

CHAPTER 45

DEPARTMENT OF COMMERCE

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45.024 HEARINGS.

[For text of subd 1, see M.S.1986]

Subd. 2. **Delegation.** The commissioner of commerce may delegate to a deputy commissioner, assistant commissioner, or director the exercise of the commissioner's statutory powers and duties, including the authority to decide and issue final orders in contested cases, rulemaking proceedings, and other hearings held under chapter 14.

History: 1987 c 337 s 2

45.025 ADVERTISEMENT OF INTEREST RATES.

Subdivision 1. **Definitions.** For the purposes of this section only, the following terms have the meanings given them:

(a) "Advertisement" includes:

(1) printed or published material, audio visual material, and descriptive literature of an issuer or agent used in direct mail, newspapers, magazines, other periodicals, radio scripts, television scripts, billboards, and other similar displays, excluding advertisements prepared for the sole purpose of obtaining employees, agents, or agencies;

(2) descriptive literature and sales aids of all kinds issued by an issuer or agent for presentation to members of the public, including but not limited to circulars, leaflets, booklets, depictions, illustrations, and form letters;

(3) prepared sales talks, presentations, and materials for use by issuers and agents and representations made by issuers and agents in accordance with these talks, presentations, and materials; and

(4) statements, written or oral, by an agent or issuer.

(b) "Agent" is a person who effects or attempts to effect or assist in the purchase or sale of an investment product.

(c) "Commissioner" means the commissioner of commerce.

(d) "Effective annual yield" is the annualized income expressed as a simple interest rate per annum based on the initial investment principal.

(e) "Effective net annual yield" means the effective annual yield, based on a hypothetical \$1,000 investment, minus any annual fee or similar regular periodic charges.

(f) "Investment product" includes but is not limited to:

(1) certificate of deposits, deposits, or fiduciary funds entrusted to banks, savings associations, trust companies, credit unions, savings banks, industrial loan and thrift companies, and any other financial institution whether or not licensed by or registered with the department of commerce;

(2) annuities, endowment policies, or other life insurance products;

(3) securities, including: a note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit sharing agreement; collateral trust certificate; preorganizational certificate or subscription; transferable shares; investment contract, including but not limited to metals, gems, and coins; voting trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining right, title or lease, or in payments out of

production under the right, title or lease; or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, temporary or interim certificate for, receipt for guarantee of, or warrant or right to subscribe to or purchase, any of the securities listed in this clause.

(g) "Issuer" includes but is not limited to: banks, savings associations, trust companies, credit unions, savings banks, industrial loan and thrift companies, insurance companies, investment companies, trusts, or a person who issues an investment product.

(h) "Person" means an individual, corporation, a partnership, an association, a joint stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, a political subdivision of a government, or any other entity.

Subd. 2. **General restriction.** A person may not advertise the interest rate of an investment product unless the effective net annual yield is disclosed in an equally prominent manner.

The name and address of the issuer and any prepayment expense, surrender charge, or withdrawal penalty charged by the issuer must also be disclosed in a prominent manner. If the expense, charge, or penalty varies according to the length of time the product is held, the advertisement must disclose the expense, fee, or penalty imposed if surrendered or terminated within one year.

Subd. 3. **Variable rates.** With the exception of life insurance policy and annuity contract illustrations based upon a prospective purchaser's age and sex that do not provide a comparison with another policy or contract, an investment product whose interest rate varies according to the income or earnings of the issuer may not advertise projections of effective annual yield for a period exceeding one year. In addition, the advertisement must include in a prominent manner substantially the following statement:

"The effective annual yield or total return will fluctuate along with market and other economic conditions. Past performance does not guarantee future results."

Subd. 4. **Past performance.** If the advertisement refers to the past performance of an investment product, the advertisement must disclose the effective net annual yield for the one-year period immediately preceding the most recent quarter. "Quarters" for the purposes of this subdivision end on March 31, June 30, September 30, and December 31.

Subd. 5. **Comparative illustrations.** Illustrations comparing a life insurance policy or annuity contract of one company with a life insurance policy or an annuity contract of another company must clearly disclose with equal prominence for each policy or contract:

- (1) the guaranteed rate of interest paid on the cash value;
- (2) the current dividend scale or current rate of interest paid on the cash value;
- (3) the nonguaranteed nature of any current dividends, current interest rates, charges, or other fees applied to the policy or contract, including the issuer's rights to alter any of these factors;
- (4) any limitations on the crediting of dividends or interest;
- (5) the frequency and timing by which dividends or the current interest rate is determined; and
- (6) the net cash surrender value at all ages and contract durations illustrated.

