

Banking

CHAPTER 46

BANKING DIVISION

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46.01 POWERS.

Subdivision 1. The banking division shall have charge of the execution of all laws relating to state banks, savings banks, trust companies, savings associations, and other financial institutions organized under the laws of this state, and the business thereof.

Subd. 2. The commissioner of banks may promulgate rules as necessary to administer or execute the laws relating to financial institutions subject to his supervision or examination.

History: 1909 c 201 s 1; 1977 c 272 s 1 (5320)

46.02 [Superseded by Laws 1925 c 426]

46.03 SEAL OF DIVISION.

The commissioner of banks, in Minnesota Statutes, Chapters 46 to 59, called the commissioner, shall devise a seal for the use of his office, which shall continue to be the seal of the division of banking. A description of the seal; with an impression thereof, shall be filed in the office of the secretary of state.

History: 1909 c 201 s 3; 1949 c 533 s 1 (5322)

46.04 COMMISSIONER; POWERS.

Subdivision 1. The commissioner of banks, referred to in Minnesota Statutes, Chapters 46 to 59, as the commissioner, is vested with all the powers, authority, and privileges which, prior to the enactment of Laws 1909, Chapter 201, were conferred by law upon the public examiner, and he or she shall take over all duties in relation to state banks, savings banks, trust companies, savings associations, and other financial institutions within the state which, prior to the enactment of chapter 201, were imposed upon the public examiner. The commissioner of banks shall exercise a constant supervision, either personally or through the examiners herein provided for, over the books and affairs of all state banks, savings banks, trust companies, savings associations, credit unions, industrial loan and thrift companies, and other financial institutions doing business within this state; and shall, through examiners, examine each financial institution at least once annually. In satisfying this examination requirement, the commissioner may

accept reports of examination prepared by a federal agency having comparable supervisory powers and examination procedures. With the exception of industrial loan and thrift companies which do not have deposit liabilities and small loan companies, it shall be the principal purpose of these examinations to inspect and verify the assets and liabilities of each and so far investigate the character and value of the assets of each institution as to determine with reasonable certainty that the values are correctly carried on its books. Assets and liabilities shall be verified in accordance with methods of procedure which the commissioner may determine to be adequate to carry out the intentions of this section. It shall be the further purpose of these examinations to assess the adequacy of capital protection and the capacity of the institution to meet usual and reasonably anticipated deposit withdrawals and other cash commitments without resorting to excessive borrowing or sale of assets at a significant loss, and to investigate each institution's compliance with applicable laws and regulations. Based on the examination findings, the commissioner shall make a determination as to whether the institution is being operated in a safe and sound manner. None of the above provisions limits the commissioner in making additional examinations as deemed necessary or advisable. The commissioner shall investigate the methods of operation and conduct of these institutions and their systems of accounting, to ascertain whether these methods and systems are in accordance with law and sound banking principles. The commissioner may make requirements as to records as deemed necessary to facilitate the carrying out of his or her duties and to properly protect the public interest. The commissioner may examine, or cause to be examined by these examiners, on oath, any officer, director, trustee, owner, agent, clerk, customer, or depositor of any financial institution touching the affairs and business thereof, and may issue, or cause to be issued by the examiners, subpoenas, and administer, or cause to be administered by the examiners, oaths. In case of any refusal to obey any subpoena issued under the commissioner's direction, the refusal may at once be reported to the district court of the district in which the bank or other financial institution is located, and this court shall enforce obedience to these subpoenas in the manner provided by law for enforcing obedience to subpoenas of the court. In all matters relating to his official duties, the commissioner of banks has the power possessed by courts of law to issue subpoenas and cause them to be served and enforced, and all officers, directors, trustees, and employees of state banks, savings banks, trust companies, savings associations, and other financial institutions within the state, and all persons having dealings with or knowledge of the affairs or methods of these institutions, shall afford reasonable facilities for these examinations, make returns and reports to the commissioner of banks as the commissioner may require; attend and answer, under oath, the commissioner's lawful inquiries; produce and exhibit any books, accounts, documents, and property as the commissioner may desire to inspect, and in all things aid the commissioner in the performance of his or her duties.

