.

Sec. 16. Minnesota Statutes 1996, section 80A.06, subdivision 1, is amended to read:

Subdivision 1. Every licensed broker-dealer and investment adviser shall make and keep all accounts, correspondence, memoranda, papers, books and other records which the commissioner by rule prescribes by rule or order, except as provided by section 15 of the Securities Act of 1934 in the case of a broker-dealer and section 222 of the Investment Advisers Act of 1940 in the case of an investment adviser. All records required shall be preserved for three years unless the commissioner by rule prescribes otherwise for particular types of records. All required records shall be kept within the state or shall, at the request of the commissioner, be made available at any time for examination by the commissioner either in the principal office of the licensee or by production of exact copies thereof in this state.

Sec. 17. Minnesota Statutes 1996, section 80A.06, subdivision 2, is amended to read:

Subd. 2. Every licensed broker-dealer and investment adviser shall file such reports as the commissioner by rule or order prescribes except as provided in section 15 of the Securities Exchange Act of 1934 in the case of a broker-dealer and section 222 of the Investment Advisers Act of 1940 in the case of an investment adviser.

Sec. 18. Minnesota Statutes 1996, section 80A.06, subdivision 3, is amended to read:

Subd. 3. If the information contained in any document filed with the commissioner is or becomes inaccurate or incomplete in any material respect, the licensee or federal covered adviser shall within 30 days file a correcting amendment unless notification of the correction has been given under section 80A.04, subdivision 2.

Sec. 19. Minnesota Statutes 1996, section 80A.08, is amended to read:

80A.08 REGISTRATION REQUIREMENT.

It is unlawful for any person to offer or sell any security in this state unless (a) it is registered under sections 80A.01 to 80A.31 or (b) the security or transaction is exempted under section 80A.15 or (c) it is a federal covered security.

Sec. 20. Minnesota Statutes 1996, section 80A.12, is amended by adding a subdivision to read:

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Subd. 12. COORDINATED REGISTRATION. The commissioner may enter into cooperative and reciprocal agreements with members of a national securities regulatory organization composed of securities administrators of this and other states to participate in a coordinated review of securities offerings in lieu of conducting the commissioner's own review.

Sec. 21. [80A.122] FEDERAL COVERED SECURITIES.

Subdivision 1. 18(b)(2) FILINGS. The commissioner may, by rule or otherwise, require the filing of any or all of the following documents with respect to a federal covered security under section 18(b)(2) of the Securities Act of 1933:

(1) prior to the initial offer of a federal covered security in this state, all documents that are part of a current federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, together with a fee and a consent to service of process;

(2) after the initial offer of a federal covered security in this state, all documents that are part of an amendment to a current federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, which must be filed concurrently with the commissioner;

(3) notices that increase the aggregate amount of securities offered or sold in this state, together with the fee.

Subd. 2. 18(b)(4)(D) FILINGS. With respect to a security that is a federal covered security under section 18(b)(4)(D) of the Securities Act of 1933, the commissioner, by rule or otherwise, may require the issuer to file a notice on form D of the Securities and Exchange Commission, together with a fee and a consent to service of process no later than 15 days after the first sale of the covered security in this state.

Subd. 3. 18(b)(3) or (4) FILINGS. The commissioner, by rule or otherwise, may require the filing of any document filed with the Securities and Exchange Commission under the Securities Act of 1933 with respect to a federal covered security under section 18(b)(3) or (4) of the Securities Act of 1933 together with the fee.

Subd. 4. REGISTRATION. Notwithstanding any other provision of this section, until October 10, 1999, the commissioner may require registration of a federal covered security for which the fees required by section 80A.28 have not been promptly paid after the issuer of such securities has been notified in writing by the commissioner of the non-payment or underpayment of such fees. An issuer shall be considered to have promptly paid such fees if the fees are remitted to the commissioner within 15 days following the receipt of written notification from the commissioner.

Subd. 5. STOP ORDERS. The commissioner may issue a stop order suspending the offer and sale of a federal covered security, except a federal covered security under section 18(b)(1) of the Securities Act of 1933, if the commissioner finds that: (1) the order is in the public interest; and (2) there is a failure to comply with any condition established under this section.

Subd. 6. COMMISSIONER'S WAIVER. The commissioner may, by rule or otherwise, waive any or all of the provisions of this section.

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Sec. 22. Minnesota Statutes 1996, section 80A.14, subdivision 3, is amended to read:

Subd. 3. **AGENT.** "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include:

(a) an individual who represents an issuer in:

(1) effecting transactions in a security exempted by section 80A.15, subdivision 1;

(2) effecting transactions exempted by section 80A.15, subdivision 2;

(3) effecting transactions with existing employees, partners or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state;

(4) effecting other transactions, if the individual is an officer or director of the issuer, no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state, and, upon application, the individual is specifically authorized by name in an order issued by the commissioner; or

(5) effecting transactions in securities registered by notification under section 80A.09 if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state; or

(6) effecting transactions in a federal covered security as described in sections 18(b)(3) and 18(b)(4) of the Securities Act of 1933; or

(b) an individual who represents a broker-dealer in effecting transactions in the state limited to those transactions described in section 15(h)(2) of the Securities Exchange Act of 1934.

A partner, officer or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if that person otherwise comes within this definition.

Sec. 23. Minnesota Statutes 1996, section 80A.14, subdivision 4, is amended to read:

Subd. 4. **BROKER-DEALER.** "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for that person's own account. "Broker-dealer" does not include:

(1) an agent;

(2) an issuer;

(3) a trust company; or

(4) a bank, savings institution, savings association, credit union:

(i) acting for the account of others, provided that such activities are conducted in compliance with such rules as may be adopted by the commissioner;

(ii) acting for its own account; or

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(iii) acting in a fiduciary capacity pursuant to the powers and privileges described by sections 48.36 to 48.49 or United States Code, title 12, section 92(a);

(5) a person who has no place of business in this state if that person effects transactions in this state exclusively with or through (i) the issuers of the securities involved in the transactions, (ii) other broker-dealers, or (iii) banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, ~~pension or profit sharing trusts,~~ or other financial institutions or institutional buyers, or to broker-dealers, whether the purchaser is acting for itself or in some fiduciary capacity; or

(6) other persons not within the intent of this subsection whom the commissioner by rule or order designates.

Sec. 24. Minnesota Statutes 1996, section 80A.14, is amended by adding a subdivision to read:

Subd. 5a. **FEDERAL COVERED ADVISER.** "Federal covered adviser" means a person who is: (1) registered under section 203 of the Investment Act of 1940; or (2) is excluded from the definition of "investment adviser" under section 202(a)(11).

Sec. 25. Minnesota Statutes 1996, section 80A.14, is amended by adding a subdivision to read:

Subd. 5b. **FEDERAL COVERED SECURITY.** "Federal covered security" means a security that is a covered security under section 18(b) of the Securities Act of 1933 or regulations adopted under that act.

