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State of Minnesota

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HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH
SESSION

HOUSE FILE No. **2056**

March 13, 2007

Authored by Atkins

The bill was read for the first time and referred to the Committee on Commerce and Labor

March 27, 2007

Committee Recommendation and Adoption of Report:

To Pass as Amended

Read Second Time

1.1 A bill for an act
 1.2 relating to financial institutions; regulating certain debt, charges, expenses,
 1.3 electronic financial terminals, and investments; amending Minnesota Statutes
 1.4 2006, sections 47.19; 47.59, subdivision 6; 47.60, subdivision 2; 47.62,
 1.5 subdivision 1; 47.75, subdivision 1; 48.15, subdivision 4; 118A.03, subdivision
 1.6 2; 332.54, subdivision 7; repealing Minnesota Statutes 2006, sections 46.043;
 1.7 47.62, subdivision 5.

1.8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.9 Section 1. Minnesota Statutes 2006, section 47.19, is amended to read:

1.10 **47.19 CORPORATION MAY BE MEMBER OR STOCKHOLDER OF**
 1.11 **FEDERAL AGENCY.**

1.12 Any corporation is hereby empowered and authorized to become a member of,
 1.13 or stockholder in, any such agency, and to that end to purchase stock in, or securities
 1.14 of, or deposit money with, such agency and/or to comply with any other conditions of
 1.15 membership or credit; to borrow money from such agency upon such rates of interest, not
 1.16 exceeding the contract rate of interest in this state, and upon such terms and conditions
 1.17 as may be agreed upon by such corporation and such agency, for the purpose of making
 1.18 loans, paying withdrawals, paying maturities, paying debts, and for any other purpose not
 1.19 inconsistent with the objects of the corporation; provided, that the aggregate amount of the
 1.20 indebtedness, so incurred by such corporation, which shall be outstanding at any time shall
 1.21 not exceed ~~25~~ 35 percent of the then total assets of the corporation; to assign, pledge and
 1.22 hypothecate its bonds, mortgages or other assets; and, in case of savings associations, to
 1.23 repledge with such agency the shares of stock in such association which any owner thereof
 1.24 may have pledged as collateral security, without obtaining the consent thereunto of such
 1.25 owner, as security for the repayment of the indebtedness so created by such corporation

2.1 and as evidenced by its note or other evidence of indebtedness given for such borrowed
2.2 money; and to do any and all things which shall or may be necessary or convenient in
2.3 order to comply with and to obtain the benefits of the provisions of any act of Congress
2.4 creating such agency, or any amendments thereto.

2.5 Sec. 2. Minnesota Statutes 2006, section 47.59, subdivision 6, is amended to read:

2.6 Subd. 6. **Additional charges.** (a) For purposes of this subdivision, "financial
2.7 institution" includes a person described in subdivision 4, paragraph (a). In addition to the
2.8 finance charges permitted by this section, a financial institution may contract for and
2.9 receive the following additional charges that may be included in the principal amount
2.10 of the loan or credit sale unpaid balances:

2.11 (1) official fees and taxes;

2.12 (2) charges for insurance as described in paragraph (b);

2.13 (3) with respect to a loan or credit sale contract secured by real estate, the following
2.14 "closing costs," if they are bona fide, reasonable in amount, and not for the purpose of
2.15 circumvention or evasion of this section:

2.16 (i) fees or premiums for title examination, abstract of title, title insurance, surveys,
2.17 or similar purposes;

2.18 (ii) fees for preparation of a deed, mortgage, settlement statement, or other
2.19 documents, if not paid to the financial institution;

2.20 (iii) escrows for future payments of taxes, including assessments for improvements,
2.21 insurance, and water, sewer, and land rents;

2.22 (iv) fees for notarizing deeds and other documents;

2.23 (v) appraisal and credit report fees; and

2.24 (vi) fees for determining whether any portion of the property is located in a flood
2.25 zone and fees for ongoing monitoring of the property to determine changes, if any,
2.26 in flood zone status;

2.27 (4) a delinquency charge on a payment, including the minimum payment due in
2.28 connection with open-end credit, not paid in full on or before the tenth day after its due
2.29 date in an amount not to exceed five percent of the amount of the payment or \$5.20,
2.30 whichever is greater;

2.31 (5) for a returned check or returned automatic payment withdrawal request, an
2.32 amount not in excess of the service charge limitation in section 604.113, except that, on
2.33 a loan transaction that is a consumer small loan as defined in section 47.60, subdivision
2.34 1, paragraph (a), in which cash is advanced in exchange for a personal check, the civil

3.1 penalty provisions of section 604.113, subdivision 2, paragraph (b), may not be demanded
3.2 or assessed against the borrower; and

3.3 (6) charges for other benefits, including insurance, conferred on the borrower that
3.4 are of a type that is not for credit.

