

### CHAPTER 198--H.F.No. 2853

*An act relating to commerce; regulating certain licensees; modifying education requirements; making technical changes; modifying enforcement provisions and other actions; prohibiting certain homeowners policy surcharges; regulating insurance holding company systems by enacting changes proposed by the National Association of Insurance Commissioners; amending Minnesota Statutes 2012, sections 45.027, subdivision 7; 45.32, by adding subdivisions; 58.12, subdivision 1; 60A.0789, subdivision 3; 60A.10, subdivision 1; 60D.09; 60D.15, by adding a subdivision; 60D.17, subdivisions 1, 2, 4, 6, 7; 60D.18, subdivisions 2, 6; 60D.19, subdivisions 1, 2, 3, 11, 12, by adding a subdivision; 60D.20, subdivisions 1, 3; 60D.21, subdivision 1, by adding subdivisions; 60D.22; 60K.54, subdivision 2; 61A.282, subdivision 1; 66A.01; 68A.01, subdivision 2; 68A.02, subdivision 1; 68A.04, subdivision 1; 82.55, subdivision 4; 82.641, subdivision 6; 82.81, subdivision 8; 82B.135, subdivision 1; 82B.19, subdivisions 1, 3, by adding a subdivision; 115C.02, subdivision 16; 115C.09, subdivisions 2a, 3; 239.785, subdivision 6; 297I.01, subdivision 9; 327C.095, subdivision 11; 386.66; 507.401, subdivisions 1, 2, 3, 4, 5; 507.45, subdivision 4; 515B.4-109; Minnesota Statutes 2013 Supplement, sections 82B.094; 82B.13, subdivision 1; 239.761, subdivision 8; 332A.02, subdivision 8; 559.202, subdivision 3; proposing coding for new law in Minnesota Statutes, chapters 60D; 65A; 82B; repealing Minnesota Statutes 2012, section 82B.10, subdivision 7.*

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

#### ARTICLE 1

#### LICENSING

Section 1. Minnesota Statutes 2012, section 45.32, is amended by adding a subdivision to read:

Subd. 2a. **Qualifications for instructors of the Minnesota Supervisor/Trainee Appraiser Course.** In addition to qualifying under subdivision 2, an instructor of the Minnesota Supervisor/Trainee Appraiser Course offered as continuing education must:

(1) be licensed in good standing as either a certified residential real property appraiser or a certified general real property appraiser, and must have been so licensed for the three-year period immediately preceding the individual's application to become an instructor of the Minnesota Supervisor/Trainee Appraiser Course; and

(2) not have been the subject of any license or certificate suspension or revocation, or been prohibited from supervising activities in this state or any other state within the three years immediately preceding the individual's application to become an instructor of the Minnesota Supervisor/Trainee Appraiser Course.

Sec. 2. Minnesota Statutes 2012, section 45.32, is amended by adding a subdivision to read:

Subd. 3a. **Qualifications for instructors of the Minnesota Supervisor/Trainee Appraiser Course.** In addition to qualifying under subdivision 3, an instructor of the Minnesota Supervisor/Trainee Appraiser Course offered as prelicense education must:

(1) be licensed in good standing as either a certified residential real property appraiser or a certified general real property appraiser, and must have been so licensed for the three-year period immediately preceding the individual's application to become an instructor of the Minnesota Supervisor/Trainee Appraiser Course; and

(2) not have been the subject of any license or certificate suspension or revocation, or been prohibited from supervising activities in this state or any other state within the three years immediately preceding the individual's application to become an instructor of the Minnesota Supervisor/Trainee Appraiser Course.

