

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
BANKING DIVISION

In the Matter of the Proposed
Amendments to the Rules Governing
Regulated Lenders (Formerly Small
Loan Lenders) and Industrial Loan
and Thrift Companies
Chapter 3: BD 100-109 and
Chapter 4: BD 120-127

STATEMENT OF NEED
AND REASONABLENESS
OF PROPOSED AMENDMENTS

STATEMENT OF AUTHORITY

Minn. Stat. § 46.01, Subd. 2 (1980), provides that the Commissioner of Banks has the power to promulgate rules as necessary to administer or execute the laws relating to financial institutions subject to his supervision or examination. Industrial loan and thrift companies are organized pursuant to Minn. Stat. Ch. 53 and are subject to the constant supervision and examination as directed in Minn. Stat. §§ 46.04, Subd. 1, and 53.09, Subd. 1. In the case of Regulated Lenders, formerly known as Small Loan Companies, their examination and supervision is required by Minn. Stat. § 56.10, as amended. The enforcement of Minn. Stat. Ch. 56, The Minnesota Regulated Loan Act, by the Commissioner of Banks by making general rules is provided for in Minn. Stat. § 56.21. The above-captioned amendments are proposed by the Commissioner pursuant to this authority.

On May 24, 1982, the Commissioner published Notice of Intent to Solicit Outside Opinion regarding the proposed amendments (6S.R. 1985).

FACTS ESTABLISHING NEED AND REASONABLENESS

As more specifically stated below, the proposed amendments are needed in order to remove conflicts and possible sources of confusion in the existing rule due to recent and material changes in the former Small Loan Act and Industrial Loan and Thrift Act. The Regulated Loan Act, Minn. Stat. Ch. 56

and the Industrial Loan and Thrift Acts, Minn. Stat. Ch. 53, were broadly recodified by Laws of 1981, Ch. 258, and Laws of 1982, Ch. 547. The operations and associated lending powers were revised, eliminating many of the statutory provisions on which existing rules, Chapter 3: BD 100-109 and Chapter 4: BD 120-127 were adopted. Without these amendments and repealer, the rules will remain a source of confusion and conflict so as to be unenforceable and disservice to the industries involved.

4 MCAR ~~§§~~ 1.0101-1.0107 as assigned to the Department of Commerce, Banking Division replaces the former codification of Chapter Three, Small Loans (formerly BD 100-109). The title is changed to Licensed Regulated Lenders to correspond to Minn. Stat. Ch. 56 which replaces the Small Loan Act and is titled Minnesota Regulated Loan Act (Laws of 1982, Ch. 547, Sect. 4, effective August 1, 1982).

4 MCAR § 1.0101 (formerly BD 101) is an existing rule which is consistent with the Minnesota Regulated Loan Act except for the citation of reference to Minn. Stat. § 56.13 which should be 56.131 effective August 1, 1981 under Laws of 1981, Ch. 258, Sect. 11 and 23.

4 MCAR § 1.0102 (formerly BD 103) is an existing rule dealing with the reporting to and need for approval by the Commissioner of Banks when a licensee sells or purchases loans made under the Minnesota Regulated Loan Act. Laws of 1981, Ch. 258, Sections 2, 3 and 20, amended the application and necessity of a license provision authorizing Industrial Loan and Thrift Companies to engage in the business of making Regulated Loans as permitted by Ch. 56, Minn. Stat. without a license. Also, other supervised financial institutions including commercial banks, savings and loan associations and trust companies are exempt from the licensing requirements.

As a result, the potential for purchase or sale of existing regulated loans by other persons than licensees exist. This amended rule (Para. A & B)

acknowledges the statutory amendments effective August 1, 1981 and provides control and reporting of these transactions for purposes of enforcement of the consumer protection aspects of the Minnesota Regulated Loan Act.

In response to outside opinion received as a result of the published notice, a provision of existing rule in Paragraph B is amended. The limitation of the interest rate on regulated loans acquired by a non-licensee or non-authorized person was 6 percent per annum. This is the lawful rate under Minn. Stat. § 334.01 in the absence of a contract. The commenter argued soundly that there exists a contract in each such loan and that the limitation was arbitrary and inconsistent with reasonable application of law. The amended language is consistent with § 334.01 where a contract is made.

Commenters also argued that the application of the maximum lawful contract rate and requirement for approval in Paragraph B should only apply to voluntary assignments of Regulated Loans to non-licensees or other unauthorized purchasers. Transfers resulting from involuntary transactions by virtue of legal process, foreclosure, etc., should not result in decreasing the value of the contracts or a windfall to the borrower. It appears necessary and reasonable that this exception be made clear.

4 MCAR § 1.0104 (formerly BD 105) is an existing rule relating to the maintenance of records by licensees following transfers of loans to others. The only changes are to remove the obsolete references to small loan and substitute current regulated loan act terminology authorized by Laws of 1982, Ch. 547, Sect. 4, effective August 1, 1982.

