

CHAPTER 49

LIQUIDATION, CONSOLIDATION, MERGER

<p>49.01 DEFINITIONS.</p> <p>49.013 INSOLVENT FINANCIAL INSTITUTIONS; ASSIGNMENT PROHIBITED.</p> <p>49.02 ASSESSMENTS ON STOCK; STOCK UNPAID OR CAPITAL IMPAIRED.</p> <p>49.04 INVOLUNTARY LIQUIDATION OF FINANCIAL INSTITUTIONS.</p> <p>49.05 POWERS AND DUTIES OF COMMISSIONER ON LIQUIDATION.</p> <p>49.06 CONSOLIDATION DURING LIQUIDATION.</p> <p>49.07 REORGANIZATION DURING LIQUIDATION.</p> <p>49.17 ASSESSMENTS AGAINST STOCKHOLDERS; ORDERS FOR.</p> <p>49.18 REVIEW OF ORDERS OF COMMISSIONER.</p> <p>49.19 DEFENSES BY STOCKHOLDERS.</p> <p>49.20 REMEDY EXCLUSIVE.</p> <p>49.215 VOLUNTARY LIQUIDATIONS.</p> <p>49.24 PROCEDURE IN LIQUIDATION.</p> <p>49.30 COMMITTEE TO COMPLETE LIQUIDATION.</p> <p>49.31 COMMITTEE TO FURNISH BONDS.</p> <p>49.32 DISCHARGE OF COMMISSIONER AS STATUTORY LIQUIDATOR.</p> <p>49.33 CONSOLIDATION AND MERGER, WHEN AUTHORIZED.</p>	<p>49.34 CONSOLIDATION OR MERGER OF STATE BANKS OR TRUST COMPANIES, PROCEDURE.</p> <p>49.35 CONSOLIDATION OR MERGER AGREEMENT.</p> <p>49.36 APPROVAL BY COMMISSIONER.</p> <p>49.37 STOCKHOLDERS TO APPROVE; CERTIFICATE OF CONSOLIDATION OR MERGER.</p> <p>49.38 CORPORATE EXISTENCE MERGED; RIGHTS, POWERS, OBLIGATIONS.</p> <p>49.39 CONSOLIDATION OR MERGER OF BANKS AND TRUST COMPANIES.</p> <p>49.40 PENDING ACTIONS OR PROCEEDINGS NOT AFFECTED.</p> <p>49.41 RIGHTS OF DISSENTING SHAREHOLDERS.</p> <p>49.411 INTERSTATE BANK MERGERS AFFECTING INTERSTATE BRANCHING.</p> <p>49.42 STATE BANK.</p> <p>49.43 STATE BANK; CONVERSION, MERGER, CONSOLIDATION; NATIONAL BANKING ASSOCIATION.</p> <p>49.44 NATIONAL BANKING ASSOCIATION; CONVERSION, MERGER, CONSOLIDATION; STATE BANK.</p> <p>49.45 MERGER OR CONSOLIDATION.</p> <p>49.46 STATE BANK, RETENTION OF ASSETS.</p>
---	---

49.01 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 49.01 to 49.32, the following terms shall be given the meanings subjoined to them.

Subd. 2. **Financial institution.** "Financial institution" means and includes a bank, a savings bank, a trust company, a savings association, a credit union, and an industrial loan and thrift company.

Subd. 3. **Investment company.** "Investment company" means any person, copartnership, association, or corporation referred to in sections 54.26 to 54.297.

Subd. 4. **Commissioner.** "Commissioner" means the commissioner of commerce.

Subd. 5. **District court.** "The district court," unless otherwise specifically stated, means the district court of the county in which the financial institution being liquidated had its principal place of business prior to the time the commissioner took possession of its business and assets.

Subd. 6. **Liquidation Division.** "Liquidation Division" means the Liquidation Division of the Department of Commerce, consisting of the commissioner of commerce, a deputy, any examiner in charge of liquidation, deputy examiners, attorneys, and other employees engaged in carrying out the provisions of sections 49.01 to 49.32, and performing functions incidental thereto.

Subd. 7. **State bank.** "State bank," for the purposes of sections 49.02 to 49.41, shall mean any bank, savings bank, trust company, or bank and trust company which is now or may hereafter be organized under the laws of this state.

History: 1945 c 128 s 1 subds 1-6; 1975 c 166 s 7; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444; 1987 c 384 art 2 s 12; 1995 c 171 s 31; 1995 c 202 art 1 s 13,25

49.013 INSOLVENT FINANCIAL INSTITUTIONS; ASSIGNMENT PROHIBITED.

No financial institution shall make an assignment by reason of existing or probable insolvency. Its governing board or managing officers, if satisfied that it is, or is about to become, insolvent, shall immediately report that fact to the commissioner.

History: (7682) RL s 2998; 1945 c 128 s 1 subd 7

49.02 ASSESSMENTS ON STOCK; STOCK UNPAID OR CAPITAL IMPAIRED.

Subdivision 1. **Grounds for assessment.** Every bank or trust company which shall have failed to pay up its capital stock as required by law, or the capital of which shall have become impaired, within 90 days after receiving notice thereof from the commissioner, shall make up the deficiency by a pro rata assessment on the capital stock, to be made by the stockholders at a meeting called for that purpose, and, in case of its refusal to do so, the commissioner may proceed forthwith to take possession of its property and business and liquidate it as hereinafter provided; but, with the commissioner's consent and approval it may reduce its paid-up capital stock, as provided by law, pay in any remaining deficiency, and thereupon continue business upon the reduced capital.

Subd. 2. **Procedure.** The directors of any bank or trust company receiving notice from the commissioner to make good an impairment of capital shall fix the time when the assessment made at the stockholders' meeting shall become due and payable, which time shall be not less than 15, nor more than 30, days after the assessment is levied. Notice of this assessment shall be mailed to each stockholder at the office address as shown by the stock books of the bank or trust company.

If any stockholder shall fail to pay in cash the amount of the assessment against stock for a period of 30 days after the same shall become due and payable, the directors of the bank or trust company shall sell the same at public sale upon ten days' notice, to be given by posting copies of the notice of sale in three public places in the city, town, or community where the bank or trust company is located, or at a private sale, after giving the stockholder ten days' written notice by certified mail addressed to the post office address as shown by the stock books of the bank or trust company.

Upon sale of any stock, as herein provided, the purchaser shall forthwith become liable for, and shall pay in cash, the amount of the assessment thereon.

Subd. 3. **Sale of stock.** This stock shall not be sold for less than the amount due thereon and the expense of sale, and any excess shall be paid to the delinquent stockholder. If no bidder offers the amount due and expenses of sale, the amount previously paid on the stock shall be forfeited, and the stock sold by order of the directors within six months thereafter, or canceled and deducted from the capital of the corporation; and when, by reason of this cancellation and reduction, the capital is reduced below the minimum required by law, the deficiency shall be paid in within 30 days, or the commissioner shall take possession of the property and business of said bank or trust company and may proceed to liquidate it as hereinafter provided.

History: (7681-1, 7684, 7686) RL s 3000, 3002; 1939 c 302 s 1; 1945 c 128 s 2-4; 1978 c 674 s 60; 1986 c 444

49.03 [Repealed, 1945 c 128 s 13]

49.04 INVOLUNTARY LIQUIDATION OF FINANCIAL INSTITUTIONS.

Subdivision 1. **Commissioner taking possession; grounds for; rights of third parties.** When it shall appear to the commissioner that any financial institution has violated its charter, or any law of the state, or is conducting its business in an unsafe or unauthorized manner, or that its capital is impaired, or if it or any of its controlling officers shall refuse to submit its books, papers, and concerns to the inspection of the commissioner, or any duly authorized assistant, or if any of its officers shall refuse to be examined upon oath touching its concerns, or if it shall suspend payment of its obligations, or furnish reason for the commissioner concluding that it is in an unsound or unsafe condition to transact the business for which it was organized, or that it is unsafe and inexpedient for it to continue business, or if it shall neglect or refuse to observe a proper order of the commissioner, the commissioner may forthwith take possession of its property and business including forfeiture of its certificate of authorization and retain this possession until it shall resume business or its affairs be finally liquidated, as herein provided. On taking possession of the property and business of any such financial institution, the commissioner shall forthwith give notice of that fact to any and all financial institutions or other corporations, associations, partnerships, and individuals holding, or in possession of, any of its assets. No financial institution or other corporation, association, partnership, or individual knowing of such taking possession by the commissioner, or notified, as aforesaid, shall have a lien or charge for any payment, advance, or clearance thereafter made, or liability thereafter incurred against any of the assets of the financial institution of whose property and business the commissioner shall have taken possession, as aforesaid. The financial institution may, with the consent of the commissioner, resume business upon such conditions as may be approved by the commissioner. Upon taking possession of the property and business of the financial institution, the commissioner is authorized to collect money due to it and to do such other acts as are necessary to conserve its assets and business, and shall proceed to liquidate the affairs thereof, if in the commissioner's opinion it cannot safely resume business, as hereinafter provided.