3.5 (b) An additional charge may be made for insurance written in connection with the
3.6 loan or credit sale contract, which may be included in the principal amount of the loan or
3.7 credit sale unpaid balances:

3.8 (1) with respect to insurance against loss of or damage to property, or against
3.9 liability arising out of the ownership or use of property, if the financial institution furnishes
3.10 a clear, conspicuous, and specific statement in writing to the borrower setting forth the
3.11 cost of the insurance if obtained from or through the financial institution and stating that
3.12 the borrower may choose the person through whom the insurance is to be obtained;

3.13 (2) with respect to credit insurance or mortgage insurance providing life, accident,
3.14 health, or unemployment coverage, if the insurance coverage is not required by the
3.15 financial institution, and this fact is clearly and conspicuously disclosed in writing to
3.16 the borrower, and the borrower gives specific, dated, and separately signed affirmative
3.17 written indication of the borrower's desire to do so after written disclosure to the borrower
3.18 of the cost of the insurance; and

3.19 (3) with respect to the vendor's single interest insurance, but only (i) to the extent
3.20 that the insurer has no right of subrogation against the borrower; and (ii) to the extent that
3.21 the insurance does not duplicate the coverage of other insurance under which loss is
3.22 payable to the financial institution as its interest may appear, against loss of or damage
3.23 to property for which a separate charge is made to the borrower according to clause (1);
3.24 and (iii) if a clear, conspicuous, and specific statement in writing is furnished by the
3.25 financial institution to the borrower setting forth the cost of the insurance if obtained from
3.26 or through the financial institution and stating that the borrower may choose the person
3.27 through whom the insurance is to be obtained.

3.28 (c) In addition to the finance charges and other additional charges permitted by
3.29 this section, a financial institution may contract for and receive the following additional
3.30 charges in connection with open-end credit, which may be included in the principal
3.31 amount of the loan or balance upon which the finance charge is computed:

3.32 (1) annual charges, not to exceed \$50 per annum, payable in advance, for the
3.33 privilege of opening and maintaining open-end credit;

3.34 (2) charges for the use of an automated teller machine;

3.35 (3) charges for any monthly or other periodic payment period in which the borrower
3.36 has exceeded or, except for the financial institution's dishonor would have exceeded,

4.1 the maximum approved credit limit, in an amount not in excess of the service charge
4.2 permitted in section 604.113;

4.3 (4) charges for obtaining a cash advance in an amount not to exceed the service
4.4 charge permitted in section 604.113; and

4.5 (5) charges for check and draft copies and for the replacement of lost or stolen
4.6 credit cards.

4.7 (d) In addition to the finance charges and other additional charges permitted by this
4.8 section, a financial institution may contract for and receive a onetime loan administrative
4.9 fee not exceeding \$25 in connection with closed-end credit, which may be included in the
4.10 principal balance upon which the finance charge is computed. This paragraph applies only
4.11 to closed-end credit in an original principal amount of \$4,320 or less. The determination
4.12 of an original principal amount must exclude the administrative fee contracted for and
4.13 received according to this paragraph.

4.14 Sec. 3. Minnesota Statutes 2006, section 47.60, subdivision 2, is amended to read:

4.15 Subd. 2. **Authorization, terms, conditions, and prohibitions.** (a) In lieu of the
4.16 interest, finance charges, or fees in any other law, a consumer small loan lender may
4.17 charge the following:

4.18 (1) on any amount up to and including \$50, a charge of \$5.50 may be added;

4.19 (2) on amounts in excess of \$50, but not more than \$100, a charge may be added
4.20 equal to ten percent of the loan proceeds plus a \$5 administrative fee;

4.21 (3) on amounts in excess of \$100, but not more than \$250, a charge may be
4.22 added equal to seven percent of the loan proceeds with a minimum of \$10 plus a \$5
4.23 administrative fee;

4.24 (4) for amounts in excess of \$250 and not greater than the maximum in subdivision
4.25 1, paragraph (a), a charge may be added equal to six percent of the loan proceeds with a
4.26 minimum of \$17.50 plus a \$5 administrative fee.