Sec. 26. Minnesota Statutes 1996, section 80A.14, is amended by adding a subdivision to read:

Subd. 8a. **INSTITUTIONAL BUYER.** For the purposes of sections 80A.04, subdivision 3; 80A.14, subdivision 4, clause (5); and 80A.15, subdivision 2, paragraph (g), "institutional buyer" includes, but is not limited to, a corporation with a class of equity securities registered under section 12(b) or 12(g) of the Securities Exchange Act of 1934, as amended, a "qualified institutional buyer" within the meaning of rule 144A, and an "accredited investor" within the meaning of rule 501(a) of regulation D.

Sec. 27. Minnesota Statutes 1996, section 80A.15, subdivision 1, is amended to read:

Subdivision 1. The following securities are exempted from sections 80A.08 and 80A.16:

(a) Any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; but this exemption does not apply to a security issued by any of the foregoing that is payable solely from payments to be received in respect of property or money used under a lease, sale, or loan arrangement by or for a nongovernmental industrial or commercial enterprise. Pursuant to section 106(c) of the Secondary Mortgage Market Enhancement Act of 1984, Public Law Number 98-440, this exemption does not apply to a security that is offered or sold pursuant to section 106(a)(1) or (2) of that act.

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(b) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any province, any agency or corporate or other instrumentality of one or more of the foregoing, if the security is recognized as a valid obligation by the issuer or guarantor; but this exemption shall not include any revenue obligation payable solely from payments to be made in respect of property or money used under a lease, sale or loan arrangement by or for a nongovernmental industrial or commercial enterprise.

(c) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution or trust company organized under the laws of any state and subject to regulation in respect of the issuance or guarantee of its securities by a governmental authority of that state.

(d) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings association, or any savings association or similar association organized under the laws of any state and authorized to do business in this state.

(e) Any security issued or guaranteed by any federal credit union or any credit union, or similar association organized and supervised under the laws of this state.

(f) Any security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange, the Pacific Stock Exchange, or the Chicago Board Options Exchange; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing. This exemption does not apply to second tier listings on any of the exchanges in this paragraph.

(g) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of the paper which is likewise limited, or any guarantee of the paper or of any renewal which are not advertised for sale to the general public in newspapers or other publications of general circulation or otherwise, or by radio, television or direct mailing.

(h) Any interest in any employee's savings, stock purchase, pension, profit sharing or similar benefit plan, or a self-employed person's retirement plan.

(i) Any security issued or guaranteed by any railroad, other common carrier or public utility which is subject to regulation in respect to the issuance or guarantee of its securities by a governmental authority of the United States.

(j) Any interest in a common trust fund or similar fund maintained by a state bank or trust company organized and operating under the laws of Minnesota, or a national bank wherever located, for the collective investment and reinvestment of funds contributed thereto by the bank or trust company in its capacity as trustee, executor, administrator, or guardian; and any interest in a collective investment fund or similar fund maintained by the bank or trust company, or in a separate account maintained by an insurance company, for the collective investment and reinvestment of funds contributed thereto by the bank, trust company or insurance company in its capacity as trustee or agent, which interest is issued in connection with an employee's savings, pension, profit sharing or similar benefit plan, or a self-employed person's retirement plan.

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(k) Any security which meets all of the following conditions:

(1) If the issuer is not organized under the laws of the United States or a state, it has appointed a duly authorized agent in the United States for service of process and has set forth the name and address of the agent in its prospectus;

(2) A class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934, and has been so registered for the three years immediately preceding the offering date;

(3) Neither the issuer nor a significant subsidiary has had a material default during the last seven years, or for the period of the issuer's existence if less than seven years, in the payment of (i) principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for borrowed money, or (ii) rentals under leases with terms of three years or more;

(4) The issuer has had consolidated net income, before extraordinary items and the cumulative effect of accounting changes, of at least \$1,000,000 in four of its last five fiscal years including its last fiscal year; and if the offering is of interest bearing securities, has had for its last fiscal year, net income, before deduction for income taxes and depreciation, of at least 1-1/2 times the issuer's annual interest expense, giving effect to the proposed offering and the intended use of the proceeds. For the purposes of this clause "last fiscal year" means the most recent year for which audited financial statements are available, provided that such statements cover a fiscal period ended not more than 15 months from the commencement of the offering;

(5) If the offering is of stock or shares other than preferred stock or shares, the securities have voting rights and the rights include (i) the right to have at least as many votes per share, and (ii) the right to vote on at least as many general corporate decisions, as each of the issuer's outstanding classes of stock or shares, except as otherwise required by law; and

(6) If the offering is of stock or shares, other than preferred stock or shares, the securities are owned beneficially or of record, on any date within six months prior to the commencement of the offering, by at least 1,200 persons, and on that date there are at least 750,000 such shares outstanding with an aggregate market value, based on the average bid price for that day, of at least \$3,750,000. In connection with the determination of the number of persons who are beneficial owners of the stock or shares of an issuer, the issuer or broker-dealer may rely in good faith for the purposes of this clause upon written information furnished by the record owners.

(l) Any certificate of indebtedness sold or issued for investment, other than a certificate of indebtedness pledged as a security for a loan made contemporaneously therewith, and any savings account or savings deposit issued, by an industrial loan and thrift company.

(m) Any security designated or approved for designation upon notice of issuance on the NASDAQ/National Market System; any other security of the same issuer that is of senior or substantially equal rank; any security called for by subscription rights or warrants so designated or approved; or any warrant or right to purchase or subscribe to any of the securities referred to in this paragraph; provided that the National Market System provides the commissioner with notice of any material change in its designation require-

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ments. The commissioner may revoke this exemption if the commissioner determines that the designation requirements are not enforced or are amended in a manner that lessens protection to investors.

Sec. 28. Minnesota Statutes 1996, section 80A.15, subdivision 2, is amended to read:

Subd. 2. The following transactions are exempted from sections 80A.08 and 80A.16:

(a) Any sales, whether or not effected through a broker-dealer, provided that:

(1) no person shall make more than ten sales of securities of the same issuer pursuant to this exemption, exclusive of sales according to clause (2), during any period of 12 consecutive months; provided further, that in the case of sales by an issuer, except sales of securities registered under the Securities Act of 1933 or exempted by section 3(b) of that act, (i) the seller reasonably believes that all buyers are purchasing for investment, and (ii) the securities are not advertised for sale to the general public in newspapers or other publications of general circulation or otherwise, or by radio, television, electronic means or similar communications media, or through a program of general solicitation by means of mail or telephone; and

(2) no issuer shall make more than 25 sales of its securities according to this exemption, exclusive of sales pursuant to clause (1), during any period of 12 consecutive months; provided further, that the issuer meets the conditions in clause (1) and, in addition meets the following additional conditions: (i) files with the commissioner, ten days before a sale according to this clause, a statement of issuer on a form prescribed by the commissioner; and (ii) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyers in this state in connection with a sale according to this clause except reasonable and customary commissions paid by the issuer to a broker-dealer licensed under this chapter.