Sec. 3. Minnesota Statutes 2013 Supplement, section 82B.094, is amended to read:

#### **82B.094 SUPERVISION OF TRAINEE REAL PROPERTY APPRAISERS.**

(a) A certified residential real property appraiser or a certified general real property appraiser, in good standing, may engage a trainee real property appraiser to assist in the performance of real estate appraisals, provided that the certified residential real property appraiser or a certified general real property appraiser:

(1) has been licensed in good standing as either a certified residential real property appraiser or a certified general real property appraiser for a total of at least three years the three-year period immediately preceding the individual's application to become a supervisor;

(2) has completed a six-hour course, approved in advance by the commissioner and provided by an education provider approved by the commissioner, that is specifically oriented to the requirements and responsibilities of supervisory appraisers and trainee appraisers. A course approved by the commissioner for the purposes of this section must be given the course title "Minnesota Supervisor/Trainee Appraiser Course";

(3) has not been the subject of any license or certificate suspension or revocation or has not been prohibited from supervising activities in this state or any other state within the ~~previous two~~ three years immediately preceding the individual's application to become a supervisor;

(4) has no more than three trainee real property appraisers working under supervision at any one time;

(5) actively and personally supervises the trainee real property appraiser, which includes ensuring that research of general and specific data has been adequately conducted and properly reported, application of appraisal principles and methodologies has been properly applied, that the analysis is sound and adequately reported, and that any analyses, opinions, or conclusions are adequately developed and reported so that the appraisal report is not misleading;

(6) discusses with the trainee real property appraiser any necessary and appropriate changes that are made to a report, involving any trainee appraiser, before it is transmitted to the client. Changes not discussed with the trainee real property appraiser that are made by the supervising appraiser must be provided in writing to the trainee real property appraiser upon completion of the appraisal report;

(7) accompanies the trainee real property appraiser on the inspections of the subject properties and drive-by inspections of the comparable sales on all appraisal assignments for which the trainee will perform

work until the trainee appraiser is determined to be competent, in accordance with the competency rule of USPAP for the property type;

(8) accepts full responsibility for the appraisal report by signing and certifying that the report complies with USPAP; and

(9) reviews and signs the trainee real property appraiser's appraisal report or reports or if the trainee appraiser is not signing the report, states in the appraisal the name of the trainee and scope of the trainee's significant contribution to the report.

(b) The supervising appraiser must review and sign the applicable experience log required to be kept by the trainee real property appraiser.

(c) The supervising appraiser must notify the commissioner within ten days when the supervision of a trainee real property appraiser has terminated or when the trainee appraiser is no longer under the supervision of the supervising appraiser.

(d) The supervising appraiser must maintain a separate work file for each appraisal assignment.

(e) The supervising appraiser must verify that any trainee real property appraiser that is subject to supervision is properly licensed and in good standing with the commissioner.

#### Sec. 4. **82B.105** **RECIPROCITY.**

The education, experience, and examination requirements of this chapter may be waived by the commissioner for individuals of other jurisdictions if: (1) the individual is licensed in another jurisdiction and is listed in good standing on the National Registry maintained by the Appraisal Subcommittee, and (2) the licensing requirements of that jurisdiction are substantially similar to the provisions of this chapter.

Sec. 5. Minnesota Statutes 2013 Supplement, section 82B.13, subdivision 1, is amended to read:

Subdivision 1. **Trainee real property appraiser.** (a) As a prerequisite for licensing as a trainee real property appraiser, an applicant must present evidence satisfactory to the commissioner that the person has successfully completed:

(1) at least 75 hours of prelicense courses approved by the commissioner. Fifteen of the 75 hours must include successful completion of the 15-hour national USPAP course; and

(2) in addition to the required hours under clause (1), a six-hour course that is specifically oriented to the requirements and responsibilities of supervisory appraisers and trainee appraisers. A course approved by the commissioner for the purposes of this subdivision must be given the course title "Minnesota Supervisor/Trainee Appraiser Course." This course must not be counted toward qualifying education to upgrade to a higher level appraiser license.

(b) All qualifying education must be completed within the five-year period prior to the date of submission of a trainee real property appraiser license application.