Subd. 2. With respect to specific transactions between a bank holding company and a state bank affiliate, the commissioner of banks shall have the authority to examine the records of such holding company that directly pertain to such transactions to the same extent such holding company were a state bank or trust company. For purposes of this subdivision, a bank holding company is defined as a company registered as such with the Federal Reserve System pursuant to the Bank Holding Company Act of 1956, as amended.

History: 1909 c 201 s 4; 1943 c 12 s 1; 1957 c 601 s 25; 1963 c 153 s 1; 1977 c 272 s 2; 1979 c 229 s 1; 1980 c 604 s 1; 1981 c 182 s 1; 1981 c 220 s 1 (5323)

46.05 SUPERVISION OVER FINANCIAL INSTITUTIONS.

Every state bank, savings bank, trust company, savings association, and other financial institutions shall be at all times under the supervision and subject to the

control of the commissioner of banks. If, and whenever in the performance of his duties, the commissioner finds it necessary to make a special investigation of any financial institution under his supervision, and other than a complete examination, he shall make a charge therefor to include only the necessary costs thereof. Such a fee shall be payable to the commissioner on his making a request for payment.

History: 1909 c 201 s 5; 1965 c 171 s 2; 1977 c 272 s 3 (5324)

46.06 REFUSAL TO OBEY DIRECTIONS OF COMMISSIONER.

Every person who shall refuse or neglect to obey any lawful direction or order of the commissioner of banks; withhold any information, book, record, paper or other thing called for by him for the purpose of examination and ascertaining the true condition of the corporation; wilfully obstruct or mislead him in the execution of his duties, or falsely swear concerning any matter stated under oath, shall be guilty of a felony; the minimum penalty thereof shall be a fine of \$1,000, or imprisonment in the Minnesota correctional facility-Stillwater for one year.

History: 1909 c 201 s 6; 1979 c 102 s 13 (5325)

46.07 RECORDS.

Subdivision 1. The commissioner of banks shall keep all proper records and files pertaining to the duties and work of his office.

Subd. 2. **Confidential records.** The commissioner shall divulge facts and information obtained in the course of examining financial institutions under his supervision only when and to the extent that he is required or permitted by law to report upon or take special action regarding the affairs of an institution, or to testify in a criminal proceeding or in a court of justice, except that he may, in his discretion, furnish information as to matters of mutual interest to an official or examiner of the federal reserve system, the federal deposit insurance corporation, or the national credit union administration. The commissioner shall not be required to disclose the name of a debtor of a financial institution under his supervision, or anything relative to the private accounts, ownership, or transactions of an institution, or any fact obtained in the course of an examination thereof, except as herein provided. These records are classified confidential for purposes of the Minnesota government data practices act and their destruction, as prescribed in section 46.21, shall be exempt from the provisions of chapter 138 and Laws 1971, Chapter 529, so far as their deposit with the state archives.

History: 1909 c 201 s 7; 1921 c 250 s 1; 1955 c 847 s 6; 1967 c 102 s 1; 1969 c 1129 art 4 s 8; 1971 c 9 s 1; 1982 c 473 s 2 (5326)

46.08 EMPLOYEES.

Subdivision 1. **Assistant commissioner, examiners and other employees.** The commissioner of banks may appoint an assistant commissioner and such examiners, assistant examiners, stenographers, and such other employees as may be necessary to carry out the duties and responsibilities entrusted to him, subject to such rules and regulations as may be established by civil service with regard to qualifications and general fitness. The assistant commissioner and examiners shall each give bond to the state in the sum of \$10,000 and the other employees, whenever so provided, shall each give bond to the state in such sum as may be designated by the commissioner of banks; all such bonds to be approved by the commissioner of banks and filed in the office of the secretary of state. During the absence or disability of the commissioner of banks said assistant commissioner shall have charge of the office and administer its affairs. Such examiners shall confine their work to those institutions which are subject to the supervision of the commissioner of banks and may be transferred from one supervisory district to

another at the option of said commissioner when it shall appear that the interest of the division of banking shall be better served by so doing.