Subd. 2. **Application to enjoin liquidation.** Whenever any such financial institution of whose property and business the commissioner has taken possession as aforesaid deems itself aggrieved thereby it may at any time within ten days after such taking possession apply to the district court to enjoin further proceedings, and said court, after citing the commissioner to show cause why further proceedings should not be enjoined, and hearing the allegations and proofs of the parties in determining the facts, may upon the merits dismiss such application or enjoin the commissioner from further proceedings and direct the commissioner to surrender such business and property to such financial institutions.

Subd. 3. **Actions stayed.** When the commissioner shall take possession of the business and property of any financial institution, any action at law pending against it shall be stayed, upon motion to the court in which such action is pending setting forth said fact, so long as such possession continues, unless otherwise ordered by the court, pursuant to the provisions of subdivision 5.

Subd. 4. **Garnishments, attachments, levies vacated.** All garnishments, attachments, and levies in any action against the financial institution shall likewise be set aside and vacated upon motion.

Subd. 5. **Judgments vacated.** Any judgment for money only entered against such financial institution within 30 days preceding the date when the commissioner takes possession shall be vacated and set aside upon motion, and the judgment creditor shall be entitled to file a claim with the commissioner; all other judgments entered within that period of 30 days shall be vacated upon the application of the commissioner to the court wherein such judgment is entered, when it appears to the court that the judgment is detrimental to the interest of the creditors of the financial institution.

Subd. 6. **Subsequent levies and attachments unlawful.** It shall be unlawful for any officer or other person to levy upon, seize, or attach any of the assets of any financial institution to the possession of which the commissioner is entitled, after the commissioner has taken possession, and so long as this possession continues.

History: (7688, 7699-25, 7699-26, 7699-27, 7699-28) 1909 c 179 s 2; 1927 c 261 s 1-4; 1945 c 128 s 5; 1986 c 444; 1987 c 349 art 1 s 23

49.05 POWERS AND DUTIES OF COMMISSIONER ON LIQUIDATION.

Subdivision 1. **General powers.** In all cases where the commissioner has taken possession of the property and business of any financial institution, or any such financial institution is in the process of liquidation by the commissioner, the commissioner may, in the name of the financial institution or of the commissioner acting as such, for its use, bring and carry to an end all necessary actions in the proper courts to reduce its assets to money and to protect its property and rights, and to that end may, in the name of the financial institution or of the commissioner acting as such, execute all bonds and other papers necessary to carry on any such actions, and may, in its name, satisfy, discharge, and assign, by written instrument, any and all real estate and chattel mortgages and all other liens held by it, and may foreclose in the manner provided by law any real estate mortgage held by it, and execute, in its name, to the attorney employed to foreclose any such mortgage, any power of attorney required by law.

Subd. 2. **Certificates prior to foreclosure sales.** Prior to any sale under any foreclosure proceedings, the commissioner shall record in the office of the county recorder of the county where any land affected by any such foreclosure sale is situated, a certificate under the commissioner's hand, as such commissioner, stating therein the corporate name of the financial institution affected; its principal place of business; that possession of its property and business has been taken by the commissioner under the laws of the state, and the date of taking possession thereof; and that it is in process of liquidation by the commissioner, pursuant to the laws of this state, if such be the fact. A like certificate shall be recorded by the commissioner in the office where any such mortgage or lien is recorded. This certificate, or a duly certified copy thereof, shall be prima facie evidence of the facts therein set forth. Only one such certificate need be recorded as hereinbefore provided in this section, for each financial institution in liquidation. All foreclosure proceedings heretofore conducted, whether the certificate was recorded as to each such foreclosure or not, are hereby validated if one such certificate has been recorded as to each financial institution in liquidation, or if the commissioner shall after any foreclosure sale record a certificate reciting the facts required to be set out in an original certificate, as they existed prior to the foreclosure sale.

Subd. 3. **Certificates prior to judgments and final orders.** A like certificate shall be filed by the commissioner in the office of the court administrator of the district court in any county where any action or proceeding affecting any such financial institution or its property shall be brought, in the name of such financial institution, or in the name of the commissioner for its use, prior to the entry of judgment or the making of any final order therein, and this certificate, or a duly certified copy thereof, shall be prima facie evidence of the facts therein set forth.

Subd. 4. **Certain actions, orders, and judgments validated.** Where the commissioner has heretofore taken possession of the property and business of any financial institution, or any financial institution has been liquidated, or the same is in process of liquidation by the commissioner, and actions or proceedings have been heretofore brought in the name of any such financial institution, or in the name of the commissioner for its use, in any court of the state, all such actions, and all orders and judgments that have heretofore been, or may hereafter be, made or entered therein, are hereby in all things validated, on the filing of a certificate

reciting the facts required to be set out as provided for in subdivision 3, in the court wherein any such action or proceeding is or has been pending.

Subd. 5. Federal Deposit Insurance Corporation as receiver or liquidator. The Federal Deposit Insurance Corporation created by section 12B of the Federal Reserve Act, as amended, upon appointment by the commissioner, may act without bond as receiver or liquidator of a financial institution, the deposits in which are to any extent insured by this corporation, and that has been closed pursuant to section 49.04, subdivision 1.

Notwithstanding any other provision of law the appropriate state authority having the right to appoint a receiver or liquidator of a financial institution may, in the event of the closing, tender to the corporation the appointment as receiver or liquidator of the financial institution; and, if the corporation accepts the appointment, the corporation shall have and possess all the powers and privileges provided by the laws of this state with respect to a receiver or liquidator, respectively, of a financial institution, its depositors, and other creditors.

Subd. 6. Right of subrogation. When a financial institution has been closed, and the Federal Deposit Insurance Corporation has paid or made available for payment the insured deposit liabilities of the closed institution, the corporation, whether or not it has or shall thereafter become a liquidating agent of the closed institution is subrogated, by operation of law with like force and effect as if the closed institution were a national bank, to all rights of the owners of these deposits against the closed financial institution in the same manner and to the same extent as now or hereafter necessary to enable the Federal Deposit Insurance Corporation under federal law to make insurance payments available to depositors of closed insured financial institutions; provided, that the rights of depositors and other creditors of the closed institution shall be determined in accordance with the laws of this state. The commissioner may, in the event of the closing of any financial institution pursuant to section 49.04, subdivision 1, the deposits of which financial institution are to any extent insured by the corporation, tender to the corporation the appointment as liquidating agent of this financial institution and, if the corporation accepts the appointment, it shall have and possess all the powers and privileges provided by the laws of this state with respect to a special deputy examiner of the Department of Commerce in the management and liquidation of this institution, and be subject to all of the duties of the special deputy examiner; provided, that nothing contained in this subdivision shall be construed as a surrender of the right of the commissioner to liquidate financial institutions under the commissioner's supervision pursuant to the statute in such case made and provided; and the commissioner may waive the filing of a bond by the corporation as the special deputy examiner.

Subd. 7. Commissioner may borrow money. With respect to a banking institution which is or may be closed on account of inability to meet the demands of its depositors or by action of the commissioner or of a court or by action of its directors, or, in the event of its insolvency or suspension, the commissioner may borrow from the Federal Deposit Insurance Corporation and furnish any part or all of the assets of the institution to the corporation as security for a loan from same. The order of a court of record of competent jurisdiction shall be first obtained approving this loan. The commissioner or receiver or liquidator appointed by the commissioner upon the order of a court of record of competent jurisdiction may sell to the corporation any part or all of the assets of the institution.

The provisions of this subdivision shall not be construed to limit the power of any banking institution, or the commissioner, to pledge or sell assets in accordance with any other law of this state.

History: (7690) 1913 c 447 s 1; 1933 c 10 s 1; 1945 c 128 s 6; 1976 c 181 s 2; 1Sp1985 c 1 s 2,3; 1Sp1985 c 13 s 183,184; 1Sp1985 c 16 art 2 s 37; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1987 c 349 art 1 s 24; 2005 c 4 s 2

49.06 CONSOLIDATION DURING LIQUIDATION.

Any such financial institution in course of liquidation may, with the consent of the commissioner, consolidate with any other like financial institution, upon such terms as may be authorized by their respective boards of directors, with the consent of a majority of the stockholders, and may transfer to such financial institution its entire assets, subject to its existing liabilities.