Sec. 6. Minnesota Statutes 2012, section 82B.135, subdivision 1, is amended to read:

Subdivision 1. **Submitting to commissioner.** An applicant for a real estate appraiser license must submit to the commissioner, along with an application for licensure and in a manner prescribed by the

commissioner, a copy of the course completion certificate for evidence that the applicant has completed all required preclicensing education coursework applicable to the class of license sought.

Sec. 7. Minnesota Statutes 2012, section 82B.19, subdivision 1, is amended to read:

~~Subdivision 1. **License renewals.** (a) A licensed real estate appraiser must present evidence satisfactory to the commissioner of having~~ The commissioner must determine that a licensed real estate appraiser has met the continuing education requirements of this chapter before the commissioner renews a license. This determination must be based on, for a resident appraiser, course completion records uploaded electronically in a manner prescribed by the commissioner and, for a nonresident appraiser, course completion records presented by electronic transmission or uploaded electronically in a manner prescribed by the commissioner.

The basic continuing education requirement for renewal of a license is the completion by the applicant either as a student or as an instructor, during the immediately preceding term of licensing, of at least 30 classroom hours of instruction in courses or seminars that have received the approval of the commissioner. Classroom hour credit must not be accepted for courses of less than two hours. As part of the continuing education requirements of this section, the commissioner must require that all real estate appraisers successfully complete the seven-hour national USPAP update course every two years. If the applicant's immediately preceding term of licensing consisted of six or more months, but fewer than 24 months, the applicant must provide evidence of completion of 15 hours of instruction during the license period. The credit hours required under this section may be credited to a person for distance education courses that meet Appraiser Qualifications Board criteria. An approved preclicensing education course may be taken for continuing education credit.

(b) The 15-hour USPAP course cannot be used to satisfy the requirement to complete the seven-hour national USPAP update course every two years.

~~(c) Notwithstanding section 326.56, subdivision 2, a licensed real estate appraiser returning from active military duty may be placed in active status for a period of up to 90 days pending completion of all continuing education requirements.~~

Sec. 8. Minnesota Statutes 2012, section 82B.19, is amended by adding a subdivision to read:

Subd. 1a. **Deferral.** (a) Deferrals may not be granted to appraisers, except in the case of individuals returning from active military duty, or individuals impacted by a state-declared or federally declared disaster. The commissioner may allow appraisers returning from active military duty to be placed in active status for a period of up to 90 days pending completion of all continuing education requirements. The commissioner may allow appraisers impacted by a state-declared or federally declared disaster that occurs within 90 days before the end of the continuing education cycle to remain or be placed in active status for a period of up to 90 days after the end of the appraiser's continuing education cycle, pending completion of all continuing education requirements.

(b) This subdivision supersedes any conflicting provision in section 326.56, subdivision 2.

Sec. 9. Minnesota Statutes 2012, section 82B.19, subdivision 3, is amended to read:

Subd. 3. **Reinstatements.** A license as a real estate appraiser that has been ~~revoked~~ suspended for less than two years as a result of disciplinary action by the commissioner may not be reinstated unless the applicant presents evidence of completion of the continuing education required by this chapter. This

requirement may not be imposed upon an applicant for reinstatement who has been required to successfully complete the current experience, education, and examination requirements for real estate appraiser licensure as a condition to reinstatement of a license.

Sec. 10. **MONEY TRANSMITTERS; NO TRANSMIT LIST; DELAYED EFFECTIVE DATE.**

Notwithstanding Laws 2013, chapter 50, Minnesota Statutes 2013 Supplement, section 53B.27, subdivision 3, is effective January 1, 2016.

Sec. 11. **REPEALER.**

Minnesota Statutes 2012, section 82B.10, subdivision 7, is repealed.

