# CHAPTER 48A

# TRUST COMPANIES


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## ORGANIZATION AND CHARTER

### 48A.01 ORGANIZATION OF A STATE TRUST COMPANY.

Subdivision 1. **Articles of incorporation.** (a) Subject to the other provisions of this chapter, three or more persons may organize and charter a state trust company for purposes of transacting business as a trust company in conformity with the applicable laws.

(b) A state trust company may be organized under section 47.12. If the trust company does not exercise banking powers, it may exercise the powers of a Minnesota business corporation reasonably necessary or helpful to enable exercise of its specific powers under this chapter.

(c) A state trust company may be organized as a limited liability company if it does not exercise banking powers.

(d) The articles of incorporation or articles of organization of the company must be signed and acknowledged by each organizer and must contain:

(1) the name of the state trust company;

(2) the period of its duration, which may be perpetual;

(3) the powers of the state trust company, which may be stated as:

(i) all powers granted to a state trust company in this state; or

(ii) a list of the specific powers that the state trust company chooses and is authorized to exercise;

(4) the aggregate number of shares or membership interests that the state trust company will be authorized to issue, the number of classes of shares or membership interests, which may be one or more, the number

of shares or membership interests of each class if more than one class, and a statement of the par value of the shares of each class or that the shares or membership interests are to be without par value;

(5) if the shares or membership interests are to be divided into classes, the designation of each class and statement of the preferences, limitations, and relative rights of the shares or membership interests of each class, which in the case of a limited trust association may be more fully set forth in the statement of membership interest;

(6) a provision limiting or denying to participants the preemptive right to acquire additional or treasury membership interests or shares of the state trust company;

(7) a provision granting the right of members or shareholders to cumulative voting in the election of directors or managers;

(8) the aggregate amount of consideration to be received for all shares or membership interests initially issued by the state trust company, and a statement that all authorized contributions or shares have been subscribed and that all subscriptions received provide for the consideration to be fully paid in cash before the charter is issued;

(9) a provision consistent with law that the organizers elect to set forth in the articles of incorporation or articles of organization for the regulation of the internal affairs of the state trust company or that is otherwise required by this chapter to be set forth in the articles;

(10) the street address of the state trust company's principal office; and

(11) the number of directors or governors constituting the initial board, which must not be fewer than five or more than 25, and a statement that management is vested in a board.

Subd. 2. **Directors or managers; qualifications; vacancies; how filled.** A majority of the directors or governors of a trust company must be residents of this state. Each must take and subscribe an oath to diligently and honestly perform the official duties of a director or manager and not knowingly violate, or permit to be violated, any provision of law relating to trust companies. The taking of this oath must be noted on the minutes of the records of the corporation and filed with the commissioner. Failure of a person selected as director to qualify creates a vacancy in the board. All vacancies in the board must be filled by the qualified members. However, not more than one-third of the membership of the board may be so filled in any one year.

**History:** *1998 c 331 s 14; 2005 c 69 art 3 s 2*

## 48A.02 APPLICATION FOR STATE TRUST COMPANY CHARTER.

Subdivision 1. **Procedure.** An application for a trust company charter must be in the form prescribed by the commissioner. The procedure in sections 46.041 to 46.045 apply, except for the conditions in section 46.044, subdivision 1, clauses (1) to (6).

Subd. 2. **Conditions.** The commissioner shall grant an application for a trust company charter if:

(1) the applicants are of good moral character and financial integrity;

(2) there is reasonable public demand for this trust company in this location that:

(i) considers the needs of the community for trust service of the kind applied for and the probable volume of trust business available to the applicant; and

(ii) the probable volume of business in this location is sufficient to ensure and maintain the solvency of the new trust company and the solvency of the existing trust company or trust companies in the locality;

(3) the commissioner is satisfied the proposed trust company will be properly and safely managed considering:

(i) the general character and ability of the proposed management;

(ii) the nature of the supervision to be given to the proposed trust activities, including the qualifications and experience of the members of the proposed trust investment committee;

(iii) the qualifications, experience, and character of the proposed executive officer or officers of the trust company; and

(iv) whether the trust company will have available competent legal counsel to advise and pass upon trust matters whenever necessary;

(4) the commissioner is satisfied that the capital funds are available and the commissioner may accept any reasonable demonstration including subscription agreements supported by current financial statements; and

(5) any other facts and circumstances that the commissioner considers proper.

The commissioner shall deny an application that does not satisfy the requirements of this subdivision.

**History:** *1998 c 331 s 15*

**48A.03 CAPITAL AND SURPLUS REQUIREMENTS OF TRUST COMPANIES.**

Subdivision 1. **Required amount.** The capital of a trust company organized under this chapter must be not less than $500,000. The trust company must also provide a surplus of at least 20 percent of its capital in addition to the capital amounts required by this section. The capital or the surplus must not be reduced without the approval of the commissioner of commerce. In the case of a trust company organized as a limited liability company, "capital and surplus" is considered the "contribution" of its members reflected in the required records of a limited liability company.

Subd. 2. **Required investment.** No trust company shall transact business until all of its authorized capital stock and required surplus has been paid in, in cash, and at least 25 percent of the capital has been invested in one or more of the first, second, third, and fourth classes of authorized securities and railroad bonds, as described by section 48.37, and also in the farm loan bonds issued by the federal land banks, federal intermediate credit banks, and the banks for cooperatives. These investments must be assigned and transferred to and deposited with the commissioner of management and budget, provided, however, that no trust company shall be required to deposit securities in excess of $1,000,000. The commissioner of management and budget shall submit the securities deposited according to this subdivision to the commissioner. The commissioner shall carefully examine the securities offered for deposit and determine if they comply with all applicable provisions of law. Upon receipt of an order of the commissioner, the commissioner of management and budget shall issue a receipt. This deposit must be maintained unimpaired as a guaranty fund for depositors and creditors and for the faithful discharge of the trust company's duties, with the right to collect the income from it and to substitute other similar authorized securities, of equal amount and value, upon approval and order of the commissioner.

If the securities comply with the law, the commissioner shall issue a certificate of authorization for the trust company to begin business.

Subd. 3. **Reduction of capital stock.** The capital stock of a trust company may be reduced with the approval of the commissioner, but not below the minimum amounts in this section. A trust company shall not return assets to the stockholders unless its deposits of authorized securities after the return equal one-fourth of the reduced capital, which in no event may be less than $125,000. The liability of a stockholder or participant upon an existing contract is not affected by the return of assets.

