

CHAPTER 2675

DEPARTMENT OF COMMERCE

FINANCIAL INSTITUTIONS

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BANK LOANS

2675.0200 FINANCIAL STATEMENTS.

Signed, current financial statements of the borrowers, endorsers, or guarantors are required on loans which the commissioner or an examiner determines to be inadequately secured. Financial statements are considered current when renewed at least annually.

Statutory Authority: *MS s 46.01 subd 2*

History: *9 SR 1689*

2675.0300 DELINQUENT LOANS.

Subpart 1. **When delinquent.** For the purposes of the report of examination of banks, loans, leases, and unplanned overdrafts are considered delinquent and are separated into two distinct groupings as follows:

A. "A" paper consists of all loans and leases which are six months past their maturity, or on which interest or principal is due and unpaid for six months or more, including unplanned overdrafts.

B. "B" paper consists of all other loans and leases which are 30 days, but less than six months past their maturity, or on which interest or principal is due and unpaid for a period of 30 days, but less than six months including unplanned overdrafts. An installment loan will not be considered overdue until at least two monthly payments are due. The same will apply to real estate mortgage loans, term loans, or any other loans payable on regular monthly installments of principal and/or interest.

Subp. 2. **Examples of "A" paper and "B" paper.** The following examples will illustrate the applications to "A" paper and "B" paper:

A. Single payment notes: Note dated January 2, 1984, due July 2, 1984, with interest to be paid at maturity. If unpaid, the note becomes "B" paper at close of business August 2, 1984, and "A" paper at close of business January 2, 1985.

B. Demand notes: Note dated January 2, 1984, written "due on demand." Interest will be considered to be due every six months, if not otherwise indicated in the body of the note. If interest is unpaid, this note becomes "B" paper at the close of business August 2, 1984, and "A" paper at the close of business January 2, 1985.

C. Installment notes: Note dated January 2, 1984, to be paid in monthly installments beginning February 2, 1984. Allowing one month grace, if the installment due on February 2, 1984, is unpaid, the balance of this note will become "B" paper at the close of business March 2, 1984, and "A" paper at the close of business on August 2, 1984.

Subp. 3. **Apportionment.** The overdue figure shall include the total dollar balance of the lease or loan that is not current.

For examination purposes, past due loans that are in a nonaccrual status or that are renegotiated troubled debt are to be apportioned to "A" paper or "B" paper as appropriate.

Statutory Authority: *MS s 46.01 subd 2*

History: *9 SR 1689*

2675.0400 PARTICIPATION LOANS.

Where a participation in a loan is sold to another bank the agreement may provide that repayment may first be applied to the share sold. Since one of the purposes of such a sale may be to reduce the bank's retention of loans which may exceed its lending limit, the agreement should, as a matter of prudent banking practice, also provide that in the event of default or a comparable event defined in the agreement, the participants shall share in all subsequent repayments and collections in proportion to the percentage of participation at the time of the happening of the event.

When a bank or trust company purchases a participation in a loan originated elsewhere, it must obtain copies of all essential papers necessary to determine the credit quality thereof.

Statutory Authority: *MS s 46.01*

2675.0500 SPECIAL FEEDER LOANS.

Special feeder loans as referred to in Minnesota Statutes, section 48.24, subdivision 7, must be made for the exclusive purpose of purchasing feeder livestock and each note shall bear the notation "special feeder loan" on its face.

Each such note on file shall be supplied with a paid invoice, bill of sale, or other evidence to show the date of purchase, weight of each feeder animal or the total weight if they are all of the same class, and the total cost or value. Such loans need not be made at the time of actual purchase providing that these documents are held and made available for inspection.

Statutory Authority: *MS s 46.01*

2675.0600 LOANS TO CORPORATIONS AND PARTNERSHIPS.

Subpart 1. **Corporations.** All loans to corporations shall be supported by a certified copy of a resolution of the board of directors, board of trustees, or other governing bodies of such corporations authorizing the borrowing by the officer or officers signing on behalf of the corporation and such resolution shall indicate the authority of such officer.

Subp. 2. **Partnerships.** Loans made directly to partnerships, unless all partners sign the note, must be supported by a declaration by the partners showing the composition of the partnership and the proportionate part owned by each partner, and authority of the partner executing the note to bind the partnership therefore.

Statutory Authority: *MS s 46.01*

2675.0700 [Repealed, 9 SR 1689]

2675.0800 [Repealed, 9 SR 1689]

2675.0900 [Repealed, 9 SR 1689]

REAL ESTATE LOANS

2675.0901 REAL ESTATE LOANS-DOCUMENTATION.

A bank must maintain a written policy approved annually by its board of directors that at a minimum addresses:

A. Written appraisal or valuation reports made in conjunction with federal, state, and board requirements. Valuation reports must contain detail sufficient to state current market value based on actual conditions and must not be based on projected or speculative events. Updated evaluation reports based on changing conditions of an individual loan transaction or economic conditions must also be included as a requirement.

B. Description of fee title, validity of the bank's lien, position of the lien, and documentation of methods used to make these determinations.

C. Evidence of adequate insurance which names the bank as the loss payee.

D. Exemption of documentation requirements, for a single loan or class of loans, if the loan documents reflect that the lien is not needed to support the loan and where the terms of the transaction as a consequence have not been made more favorable than they would have been in the absence of a lien. For regulatory purposes, no real estate collateral value will be assigned to exempted loans.

Statutory Authority: *MS s 45.023; 46.01*

History: *9 SR 1689; 14 SR 517; 20 SR 168*

2675.0910 [Repealed, 9 SR 1689]

2675.0920 [Repealed, 9 SR 1689]

2675.0930 [Repealed, 9 SR 1689]

2675.0940 [Repealed, 9 SR 1689]

2675.0950 [Repealed, 9 SR 1689]

INVESTMENTS

2675.1100 BOND INVESTMENT RECORDS.

During the period in which such investment is carried on a bank's books, it shall be required that original invoices of bond purchases and sales be retained as a part of the records of a bank; a record be maintained of all securities bought and sold showing date of purchase or sale, interest rate, maturity, par value, description, from whom purchased, to whom sold, selling price, and where pledged or deposited for safekeeping; all municipal and corporation bonds owned by a bank be supported by full credit information at the time of purchase; and every sale and every purchase will be considered a separate transaction and trades, switches and securities received under debt readjustment, as well as new purchases, must meet the requirements of these parts.

Statutory Authority: *MS s 46.01 subd 2*

History: *9 SR 1689*

2675.1110 ELIGIBLE SECURITIES.

An obligation of indebtedness which may be purchased for its own account by a state bank, in order to come within the classification of eligible securities within the meaning of this part, must be a marketable obligation. It must be salable under ordinary circumstances with reasonable promptness at a fair value; and with respect to the particular security, there must be present one or more of the following characteristics:

A. a public distribution of the securities must have been provided for or made in a manner to protect or insure the marketability of the issue; or

B. other existing securities of the obligor must have such a public distribution as to protect or insure the marketability of the issue under consideration; or

C. in the case of eligible securities for which a public distribution as set forth in item A or B cannot be so provided, or so made, and which are issued by established commercial or industrial businesses or enterprises, that can demonstrate the ability to service such securities, the debt evidenced thereby must mature not later than 20 years after the date of issuance of the security and must be of such sound value or so secured as reasonably to assure its payments.

Statutory Authority: *MS s 46.01 subd 2*

History: *9 SR 1689*

2675.1120 SECURITIES UNDER TRUST AGREEMENT.

Where the security is issued under a trust agreement, the agreement must provide for a trustee independent of the obligor, and such trustee must be a bank or trust company.

Statutory Authority: *MS s 46.01*

2675.1130 INVESTMENT QUALITIES.

Securities, in order to be eligible for purchase by state banks, must be in the form of bonds, notes, and/or debentures, and must be of recognized investment quality. Eligible securities are those which are included among the four highest ratings of the

rating services, and nonrated securities of equivalent value. With regard to the ratings, the following items shall apply:

A. A security rated by only one service will be designated as an eligible security if it is rated within the first four grades by that service.

B. A security rated by two services will be designated as an eligible security if it is rated within the first four grades by both services.

C. A security rated by three services will be designated as an eligible security if it is rated within the first four grades by two of those services.

Statutory Authority: *MS s 46.01 subd 2*

History: 9 SR 1689

2675.1140 HOLDING BONDS ON PAR OR FACE VALUE.

The statutory limitation on the amount of the eligible securities of any one obligor or maker which may be held by the bank, not otherwise exempted by Minnesota Statutes, section 48.24, subdivision 6, is to be determined on the basis of the par or face value of the securities, and not on their book value.

Statutory Authority: *MS s 46.01 subd 2*

History: 9 SR 1689

2675.1150 PURCHASE OF ASSET AT A PREMIUM OR DISCOUNT.

When assets are purchased at a premium or discount, a bank:

A. shall charge off the premium when the asset is placed on the books; or, provide for the regular amortization of the premium pursuant to generally accepted accounting principles; and

B. may provide for the regular accretion of the discount pursuant to generally accepted accounting principles.

Statutory Authority: *MS s 46.01 subd 2*

History: 9 SR 1689

2675.1160 [Repealed, 9 SR 1689]

2675.1170 SECURITIES HAVING HOLDER OPTIONS.

Purchase of securities convertible into stock at the option of the holder or with stock purchase warrants attached is prohibited if the price paid for such security is in excess of the investment value of the security itself, considered independently of the stock purchase warrants or conversion feature. If it is apparent that the price paid for an otherwise eligible security fairly reflects the investment value of the security itself and does not include any speculative value based upon the presence of a stock purchase warrant or conversion option, the purchase of such a security is not prohibited.

Statutory Authority: *MS s 46.01*

2675.1180 FOREIGN BORROWERS SECURITIES.

Purchase of securities of foreign borrowers, whether private, corporate, or governmental, is prohibited with the exception of:

A. securities of borrowers, whether private, corporate, or governmental, residing in or which are part of the Dominion of Canada, provided, however, that such securities are payable in dollars of the United States;

B. bonds of the International Bank for Reconstruction and Development, which are payable in dollars of the United States; provided, however, that the total par value of such bonds held by any bank or trust company shall never exceed 20 percent of its capital and of its actual surplus fund; provided further, that this part is intended to permit limited purchase of the bonds of the International Bank for Reconstruction and Development only by banks, trust companies, and savings banks;

C. bonds of the Inter-American Development Bank, which are payable in dollars of the United States; provided, however, that the total par value of such bonds held by any bank or trust company shall never exceed 20 percent of its capital and of its actual surplus fund; provided further, that this part is intended to permit limited purchase of the bonds of the Inter-American Development Bank only by banks, trust companies, and savings banks;

D. bonds of the Asian Development Bank, which are payable in dollars of the United States; provided, however, that the total par value of such bonds held by any bank or trust company shall never exceed 20 percent of its capital and of its actual surplus fund; provided further, that this part is intended to permit limited purchase of the bonds of the Asian Development Bank only by banks, trust companies, and savings banks; and

E. bonds of the African Development Bank, which are payable in dollars of the United States; provided however, that the total par value of such bonds held by any bank or trust company shall never exceed 20 percent of its capital and of its actual surplus fund; provided further, that this part is intended to permit limited purchase of the bonds of the African Development Bank only by banks, trust companies, and savings banks.