(b) Any nonissuer distribution of an outstanding security if (1) either Moody's, Fitch's, or Standard & Poor's Securities Manuals, or other recognized manuals approved by the commissioner contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date not more than 18 months prior to the date of the sale, and a profit and loss statement for the fiscal year preceding the date of the balance sheet, and (2) the issuer or its predecessor has been in active, continuous business operation for the five-year period next preceding the date of sale, and (3) if the security has a fixed maturity or fixed interest or dividend provision, the issuer has not, within the three preceding fiscal years, defaulted in payment of principal, interest, or dividends on the securities.

(c) The execution of any orders by a licensed broker-dealer for the purchase or sale of any security, pursuant to an unsolicited offer to purchase or sell; provided that the broker-dealer acts as agent for the purchaser or seller, and has no direct material interest in the sale or distribution of the security, receives no commission, profit, or other compensation from any source other than the purchaser and seller and delivers to the purchaser and seller written confirmation of the transaction which clearly itemizes the commission, or other compensation.

(d) Any nonissuer sale of notes or bonds secured by a mortgage lien if the entire mortgage, together with all notes or bonds secured thereby, is sold to a single purchaser at a single sale.

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(e) Any judicial sale, exchange, or issuance of securities made pursuant to an order of a court of competent jurisdiction.

(f) The sale, by a pledge holder, of a security pledged in good faith as collateral for a bona fide debt.

(g) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, ~~pension or profit sharing trust~~, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity.

(h) An offer or sale of securities by an issuer made in reliance on the exemptions provided by Rule 505 or 506 of Regulation D promulgated by the Securities and Exchange Commission, Code of Federal Regulations, title 17, sections 230.501 to 230.508, subject to the conditions and definitions provided by Rules 501 to 503 of Regulation D, if the offer and sale also satisfies the conditions and limitations in clauses (1) to (10).

(1) The exemption under this paragraph is not available for the securities of an issuer if any of the persons described in Rule 252(c) to (f) of Regulation A promulgated by the Securities and Exchange Commission, Code of Federal Regulations, title 17, sections 230.251 to 230.263:

(i) has filed a registration statement that is the subject of a currently effective order entered against the issuer, its officers, directors, general partners, controlling persons, or affiliates, according to any state's law within five years before the filing of the notice required under clause (5), denying effectiveness to, or suspending or revoking the effectiveness of, the registration statement;

(ii) has been convicted, within five years before the filing of the notice required under clause (5), of a felony or misdemeanor in connection with the offer, sale, or purchase of a security or franchise, or a felony involving fraud or deceit, including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(iii) is subject to an effective administrative order or judgment entered by a state securities administrator within five years before the filing of the notice required under clause (5), that prohibits, denies, or revokes the use of an exemption from securities registration, that prohibits the transaction of business by the person as a broker-dealer or agent, or that is based on fraud, deceit, an untrue statement of a material fact, or an omission to state a material fact; or

(iv) is subject to an order, judgment, or decree of a court entered within five years before the filing of the notice required under clause (5), temporarily, preliminarily, or permanently restraining or enjoining the person from engaging in or continuing any conduct or practice in connection with the offer, sale, or purchase of a security, or the making of a false filing with a state.

A disqualification under paragraph (h) involving a broker-dealer or agent is waived if the broker-dealer or agent is or continues to be licensed in the state in which the administrative order or judgment was entered against the person or if the broker-dealer or agent is or continues to be licensed in this state as a broker-dealer or agent after notifying the commissioner of the act or event causing disqualification.

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The commissioner may waive a disqualification under paragraph (h) upon a showing of good cause that it is not necessary under the circumstances that use of the exemption be denied.

A disqualification under paragraph (h) may be waived if the state securities administrator or agency of the state that created the basis for disqualification has determined, upon a showing of good cause, that it is not necessary under the circumstances that an exemption from registration of securities under the state's laws be denied.

It is a defense to a violation of paragraph (h) based upon a disqualification if the issuer sustains the burden of proof to establish that the issuer did not know, and in the exercise of reasonable care could not have known, that a disqualification under paragraph (h) existed.

(2) This exemption must not be available to an issuer with respect to a transaction that, although in technical compliance with this exemption, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in paragraph (h).

(3) No commission, finder's fee, or other remuneration shall be paid or given, directly or indirectly, for soliciting a prospective purchaser, unless the recipient is appropriately registered licensed, or exempt from registration licensure, in this state as a broker-dealer.

(4) Nothing in this exemption is intended to or should be in any way construed as relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the antifraud provisions of the securities law of Minnesota.

(5) The issuer shall file with the commissioner a notice on form D as adopted by the Securities and Exchange Commission according to Regulation D, Code of Federal Regulations, title 17, section 230.502. The notice must be filed not later than 15 days after the first sale in this state of securities in an offering under this exemption. Every notice on form D must be manually signed by a person duly authorized by the issuer and must be accompanied by a consent to service of process on a form prescribed by the commissioner.

(6) A failure to comply with a term, condition, or requirement of paragraph (h) will not result in loss of the exemption for an offer or sale to a particular individual or entity if the person relying on the exemption shows that: (i) the failure to comply did not pertain to a term, condition, or requirement directly intended to protect that particular individual or entity, and the failure to comply was insignificant with respect to the offering as a whole; and (ii) a good faith and reasonable attempt was made to comply with all applicable terms, conditions, and requirements of paragraph (h), except that, where an exemption is established only through reliance upon this provision, the failure to comply shall nonetheless constitute a violation of section 80A.08 and be actionable by the commissioner.

(7) The issuer, upon request by the commissioner, shall, within ten days of the request, furnish to the commissioner a copy of any and all information, documents, or materials furnished to investors or offerees in connection with the offer and sale according to paragraph (h).

(8) Neither compliance nor attempted compliance with the exemption provided by paragraph (h), nor the absence of an objection or order by the commissioner with respect

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to an offer or sale of securities undertaken according to this exemption, shall be considered to be a waiver of a condition of the exemption or considered to be a confirmation by the commissioner of the availability of this exemption.

(9) The commissioner may, by rule or order, increase the number of purchasers or waive any other condition of this exemption.

(10) The determination whether offers and sales made in reliance on the exemption set forth in paragraph (h) shall be integrated with offers and sales according to other paragraphs of this subdivision shall be made according to the integration standard set forth in Rule 502 of Regulation D promulgated by the Securities and Exchange Commission, Code of Federal Regulations, title 17, section 230.502. If not subject to integration according to that rule, offers and sales according to paragraph (h) shall not otherwise be integrated with offers and sales according to other exemptions set forth in this subdivision.

(i) Any offer (but not a sale) of a security for which a registration statement has been filed under sections 80A.01 to 80A.31, if no stop order or refusal order is in effect and no public proceeding or examination looking toward an order is pending; and any offer of a security if the sale of the security is or would be exempt under this section. The commissioner may by rule exempt offers (but not sales) of securities for which a registration statement has been filed as the commissioner deems appropriate, consistent with the purposes of sections 80A.01 to 80A.31.