Subd. 6. **Waiver.** The commissioner may by rule or order waive or defer implementation of the provisions of subdivisions 2 to 5 with regard to any person or persons who comply with similar restrictions imposed by the Securities and Exchange Commission or other regulatory agency.

Subd. 7. **Misdemeanor.** A person who willfully violates a provision of this section, knowing that the advertisement was false or misleading in any material respect, may

be fined not more than \$700 or imprisoned not more than 90 days, or both. Each act in violation of this section constitutes a separate offense and a prosecution or conviction for any violation of this section does not bar prosecution or conviction for another violation under this section.

Subd. 8. **Civil remedy.** A person violating this section is liable to a purchaser of the investment product. The purchaser may sue either in equity for rescission upon tender of the investment product or at law for damages if the purchaser no longer owns the investment product. In an action for rescission, the purchaser is entitled to recover the consideration paid for the investment product, together with interest at the legal rate, costs, and reasonable attorney fees, less the amount of any income received on the investment product. In an action at law, damages are the consideration paid for the investment product together with interest at the legal rate to the date of disposition, costs, and reasonable attorney fees, less the value of the investment product at the date of disposition. If the advertisement advertises an investment product whose interest rate varies according to the earnings or income of the issuer and if the advertisement projects the accumulated earnings for a period longer than one year, the issuer and agent are jointly and severally liable to the purchaser for the difference in the principal and interest received by the purchaser and the principal and interest as projected in the advertisement.

Subd. 9. **Denial, suspension, or revocation.** The commissioner may by order deny, suspend, or revoke an agent's or issuer's license or may censure the licensee if the commissioner finds that: (1) the order is in the public interest; (2) the agent or issuer violated any provision of this section; and (3) the agent or issuer is licensed by the department.

History: 1987 c 153 s 1

45.026 REGULATION OF BUSINESS OF FINANCIAL PLANNING.

Subdivision 1. **Definitions.** For the purposes of this section, the following terms have the meanings given them:

(a) "Person" means an individual, corporation, partnership, joint venture, joint stock association, trust, or unincorporated association.

(b) "Financial planner" means a person who, on advertisements, cards, signs, circulars, letterheads, or in another manner, indicates that the person is a "financial planner," "financial counselor," "financial adviser," "investment counselor," "investment adviser," "financial consultant," or other similar designation, title, or combination is considered to be representing that the person is engaged in the business of financial planning.

(c) "Advertisement" includes:

(1) printed or published material, audiovisual material, and descriptive literature of a financial planner used in direct mail, newspapers, magazines, other periodicals, radio scripts, television scripts, billboards, and other similar displays, excluding advertisements prepared for the sole purpose of obtaining employees, agents, or agencies;

(2) descriptive literature and sales ads of all kinds issued by a financial planner for presentation to members of the public, including but not limited to, circulars, leaflets, booklets, depictions, illustrations, and form letters;

(3) prepared sales talks, presentations, and materials for use by a financial planner and any representations made by a financial planner in accordance with these talks, presentations, and materials; and

(4) statements, written or oral, by a financial planner.

Subd. 2. **Fiduciary duty.** Persons who represent that they are financial planners have a fiduciary duty to persons for whom services are performed for compensation. In an action for breach of fiduciary duty, a person may recover actual damages resulting from the breach, together with costs and disbursements.

Subd. 3. **Penalty.** A financial planner is subject to section 45.027, subdivision 5.

History: 1987 c 336 s 1

45.027 INVESTIGATIONS AND SUBPOENAS.

Subdivision 1. **General powers.** In connection with the administration of chapters 45 to 83, 309, and 332, the commissioner of commerce may:

(1) make public or private investigations within or without this state as the commissioner considers necessary to determine whether any person has violated or is about to violate chapters 45 to 83, 309, and 332 or any rule or order under those chapters, or to aid in the enforcement of chapters 45 to 83, 309, and 332, or in the prescribing of rules or forms under those chapters;

(2) require or permit any person to file a statement in writing, under oath or otherwise as the commissioner determines, as to all the facts and circumstances concerning the matter being investigated;

(3) hold hearings, upon reasonable notice, in respect to any matter arising out of the administration of chapters 45 to 83, 309, and 332;

(4) conduct investigations and hold hearings for the purpose of compiling information with a view to recommending changes in chapters 45 to 83, 309, and 332 to the legislature;

(5) examine the books, accounts, records, and files of every licensee under chapters 45 to 83, 309, and 332 and of every person who is engaged in any activity regulated under chapters 45 to 83, 309, and 332; the commissioner or a designated representative shall have free access during normal business hours to the offices and places of business of the person, and to all books, accounts, papers, records, files, safes, and vaults maintained in the place of business;

(6) publish information which is contained in any order issued by the commissioner; and

(7) require any person subject to chapters 45 to 83, 309, and 332 to report all sales or transactions that are regulated under chapters 45 to 83, 309, and 332. The reports must be made within ten days after the commissioner has ordered the report. The report is accessible only to the respondent and other governmental agencies unless otherwise ordered by a court of competent jurisdiction.