Statutory Authority: *MS s 46.01 subd 2*

History: 9 SR 1689

2675.1190 REPURCHASE AGREEMENT SECURITIES.

As to purchase of securities under repurchase agreement subject to the limitations and restrictions set forth in the law and this part:

A. It is permissible for the bank to purchase eligible securities from another under an agreement whereby the bank has an option or a right to require the seller of the securities to repurchase them from the bank at a price stated or at a price subject to determination under the terms of the agreement, but in no case less than the value at the time of repurchase.

B. It is permissible for the bank to purchase eligible securities from another under an agreement whereby the seller or a third party guarantees the bank against loss on resale of the securities.

C. It is not permissible for the bank to purchase eligible securities from another under an agreement whereby the seller reserves the right or the option to repurchase said securities itself or through its nominee at a price stated or at a price subject to determination under the terms of the agreement, notwithstanding the fact that the bank may also, under such agreement, have the right or option to compel the seller to repurchase the securities at a price stated or at a price subject to determination under the terms of the agreement.

Statutory Authority: *MS s 46.01*

2675.2000 BANKS SELLING WITH REPURCHASE AGREEMENT.

As to repurchase agreements accompanying sales of securities, it is permissible for the bank selling securities to another to agree that the bank shall have an option or right to repurchase the securities from the buyer at a price stated or at a price subject to determination under the terms of the agreement, but in no case in excess of the market value at the time of repurchase.

Except for securities which are the direct obligation of, or obligations that are fully guaranteed as to principal and interest by, the United States government or an agency thereof, it is not permissible for the bank selling securities to another to agree that the purchaser shall have the right or the option to require the bank to repurchase said securities at a price stated or at a price subject to determination under the terms of the agreement, notwithstanding the fact that the bank may also, under such agreement

have the right or option to repurchase the securities from the buyer at a price stated or at a price subject to determination under the terms of the agreement.

Statutory Authority: *MS s 46.01 subd 2*

History: *9 SR 1689*

2675.2010 [Repealed, 9 SR 1689]

2675.2020 [Repealed, 9 SR 1689]

2675.2030 [Repealed, 9 SR 1689]

2675.2040 PURCHASE OF ISSUER OPTION SECURITIES PROHIBITED.

Purchase of securities convertible into stock at the option of the issuer is prohibited.

Statutory Authority: *MS s 46.01*

2675.2050 PURCHASE OF NONELIGIBLE SECURITIES PROHIBITED; DISPOSITION; EXCEPTIONS.

The purchase of securities other than eligible securities as defined in part 2675.1110 is prohibited. Any such purchase will be considered a violation of this part and the commissioner will require that any noneligible security so purchased be disposed of within a reasonable length of time. No bank shall be permitted to purchase securities of business or municipal corporations that shall have undergone debt readjustment until 12 months shall have elapsed since the effective date of the readjustment. Such securities, if purchased, must also be disposed of. However, the purchase of railroad equipment trust obligations which are not in default either as to principal or interest, or both, and which are considered to be of eligible quality shall not be prohibited.

Statutory Authority: *MS s 46.01 subd 2*

History: *9 SR 1689*

2675.2060 [Repealed, 9 SR 1689]

2675.2070 [Repealed, 9 SR 1689]

2675.2080 [Repealed, 9 SR 1689]

2675.2090 [Repealed, 9 SR 1689]

BANKING PROCEDURES

2675.2100 CASH ITEMS.

A daily record shall be maintained of all cash items for anything other than currency or coin being held over until the following day's business and not in the process of being forwarded for collection or being returned to endorsers. No checks shall be held in a bank's cash account to avoid the showing of overdrafts.

Statutory Authority: *MS s 46.01 subd 2*

History: *9 SR 1689*

2675.2110 BANKING HOUSE.

A. Investment for banking house and premises requires no prior written approval of the commissioner pursuant to Minnesota Statutes, section 47.10, unless:

- (1) the investment is in nonadjacent property, or
- (2) the total investment exceeds 50 percent of the banks's capital and paid-in surplus.

B. In determining the total investment in banking premises, the net book value for land, buildings, real estate for future use, leasehold improvements, and leases capitalized according to financial accounting standard board practices are to be aggregated.

C. A bank shall maintain documentation to reflect that investments in banking premises are depreciated or amortized pursuant to generally accepted accounting principles. The documentation shall disclose the period of time the assets are expected to remain on the books, and the accepted practice used to consistently assign the cost and write down the value.

D. Investment in nonadjacent real estate to be used for future banking premises not utilized as intended within five years shall be considered other real estate unless definite plans for utilization are in process and extended time is approved by the commissioner.

E. Prior to December 31, 1985, a bank may, without obtaining approval, restate the net book value of its banking premises to reflect the original cost less any prior write down required under generally accepted accounting principles. Adequate documentation shall be maintained to substantiate any restatement of banking premises. Alternatively, a bank not restating the value of banking premises may write down the remaining net book value pursuant to generally accepted accounting principles.

Statutory Authority: *MS s 46.01 subd 2*

History: 9 SR 1689

2675.2120 [Repealed, 9 SR 1689]

2675.2130 FURNITURE AND FIXTURES, PERSONAL PROPERTY, AUTOMOBILES, AND EQUIPMENT.

Purchases capitalized in this account shall be amortized as required by generally accepted accounting principles, or a greater amount as may be approved in writing by the commissioner. Furniture and fixtures, personal property, automobiles, and equipment used in the conduct of banking business may be acquired by purchase or lease without obtaining prior approval of the commissioner unless the seller or lessor has an existing direct or indirect interest in the management or ownership of the acquiring bank.

Statutory Authority: *MS s 46.01 subd 2*

History: 9 SR 1689

2675.2140 LEASEHOLD INVESTMENT AMORTIZATION.

Leasehold investments shall be amortized as required by generally accepted accounting principles. Leasehold investments receiving prior approval pursuant to Minnesota Statutes, section 47.10, subdivision 3, are subject to further prior approval of renegotiated and amended terms. If there is an optional clause in such lease for an additional period to be covered thereby, this shall serve to extend the amortization period to such extent.

Statutory Authority: *MS s 46.01 subd 2*

History: 9 SR 1689

2675.2150 [Repealed, 9 SR 1689]

2675.2160 [Repealed, 9 SR 1689]

2675.2170 OTHER REAL ESTATE.

Other real estate:

A. Any real estate acquired or owned by a bank (1) pursuant to Minnesota Statutes, section 48.21, clauses (2) to (5); (2) not used in the business resulting from relocation of the principal office, or closing of a detached facility; or (3) abandonment of plans to use real estate acquired for future expansion, shall be designated as "other

real estate.” The property acquired pursuant to (1) shall be so designated from the date upon which the bank actually acquires title and upon expiration of any redemption period. Property owned pursuant to subitems (2) and (3) shall be so designated from the date the determination is made to divert or abandon as actual operating bank premises.

B. “Other real estate” shall not be entered upon the books of a bank at an amount greater than the balance of the principal amount of the indebtedness at the time of acquisition or the remaining book value if owned. In any case, the book value of other real estate shall never exceed the estimated fair market value of the property. The fair market value shall be determined by an appraisal prepared by an independent qualified appraiser within 60 days of acquisition. The appraisal shall be made part of the other real estate file.

C. Reasonable attempts shall be made to dispose of other real estate by sale. The other real estate file shall be documented with disposal attempts. The maximum period for holding other real estate as an asset shall be five years.

D. “Other real estate” sold on contract for deed may be carried as a loan at the lesser of the principal balance due on the contract, or at its present book value. Loss on sale of “other real estate” shall be recognized in the period the sale occurs. Gains on sale of other real estate shall be either accreted ratably on the same basis as repayment, or may be deferred until title is transferred to the buyer.

E. “Other real estate” shall be documented with an attorney’s opinion or equivalent evidence to reflect title and all encumbrances. Insurance must be maintained where necessary and taxes must be kept current if the “other real estate” is carried as an asset.

F. Expenditures approved by the board for permanent improvements to other real estate owned, in order to improve marketability, may be capitalized up to ten percent of the amounts referred to in item B and further provided the original amount plus the additional capitalization does not exceed the amount of the appraisal required by item B.

Statutory Authority: *MS s 45.023; 46.01*

History: *9 SR 1689; 14 SR 517; 20 SR 168*

2675.2180 REAL ESTATE TAX RECORD.

Banks shall install and maintain tax records as to properties in which it has a financial interest by the holding of real estate mortgages, contracts for deed, other real estate, or otherwise.

Statutory Authority: *MS s 47.20; 48.21*

2675.2190 [Repealed, 9 SR 1689]

2675.2200 CHARGED OFF ASSETS; DUAL CONTROL.

Subpart 1. **Record.** A complete record of charged off assets shall be maintained on which all recoveries shall be shown. This record shall also cite authority of directors with regard to any debts that have been compromised, and include signed compromise agreements, if it is possible to obtain them.

The original records of charged off assets shall be maintained under dual control to effect any entry subsequent to the board’s charge off resolution.

Subp. 2. [Repealed, 9 SR 1689]

Subp. 3. [Repealed, 9 SR 1689]

Statutory Authority: *MS s 46.01 subd 2*

History: *9 SR 1689*

2675.2210 POSTING RECORDS.

All asset and liability records of a bank must be posted on a daily basis.

Statutory Authority: *MS s 46.01*

2675.2220 ADDITIONAL COMMON STOCK SALES.

Any bank which increases its common capital account by means of the sale of additional common stock need not carry such funds in any other bank but may carry them on its own books among demand liabilities and furnishing appropriate certificate to the commissioner as to the total paid in.

Statutory Authority: *MS s 46.01 subd 2*

History: 9 SR 1689

2675.2230 [Repealed, 9 SR 1689]**2675.2240 DIVIDENDS.**

The dividend period for the purpose of declaring dividends in accordance with Minnesota Statutes, section 48.09 shall be the period commencing on January 1 and ending as of the close of business December 31 of each calendar year and the net income for each such period shall be determined from the consolidated report of income of each bank.

The Department of Commerce will supply each bank with forms to be completed with information called for. The forms must be mailed or delivered to the commissioner within ten days of the date of declaration of any dividend and at least 15 days prior to the proposed payment date of any dividend. The forms shall contain a statement by the commissioner providing that if certain requirements as set forth therein are met, the bank may pay a cash dividend or dividends without specific approval of the commissioner in the year succeeding the dividend period in such amount or amounts as will not reduce the bank's capital, surplus, undivided profits, and reserves below such requirements. Except as provided in the preceding sentence, no bank or trust company shall pay a cash dividend to its stockholders until written approval for the dividend has been obtained from the commissioner.

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

Statutory Authority: *MS s 46.01 subd 2*

History: 9 SR 1689

2675.2246 CERTIFICATE OF DEPOSIT OF OTHER FINANCIAL INSTITUTIONS.

Where a bank makes a direct investment in a certificate of deposit of another financial institution, such investment shall not exceed its legal lending limit as provided in Minnesota Statutes, section 48.24; however, this limitation shall apply only to that portion, if any, of the investment which is not insured by an agency of the United States.

Statutory Authority: *MS s 46.01 subd 2*

History: 9 SR 1689

2675.2250 OVERDRAFTS; OFFICERS OR EMPLOYEES.

No overdraft shall be permitted to an officer or employee of a bank with the exception of those which occur in the ordinary course of posting and are reimbursed during the same or the following business day. Overdrafts originating and disposed of in this manner shall not be construed as being in violation of Minnesota Statutes, section 48.08.