(j) The offer and sale by a cooperative organized under chapter 308A or under the laws of another state, of its securities when the securities are offered and sold only to its members, or when the purchase of the securities is necessary or incidental to establishing membership in the cooperative, or when such securities are issued as patronage dividends. This paragraph applies to a cooperative organized under the laws of another state only if the cooperative has filed with the commissioner a consent to service of process under section 80A.27, subdivision 7, and has, not less than ten days prior to the issuance or delivery, furnished the commissioner with a written general description of the transaction and any other information that the commissioner requires by rule or otherwise.

(l) The issuance and delivery of any securities of one corporation to another corporation or its security holders in connection with a merger, exchange of shares, or transfer of assets whereby the approval of stockholders of the other corporation is required to be obtained, provided, that the commissioner has been furnished with a general description of the transaction and with other information as the commissioner by rule prescribes not less than ten days prior to the issuance and delivery.

(m) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters.

(n) The distribution by a corporation of its or other securities to its own security holders as a stock dividend or as a dividend from earnings or surplus or as a liquidating distribution; or upon conversion of an outstanding convertible security; or pursuant to a stock split or reverse stock split.

(o) Any offer or sale of securities by an affiliate of the issuer thereof if: (1) a registration statement is in effect with respect to securities of the same class of the issuer and (2) the offer or sale has been exempted from registration by rule or order of the commissioner.

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(p) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if: (1) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state; and (2) the commissioner has been furnished with a general description of the transaction and with other information as the commissioner may by rule prescribe no less than ten days prior to the transaction.

(q) Any nonissuer sales of any security, including a revenue obligation, issued by the state of Minnesota or any of its political or governmental subdivisions, municipalities, governmental agencies, or instrumentalities.

(r) Any transaction as to which the commissioner by rule or order finds that registration is not necessary in the public interest and for the protection of investors.

(s) An offer or sale of a security issued in connection with an employee's stock purchase, savings, option, profit sharing, pension, or similar employee benefit plan, if the following conditions are met:

(1) the issuer, its parent corporation or any of its majority-owned subsidiaries offers or sells the security according to a written benefit plan or written contract relating to the compensation of the purchaser; and

(2) the class of securities offered according to the plan or contract, or if an option or right to purchase a security, the class of securities to be issued upon the exercise of the option or right, is registered under section 12 of the Securities Exchange Act of 1934, or is a class of securities with respect to which the issuer files reports according to section 15(d) of the Securities Exchange Act of 1934; or

(3) the issuer fully complies with the provisions of Rule 701 as adopted by the Securities and Exchange Commission, Code of Federal Regulations, title 12, section 230.701.

The issuer shall file not less than ten days before the transaction, a general description of the transaction and any other information that the commissioner requires by rule or otherwise or, if applicable, a Securities and Exchange Form S-8. Annually, within 90 days after the end of the issuer's fiscal year, the issuer shall file a notice as provided with the commissioner.

(t) Any sale of a security of an issuer that is a pooled income fund, a charitable remainder trust, or a charitable lead trust that has a qualified charity as the only charitable beneficiary.

(u) Any sale by a qualified charity of a security that is a charitable gift annuity if the issuer has a net worth, otherwise defined as unrestricted fund balance, of not less than \$300,000 and either: (1) has been in continuous operation for not less than three years; or (2) is a successor or affiliate of a qualified charity that has been in continuous operation for not less than three years.

Sec. 29. Minnesota Statutes 1996, section 80A.16, is amended to read:

80A.16 FILING OF SALES AND ADVERTISING LITERATURE.

The commissioner may by rule or order require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising commu-

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nication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser or broker-dealer unless: (1) the security or transaction is exempted by section 80A.15; or (2) the security is a federal covered security.

Sec. 30. Minnesota Statutes 1996, section 80A.28, subdivision 1, is amended to read:

Subdivision 1. (a) There shall be a filing fee of \$100 for every application for registration or notice filing. There shall be an additional fee of one-tenth of one percent of the maximum aggregate offering price at which the registered securities are to be offered in this state, and the maximum combined fees shall not exceed \$300.

(b) ~~If the registration statement relates to redeemable securities issued by an open end management company or unit investment trust, as defined in the Investment Company Act of 1940, there shall be a filing fee of \$100 for every application for registration. There shall be an additional fee of 1/20 of one percent of the maximum aggregate offering price at which the registered securities are to be offered in this state. There shall be no maximum fee for securities registered pursuant to this clause.~~

(e) When an application for registration is withdrawn before the effective date or a preeffective stop order is entered under section 80A.13, subdivision 1, all but the \$100 filing fee shall be returned. If an application to register securities is denied, the total of all fees received shall be retained.

(c) Where a filing is made in connection with a federal covered security under section 18(b)(2) of the Securities Act of 1933, there is a fee of \$100 for every initial filing. There is an additional fee of 1/20 of one percent of the maximum aggregate offering price at which the securities are to be offered in this state. There is no maximum fee for securities filings made according to this section.

Sec. 31. Minnesota Statutes 1996, section 80A.28, subdivision 2, is amended to read:

Subd. 2. Every applicant for an initial or renewal license shall pay a filing fee of \$200 in the case of a broker-dealer, \$50 in the case of an agent, and \$100 in the case of an investment adviser. When an application is denied or withdrawn, the filing fee shall be retained. A licensed agent who has terminated employment with one broker-dealer shall, before beginning employment with another broker-dealer, pay a transfer fee of \$25. The fee for a filing made according to section 80A.05, subdivision 1a, is \$100.

Sec. 32. Minnesota Statutes 1996, section 80C.01, subdivision 4, is amended to read:

Subd. 4. "Franchise" means (a) a contract or agreement, either express or implied, whether oral or written, for a definite or indefinite period, between two or more persons:

(1) by which a franchisee is granted the right to engage in the business of offering or distributing goods or services using the franchisor's trade name, trademark, service mark, logotype, advertising, or other commercial symbol or related characteristics;

(2) in which the franchisor and franchisee have a community of interest in the marketing of goods or services at wholesale, retail, by lease, agreement, or otherwise; and

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(3) for which the franchisee pays, directly or indirectly, a franchise fee; or

(b) a contract, lease, or other agreement, either express or implied, whether oral or written, for a definite or indefinite period, between two or more persons, whereby the franchisee is granted the right to market motor vehicle fuel using the franchisor's trade name, trademark, service mark, logotype, advertising, or other commercial symbol or related characteristics for which the franchisee pays a franchise fee; or

(c) the sale or lease of any products, equipment, chattels, supplies, or services to the purchaser, other than the sale of sales demonstration equipment, materials or samples for a total price of \$500 or less to any one person, for the purpose of enabling the purchaser to start a business and in which the seller:

(1) represents that the seller, lessor, or an affiliate thereof will provide locations or assist the purchaser in finding locations for the use or operation of vending machines, racks, display cases, or similar devices, or currency operated amusement machines or devices, on premises neither owned or leased by the purchaser or seller; or

(2) represents that the seller will purchase any or all products made, produced, fabricated, grown, bred, or modified by the purchaser using, in whole or in part, the supplies, services, or chattels sold to the purchaser; or

(3) guarantees that the purchaser will derive income from the business which exceeds the price paid to the seller; or

(d) an oral or written contract or agreement, either expressed or implied, for a definite or indefinite period, between two or more persons, under which a manufacturer, selling security systems through dealers or distributors in this state, requires regular payments from the distributor or dealer as royalties or residuals for products purchased and paid for by the dealer or distributor.

