

CHAPTER 53

INDUSTRIAL LOAN AND THRIFT COMPANIES

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NOTE: "Commissioner" means commissioner of commerce. See sections 46.03 and 46.04.

53.01 ORGANIZATION.

It is lawful for three or more persons, who desire to form a corporation for the purpose of carrying on primarily the business of loaning money to persons within the conditions set forth in this chapter, to organize, under this chapter, an industrial loan and thrift company, by filing with the secretary of state articles of incorporation, and upon paying the fees prescribed by sections 301.07 and 301.071 or chapter 302A and upon compliance with the procedure provided for the organization and government of ordinary corporations under the laws of this state, and upon compliance with the additional requirements of this chapter prior to receiving authorization to do business.

History: (7774-25) 1933 c 246 s 1; 1943 c 67 s 1; 1976 c 181 s 2; 1980 c 541 s 2; 1981 c 270 s 126; 1982 c 547 s 1; 1983 c 250 s 19; 1984 c 576 s 19

53.015 DEFINITIONS.

Subdivision 1. For the purposes of this chapter, the terms defined in this section shall have the meanings given them.

Subd. 2. "Paid-in capital" means consideration received in excess of the par value of preferred or common stock.

Subd. 3. "Invested income" means the net remaining funds resulting from the operation of the corporation and shall include, but not be limited to retained earnings, earned surplus, undivided profits and current earnings.

Subd. 4. "Donated capital" means all funds contributed by the stockholders, other than funds received in connection with the issuance of stock, and such amounts transferred from invested income, either by declaration of a share dividend or by action of the board of directors.

Subd. 5. "Contributed capital" means the sum total of all funds contributed to the corporation by the stockholders and shall include, but not be limited to preferred stock, common stock, paid-in capital and donated capital.

Subd. 6. "Appropriated reserves" means dedicated funds transferred from invested income by action of the board of directors, which dedicated funds shall otherwise be known as a capital reserve.

History: 1971 c 442 s 1

53.02 CAPITAL.

No corporation shall be organized under this chapter or qualified to do business thereunder with a capital represented by shares of common stock of less than \$25,000 in cities with less than 50,000 people; \$50,000 in cities with more than 50,000 people and less than 100,000 people; and \$75,000 in cities with 100,000 people, or more, according to the last official census; each share of that common stock to have a par value of not less than \$1 per share. No corporation shall begin doing business under this chapter unless the required capital is fully paid, and unless a paid-in capital of no less than ten percent of that required capital shall have also been fully paid and set up. After the required capital of a corporation organized or doing business under this chapter

shall have been fully paid and a paid-in capital of not less than ten percent thereof also fully paid and set up, additional capital stock in that corporation may be sold at not less than par, provided, however, that there is always maintained a paid-in capital of at least ten percent of the capital of the corporation represented by shares of common stock.

History: (7774-26) 1933 c 246 s 2; 1943 c 67 s 2; 1947 c 20 s 1; 1971 c 442 s 2

53.03 CERTIFICATE.

Subdivision 1. Application, fee, notice. Any corporation hereafter organized as an industrial loan and thrift company, shall, after compliance with the requirements set forth in sections 53.01 and 53.02, file a written application with the department of commerce for a certificate of authorization. A corporation that will not sell or issue thrift certificates for investment as permitted by this chapter need not comply with subdivision 2b. The application must be in the form prescribed by the department of commerce. The application must be made in the name of the corporation, executed and acknowledged by an officer designated by the board of directors of the corporation, requesting a certificate authorizing the corporation to transact business as an industrial loan and thrift company, at the place and in the name stated in the application. At the time of filing the application the applicant shall pay a \$1,000 filing fee and a \$500 investigation fee. The fees must be turned over by the commissioner to the state treasurer and credited to the general fund. The applicant shall also submit a copy of the bylaws of the corporation, its articles of incorporation and all amendments thereto at that time. If the application is contested, 50 percent of an additional fee equal to the actual costs incurred by the department of commerce in approving or disapproving the application, payable to the state treasurer and credited to the general fund shall be paid by the applicant and 50 percent equally by the intervening parties. A notice of the filing of the application must be published once within 30 days of the receipt of the form prescribed by the department of commerce, at the expense of the applicant, in a newspaper published in the municipality in which the proposed industrial loan and thrift company is to be located, or, if there be none, in a newspaper published at the county seat of the county in which the company is proposed to be located. If the department of commerce receives a written objection to the application from any person within 20 days of the notice having been fully published a contested case hearing must be conducted on the application. Notice of a hearing in connection with this section must be published once in the form prescribed by the department of commerce, at the expense of the applicant, in the same manner as a notice of application.