Subd. 4. **Requirements for consolidated or merged companies.** When two or more trust companies have been or are consolidated under sections 49.34 to 49.41, or, in the case of a limited liability company that has been or is merged under sections 322C.1001 to 322C.1005 and 322C.1015, the capital of the consolidated or merged trust company is considered substituted for the capital of the several trust companies entering into the consolidation or merger, and the aggregate of the securities of these trust companies on deposit with the commissioner of management and budget, according to this section, must be increased or diminished accordingly.

Subd. 5. **Requirements for limited purpose companies.** A company may also be organized, with its principal place of business in the state, with a capital of not less than $10,000, to be paid in cash, of which 50 percent must be invested in authorized securities and deposited with the commissioner of management and budget, as provided in this section. The powers and business of the company must be to act as assignee under an assignment for the benefit of creditors, or be appointed and act as a trustee or receiver, as a guardian of the person, conservator of the estate, or personal representative of an estate. The company may accept and perform any other lawful trust over which a state or federal court has jurisdiction. The company, before entering upon the duties of its trust, shall give a surety bond in the sum the court directs, with sufficient surety, conditioned for the faithful performance of its duties. The business of a company is limited to the matters in this subdivision. A company with a capital stock of less than $10,000 shall not use the word "trust" in the title or name of the company.

**History:** *1998 c 331 s 16; 2003 c 112 art 2 s 50; 2007 c 12 s 1; 2009 c 101 art 2 s 109; 2014 c 157 art 2 s 1,29*

**48A.04 CERTAIN TRUST COMPANIES MAY ASSUME POWERS OF STATE BANKS.**

Subdivision 1. **Authority.** Upon complying with the terms of this section, a trust company organized under section 47.12 has all the powers and privileges of a state bank not otherwise granted to trust companies and is subject to and must comply with all the laws of this state applicable to state banks.

Subd. 2. **Application.** In considering the application of a trust company to assume the powers of a state bank, the department shall proceed in the same manner and be governed by the same laws that are applicable to applications for charters for new state banks.

Subd. 3. **Certificates to be amended.** In order to exercise the powers granted under this subdivision, the trust company shall amend its certificate of incorporation to include the additional powers of a state banking corporation. This amendment may include the change of the corporate name of the trust company. The trust company shall display in its place of business the certificate of the authorization issued by the commissioner of commerce.

Amendments to the certificate of incorporation must be made under section 47.171. Before becoming effective, these amendments must be approved by the department and the approval must be endorsed upon the certificate of amendment.

Subd. 4. **Trust companies to comply with certain laws.** No trust company of this state shall conduct a banking business, as defined in section 47.02, exercising deposit taking powers, without complying with the reserve requirements of section 48.221.

**History:** *1998 c 331 s 17; 2005 c 69 art 3 s 3,4*

### 48A.05 NATIONAL ASSOCIATIONS; POWERS.

The commissioner of commerce may authorize trust companies organized under the laws of this state to engage in trust activity in which banks exercising trust powers subject to the jurisdiction of the federal government may be authorized to engage. The commissioner may not authorize trust companies to engage in an activity prohibited by the laws of this state.

**History:** *1998 c 331 s 18*

### 48A.06 PROHIBITED DEALINGS AND INDEBTEDNESS.

(a) A trust company shall not engage in banking, mercantile, manufacturing, or other business, unless this business is expressly authorized in this chapter.

(b) A trust company shall not lend its funds, money, capital, trust funds, or other property to a director, officer, agent, or employee.

(c) A director, officer, agent, or employee of a trust company shall not become indebted to it by means of an overdraft, promissory note, account, endorsement, guaranty, or any other contract. A director, officer, agent, or employee who violates this paragraph is guilty of theft of the amount of the indebtedness from the time of its creation.

**History:** *1998 c 331 s 19*

## FIDUCIARY PROVISIONS FOR BANKS AND TRUSTS

### 48A.07 TRUST COMPANY OR BANK; SPECIAL POWERS AND DUTIES AS FIDUCIARY.

Subdivision 1. **Qualifying organizations.** A trust company, or bank that holds a certificate as provided in section 48.37, may exercise the powers and privileges set forth in this section.

Subd. 2. **Taking and holding real and personal property in trust.** (a) The bank or trust company may take and hold in trust any real or personal property, wherever situated, by order, judgment, or decree of a court, or by gift, grant, assignment, transfer, devise, legacy, or bequest from, or by lawful contract with, a public or private corporation or an individual or copartnership. It may manage this real or personal property upon the terms and conditions declared or imposed.

(b) The bank or trust company may act as agent for the signatures, countersignatures, registration, transfer, or redemption of certificates of stock, bonds, coupons, or other evidences of indebtedness.

(c) The bank or trust company may act as trustee under mortgages in the form of trust deeds.

(d) The bank or trust company may act as general or special agent or attorney in fact in the acquisition, management, sale, assignment, transfer, encumbrance, conveyance, or other disposition of real or personal property, in the collection of rents, payment of taxes, and generally as the representative of a person, corporation, or copartnership.

(e) The bank or trust company may guarantee the title to securities sold and transferred by it.

Subd. 3. **Taking and holding deposits.** The bank or trust company may take and hold on deposit or for safekeeping, money, bonds, stocks, or other securities, or personal property, that: (1) is given to it by a public officer or a trustee or other legal representative or a public or private corporation or a person; or (2) is authorized, ordered, or otherwise required by law to be deposited in a safe depository or paid into any court of record. If a court orders the deposit, and the depositor takes the receipt of the bank or trust company for it, the depositor and the depositor's sureties are relieved from liability on the deposits while they are held by the bank or trust company. With respect to trust companies only, deposits do not include checking or savings accounts, certificates of deposit, or other liabilities not relating to its fiduciary activities, except as may be authorized by sections 47.23 and 48A.04.

Subd. 4. **Accepting and performing assignments or trusts.** The bank or trust company may act as assignee under an assignment for the benefit of creditors, or be appointed as a trustee, receiver, guardian, executor, or administrator, and may accept and perform any other lawful trust conferred by a court or by a corporation or individual. No oath or security is required of a bank or trust company accepting or performing a trust under this subdivision.

Subd. 5. **Court-ordered deposit of securities.** The judge or court having jurisdiction may direct an executor, administrator, guardian, assignee, receiver, or other trustee to deposit with the bank or trust company any securities belonging to the trust subject to the order of the trustee when countersigned by the judge of the court. The court may fix the security to be given by the trustee with reference only to the remainder of the trust estate. Securities may not be withdrawn and no part of the principal or interest of the securities may be collected without a court order. However, an officer of the bank or trust company, upon satisfactory proof that additional security has been furnished by the trustee or that the estate or fund has been so reduced that the deposit is no longer required, may withdraw securities or collect the principal of or interest on the securities.