Subd. 2. Power to compel production of evidence. For the purpose of any investigation, hearing, or proceeding under chapters 45 to 83, 309, and 332, the commissioner or a designated representative may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of books, papers, correspondence, memoranda, agreements, or other documents or records that the commissioner considers relevant or material to the inquiry.

Subd. 3. Court orders. In case of a refusal to appear or a refusal to obey a subpoena issued to any person, the district court, upon application by the commissioner, may issue to any person an order directing that person to appear before the commissioner, or the officer designated by the commissioner, there to produce documentary evidence if so ordered or to give evidence relating to the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

Subd. 4. Scope of privilege. No person is excused from attending and testifying or from producing any document or record before the commissioner, or from obedience to the subpoena of the commissioner or any officer designated by the commissioner or in a proceeding instituted by the commissioner, on the ground that the testimony or evidence required may tend to incriminate that person or subject that person to a penalty of forfeiture. No person may be prosecuted or subjected to a penalty or forfeiture for or on account of a transaction, matter, or thing concerning which the person is compelled, after claiming the privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

Subd. 5. Legal actions; injunctions; cease and desist orders. Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or

practice constituting a violation of chapters 45 to 83, 309, and 332, or any rule or order adopted under those chapters, the commissioner has the following powers: (1) the commissioner may bring an action in the name of the state in the district court of the appropriate county to enjoin the acts or practices and to enforce compliance with chapters 45 to 83, 309, and 332, or any rule or order adopted or issued under those chapters, or the commissioner may refer the matter to the attorney general or the county attorney of the appropriate county. Upon a proper showing, a permanent or temporary injunction, restraining order, or other appropriate relief must be granted; (2) the commissioner may issue and cause to be served upon the person an order requiring the person to cease and desist from violations of chapters 45 to 83, 309, and 332, or any rule or order adopted or issued under those chapters. The order must be calculated to give reasonable notice of the rights of the person to request a hearing and must state the reasons for the entry of the order. A hearing must be held not later than seven days after the request for the hearing is received by the commissioner, after which and within 20 days after receiving the administrative law judge's report, the commissioner shall issue a further order vacating the cease and desist order or making it permanent as the facts require. If no hearing is requested within 30 days of service of the order, the order will become final and will remain in effect until it is modified or vacated by the commissioner. Unless otherwise provided, all hearings must be conducted in accordance with chapter 14. If the person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, the person is in default, and the proceeding may be determined against that person upon consideration of the cease and desist order, the allegations of which may be considered to be true. The commissioner may adopt rules of procedure concerning all proceedings conducted under this subdivision.

Subd. 6. Violations and penalties. The commissioner may impose a civil penalty not to exceed \$2,000 per violation upon a person who violates chapters 45 to 83, 309, and 332, unless a different penalty is specified.

Subd. 7. Actions against licensees. In addition to any other actions authorized by this section, the commissioner may, by order, deny, suspend, or revoke the authority or license of a person subject to chapters 45 to 83, 309, or 332, or censure that person if the commissioner finds that:

- (1) the order is in the public interest; or
- (2) the person has violated chapters 45 to 83, 309, or 332.

Subd. 8. Stop order. In addition to any other actions authorized by this section, the commissioner may issue a stop order denying effectiveness to or suspending or revoking any registration subject to chapters 45 to 83, 309, or 332.

Subd. 9. Powers additional. The powers contained in subdivisions 1 to 8 are in addition to all other powers of the commissioner.

History: 1987 c 336 s 2

45.028 SERVICE OF PROCESS.

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

Subd. 2. How made. Service of process under this section may be made by leaving a copy of the process in the office of the commissioner, and is not effective unless: (1) the plaintiff, who may be the commissioner in an action or proceeding instituted by the commissioner, sends notice of the service and a copy of the process by certified mail to the defendant or respondent at the last known address; and (2) the plaintiff's affidavit

of compliance is filed in the action or proceeding on or before the return day of the process, if any, or within further time as the court allows.

History: 1987 c 336 s 3

45.029 FINANCIAL STATEMENT.

Wherever used in chapters 45 to 83, or rules adopted thereunder, the term "certified" as applied to balance sheets, profit and loss statements or other financial statements shall be construed as meaning an audited financial statement prepared in accordance with generally accepted accounting principles that has been examined by an independent certified public accountant for the purpose of expressing an opinion. The opinion by the certified public accountant shall contain a statement that it fairly represents the financial position of the organization or person.

History: 1987 c 336 s 4