Subd. 2. Department of commerce; duties. Upon receiving an application the department of commerce shall make, or cause to be made, an examination to ascertain whether the assets of such corporation, over and above all its liabilities, have an actual value of not less than the par value of all of its capital represented by shares of common stock, which shall not be less than the amount prescribed by section 53.02. If upon its investigation or hearing provided for in subdivision 1 those facts appear and it further appears that the bylaws and articles of incorporation and amendments thereto are in accordance with law; that the shareholders of the corporation are of good moral character and financial integrity; that the company reasonably anticipates public demand for the loans it proposes to make in the location specified in the application, and that the proposed company will be properly and safely managed, the application shall be granted; otherwise it shall be denied.

Subd. 2a. Selection, change of name. Before filing the articles of incorporation or an amendment to them, the proposed name of the industrial loan and thrift company shall be submitted to the commissioner. If it is likely to confuse the public as to the character of its business, or is otherwise objectionable, additional names shall be submitted. When a satisfactory name is selected, the commissioner shall give written approval of it and issue an amended certificate of authorization.

Subd. 2b. Additional duties; thrift certificates for investment. If an application includes the right to issue thrift certificates for investment, the department of com-

merce must, in addition to the duties in subdivision 2, make a determination that there is a reasonable public demand for that company and that the probable volume of business in that location is sufficient to insure the solvency of any then existing industrial loan and thrift companies or banks in that locality, without endangering the safety of the company or bank in the locality as a place for investing or depositing public and private money.

Subd. 3. [Repealed, 1977 c 346 s 14]

Subd. 3a. If the application be granted without hearing the department of commerce shall, not later than 60 days after the application has been accepted, issue a certificate authorizing the corporation to transact business as an industrial loan and thrift company as provided in this chapter. If the application be denied without hearing the department of commerce shall, not later than 60 days after the application has been accepted, notify the corporation of the denial and the reasons for the denial. The applicant may request within 30 days of receiving the notice of denial, and shall be granted, a contested case hearing on the application which shall then be conducted as if no order of denial had been issued. If the commissioner approves the application after a hearing the commissioner shall, not later than 30 days after a hearing, issue a certificate authorizing the corporation to transact business as an industrial loan and thrift company as provided in this chapter. If the application be denied after a hearing the commissioner shall, not later than 30 days after a hearing, notify the corporation of the denial.

Subd. 4. [Repealed, 1Sp1985 c 1 s 25]

Subd. 5. **Place of business.** Not more than one place of business may be maintained under any certificate of authorization issued subsequent to the enactment of Laws 1943, chapter 67, pursuant to the provisions of this chapter, but the department of commerce may issue more than one certificate of authorization to the same corporation upon compliance with all the provisions of this chapter governing an original issuance of a certificate of authorization. To the extent that previously filed applicable information remains unchanged, the applicant need not refile this information, unless requested. The filing fee for a branch application shall be \$500 and the investigation fee \$250. If a corporation has been issued more than one certificate of authorization, the corporation shall allocate a portion of contributed capital to each office for which a certificate has been issued, in order to comply with the capital requirements of sections 53.02 and 53.05, clause (2), which sections are applicable to each office and the capital allocated thereto in the same manner as if each certificate had been issued to a separate corporation. An industrial loan and thrift corporation with deposit liabilities may change one or more of its locations upon the written approval of the commissioner of commerce. A fee of \$100 must accompany each application to the commissioner for approval to change the location of an established office. An industrial loan and thrift corporation that does not sell and issue thrift certificates for investment may change one or more locations by giving 30 days' written notice to the department of commerce which shall promptly amend the certificate of authorization accordingly.