(e) "Franchise" does not include any business which is operated under a lease or license on the premises of the lessor or licensor as long as such business is incidental to the business conducted by the lessor or licensor on such premises, including, without limitation, leased departments, licensed departments, and concessions.

(f) "Franchise" does not include any contract, lease or other agreement whereby the franchisee is required to pay less than \$100 on an annual basis, except those franchises identified in paragraph (b).

(g) "Franchise" does not include a contract, lease or other agreement between a new motor vehicle manufacturer, distributor, or factory branch and a franchisee whereby the franchisee is granted the right to market automobiles, motorcycles, trucks, truck tractors, or self-propelled motor homes or campers if the foregoing are designed primarily for the transportation of persons or property on public highways.

(h) "Franchise" does not include a contract, lease, or other agreement or arrangement between two or more air carriers, or between one or more air carriers and one or more foreign air carriers. The terms "air carrier" and "foreign air carrier" shall have the meanings assigned to them by the Federal Aviation Act, United States Code Appendix, title 49, sections 1301(3) and 1301(22), respectively.

Sec. 33. Minnesota Statutes 1996, section 82.19, is amended by adding a subdivision to read:

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Subd. 9. **EXCLUSIVE AGENCY AGREEMENTS.** (a) Except as provided in paragraph (b), a licensee shall not negotiate the sale, exchange, lease, or listing of any real property directly with the owner or lessor knowing that the owner or lessor has executed a written exclusive listing contract or exclusive contract for nonagency services in connection with the property with another real estate broker, buyer, or lessee, nor shall a licensee negotiate the purchase, lease, or exchange of real property knowing that the buyer or lessee has executed a written exclusive buyer representation contract or exclusive contract for nonagency services for the purchase, lease, or exchange of the real property with another real estate broker.

(b) A licensee may discuss the terms upon which a listing or buyer representation contract or a contract for nonagency services may be entered into after expiration of any existing exclusive contract when the inquiry or discussion is initiated by the owner, lessor, buyer, or lessee. The licensee must inquire of the owner, lessor, buyer, or lessee whether such an exclusive contract exists.

Sec. 34. Minnesota Statutes 1996, section 82.20, subdivision 15, is amended to read:

Subd. 15. **EXEMPTION.** The following persons, when acting as closing agents, are exempt from the requirements of sections 82.19 and 82.24 unless otherwise required in this section or chapter:

(1) a direct employee of a title insurance company authorized to do business in this state, or a direct employee of a title company, or a person who has an agency agreement with a title insurance company or a title company in which the agent agrees to perform closing services on the title insurance company's or title company's behalf and the title insurance company or title company assumes responsibility for the actions of the agent as if the agent were a direct employee of the title insurance company or title company;

(2) a licensed attorney or a direct employee of a licensed attorney;

(3) a licensed real estate broker or salesperson;

(4) a direct employee of a licensed real estate broker if the broker maintains all funds received in connection with the closing services in the broker's trust account;

(5) any bank, trust company, savings association, credit union, industrial loan and thrift company, regulated lender under chapter 56, public utility, or land mortgage or farm loan association organized under the laws of this state or the United States, when engaged in the transaction of businesses within the scope of its corporate powers as provided by law; and

(6) a title insurance company authorized to do business in this state or a title company which is the appointed agent of a title insurance company authorized to do business in this state; and

(7) a title company that has a contractual agency relationship with a title insurance company authorized to do business in this state, where the title insurance company assumes responsibility for the actions of the title company and its employees or agents as if they were the employees or agents of the title insurance company.

Sec. 35. Minnesota Statutes 1996, section 82.22, subdivision 13, is amended to read:

Subd. 13. **CONTINUING EDUCATION.** (a) After their first renewal date, all real estate salespersons and all real estate brokers shall be required to successfully complete

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30 hours of real estate continuing education, either as a student or a lecturer, in courses of study approved by the commissioner, during each 24-month license period. At least 15 of the 30 credit hours must be completed during the first 12 months of the 24-month licensing period. Salespersons and brokers whose initial license period extends more than 12 months are required to complete 15 hours of real estate continuing education during the initial license period. Those licensees who will receive a 12-month license on July 1, 1995, because of the staggered implementation schedule must complete 15 hours of real estate continuing education as a requirement for renewal on July 1, 1996. Licensees may not claim credit for continuing education not actually completed as of the date their report of continuing education compliance is filed.

(b) The commissioner shall adopt rules defining the standards for course and instructor approval, and may adopt rules for the proper administration of this subdivision. The commissioner may not approve a course which can be completed by the student at home or outside the classroom without the supervision of an instructor approved by the department of commerce. The commissioner has discretion to establish a pilot program to explore delivery of accredited courses using new delivery technology, including interactive technology. This pilot program expires on August 1, 2000.

(c) Any program approved by Minnesota continuing legal education shall be approved by the commissioner of commerce for continuing education for real estate brokers and salespeople if the program or any part thereof relates to real estate.

(d) As part of the continuing education requirements of this section, the commissioner shall require that all real estate brokers and salespersons receive:

(1) at least two hours of training during each license period in courses in laws or regulations on agency representation and disclosure; and

(2) at least two hours of training during each license period in courses in state and federal fair housing laws, regulations, and rules, or other antidiscrimination laws.

Clause (1) does not apply to real estate salespersons and real estate brokers engaged solely in the commercial real estate business who file with the commissioner a verification of this status along with the continuing education report required under paragraph (a).

(e) The commissioner is authorized to establish a procedure for renewal of course accreditation.

Sec. 36. Minnesota Statutes 1996, section 82.24, subdivision 5, is amended to read:

Subd. 5. **TRUST ACCOUNT RECORDS ACCOUNTS.** (a) Each broker or closing agent shall maintain and retain records of all trust funds and trust accounts. The commissioner may prescribe information to be included in the records by appropriate rules.

(b) A check received from a potential buyer shall be deposited into the listing broker's trust account not later than the third business day after delivery of the check to the broker, except that the check may be held by the listing broker until acceptance or rejection of the offer if:

(1) the check by its terms is not negotiable by the broker or if the potential buyer has given written instructions that the check shall not be deposited nor cashed until acceptance or shall be immediately returned if the offer is rejected; and

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(2) the potential seller is informed that the check is being so held before or at the time the offer is presented to that person for acceptance.

If the offer is accepted, the check shall be deposited in a neutral escrow depository or the trust fund account of the listing broker not later than the third business day following acceptance of the offer unless the broker has received written authorization from all parties to the transaction to continue to hold the check. If the offer is rejected, the check shall be returned to the potential buyer not later than the next business day after rejection.