Subd. 2. Examiner in charge of liquidation. The commissioner of banks may appoint an examiner in charge of liquidation and such special deputy examiners and other employees as are needed by him in the liquidation of banks. The certificates of appointment of the examiner in charge of liquidation, and of such special deputy examiners shall be filed in the office of the commissioner of banks and a certified copy thereof shall be filed in the office of the secretary of state and in the office of the clerk of the district court of the county in which the principal office of the bank concerned was located. The qualifications of such examiner in charge of liquidation and special deputy examiners shall be the same as prescribed in subdivision 1 of this section for examiners. The commissioner of banks may from time to time authorize any such special deputy examiner to perform such duties connected with such liquidation and distribution as he may deem proper. The commissioner of banks shall require from the examiner in charge of liquidation and each special deputy examiner such bond for the faithful discharge of his duties as he may deem proper. The commissioner of banks may procure such expert assistance as may be necessary in the liquidation and distribution of the assets of such bank and may retain such of its officers or employees as he may deem necessary.

Subd. 3. Examiners not to examine institutions in which they have a financial interest. No examiner shall have the right to examine any bank, savings bank or other financial corporation in which he may have an interest, either directly or indirectly.

History: 1909 c 201 s 8; 1919 c 121; 1921 c 42; 1923 c 371 s 1; 1943 c 442 s 1; 1957 c 601 s 3; 1959 c 88 s 2 (5327)

46.09 STATE BANKING DIVISION EXAMINERS OR EMPLOYEES NOT TO MAINTAIN INTEREST IN SUPERVISED INSTITUTIONS.

Subdivision 1. Prohibition. No person who is an examiner or other officer of the division of banking shall be interested, either directly or indirectly, as a stockholder, director, officer, trustee, assignee, employee, or otherwise, in a bank, savings bank, trust company, financial institution, or corporation holding the stock of any such corporation within this state, or which carries on a banking business within this state, either directly or indirectly, or through an affiliated group or chain bank operating within this state. The provisions of this subdivision do not apply to the commissioner of banks.

Subd. 2. Exceptions. Officers and examiners of the division of banking may:

- (1) maintain a demand or trust account in any financial institution;
- (2) maintain a savings, time or share account in any financial institution;
- (3) transact business with any national bank, federally chartered savings and loan association or federally chartered credit union;
- (4) transact business with any financial institution or licensee subject to the examination by the commissioner of banks to the extent the transaction is on the same terms, conditions and to the same extent available to all other customers of the financial institution or licensee.

Subd. 3. Loans and credit advances. The exceptions created in subdivision 2 do not include a loan or advance of credit from a financial institution or licensee subject to examination by the commissioner of banks. A transaction not specifically exempt by subdivision 2, clauses (1) to (3), is subject to disclosure to the

commissioner of banks at his request to determine if a conflict of interest exists or interest contemplated by subdivision 1.

History: 1915 c 164 s 1; 1931 c 43 s 1; 1977 c 272 s 4; 1981 c 31 s 1; 1982 c 473 s 3 (5328)

46.10 PENALTY FOR VIOLATION.

Any person violating the provisions of section 46.09 shall be disqualified from holding any office or employment in the division of banking and shall be removed from such office or employment by the commissioner of banks immediately upon knowledge of the violation.

History: 1931 c 43 s 2 (5328-1)

46.11 EXAMINERS' DISTRICTS.

For the purpose of the better administration of his department, the commissioner of banks shall divide the counties of the state into as many districts for the purpose of supervision as may be practical, taking into consideration the volume of work represented and the number of examiners or assistants available, and shall also designate the district in which each of the examiners or assistants appointed under the provisions of section 46.08 shall make examinations. In arranging the districts, the commissioner of banks shall also consider the matter of convenience and economy as much as possible in covering the same by examiners.

History: 1909 c 201 s 9; 1959 c 88 s 3 (5329)

46.12 REPORTS OF EXAMINERS.

Each examiner appointed under Laws 1909, Chapter 201, as amended, shall make report to the commissioner of banks immediately after the completion of an examination of the actual financial condition of the institution examined, with such recommendations and suggestions as he may deem advisable.

History: 1909 c 201 s 10 (5330)

46.13 [Repealed, 1965 c 475 s 4]

46.131 EXAMINATION FEES FOR FINANCIAL INSTITUTIONS.

Subdivision 1. Examination fees of the division of banking shall be assessed against financial institutions in accordance with the provisions of this section.

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

Subd. 3. A proportionate share of all annual office expenses of the commissioner of banks and the portion of the general support costs of the department of commerce and of the cost of services provided by the attorney general that is attributable to the commissioner of banks, as well as all actual expenses of the examiners in the field, excepting salaries, shall be allocated to each industry affected, and referred to in subdivision 4, as assessments and on the basis of the total time devoted to each.