Subd. 6. **Investment authority.** (a) The bank or trust company may, in its discretion, retain and continue an investment and security or securities coming into its possession in a fiduciary capacity.

(b) In the absence of an express prohibition in the trust instrument, the trustee may acquire and retain securities of an open-end or closed-end management company or unit investment trust registered under the federal Investment Company Act of 1940. The fact that the banking institution or an affiliate of the banking institution, is providing services to the investment company or trust as investment advisor, sponsor, broker, distributor, custodian, transfer agent, registrar, or otherwise, and receiving compensation for the services does not preclude the trustee from investing in the securities of that investment company or trust. The banking institution shall disclose to all current income beneficiaries of the trust the rate, formula, and method of the compensation. This paragraph does not alter the degree of care and judgment required of trustees by section 501C.0901.

(c) Except as otherwise provided in this subdivision, a bank or trust company shall invest an amount not less than $500 received by it as representative or trustee or by order of the court, not required for the purposes of the trust and not to be accounted for within one year, as provided in this subdivision, in authorized securities then held by it or specially procured by it. Except as may be otherwise provided in the governing will, trust agreement, court order, or other instrument, any amount in any one trust account, may be invested in certificates of deposit or savings accounts in the same bank, or any other bank or banks if the certificates of deposit or savings accounts are fully insured by the Federal Deposit Insurance Corporation and receive the prevailing rate of interest on the certificates or savings accounts.

(d) Where funds are invested in authorized securities, as defined by law, the provisions of section 48.24 limiting the amount of liability of a person, corporation, or copartnership, with reference to a percentage of the capital and surplus of the bank, does not apply.

(e) A bank or trust company may invest all money received by it in trust in authorized securities. It is responsible to the owner or cestui que trust for the validity, regularity, quality, value, and genuineness of these investments and securities at the time they are made. It is also responsible to the owner or cestui que trust for the safekeeping of these securities and evidences of them. When special directions are given in an order, judgment, decree, will, or other written instrument as to the particular manner or the particular class or kind of securities or property in which an investment must be made, the bank or trust company must follow these directions and is not responsible for the performance of the trust. In all other cases it may invest funds held in any trust capacity in authorized securities using its best judgment in the selection of them, and is responsible for the validity, regularity, quality, and value of them at the time made, and for their safekeeping.

(f) As the sole trustee or one of two or more cotrustees, it may invest in fractional parts of, as well as in whole, securities, or may commingle funds for investment. If it invests in fractional parts of securities or commingles funds for investment, all of the fractional parts of the securities, or the whole of the funds so commingled must be owned and held by the bank or trust company in its several trust capacities. The bank or trust company is liable for the administration of these trusts in all respects as though separately invested. Not more than $100,000, at the cost price of the investments, may be invested for any one trust at any one time in fractional parts or as commingled funds for investment by a bank or trust company having capital and surplus of less than $500,000, unless the authority to invest in fractional parts or as commingled funds is given in the order, judgment, decree, will, or other written instrument governing the trust. Funds so commingled for investment must be designated collectively as a common trust fund. The trust company or bank shall maintain the common trust fund in conformity with the rules and regulations prevailing from time to time of the federal governmental agency that regulates the collective investment of trust funds by national banks. It may, in its discretion, retain and continue an investment and security or securities coming into its possession in any fiduciary capacity. Paragraphs (a) to (f) apply whether a corporate trustee is acting alone or with an individual cotrustee.

(g) Notwithstanding the provisions of paragraph (f), a bank or trust company may:

(1) establish and maintain common trust funds for the collective investment of funds held in a fiduciary capacity by it or by another bank or trust company that is owned or controlled by a corporation that owns or controls the bank or trust company; and

(2) as a fiduciary or cofiduciary, invest funds that it holds for investment in common trust funds established and maintained according to clause (1) if the investment is not prohibited by the instrument, judgment, decree, or order creating the fiduciary relationship. This section applies to fiduciary relationships now in existence or hereafter created.

To the extent not inconsistent with this paragraph, the provisions of paragraph (f) relating to common trust funds apply to the establishment and maintenance of common trust funds under this paragraph.

(h) A bank or trust company is entitled to reasonable compensation for the faithful performance of its duties and discharge of its trust, including all necessary expenses and interest at the legal rate, or the amount that has been or may be agreed upon by the parties. No compensation or commission paid or agreed to be paid by it for the negotiation of a loan, or the execution of a trust, is considered interest within the meaning of the law, and no excess over the legal rate of interest is considered usury.

**History:** *1998 c 331 s 20; 2015 c 5 art 15 s 2*

## 48A.08 INCIDENTAL INVESTMENTS, POWERS, AND LIMITATIONS.

Subdivision 1. **Qualifying organization.** A trust company, or a bank that holds a certificate as provided in section 48.37, may exercise the powers and privileges set forth in this section.

Subd. 2. **Investment powers.** (a) The bank or trust company may acquire, use, and improve, and for that purpose mortgage, lease, sell, and convey, real and personal property that is necessary for the transaction of its business.

(b) The bank or trust company may sell or continue to hold and use for its interests or those of the estate or trust to which it belongs an estate or interest in real estate that the bank or trust company acquires through foreclosure of a mortgage, trust deed, or other security, or by the settlement of an obligation or otherwise in the course of its business.

(c) The bank or trust company may become the purchaser at a foreclosure or judicial sale to which it is a party as trustee or otherwise.

(d) The bank or trust company may accept or make a deed, mortgage, or other instrument necessary for the transaction of its business. It may loan money and secure the loans by mortgage, trust deed or pledge, and/or purchase. It may sell and assign notes, bonds, mortgages, and other evidences of indebtedness, and securities, and convert them into cash or into other authorized securities, or securities and property not expressly prohibited by this chapter.

(e) The investment of funds owned by the trust company, as distinguished from funds held by it in trust, are restricted to authorized securities.

(f) The bank or trust company may guarantee a title to securities sold and transferred by it.

(g) The bank or trust company may become sole surety upon a bond. For trust companies organized after April 10, 1965, the bond must pertain to its own fiduciary activities.

(h) The bank or trust company may maintain and operate safe deposit vaults.

(i) The bank or trust company shall not invest its capital or surplus in real estate except as authorized. It shall not invest deposits, trust funds, or property except as authorized, or under or by virtue of an express contract, judgment, or other instrument conferring or imposing special power and authority so to do.