4.27 (b) The term of a loan made under this section shall be for no more than 30 calendar
4.28 days.

4.29 (c) After maturity, the contract rate must not exceed 2.75 percent per month of the
4.30 remaining loan proceeds after the maturity date calculated at a rate of 1/30 of the monthly
4.31 rate in the contract for each calendar day the balance is outstanding.

4.32 (d) No insurance charges or other charges must be permitted to be charged, collected,
4.33 or imposed on a consumer small loan except as authorized in this section.

4.34 (e) On a loan transaction in which cash is advanced in exchange for a personal
4.35 check, a return check charge may be charged as authorized by section 604.113, subdivision

5.1 2, paragraph (a). The civil penalty provisions of section 604.113, subdivision 2, paragraph
5.2 (b), may not be demanded or assessed against the borrower.

5.3 (f) A loan made under this section must not be repaid by the proceeds of another
5.4 loan made under this section by the same lender or related interest. The proceeds from a
5.5 loan made under this section must not be applied to another loan from the same lender or
5.6 related interest. No loan to a single borrower made pursuant to this section shall be split or
5.7 divided and no single borrower shall have outstanding more than one loan with the result
5.8 of collecting a higher charge than permitted by this section or in an aggregate amount of
5.9 principal exceed at any one time the maximum of \$350.

5.10 Sec. 4. Minnesota Statutes 2006, section 47.62, subdivision 1, is amended to read:

5.11 Subdivision 1. **General authority.** Any person may establish and maintain one
5.12 or more electronic financial terminals. Any financial institution may provide for its
5.13 customers the use of an electronic financial terminal by entering into an agreement with
5.14 any person who has established and maintains one or more electronic financial terminals if
5.15 that person authorizes use of the electronic financial terminal to all financial institutions
5.16 on a nondiscriminatory basis pursuant to section 47.64. ~~Electronic financial terminals to~~
5.17 ~~be established and maintained in this state by financial institutions located in states other~~
5.18 ~~than Minnesota must file a notification to the commissioner as required in this section.~~
5.19 ~~The notification may be in the form lawfully required by the state regulator responsible~~
5.20 ~~for the examination and supervision of that financial institution. If there is no such~~
5.21 ~~requirement, then notification must be in the form required by this section for Minnesota~~
5.22 ~~financial institutions.~~

5.23 Sec. 5. Minnesota Statutes 2006, section 47.75, subdivision 1, is amended to read:

5.24 Subdivision 1. **Retirement, health savings, and medical savings accounts.** (a) A
5.25 commercial bank, savings bank, savings association, credit union, or industrial loan and
5.26 thrift company may act as trustee or custodian:

5.27 (1) under the Federal Self-Employed Individual Tax Retirement Act of 1962, as
5.28 amended;

5.29 (2) of a medical savings account under the Federal Health Insurance Portability and
5.30 Accountability Act of 1996, as amended;

5.31 (3) of a health savings account under the Medicare Prescription Drug, Improvement,
5.32 and Modernization Act of 2003, as amended; and

5.33 (4) under the Federal Employee Retirement Income Security Act of 1974, as
5.34 amended.

6.1 (b) The trustee or custodian may accept the trust funds if the funds are invested
6.2 only in savings accounts or time deposits in the commercial bank, savings bank, savings
6.3 association, credit union, or industrial loan and thrift company, except that health savings
6.4 accounts may also be invested in transaction accounts. Health savings accounts invested in
6.5 transaction accounts shall not be subject to the restrictions in section 48.512, subdivision
6.6 3. All funds held in the fiduciary capacity may be commingled by the financial institution
6.7 in the conduct of its business, but individual records shall be maintained by the fiduciary
6.8 for each participant and shall show in detail all transactions engaged under authority
6.9 of this subdivision.

6.10 **EFFECTIVE DATE.** This section is effective the day following final enactment.