Sec. 37. Minnesota Statutes 1996, section 82B.13, subdivision 1, is amended to read:

Subdivision 1. **REGISTERED REAL PROPERTY APPRAISER OR LICENSED REAL PROPERTY APPRAISER.** As a prerequisite for licensing as a registered real property appraiser or licensed real property appraiser, an applicant must present evidence satisfactory to the commissioner that the person has successfully completed at least ~~75~~ 90 classroom hours of courses. The courses must consist of ~~60~~ 75 hours of general real estate appraisal principles and 15 hours related to standards of professional appraisal practice and the provisions of this chapter.

Sec. 38. Minnesota Statutes 1996, section 82B.13, subdivision 4, is amended to read:

Subd. 4. **CERTIFIED RESIDENTIAL REAL PROPERTY APPRAISER.** As a prerequisite for licensing as a certified residential real property appraiser, an applicant must present evidence satisfactory to the commissioner that the person has successfully completed at least ~~165~~ 120 classroom hours of courses, including 15 hours related to the standards of professional appraisal practice and the provisions of this chapter, with particular emphasis on the appraisal of one to four unit residential properties.

Sec. 39. Minnesota Statutes 1996, section 82B.13, subdivision 5, is amended to read:

Subd. 5. **CERTIFIED GENERAL REAL PROPERTY APPRAISER.** As a prerequisite for licensing as a certified general real property appraiser, an applicant must present evidence satisfactory to the commissioner that the person has successfully completed at least ~~165~~ 180 classroom hours of courses, including 15 hours related to the standards of professional appraisal practice and the provisions of this chapter, with particular emphasis on the appraisal of nonresidential properties.

Sec. 40. Minnesota Statutes 1996, section 82B.14, is amended to read:

82B.14 EXPERIENCE REQUIREMENT.

(a) A license under section 82B.11, subdivision 3, 4, or 5, may not be issued to a person who does not have the equivalent of two years of experience in real property appraisal supported by adequate written reports or file memoranda. As a prerequisite for licensing as a registered real property appraiser or licensed real property appraiser, an applicant must present evidence satisfactory to the commissioner that the person has obtained 2,000 hours of experience in real property appraisal.

As a prerequisite for licensing as a certified residential real property appraiser, an applicant must present evidence satisfactory to the commissioner that the person has obtained 2,500 hours of experience in real property appraisal.

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As a prerequisite for licensing as a certified general real property appraiser, an applicant must present evidence satisfactory to the commissioner that the person has obtained 3,000 hours of experience in real property appraisal.

(b) Each applicant for license under section 82B.11, subdivision 3, 4, or 5, shall give under oath a detailed listing of the real estate appraisal reports or file memoranda for each year for which experience is claimed by the applicant. Upon request, the applicant shall make available to the commissioner for examination, a sample of appraisal reports that the applicant has prepared in the course of appraisal practice.

(c) Applicants may not receive credit for experience accumulated while unlicensed, if the experience is based on activities which required a license under this section.

Sec. 41. Minnesota Statutes 1996, section 82B.19, subdivision 1, is amended to read:

Subdivision 1. **LICENSE RENEWALS.** A licensed real estate appraiser shall present evidence satisfactory to the commissioner of having met the continuing education requirements of this chapter before the commissioner renews a license.

The basic continuing education requirement for renewal of a license is the completion by the applicant either as a student or as an instructor, during the immediately preceding term of licensing, of at least 30 classroom hours of instruction in courses or seminars that have received the approval of the commissioner. As part of the continuing education requirements of this section, the commissioner shall require that all real estate appraisers receive at least four hours of training each license period in courses in laws or regulations on standards of professional practice. If the applicant's immediately preceding term of licensing consisted of 12 or more months, but fewer than 24 months, the applicant must provide evidence of completion of 15 hours of instruction during the license period. If the immediately preceding term of licensing consisted of fewer than 12 months, no continuing education need be reported.

Sec. 42. Minnesota Statutes 1996, section 317A.141, is amended by adding a subdivision to read:

Subd. 4. **EFFECT OF AMENDMENTS ON CHARITABLE TRUST ASSETS.** Assets held by a corporation, including income or fees from services, are restricted to the uses and purposes for which the property was received and held.

Sec. 43. Minnesota Statutes 1996, section 317A.671, is amended to read:

317A.671 CERTAIN ASSETS NOT TO BE DIVERTED.

Except as provided in section 501B.31, when a corporation dissolves, merges, substantially changes the use or purposes for which it will use its assets, or consolidates, transfers its assets, or grants a mortgage or other security interest in its assets, assets of the corporation or a constituent corporation, and assets subsequently received by a single corporation after a merger or consolidation, may not be diverted from the uses and purposes for which the assets have been received and held, or from the uses and purposes expressed or intended by the original donor.

Sec. 44. **[325E.58] SIGN CONTRACTOR; BOND.**

(a) A sign contractor may post a compliance bond with the commissioner, conditioned that the sign contractor shall faithfully perform duties and comply with laws, ordi-

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nances, rules, and contracts entered into for the installation of signs. The bond must be renewed annually and maintained for so long as determined by the commissioner. The aggregate liability of the surety on the bond to any and all persons, regardless of the number of claims made against the bond, may not exceed the annual amount of the bond. The bond may be canceled as to future liability by the surety upon 30 days' written notice mailed to the commissioner by United States mail.

(b) The amount of the bond shall be \$8,000. The bond may be drawn upon only by a local unit of government that requires sign installers to post a compliance bond. The bond is in lieu of any compliance bond required by a local unit of government.

(c) For purposes of this section, "sign" means a device, structure, fixture, or placard using graphics, symbols, or written copy that is erected on the premises of an establishment including the name of the establishment or identifying the merchandise, services, activities, or entertainment available on the premises.

Sec. 45. Minnesota Statutes 1996, section 326.83, subdivision 11, is amended to read:

Subd. 11. **OWNER.** Except in section 326.91, subdivision 1, "owner" means a person who has any legal or equitable interest in real property. For purposes of sections 326.83 to 326.991, "owner" does not include a residential building contractor or residential remodeler who constructs or improves its own property for purposes of speculation. A residential building contractor or residential remodeler will be presumed to be building or improving for purposes of speculation if it constructs or improves more than one property within any ~~12-month~~ 24-month period.

Sec. 46. Minnesota Statutes 1996, section 326.83, subdivision 19, is amended to read:

Subd. 19. **SPECIAL SKILL.** "Special skill" means one of the following eight categories:

(a) **EXCAVATION.** Excavation includes work in any of the following areas:

- (1) excavation;
- (2) trenching;
- (3) grading; and
- (4) site grading.

(b) **MASONRY AND CONCRETE.** Masonry and concrete includes work in any of the following areas:

- (1) drain systems;
- (2) poured walls;
- (3) slabs and poured-in-place footings;
- (4) masonry walls;
- (5) masonry fireplaces;

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(6) masonry veneer; and

(7) water resistance and waterproofing.