History: (7643) *RL s 2971; 1945 c 128 s 7*

49.07 REORGANIZATION DURING LIQUIDATION.

Subdivision 1. **Plan.** When the commissioner, with a view to restoring the solvency of any bank or trust company of which the commissioner has taken charge pursuant to law, shall approve a reorganization plan entered into between the depositors and unsecured creditors of such bank or trust company and the bank or trust company or reorganizers thereof which represent 90 percent of the amount of deposits and unsecured claims of the bank or trust company, then and in such case all other depositors and unsecured creditors shall be held to be subject to this agreement to the same extent and with the same effect as if they had joined in the execution thereof, and their claims shall be treated in all respects as if they had joined in the execution of the articles or reorganization plan in the event of restoration of the bank or trust company to solvency, and the reopening of the same for business.

Subd. 2. **Deposits.** All deposits made in any state bank or trust company subsequent to the passage of Laws 1925, chapter 38, shall be subject to the provisions of this section.

Subd. 3. **Deposits exempt.** Deposits of the state, counties, cities, towns and school districts are exempt from the operation of this section.

History: (7690-1, 7690-2, 7690-3) *1925 c 38 s 1-3; 1945 c 128 s 8; 1973 c 123 art 5 s 7; 1986 c 444*

49.13 [Repealed, 1945 c 128 s 13]

49.14 [Repealed, 1945 c 128 s 13]

49.15 [Repealed, 1945 c 128 s 13]

49.17 ASSESSMENTS AGAINST STOCKHOLDERS; ORDERS FOR.

In all cases where a state bank or trust company has been closed and the commissioner of commerce has taken charge of its business, property, and assets, and the corporation is in process of liquidation by the commissioner and the commissioner shall find and determine that the corporation is insolvent, and it is necessary, in order that the creditors thereof may be paid, to levy an assessment on and against the stockholders of the corporation, in such case the commissioner is hereby authorized and empowered to make and file an order in the commissioner's office, levying an assessment against and upon the stockholders of the corporation. This order shall set forth a summary statement of the assets of the corporation and the probable value thereof, and of the deposits and other liabilities of the corporation, and state the reason for the assessment and the rate thereof against each share of stock, and fix the time within which the assessment must be paid, which time shall not be less than 40 days from the date of filing the order.

A certified copy of the order shall be filed in the office of the court administrator in the county where the corporation has its principal place of business.

A copy of the order shall be served by the commissioner of commerce, by certified mail, on each of the stockholders of the corporation, directed to the stockholder's last known address, within ten days after the filing of the order in the office of the commissioner.

History: (7699-20) 1927 c 254 s 1; 1978 c 674 s 60; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444; 1Sp1986 c 3 art 1 s 82

49.18 REVIEW OF ORDERS OF COMMISSIONER.

The order is a conclusive determination that the necessity for the levying of the assessment exists; provided, that the corporation, or any stockholder or creditor thereof, may secure a review of the commissioner's order by serving a notice requesting review upon the commissioner within 20 days after the service of the order upon the aggrieved party. This notice, with proof of service, shall be filed within ten days after service with the court administrator of the district court in the county where the corporation has its principal place of business. The district court then has jurisdiction to consider the necessity of levying the assessment. It shall hear and determine the matter de novo in or out of term at any place in the district. This hearing shall take precedence of all other matters and may be held upon ten days' written notice by either party. The judge shall make such order in the premises as is proper, and may affirm, vacate, or modify the commissioner's order. An appeal may be taken therefrom as in other civil cases. During the pendency of the appeal the commissioner of commerce shall remain in charge of the business, property, and assets of the corporation involved.

History: (7699-21) 1927 c 254 s 2; 1983 c 247 s 26; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1Sp1986 c 3 art 1 s 82

49.19 DEFENSES BY STOCKHOLDERS.

In all other respects the stockholders in the corporation shall have and retain all defenses that they may now have, in case an action is brought to enforce payment of the assessment.

History: (7699-22) 1927 c 254 s 3

49.20 REMEDY EXCLUSIVE.

The provisions of sections 49.17 to 49.19 shall not be cumulative but shall be the exclusive procedure for the levying of assessments upon and against stockholders of banks or trust companies in charge of the commissioner of commerce and in process of liquidation by the commissioner.

History: (7699-23) 1927 c 254 s 4; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444

49.21 [Repealed, 1945 c 128 s 13]

49.215 VOLUNTARY LIQUIDATIONS.

Subdivision 1. **Resolution.** By a resolution duly adopted by the holders of 75 percent of its stock, a bank, a trust company, one acting in the capacity of both a bank and trust company, a savings bank, an industrial loan and thrift company, or an investment company may go into voluntary liquidation upon filing a certified copy of such resolution with the commissioner and obtaining written consent to such voluntary liquidation.

Subd. 2. **Notice to creditors.** After the filing of such certified copy of such resolution and obtaining the written consent of the commissioner, it shall give eight weeks' published notice, in a qualified newspaper in the county of the principal place of business of such financial institution, to creditors to present their

claims, file a copy thereof with the commissioner within one week after the first publication thereof, and file with the commissioner proof of the publication within ten days after the completion thereof.

Subd. 3. **Certificate of liquidation.** Upon compliance with the foregoing and upon filing with the commissioner an affidavit of the president and cashier or vice president conducting the duties of cashier of said financial institution that the provisions of subdivision 4 have been complied with and that all depositors and other creditors have been paid in full, or, if any dividends or any moneys set apart for the payment of claims remain unpaid and the places of residence of the depositors or other creditors are unknown to the persons making the affidavit, that sufficient funds have been turned over to the commissioner for payment into the state treasury to pay said depositors and other creditors, in the manner provided by subdivision 5, the commissioner shall issue a certificate of liquidation, and upon the recording in the office of the county recorder of the county of the principal place of business of such financial institution immediately prior to its voluntary liquidation, the liquidation of said financial institution shall be complete, and its corporate existence shall thereupon terminate.

Subd. 4. **Omitted assets; trustee.** If any assets have been omitted from the liquidation, before the commissioner shall file a certificate of liquidation the financial institution being liquidated shall petition the district court for the appointment of a trustee and shall transfer the title to all assets so omitted from its liquidation to the trustee, except unpaid dividends or any moneys set apart for the payment of claims remaining unpaid, and turn over to the commissioner of commerce for payment into the state treasury, as provided for in subdivision 5, for the benefit of the persons entitled thereto. Such assets shall thereafter be administered and distributed by the trustee subject to the approval of the district court.

Subd. 5. **Disposition of unclaimed dividends.** If any dividends or any moneys set apart for the payment of claims remain unpaid and the places of residence of the owners thereof are unknown to the officers of the financial institution being liquidated, they may pay the same over to the commissioner for payment into the state treasury, furnishing the commissioner certified triplicate lists of any such unclaimed dividends or other moneys, specifying the name of each owner, the amount due, and the owner's last known address. Thereafter the commissioner shall deposit said unpaid dividends or other moneys in the state treasury in the manner provided for in section 49.24, subdivision 13, with reference to unclaimed dividends and other moneys in the commissioner's hands as a result of involuntary liquidations and the provisions of said subdivision 13 which apply to such unclaimed dividends and other moneys.

History: 1945 c 128 s 12; 1976 c 181 s 2; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444; 1997 c 157 s 30; 2005 c 4 s 3; 2014 c 283 s 1

49.22 [Repealed, 1945 c 128 s 13]

49.23 [Repealed, 1945 c 128 s 13]

49.24 PROCEDURE IN LIQUIDATION.

Subdivision 1. **Inventory.** Upon taking possession of the property and assets of any financial institution the commissioner shall make an inventory of the assets of such financial institution, in duplicate, one to be filed in the office of the commissioner and one in the office of the court administrator of the district court, and thereupon the district court shall assume jurisdiction for the purpose of taking such action as is provided for in sections 49.24 to 49.32.

Subd. 2. **Collection of debts; compromise of debts and sale of property.** The commissioner shall collect all debts due and all claims belonging to such financial institution. Whenever the commissioner is of the opinion that a debt due such financial institution is bad or doubtful the commissioner may present a

verified petition to a judge of the district court setting forth the facts; and the judge if satisfied that it is for the best interests of the creditors may hear such petition without notice and make an order granting such petition and authorizing the petitioner to sell, compound, or compromise such debt. Personal property or real estate may be sold on like petition, approval, and order. If a petition for the sale of real estate is presented, the judge may require that notice of a hearing thereon be given to the creditors by publication in such manner as the judge orders. The commissioner may compromise bad or doubtful debts and sell personal property having a book value, as shown by the commissioner's inventory, of not to exceed \$200 without such order.