Statutory Authority: *MS s 46.01 subd 2*

History: 9 SR 1689

2675.2260 RECORDS OF CHECKS, DRAFTS, AND OTHER LIABILITIES.

A numerical record shall be installed and maintained to disclose at the time of issuance, all liabilities resulting from the issuing of checks, drafts, check certifications, and similar liabilities.

Statutory Authority: *MS s 46.01*

2675.2270 DISCLOSURE OF CONTINGENT OR ACTUAL LIABILITIES.

Any liability either actual or contingent that may be incurred by a bank in the conduct of its daily operations must be reflected on the bank's financial statements under an appropriate caption on its statement of condition or as a footnote to the statement. In the case of agreements which may be entered into between a Minnesota state bank and automobile manufacturers, such agreements result in a contingent liability and should be shown as a footnote to the daily statement. When a draft (whether demand or time) is received by the bank under this agreement, it becomes an actual liability and is to be entered in the general ledger as "acceptances outstanding" with a corresponding entry under assets with the caption "customers' liabilities on acceptances."

Statutory Authority: *MS s 46.01*

2675.2280 SAVINGS PASSBOOKS.

Savings passbooks must not be retained by a bank for safekeeping except for collateral purposes.

Statutory Authority: *MS s 46.01*

2675.2290 [Repealed, 9 SR 1689]

2675.2300 SAFE DEPOSIT BOXES.

There must be a rental agreement, signed by the parties who are to have entry, and this agreement must specifically state who is to be authorized to enter.

The record to the agreement must contain the signature of each person who is to have access to the safe deposit box.

The guard key should be restricted to authorized bank personnel and must be kept in such a place as not to be available for customer's use. Bank employees are not to be permitted to enter the vault with the customer's key and to bring the box out to the customer. The customer must control the box at all times when the safe deposit box door is open.

There must be a record signed by each customer at each time the customer enters the safe deposit box.

A bank shall not retain customers' safe deposit box keys under any circumstances.

Keys to safe deposit boxes not under lease must be kept under dual control until such time as such box is rented.

Statutory Authority: *MS s 46.01*

History: *17 SR 1279*

FIDELITY INSURANCE

2675.2400 INSURANCE APPROVAL.

The board of directors of each bank shall, at least once a year or at each annual meeting, approve of the amount of fidelity insurance to be carried for the ensuing year.

Statutory Authority: *MS s 46.01*

2675.2410 [Repealed, 9 SR 1689]

2675.2420 OTHER BUSINESS; EXPENSE REIMBURSEMENT AGREEMENTS.

If an officer of a bank is acting as an insurance agent, acting to effect transactions in securities or the business of an insurance agency or securities broker-dealer not

owned by the bank is being conducted on the banking premises, there must be an arrangement as to allocating overhead expenses or as to distribution of net earnings and be included in an appropriate board resolution. The allocations may include the credit insurance income required to be turned over to the bank pursuant to Minnesota Statutes, section 47.016, or commissions.

Statutory Authority: *MS s 46.01 subd 2*

History: 9 SR 1689

BANK CHARTER

2675.2500 DISPLAY AND REPLACEMENT COPIES.

Every bank shall display its bank charter in a prominent place in the lobby. In case of destruction or misplacement of the charter, the commissioner will supply a duplicate, upon application, at the cost set out in Minnesota Statutes, section 46.131, subdivision 10.

Statutory Authority: *MS s 46.01 subd 2*

History: 9 SR 1689

FINANCIAL INSTITUTION INTERNAL CONTROL SYSTEM AND POLICIES

2675.2600 INTERNAL CONTROL.

Subpart 1. **Written internal control policy.** Management of a bank, trust company, savings bank, or deposit taking industrial loan and thrift company shall establish a written internal control system. A report describing the scope of coverage and effectiveness of the internal control system shall be reviewed for adequacy and approved by the board annually. Documentation of internal audit procedures performed in testing this internal control system and the reports shall be maintained by the bank for inspection by the supervisory examiners and by the external auditors. The board shall consider inclusion of recommendations made by supervisory examiners and external auditors regarding the internal control system.

Subp. 2. **Resolution officer.** The board of directors, through its management, will designate one or more of its officers as a resolution officer. It is the responsibility of this person to promptly investigate and respond to written complaints, disputes, and inquiries from bank customers regarding the customer's account or bank activities. Individual files containing the complaint letter, investigation procedure, and disposition of the matter shall be maintained for 18 months following disposition.

Statutory Authority: *MS s 45.023; 46.01*

History: 12 SR 623; 14 SR 517; 21 SR 1778

2675.2610 ANNUAL EXAMINATION REPORT.

Subpart 1. **Contents.** An annual examination report made under the direction of the board of directors pursuant to Minnesota Statutes, section 48.10, must at a minimum:

A. determine that an internal control system is in place as required by part 2675.2600 and that control procedures are being followed (describe process and findings);

B. determine when the board last reviewed loan, investment, audit, and asset/liability policies;

C. confirm securities held at the bank, in safekeeping elsewhere, or in book entry form;

D. confirm loans and deposits through a sample positive or negative verification (define and describe process);

E. determine if the board has reviewed fixed assets, other real estate, and equity accounts since the last examination;

F. examine income, expense, and related accrual accounts since the last examination (describe process and findings);

G. determine that general ledger supporting accounts are promptly reconciled and appropriateness of reconciling items, and account makeup (describe process and findings);

H. determine that the board is reviewing delinquent loans and collection action taking place (show frequency of review);

I. determine when the board last reviewed the allowance for loan loss account and the basis on which the funding determination was made;

J. determine that the board has approved charge off loans, that charge off notes and files are secure, and that IRS Forms 1099C have been prepared where appropriate;

K. sample loan files for documentation and approvals required by loan policy (describe sample methodology and findings);

L. determine that an internal audit function exists regarding the electronic data processing system or computer applications and that procedures are in place for authorizing input data and master file changes and consider the effect of a service organization on the bank's internal control system and, if applicable, obtain an auditor's report on the policies and procedures in operation at the service organization;

M. examine significant activity in employee and officer accounts (depository and loan) for propriety and compliance with bank policies and regulations (describe process and findings); and

N. determine that off-balance sheet items have been authorized and detail items that may have a material impact on the condition of the financial institution.

Subp. 2. [Repealed, 14 SR 517]

Subp. 3. **Preparation.** A written report of the annual examination must be prepared and must include the scope of the examination including the size of the samplings taken. The report must summarize the findings and make recommendations for improving conditions, where appropriate.

Subp. 4. **Transmittal.** The written report shall be transmitted to the board of directors within 30 days of completion of the annual examination.

Subp. 5. **Board response.** The board shall prepare a written response on the findings and recommendations contained in the report and submit the response, the report, and its findings and recommendations to the Department of Commerce, Division of Financial Examinations, within 60 days of receipt of the report.

The board response shall be filed with the annual examination report as part of the bank's permanent records.

Statutory Authority: *MS s 45.023; 46.01*

History: *12 SR 623; 21 SR 1778*

2675.2620 QUALIFICATIONS OF EXAMINING AUTHORITY.

Subpart 1. **Board to specify examining authority.** The board shall have the discretion to determine the method of examination used to meet the requirements of this part provided the examination is accomplished through one of the methods in subparts 2 to 5.

Subp. 2. **Examining committee.** If the requirements of this part are to be accomplished in whole or in part by an examining committee appointed by the board, the annual examination must be completed by qualified directors or their appointees who are in fact reasonably independent. A director or appointee serving as a member of the examining committee will not be considered independent if:

A. the person is closely related to active officers or employees of the bank;

B. the person has outstanding loans with the bank subject to criticism by state or federal supervisory agencies; or

C. the person has other unusual relationships or affiliations with the bank that raise the question of independence.

Subp. 3. **Internal auditor.** If the requirements of this part are to be accomplished in whole or in part by an internal auditor, the examination must be completed by a qualified internal auditor who is in fact reasonably independent. An internal auditor will not be considered independent if:

A. the person is employed or accountable to anyone other than the board of directors, and salary and annual bonus are not set by the board, unless the person is employed by the institution's holding company;

B. the person's duties within the bank are not confined entirely to bank auditing;

C. the person has any proprietary interest in any partnership, firm, or corporation which controls the bank, directly or indirectly;

D. the person has outstanding loans subject to criticism by state or federal supervisory agencies;

E. the person is a member of the immediate family of an officer, director, attorney, or employee for the bank; or

F. the person has other unusual relationships or affiliations with the bank that raise the question of independence.

In banks of less than \$50,000,000 in total assets as of the immediately preceding calendar year end, where duties of the internal auditor cannot be confined entirely to bank auditing, the internal auditor will be considered reasonably independent only if someone else audits the areas for which the internal auditor has operational responsibilities. The board is responsible for determining that this degree of internal audit dependence is maintained.

Subp. 4. **Certified public accountants or licensed public accountants.** If the requirements of this part are to be accomplished in whole or in part by a certified public accountant or licensed public accountant, the examination must be completed by a qualified certified public accountant or a qualified licensed public accountant who is in fact independent. A certified public accountant or licensed public accountant will not be considered independent if:

A. The certified public accountant, licensed public accountant, or any member of a firm performing the examination is connected with the bank as an officer, director, attorney, or employee or is a member of the immediate family of an officer, director, bank attorney, or employee.

B. He or she is the beneficial owner, directly or indirectly, of any of the shares of stock of the bank.

C. He or she has any proprietary interest in any partnership, firm, or corporation which controls the banks, directly or indirectly.

D. The bank under examination has outstanding loans to the certified public accountant, licensed public accountant, partners, principals of the firm, or employees of such a firm who are directly involved in the examination, unless the loans are adequately disclosed in the examination report to the board of directors of the bank. Adequate disclosure includes the name of the borrower, the amount of the loan, the security pledged, and the appraisal or market value of the security at the time of the engagement.

E. He or she makes entries or postings on the books of account or performs any other operating functions for the bank, except functions for which prior approval was requested and obtained in writing from the commissioner of commerce.

F. He or she has other unusual relationships or affiliations with the bank that raise the question of independence.

In circumstances where directors, appointees, or the internal auditor are considered not independent or qualified to perform the annual examination, the board should engage a certified public accountant or licensed public accountant.

Subp. 5. **Board of directors.** If the requirements of this part are to be accomplished by the board of directors as provided in Minnesota Statutes, section 48.10, the board must number at least five and include at a minimum one outside director.

Subp. 6. [Repealed, 21 SR 1778]

Statutory Authority: *MS s 45.023; 46.01*

History: *12 SR 623; 20 SR 168; 21 SR 1778*

2675.2630 OPINION AUDIT.

Subpart 1. **Request by commissioner.** The board of directors of institutions covered by parts 2675.2600 to 2675.2630 will engage an independent certified public accountant to provide an opinion audit on the financial statements of the institution, any or all of its subsidiaries, or a consolidated opinion audit on the institution taken as a whole when requested to do so by the commissioner of commerce. The commissioner shall make a request under this subpart if any of the following conditions exist:

A. the commissioner has reason to believe that generally accepted accounting principles (GAAP) are not being followed and failure to properly apply such accounting principles may have a material impact on the presentation of the bank's statement of financial condition;

B. the bank maintains a subsidiary or subsidiaries as provided in Minnesota Statutes, section 48.61, subdivision 7, and the commissioner has reason to believe that the activities or financial condition of the subsidiary or subsidiaries may have a material impact on the financial condition of the bank; or

C. suspected criminal activity has been reported and certainty of the financial impact on the bank is unknown.

Subp. 2. **Issuance of no opinion.** In the event of material issues leading to the issuance of a qualified or no opinion on an engagement referenced in subpart 1, the board shall direct immediate action to correct deficiencies preventing the issuance of an unqualified opinion.