Subd. 4. Assessments shall be made by the commissioner against each institution within the industry on an equitable basis, according to the total assets of each institution as of the end of the previous calendar year.

Subd. 5. If the income from the fees provided for herein during any fiscal year shall be more than 103 percent of such expenditures for that year, any excess above such sum of 103 percent may be carried over to succeeding years in order to cover any deficit below 103 percent which may occur in such succeeding years. If the income from the fees provided for herein during any fiscal year shall produce less than the expenditures for that year, the division in adjusting its schedule of fees for use in the next fiscal year shall fix the fees so as to produce income in the amount of the expenditures for the latter year plus the amount of the difference between the expenditures for the first year referred to herein and the total income from such fees during the year and plus three percent of the total expenditures for both the latter and the first year referred to herein.

Subd. 6. [Repealed, 1981 c 220 s 18]

Subd. 7. Such assessments shall be levied on July 1, 1965, and at the beginning of each fiscal period beginning July 1 and ending June 30 thereafter, and shall be based on the total estimated expense as herein referred to during such period.

Subd. 8. In addition to such assessments, each institution referred to in subdivision 2, with the exception of credit unions under \$25,000, shall pay an examination fee upon the request of the commissioner and to be based on the salary cost of examiners or assistants, and at such an average rate per man day or fraction thereof so as to provide for the total cost of such examinations.

Subd. 9. These assessments or fees shall be paid by the institution examined within 20 days after a statement of the amount has been submitted to the institution examined by the commissioner of banks and, if not so paid, shall bear interest at the discount rate charged member banks for borrowing from the Federal Reserve Bank. The penalty shall be payable to the commissioner on request.

Subd. 10. Each financial institution described in subdivision 2 shall pay a fee of \$25 to the commissioner of banks upon application to the commissioner for approval of a change in its certificate, charter, articles of incorporation, bylaws, powers or license. Money collected by the commissioner under this subdivision shall be deposited in the general fund.

History: 1965 c 475 s 1; 1967 c 102 s 2,3; 1977 c 272 s 5,6; 1981 c 220 s 2,3; 1981 c 357 s 29

46.14 EXAMINERS' POWERS ENLARGED.

The examiner in charge of liquidation in the banking division of the department of commerce is hereby authorized to sign the name of the commissioner of banks and to act for him in all matters connected with the liquidation of insolvent corporations under the supervision and control of the commissioner of banks, with the same force and effect as though the commissioner himself had signed or acted; provided, that the examiner shall have no authority to order an assessment against the stockholders of an insolvent state bank or trust company under the provisions of Laws 1927, Chapter 254, as amended.

History: 1931 c 137 (5332-1)

46.15 CERTAIN SECURITIES DEPOSITED WITH STATE TREASURER.

All securities required or permitted by law to be assigned to and deposited with the commissioner of banks for any purpose shall hereafter be assigned to and deposited with the state treasurer, who shall give his receipt therefor, and this receipt shall be filed with the commissioner of banks, in lieu of the securities, and in this case neither the commissioner of banks nor his bondsmen shall be

responsible for the safe-keeping of these securities, and the state treasurer shall perform all the duties with regard to the safe-keeping of these securities which the commissioner of banks is now required to perform, and the state treasurer shall be subject to the same obligations and under the same liability, with reference to the safe-keeping of these securities, as the commissioner of banks. The state treasurer shall accept, release, surrender, and permit substitutions of securities assigned to and deposited with him under the provisions of Laws 1923, Chapter 155, upon order of the commissioner of banks.

History: 1923 c 155 s 1 (5334)

46.16 [Repealed, 1951 c 713 s 37]

46.17 SALARY OF EXAMINER IN CHARGE OF LIQUIDATION.

The commissioner of banks shall fix the salary of the examiner in charge of liquidation appointed by him, but not to exceed the salary of a bank examiner in the classified service of the state and the same shall be paid out of the funds of banks in the hands of the commissioner of banks for liquidation.

History: 1913 c 400 s 1; 1933 c 232 s 2; 1959 c 88 s 4 (252(9))

46.21 DESTRUCTION OF CERTAIN RECORDS.

Subdivision 1. **Reports, correspondence.** After ten years, the commissioner of banks may dispose of any examination report, call report of the condition of state banks, earnings and dividend report, oath of office of director, examining committee report, or any correspondence with reference to any examination report. After a period of two years the commissioner of banks need not retain the examiner's original pencil copy of any examination report.