## ARTICLE 2

### PETROFUND

Section 1. Minnesota Statutes 2012, section 115C.02, subdivision 16, is amended to read:

Subd. 16. **Tank in transport.** "Tank in transport" means a liquid fuel cargo tank with a capacity of greater than 250 gallons used to deliver petroleum into storage tanks or dispense petroleum into mobile tanks.

Sec. 2. Minnesota Statutes 2012, section 115C.09, subdivision 2a, is amended to read:

Subd. 2a. **Application for reimbursement.** (a) Applications for reimbursement may be submitted for consideration by the board at the following stages:

(1) after costs have been incurred, and the associated tasks completed, for excavation basin soil sampling, excavation of contaminated soil, treatment of contaminated soil, or remedial investigation tasks such as soil boring drilling, monitoring well installation, vapor risk assessment, and groundwater receptor survey; corrective action costs relating to the construction and installation of a comprehensive corrective action design system are not reimbursable at this stage; and

(2) after costs have been incurred, and the associated tasks completed, for tasks related to the construction and installation of a comprehensive corrective action design system, but only if the commissioner has approved a comprehensive plan for corrective action that will adequately address the entire release, including groundwater contamination if necessary.

(b) An applicant shall not submit an application for reimbursement more frequently than four times per 12-month period unless the application is for more than \$2,000 in reimbursement.

(c) The commissioner shall review a plan, and provide an approval or disapproval to the applicant and the board, within 60 days in the case of a plan submitted under paragraph (a), clause (1), and within 120 days in the case of a plan submitted under paragraph (a), clause (2), or the commissioner shall explain to the board why additional time is necessary. The board shall consider a complete initial application within 60 days of its submission, and shall consider a complete supplemental application within 120 days of its submission, or the board shall explain for the record why additional time is necessary. Board staff may review applications

submitted to the board at the same time the commissioner considers the appropriateness of the corrective action, but the board may not act on the application until after the commissioner's approval is received.

(d) A reimbursement may not be made unless the board determines that the commissioner has determined that the corrective action was appropriate in terms of protecting public health, welfare, and the environment.

(e) A reimbursement may not be made unless the application was submitted within seven years after the corrective action services for which reimbursement has been requested were performed.

**EFFECTIVE DATE; APPLICATION.** This section is effective July 1, 2015, and applies to applications for reimbursement on or after that date.

Sec. 3. Minnesota Statutes 2012, section 115C.09, subdivision 3, is amended to read:

Subd. 3. **Reimbursements; subrogation; appropriation.** (a) The board shall reimburse an eligible applicant from the fund for 90 percent of the total reimbursable costs incurred at the site, except that the board may reimburse an eligible applicant from the fund for greater than 90 percent of the total reimbursable costs, if the applicant previously qualified for a higher reimbursement rate. For costs associated with a release from a tank in transport, the board may reimburse ~~90 percent of costs over \$10,000, with the a maximum reimbursement not to exceed~~ of \$100,000.

Not more than \$1,000,000 may be reimbursed for costs associated with a single release, regardless of the number of persons eligible for reimbursement, and not more than \$2,000,000 may be reimbursed for costs associated with a single tank facility.

(b) A reimbursement may not be made from the fund under this chapter until the board has determined that the costs for which reimbursement is requested were actually incurred and were reasonable.

(c) When an applicant has obtained responsible competitive bids or proposals according to rules promulgated under this chapter prior to June 1, 1995, the eligible costs for the tasks, procedures, services, materials, equipment, and tests of the low bid or proposal are presumed to be reasonable by the board, unless the costs of the low bid or proposal are substantially in excess of the average costs charged for similar tasks, procedures, services, materials, equipment, and tests in the same geographical area during the same time period.

(d) When an applicant has obtained a minimum of two responsible competitive bids or proposals on forms prescribed by the board and where the rules promulgated under this chapter after June 1, 1995, designate maximum costs for specific tasks, procedures, services, materials, equipment and tests, the eligible costs of the low bid or proposal are deemed reasonable if the costs are at or below the maximums set forth in the rules.