Subp. 3. **Satisfaction of annual examination report requirement.** An unqualified opinion audit on the financial statement of the institution or a consolidated opinion audit on the institution taken as a whole will satisfy the annual examination report requirements of part 2675.2610, subpart 1. However, documentation of internal audit procedures performed in testing the internal control system, part 2675.2600, must be maintained by the bank for inspection by the supervisory examiners and external auditors.

Statutory Authority: *MS s 45.023*

History: *21 SR 1778*

2675.2640 AGREED UPON PROCEDURES EXAMINATION.

The board of directors shall engage an independent certified public accountant to conduct an agreed upon procedures examination when requested to do so by the commissioner of commerce. When requested by the Department of Commerce, the engagement letter must be forwarded to the department for acceptance and approval before the examination is performed. The commissioner shall make a request under this part if any of the following conditions exist:

A. bank management has not established a written internal control system;

B. bank management has not issued a report to the board describing the scope of coverage and effectiveness of the internal control system in the immediate 18-month period prior to the request;

C. documentation of internal audit procedures performed in testing the internal control system for the immediate 18-month period prior to the request is not evident; or

D. the commissioner, through reports received from examiners, has reason to believe that:

- (1) the bank is a victim of insider abuse; or
- (2) the bank's records show unauthorized expense items.

Statutory Authority: *MS s 45.023*

History: *21 SR 1778*

SAVINGS ASSOCIATIONS

2675.3100 LIQUIDITY.

Subpart 1. **Ratio.** An association shall maintain a liquidity ratio based upon its cash and obligations of the United States or this state, or in obligations of political subdivisions of this state, in an amount equal to a percentage from four percent up to eight percent of its outstanding withdrawable shares as the commissioner of commerce may determine at least semiannually. Each state chartered association shall be notified, by first class mail, of the liquidity ratio required for each semiannual period within 15 working days of the end of the preceding period. Semiannual periods shall end on June 30 and December 31 of each year. Such association shall also be notified immediately, by first class mail, of a change in the required liquidity ratio established at any time other than the end of a semiannual period.

Subp. 2. **Definitions.** Definitions:

A. The term "cash" means cash on hand and cash invested in or on deposit in banks, including the Federal Home Loan Bank, and in other savings associations, which is not pledged as security for indebtedness.

B. The term "obligations of the United States or this state" means all unpledged evidences of indebtedness assumed by the United States or the state of Minnesota or any of its political subdivisions and all unpledged evidences of indebtedness assumed by any agency or instrumentality of the United States or of the state of Minnesota or any of its political subdivisions, which are by statute fully guaranteed as to principal and interest.

Statutory Authority: *MS s 51A.42 subd 3*

History: *L 1983 c 289 s 114 subd 1; L 1984 c 655 art 1 s 92; L 1995 c 202 art 1 s 25*

2675.3110 MORTGAGE LOANS.

A separate individual record shall be kept of each mortgage loan. Only such advances or charges as are provided for in the loan contract and/or those specifically provided for in Minnesota Statutes, section 51A.38 may be added to the loan balance.

The loan record shall show the contractual status as to delinquency or advance payment in dollars and cents at the close of each six month accounting period. Advances charged to the loan and not repaid will be reflected in the delinquency.

An attorney's opinion or title insurance policy will be required with all loans, which opinion or policy should show the status of fee title and whether or not the association has a first valid lien on the property.

Statutory Authority: *MS s 51A.42 subd 3*

2675.3120 OTHER REAL ESTATE.

When real estate is acquired through foreclosure or by deed in lieu thereof, it shall be transferred to an account entitled "other real estate" on the date the association actually acquires title.

"Other real estate" cannot be entered on the books of an association at an amount greater than the balance of the principal amount of the loan at the time of acquisition, plus foreclosure costs and delinquent taxes and assessments paid at time of acquisition.

A separate record of each parcel shall be kept which will show among other things the legal description, the balance due on the principal debt, the cost of foreclosure, delinquent taxes, or other costs of acquisition, subsequent additions, if any, charge-offs, and final disposition.

No cost of repairs or cost of restoration of property may be added to the real estate account except such expenditures as represent permanent improvements.

No additions to book value may be made after the date of sale in cases of foreclosure, except as noted in the previous sentence. If deed is taken in lieu of foreclosure, real estate must be carried at a figure not exceeding the balance due on the mortgage, plus taxes and assessments paid by the association other than taxes which were current when deed was obtained.

When "other real estate" is sold on a contract for deed, the parcel involved shall be transferred to an account entitled "real estate contracts."

When sales are made at prices in advance of the book value of real estate, the profit involved shall be considered a deferred profit and held in a reserve account and only credited to actual profits after 33-1/3 percent of the purchase price has been paid on the contract, excluding interest payments.

Statutory Authority: *MS s 51A.42 subd 3*

2675.3130 PARCELS OF UNSOLD "OTHER REAL ESTATE."

Parcels of unsold "other real estate."

A. Parcels of "other real estate," not yet sold on contract for deed, must be charged off against the legal reserve account annually at the rate of at least five percent of the original amount. The first charge-off for each parcel must be made not later than 12 months after the date of acquisition.

B. In lieu of item A, and if an association chooses to establish a specific reserve for losses for the excess book value of unsold real estate parcels based on dated and signed appraisals by the association of qualified appraisers at the time the association acquires each parcel, it may do so by transferring these amounts from the legal reserve account. If said parcels of other real estate continue to remain unsold and when due passage of years prove the specific reserve for losses to be insufficient based on annual multiples of five percent of the original amount, as the case may be, the association shall then begin annual transfers, as provided in item A, to the specific reserve account from the legal reserve account.

Statutory Authority: *MS s 51A.42 subd 3*

2675.3140 SHARES.

Any association issuing shares by series shall keep an individual record of each certificate issued, adequate to show each payment made thereon, and at the close of each accounting period to show the value to date, the dividend credited, and the delinquent or advance payments in dollars and cents. Red figures will indicate delinquency. Black figures will indicate advance payments.

When a bonus agreement is entered into in connection with any share account the share record shall show, in addition to the customary record and stipulated monthly payment, the amount of "bonus dividend" allocated to the account, and for each and every month the amount the account is delinquent or paid in advance.

Statutory Authority: *MS s 51A.42 subd 3*

2675.3150 INTEREST EARNED BUT NOT COLLECTED.

When interest on loans is calculated and added to the loan balance, and if all or part of such interest is not paid, such amount must be set up as "interest earned but not collected" at time of adjusting the loan balance and can only be transferred to interest received after being actually paid by the borrower.

Statutory Authority: *MS s 51A.42 subd 3*

2675.3155 SURETY BONDS.

Subpart 1. **Minimum coverage.** Each association shall maintain bond coverage with a bonding company acceptable to the commissioner of commerce, and such bond shall

be in form known as "standard form no. 22" or its equivalent or in other form acceptable to the commissioner of commerce. The bonds shall cover each director, officer, employee, and agent who has control over or access to cash or securities of such association. Such coverage shall be maintained in the minimum amount set forth below, computed on a base consisting of the total assets of the savings association, as follows:

Base	Minimum Bond
Not over \$300,000	\$15,000 plus \$7,500 for each \$100,000 or fraction thereof over \$100,000
\$300,001 to \$1,000,000	\$45,000 plus \$15,000 for each \$100,000 or fraction thereof over \$400,000
\$1,000,001 to \$10,000,000	\$150,000 plus \$30,000 for each \$1,000,000 or fraction thereof over \$2,000,000
\$10,000,001 to \$30,000,000	\$450,000 plus \$60,000 for each \$5,000,000 or fraction thereof over \$15,000,000
\$30,000,001 to \$60,000,000	\$705,000 plus \$75,000 for each \$10,000,000 or fraction thereof over \$40,000,000
\$60,000,001 to \$100,000,000	\$945,000 plus \$90,000 for each \$15,000,000 or fraction thereof over \$70,000,000
\$100,000,001 and over	\$1,230,000 plus \$105,000 for each \$25,000,000 or fraction thereof over \$125,000,000

Subp. 2. **Deductible amounts.** No association shall be required to maintain such bond coverage in an amount greater than \$3,000,000. Such bond coverage may contain provision for a deductible amount from any loss which, except for such deductible provision, would be recoverable from the bonding company. A deductible shall not be in excess of the following amounts in relation to the following bond bases:

Base	Permissible Deductible
Under \$1,000,000	\$ 500
\$ 1,000,001 to \$ 10,000,000	1,000
10,000,001 to 50,000,000	1,500
50,000,001 to 100,000,000	2,500
100,000,001 to 150,000,000	5,000
150,000,001 to 200,000,000	7,500
200,000,001 and over	10,000

The permissible deductible amount specified in this paragraph may be increased by an association to a maximum of three times the above-specified permissible amount whenever losses under the bond exceed 50 percent of the premium payable for the current premium term. A deductible amount may be applied separately to one or more insuring agreements. The bond shall not provide that there may be more than one deductible amount from all losses caused by the same person or caused by the same persons acting in collusion or combination in cases in which such losses result from dishonesty of employees (as defined in the bond).

Subp. 3. **Coverage of service organizations.** If the accounting records of an association are maintained and serviced by a data processing organization, that

organization, while performing such data processing services, must be covered as an employee under the association's bond.

A service corporation of an association shall maintain such bond coverages as may be appropriate considering the nature of its activities and the practice of other corporations engaged in similar activities.

Statutory Authority: *MS s 51A.42 subd 3*

History: *L 1983 c 289 s 114 subd 1; L 1984 c 655 art 1 s 92*

2675.3160 BRANCH OFFICES.

Subpart 1. **Authorizing resolution.** A savings association may make an application to establish a branch office. The application must be in writing in the form prescribed by the Department of Commerce and submitted to the commissioner of commerce.

Subp. 2. **Summary denial.** The commissioner shall deny such application if it is determined that any of the following conditions exist:

A. the location of the proposed branch office is more than 100 miles from home office of the association on the effective date of this part;

B. the commissioner has granted, within one year preceding the filing of the application, another application by the association under this section for a certificate authorizing it to establish a branch office;

C. the commissioner has denied, other than summarily, within one year preceding the filing of the application, another application by the association under this part for a certificate authorizing it to establish a branch office at the same location or within the immediate vicinity thereof; or

D. the association has filed with the commissioner another application for a certificate authorizing it to establish a branch office with respect to which action by the commissioner is pending.

If the commissioner summarily denies such application, the commissioner shall serve the order of summary denial upon the association by mail at its principal place of business.

Subp. 3. **Hearing.** If the application is not summarily denied, the commissioner shall fix the time, within 60 days after the filing of the application, for a hearing at the commissioner's office to decide whether or not the application shall be granted. Notice of the hearing shall be published in the form prescribed by the commissioner in some newspaper published in the municipality in which the proposed branch office is to be located, and if there is no such newspaper, then at the county seat of the county in which the branch office is proposed to be located. The notice shall be published once, at the expense of the association, not less than 15 days nor more than 30 days prior to the date of the hearing. At the hearing the commissioner shall consider the application and hear such witnesses as may appear in favor of or against the granting of the application.

