

CHAPTER 46

GENERAL BANKING POWERS

<p>46.03 Repealed. 46.04 Commissioner; powers. 46.041 Bank applications. 46.046 Definitions. 46.047 Definitions.</p>	<p>46.048 Notice of proposed acquisition. 46.09 Department of commerce examiners or employees not to maintain interest in supervised institutions. 46.35 Interpretations.</p>
--	---

46.03 [Repealed, 1995 c 202 art 1 s 26]

46.04 COMMISSIONER; POWERS.

Subdivision 1. The commissioner of commerce, referred to in chapters 46 to 59A, and sections 332.12 to 332.29, 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 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 commerce 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 every 18 calendar months. 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 licensed regulated lenders, 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 rules. 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 the commissioner's 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 official duties, the commissioner of commerce 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 commerce as the commissioner may require; attend and answer, under oath, the commission-

er'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 duties.

[For text of subd 2, see M.S.1994]

Subd. 3. Financial institutions and licensee records. For purposes of examination and regulation of those entities referred to in subdivisions 1 and 2, records may be maintained on optical image storage systems acceptable to the commissioner. Electronically maintained and stored records must meet the following minimum standards:

(1) a document or record may be transferred to and stored on a nonerasable imaging system and retained only in that format if all documents and records preserved on nonerasable optical imaging systems meet nationally recognized standards for permanent records and are available for retrieval for as long as applicable law requires;

(2) a backup copy of the record is created and stored at a site other than the site where the original is kept. The backup copy must be preserved either: (i) on a nonerasable optical imaging system; or (ii) by another reproduction method approved by the commissioner; and

(3) all contracts for third-party maintenance and storage of those records must include assurance of access by the commissioner consistent with the purposes of this section.

History: 1995 c 202 art 1 s 2; art 2 s 1

46.041 BANK APPLICATIONS.

[For text of subs 1 to 3, see M.S.1994]

Subd. 4. Hearing. In any case in which the commissioner grants a request for a hearing or makes the independent determination that a hearing is warranted on the basis of the conditions in subdivision 3, the commissioner shall fix a time for a hearing conducted pursuant to chapter 14 to decide whether or not the application will be granted. A notice of the hearing must be published by the applicant in the form prescribed by the commissioner in a newspaper published in the municipality in which the proposed bank is to be located, and if there is no such newspaper, then in a qualified newspaper likely to give notice in the municipality in which the bank is proposed to be located. The notice must be published once, at the expense of the applicants, not less than 30 days prior to the date of the hearing. At the hearing the commissioner shall consider the application and hear the applicants and witnesses that appear in favor of or against the granting of the application of the proposed bank. 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 department of commerce to be deposited in the general fund, must be paid by the applicant and 50 percent equally by the intervening parties.

[For text of subd 5, see M.S.1994]

History: 1995 c 202 art 1 s 3

46.046 DEFINITIONS.

Subdivision 1. Words, terms, and phrases. Unless the language or context clearly indicates that a different meaning is intended, the word defined in subdivision 2, for the purposes of sections 46.041 to 46.044, shall be given the meaning subjoined to it; and the word defined in subdivision 3, for the purposes of chapters 46 to 83, shall be given the meaning subjoined to it.

[For text of subs 2 to 4, see M.S.1994]

History: 1995 c 202 art 1 s 4

46.047 DEFINITIONS.

[For text of subd 1, see M.S.1994]

Subd. 2. Banking institution. The term “banking institution” means a bank, trust company, bank and trust company, savings bank, or thrift institution, that is organized under the laws of this state, or a holding company which owns or otherwise controls the banking institution.