(e) Costs incurred for change orders executed as prescribed in rules promulgated under this chapter after June 1, 1995, are presumed reasonable if the costs are at or below the maximums set forth in the rules, unless the costs in the change order are above those in the original bid or proposal or are unsubstantiated and inconsistent with the process and standards required by the rules.

(f) A reimbursement may not be made from the fund in response to either an initial or supplemental application for costs incurred after June 4, 1987, that are payable under an applicable insurance policy, except that if the board finds that the applicant has made reasonable efforts to collect from an insurer and failed, the board shall reimburse the applicant.

(g) If the board reimburses an applicant for costs for which the applicant has insurance coverage, the board is subrogated to the rights of the applicant with respect to that insurance coverage, to the extent of the reimbursement by the board. The board may request the attorney general to bring an action in district court against the insurer to enforce the board's subrogation rights. Acceptance by an applicant of reimbursement constitutes an assignment by the applicant to the board of any rights of the applicant with respect to any insurance coverage applicable to the costs that are reimbursed. Notwithstanding this paragraph, the board may instead request a return of the reimbursement under subdivision 5 and may employ against the applicant the remedies provided in that subdivision, except where the board has knowingly provided reimbursement because the applicant was denied coverage by the insurer.

(h) Money in the fund is appropriated to the board to make reimbursements under this chapter. A reimbursement to a state agency must be credited to the appropriation account or accounts from which the reimbursed costs were paid.

(i) The board may reduce the amount of reimbursement to be made under this chapter if it finds that the applicant has not complied with a provision of this chapter, a rule or order issued under this chapter, or one or more of the following requirements:

(1) the agency was given notice of the release as required by section 115.061;

(2) the applicant, to the extent possible, fully cooperated with the agency in responding to the release;

(3) the state rules applicable after December 22, 1993, to operating an underground storage tank and appurtenances without leak detection;

(4) the state rules applicable after December 22, 1998, to operating an underground storage tank and appurtenances without corrosion protection or spill and overfill protection; and

(5) the state rule applicable after November 1, 1998, to operating an aboveground tank without a dike or other structure that would contain a spill at the aboveground tank site.

(j) The reimbursement may be reduced as much as 100 percent for failure by the applicant to comply with the requirements in paragraph (i), clauses (1) to (5). In determining the amount of the reimbursement reduction, the board shall consider:

(1) the reasonable determination by the agency that the noncompliance poses a threat to the environment;

(2) whether the noncompliance was negligent, knowing, or willful;

(3) the deterrent effect of the award reduction on other tank owners and operators;

(4) the amount of reimbursement reduction recommended by the commissioner; and

(5) the documentation of noncompliance provided by the commissioner.

(k) An applicant may request that the board issue a multiparty check that includes each lender who advanced funds to pay the costs of the corrective action or to each contractor or consultant who provided corrective action services. This request must be made by filing with the board a document, in a form prescribed by the board, indicating the identity of the applicant, the identity of the lender, contractor, or consultant, the dollar amount, and the location of the corrective action. The applicant must submit a request

for the issuance of a multiparty check for each application submitted to the board. Payment under this paragraph does not constitute the assignment of the applicant's right to reimbursement to the consultant, contractor, or lender. The board has no liability to an applicant for a payment issued as a multiparty check that meets the requirements of this paragraph.

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

### ARTICLE 3

#### ADMINISTRATIVE SERVICES

Section 1. Minnesota Statutes 2013 Supplement, section 239.761, subdivision 8, is amended to read:

Subd. 8. **Diesel fuel oil.** (a) When diesel fuel oil is not blended with biodiesel, it must comply with ASTM specification D975-12a.

(b) When diesel fuel oil is a blend of up to five volume percent biodiesel, the diesel component must comply with ASTM specification D975-12a and the biodiesel component must comply with ASTM specification ~~D675-11b~~ D6751-11b.