Subp. 4. **Criteria for granting.** If upon the hearing it appears to the commissioner that there is a reasonable public demand for the branch office in the location specified by the application, that there is a reasonable probability of its usefulness and success, that it can be established without undue injury to the properly conducted, existing financial institutions in the locality, and that it will be properly and safely managed, the application shall be granted; otherwise it shall be denied.

Subp. 5. **Written denial.** If the application is denied, the commissioner shall, not later than 60 days after the hearing, make an order in writing to that effect, specifying the ground for denial and forthwith give notice thereof by registered mail to the association, at its principal place of business; and, thereupon, the commissioner shall refuse to issue a certificate of authorization to the association.

Subp. 6. **Authorizing certificate.** If upon hearing it shall appear to the commissioner of commerce that the application shall be granted, the commissioner shall not later than 60 days after the hearing issue a certificate authorizing the association to establish

a branch office at the location stated in the application, subject to such conditions as the commissioner may deem necessary. After the issuance of the certificate of authorization by the commissioner, it shall be filed for record with the secretary of state and with the county recorder of the county of the principal place of business of the association and also with the county recorder of the county in which said branch office is to be located, if different from that of the principal place of business of the association.

Subp. 7. Deadline. If a branch office is not opened for business to the public within 12 months following the date of issuance by the commissioner of the certificate authorizing its establishment, unless extended by order of the commissioner for a period not exceeding an additional 12 months, said certificate shall become void.

Statutory Authority: *MS s 46.01 subd 2; 51A.42 subd 3*

History: 9 SR 1337; L 1983 c 289 s 114 subd 1; L 1984 c 655 art 1 s 92; 17 SR 1279

2675.3170 BOOKS, RECORDS, AND REPORTS.

An association shall keep a complete set of books and records and shall keep the commissioner of commerce advised at all times of the address at which they are maintained. Any association receiving recordkeeping services from another association or from a service corporation shall provide the following:

A. a certificate from the association receiving such services, stating that it will comply with the provisions of Minnesota Statutes, sections 46.04 and 51A.42 and giving full assurance that the performance of such recordkeeping services by the other association, or the respective clerical service corporation (name of either to be given), will be subject to Department of Commerce rules in the same manner as if such services were being performed by the association itself and on its own premises; and

B. a certificate to be furnished by the association furnishing such clerical services, or the clerical service corporation, agreeing as to performing such services as outlined in Minnesota Statutes, sections 46.04 and 51A.42 that its performance thereof will be subject to regulation and examination by the commissioner of commerce to the same extent as if such services were being performed by the serviced association itself on its own premises.

Statutory Authority: *MS s 51A.42 subd 3*

History: L 1983 c 289 s 114 subd 1; L 1984 c 655 art 1 s 92

2675.3180 INVESTMENT RECORDS.

Subpart 1. Requirements. During the period in which investments are carried on an association's books, it shall be required that:

A. original invoices of bond purchases and sales be retained as a part of the records of an association;

B. a record be maintained of all securities bought and sold, showing date of purchase or sale, interest rate, maturity, par value, description, from whom purchased, to whom sold, selling price, and where deposited for safekeeping;

C. any investment, other than U.S. governments direct and/or guaranteed, shall be supported by full credit information at the time of purchase (dealer's circular or prospectus).

Subp. 2. Purchase exceeding par. Purchase of a security at a price exceeding par is prohibited, unless the association shall:

A. charge off the premium when the securities are placed on the books; or

B. provide for the regular amortization of the premium paid, so that the premium shall be entirely extinguished at or before the maturity of the security and the security (including premium) shall at no intervening date be carried at an amount in excess of that at which the obligor may legally redeem such security; or

C. set up a reserve account to amortize the premium, said account to be credited periodically with an amount not less than the amount required for amortization under item B; and

D. accrued interest paid on securities must be charged to interest received, and bond commissions and all costs of sales or purchases must be charged to expense.

Subp. 3. **Purchase less than par.** Upon the purchase of a security at a price less than par, the association shall place such security on its books at cost and may provide for the regular accretion of the discount, ratably over the period from purchase to maturity of the security.

Statutory Authority: *MS s 51A.42 subd 3*

2675.3190 CHARTER.

The charter must be framed and hung in a conspicuous place in the main lobby of the association's office.

Statutory Authority: *MS s 51A.42 subd 3*

LICENSED REGULATED LENDERS

2675.4100 LICENSED OFFICE.

No application for a loan shall be taken, nor shall any note evidencing the loan obligation be signed, nor shall the proceeds of any loan be paid to a borrower at any other place than that named in the license; except that a renewal note to evidence the unpaid balance of an existing loan and other instruments given to secure said balance, may be taken outside of the office of the licensees, and in loan transactions where there is more than one signer only one thereof shall be required to sign in the office of the licensee; provided, however, that this part shall not apply to loans consummated by mail.

Statutory Authority: *MS s 56.21*

2675.4110 MAXIMUM LOAN APPLIES TO MULTIPLE OFFICES.

Licensees shall not induce or permit any borrower to become obligated, directly or contingently, for a total amount in excess of maximum limit stated in Minnesota Statutes, section 56.131 on loans obtained from two or more licensed offices operated in Minnesota by the same individual, partnership, affiliated partnership, corporation, or affiliated corporation. Licensees shall take reasonable precautions to prevent borrowers from obtaining amounts in excess of the maximum limit in this manner.

Statutory Authority: *MS s 56.21*

2675.4140 LICENSEES TO BE RESPONSIBLE FOR ACTS OF ASSIGNEES.

Subpart 1. **Notification.** Within ten days after the transaction date, licensees shall notify the commissioner of commerce of the bulk purchase of loan accounts made pursuant to the Minnesota Regulated Loan Act from another licensee or person authorized by the Minnesota Regulated Loan Act to engage in this business without necessity of a license and of the bulk sale of loan accounts to another licensee or person authorized by the Minnesota Regulated Loan Act to engage in this business without necessity of a license. Notices of the purchase and sale of accounts shall state the name and address of the licensee or person from whom accounts are being purchased, to whom accounts are being sold, and shall state the total number of accounts and the total outstanding principal balances involved.

Subp. 2. **Disposition of loan accounts to unlicensed persons.** Licensees shall not make a bulk sale or otherwise dispose of loan accounts made pursuant to the Minnesota Regulated Loan Act to any person not licensed under or authorized to engage in this business without necessity of a license by the Minnesota Regulated Loan Act unless prior approval is obtained from the commissioner of commerce. The privilege of receiving the charges allowed by the Minnesota Regulated Loan Act cannot

be transferred to an unlicensed purchaser or purchaser not authorized to engage in this business without necessity of a license and all loans sold, assigned, or transferred to a nonlicensee or unauthorized person shall be endorsed to bear interest at a rate not to exceed the maximum legal contract rate of interest. This subpart does not apply to a transfer of loan accounts made pursuant to the Minnesota Regulated Loan Act that is involuntary or by operation of law.

Statutory Authority: *MS s 56.21*

History: *L 1983 c 289 s 114 subd 1; L 1984 c 655 art 1 s 92*

2675.4150 MANAGEMENT AND CONTROL.

Subpart 1. **License criteria.** Licenses are issued after consideration of the experience, character, and general fitness of the officer or manager in charge of the licensed office.

Subp. 2. **Change of managing officer.** Changes of such managing officer which occur must be reported promptly, in writing, to the commissioner of commerce, in advance of the effective date of change when circumstances permit, but in any event within ten days of such transfer.

Statutory Authority: *MS s 56.21*

History: *L 1983 c 289 s 114 subd 1; L 1984 c 655 art 1 s 92*

2675.4160 TRANSFERRED ACCOUNTS.

The original ledger card or record of payments on any transferred regulated loan must be retained in the transferring licensed regulated loan office for at least two years from the date of transfer.

Statutory Authority: *MS s 56.21*

2675.4170 COMPUTING DATE AND TIME.

For the purpose of computing elapsed periods of time, a month shall be considered a calendar month and, where a fraction of a month is involved, a day shall be considered 1/30 of a month. The method employed must count only 30 days for any full calendar month elapsed but count the actual days in any fractional month period. A full calendar month is the period from a given date in one month to the same numbered date in the following month and in case there is no same numbered date in the following month, to the last day in the following month. In any period extending beyond one or more full months, the one or more full months fall at the start of the period and the fractional month at the end.

Statutory Authority: *MS s 56.21*

2675.4180 REFUND OF UNEARNED INTEREST.

The refund of unearned precomputed interest shall be computed as of the next installment date on any regulated loan prepaid in full by cash, a new loan, renewal, refinancing, or otherwise if prepaid when:

A. 15 days or more have elapsed after a scheduled installment due date in any month where the actual number of days in the interval between the scheduled installment dates totals 28 or 29 days; or

B. 16 days or more have elapsed after a scheduled installment due date in any month where the actual number of days in the interval between the scheduled installment dates totals 30 or 31 days; or

C. when fewer days than described in item A or B have elapsed the refund shall be computed as of the prior due date.

Statutory Authority: *MS s 56.21*

INDUSTRIAL LOAN AND THRIFT COMPANIES

2675.5100 BOOKS AND RECORDS.

Subpart 1. **Minimum requirements.** In order to facilitate a satisfactory examination by the commissioner of commerce or the commissioner's representatives, each industrial loan and thrift company shall maintain such books and records as are deemed necessary, and a monthly trial balance as of the close of the accounting period to be in the branch office within 25 days.

Subp. 2. **Additional requirements.** The principal office of each industrial loan and thrift company in this state shall maintain the following additional books and records:

A. a consolidated monthly trial balance as of the close of the accounting period to be in the principal office within 25 days;

B. copies of the corporate stock register;

C. copies of all corporate insurance policies and surety bonds, as required by part 2675.5120; and

D. copies of the minutes of all the annual, regular, and special meetings of the board of directors and stockholders.

Subp. 3. **Retention period.** Unless otherwise provided, all legal instruments, supporting documents, and ledger cards or record of payments shall be maintained in the office for at least two years after recording the final entry on them.

Statutory Authority: *MS s 46.01*

History: *L 1983 c 289 s 114 subd 1; L 1984 c 655 art 1 s 92*

2675.5110 CASH DIVIDENDS.

No industrial loan and thrift company which sells certificates of indebtedness to the public for investment purposes shall pay a cash dividend to its stockholders until written approval for such payment has been obtained from the commissioner of commerce. Banks requesting information that will be required for the approval of dividends will be supplied by the division upon request.

Statutory Authority: *MS s 46.01*

History: *L 1983 c 289 s 114 subd 1; L 1984 c 655 art 1 s 92*

2675.5120 SURETY BONDS AND INSURANCE.

Each industrial loan and thrift company shall provide adequate corporate surety bond coverage on all its officers and employees having access to cash or other assets of the company. They shall also provide other types of insurance that may be deemed necessary.

Statutory Authority: *MS s 46.01*

2675.5130 MANAGEMENT.

Subpart 1. **License criteria.** Certificates of authorization are granted after consideration of the experience, character, and general fitness of the officer or manager in charge of the licensed office.

Subp. 2. **Change of managing officer.** Changes of such managing officer which occur must be reported promptly, in writing, to the commissioner of commerce, in advance of the effective date of change when circumstances permit, but in any event within ten days of such transfer.

Statutory Authority: *MS s 46.01*

History: *L 1983 c 289 s 114 subd 1; L 1984 c 655 art 1 s 92*

CREDIT UNIONS

2675.6100 BOOKS, RECORDS, AND REPORTS.

Subpart 1. [Repealed, 9 SR 2105]

Subp. 2. **Data processing off premises.** Any credit union receiving recordkeeping services from another credit union or from a service corporation shall provide a certificate from the other credit union or service corporation, stating its agreement to perform the services in compliance with Minnesota Statutes, section 52.06. The certificate must acknowledge that it is subject to regulation and examination to the same extent as if the services were being performed by the credit union on its premises.