Subd. 2. **Upon liquidation.** At any time after ten years from the date of payment of the final dividend in liquidation, the commissioner of banks may destroy the records, documents, or correspondence of any financial corporation of which he has taken possession or any records, documents, or correspondence relating to liquidation of any financial corporation which has been liquidated.

History: 1957 c 505 s 1,2; 1981 c 220 s 4

46.22 RURAL CREDIT RECORDS.

The commissioner of banks shall have charge of the records of the former department of rural credit. He shall provide the public with appropriate access to and copies of the records.

History: 1973 c 87 s 2; 1973 c 494 s 4

46.221 ISSUANCE OF QUITCLAIM DEEDS.

The commissioner of banks is empowered to issue quitclaim deeds in connection with loans made by the now defunct department of rural credit, a former state agency. The commissioner shall issue the quitclaim deeds upon reasonable evidence the state of Minnesota no longer has a valid claim of title to the property involved. No fee shall be charged for the issuance of a quitclaim deed.

History: 1980 c 543 s 11

46.23 UNSAFE PRACTICES; DEFINITIONS.

Subdivision 1. For purposes of sections 46.23 to 46.33, the following terms shall have the meaning here given them.

Subd. 2. "Cease and desist order which has become final" and "order which has become final" mean a cease and desist order, or an order issued by the

commissioner with the consent of the institution or the director, trustee, officer, or other person concerned, with respect to which no timely petition for review of the action of the commissioner has been filed in a district court as specified in section 46.30, subdivision 2, or with respect to which the action of the court in which a petition for review has been filed is not subject to further review by the courts of the state.

Subd. 3. "Commissioner" means the commissioner of banks.

Subd. 4. "Institution" means a bank, savings bank, savings association, trust company, credit union, industrial loan and thrift company, small loan company, safe deposit company, investment company, debt prorating agency, insurance premium finance company, or motor vehicle retail installment sales finance company subject to the supervision of the commissioner.

Subd. 5. "Violation" includes without limitation any action, alone or with others, toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

History: 1978 c 544 s 1

46.24 CEASE AND DESIST PROCEEDINGS; INJUNCTIVE RELIEF.

Subdivision 1. **Notice of charges, issuance, contents; hearing; cease and desist order, issuance, service, contents.** If in the opinion of the commissioner any institution or a director, officer, employee, agent or other person participating in the conduct of the affairs of the institution is engaging, or has engaged, or the commissioner has reasonable cause to believe that the institution is about to engage, in an unsafe or unsound practice in conducting the business of such institution or is violating, has violated, or the commissioner has reasonable cause to believe that the institution or a director, officer, employee, agent or other person participating in the conduct of the affairs of the institution is about to violate a law or rule, or a condition imposed in writing by the commissioner in connection with the granting of any application or other request by the institution or any written agreement entered into with the commissioner, the commissioner may issue and serve upon the institution or director, officer, employee, agent or other person, a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged unsafe or unsound practice or violation, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the institution or a director, officer, employee, agent or other person participating in the conduct of the affairs of the institution. The hearing shall be not earlier than ten days nor later than 30 days after service of the notice unless an earlier or a later date is set by the commissioner at the request of any party so served. Unless the party or parties so served appear at the hearing by a duly authorized representative, they are deemed to have consented to the issuance of the cease and desist order. In the event of consent, or if upon the record made at any hearing the commissioner finds that any unsafe or unsound practice or violation specified in the notice of charges has been established, the commissioner may issue and serve upon the institution or a director, officer, employee, agent or other person participating in the conduct of the affairs of the institution an order to cease and desist from the practice or violation. By provisions which may be mandatory or otherwise, the order may require the institution or its directors, officers, employees, agents and other persons participating in the conduct of the affairs of the institution to cease and desist from the same and to take affirmative action to correct the conditions resulting from the practice or violation.

Subd. 2. **Effective date.** A cease and desist order is effective at the expiration of 30 days after the service of the order upon the institution or other person concerned, except in the case of an order issued upon consent which is effective at

the time specified therein, and remains effective and enforceable as provided therein, except to the extent it is stayed, modified, terminated or set aside by the action of the commissioner or a reviewing court.

