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 commerce 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; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92*