Subd. 3. **Powers of court; annual report to the court.** The bank or trust company is subject at all times to the orders, judgments, and decrees of a court of record from which it has accepted a trust, appointment, or commission as to the trust. It shall provide to the court itemized and verified accounts, statements, and reports required by law, or as the court orders as to a particular trust. The bank or trust company is subject to the general jurisdiction and authority of the district court of the county of its principal place of business.

**History:** *1998 c 331 s 21*

## 48A.09 DEFINITIONS.

Subdivision 1. **Terms.** For purposes of this section and section 48A.10, the terms defined in this section have the meanings given them.

Subd. 2. **Affiliated bank.** "Affiliated bank," with respect to another bank or a trust company, means a bank that is owned or controlled by the corporation that owns or controls that other bank or trust company, including a wholly owned subsidiary of the other bank or trust company.

Subd. 3. **Bank.** "Bank" means a state bank permitted to exercise trust powers under sections 48.37 to 48.47, and a national bank authorized to exercise fiduciary powers under the laws of the United States, including a national bank whose operations are limited to those of a trust company and related activities.

Subd. 4. **Fiduciary capacity.** "Fiduciary capacity" means a capacity resulting from a bank undertaking to act alone or jointly with others primarily for the benefit of another in all matters connected with its undertaking. The term includes, but is not limited to, the capacities of trustee, including trustee of a common trust fund; executor; administrator; personal representative; registrar or transfer agent with respect to stocks, bonds, or other evidences of indebtedness of a corporation, association, municipality, state or public authority; guardian of estates; conservator; receiver; escrow agent; agent for the investment of money; attorney-in-fact; or any other similar capacity.

Subd. 5. **Trust company.** "Trust company" means a trust company incorporated under the laws of this state that is duly authorized to exercise fiduciary powers.

**History:** *1998 c 331 s 22*

**48A.10 SUBSTITUTION; PROCEDURE.**

Subdivision 1. **Application.** A bank or trust company may file an application with the district court in the county in which an affiliated bank or other bank or trust company for which it seeks to be substituted is located requesting that it be substituted, except as is expressly excluded in the application, in every fiduciary capacity held by the affiliated bank or other bank or trust company that is specified in the application. The affiliated bank or other bank or trust company for which substitution is sought shall join in the application. The application need not list the fiduciary capacities in which substitution is requested.

Subd. 2. **Hearing notice.** When the application is filed with the district court, the court shall set a date and time for hearing and direct that notice of the hearing be given as provided in this subdivision. The applicant shall cause a copy of the notice to be published at least once a week for two consecutive weeks in a legal newspaper in the county where the hearing is to be held, the last publication of which is to be at least ten days before the time set for the hearing. The court may require additional notice as it considers necessary. A defect in giving notice does not limit or affect the validity of an order entered according to this section.

Subd. 3. **Order.** Upon finding that the applicant is authorized to exercise fiduciary powers, the district court shall enter an order substituting the applicant bank or trust company in every fiduciary capacity held by the affiliated bank or other bank or trust company for which substitution is sought and which joined in the application, except as may be otherwise specified in the application, and except for fiduciary capacities in any account with respect to which a person beneficially interested in the account has filed objection to the substitution and has appeared and been heard in support of the objection. Upon entry of the order, or at a later date as may be specified in the order, the applicant bank or trust company is substituted in every fiduciary capacity to which the order extends. The substitution may be made a matter of record in any county of this state by filing a certified copy of the order of substitution in the office of the court administrator of a district court, or by filing a certified copy of the order in the office of the county recorder.

Subd. 4. **Effect of substitution.** A designation in a will or other instrument of an affiliated bank as fiduciary is considered a designation of the bank or trust company substituted for the affiliated bank according to this section except where the will or other instrument is executed after the substitution and expressly provides that this section does not apply. Except as otherwise provided in this subdivision, a grant in a will or other instrument of a discretionary power is considered conferred upon the bank or trust company substituted as the fiduciary according to this section.

Subd. 5. **Accounting and transfer of assets.** An affiliated bank or other bank or trust company shall account jointly with the substituted bank or trust company for the accounting period during which the substitution occurred. Upon substitution according to this section, the affiliated bank or other bank or trust company shall deliver to the substituted bank or trust company all assets held by the affiliated bank or other bank or trust company as fiduciary, except assets held for fiduciary accounts with respect to which no substitution occurs. Upon substitution, all assets become the property of the substituted bank or trust company without the necessity of any instrument of transfer or conveyance.

Subd. 6. **Transfer of trusts to company; condition.** The trustees of an estate or property may surrender and resign the trust in favor of the trust company that will accept the trust and convey and deliver to it all property and assets of the trust, upon condition that the grantor, cestui que trust, and all parties in any manner interested in the execution and performance of the trust shall execute, acknowledge, and deliver an instrument in writing, consenting to the transfer, releasing and discharging the original trustee, and appointing the trust company as successor. If either party to the original trust is dead or does not join in the written consent, or if the original trust was created under a last will or an order or decree of a court of record, then the transfer is not valid except after full compliance with the judgment or decree of a court having jurisdiction to remove the acting trustee.

Subd. 7. **Trust funds; investment of accumulations.** A bank or trust company that receives $500 or more as executor, administrator, guardian, or other trustee, or by order of court, that is not required for the purposes of the trust, or does not have to be accounted for within one year, shall invest it as soon as practicable in authorized securities either then held by it or specially obtained by it. The income, less its proper charges, becomes part of the trust estate. The net accumulations on the income must be invested, accounted for, and allowed in the settlement of the trust.

Except as may be otherwise provided in the governing will, trust agreement, court order, or other instrument, any amount in a trust account may be invested in certificates of deposit, share certificates, or savings accounts in a bank or banks, or credit union, if the beneficial owner is a member, if the certificates of deposit, share certificates, or savings accounts are fully insured by an agency of the federal government insuring deposits and receive the prevailing rate of interest on the certificates or savings accounts.

**History:** *1998 c 331 s 23; 2006 c 260 art 5 s 4*

## 48A.11 NATIONAL BANKS AS FIDUCIARIES.

A national bank in this state granted a special permit to act in a fiduciary capacity by either the Federal Reserve Board under subsection K of section 11 of the Federal Reserve Act, as amended by the act of September 26, 1918, or the Office of the Comptroller of the Currency under the provisions of United States Code, title 12, section 92a, may without oath or security assign, transfer to, and deposit with the commissioner, the kinds and amounts of authorized securities required by section 48A.03 of a bank or trust company in a city in which the national bank is located. If the national bank has a capital of $500,000 or more, it is not required to deposit these securities for more than the lesser of $1,000,000 or ten percent of the amount of assets the bank is acting in a fiduciary capacity for at offices located in Minnesota. The securities so deposited must be held and maintained as a guaranty fund for the national bank for the performance of its duties in this fiduciary capacity.