Subd. 3. **Attorneys.** Upon the request of the commissioner in writing the attorney general shall employ a special attorney to act as counsel in all matters relating to the liquidation of each financial institution, which appointment shall be made according to the provisions of the statutes regulating the employment by the attorney general of special attorneys for state boards and officers, and the payment of such attorney shall be made in the manner provided in subdivision 7 for the payment of compensation and expenses in liquidation of financial institutions.

Subd. 4. **Notice to file claims.** The commissioner shall cause notice to be given by advertisement in a legal newspaper in the city where such financial institution had its principal place of business prior to liquidation, or, if none in such city, then in the county, weekly for five consecutive weeks, calling on all persons who may have claims against such financial institution to present the same to the commissioner, and make legal proof thereof at a place and within a time not earlier than one week after the last day of publication, which time and place shall be specified in said notice. The commissioner shall mail a similar notice to all persons whose names appear as creditors upon the books of the financial institution.

Subd. 5. **Rejection of claims; actions; limitations.** If the commissioner doubts the justice or validity of any claim, the commissioner may reject the same in whole or in part and serve notice of such rejection upon the claimant, either by mail or personally. An affidavit of the service of such notice made according to law shall be filed with the commissioner. An action upon a claim so rejected must be brought within 60 days after such service and the filing of proof thereof. The venue of such action shall be in the county in which such financial institution had its principal place of business prior to liquidation, and such action shall be brought jointly against the financial institution and the commissioner or receiver or liquidator appointed by the commissioner as statutory liquidator thereof. Any person having a claim against such financial institution which is not presented and filed within the time fixed in the notice to creditors may thereafter present the same and the commissioner shall allow or reject the same in whole or in part and give notice of any rejection, as hereinbefore provided. Suit on any such claim not filed within the time fixed by the notice which is rejected must be brought within 30 days after the service and filing of proof of such rejection. Any claim not filed within the time fixed in the notice to creditors but later received and filed as by this section provided and duly allowed, shall participate and share in such dividends only as shall be paid from the proceeds of those assets remaining undistributed at the time of filing of such claim, and any claim not filed prior to the declaration of a final dividend shall be barred. No action shall be commenced against any such financial institution after possession of the business and property thereof has been taken by the commissioner on any claim until such claim has been filed with and rejected, in whole or in part, by the commissioner. As to any action pending at the time the commissioner takes possession of the business and property of such financial institution which has been stayed by order of the court, a claim may be filed for the subject matter of said action. If the claim be allowed, the action shall terminate and be dismissed without costs and disbursements, but, if rejected in whole or in part, the stay order shall be vacated, and the action may continue. No interest shall be allowed or paid on any deposit or other claim from and after the closing of the financial institution and the taking over of the same by the commissioner for purposes of liquidation.

Subd. 6. **Filing list of claims.** Upon the expiration of the time fixed for the presentation of claims, the commissioner shall make in duplicate a complete list of the claims presented, including and specifying such claims as have been rejected by the commissioner, one such list to be filed in the commissioner's office and one in the office of the court administrator of the district court. The inventory and list of claims shall be open at all reasonable times to inspection.

Subd. 7. **Payment expenses of supervision and liquidation.** All expenses of supervision and liquidation and the compensation of legal counsel as fixed by the attorney general, shall be paid upon the certificate of the commissioner out of the commissioner of commerce's liquidation fund created by this section. The commissioner shall determine monthly the amount of compensation paid to each employee for services in connection with the liquidation of each financial institution and of all other expenses in connection therewith and thereupon shall pay to the commissioner of management and budget from the assets of each such financial institution the amount so determined, if such assets be sufficient to pay the amount of such compensation and expenses, which shall be deposited in such commissioner of commerce's liquidation fund.

Subd. 8. **Deposit of moneys collected on liquidation.** The money collected by the commissioner shall be from time to time deposited in one or more state banks or trust companies, and, in case of a suspension or insolvency of the depository, such deposit shall be preferred before all of the deposits.

Subd. 9. **Dividends on claims.** At any time after the expiration of the date fixed for the presentation of claims the commissioner may, out of the funds remaining on hand after the payment of expenses and amounts due to depositors, declare one or more dividends, and after the expiration of one year from the first publication of notice to creditors, may declare a final dividend, such dividends to be paid to such persons in such amounts as may be directed by the district court.

If any dividend on any claim shall be less than \$1, the commissioner may hold that dividend until it with subsequent dividends amounts to the sum of \$1 or more. The commissioner shall pay all dividends so withheld with the final dividend.

Subd. 10. **Objections to claims.** Objections to any claim not rejected by the commissioner may be made by any party interested by filing a copy of such objections with the commissioner, who shall present the same to the district court at the time of the next application to declare a dividend.

Subd. 11. [Repealed, 1945 c 128 s 13]

Subd. 12. **Completion of liquidation after full payment of claims.** Whenever the commissioner shall have paid each and every depositor and other creditor of any financial institution in liquidation (not including stockholders) whose claim or claims as such creditor or depositor shall have been duly approved and allowed, and who can be located by the commissioner for the purpose of making payment, the full amount of such claim or claims as allowed, and shall have made proper provisions for any dividends or other moneys set apart for the payment of claims remaining unpaid, and shall have paid all the expenses of the liquidation, the commissioner shall call a meeting of the stockholders of such financial institution by giving notice thereof for ten days by publishing such notice in one or more newspapers of the county where it had its principal place of business prior to liquidation. At such meeting the stockholders shall determine whether the commissioner shall be continued as liquidator and shall wind up the affairs of such financial institution, or whether an agent or agents shall be elected for that purpose, and in so determining the said stockholders shall vote by ballot, in person or by proxy, each share of stock entitling the holder to one vote, and the majority of the stock shall be necessary to a determination. In case it is determined to continue the liquidation under the commissioner, the commissioner shall complete the liquidation of the affairs of such financial institution, and after paying the expenses thereof, if there are proceeds of liquidation as yet undistributed

shall reimburse any stockholders who have paid stock assessments pursuant to any order for assessment to the extent that each has paid, and if the proceeds are insufficient to reimburse such paying stockholders in full, then in just proportion. Any proceeds remaining undistributed after such paying stockholders have been reimbursed as by this subdivision provided shall be distributed among all the stockholders in proportion to their several holdings of stock in such manner and upon such notice as may be directed by the district court. In case it is determined to appoint an agent or agents to liquidate, the stockholders shall thereupon select such agent or agents by ballot, a majority of the stock present and voting, in person or by proxy, being necessary to a choice. Such agent or agents shall execute and file with the commissioner a bond to the state of Minnesota, in such amount, with such sureties, and in such form as shall be approved by the commissioner, conditioned for the faithful performance of all the duties of trust, and thereupon the commissioner shall transfer and deliver to such agent or agents all the undivided or uncollected or other assets of such corporation then remaining in the commissioner's hands, and upon such transfer and delivery the said commissioner shall be discharged from any and all further liability to such financial institution and its creditors. Such agent or agents shall convert the assets into cash and shall account for and make distribution of the property of such financial institution as is herein provided in the case of distribution by the commissioner, except that the expenses thereof shall be subject to the direction and control of the district court. In case of the death, removal or refusal to act of any such agent, the stockholders, on the same notice as that after which they were elected, and in the same way may elect a successor who shall have the same powers and be subject to the same liabilities and duties as the agent originally elected.