Subd. 3. Temporary cease and desist orders. (1) Whenever the commissioner of banks determines that the violation or threatened violation or the unsafe or unsound practice or practices, specified in the notice of charges served upon the institution or a director, officer, employee, agent, or other person participating in the conduct of the affairs of the institution pursuant to subdivision 1, or the continuation thereof, is likely to cause insolvency or substantial dissipation of assets or earnings of the institution, or is likely to seriously weaken the condition of the institution or otherwise seriously prejudice the interests of the institution's depositors prior to the completion of the proceedings conducted pursuant to subdivision 1, the commissioner may issue a temporary order requiring the institution or a director, officer, employee, agent, or other person to cease and desist from the violation or practice and to take affirmative action to prevent insolvency, dissipation, condition, or prejudice pending completion of the proceedings. The order becomes effective upon service upon the institution or a director, officer, employee, agent, or other person participating in the conduct of the affairs of the institution and, unless set aside, limited, or suspended by a court in proceedings authorized by clause (2), remains effective and enforceable pending the completion of the administrative proceedings pursuant to the notice and until the time the commissioner dismisses the charges specified in the notice, or if a cease and desist order is issued against the institution or a director, officer, employee, agent or other person, until the effective date of the order.

(2) Within ten days after the institution concerned or a director, officer, employee, agent, or other person participating in the conduct of the affairs of the institution has been served with a temporary cease and desist order, the institution or a director, officer, employee, agent, or other person may apply to the appropriate district court for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the institution or a director, officer, employee, agent, or other person under subdivision 1, and the court has jurisdiction to issue an injunction.

History: 1978 c 544 s 2; 1980 c 604 s 2

46.26 DIRECTORS, TRUSTEES AND OFFICERS, NOTICE OF INTENTION TO REMOVE FROM OFFICE OR TO PROHIBIT PARTICIPATION, SUSPENSION OR PROHIBITION.

Subdivision 1. Whenever in the opinion of the commissioner any director, trustee or officer of an institution has committed any violation of law; has violated a cease and desist order which has become final; has engaged or participated in any unsafe or unsound practice in connection with the institution; or has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as a director, trustee or officer of the institution, and the commissioner determines that the institution has suffered or will probably suffer substantial financial loss or other damage or that the interest of its depositors could be seriously prejudiced by reason of the violation, practice, or breach of fiduciary duty, the commissioner may serve upon the director, trustee or officer a written notice of his intention to remove him from office.

Subd. 2. Whenever in the opinion of the commissioner any director, trustee or officer of an institution, by conduct or practice with respect to another institution or business organization which has resulted in substantial financial loss or other damage to that institution or business organization, has evidenced his personal disability and unfitness to continue as a director, trustee or officer of the

institution, and whenever in the opinion of the commissioner any other person participating in the conduct of the affairs of an institution, by conduct or practice with respect to such institution, another institution, or other business organization which has resulted in substantial financial loss or other damage to the institution or business organization, has evidenced his personal disability and unfitness to participate in the conduct of the affairs of such institution, the commissioner may serve upon the director, trustee, officer, or other person a written notice of his intention to remove him from office or to prohibit his further participation in any manner in the conduct of the affairs of the institution.

Subd. 3. Whenever any director, trustee or officer of an institution, or other person participating in the conduct of the affairs of an institution, is convicted in any state or federal court of a felony involving dishonesty or breach of trust the commissioner may serve upon the director, trustee, officer, or other person a written notice of his intention to remove him from office or to prohibit his further participation in any manner in the conduct of the affairs of the institution.

Subd. 4. A notice of intention to remove a director, trustee, officer, or other person from office or to prohibit his participation in the conduct of the affairs of an institution shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. The hearing shall be held not earlier than 10 days nor later than 30 days after the date of service of the notice, unless an earlier or later date is set by the commissioner at the request of the director, trustee, officer, or other person and for good cause shown. Unless the director, trustee, officer, or other person appears at the hearing in person or by a duly authorized representative, he shall be deemed to have consented to the issuance of an order of removal or prohibition. In the event of consent, or if upon the record made at the hearing the commissioner finds that any of the grounds specified in the notice has been established, the commissioner may issue such orders of suspension, removal from office, or prohibition from participation in the conduct of the affairs of the institution as he deems appropriate. The order shall become effective at the expiration of 30 days after service upon the institution and the director, trustee, officer, or other person concerned, except in the case of an order issued upon consent which shall become effective at the time specified therein. The order shall remain effective and enforceable until it is stayed, modified, terminated, or set aside by action of the commissioner or a reviewing court.