When a national bank has complied with section 48A.03, no oath or security is required of it to accept and perform the trust, as provided in section 48A.07, subdivision 4.

For purposes of this section, "bank" and "trust company" have the meanings given in section 48A.09.

**History:** *1998 c 331 s 24; 2020 c 80 art 1 s 2*

## TRUST INSTITUTION OFFICES

### 48A.12 DEFINITIONS.

Subdivision 1. **Terms.** For purposes of sections 48A.12 to 48A.22, the following words and phrases have the meanings given them.

Subd. 2. **Account.** "Account" means the client relationship established with a trust company involving the transfer of funds or property to the trust company, including a relationship in which the trust company acts as trustee, executor, administrator, guardian, custodian, conservator, bailee, receiver, registrar, or agent, but excluding a relationship in which the trust company acts solely in an advisory capacity.

Subd. 3. **Administer.** "Administer" with respect to real or tangible personal property means, as an agent or in another representative capacity, to possess, purchase, sell, lease or insure, safekeep, or otherwise manage the property.

Subd. 4. **Affiliate.** "Affiliate" means a company that directly or indirectly controls, is controlled by, or is under common control with a trust institution or other company.

Subd. 5. **Bank.** "Bank" has the meaning given the term in United States Code, title 12, section 1813(h). The term "bank" does not include a "foreign bank" as defined in United States Code, title 12, section 3101(7), except for a foreign bank organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, the deposits of which are insured by the Federal Deposit Insurance Corporation.

Subd. 6. **Bank supervisory agency.** "Bank supervisory agency" means:

(1) an agency of another state with primary responsibility for chartering and supervising a trust institution; and

(2) the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Office of Thrift Supervision, and any successor to these agencies.

Subd. 7. **Branch.** "Branch," with respect to a trust company or depository institution, has the meaning given in section 48A.17 and in sections 47.51 and 49.411, subdivision 2, paragraph (d).

Subd. 8. **Charter.** "Charter" means a charter, license, or other authority issued by the commissioner or a bank supervisory agency authorizing a trust institution to act as a fiduciary in its home state.

Subd. 9. **Client.** "Client" means a person to whom a trust institution owes a duty or obligation under a trust or other account administered by the trust institution or as an advisor or agent, regardless of whether the trust institution owes a fiduciary duty to the person. The term includes the noncontingent beneficiaries of an account.

Subd. 10. **Commissioner.** "Commissioner" means the commissioner of commerce and, where appropriate, all of the commissioner's successors and predecessors in office.

Subd. 11. **Company.** "Company" includes a bank, trust company, corporation, limited liability company, partnership, association, business trust, or another trust.

Subd. 12. **Department.** "Department" means the Minnesota Commerce Department.

Subd. 13. **Fiduciary record.** "Fiduciary record" means a matter written, transcribed, recorded, received, or otherwise in the possession or control of a trust company, whether in physical, electromagnetic, or optical disk form, that is necessary to preserve information concerning an act or event relevant to an account or a client of a trust company.

Subd. 14. **Home state.** "Home state" means:

(1) with respect to a federally chartered trust institution, the state in which the institution maintains its principal office; and

(2) with respect to any other trust institution, the state that chartered the institution.

Subd. 15. **Home state regulator.** "Home state regulator" means the bank supervisory agency with primary responsibility for chartering and supervising an out-of-state trust institution.

Subd. 16. **Host state.** "Host state" means a state, other than the home state of a trust institution, in which the trust institution maintains or seeks to acquire or establish an office.

Subd. 17. **New trust office.** "New trust office" means a trust office located in a host state that:

(1) is originally established by the trust institution as a trust office; and

(2) does not become a trust office of the trust institution as a result of:

(i) the acquisition of another trust institution or trust office of another trust institution; or

(ii) a merger, consolidation, or conversion involving the trust institution or trust office.

Subd. 18. **Office.** "Office," with respect to a trust institution, means the principal office, a trust office, or a representative trust office, but not a detached facility.

Subd. 19. **Out-of-state bank.** "Out-of-state bank" means a bank chartered to act as a fiduciary in a state or states other than this state.

Subd. 20. **Out-of-state trust company.** "Out-of-state trust company" means a trust company that is not a state trust company whose principal office is not located in this state.

Subd. 21. **Out-of-state trust institution.** "Out-of-state trust institution" means a trust institution that is not a state trust institution.

Subd. 22. **Principal office.** "Principal office" with respect to:

(1) a state trust company, means a location registered with the commissioner as the state trust company's home office at which:

(i) the state trust company does business;

(ii) the state trust company keeps its corporate books and a set of its material records, including material fiduciary records; and

(iii) at least one executive officer of the state trust company maintains an office; or

(2) a trust institution other than a state trust company, means its principal place of business in the United States.

Subd. 23. **Registration.** "Registration" means the process by which a trust institution has been authorized by the commissioner to acquire, establish, or maintain a representative trust office in this state.

Subd. 24. **Representative trust office.** "Representative trust office" means an office at which a trust institution has been authorized by the commissioner to engage in a trust business other than:

(1) accepting or executing trusts, including to:

(i) act as trustee under a written agreement;

(ii) receive money or other property in its capacity as a trustee for investment in real or personal property;

(iii) act as trustee and perform the fiduciary duties committed or transferred to it by order of court of competent jurisdiction;

(iv) act as trustee of the estate of a deceased person; or

(v) act as trustee for a minor or incapacitated person;

(2) administering in any other fiduciary capacity real or personal property; or

(3) acting according to an order of a court of competent jurisdiction as executor or administrator of the estate of a deceased person or as a guardian or conservator for a minor or incapacitated person.

Subd. 25. **State.** "State" means a state of the United States, the District of Columbia, a territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

Subd. 26. **State bank and trust.** "State bank and trust" means a bank chartered by this state with the additional authority to exercise fiduciary powers and privileges set out in sections 48A.07 and 48A.08.

Subd. 27. **State trust company.** "State trust company" means a corporation or a limited liability trust company organized or reorganized under this chapter, including a trust company organized under the laws of this state before August 1, 1998.