Sec. 2. Minnesota Statutes 2012, section 239.785, subdivision 6, is amended to read:

Subd. 6. **Liquefied petroleum gas account.** A liquefied petroleum gas account in the special revenue fund is established in the state treasury. Fees and penalties collected under this section must be deposited in the state treasury and credited to the liquefied petroleum gas account. Money in that account, including interest earned, is appropriated to the commissioner of ~~education~~ commerce for programs to improve the energy efficiency of residential liquefied petroleum gas heating equipment in low-income households, and, when necessary, to provide weatherization services to the homes.

### ARTICLE 4

#### ENFORCEMENT

Section 1. Minnesota Statutes 2012, section 45.027, subdivision 7, is amended to read:

Subd. 7. **Actions against licensees.** (a) In addition to any other actions authorized by this section, the commissioner may, by order, deny, suspend, or revoke the authority or license of a person subject to the duties and responsibilities entrusted to the commissioner, as described under section 45.011, subdivision 4, or censure that person if the commissioner finds that:

(1) the order is in the public interest; and

(2) the person has violated any law, rule, or order related to the duties and responsibilities entrusted to the commissioner; or

(3) the person has provided false, misleading, or incomplete information to the commissioner or has refused to allow a reasonable inspection of records or premises; or

(4) the person has engaged in an act or practice, whether or not the act or practice directly involves the business for which the person is licensed or authorized, which demonstrates that the applicant or licensee is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the authority or license granted by the commissioner.

(b)(1) The commissioner shall issue an order requiring a licensee or applicant for a license to show cause why the license should not be revoked or suspended, or the licensee censured, or the application denied and provide the licensee or applicant an opportunity to request a hearing under the contested case provisions of chapter 14. The order must be calculated to give reasonable notice of the time and place for a hearing on the action, and must state the reasons for the entry of the order. The commissioner may, by order, summarily suspend a license pending final determination of an order to show cause. If a license is suspended pending final determination of an order to show cause, a hearing on the merits must be held within 30 days of the issuance of the order of suspension. The order must: (i) state the reasons that an order is being sought and whether a civil penalty is sought; and (ii) inform the licensee or applicant that unless the licensee or applicant requests a hearing on the matter within 30 days of receipt of the order, it becomes final by operation of law and that a final order will be issued under paragraph (a). If a hearing is requested by the licensee or applicant pursuant to item (ii): (A) the commissioner shall, within 15 days of receiving the request, set the date and time for the hearing and notify the licensee or applicant of those facts; and (B) the commissioner may modify, vacate, or extend the order, until the commissioner issues a final order under paragraph (a).

(2) The commissioner may, by order, summarily suspend a license pending final determination of an order to show cause issued under clause (1). If a license is suspended pending final determination of an order to show cause and the licensee requests a hearing on the matter within 30 days of receipt of the order to show cause, a hearing on the merits must be held within 30 days of receipt of the hearing request. The summary suspension or summary revocation procedure does not apply to action by the commissioner against the certificate of authority of an insurer authorized to do business in Minnesota.

(c) All hearings must be conducted according to chapter 14. After the hearing, the commissioner shall enter an a final order disposing of the matter as the facts require. If the licensee or applicant fails to appear at a hearing after having been duly notified of it, the person is considered in default, and the proceeding may be determined against the licensee or applicant upon consideration of the order to show cause, the allegations of which may be considered true. The summary suspension or summary revocation procedures does not apply to action by the commissioner against the certificate of authority of an insurer authorized to do business in Minnesota.

(d) If an order becomes final because a person subject to an order does not timely request a hearing as provided in paragraph (b) or if the petition for judicial review is not timely filed after a hearing and a final order is issued by the commissioner as provided in paragraph (a), the commissioner may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The final order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

(e) If a person does not comply with a final order under this section, the commissioner may petition a court of competent jurisdiction to enforce the order. The court may not require the commissioner to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt in an amount up to \$10,000 for each violation and may grant any other relief the court determines is just and proper in the circumstances.