Subd. 13. **Disposition of unclaimed dividends.** Upon the liquidation of any financial institution liquidated by the commissioner as statutory liquidator, if any dividends or other moneys set apart for the payment of claims remain unpaid, and the places of residence of the owners thereof are unknown to the commissioner, the commissioner may pay same into the state treasury as hereinafter provided. Whenever the commissioner shall be satisfied that the process of liquidation should not be further continued the commissioner may make and certify triplicate lists of any such unclaimed dividends or other moneys, specifying the name of each owner, the amount due, and the last known address. Upon one of such lists, to be retained by the commissioner shall be endorsed the commissioner's order that such unclaimed moneys be forthwith deposited in the state treasury. When so deposited, one of said lists shall be delivered to the commissioner of management and budget and the commissioner shall retain in the commissioner's office such records and proofs concerning said claims as the commissioner may have, which shall thereafter remain on file in the office. The commissioner of management and budget shall execute upon the list retained by the commissioner a receipt for such money, which shall operate as a full discharge of the commissioner on account of such claims. At any time within six years after such receipt, but not afterward, the claimant may apply to the commissioner for the amount so deposited for the claimant's benefit, and upon proof satisfactory to the governor, the attorney general and the commissioner, or to a majority of them, they shall give an order to the commissioner of management and budget to issue a payment for such amount, and such payment shall thereupon be issued. If no such claim be presented within six years, the commissioner shall so note upon the commissioner's copy of said list and certify the fact to the commissioner of management and budget who shall make like entries upon the commissioner of management and budget's corresponding lists; and all further claims to said money shall be barred. Provided, that the commissioner of management and budget shall transfer to the commissioner of commerce's liquidation fund created by this section not to exceed 50 percent of the amount so turned over by the commissioner, to be used to partially defray expenses in connection with the liquidation of closed banks and the conduct of the liquidation division, in such amounts and at such times as the commissioner shall request.

There is hereby appropriated to the persons entitled to such amounts, from such moneys in the state treasury not otherwise appropriated, an amount sufficient to make such payment.

Subd. 14. **Destruction of books and records.** At any time after ten years from the date of payment of the final dividend in liquidation of any financial institution the commissioner may destroy all books and records of such financial institution which came into the commissioner's care and custody at the time the commissioner took possession of the assets thereof, unless requested by some interested party to preserve any such books or records for any purpose for any period beyond such ten years.

Subd. 15. **Liquidation fund created.** There is hereby created the commissioner of commerce's liquidation fund, for the purpose of paying the expenses of liquidating financial institutions and of conducting the Liquidation Division. Such fund shall consist of the moneys transferred to it as herein provided, which are appropriated to the commissioner for the purposes of this section. Such funds shall be kept in the state treasury and shall be paid out upon authorization of the commissioner in the manner prescribed by law for moneys therein.

Subd. 16. **Transfers to liquidation fund.** The following moneys shall be transferred to and deposited in the commissioner of commerce's liquidation fund:

(1) All moneys paid to the commissioner of management and budget by the commissioner out of funds of any financial institution in the commissioner's hands as reimbursement for services and expenses pursuant to the provisions of subdivision 7.

(2) All moneys in the possession of the commissioner set aside for the purpose of meeting unforeseen and contingent expenses incident to the liquidation of closed financial institutions, which funds have been or shall be hereafter established by withholding portions of final liquidating dividends in such cases.

(3) All moneys which the commissioner shall request the commissioner of management and budget to transfer to such fund pursuant to the provisions of subdivision 13.

(4) All moneys in the possession of the commissioner now carried on the commissioner's books in "stamp account," "suspense account," and "unclaimed deposit account."

(5) All moneys in the possession of the commissioner which the commissioner may be authorized by order of any district court having jurisdiction of any liquidation proceedings to transfer to such fund, or to use for any of the purposes for which the fund is established.

(6) All moneys in the possession of the commissioner carried on the commissioner's books in the "unclaimed bonds account." At any time within six years after any bond the proceeds of the sale of which constitute a portion of the moneys in this paragraph referred to came into the possession of the commissioner as liquidator of any financial institution, any claimant thereto may apply to the commissioner for the proceeds of the sale of such bond, and, upon proof satisfactory to the governor, the attorney general, and the commissioner, or a majority of them, they shall give an order to the commissioner of management and budget to issue a payment for such amount, without interest, and such payment shall thereupon be issued and the amount thereof paid out of the commissioner of commerce's liquidation fund. If no such claim be presented within such period, all further claims to the proceeds of any such bond shall be barred.

(7) All sums which the commissioner may receive from the sale of personal property of liquidated financial institutions where the final dividend has been paid and no disposition of said property made by any order of the court, and the proceeds of sales of any personal property used by the liquidation division which have been purchased with funds of financial institutions in liquidation.

Subd. 17. **Disbursements from liquidation fund.** The commissioner of commerce's liquidation fund shall be used for the purpose of paying compensation and expenses as provided in subdivision 7, for the

payment of salaries of employees, regular and special, the compensation of legal counsel, and all other expenses incurred by the commissioner in connection with the administration of the Liquidation Division.

History: (7689) 1909 c 179 s 3; 1933 c 168 s 1; 1941 c 183 s 1; 1943 c 442 s 2; 1945 c 128 s 9,13; 1955 c 16 s 1; 1959 c 158 s 4; 1973 c 123 art 5 s 7; 1973 c 492 s 14; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1987 c 349 art 1 s 25; 1990 c 464 s 1; 2003 c 112 art 2 s 7,8,50; 2009 c 101 art 2 s 109; 1Sp2019 c 10 art 3 s 40

49.25 [Repealed, 1945 c 128 s 13]

49.26 [Repealed, 1945 c 128 s 13]

49.27 [Repealed, 1945 c 128 s 13]

49.28 [Repealed, 1945 c 128 s 13]

49.29 [Repealed, 1945 c 128 s 13]

49.30 COMMITTEE TO COMPLETE LIQUIDATION.

At any time after a period of three years shall have elapsed, after the commissioner shall have taken possession of the business and property of a financial institution, a majority of the creditors in number and amount may petition the court for the appointment of a committee of three competent persons, residents of the county, named by them, the court may make such appointment, and any officer or member of the board of directors of the financial institution may be appointed as members of said committee, if residents of the county. All rights and duties of the commissioner shall then devolve upon the committee.

History: (7683) RL s 2999; 1933 c 310 s 1; 1945 c 128 s 10

49.31 COMMITTEE TO FURNISH BONDS.

The committee provided for by section 49.30 shall furnish adequate bond, to be approved by the district court, for the faithful performance of its duties.

History: (7683-1) 1933 c 310 s 2

49.32 DISCHARGE OF COMMISSIONER AS STATUTORY LIQUIDATOR.

Upon this order of the court, the commissioner shall be discharged as statutory liquidator of the financial institution and released from any further liability thereunder.

History: (7683-2) 1933 c 310 s 3; 1945 c 128 s 11

49.33 CONSOLIDATION AND MERGER, WHEN AUTHORIZED.

Subject to the provisions of sections 49.33 to 49.41, with the written consent of the commissioner of commerce, any bank, savings bank, or trust company may effect a transfer of its assets and liabilities to another bank, savings bank, or trust company for the purpose of consolidating or merging, but the same shall be without prejudice to the creditors of either.

History: (7692) RL s 3004; 1983 c 289 s 114 subd 1; 1989 c 166 s 8; 1997 c 157 s 31

49.34 CONSOLIDATION OR MERGER OF STATE BANKS OR TRUST COMPANIES, PROCEDURE.

Subdivision 1. **Generally.** Any two or more state banks, operating in the same city, may be consolidated or merged into a consolidated or merged state bank, and any two or more trust companies, operating in the same city, may be consolidated or merged into a consolidated or merged trust company, and any state bank or state banks and any trust company or trust companies, operating in the same city, may be consolidated or merged into a consolidated or merged state bank or consolidated or merged trust company, as the respective boards of directors thereof may determine. The consolidation or merger shall be effected in the manner provided in sections 49.35 to 49.41 and when so organized, the consolidated or merged corporation shall be governed and conducted in all other respects as provided by the statutes relating to the respective classes of financial corporations.

Subd. 2. **Acquisition of bank or savings association for operation as detached facility.** (a) Notwithstanding the geographic limitations of subdivision 1 and the limitations on number of facilities, distance limitations, and consent requirements contained in section 47.52, a state bank may apply to the commissioner, pursuant to the procedures contained in sections 47.51 to 47.56 and 49.35 to 49.41, to acquire another state bank or national banking association and its detached facilities through merger, consolidation, or purchase of assets and assumption of liabilities and operate them as detached facilities of the successor bank.

(b) Where the commissioner has determined that a merger, consolidation or purchase of assets and assumption of liabilities is necessary and in the public interest to prevent the probable failure of a state bank, national banking association, or state or federal savings association or savings bank, the limitations on location and number of detached facilities in section 47.52 shall not apply to the establishment of a detached facility directly resulting from such acquisition. The establishment of a detached facility in order to prevent a probable failure as provided in this paragraph shall not require the written consent of banks having a principal office in the municipality in which the resulting detached facility will be located, notwithstanding the provisions of section 47.52.