History: 1978 c 544 s 3

46.29 BOARD OF DIRECTORS OR TRUSTEES, LACK OF QUORUM, TEMPORARY DIRECTORS OR TRUSTEES.

If at any time because of the suspension or removal of one or more directors or trustees pursuant to sections 46.23 to 46.33, the board of directors or trustees of an institution has less than a quorum of directors or trustees not so suspended or removed, all powers and functions vested in, or exercisable by, the board shall vest in and be exercisable by the directors or trustees of the board not so suspended or removed until such time as there is a quorum of the board of directors or trustees. If all of the directors or trustees of an institution have been suspended or removed, the commissioner shall appoint persons to serve temporarily as directors or trustees, pending the termination of the suspensions or removals, or until such time as their successors are duly elected and take office.

History: 1978 c 544 s 4

46.30 HEARINGS, DECISION; REVIEW, MODIFICATION, TERMINATION OR STAY OF ORDERS.

Subdivision 1. Any hearing provided for in sections 46.23 to 46.33 shall be conducted in accordance with the provisions of chapter 14, provided, the hearing

shall be private unless the commissioner after fully considering the views of the party afforded the hearing determines that a public hearing is necessary to protect the public interest. After the hearing and within 90 days after the commissioner has notified the parties that the case has been submitted to him for final decision, he shall render his decision which shall include findings of fact upon which his decision is predicated and shall issue and serve upon each party to the proceeding an order consistent with the provisions of this section.

Subd. 2. Any party to the hearing, or any person required by an order issued under sections 46.23 to 46.33 to cease and desist from any of the violations or practices stated therein or to be suspended, removed, or prohibited from participation in the conduct of the affairs of an institution may obtain a review of any order, other than a consent order, which review shall be pursuant to chapter 14. Unless a petition for review is timely filed as provided in chapter 14, the commissioner, at any time, upon such notice and in such manner as he deems proper may modify, terminate, or set aside the order. Upon the timely filing of a petition for review, the commissioner may modify, terminate, or set aside the order with the permission of the court.

Subd. 3. No order issued under sections 46.23 to 46.33 shall be subject to review by the commerce commission.

History: 1978 c 544 s 5; 1982 c 424 s 130

46.31 ENFORCEMENT OF NOTICES OR ORDERS.

The commissioner may apply to the district court of the county in which the home office of the institution is located or to the district court for Ramsey county for the enforcement of any effective and outstanding notice or order issued under sections 46.23 to 46.33, and the court shall have jurisdiction to require compliance therewith.

History: 1978 c 544 s 6

46.32 VIOLATION OF NOTICE OR FINAL ORDER, PENALTIES.

Any director, trustee or officer, or former director, trustee or officer, of an institution or any other person against whom there is outstanding and effective any notice or final order served upon the director, trustee, officer, or other person pursuant to section 46.26 who (1) participates in any manner in the conduct of the affairs of such institution; (2) directly or indirectly solicits, procures, transfers, or attempts to transfer, votes, or attempts to vote any proxies, consents, or authorizations in respect to any voting rights in such institution; or (3) without the prior written approval of the commissioner, votes for a director or trustee or serves as a director, trustee, officer, or employee of such institution is guilty of a gross misdemeanor and may be fined not more than \$5,000 or imprisoned for not more than one year, or both.

History: 1978 c 544 s 7

46.33 MANNER OF SERVICE; COPIES TO FEDERAL AUTHORITIES; CEASE AND DESIST ORDERS.

Any service required or authorized to be made by the commissioner pursuant to sections 46.23 to 46.33 may be made by registered or certified mail to the last known address of the person or principal Minnesota office of the institution to whom service is directed, or in such other manner reasonably calculated to give actual notice as the commissioner by rule or otherwise may provide. Copies of any notice or order served by the commissioner upon any institution or any director, trustee or officer thereof or other person participating in the conduct of its affairs, pursuant to the provisions of sections 46.23 to 46.33, may also be sent to the appropriate federal supervisory authorities.

History: 1978 c 544 s 8