4 MCAR § 1.0106 (formerly BD 107) is an existing rule clarifying the calculation of lapsed periods of time for refunds of precomputed interest upon prepayment or refinancing. The only changes are to remove obsolete or confusing language inconsistent with the provisions of Laws of 1981, Ch. 258, Section 1, Subd. 5, and Section 11, Subd. 1(e)(2), effective August 1, 1981, Laws of 1982, Ch. 547, Sect. 6, effective August 1, 1982.

4 MCAR § 1.0120-1.0124 as assigned to the Department of Commerce, Banking Division, replaces the former codification of Chapter Four, Industrial Loan and Thrift Companies (formerly BD 120-127).

4 MCAR § 1.0120 (formerly BD 120) is an existing rule relating to the requirement that certain books and records be maintained at both principal and branch offices. Minn. Stat. § 53.09, Subd. 1, provides for the same authority as in the examination of banks which includes the powers detailed in § 46.04, Subd. 1, as to requirements for records as he deems necessary to facilitate the carrying out of his duties. The requirement in the existing rule allowing 15 days following the date of month end closing is reported to be a hardship in one response to the Notice of Intent. Also, the requirement of a form has been to supply a balance sheet and operating statement, not a trial balance.

The same balance sheet and operating statement is required in compliance with the annual reporting in Minn. Stat. § 53.09, Subd. 2, which is not due until 30 days following the close of year end. This is a conflict between the statute and existing rule where the same form is required.

If a trial balance of the general ledger is required not the special format of the Banking Division, this common accounting should be available within 25 days. It is recommended that the form requirement be deleted and a middle ground 25 days for examination purposes be acceptable. This also removes the conflict with the statutory requirement of 30 days for a similar form under the existing rule.

Repealer

BD 102(a) is an existing rule which provides for a limitation of a 36-1/2 month maturity for former small loans. With the enactment of Laws of 1981, Ch. 258, Minn. Stat. § 56.13 was repealed removing any limitation in maturity under the Minnesota Regulated Loan Act effective August 1, 1981.

This existing rule is in direct conflict with the amended Ch. 56 and should be repealed.

BD 102(b) is also in conflict with the recodified Minn. Stat. Chapter 56 as equal monthly installments are no longer required for interest bearing loans. Laws of 1981, Ch. 258, § 1, Subd. 6, provides that an interest bearing loan may require repayment of principal "from time to time". Also, § 11, Subd. 1, paras. (d) and (e) make the same determination as well as differentiating repayment terms between interest-bearing and precomputed loans. Precomputed loans require substantially equal and consecutive monthly installments while interest bearing are called for "from time to time". There is no reason to retain the limitation in the existing rule for precomputed loans. The rule should therefore be repealed as obsolete and in conflict with law since August 1, 1981.

BD 108 is an existing rule which provides the method for refunding credit insurance premiums collected in connection with former small loans. With the enactment of Laws of 1981, § 14, insurance in connection with regulated loans became subject to the provisions of Minn. Stat. § 62B. Under these circumstances, the rule is obsolete, in conflict with the law effective August 1, 1981 and should be repealed.

BD 124 is an existing rule relating to loans made by industrial loan and thrift companies under the special powers in former Minn. Stat. § 53.04, Subds. 3 and 4. Those powers were repealed by Laws of 1981, Ch. 258, § 23, thereby removing the investigation charges and handling charges limited by this rule. Industrial loan and thrift companies now have authority and are governed by the Minnesota Regulated Loan Act under the provisions of amended special powers, Laws of 1981, Ch. 258, § 20, effective August 1, 1981. No investigation charges or handling charges are authorized unless provided for in the Minnesota Regulated Loan Act. Therefore, this rule is obsolete and to avoid confusion with current law should be repealed.

BD 125 is an existing rule relating to loans made by industrial loan and thrift companies under the special powers in former Minn. Stat. § 53.04, Subd. 3. Those powers were repealed by Laws of 1981, Ch. 258, § 23, thereby removing the certificate of indebtedness on which installment repayment was required. Industrial loan and thrift companies now have authority and are governed by the Minnesota Regulated Loan Act under the provision of amended special powers, Laws of 1981 § 20 effective August 1, 1981. Repayment terms and rates of charge are specifically controlled by Laws of 1981, Ch. 258, § 11, which provides for adjustments in first installment periods. Therefore, this rule is obsolete and to avoid confusion with current law should be repealed.

BD 126 is an existing rule relating to loans made by industrial loan and thrift companies under the special powers in former Minn. Stat. § 53.04, Subd. 3. Those powers were repealed by Laws of 1981, Ch. 258, § 23, effective August 1, 1981, thereby removing the investigation charges subject to the refund provisions in this rule. Therefore, this rule is obsolete and to avoid confusion with current law should be repealed.

CONCLUSION

For the reasons stated above, it is in the best interests of the licensed regulated loan companies, industrial loan and thrift companies and those consumers utilizing their services to remove the confusion and conflicts with existing law. Furthermore, these amendments are noncontroversial and time is of the essence as amended laws have been in final effect since August 1, 1982. It is believed to be clear that the proposed amendments reasonably effectuate the above stated need.



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Commissioner of Banks