The consolidation or merger under this paragraph of a capital stock savings association or savings bank and a bank shall be effected in the manner provided in sections 49.33 to 49.41. A savings association or savings bank that is a mutual association may be acquired directly under this paragraph through the purchase of assets and assumption of liabilities. A state bank acquiring a savings association or savings bank under this paragraph must, with the approval of the commissioner of commerce, establish a reasonable date by which the bank will cease all activities conducted by the savings association or savings bank that are not authorized activities for the bank.

History: (7699-5) 1925 c 156 s 1; 1973 c 123 art 5 s 7; 1981 c 57 s 1; 1987 c 161 s 3; 1989 c 166 s 9; 1992 c 587 art 1 s 17; 1993 c 7 s 1; 1995 c 202 art 1 s 25

49.35 CONSOLIDATION OR MERGER AGREEMENT.

The respective boards of directors of the consolidating or merging corporations may, by the majority vote of all of the members of each board, make or authorize to be made between the corporations a written agreement, in duplicate, for the consolidation or merger of the corporations. The agreement shall specify each corporation to be a party to the transaction, and shall prescribe the terms and conditions thereof; the mode of carrying it into effect; the authorized capital stock of the consolidated or surviving corporation; the name of the consolidated or surviving corporation, which may be the name, in whole or in part, of any corporation which is a party to the agreement, and shall specify the city in which it shall have its principal

place of business. It shall name the persons who shall constitute the board of directors of the consolidated or surviving corporation, but the number and qualifications of these persons shall be in accordance with the statutes relating to the number and qualifications of directors of that class of corporation.

History: (7699-6) 1925 c 156 s 2; 1973 c 123 art 5 s 7; 1989 c 166 s 10; 1993 c 257 s 26

49.36 APPROVAL BY COMMISSIONER.

Subdivision 1. **Requirements.** This consolidation or merger agreement and certified copy of the proceedings of the meetings of the respective boards of directors, at which the making of the agreement was authorized, must be submitted to the commissioner of commerce for approval with a fee of \$2,000 payable to the commissioner of commerce. The agreement shall not be effective until so approved by the commissioner. The commissioner shall take action after the documents are submitted, and is entitled to further information from any party to the transaction as may be requested by the commissioner, or as may be obtained upon a hearing directed by the commissioner.

Subd. 2. **Procedures.** The procedures contained in section 47.54 must also be adhered to when a merger, consolidation, or purchase of assets and assumption of liabilities is effected pursuant to section 49.34, subdivision 2. In the event the commissioner has determined that it is necessary and in the public interest to act immediately on a merger, consolidation or purchase of assets and assumption of liabilities to prevent the probable failure of a bank, the commissioner may waive the requirements of section 47.54.

Subd. 3. **Application decisions.** In all applications filed under this section the commissioner in determining whether to approve or disapprove the application shall consider (a) the effects of the proposed merger transaction on competition, (b) the convenience and needs of the community to be served, and (c) the financial and managerial resources and future prospects of the existing and successor banks.

Subd. 4. **Notice of proposed acquisition.** The successor bank shall give reasonable notice of the acquisition to each of the depositors and creditors of an acquired bank or savings association at a time and in a form determined in the discretion of the commissioner. This notice may be coordinated to include federal regulator concerns for impact on deposit insurance of accounts and information designed to alert depositors and creditors of any changes in procedures or practices. If detached facilities are to be closed as a result of transactions authorized by this section, adequate notice shall be provided by the bank prior to closing, unless the commissioner has acted to prevent the probable failure of the bank or savings association, and then as soon as practicable after the acquisition date.

History: (7699-7) 1925 c 156 s 3; 1981 c 57 s 2; 1983 c 250 s 9; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1989 c 166 s 11; 1993 c 257 s 27,28; 1997 c 157 s 32; 1999 c 151 s 24

49.37 STOCKHOLDERS TO APPROVE; CERTIFICATE OF CONSOLIDATION OR MERGER.

Either before or after the consolidation or merger agreement has been approved by the commissioner of commerce, it must be submitted to the stockholders of each corporation at a meeting thereof called, and it does not become binding upon the corporation until it has been approved at each of the meetings required by this section by the vote or ballot of the stockholders, holding at least a majority of the amount of stock of the respective corporations, or a higher percentage as may be required by the certificate of incorporation of the corporations. Proof of the holding of these meetings and the results thereof must be submitted to the commissioner of commerce. After the agreement called for by sections 49.33 to 49.41 has been approved by the stockholders of the respective corporations and by the commissioner of commerce, the latter shall issue a certificate reciting that the corporations have complied with the provisions of sections 49.34 to 49.41 and declaring the consolidation or merger of these corporations and the name of the consolidated or surviving

corporation, the amount of capital stock thereof, the names of the first board of directors, and the place of business of the consolidated or surviving corporation, which must be within the city where any of the constituent corporations have been previously authorized to have their places of business. Upon the issuing of this certificate and the filing of it for record in the Office of the Secretary of State, the incorporation is deemed to be complete in the case of the consolidation, and the assets of the constituent corporations merged into the survivor in the case of a merger, and the consolidated or surviving corporation shall, from the date of this certificate, have the term of corporate existence as may be specified in it, not exceeding the longest unexpired term of any constituent corporation. The certificate of the commissioner of commerce is prima facie evidence that all of the provisions of sections 49.34 to 49.41 have been complied with, and is conclusive evidence of the existence of the consolidated or surviving corporation.

History: (7699-8) 1925 c 156 s 4; 1973 c 123 art 5 s 7; 1976 c 181 s 2; 1983 c 250 s 10; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1989 c 166 s 12

49.38 CORPORATE EXISTENCE MERGED; RIGHTS, POWERS, OBLIGATIONS.

Upon the consolidation or merger of a corporation with or into any one or more corporations as herein provided, the corporate existence of each former corporation shall be merged into that of the consolidated or merged corporation, and all and singular its rights, privileges, and franchises, and its right, title, and interest in and to all property of whatsoever kind, whether real, personal, or mixed, and all things in action, and every right, privilege, interest, or asset of conceivable value or benefit then existing which would inure to it under an unmerged or unconsolidated existence, shall be deemed fully and finally transferred to and vested in the consolidated or surviving corporation without further act or deed, and the last mentioned corporation shall have and hold the same in its own right as fully as the same was possessed and held by the former corporation from which it was, by operation of sections 49.34 to 49.41, transferred. Its rights, obligations, and relations to any person, creditor, depositor, trustee, or beneficiary of any trust shall remain unimpaired and the corporation into which it shall have been consolidated or merged shall succeed to these relations, obligations, trusts, and liabilities and shall execute and perform all such trusts in the same manner as though it had itself assumed the relation or trust, or incurred the obligation or liability; and its liabilities and obligations to creditors existing for any cause shall not be impaired by the consolidation or merger, nor shall any obligation or liability of any stockholder, in any corporation which is a party to the consolidation or merger, be affected by any such consolidation or merger, but these obligations and liabilities shall continue as fully and to the same extent as existed before the consolidation or merger. The consolidated or surviving corporation shall become, without further act or deed, the successor of the consolidating or constituent corporations in any and all fiduciary capacities, in which each consolidated or constituent corporation may be acting at the time of the consolidation or merger, and shall be liable to all beneficiaries as fully as if the consolidating or merging corporations had continued its separate corporate existence. If any consolidating or merging corporation shall be nominated and appointed, or shall have been nominated or appointed, as executor, guardian, administrator, agent, or trustee, or in any other trust relationship of fiduciary capacities in any will, trust agreement, trust conveyance, or any other conveyance, order, or judgment of any court, or any other instrument prior to the consolidation or merger, even though the will or other instrument shall not be operative or effective until after the consolidation or merger shall have become effective, every such office, trust relationship, fiduciary capacity, and all of the rights, powers, privileges, duties, discretions, and responsibilities so provided to devolve upon, vest in, or inure to the corporation so nominated or appointed, shall fully and in every respect devolve upon, vest in, and inure to, and be exercised by, the consolidated or surviving corporation, whether there be one or more successive mergers or consolidations.

History: (7699-9) 1925 c 156 s 5; 1989 c 166 s 13

49.39 CONSOLIDATION OR MERGER OF BANKS AND TRUST COMPANIES.

Upon the consolidation or merger of a trust company with a national banking corporation into a consolidated or merged banking corporation, as provided by any existing act of Congress of the United States, the corporate existence of that trust company shall be consolidated or merged into that of the consolidated or merged banking corporation to the same extent and with the same effect provided in section 49.38, relating to the consolidation or merger of two or more state banks or trust companies.