Subd. 6. **Amended certificates, thrift certificates for investment, application, fee, notice.** Upon approval by the commissioner of banks of a commitment for insurance or guarantee of certificates to be held for investment as required in section 53.10, subdivision 3, an industrial loan and thrift company may apply to the department of commerce for an amended certificate of authorization and consent to sell and issue thrift certificates for investment.

The application, in triplicate, must be in the form prescribed by the department of commerce and filed in its office. At the time of filing the application, the applicant shall pay a filing fee of \$500 and if an application is contested, 50 percent of an additional fee equal to the actual costs incurred by the department of commerce in approving or disapproving the application, payable to the state treasurer and credited by the treasurer to the general fund, must be paid by the applicant and 50 percent equally by the intervening parties. A notice of the filing of the application must be

published once within 30 days of the receipt of the form prescribed by the department of commerce, at the expense of the applicant, in a newspaper published in the municipality in which the place of business under the application is located, or if there is none, in a newspaper published at the county seat of the county in which the place of business is located. Not more than one place of business maintained under a certificate of authorization may be the subject of an application.

Subd. 7. Objection to application. Upon receiving written objection to the application from any person within 20 days of the notice having been fully published, the department of commerce shall order a contested case hearing to be conducted on the application.

Subd. 8. Investigation. Upon receiving an application, the department of commerce shall make or cause to be made, an investigation of the application to determine that the corporation is in a solvent condition, meets current thrift industry standards of management quality and asset condition, is in compliance with the requirements of this chapter. If upon completion of its investigation and any hearing provided for in subdivision 7, it appears to the department of commerce that the requirements for approval contained in this subdivision have been met, the application shall be approved. In all other cases, the application shall be denied. As a condition of approval, the capital funds of the applicant corporation shall not be less than the total amount which the department of commerce considers necessary having in mind the potential for the issuance of certificates for investment by the applicant. The procedure in subdivision 3a shall be followed in decisions, notice, and hearing of applications for consent to sell and issue thrift certificates for investment by issuance of an amended certificate of authorization.

History: (7774-27) 1933 c 246 s 3; 1943 c 67 s 3; 1947 c 20 s 2; 1951 c 70 s 1; 1969 c 347 s 2; 1969 c 399 s 1; 1969 c 1129 art 4 s 10; 1971 c 442 s 3; 1976 c 181 s 2; 1976 c 235 s 1; 1977 c 346 s 5-7; 1978 c 674 s 12; 1981 c 132 s 1-4; 1983 c 250 s 20-22; 1983 c 252 s 4; 1984 c 576 s 20-22; 1984 c 655 art 1 s 12; 1Sp1985 c 1 s 4-11

53.04 SPECIAL POWERS.

Subdivision 1. Industrial loan and thrift companies, in addition to the general and usual powers incidental to ordinary corporations in this state, which are not specifically restricted in this chapter, shall have the special powers enumerated in subdivisions 2 to 5.

Subd. 2. The right to discount or purchase notes, bills of exchange, acceptances or other choses in action.

Subd. 3. [Repealed, 1981 c 258 s 23]

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

(b) Loans made under this subdivision at a rate of interest not in excess of that provided for in paragraph (a) may be secured by real or personal property, or both.

If the proceeds of a loan made after August 1, 1987 are used in whole or in part to satisfy the balance owed on a contract for deed, the rate of interest charged on the loan must not exceed the rate provided in section 47.20, subdivision 4a. If the proceeds of a loan secured by a first lien on the borrower's primary residence are used to finance the purchase of the borrower's primary residence, the loan must comply with the provisions of section 47.20.

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

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

Subd. 3b. The right to make loans under chapter 47 on the same terms and subject to the same conditions as apply to other lenders under that chapter.

Subd. 4. [Repealed, 1981 c 258 s 23]

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

Subd. 5. The right, with the consent of the department of commerce, to (1) sell and issue for investment certificates of indebtedness, under any descriptive name, which may bear interest, if any, as their terms provide, and which may require the payment to the company of amounts, from time to time as their terms provide, and permit the withdrawal of amounts paid on them, in whole or in part, from time to time, and the credit of amounts thereon upon conditions set forth therein; and (2) receive savings accounts or savings deposits. No certificate of indebtedness shall have a surrender value which is less than the total amount paid to the company therefor.