Subp. 2a. **Daily closing.** Credit unions that maintain in excess of \$500,000 in accounts subject to draft withdrawal shall post all assets and liabilities daily.

Subp. 3. **Semiannual audit.** The supervisory committee shall file a report in duplicate on forms furnished by the Department of Commerce, within 30 days after the date of each semiannual audit.

Subp. 4. **Commingled funds.** All cash receipts and assets of the credit union must be kept intact and separate from other funds.

Subp. 5. [Repealed, 9 SR 2105]

Subp. 5a. **Statement of accounts.** A statement of account that itemizes all transactions must be issued at least monthly for sharedraft accounts. A statement must be issued at the end of a dividend period on all other accounts, except that a statement need not be issued more often than quarterly and must be issued at least annually.

Subp. 5b. **Inactive accounts.** If the board determines that an account is inactive and identifies the account by code or some other means, it must be issued a statement at least annually. Statements on inactive accounts must be issued under the control of the supervisory committee.

Subp. 5c. **Passbooks.** When issued, passbooks must show the current position of shares, deposits, and loans. The credit union shall annually notify members to bring passbooks into the credit union office for current posting. A credit union may not hold a passbook.

Subp. 6. **Issuing account numbers.** A number as determined by the board of directors in a predetermined set pattern must be assigned to each member upon election to membership and that number may never be reissued to another member. Each member's assigned number must appear on the member's individual record of accounts for shares, deposits, and loans.

Statutory Authority: *MS s 45.023; 46.01*

History: *9 SR 2105; 17 SR 1279; 18 SR 1472*

2675.6110 PURCHASE OF REAL ESTATE.

A credit union may not purchase real estate other than for credit union premises.

Statutory Authority: *MS s 46.01 subd 2*

History: *9 SR 2105*

2675.6111 INVESTMENTS IN CREDIT UNION PREMISES.

Investments in credit union premises or leasehold investments may not exceed 50 percent of total reserves of the credit union unless the Department of Commerce grants a prior approval.

Statutory Authority: *MS s 46.01 subd 2*

History: *9 SR 2105*

2675.6120 OTHER REAL ESTATE.

Subpart 1. **Transfers.** Whenever real estate is acquired by a credit union through foreclosure or by deed in lieu of foreclosure, it must be transferred from loans to an

account titled "Other Real Estate" on the date of sheriff's certificate or other conveyance.

Subp. 2. **Repair and restoration costs.** Costs of repairs and costs of restoration of the property may not be added to the real estate account, unless the expenditures are for permanent improvements. Taxes delinquent when title is acquired may, when paid by the credit union, be added to the book value of the property.

Subp. 3. **Additions to book value.** Additions to book value may not be made after the date of sale in cases of foreclosure except as noted in subpart 2. If a deed is taken in lieu of foreclosure, real estate must be carried at a figure not exceeding the balance due on the mortgage, plus delinquent taxes and assessments paid by the credit union at the time of acquiring title.

Subp. 4. **Sale of other real estate.** A credit union may finance the sale of other real estate or credit union premises under the terms and conditions available to any seller or owner of real property. A profit on the sale of other real estate sold on contract is considered deferred profit and must be held in reserve to be realized after two consecutive years of contracted payments have been made.

Subp. 5. [Repealed, 18 SR 1472]

Subp. 6. **Unsold other real estate.** Other real estate that is not sold must be charged off annually through earnings at the rate of at least ten percent of the original amount. The charge-off period begins at the end of the redemption period if the other real estate was acquired through foreclosure or on the date of the deed if the other real estate was acquired via a deed in lieu of foreclosure. The first charge off shall be prorated based upon the number of full months in the first year since the charge-off period began.

Statutory Authority: *MS s 45.023; 46.01*

History: *9 SR 2105; 18 SR 1472*

2675.6130 [Repealed, 9 SR 2105]

2675.6140 [Repealed, 9 SR 2105]

2675.6141 REAL ESTATE MORTGAGES.

Subpart 1. **Loans.** Credit unions may make loans upon the security of real estate if it is a first lien on the real estate. Additionally, credit unions may take a junior lien if the loan is made:

A. to secure debts previously contracted;

B. if at least 80 percent of the principal balance is guaranteed or insured by a governmental agency or nationally recognized insurer; or

C. to secure a loan if the total unpaid aggregate of all outstanding liens against the same real estate, including the credit union's proposed lien, does not exceed 80 percent of its appraised value. A loan made under Minnesota Statutes, section 52.165, is deemed to comply with this part if it was in compliance at the date of its origination.

Subp. 1a. **Written policy.** A credit union taking a lien on real estate as security must maintain a written policy approved annually by its board of directors which at a minimum addresses:

A. written appraisal or valuation reports made in conjunction with federal, state, and board requirements;

B. description of fee title, validity of the credit union's lien, position of the lien, and documentation of methods used to make these determinations;

C. evidence of adequate insurance with loss payable clause payable to the credit union; and

D. exemption of documentation requirements, for any single loan or class of loans, if the loan documents reflect that the lien has been taken as collateral solely

through an abundance of caution and where the terms of the transaction as a consequence have not been made more favorable than they would have been in the absence of a lien.

Subp. 2. [Repealed, 18 SR 1472]

Subp. 3. [Repealed, 18 SR 1472]

Subp. 4. [Repealed, 18 SR 1472]

Subp. 5. [Repealed, 18 SR 1472]

Subp. 6. [Repealed, 18 SR 1472]

Statutory Authority: *MS s 45.023; 46.01*

History: *9 SR 2105; 18 SR 1472*

2675.6142 LOANS.

Subpart 1. **Fees.** As specified by board resolution, a credit union may require members to pay fees in connection with the making, closing, disbursing, extending, readjusting, or renewing of any loan. The board resolution establishing the fees to be retained by the credit union must be conspicuously posted at the principal office of the credit union for so long as the fees are in effect.

Subp. 1a. **Other charges.** The borrower may be charged, or included in the amount financed, the premium on any life, accident and health, property, or other insurance written upon or in connection with a loan if notification is given in writing that the borrower has the option of furnishing this coverage through existing policies of insurance owned or controlled by the borrower or furnishing the coverage through any insurer authorized to transact business in this state. The premium may not be included as part of the loan and must be accounted for as a separate receivable unless advanced as part of the principal at the time of origination or payments are increased to provide amortization of the premium within the original maturity of the loan.

Subp. 2. [Repealed, 18 SR 1472]

Subp. 3. **Written policy.** A written loan policy is required to be reviewed and approved annually by the board. A detailed description of the frequency and depth of financial review of various classes of loans must be included in the policy.

Statutory Authority: *MS s 45.023; 46.01*

History: *9 SR 2105; 17 SR 1279; 18 SR 1472*

2675.6143 DELINQUENT LOANS.

Subpart 1. **Installment loans.** A note due on a monthly installment basis must be scheduled for delinquency. The whole principal balance is considered past due if any portion of an installment remains unpaid 60 days after the scheduled payment date. Delinquent loans must be shown by categories coded as follows:

- A. 60 days to 180 days, code A;
- B. 181 days to 364 days, code B; and
- C. 365 days or more, code C.

Subp. 2. **Single payment loans.** A single payment loan is considered past due the next day after maturity and must be coded past due from that date according to the schedule in subpart 1.

Subp. 3. **Extensions.** A loan is not considered current by extension unless accrued interest has been paid to the date of extension. Special consideration for unusual circumstances affecting the general membership may be permitted by a detailed application to the Department of Commerce.

Subp. 4. **Delinquent loan report.** Each credit union board will develop and implement a program to ensure that the board is kept informed on the status of delinquent loans and collection actions monthly.

Subp. 5. [Repealed, 18 SR 1472]

Subp. 5a. **Loan reserve requirements and dividends.** Before declaration of a dividend, the board of directors shall ascertain that:

A. the allowance for a loan losses account is funded as determined by the board's internal risk rating system to present fairly the financial position and meet the requirements of the agreement for insurance of accounts; and

B. that statutory reserve transfers are made in accordance with statute.

Notification to the commissioner of commerce of dividends paid will be required if the dividends paid exceed earnings for the period declared. Accrual accounting adjustments may be made for those credit unions operating on a cash, modified cash, or partial accrual account basis.

Subp. 6. **Interest earned not collected.** Interest earned not collected reflected on a credit union's books under the accrual method of accounting may not be continued on a loan which is more than 90 days delinquent. Accrued interest must be reversed to earnings or undivided profits at the time a loan is charged off to the statutory reserve fund or at the time an allowance for loan losses is established.

Statutory Authority: *MS s 45.023; 46.01*

History: 9 SR 2105; 18 SR 1472

2675.6150 [Repealed, 9 SR 2105]

2675.6160 [Repealed, 9 SR 2105]

2675.6170 [Repealed, 9 SR 2105]

2675.6180 BOARD OF DIRECTORS.

Subpart 1. **Change.** Notice of any change in officers, directors, or committee members between annual meetings must be forwarded to the Department of Commerce within ten days of the effective date of the change.

Subp. 2. **Review of examiner's report.** When the examiner's report is received by a credit union, it must be reviewed by the board of directors at a regular or special meeting and a reply must be submitted to the Department of Commerce within 60 days of the receipt of the report or as instructed in the transmittal letter. The letter from the Department of Commerce which accompanies the report must also be read at the directors' meeting.

Subp. 3. [Repealed, 9 SR 2105]

Subp. 4. **Minute book.** The minutes of any meeting must be written up as soon as practicable and signed by the secretary and the presiding officer at the next meeting upon approval. The minutes must be kept in a book and be available along with the credit union records for inspection by the commissioner of commerce or representatives at all times with or without previous notice.

Statutory Authority: *MS s 46.01 subd 2*

History: 9 SR 2105; 17 SR 1279

2675.6190 [Repealed, 9 SR 2105]

2675.6200 [Repealed, 18 SR 1472]

2675.6210 ASSET RECEIPT.

Whenever it becomes necessary to remove any asset from the files for any reason whatsoever, a properly executed receipt attached to a copy of the asset must replace it.

Statutory Authority: *MS s 46.01 subd 2*

History: 9 SR 2105

2675.6220 CHARGED OFF ASSETS.

A record of all assets charged off, either to the statutory reserve fund or undivided earnings, along with recoveries thereto must be maintained. This record must be available to the examiners at each examination.

Statutory Authority: *MS s 46.01 subd 2*

History: 9 SR 2105

2675.6230 FURNITURE AND FIXTURES ACCOUNT.

Purchases capitalized to the furniture and fixtures account shall be amortized at the minimum rate of ten percent annually, unless exception is made by the commissioner of commerce. The charge off may be based on the number of full months in which the item was capitalized. Adequate records must be maintained to facilitate a determination of the unamortized amount of each capitalized item.

Statutory Authority: *MS s 46.01 subd 2*

History: 9 SR 2105

2675.6240 [Repealed, 9 SR 2105]**2675.6250 FIDELITY BONDS.**

Subpart 1. **Requirements.** A credit union operating under Minnesota law is required to be protected by a blanket bond with the following provisions: all officers, committee members, employees, bank messengers, and attorneys representing the credit union shall be covered by the bond. The credit union shall be protected against losses from a lack of honesty, burglary or robbery, forgery or alteration, and misplacement or mysterious and unexplainable disappearance. The bond must be approved by the Department of Commerce. The bond must provide that the commissioner of commerce will be given notice of pending cancellation within 60 days of final termination.