History: (7699-9 1/2) 1931 c 348 s 1; 1989 c 166 s 14

49.40 PENDING ACTIONS OR PROCEEDINGS NOT AFFECTED.

Any pending action or other judicial proceeding in which any consolidating or merging corporation is a party shall not be deemed to have abated or to have discontinued by reason of the consolidation or merger but may be prosecuted to final judgment, order, or decree in the same manner as if the consolidation or merger had not been made, or the consolidated or merged corporation may be substituted as a party to the action or proceeding, and any judgment, order, or decree may be rendered for or against it that might have been rendered for or against that corporation if the consolidation or merger had not occurred.

History: (7699-10) 1925 c 156 s 6; 1989 c 166 s 15

49.41 RIGHTS OF DISSENTING SHAREHOLDERS.

Any shareholder not voting in favor of the agreement of consolidation or merger at the meeting prescribed in section 49.37 may, at that meeting, or within 20 days thereafter, object to the consolidation or merger and demand payment for that person's shares. If the consolidation or merger takes effect at any time after this demand, the shareholder may, at any time within 60 days thereafter, apply to the district court in the county wherein is situated the principal place of business of the corporation with which the other or others are consolidated or merged, for the appointment of three persons to appraise the value of that person's shares. The court shall thereupon appoint these appraisers and designate the time and place of their first meeting, with such directions in regard to their proceedings as shall be deemed proper, and also direct the time and manner in which payment shall be made of the value of that person's shares to the shareholder. The appraisers shall meet at the time and place designated, after being duly sworn to discharge their duties honestly and faithfully, make and certify a written estimate of the value of the shares at the time of the appraisal, and deliver one copy to the corporation and another to the shareholder, if demanded. The charges and expenses of the appraisers shall be paid one-half by the shareholder and one-half by the corporation. When the corporation shall have paid the appraised value of the shares, the shares shall be canceled and this shareholder shall cease to be a member of the corporation or to have any interest in the shares or in the corporation or in the corporate property, and the shares may be held and disposed of by the corporation for its own benefit.

History: (7699-11) 1925 c 156 s 7; 1986 c 444; 1989 c 166 s 16; 2005 c 69 art 1 s 13

49.411 INTERSTATE BANK MERGERS AFFECTING INTERSTATE BRANCHING.

Subdivision 1. **Purpose.** It is the express intent of this section to permit interstate branching by mergers under section 102 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law 103-328, according to this section.

Subd. 2. **Definitions.** As used in this section, unless the context clearly indicates otherwise, the following terms have the meanings given them.

(a) "Bank" has the meaning given in United States Code, title 12, section 1813(h) with the following exceptions: (1) the term does not include a foreign bank as defined in United States Code, title 12, section 3101(7); and (2) the term includes 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.

(b) "Bank holding company" has the meaning given in United States Code, title 12, section 1841(a)(1).

(c) "Bank supervisory agency" means:

- (1) an agency of another state with the primary responsibility for chartering and supervising banks; and
- (2) the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and any successor to these agencies.

(d) "Branch" has the meaning given in United States Code, title 12, section 1813(o).

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

(f) "Control" has the meaning given in section 46.048, subdivision 1.

(g) "Home state" has the meaning given in section 48.92, subdivision 6, except in relation to foreign banks, for which home state means the state determined to be the home state of the foreign bank under United States Code, title 12, section 3103(c).

(h) "Home state regulator" means, with respect to an out-of-state state bank, the bank supervisory agency of the state in which the bank is chartered.

(i) "Host state" means a state other than the home state of a bank in which the bank maintains or seeks to establish and maintain a branch.

(j) "Interstate merger transaction" means:

- (1) the merger or consolidation of banks with different home states, and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank; or
- (2) the purchase of all or substantially all of the assets including all or substantially all of the branches of a bank whose home state is different from the home state of the acquiring bank.

(k) "Out-of-state bank" has the meaning given in section 48.92, subdivision 11.

(l) "Out-of-state state bank" means a bank chartered under the laws of any state other than Minnesota.

(m) "Resulting bank" means a bank that has resulted from an interstate merger transaction under this section.

(n) "State" means any state of the United States, the District of Columbia, or any 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.

(o) "Minnesota bank" means a bank whose home state is Minnesota.

(p) "Minnesota state bank" means a bank chartered under the laws of Minnesota.

Subd. 3. Authority of state banks to establish interstate branches by merger. With the prior approval of the commissioner, a Minnesota state bank may establish, maintain, and operate one or more branches in a state other than Minnesota as a result of an interstate merger transaction in which the Minnesota state bank is the resulting bank. Not later than the date on which the required application for the interstate merger transaction is filed with the responsible federal bank supervisory agency, the applicant Minnesota state bank shall file with the commissioner an application on a form prescribed by the commissioner and pay the fee prescribed by section 49.36. The applicant shall also comply with the applicable provisions of sections 49.33 to 49.41. After considering the criteria in section 49.36, subdivision 3, the commissioner may approve the interstate merger transaction and the operation of branches outside of Minnesota by the Minnesota state bank. Such an interstate merger transaction may be consummated only after the applicant has received the commissioner's written approval.

Subd. 4. Interstate merger transactions and branching permitted. (a) One or more Minnesota banks may enter into an interstate merger transaction with one or more out-of-state banks under this section, and an out-of-state bank resulting from the transaction may maintain and operate the branches in Minnesota of a Minnesota bank that participated in the transaction if the conditions and filing requirements of this section are met.

(b) An interstate merger transaction resulting in the acquisition by an out-of-state bank of a Minnesota state bank, or all or substantially all of the branches of a Minnesota state bank, shall not be permitted under this section unless the Minnesota state bank has been in continuous operation, on the date of the acquisition, for at least five years. For purposes of this paragraph, a bank that has been chartered solely for the purpose of, and does not open for business before, acquiring control of, or acquiring all or substantially all of the assets of, an existing bank is considered to have been in existence for the same period of time as the bank to be acquired. For determining the time period of existence of a bank, the time period begins after the issuance of a certificate of authorization and from the date the approved bank actually opens for business.

Subd. 5. Notice and filing requirement. An out-of-state bank that will be the resulting bank under an interstate merger transaction involving a Minnesota state bank shall notify the commissioner of the proposed merger not later than the date on which it files an application for an interstate merger transaction with the responsible federal bank supervisory agency, and shall submit a copy of that application to the commissioner and pay the filing fee, if any, required by the commissioner. A Minnesota state bank that is a party to an interstate merger transaction shall comply with sections 49.33 to 49.41 and with other applicable state and federal laws. An out-of-state bank that is the resulting bank in such an interstate merger transaction shall provide satisfactory evidence to the commissioner of compliance with applicable requirements of the bank's home state.

Subd. 6. Powers; additional branches. (a) An out-of-state state bank that establishes and maintains one or more branches in Minnesota under this section may conduct any activities at the branch or branches that are authorized under the laws of this state for Minnesota state banks.

(b) A Minnesota state bank may conduct any activities at or in connection with a branch outside Minnesota that are permissible for a bank chartered by the host state where the branch is located, except to the extent that the activities are expressly prohibited by the laws of this state or by any rule or order of the commissioner applicable to the Minnesota state bank. The commissioner may waive the prohibition if the commissioner determines, by rule or order, that the involvement of out-of-state branches of Minnesota state banks in particular activities would not threaten the safety or soundness of the banks.

(c) An out-of-state bank that has established or acquired a branch in Minnesota under this section may establish or acquire additional branches in Minnesota to the same extent that a Minnesota bank may establish

or acquire a branch in Minnesota under applicable federal and state law where a bank involved in the transaction could have established, acquired, or operated the additional branches if the bank had not been a party to the merger transaction.

Subd. 7. Examinations; periodic reports; cooperative agreements; assessment of fees. (a) To the extent consistent with paragraph (c), the commissioner may make examinations of a branch established and maintained in this state under this section by an out-of-state state bank as the commissioner considers necessary to determine whether the branch is being operated in compliance with the laws of this state and according to safe and sound banking practices. Section 46.04 applies to the examinations.

(b) The commissioner may prescribe requirements for periodic reports regarding an out-of-state bank that operates a branch in Minnesota under this section. The required reports must be provided by the bank or by the bank supervisory agency having primary responsibility for the bank. Reporting requirements prescribed by the commissioner under this paragraph must be: (1) consistent with the reporting requirements applicable to Minnesota state banks; and (2) appropriate for the purpose of enabling the commissioner to carry out responsibilities under this section.

(c) The commissioner may enter into cooperative, coordinating, and information-sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies with respect to the periodic examination or other supervision of a branch in Minnesota of an out-of-state state bank, or a branch of a Minnesota state bank in a host state. The commissioner may accept the parties' reports of examination and reports of investigation in lieu of conducting the commissioner's own examinations or investigations.