Subd. 6. [Repealed, 1981 c 258 s 23]

Subd. 7. [Repealed, 1981 c 258 s 23]

History: (7774-28) 1933 c 246 s 4; 1945 c 439 s 1; 1953 c 133 s 1; 1963 c 596 s 1; 1971 c 906 s 1; 1975 c 373 s 1; 1976 c 235 s 2; 1980 c 551 s 3; 1981 c 258 s 20; 1982 c 473 s 20; 1982 c 547 s 2,3; 1983 c 250 s 23; 1983 c 252 s 5,6; 1984 c 473 s 2-4; 1984 c 576 s 5; 1984 c 655 art 1 s 13; art 2 s 3 subd 1; 1Sp1985 c 1 s 12; 1Sp1985 c 13 s 188

53.05 POWERS, LIMITATION.

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

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

(2) have outstanding at any one time certificates of indebtedness, savings accounts, and savings deposits, exclusive of those held by the company, as security for loans made by it of more than seven times the sum of the contributed capital and appropriated reserves of the company until July 1, 1985, or the date an industrial loan and thrift company obtains a commitment for insurance or guarantee of accounts acceptable to the commissioner as required by section 53.10, whichever is earlier, and thereafter 15 times the sum of contributed capital and appropriated reserves of the company;

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

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

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

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

(7) lend money in excess of ten percent of its contributed capital and appropriated reserves to a person primarily liable. "Contributed capital and appropriated reserves" means the total of the company's contributed capital and appropriated reserves at all its authorized locations.

If a loan has been made to a person primarily liable and payments have been made on a certificate of indebtedness securing it, the amount of the payments may be added to the limitation contained in this clause for the purpose of determining whether additional loans may be made to that person; or

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

History: (7774-29) 1933 c 246 s 5; 1947 c 20 s 3; 1971 c 442 s 4; 1975 c 373 s 2; 1976 c 235 s 3; 1983 c 250 s 24; 1983 c 252 s 7; 1983 c 289 s 114 subd 1; 1984 c 473 s 5; 1984 c 655 art 1 s 92; 1Sp1985 c 1 s 13

53.051 [Repealed, 1981 c 258 s 23]

53.06 DIRECTORS, RESIDENCE.

At least three-fourths of the directors of any industrial loan and thrift company must be residents of the county in which the industrial loan and thrift company maintains its principal place of business, an adjacent county or any county in which the industrial loan and thrift company maintains a place of business pursuant to this chapter.

History: (7774-30) 1933 c 246 s 6; 1943 c 67 s 3; 1947 c 20 s 4; 1971 c 442 s 6; 1980 c 503 s 1; 1983 c 250 s 25

53.07 RESERVE.

Subdivision 1. Liquidity requirement. An industrial loan and thrift company shall maintain reserves in the form of liquid assets at a level reasonably necessary to meet anticipated withdrawals, commitments, and loan demand. Reserves shall be in cash, cash items in process of collection, short term obligations of or demand balances with other insured financial institutions in the United States and its territories, or short term, direct obligations of or guaranteed by the United States government. Obligations must mature within one year to be considered short term. The commissioner may

prescribe the required amount of reserves in relation to liabilities for an individual industrial loan and thrift company from time to time based upon examination findings or other reports relating to the industrial loan and thrift company that are available to the commissioner. The determination by the commissioner of a required amount of reserves for an industrial loan and thrift company shall not be considered a rule as defined by section 15.0411, subdivision 3. Reserves for an individual industrial loan and thrift company as prescribed by the commissioner pursuant to this section shall be enforced in accordance with sections 46.24 and 46.30 to 46.33.

Subd. 2. Temporary reserve minimum. Until an industrial loan and thrift company obtains a commitment for insurance or guarantee of accounts acceptable to the commissioner as required by section 53.10, it shall establish a minimum reserve against the certificates of indebtedness, savings accounts, and savings deposits described in section 53.04, subdivision 5, of not less than ten percent of the amount of indebtedness thus created. Three percent of this indebtedness shall be in cash in the actual possession of the industrial loan company or on demand deposit in approved banks of this state, and seven percent of the total indebtedness may be in bonds admissible for investment by mutual savings banks under the laws of this state.