Subp. 2. [Repealed, 9 SR 2105]

Subp. 3. **Minimum provisions.** The board of directors shall at least once a year approve the amount of fidelity insurance to be carried for the ensuing year.

Statutory Authority: *MS s 45.023; 46.01*

History: 9 SR 2105; 18 SR 1472

2675.6260 [Repealed, 18 SR 1472]**2675.6270 INVESTMENTS.**

Subpart 1. **Records required.** During the period in which investments are carried on a credit union's books, original invoices of bond purchases and sales must be retained as a part of the records of a credit union.

A record must be maintained of all securities bought and sold showing date of purchase or sale, interest rate, maturity, par value, description, from whom purchased, to whom sold, selling price, and where deposited for safekeeping.

Any investment, other than United States governments direct and/or guaranteed, must be supported by full credit information at the time of purchase (dealer's circular or prospectus).

Subp. 2. **Bond price exceeding par.** Purchase of a bond at a price exceeding par is prohibited, unless the credit union shall:

A. charge off the premium when the securities are placed on the books;

B. provide for the regular amortization of the premium paid so that the premium shall be entirely extinguished at or before the maturity of the security and the security (including premium) shall at no intervening date be carried at an amount in excess of that at which the obligor may legally redeem such security; or

C. set up a reserve account to amortize the premium, said account to be credited periodically with an amount not less than the amount required for amortization under item B.

Subp. 3. **Charges.** Accrued interest paid on securities must be charged to interest received under the cash basis of accounting. Bond commissions and all costs of sales or purchase must be charged to expense.

Subp. 4. **Security at price less than par.** Upon the purchase of a security at a price less than par, the credit union shall place the security on its books at cost and may provide for the regular accretion of the discount, ratably over the period from purchase to maturity of the security.

Statutory Authority: *MS s 46.01 subd 2*

History: 9 SR 2105

2675.6280 [Repealed, 9 SR 2105]

2675.6290 INSURANCE.

Subpart 1. **Insurance agency.** A credit union may establish, operate, or maintain an insurance agency as a separate corporation or agency within its physical premises.

Subp. 2. **Policyholder.** A credit union may be the policyholder of either a group insurance plan or a subgroup under a master policy plan.

Subp. 3. **Remission of premiums.** Premiums may be remitted by the credit union to an insurer or the holder of a master policy on behalf of a credit union member provided that the credit union has obtained written authorization from the member.

Subp. 4. **Election by member.** Where a credit union is engaged in the facilitation of its members' voluntary purchase of insurance incidental to the borrowing of money, including but not limited to fire, theft, automobile, life, and temporary disability insurance, a member shall be given the elective of purchasing any required insurance from the vendor of the member's choice, and the members' file shall contain the signed written elective.

Subp. 5. **Canceled insurance.** If the insurance is canceled, the unearned premium shall be paid to the member or credited to the member's share or deposit or loan account.

Statutory Authority: *MS s 46.01 subd 2*

History: 9 SR 2105; 17 SR 1279

2675.6300 [Repealed, 9 SR 2105]

2675.6301 [Repealed, 18 SR 1472]

2675.6400 SELECT GROUP IDENTIFICATION.

Subpart 1. **Select group identification.** A select group is one that:

A. has a common bond as defined in Minnesota Statutes, section 52.05, subdivision 1; and

B. cannot feasibly form and maintain a credit union with its own membership, but desires to join an existing credit union.

Subp. 2. **Application procedure.** Residents of this state may apply to be a select group by including the following information in writing:

A. the basis on which the undersigned residents or individuals represent the select group;

B. a description of the basis of common bond affinity of the members of the petitioning group consistent with Minnesota Statutes, section 52.05, subdivision 1;

C. if the members of the group are part of an existing credit union, a waiver or consent from the board of directors of the existing credit union that states that the

credit union has no objection to the applicants' certification as a select group eligible to petition another existing credit union for membership; and

D. a count or reasonable estimate of the potential numbers of the group, the basis on which the potential number was determined, and a statement whether the group is aware of any existing credit union service available to the group. This statement is solely for informational use by the department.

Subp. 3. Groups with fewer than 1,500 potential members. Groups with fewer than 1,500 potential members will be considered too small to be feasible as a separate credit union unless the requirements of subpart 1 are satisfied and:

A. the group desires to form its own credit union; or

B. the group cannot obtain an agreement from an existing credit union to be part of it.

Subp. 4. Groups with more than 1,500 potential members. A group with more than 1,500 potential members will also be considered as a select group if it otherwise can comply with subpart 1.

Subp. 5. Approval. Upon receipt of an application from a group, the commissioner shall, within 30 days of receipt of the application, approve or disapprove it. If disapproved, the commissioner shall provide the applicants with a written explanation on which the denial was based. The commissioner may ask for additional information or statements at any time before the application is considered complete. All group applications, except for applications from groups made up of members of existing credit unions or groups made up of people who have a common employer which qualifies them for membership in an existing credit union, will be considered separately from any consideration of the membership provisions of existing credit unions.

Subp. 6. Subsequent action by an existing credit union. For an existing credit union to qualify for approval of a bylaw amendment to include an eligible select group in its field of membership, in addition to the requirements in Minnesota Statutes, section 52.02, the existing credit union must be capable of serving the eligible select group, and the commissioner shall require:

A. the existing credit union and representatives of the eligible group to agree on and submit a plan of operation to facilitate servicing of the members of the eligible select group for the commissioner's consideration on a case by case basis; and

B. a statement that the existing credit union will not solicit individuals to join the select group.

Statutory Authority: *MS s 45.023; 52.05*

History: *14 SR 1717*

DEBT PRORATING COMPANIES

2675.7100 SURETY BOND.

Subpart 1. Minimum amount. The corporate surety bond shall be for an amount not less than \$5,000 but, at the discretion of the commissioner of commerce, may be at least equal to the largest amount which may or has accrued in the trust account during the year. Securities in excess of a minimum of \$5,000 surety bond, which are acceptable to the commissioner, may be forwarded for deposit with the state treasurer as additional surety, provided prior approval has been obtained.

Subp. 2. Form and expiration. The surety bond shall be executed on forms provided by the commissioner and shall expire simultaneously with the license.

Statutory Authority: *MS s 332.15 subd 5; 332.25*

History: *L 1983 c 289 s 114 subd 1; L 1984 c 655 art 1 s 92*

2675.7110 REPORT TO COMMISSIONER.

Each debt prorating company shall annually, on or before the 15th day of February, file a report as of December 31 with the commissioner of commerce

containing such information as the commissioner may require. Such reports shall be made on the form prescribed by the commissioner.

Statutory Authority: *MS s 332.22 subd 1; 332.25*

History: *L 1983 c 289 s 114 subd 1; L 1984 c 655 art 1 s 92*

2675.7120 CONTRACT REQUIREMENTS.

Each contract entered into by the licensee and the debtor must be in writing and signed by both parties. The licensee shall provide the debtor with a copy of the signed contract.

The contract shall set forth the following items which shall be made a part thereof:

- A. the names and addresses of the licensee and the debtor;
- B. all debts which are to be managed by the licensee, including the name of the creditor and the amount of the debt;
- C. in clear and precise terms, payments and time of payments reasonably within the ability of the debtor to pay;
- D. the dollar charges agreed upon for the services of the lender as provided under Minnesota Statutes, section 332.23; and
- E. the terms upon which the debtor may cancel the contract as set out in Minnesota Statutes, section 332.23.

Statutory Authority: *MS s 332.25*

2675.7130 OFFICE RECORDS AND PROCEDURES.

Subpart 1. **Basics.** Office records shall be maintained in each individual office and shall include the following:

A. a ledger card for each account which must contain at least the following information:

- (1) name, address, and account number of the debtor;
 - (2) date debtor entered into the plan, schedule of payments, and amount of the initial indebtedness;
 - (3) name, address, account number, and initial amount due each creditor;
 - (4) date, name, address, account number, and initial amount due each creditor under a separate and additional contract;
 - (5) amount, date, and receipt number of each payment received from the debtor;
 - (6) source and nature of unusual payments received from or on behalf of the debtor;
 - (7) date, amount, check number, and current balance due each creditor;
- and
- (8) balance in escrow after payment.

B. a receipt for all payments received from a debtor or other person on behalf of the debtor; the receipt shall be:

- (1) prenumbered by the printer;
- (2) issued in duplicate, one copy to the payor and one copy filed in consecutive, numerical order in the licensed office; and
- (3) given or sent immediately to the payor, or maintained in the debtor's file and attached to the next quarterly statement sent to the debtor.

Subp. 2. **Trust funds.** In addition to the requirements of subpart 1, each office shall comply with the following:

A. All payments received from a debtor or on behalf of a debtor shall be deposited into a separate trust account daily in an approved bank and such funds shall not be commingled with the licensee's own property or funds.

B. The trust fund account must be reconciled monthly with the canceled checks together with voided or unused checks filed in numerical order after the monthly statement has been reconciled. All trust fund checks must be prenumbered by the printer.

C. The licensee's own operating bank account must be reconciled monthly and proper records maintained, but not commingled with the trust account record.

D. A daily receipts and disbursements journal shall be maintained showing receipt of all debtor payments as well as the disbursement of these payments.

E. Accounting records must be maintained which show daily debtor payments received, disbursement to creditors, fees collected, and money held in escrow.

F. A scrapbook containing copies of all advertising promulgated by or for each office including radio and television scripts.

G. A statement, as required under Minnesota Statutes, section 332.22, shall be delivered to each debtor for the quarters ending March 31, June 30, September 30, and December 31, within 20 days following the end of the quarter; upon cancellation or termination of the contract; or upon receipt of a written request from or on behalf of a debtor and a duplicate copy of any such statement maintained in the debtor's file.

H. Documents or records shall be maintained for each debtor indicating steps taken to obtain consent of all creditors; notice to the debtor of the right to cancel the contract for failure to obtain the consent of all creditors; and notice to all creditors of the debtor's cancellation of the contract.

Subp. 3. **Variances.** Any variation of these standard procedures or records that prevent the licensee from maintaining the required records must be first approved, in writing, by the commissioner of commerce.

Statutory Authority: *MS s 332.25*

History: *L 1983 c 289 s 114 subd 1; L 1984 c 655 art 1 s 92*

2675.7140 FEES.

The origination fee may not exceed \$25 but shall not be collected unless there is a valid contract with a written budget analysis indicating that the debtor can reasonably meet the requirements of the financial adjustment plan and will be benefited by the plan.

No additional charges, such as filing wage assignments, purchasing money orders, dishonored checks, telephone calls, or telegrams are allowed.

No cancellation fee is allowed.

Statutory Authority: *MS s 332.25*

ELECTRONIC FUNDS TRANSFER TERMINALS

2675.8100 DEFINITIONS.

Subpart 1. **Scope.** Terms in parts 2675.8100 to 2675.8190 that are defined in Minnesota Statutes, sections 47.61 to 47.74, have the meanings given them. For the purpose of Minnesota Statutes, sections 47.61 to 47.74, and parts 2675.8100 to 2675.8190, the terms defined in this part have the meanings given them.

Subp. 2. **Act.** "Act" means Minnesota Statutes, sections 47.61 to 47.74.