Subd. 28. **State trust institution.** "State trust institution" means a trust institution chartered by the state.

Subd. 29. **Trust business.** "Trust business" means the holding out by a person to the public by advertising, solicitation, or other means that the person is available to perform any service of a trust institution.

Subd. 30. **Trust company.** "Trust company" means a state trust company or other company chartered to act as a fiduciary that is not a depository institution or a foreign bank.

Subd. 31. **Trust institution.** "Trust institution" means a bank and trust, or trust company.

Subd. 32. **Trust office.** "Trust office" means an office, other than the principal office, at which a trust institution is authorized by the commissioner to conduct any trust business incidental to the trust business that it is permitted to conduct at its principal office or branch. It may not accept deposits except as incidental to the trust business.

Subd. 33. **Unauthorized activity.** "Unauthorized activity" means:

(1) a company, other than one identified in section 48.37, 48A.01, or 48A.11, acting as a fiduciary within this state;

(2) a company engaging in a trust business in this state at an office of the company that is not its principal office, if it is a state trust institution, or that is not a trust office or a representative trust office of the company; or

(3) an out-of-state trust institution engaging in a trust business in this state at any time an order issued by the commissioner under section 48A.22 is in effect.

**History:** *1998 c 331 s 25; 1999 c 86 art 1 s 13*

**48A.13 STATE TRUST COMPANY PRINCIPAL OFFICE.**

Subdivision 1. **Requirement.** A state trust company must have and continuously maintain a principal office in this state.

Subd. 2. **Service of process.** Each executive officer at the principal office is an agent of the state trust company for service of process.

Subd. 3. **Notice of change.** A state trust company not authorized to engage in the business of banking may change its principal office to a location within this state by filing a written notice with the commissioner setting forth the name of the state trust company, the street address of its principal office before the change, the street address to which the principal office is to be changed, and a copy of the resolution adopted by the board authorizing the change.

The change of principal office takes effect on the 31st day after the date the commissioner receives the notice under this subdivision, unless the commissioner establishes an earlier or later date or unless before that day the commissioner notifies the state trust company that it must establish to the satisfaction of the commissioner that the relocation is consistent with the original determination made under section 48A.02, for the establishment of a state trust company at that location, in which event the change of principal office takes effect when approved by the commissioner.

**History:** *1998 c 331 s 26*

**48A.14 STATE TRUST INSTITUTIONS; REPRESENTATIVE TRUST OFFICES.**

Subdivision 1. **Authority.** (a) A state trust institution may establish or acquire and maintain representative trust offices anywhere in this state. A state trust institution may establish or acquire and maintain the office by filing a written notice with the commissioner setting forth the name of the state trust institution and the location of the proposed additional office, together with a copy of the resolution adopted by the board authorizing the additional office, and a filing fee of $250.

(b) The state trust institution may begin business at the additional office on the 31st day after the date the commissioner receives the notice, unless the commissioner specifies an earlier or later date.

Subd. 2. **Review by commissioner.** The 30-day period of review may be extended by the commissioner on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the state trust institution may establish the additional office only on prior written approval by the commissioner.

Subd. 3. **Disapproval.** The commissioner may deny approval of the additional office if the commissioner finds that the state trust institution lacks sufficient financial resources to undertake the proposed expansion

without adversely affecting its safety or soundness or that the proposed office would be contrary to the public interest.

**History:** *1998 c 331 s 27*

**48A.15 STATE BANKS AND TRUST COMPANIES; TRUST SERVICE OFFICES.**

Subdivision 1. **Authorization.** (a) A trust company organized under the laws of this state or a state bank and trust may, after completing the notification procedure required by this subdivision, establish and maintain a trust service office at any office in this state or of any other state or national bank. A state bank may, after completing the notification procedure required by this subdivision, permit a trust company organized under the laws of this state or a state bank and trust or a national bank in this state that is authorized to exercise trust powers to establish and maintain a trust service office at any of its banking offices.

(b) The trust company or state bank and trust and a state bank at which a trust service office is to be established according to this section shall jointly file, on forms provided by the commissioner, a notification of intent to establish a trust service office. The notification must be accompanied by a filing fee of $100 payable to the commissioner, to be deposited in the financial institutions account under section 46.131, subdivision 11. No trust service office shall be established according to this section if disallowed by order of the commissioner within 30 days of the filing of a complete and acceptable notification of intent to establish a trust service office. An order of the commissioner to disallow the establishment of a trust service office under this section is subject to judicial review under sections 14.63 to 14.69.

Subd. 2. **Services permitted.** The trust company or bank and trust that establishes a trust service office under this section may conduct at the office any trust business and business incidental to the trust business that it is permitted to conduct at its principal office. It may not accept deposits except as incidental to the trust business.

Subd. 3. **General requirements for banks.** (a) If the bank at which a trust service office is to be established has exercised trust powers, then the trust company or bank and trust that is establishing the trust service office shall enter into an agreement respecting those fiduciary powers to which the trust company or bank and trust shall succeed and shall file the agreement with the commissioner.

(b) The trust company or bank and trust that is establishing a trust service office under this section shall publish a notice of the filing in the form prescribed by the commissioner in a newspaper published in the municipality in which the trust service office 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 proposed trust service office is to be located. The trust company or bank and trust shall file proof of publication of the notice with the commissioner immediately after the notice is published.

(c) After filing and publication, the trust company or bank and trust establishing the trust service office shall, as of the date the office first opens for business, succeed to and be substituted for the bank at which the trust service office is located as to all fiduciary powers, rights, duties, privileges, and liabilities of the bank in its capacity as fiduciary for all estates, trusts, conservatorships, guardianships, and other fiduciary relationships of which the bank is then serving as fiduciary, except as may be otherwise specified in the agreement between the bank and the trust company or bank and trust which has established the trust service office.

(d) The trust company or bank and trust that has established the trust service office shall also be considered named as fiduciary in all writings, including, but not limited to, wills, trusts, court orders, and similar documents and instruments, naming the bank at which the trust service office is located signed before the

date the trust service office first opens for business, unless expressly negated by the writing or otherwise specified in the agreement between the trust company or bank and trust and the bank at which the trust service office is located.

(e) On the effective date of the substitution, the bank at which the trust service office has been established is released and absolved from all fiduciary duties and obligations under the writings and shall discontinue its exercise of trust powers on all matters not specifically retained by the agreement. This subdivision does not absolve the bank from liabilities arising out of a breach of fiduciary duty or obligation occurring before the date the trust service office first opens for business.