History: (7774-31) 1933 c 246 s 7; 1976 c 235 s 4; 1982 c 473 s 21; 1983 c 252 s 8

53.08 DIVIDENDS.

When an industrial loan and thrift company is organized under this chapter or operating thereunder, the board of directors may declare a dividend of so much of the net profits of the corporation, after providing for all expenses, reserves, interest, and taxes accrued or due from the corporation, as they shall judge expedient, but before any dividend is declared, not less than one-tenth of the net profits of the industrial loan and thrift company of the preceding half year, or for such period as is covered by the dividend, shall be carried to an invested income fund or appropriated reserves until the aggregate of invested income and appropriated reserves shall amount to 20 percent of its capital represented by shares of common stock.

History: (7774-32) 1933 c 246 s 8; 1947 c 20 s 5; 1971 c 442 s 5

53.09 EXAMINATIONS.

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

Subd. 2. Report to commissioner. (1) Each industrial loan and thrift company shall annually on or before the first day of February file a report with the commissioner stating in detail, under appropriate heads, its assets and liabilities at the close of business on the last day of the preceding calendar year. This report shall be made under oath in the form prescribed by the commissioner and published once, at the expense of the industrial loan and thrift company, in a newspaper of the county of its location, and proof thereof filed immediately with the commissioner of commerce.

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

Subd. 3. Penalties. The penalties for violation of this chapter, or for any wrongdoing in connection therewith, shall be the same as those applied to state banks under the laws of this state.

History: (7774-33) 1933 c 246 s 9; 1943 c 67 s 4; 1947 c 20 s 6; 1965 c 475 s 2; 1980 c 503 s 2; 1983 c 289 s 114 subd 1; 1984 c 576 s 23; 1984 c 655 art 1 s 92; 1986 c 444

53.10 MANDATORY INSURANCE OF ACCOUNTS.

Subdivision 1. **Requirement.** Not later than July 1, 1987, every industrial loan and thrift company operating under this chapter with consent or holding a certificate of authorization, which includes the right to sell and issue for investment certificates of indebtedness, savings accounts, and savings deposits, shall obtain a commitment for insurance or guarantee of the certificates, accounts, or deposits by the federal deposit insurance corporation, an agency of this state, or a federal agency established for the purpose of insuring deposits in banks or otherwise eligible to insure the savings accounts and savings deposits in industrial loan and thrift companies operating pursuant to this chapter.

Subd. 2. The commissioner of commerce shall grant additional time or times to obtain the commitment for insurance or guarantee upon satisfactory evidence that the industrial loan and thrift company has made or is making a substantial effort to achieve the conditions precedent to issuance of the commitment. Additional time or times shall not extend later than July 1, 1988.

Subd. 3. No industrial loan and thrift company shall hereafter be granted consent, or issued a certificate of authorization which includes the right to issue for investment certificates of indebtedness, savings accounts, and savings deposits unless the industrial loan and thrift company has obtained a commitment for insurance or guarantee of such certificates which meets the conditions of subdivision 1.

Subd. 4. **Transitional requirement; continuing requirement.** Until the time the requirements of subdivisions 1 and 2 are fully satisfied, any existing insurance or guarantee approved by the commissioner of commerce pursuant to Laws 1980, chapter 503, section 3, must be maintained as a condition to continued operations. Thereafter every industrial loan and thrift company shall at all times maintain in effect insurance of its accounts by the Federal Deposit Insurance Corporation, an agency of this state or a federal agency established for the purpose of insuring deposits in banks or otherwise eligible to insure the accounts of industrial loan and thrift companies operating pursuant to this chapter. If it appears to the commissioner that an industrial loan and thrift company has failed to meet the requirements of this section, the commissioner shall issue an order pursuant to sections 46.24 to 46.33 requiring compliance or the noncompliant industrial loan and thrift company to cease and desist from accepting savings or deposit accounts and submit a plan to the commissioner for the orderly and timely divestiture of all existing savings and deposit accounts.

History: 1980 c 503 s 3; 1981 c 132 s 5; 1983 c 252 s 9; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1Sp1985 c 13 s 189