(c) **CARPENTRY.** Carpentry includes work in any of the following areas:

(1) rough framing;

(2) finish carpentry;

(3) siding;

(4) doors, windows, and skylights;

~~(5) exterior covering;~~

~~(6)~~ (4) porches and decks, excluding footings;

~~(7)~~ (5) wood foundations; and

~~(8) insulation and vapor barrier;~~

~~(9)~~ (6) drywall installation, excluding taping and finishing;

~~(10) cabinet and counter top installation;~~

~~(11) wood floors;~~

~~(12) installation of roofing materials, excluding roofing; and~~

~~(13) soffit, fascia, and trim.~~

(d) **INTERIOR FINISHING.** Interior finishing includes work in any of the following areas:

(1) floor covering;

(2) wood floors;

(3) cabinet and counter top installation;

(4) insulation and vapor barriers;

(5) interior or exterior painting;

(6) ceramic, marble, and quarry tile;

(7) ornamental guardrail and installation of prefabricated stairs; and

(8) wallpapering.

(e) **EXTERIOR FINISHING.** Exterior finishing includes work in any of the following areas:

(1) siding;

(2) doors, ~~skylights~~, and windows;

~~(3)~~ soffit, fascia, and trim;

(4) (3) exterior plaster and stucco;

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

(5) (4) painting; and

(6) (5) rain carrying systems, including gutters and down spouts.

(f) **DRYWALL AND PLASTER.** Drywall and plaster includes work in any of the following areas:

(1) installation;

(2) taping;

(3) finishing;

(4) interior plaster;

(5) painting; and

(6) wallpapering.

(g) **ROOFING.** Roofing includes work in any of the following areas:

(1) roof coverings;

(2) roof sheathing;

(3) roof weatherproofing and insulation; and

(4) repair of roof support system, but not construction of new roof support system.

(h) **GENERAL INSTALLATION SPECIALTIES.** Installation includes work in any of the following areas:

(1) garage doors and openers;

(2) pools, spas, and hot tubs;

(3) fireplaces and wood stoves;

(4) asphalt paving and seal coating;

(5) exterior plaster and stucco; and

(6) ornamental guardrail and prefabricated stairs.

Sec. 47. Minnesota Statutes 1996, section 326.84, subdivision 3, is amended to read:

Subd. 3. **EXEMPTIONS.** The license requirement does not apply to:

(1) an employee of a licensee performing work for the licensee;

(2) a material person, manufacturer, or retailer furnishing finished products, materials, or articles of merchandise who does not install or attach the items;

(3) an owner or owners of residential real estate who build or improve residential real estate and who do the work themselves or jointly with the owner's own bona fide employees. This exemption does not apply to a person who engages in a pattern of building or improving real estate for purposes of resale. Such a pattern is presumed to exist if the person constructs or improves more than one property within any 24-month ~~12-month~~ period;

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(4) an architect or engineer engaging in professional practice as defined in this chapter;

(5) a person whose total gross annual receipts from projects regulated under this section do not exceed \$15,000;

(6) a mechanical contractor;

(7) a plumber, electrician, or other person whose profession is otherwise subject to statewide licensing, when engaged in the activity which is the subject of licensure;

(8) specialty contractors who provide only one special skill as defined in section 326.83;

(9) a school district, or a technical college governed under chapter 136F;

(10) manufactured housing installers; and

(11) Habitat for Humanity and Builders Outreach Foundation, and their individual volunteers when engaged in activities on their behalf.

To qualify for the exemption in clause (5), a person must obtain a certificate of exemption from licensing from the commissioner.

A certificate of exemption will be issued upon the applicant's filing with the commissioner, an affidavit stating that the applicant does not expect to exceed \$15,000 in gross annual receipts derived from contracting activities during the calendar year for which the exemption is requested.

To renew the exemption in clause (5), the applicant must file an affidavit stating that the applicant did not exceed \$15,000 in gross annual receipts during the past calendar year, and the applicant does not expect to exceed \$15,000 in gross annual receipts during the calendar year for which the exemption is requested.

If a person, operating under the exemption in clause (5), exceeds \$15,000 in gross receipts during any calendar year, the person must immediately surrender the exemption certificate and apply for the appropriate license. The person must remain licensed until such time as the person's gross annual receipts during a calendar year fall below \$15,000. The person may then apply for this exemption for the next calendar year.

Sec. 48. Minnesota Statutes 1996, section 326.85, is amended by adding a subdivision to read:

Subd. 4. NONEXPIRATION. The council is not subject to the expiration provisions of section 15.059, subdivision 5.

Sec. 49. Minnesota Statutes 1996, section 326.921, is amended to read:

326.921 BUILDING PERMIT CONDITIONED ON LICENSURE.

A political subdivision shall not issue a building permit to an unlicensed person who is required to be licensed under sections 326.83 to 326.991. A political subdivision that issues zoning or land use permits in lieu of a building permit shall not issue those permits to an unlicensed person who is required to be licensed under sections 326.83 to 326.911. The political subdivision shall report the person applying for a building the permit to the commissioner who may bring an action against the person.

New language is indicated by underline, deletions by strikeout.

Sec. 50. Minnesota Statutes 1996, section 332.33, subdivision 1, is amended to read:

Subdivision 1. **REQUIREMENT.** Except as otherwise provided in this chapter, no person shall conduct within this state a collection agency or engage within this state in the business of collecting claims for others as defined in sections 332.31 to 332.45, without having first applied for and obtained a collection agency license. A person acting under the authority of a collection agency, as a collector, must first obtain a Minnesota collector license. A licensed collector may use one additional assumed name only if the assumed name is registered with and approved by the commissioner.

Sec. 51. Minnesota Statutes 1996, section 332.33, is amended by adding a subdivision to read:

Subd. 7. **NOTICE.** A licensed collection agency or individual collector must give the commissioner written notice of a change in personal name, company name, address, or ownership not later than 15 days after the change occurs.

Sec. 52. Minnesota Statutes 1996, section 332.34, is amended to read:

332.34 BOND.

The commissioner of commerce shall require each collection agency licensee to annually file and maintain in force a corporate surety bond, in a form to be prescribed by, and acceptable to, the commissioner, and in the a sum of at least \$20,000. An applicant for a new or renewal license may request that the amount of the bond be reduced to an amount not less than \$5,000. This request may be granted upon a showing that the total dollar amount received from debtors by the collection agency in the preceding fiscal year did not exceed \$30,000. A collection agency may deposit cash in and with a depository acceptable to the commissioner in an amount and in the manner prescribed and approved by the commissioner in lieu of a bond.

Sec. 53. Minnesota Statutes 1996, section 333.01, is amended to read:

333.01 COMMERCIAL ASSUMED NAMES; CERTIFICATE.

Subdivision 1. **CERTIFICATE.** No person shall hereafter carry on or conduct or transact a commercial business in this state under any designation, name, or style, which does not set forth the true name of every person interested in such business unless such person shall file in the office of the secretary of state, a certificate setting forth the name and business address under which the business is conducted or transacted, or is to be conducted or transacted, and the true name of each person conducting or transacting the same, with the address of such person. The name of the business must not include any of the following phrases or their abbreviations: corporation, incorporated, limited, chartered, professional cooperative, association, limited partnership, limited liability company, professional limited liability company, limited liability partnership, or professional limited liability partnership, except to the extent that an entity filing a certificate would be authorized to use the phrase or abbreviation. The certificate shall be executed by one of the persons conducting, or intending to conduct, the business. The certificate shall be published after it has been filed with the secretary of state in a qualified newspaper in the county in which the person has a principal or registered office for two successive issues.