Subp. 3. **Card.** "Card" means the access device used to activate a terminal, including a credit card or debit card. "Card" does not include an access device issued by a government agency solely for the purpose of electronic benefit transfer programs or stored value cards, except that a stored value card that also serves as an access device for electronic terminal transactions is considered to be a card to the extent it performs the functions of a credit card or debit card.

Subp. 4. **Card issuer.** "Card issuer" means a financial institution or a person authorized by a financial institution providing the use of a terminal to a customer to be activated by a card.

Subp. 5. **Control.** "Control" means the ownership of greater than 50 percent interest in the terminal or terminals; or any leasehold interest in the terminal or terminals; or the power to act as agent or card issuer authorized by those persons having ownership or leasehold interests in the terminal or terminals for purposes of the act and parts 2675.8100 to 2675.8190. No agency agreement effects transfer of control from an owner or leasehold interest unless the agreement is in writing and provides for assumption of all of the responsibilities and requirements of the act and parts 2675.8100 to 2675.8190 by the agent. If the agent is a financial institution, the agent is not required in the agreement to assume any responsibilities or requirements under the act or parts 2675.8100 to 2675.8190 which do not apply to terminals directly owned by financial institutions. If the agent is a national bank, federal savings association, or federal credit union, parts 2675.8100 to 2675.8190 apply to the extent permitted by federal law.

Subp. 6. **Customer.** "Customer" means any person who has established a contractual relationship with a financial institution whereby that person is authorized to initiate any of those transactions permitted to be performed under the act at a terminal.

Subp. 6a. **Establish and maintain.** "Establish and maintain" means making electronic financial terminal operations available to customers or card issuers on terms and conditions provided in the act and parts 2675.8100 to 2675.8190 by reason of having control over a terminal.

Subp. 7. **Operator.** "Operator" means any person who assists in the initiation of terminal transactions on behalf of a customer. Operator does not include an employee of a financial institution, financial institution holding company or subsidiary thereof or the customer.

Subp. 8. **Person.** "Person" means any individual, body politic or corporate, partnerships, or other unincorporated associations.

Subp. 9. **Personal identification code.** "Personal identification code" is the confidential code provided to the customer which is necessary to the completion of a transaction at a terminal.

Subp. 10. **Provider.** "Provider" means the person or persons having control over a terminal under the act.

Subp. 11. **Terminal.** "Terminal" means an electronic financial terminal as defined in the act and does not include communication systems such as telephones with digital screens, personal computers, or interactive television possessed by and operated exclusively by the customer whether or not it is used to accept the disclosures required by part 2675.8160.

Subp. 12. **Transaction.** "Transaction" means each separate, identifiable financial function performed at a terminal as authorized under the act.

Subp. 13. **Unauthorized withdrawal.** "Unauthorized withdrawal" is a withdrawal by a person other than the customer without actual authority to initiate the withdrawal, and from which the customer receives no benefit. The term does not include any withdrawal that is initiated:

A. by a person who was furnished with the card by the customer, unless the customer has notified the financial institution involved that the transfers by that person are no longer authorized;

B. with fraudulent intent by the customer or any person acting in concert with the customer; or

C. by the financial institution or its employee.

Statutory Authority: *MS s 45.023; 47.71*

History: 22 SR 1711

2675.8110 AUTHORITY, SCOPE, AND PURPOSE.

Minnesota Statutes, section 47.71, authorizes the commissioner of commerce to promulgate rules as are reasonably necessary to carry out and make effective the provisions and purposes of the act. Parts 2675.8100 to 2675.8190 relate to the operation of electronic funds transfer terminals and the manner and information required in the submission of applications for authorization, establish minimum technical operation standards, and require disclosure of information to customers using such terminals. Parts 2675.8100 to 2675.8190 establish an application procedure and guide to standards considered reasonable to accomplish the purposes of the act. Further, the act mandates the promulgation of rules to inform, guide, and protect consumers, retailers, and financial institutions in the utilization of electronic financial terminal systems. Parts 2675.8100 to 2675.8190 further set out specific requirements concerning the issuance of cards, disclosures of pertinent required information, and reporting of data relating to financial transactions initiated at electronic financial terminals.

Statutory Authority: *MS s 45.023; 47.71*

History: *L 1983 c 289 s 114 subd 1; L 1984 c 655 art 1 s 92; 22 SR 1711*

2675.8120 APPLICATION FOR AUTHORIZATION.

Any person, other than a state or federal savings association, savings bank or credit union, or state or national bank, seeking approval to establish and maintain a terminal or terminals at a specific location shall, not less than 45 days before the establishment of the terminal or terminals, file with the commissioner an application in a form provided by the commissioner entitled "Electronic Financial Terminal Authorization Application." Such application shall include the following information:

A. name and principal address of the controlling person filing the application;
B. the name and principal address of any other person or persons having control thereof, if other than the applicant;

C. descriptive information, including the number of terminals applied for, the location of each terminal by street address or other designation (including city and county);

D. whether the terminal will be attended or unattended and, if attended, by whose employees or agents as operators;

E. the transactions to be performed at the terminal;

F. schedule of charges to be paid to the provider by those financial institutions sharing the terminal or terminals;

G. a complete description of the physical and technical operation standards pertaining to the terminal, including information and specifications necessary to enable a financial institution that is eligible to share the terminal to obtain interface with the terminal, which description may be limited to the manufacturer, model number, and type of the terminal after a model of a terminal has been certified by the commissioner;

H. operational information, including the manner in which the terminal is activated, anticipated hours of use, anticipated date of first use of the terminal following approval by the commissioner;

I. all agreements used or intended to be used relating to the ownership, operation, and control of the terminal;

J. a description of the safeguards to be used to meet the terminal security requirements of Minnesota Statutes, section 47.68;

K. a description of the procedures to be used to meet the customer privacy requirements of Minnesota Statutes, section 47.69, subdivision 1;

L. a description of the procedures to be used to minimize losses due to unauthorized withdrawals from customer accounts by use of a terminal as required by Minnesota Statutes, section 47.69, subdivision 3, including procedures:

(1) for the use of a personal identification code as a means of verification of the authenticity of transactions to be completed at a terminal; and

(2) that prevent the personal identification code from being implemented or made available to the customer until the financial institution issuing the card has received the customer's signed contract or the card has been validated according to the procedures for issuance of access devices in Code of Federal Regulations, title 12, part 205.5, Electronic Fund Transfers;

M. evidence of the bond or other means adopted to comply with Minnesota Statutes, section 47.64, subdivision 5; and

N. certification under oath by the applicant that all requirements of the act and of parts 2675.8100 to 2675.8190 pertaining to the provider of a terminal shall be met and shall be observed.

Statutory Authority: *MS s 45.023; 47.62; 47.71*

History: 22 SR 1711

2675.8130 NOTICE TO COMMISSIONER.

Notice to commissioner:

A. The commissioner shall be given written notice by the applicant not less than 30 days prior to the change of control or change of the operator of any terminal or terminals. For purposes of this item, "operator" does not include individual employees of a provider or retailer.

B. The commissioner shall be given written notice by the applicant of the termination of terminal operations at the location authorized not more than ten days after termination of all regulated activity.

C. The commissioner shall be given written notice by the applicant within 15 days following the date on which the applicant relocated an existing terminal less than three miles from its prior location.

Statutory Authority: *MS s 45.023; 47.62; 47.71*

History: 22 SR 1711

2675.8140 [Repealed, 22 SR 1711]

2675.8150 [Repealed, 22 SR 1711]

2675.8160 CUSTOMER DISCLOSURE REQUIREMENTS.

Subpart 1. **Disclosure information.** Pursuant to Minnesota Statutes, section 47.69, the following information shall be disclosed in writing or by electronic communications agreed to by the customer and by the card issuer to its customer at the time the card is issued or in the event cards meeting the requirements of the act and parts 2675.8100 to 2675.8190 are outstanding (this disclosure shall be made before the customer is allowed to use a terminal):

A. the types of financial transactions available through the use of the terminal;

B. the schedule of charges made by the financial institution for the customer's use of the terminal;

C. any restrictions or limits on the number of transactions or dollar value limits that may be imposed upon the customer by the card issuer;

D. the frequency for sending periodic transaction statements to the customer;

E. the procedure to be used to give notice of error to the card issuer (said disclosure shall include the manner in which notice of error is to be filed and with whom it is to be filed, and shall include the mailing address and telephone number of the person to whom notice may be given);

F. the specific manner in which the agreement under which a card was issued may be terminated, either by the card issuer or by the customer;

G. the customary time needed to complete terminal transactions with the financial institution clearly stating differential in time if any between the various permitted transactions initiated at a terminal;

H. where payment for goods or services is made by a transfer of funds through a terminal: whether the transaction may be reversed by the customer, the procedure by which the transaction may be reversed, and a statement that the payment for goods or services made in this manner shall not affect any of the rights, protections, or liabilities in existing law concerning a cash or credit sale made by means other than through the use of a terminal;

I. a statement that the financial institution shall be liable for all unauthorized withdrawals unless the unauthorized withdrawal was due to the loss or theft of the customer machine readable card, in which case the customer shall be liable, subject to a maximum liability of \$50, for those unauthorized withdrawals made prior to the time the financial institution is notified of the loss or theft. The limitation on liability is effective only if the card issuer is notified of unauthorized charges contained in a bill within 60 days of receipt of the bill by the person in whose name the card is issued;

J. a statement that any customer may bring a civil action against any person violating the consumer privacy and unauthorized withdrawal provisions of the act and may recover, in addition to actual damages, or \$500, whichever is greater, punitive damages, together with the court costs and reasonable attorney's fees incurred; and

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

Subp. 2. **Type sizes.** All information required to be disclosed by subpart 1 shall be printed or displayed in not less than eight-point type, .075 inch computer type, or elite size typewritten characters.

Subp. 3. **Listing.** A directory listing as permitted under the act shall be made available by the applicant at the location of the terminal identifying the financial institutions using its services.

Statutory Authority: *MS s 45.023; 47.69; 47.71*

History: *17 SR 1279; 22 SR 1711*

2675.8170 TRANSACTION STATEMENT.

A financial institution shall provide each customer with a periodic transaction statement at least quarterly. The statement shall include, but need not be limited to, the following: date of transaction, amount of each transaction, and type of each transaction, which may be in clear and understandable abbreviations or codes.

Statutory Authority: *MS s 47.71*

2675.8180 ADVERTISING, EXCEPTIONS.

For purposes of Minnesota Statutes, section 47.67, notices on the site of a terminal intended to inform the customer of the operational characteristics, source of assistance or service, or fees or charges relating specifically to the use of the terminal are not considered prohibited advertising.

Statutory Authority: *MS s 45.023; 47.71*

History: *22 SR 1711*

2675.8190 OTHER PERMISSIBLE ACTIVITIES, ELECTRONIC BENEFITS TRANSFER, CONSUMER CONVENIENCE SERVICES.

The limitation on the financial transactions authorized to be performed at a terminal does not prohibit using the terminal's capability to:

A. dispense funds authorized and initiated by a government agency solely for the purpose of electronic benefit transfer purposes; or

B. deliver other consumer convenience services. These consumer convenience services include, but are not limited to, services that affect the payment for and dispense postage stamps, tickets, coupons, phone cards, or other media under agreements with affiliated or nonaffiliated businesses.

Statutory Authority: *MS s 45.023; 47.71*

History: *22 SR 1711*

2675.9910 [Repealed, 9 SR 2105]