6.11 Sec. 6. Minnesota Statutes 2006, section 48.15, subdivision 4, is amended to read:

6.12 Subd. 4. **Retirement, health savings, and medical savings accounts.** (a) A state
6.13 bank may act as trustee or custodian:

6.14 (1) of a self-employed retirement plan under the Federal Self-Employed Individual
6.15 Tax Retirement Act of 1962, as amended;

6.16 (2) of a medical savings account under the Federal Health Insurance Portability and
6.17 Accountability Act of 1996, as amended;

6.18 (3) of a health savings account under the Medicare Prescription Drug, Improvement,
6.19 and Modernization Act of 2003, as amended; and

6.20 (4) of an individual retirement account under the Federal Employee Retirement
6.21 Income Security Act of 1974, as amended, if the bank's duties as trustee or custodian are
6.22 essentially ministerial or custodial in nature and the funds are invested only (i) in the
6.23 bank's own savings or time deposits, except that health savings accounts may also be
6.24 invested in transaction accounts. Health savings accounts invested in transaction accounts
6.25 shall not be subject to the restrictions in section 48.512, subdivision 3; or (ii) in any
6.26 other assets at the direction of the customer if the bank does not exercise any investment
6.27 discretion, invest the funds in collective investment funds administered by it, or provide
6.28 any investment advice with respect to those account assets.

6.29 (b) Affiliated discount brokers may be utilized by the bank acting as trustee or
6.30 custodian for self-directed IRAs, if specifically authorized and directed in appropriate
6.31 documents. The relationship between the affiliated broker and the bank must be fully
6.32 disclosed. Brokerage commissions to be charged to the IRA by the affiliated broker should
6.33 be accurately disclosed. Provisions should be made for disclosure of any changes in
6.34 commission rates prior to their becoming effective. The affiliated broker may not provide
6.35 investment advice to the customer.

7.1 (c) All funds held in the fiduciary capacity may be commingled by the financial
7.2 institution in the conduct of its business, but individual records shall be maintained by
7.3 the fiduciary for each participant and shall show in detail all transactions engaged under
7.4 authority of this subdivision.

7.5 (d) The authority granted by this section is in addition to, and not limited by, section
7.6 47.75.

7.7 **EFFECTIVE DATE.** This section is effective the day following final enactment.

7.8 Sec. 7. Minnesota Statutes 2006, section 118A.03, subdivision 2, is amended to read:

7.9 Subd. 2. **In lieu of surety bond.** The following are the allowable forms of collateral
7.10 in lieu of a corporate surety bond:

7.11 (1) United States government Treasury bills, Treasury notes, Treasury bonds;

7.12 (2) issues of United States government agencies and instrumentalities as quoted by a
7.13 recognized industry quotation service available to the government entity;

7.14 (3) general obligation securities of any state or local government with taxing powers
7.15 which is rated "A" or better by a national bond rating service, or revenue obligation
7.16 securities of any state or local government with taxing powers which is rated "AA" or
7.17 better by a national bond rating service;

7.18 (4) ~~unrated~~ general obligation securities of a local government with taxing powers
7.19 may be pledged as collateral against funds deposited by that same local government entity;

7.20 (5) irrevocable standby letters of credit issued by Federal Home Loan Banks to a
7.21 municipality accompanied by written evidence that the bank's public debt is rated "AA" or
7.22 better by Moody's Investors Service, Inc., or Standard & Poor's Corporation; and

7.23 (6) time deposits that are fully insured by any federal agency.

7.24 Sec. 8. Minnesota Statutes 2006, section 332.54, subdivision 7, is amended to read:

7.25 Subd. 7. **Fees.** The fee for a credit services organization's registration is ~~\$100~~
7.26 \$1,000 for issuance or renewal for each location of business.

7.27 Sec. 9. **REPEALER.**

7.28 Minnesota Statutes 2006, sections 46.043; and 47.62, subdivision 5, are repealed.

7.29 Sec. 10. **EFFECTIVE DATE; APPLICATION.**

7.30 Section 8 is effective July 1, 2007, and applies to registrations issued or renewed
7.31 on or after that date.

46.043 EXPENSES OF ORGANIZATION AND INCORPORATION OF BANKS LIMITED.

The expenses of organization and incorporation to be paid by a bank may not exceed the statutory fees for filing applications as provided in section 46.041 and the necessary legal expenses incurred incident to drawing articles of incorporation, publication, and recording. The incorporators shall, prior to the issuance of the certificate of authorization, file with the commissioner a verified statement showing the total amount of expense incurred in the organization of the bank to be paid by it after commencing operation.

47.62 AUTHORIZATION.

Subd. 5. **Establishment by notice.** A bank, savings bank, savings association, or credit union organized under the laws of this state may, after completing the notification procedure required by this subdivision, establish and maintain one or more electronic financial terminals. The filing must be on forms provided by the commissioner. No electronic financial terminal may be established under sections 47.61 to 47.74 if disallowed by order of the commissioner within 15 days of the filing of a complete and acceptable notification of the intent to establish an electronic financial terminal.