(d) The commissioner may enter into contracts with a bank supervisory agency that has concurrent jurisdiction over a Minnesota state bank or an out-of-state state bank operating a branch in this state under this section to engage the services of the 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.

(e) The commissioner may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over a branch in Minnesota of an out-of-state state bank or a branch of a Minnesota state bank in a host state. However, the commissioner may at any time take the actions independently if the commissioner considers the actions to be necessary or appropriate to carry out responsibilities under this section or to ensure compliance with the laws of this state. In the case of an out-of-state state bank, 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.

(f) Each out-of-state state bank that maintains one or more branches in this state may be assessed and charged according to section 46.131 as if it were a Minnesota state bank 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 according to agreements between the parties and the commissioner.

Subd. 8. Enforcement. If the commissioner determines that a branch maintained by an out-of-state state bank in this state is being operated in violation of the laws of this state, or that the branch is being operated in an unsafe and unsound manner, the commissioner has the authority to take all enforcement actions the commissioner would be empowered to take if the branch were a Minnesota state bank. The commissioner shall promptly give notice to the home state regulator of each enforcement action taken against an out-of-state

state bank and, to the extent practicable, shall consult and cooperate with the home state regulator in pursuing and resolving enforcement action.

Subd. 9. **Notice of subsequent merger.** Each out-of-state state bank that has established and maintains a branch in this state under this section shall give at least 60 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 any merger, consolidation, or other transaction that would cause a change of control with respect to the bank or any bank holding company that controls the bank, with the result that an application would be required to be filed under 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.

Subd. 10. **Severability.** If a provision of this section, or the application of the provision, is found by any court of competent jurisdiction in the United States to be invalid as to a bank, bank holding company, foreign bank, or other person or circumstances, or to be superseded by federal law, the remaining provisions of this section shall not be affected and shall continue to apply to a bank, bank holding company, foreign bank, or other person or circumstance.

History: 1996 c 414 art 3 s 7

49.42 STATE BANK.

As used in sections 49.42 to 49.46:

"State bank" means any bank, savings bank, trust company, or bank and trust company which is now or may hereafter be organized under the laws of this state.

"National banking association" means a bank, savings bank, bank and trust company, or bank exclusively exercising trust powers organized under the laws of the United States.

History: 1951 c 99 s 1; 1995 c 171 s 32; 1997 c 157 s 33

49.43 STATE BANK; CONVERSION, MERGER, CONSOLIDATION; NATIONAL BANKING ASSOCIATION.

A state bank may convert into a national banking association or merge or consolidate with one or more national banking associations under the charter of one of such national banking associations as permitted by any law of the United States without approval of any authority of this state, upon the affirmative vote, at a meeting of stockholders called for that purpose, of the holders of not less than two-thirds of the voting power of all stockholders of such state bank entitled under the articles of incorporation to vote. Any stockholder not voting in favor of such conversion or merger or consolidation at such meeting may, at that meeting or within 20 days thereafter, object to the conversion, merger, or consolidation and demand payment for that person's stock at the par value or the book value thereof, whichever shall be the greater. If the conversion, merger or consolidation takes effect at any time after this demand and the resulting national bank has not made payment in the amount demanded, the stockholder may, at any time within 60 days thereafter, apply to the district court in the county wherein is situated the principal place of business of the national banking association into which the state bank has been converted or with which it has merged or consolidated for the appointment of three persons to appraise the value of that person's stock. The court shall thereupon appoint these appraisers and designate the time and place of their first meeting, with such directions in regard to their proceedings as shall be deemed proper and also direct the time and manner in which payment shall be made of the value of that person's stock to the stockholder. The appraisers shall meet at the time and place designated and, after being duly sworn to discharge their duties honestly and faithfully, make and certify a written estimate of the value of the stock at the time of the appraisal and deliver one copy

to the national banking association and another to the stockholder. The charges and expenses of the appraisers shall be paid one-half by the stockholder and one-half by the national banking association. When the national banking association shall have paid the appraised value of the stock, the stock shall be canceled and the stockholder shall cease to be a member of the national banking association or to have any interest in the stock or in the corporation or in the corporate property and the stock may be held and disposed of by the national banking association for its own benefit. In lieu of the rights given a dissenting stockholder by this section, the stockholder may exercise any rights given by applicable law of the United States.

History: 1951 c 99 s 2; 1986 c 444

49.44 NATIONAL BANKING ASSOCIATION; CONVERSION, MERGER, CONSOLIDATION; STATE BANK.

A national banking association which is located in this state and which has taken the corporate action required therefor by the laws of the United States may convert into a state bank upon complying with the provisions applicable to the organization of a state bank except as herein otherwise provided. In such case the certificate of incorporation and the application for a certificate authorizing the proposed bank to transact business shall be executed by a majority of the directors of the national banking association and in addition thereto there shall be filed with the application a copy of the plan of conversion and a certificate signed by the president and the cashier of the national banking association setting forth the corporate action taken by the national banking association authorizing the conversion. The Department of Commerce may, at its discretion, dispense with the notice and hearing provided in section 46.041, if the granting of the certificate of authority will not increase the number of banks in the community affected. No certificate of deposit of an amount equal to the capital stock of the proposed bank shall be required but the president and the cashier of the national banking association shall certify to the commissioner of commerce that the association has a paid in and unimpaired capital not less than that specified in the certificate of incorporation of the proposed bank. Upon the conversion of a national banking association into a state bank as herein provided, the corporate existence of the national banking association shall be merged into that of the state bank and all and singular its rights, privileges, and franchises and its right, title, and interest in and to all property of whatsoever kind, whether real, personal, or mixed, and all things in action and every right, privilege, interest, or asset of conceivable value or benefit then existing which inure to it under an unconverted existence shall be deemed fully and finally transferred to and vested in the state bank without further act or deed and the state bank shall have and hold the same in its own right as fully as the same was possessed and held by the national banking association from which it was by operation hereof transferred. Its rights, obligations, and relations to any person, creditor, depositor, trustee, or beneficiary of any trust shall remain unimpaired and the state bank into which it shall have been converted shall succeed to these relations, obligations, trusts, and liabilities and shall execute and perform all such trusts in the same manner as though it had itself assumed the relation or trust or incurred the obligation or liability and its liabilities and obligations to creditors existing for any cause shall not be impaired by the conversion, nor shall any obligation or liability of any stockholder of the national banking association be affected by such conversion, but these obligations and liabilities shall continue as fully and to the same effect as existed before the conversion. The state bank shall become without further act or deed the successor of the national banking association in any and all fiduciary capacities in which the national banking association may be acting at the time of the conversion and shall be liable to all beneficiaries as fully as if the national banking association had continued its existence as such. If the national banking association shall be nominated or appointed or shall have been nominated or appointed as executor, guardian, administrator, agent or trustee, or in any other trust relation or fiduciary capacity in any will, trust agreement, trust conveyance or any other conveyance, order or judgment of any court or any other instrument prior to the conversion, even though the will or other instrument shall not become operative or effective until after the conversion shall have become effective, every such office, trust relationship, fiduciary capacity, and all

of the rights, powers, privileges, duties, discretions, and responsibilities so provided to devolve upon, vest in, or inure to the national banking association so nominated or appointed shall fully and in every respect devolve upon, vest in, and inure to and be exercised by the state bank into which the national banking association shall have been converted.

History: *1951 c 99 s 3; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1987 c 384 art 2 s 13*

49.45 MERGER OR CONSOLIDATION.

One or more national banking associations which are located in this state and which have taken the corporate action required therefor by the laws of the United States may merge or consolidate with a state bank or banks. The merger or consolidation shall be effected in the manner provided in sections 49.34 to 49.41, and governed by the provisions thereof except that the name of the consolidated corporation shall not contain the word "national" and except that the rights of dissenting stockholders of the national banking associations shall be those prescribed in cases by the laws of the United States.

History: *1951 c 99 s 4; 1981 c 57 s 3*

49.46 STATE BANK, RETENTION OF ASSETS.

The commissioner of commerce, subject to such conditions as the commissioner may prescribe, may permit a state bank resulting from a conversion, merger or consolidation of a national banking association to retain and carry at a valuation determined by the commissioner, such of the assets of such national banking association as do not conform to the legal requirements relative to assets acquired and held by state banks.

History: *1951 c 99 s 5; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444*

49.47 [Repealed, 1997 c 157 s 72]

49.48 [Repealed, 1997 c 157 s 72]

49.51 [Renumbered 48.055]