(f) This subdivision does not affect the authority, duties, or obligations of a bank with respect to relationships that may be established without trust powers, whether the relationships arise before or after the establishment of the trust service office.

Subd. 4. **Supervision.** A trust company or state bank and trust establishing and operating one or more trust service offices according to this section shall at all times maintain records acceptable to the commissioner regarding transactions originating at the trust service offices and available at its principal office for examination according to sections 46.04 and 46.05.

Subd. 5. **National banks; requirements.** If a trust service office is established by a national bank at the banking office of another national bank, then the agreement respecting fiduciary powers required by subdivision 3 must be filed with the comptroller of the currency of the United States and the notice required by subdivision 3 must be in the form prescribed by the comptroller of the currency.

Subd. 6. **Notice of substitutions; denial of substitution.** Not less than 60 days before the effective date of the proposed substitution under subdivision 3 or 5, the parties to the substitution shall send written notice of the proposed substitution to each cofiduciary, each surviving settlor of a trust, each conservatee or ward under a conservatorship or guardianship, each person who alone or in conjunction with others has the power to remove the fiduciary being substituted, and each adult beneficiary currently receiving or entitled to receive a distribution of principal or income from a trust or estate with respect to which the substitution is to be effected. Intentional failure to send the notice to a party at the party's current address as shown on the fiduciary's records makes the substitution of fiduciaries ineffective with respect to the fiduciary relationship. An unintentional failure to give notice does not impair the validity or effect of any substitution of fiduciaries under subdivision 3 or 5. A trust company or bank that is substituted or about to be substituted as fiduciary with respect to a trust, estate, conservatorship, or guardianship under subdivision 3 or 5 may be removed as fiduciary, or the substitution may be denied, upon petition by a cofiduciary, by a beneficiary of a trust or estate, by the settlor of a trust, or on behalf of a conservatee or ward under a conservatorship or guardianship if the trust company or bank files a written consent to its removal or a written declination to act, or if the court having jurisdiction over the fiduciary relationship, upon notice and hearing, approves the petition as in the best interests of the petitioner and all other parties interested in the trust, estate, conservatorship, or guardianship. This section applies in addition to any applicable provision for removal of a fiduciary or appointment of a successor fiduciary in any other statute or in the instrument creating the fiduciary relationship.

**History:** *1998 c 331 s 28; 1999 c 151 s 23; 2022 c 93 art 2 s 12*

**48A.16 DETACHED FACILITIES.**

A state trust institution may establish or acquire and maintain detached facilities for the conduct of any or all of the activities permitted for a trust institution following the procedure and in compliance with sections 47.52 to 47.57.

**History:** *1998 c 331 s 29*

**48A.17 AUTHORITY FOR OUT-OF-STATE TRUST OFFICES; PRIOR WRITTEN NOTICE.**

(a) A state trust institution may establish and maintain a new trust office or a representative trust office or acquire and maintain an office in a state other than this state. The state trust institution shall:

(1) file a notice on a form prescribed by the commissioner stating the name of the state trust institution, the location of the proposed office, and whether the laws of the jurisdiction where the office will be located permit the office to be maintained by the state trust institution;

(2) furnish a copy of the resolution adopted by the board authorizing the out-of-state office; and

(3) pay the filing fee of $250.

(b) The state trust institution may begin business at the additional office on the 31st day after the date the commissioner receives the notice, unless the commissioner specifies an earlier or later date.

(c) The 30-day period of review may be extended by the commissioner if the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the state trust institution may establish the additional office only on prior written approval by the commissioner.

(d) The commissioner may deny approval of the additional office if the commissioner finds that the state trust institution lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office would be contrary to the public interest. In acting on the notice, the commissioner shall consider the views of the appropriate bank supervisory agencies.

**History:** *1998 c 331 s 30*

**48A.18 OUT-OF-STATE TRUST INSTITUTION TRUST OFFICES.**

Subdivision 1. **Requirement.** An out-of-state trust institution may act as a fiduciary in this state or engage in a trust business at an office in this state only if it maintains a trust office in this state as permitted by this section.

Subd. 2. **Establishing an interstate trust office.** An out-of-state trust institution that does not operate a trust office in this state and that meets the requirements of this section may acquire and maintain a trust office or establish and maintain a new trust office in this state. An out-of-state trust institution may not establish a new trust office in this state unless a similar institution chartered under the laws of this state to act as a fiduciary is permitted to establish a new trust office that may engage in activities substantially similar to those permitted to trust offices of out-of-state trust institutions under subdivision 1 in the state where the out-of-state trust institution has its principal office.

Subd. 3. **Notice.** An out-of-state trust institution seeking to establish and maintain a new trust office or acquire and maintain a trust office in this state according to this section shall provide, or cause its home state regulator to provide, written notice of the proposed transaction to the commissioner on or after the date on

which the out-of-state trust institution applies to the home state regulator for approval to establish and maintain or acquire the trust office. The filing of the notice must be preceded or accompanied by a copy of the resolution adopted by the board authorizing the additional office and the filing fee, if any, prescribed by the commissioner.

Subd. 4. **Conditions for approval.** (a) No trust office of an out-of-state trust institution may be acquired or established in this state under this section unless:

(1) the out-of-state trust institution has confirmed in writing to the commissioner that for as long as it maintains a trust office in this state, it will comply with all applicable laws of this state;

(2) the out-of-state trust institution has provided satisfactory evidence to the commissioner that it has complied with:

(i) the applicable requirements of section 303.25; and

(ii) the applicable requirements of its home state regulator for acquiring or establishing and maintaining the office; and

(3) the commissioner, acting within 60 days after receiving notice under this section, has certified to the home state regulator that the requirements of this section have been met and the notice has been approved or, if applicable, that any conditions imposed by the commissioner under paragraph (b) have been satisfied.

(b) The out-of-state trust institution may begin business at the trust office on the 61st day after the date the commissioner receives the notice unless the commissioner specifies an earlier or later date, provided, with respect to an out-of-state trust institution that is not a depository institution and for which the commissioner has conditioned the approval on the satisfaction by the out-of-state trust institution of any requirement applicable to a state trust company under section 48A.02, the institution has satisfied the conditions and provided to the commissioner satisfactory evidence of that fact.

(c) The 60-day period of review may be extended by the commissioner on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the out-of-state trust institution may establish the office only on prior written approval by the commissioner.

(d) The commissioner may deny approval of the office if the commissioner finds that the out-of-state trust institution lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office is contrary to the public interest. In acting on the notice, the commissioner shall consider the views of the appropriate bank supervisory agencies.