History: 1995 c 171 s 2

46.048 NOTICE OF PROPOSED ACQUISITION.

Subdivision 1. Requirement. Whenever a change in the outstanding voting stock of a banking institution will result in control or in a change in the control of the banking institution, the person acquiring control of the banking institution, including an out-of-state bank holding company, shall file notice of the proposed acquisition of control with the commissioner of commerce at least 60 days before the actual effective date of the change, except that the commissioner may extend the 60-day period an additional 30 days if in the commissioner’s judgment any material information submitted is substantially inaccurate or the acquiring party has not furnished all the information required. As used in this section, the term “control” means the power to directly or indirectly direct or cause the direction of the management or policies of the banking institution. A change in ownership of capital stock that would result in direct or indirect ownership by a stockholder or an affiliated group of stockholders of less than 25 percent of the outstanding capital stock is not considered a change of control. If there is any doubt as to whether a change in the outstanding voting stock is sufficient to result in control or to effect a change in the control, the doubt shall be resolved in favor of reporting the facts to the commissioner. The commissioner shall use the criteria established by the Financial Institution Regulatory and Interest Rate Control Act of 1978, United States Code, title 12, section 1817(j), and the regulations adopted under it, when reviewing the acquisition and determining if the acquisition should or should not be disapproved. Within three days after making the decision to disapprove a proposed acquisition, the commissioner shall notify the acquiring party in writing of the disapproval. The notice must provide a statement of the basis for the disapproval.

Subd. 2a. Contents. The notice required by subdivision 1 must contain the following information to the extent that it is known by the person making the notice:

(1) the identity, personal history, business background, and experience of each person by whom or on whose behalf the acquisition is to be made, including the person’s material business activities and affiliations during the past five years, and a description of any material pending legal or administrative proceedings in which the person is a party and any criminal indictment or conviction of that person by a state or federal court;

(2) a statement of the assets and liabilities of each person by whom or on whose behalf the acquisition is to be made, as of the end of the fiscal year for each of the five years immediately preceding the date of the notice, together with related statements of income, sources, and application of funds for each of the fiscal years then concluded, all prepared in accordance with generally accepted accounting principles consistently applied, and an interim statement of the assets and liabilities for each person, together with related statements of income, source, and application of funds as of a date not more than 90 days before the date of the filing of the notice;

(3) the terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made;

(4) the identity, source, and amount of the funds or other consideration to be used in making the acquisition, and if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and any arrangements, agreements, or understandings with those persons;

(5) any plans or proposals that a party making the acquisition may have to liquidate the bank, to sell its assets or merge it, or make any other major change in its business or corporate structure or management;

(6) the identity of any person employed, retained, or to be compensated by the acquiring party, or by any person on the acquiring party’s behalf, to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition, and a brief description of the terms of the employment, retainer, or arrangement for compensation;

(7) copies of all invitations, tenders, or advertisements making tender offers to stockholders for purchase of their stock to be used in connection with the proposed acquisition; and

(8) any additional relevant information in the form the commissioner requires by rule or by specific request in connection with any particular notice.

Subd. 2b. Notice. Upon the filing of an application:

(1) an applicant shall publish once in a newspaper of general circulation notice of the proposed acquisition in a form acceptable to the commissioner; and

(2) the commissioner shall accept public comment on an application for a period of not less than 30 days from the date of the publication required by clause (1).

[For text of subd 3, see M.S.1994]

Subd. 4. Hearings. Within ten days of receipt of notice of disapproval according to subdivision 1, the acquiring party may request a department hearing on the proposed acquisition. At the hearing, all issues must be determined on the record according to chapter 14 and the rules adopted by the commissioner. At the conclusion of the hearing, the commissioner shall by order approve or disapprove the proposed acquisition on the basis of the record made at the hearing.

History: 1995 c 202 art 4 s 1-4

46.09 DEPARTMENT OF COMMERCE EXAMINERS OR EMPLOYEES NOT TO MAINTAIN INTEREST IN SUPERVISED INSTITUTIONS.

[For text of subd 1, see M.S.1994]

Subd. 2. Exceptions. Officers and examiners of the department of commerce referred to in subdivision 1 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 association or federally chartered credit union;

(4) transact business with any financial institution or licensee subject to the examination by the commissioner of commerce 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.

[For text of subds 3 and 4, see M.S.1994]

History: 1995 c 202 art 1 s 25

46.35 INTERPRETATIONS.

The commissioner of commerce may upon request from an interested party give an interpretive opinion in connection with the administration of chapters 45 to 56. No penalty provision in these chapters or of any other chapter to which chapters 45 to 56 may refer applies to any act done or not done in conformity with a written interpretive opinion of the commissioner, notwithstanding that the written interpretive opinion may, after the act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

History: 1995 c 171 s 3