Subd. 2. **INTENTIONAL MISREPRESENTATION PROHIBITED.** No person shall use an assumed or fictitious name in the conduct of its business to intentionally misrepresent its geographic origin or location.

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Sec. 54. [333.065] PENALTY FOR VIOLATION.

A person who violates any provision of sections 333.01 to 333.06 is subject to the penalties and remedies provided in section 8.31.

The relief provided in this section is in addition to the remedies or penalties otherwise available.

Sec. 55. Minnesota Statutes 1996, section 359.061, is amended to read:

359.061 RECORD OF COMMISSION; CERTIFICATE.

The commission of every notary shall be recorded in the office of the court administrator of the district court of the notary's county of residence, in a record kept for that purpose. The commission of a nonresident notary must be recorded in the office of the court administrator of the district court of the Minnesota county that borders the county in which the nonresident notary resides. The court administrator, when requested, shall certify to official acts in the manner and for the fees prescribed by statute or court rule.

Sec. 56. Minnesota Statutes 1996, section 359.071, is amended to read:

359.071 CHANGE OF NAME OR ADDRESS.

A notary shall notify the commissioner of any name or address change within 30 days of the change.

Sec. 57. Minnesota Statutes 1996, section 501B.35, subdivision 3, is amended to read:

Subd. 3. **CHARITABLE TRUST.** "Charitable trust" means a fiduciary relationship with respect to property that arises as a result of a manifestation of an intention to create it, and that subjects the person by whom the property is held to equitable duties to deal with the property for a charitable purpose. As used in this definition, property includes all income derived from fees for services.

Sec. 58. Minnesota Statutes 1996, section 507.401, subdivision 2, is amended to read:

Subd. 2. **CERTIFICATE OF RELEASE.** An officer or duly appointed agent of a title insurance company may, on behalf of a mortgagor or a person who acquired from the mortgagor title to all or a part of the property described in a mortgage, execute a certificate of release that complies with the requirements of this section and record the certificate of release in the real property records of each county in which the mortgage is recorded if: (i) a satisfaction or release of the mortgage has not been executed and recorded within 60 days after the date payment in full of the loan secured by the mortgage was sent in accordance with a payoff statement furnished by the mortgagee or the mortgage servicer, and (ii) the title insurance company, its officer, or agent has sent to the last known address of the mortgagee or the mortgage servicer, at least 30 days prior to executing the certificate of release, written notice of its intention to execute and record a certificate of release in accordance with this section after the expiration of the 60-day period.

Sec. 59. Minnesota Statutes 1996, section 507.401, subdivision 3, is amended to read:

Subd. 3. **CONTENTS.** A certificate of release executed under this section must contain substantially all of the following:

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(1) the name of the mortgagor, the name of the original mortgagee, and, if applicable, the mortgage servicer, the date of the mortgage, the date of recording, and volume and page or document number in the real property records where the mortgage is recorded, together with similar information for the last recorded assignment of the mortgage;

(2) a statement that the mortgage was in the original principal amount of \$500,000 or less;

(3) a statement that the person executing the certificate of release is an officer or a duly appointed agent of a title insurance company authorized and licensed to transact the business of insuring titles to interests in real property in this state under chapter 68A;

(4) a statement that the certificate of release is made on behalf of the mortgagor or a person who acquired title from the mortgagor to all or a part of the property described in the mortgage;

(5) a statement that the mortgagee or mortgage servicer provided a payoff statement which was used to make payment in full of the unpaid balance of the loan secured by the mortgage; and

(6) a statement that payment in full of the unpaid balance of the loan secured by the mortgage was made in accordance with the written or verbal payoff statement, and received by the mortgagee or mortgage servicer, as evidenced by one or more of the following in the records of the title insurance company or its agent:

(i) a bank check, certified check, escrow account check from the title company or title insurance agent, or attorney trust account check that has been negotiated by the mortgagee or mortgage servicer; or

(ii) other documentary evidence of payment to the mortgagee or mortgage servicer;

(7) a statement that more than 60 days have elapsed since the date payment in full was sent;

(8) a statement that after the expiration of the 60-day period referred to in subdivision 2, the title insurance company, its officer, or agent sent to the last known address of the mortgagee or mortgage servicer, at least 30 days prior to executing the certificate of release, notice in writing of its intention to execute and record a certificate of release in accordance with this section, with an unexecuted copy of the proposed certificate of release attached to the written notice; and

(9) a statement that the title insurance company, its officer, or agent has not received notification in writing of any reason why the certificate of release should not be executed and recorded after the expiration of the 30-day notice period referred to in subdivision 2.

Sec. 60. REPEALER.

Minnesota Statutes 1996, section 60K.07, subdivision 1, is repealed.

Sec. 61. EFFECTIVE DATE.

Section 32, paragraph (h), is effective the day following final enactment and shall apply to all agreements or arrangements regardless of the date they were entered into or renewed.

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Sections 4, 6, 7, 42, 43, 46, 48, and 57 are effective the day following final enactment.

Sections 53 and 54 are effective the day following final enactment and apply to causes of action arising from incidents occurring on or after that date.

Presented to the governor May 27, 1997

Signed by the governor May 30, 1997, 1:15 p.m.

CHAPTER 223—S.F.No. 739

An act relating to telecommunications; providing policies to carry out the state's role in telecommunications regulation; providing for a state policy encouraging high speed telecommunication services and greater capacity for services; providing for a single statewide local access and transport area (LATA); amending Minnesota Statutes 1996, sections 8.33, subdivision 2; 237.12, by adding a subdivision; 237.121; 237.16, subdivision 9; 237.761, subdivisions 4 and 8; 237.762, subdivisions 1, 3, and by adding a subdivision; 237.764, subdivision 1; 237.765; 237.766; and 237.769; proposing coding for new law in Minnesota Statutes, chapter 237.

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

Section 1. Minnesota Statutes 1996, section 8.33, subdivision 2, is amended to read:

Subd. 2. **DUTIES.** The attorney general is responsible for representing and furthering the interests of residential and small business utility consumers through participation in matters before the public utilities commission involving utility rates and adequacy of utility services to residential or small business utility consumers. The attorney general shall expend a reasonable portion of effort among all three kinds of utility services and shall identify and promote the needs of each class of residential and small business consumers with respect to each of the utility services. When participating in telecommunication matters that affect deployment of the infrastructure, the attorney general may apply the goals of:

- (1) achieving economically efficient investment in:
 - (i) higher speed telecommunication services; and
 - (ii) greater capacity for voice, video, and data transmission; and
- (2) just and reasonable rates.

Sec. 2. [237.011] TELECOMMUNICATIONS GOALS.

The following are state goals that should be considered as the commission executes its regulatory duties with respect to telecommunication services:

- (1) supporting universal service;
- (2) maintaining just and reasonable rates;

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