Subd. 5. **Additional trust offices.** An out-of-state trust institution that maintains a trust office in this state under this section may establish trust service offices, or representative trust offices in this state to the same extent that a state trust institution may establish or acquire additional offices in this state according to the procedures for establishing or acquiring these offices.

**History:** *1998 c 331 s 31*

## 48A.19 OUT-OF-STATE TRUST INSTITUTION REPRESENTATIVE TRUST OFFICES.

Subdivision 1. **Authorization.** (a) Subject to the requirements contained in this section, an out-of-state trust institution may establish and maintain representative trust offices anywhere in this state.

(b) An out-of-state trust institution may establish or acquire and maintain a representative trust office in this state. An out-of-state trust institution not maintaining a trust office in this state and desiring to establish or acquire and maintain a representative trust office shall:

(1) file a notice on a form prescribed by the commissioner stating the name of the out-of-state trust institution and the location of the proposed office and satisfactory evidence that it is a trust institution;

(2) furnish a copy of the resolution adopted by the board authorizing the representative trust office; and

(3) pay the filing fee, if any, prescribed by the commissioner.

(c) The out-of-state trust institution may begin business at the representative trust office on the 31st day after the date the commissioner receives the notice, unless the commissioner specifies an earlier or later date.

Subd. 2. **Review by commissioner.** The 30-day period of review may be extended by the commissioner on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the out-of-state trust institution may establish the representative trust office only on prior written approval by the commissioner.

Subd. 3. **Disapproval.** The commissioner may deny approval of the representative trust office if the commissioner finds that the out-of-state trust institution lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office would be contrary to the public interests. In acting on the notice, the commissioner shall consider the views of the appropriate bank supervisory agencies.

**History:** *1998 c 331 s 32*

**48A.20 SUPERVISION OF OUT-OF-STATE TRUST INSTITUTIONS.**

Subdivision 1. **Examinations.** To the extent consistent with subdivision 3, the commissioner may make examinations of an office established and maintained in this state under this chapter by an out-of-state trust institution as the commissioner considers necessary to determine whether the office is being operated in compliance with the laws of this state and according to safe and sound banking practices. Section 46.04 applies to these examinations.

Subd. 2. **Periodic reports.** The commissioner may require periodic reports regarding an out-of-state trust institution that has established and maintained an office in this state according to this chapter. The required reports shall be provided by the trust institution or by the home state regulator. Any reporting requirements prescribed by the commissioner under this subdivision shall be:

(1) consistent with the reporting requirements applicable to state trust companies; and

(2) appropriate to allow the commissioner to carry out the commissioner's responsibilities under this chapter.

Subd. 3. **Cooperative agreements.** (a) The commissioner may enter into cooperative, coordinating, and information-sharing agreements with any other bank supervisory agencies or an organization affiliated with or representing one or more bank supervisory agencies with respect to the periodic examination or other supervision of an office in this state of an out-of-state trust institution, or an office of a state trust institution in a host state. The commissioner may accept a report of examination and report of investigation from a party to the agreement in lieu of conducting the commissioner's own examination or investigation.

(b) The commissioner may enter into contracts with any bank supervisory agency that has concurrent jurisdiction over a state trust institution or an out-of-state trust institution maintaining an office in this state to engage the services of that agency's examiners at a reasonable rate of compensation or to provide the services of the commissioner's examiners to the agency at a reasonable rate of compensation.

(c) The commissioner may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any office established and maintained in this state by an out-of-state trust institution or an office established and maintained by a state trust institution in any host state. The commissioner may at any time take actions independently if the commissioner considers the actions to be necessary or appropriate to carry out the commissioner's responsibilities under this section or to ensure compliance with the laws of this state. In the case of an out-of-state trust institution, the commissioner shall recognize the exclusive authority of the home state regulator over corporate governance matters and the primary responsibility of the home state regulator with respect to safety and soundness matters.

Subd. 4. **Fees.** Each out-of-state trust institution that maintains one or more offices in this state may be assessed and, if assessed, shall pay supervisory and examination fees according to the laws of this state and rules of the commissioner. The fees may be shared with other bank supervisory agencies or an organization affiliated with or representing one or more bank supervisory agencies under agreements between the parties and the commissioner.

**History:** *1998 c 331 s 33*

**48A.21 NOTICE OF SUBSEQUENT MERGER, CLOSING.**

Each out-of-state trust institution that maintains an office in this state according to section 48A.18, or the home state regulator of the trust institution, shall give at least 30 days prior written notice or, in the case of an emergency transaction, shorter notice as is consistent with applicable state or federal law, to the commissioner of:

(1) a merger, consolidation, or other transaction that would cause a change of control with respect to the out-of-state trust institution or any bank holding company that controls the trust institution, with the result that an application would be required to be filed pursuant to the federal Change in Bank Control Act of 1978, as amended, United States Code, title 12, section 1817(j), or the federal Bank Holding Company Act of 1956, as amended, United States Code, title 12, section 1841 et seq., or any successor statutes;

(2) a transfer of all or substantially all of the trust accounts or trust assets of the out-of-state trust institution to another person; or

(3) the closing or disposition of an office in this state.

**History:** *1998 c 331 s 34*

**48A.22 ENFORCEMENT.**

Subdivision 1. **General authority of commissioner.** (a) Consistent with hearing provisions of sections 46.23 to 46.33, if the commissioner finds that:

(1) an office maintained by an out-of-state trust institution in this state is being operated in violation of the laws of this state or in an unsafe and unsound manner; or

(2) a company is engaged in an unauthorized trust activity,

the commissioner may take any enforcement action the commissioner could take if the office or the company were a state trust company including, but not limited to, issuing an order temporarily or permanently prohibiting the company from engaging in a trust business in this state.

(b) The commissioner may determine by order that an out-of-state trust institution engaging in or proposing to engage in a trust business in this state does not meet the requirements for establishing a representative trust office in this state according to section 48A.19, the order is effective on the date of issuance or another date the commissioner determines.

Subd. 2. **Immediate enforcement action; subsequent hearing.** In cases involving extraordinary circumstances requiring immediate action, the commissioner may take any action permitted by subdivision 1 without notice or opportunity for hearing but shall promptly upon application of the out-of-state trust institution afford a subsequent hearing to rescind the action taken. The commissioner shall promptly give notice to the home state regulator of each enforcement action taken against an out-of-state trust institution and, to the extent practicable, shall consult and cooperate with the home state regulator in pursuing and resolving the enforcement action.

**History:** *1998 c 331 s 35*