(f) Except for information classified as confidential under sections 60A.03, subdivision 9; 60A.031; 60A.93; and 60D.22, the commissioner may make any data otherwise classified as private or confidential pursuant to this section accessible to an appropriate person or agency if the commissioner determines that the access will aid the law enforcement process, promote public health or safety, or dispel widespread rumor or unrest. If the commissioner determines that private or confidential information should be disclosed, the commissioner shall notify the attorney general as to the information to be disclosed, the purpose of the disclosure, and the need for the disclosure. The attorney general shall review the commissioner's determination. If the attorney general believes that the commissioner's determination does not satisfy the purpose and intent of this ~~provision paragraph~~, the attorney general shall advise the commissioner in writing that the information may not be disclosed. If the attorney general believes the commissioner's determination satisfies the purpose and intent of this provision, the attorney general shall advise the commissioner in writing, accordingly.

After disclosing information pursuant to this provision, the commissioner shall advise the chairs of the senate and house of representatives judiciary committees of the disclosure and the basis for it.

Sec. 2. Minnesota Statutes 2012, section 58.12, subdivision 1, is amended to read:

Subdivision 1. **Powers of commissioner.** (a) The commissioner may by order take any or all of the following actions:

- (1) bar a person from engaging in residential mortgage origination or servicing;
- (2) deny, suspend, or revoke a residential mortgage originator or a servicer license;
- (3) censure a licensee;
- (4) impose a civil penalty as provided for in section 45.027, subdivision 6; or
- (5) revoke an exemption or certificate of exemption.

(b) In order to take the action in paragraph (a), the commissioner must find:

- (1) that the order is in the public interest; and
- (2) that the residential mortgage originator, servicer, applicant, or other person, an officer, director, partner, employee, or agent or any person occupying a similar status or performing similar functions, or a person in control of the originator, servicer, applicant, or other person has:

- (i) violated any provision of this chapter or rule or order under this chapter;
- (ii) filed an application for a license that is incomplete in any material respect or contains a statement that, in light of the circumstances under which it is made, is false or misleading with respect to a material fact;
- (iii) failed to maintain compliance with the affirmations made under section 58.06, subdivision 2;
- (iv) violated a standard of conduct or engaged in a fraudulent, coercive, deceptive, or dishonest act or practice, whether or not the act or practice involves the residential mortgage lending business including, but not limited to, negligently making a false statement or knowingly and willfully omitting a material fact;

(v) engaged in an act or practice, whether or not the act or practice involves the business of making a residential mortgage loan, that demonstrates untrustworthiness, financial irresponsibility, or incompetence;

(vi) pled guilty, with or without explicitly admitting guilt, pled nolo contendere, or been convicted of a felony, gross misdemeanor, or a misdemeanor involving moral turpitude;

(vii) paid a civil penalty or been the subject of disciplinary action by the commissioner, or an order of suspension or revocation, cease and desist order or injunction order or order barring involvement in an industry or profession issued by this or any other state or federal regulatory agency or by the Secretary of Housing and Urban Development;

(viii) been found by a court of competent jurisdiction to have engaged in conduct evidencing gross negligence, fraud, misrepresentation, or deceit;

(ix) refused to cooperate with an investigation or examination by the commissioner;

(x) failed to pay any fee or assessment imposed by the commissioner; or

(xi) failed to comply with state and federal tax obligations.

Sec. 3. Minnesota Statutes 2012, section 60A.0789, subdivision 3, is amended to read:

Subd. 3. **Declaratory judgment action.** (a) If, prior to payment of death benefits, the insurer believes the policy was initiated by STOLI practices, the insurer may bring a declaratory judgment action seeking a court order declaring the policy void.

(b) A life insurance policy owner, who believes in good faith that the insurer may challenge the policy for lack of insurable interest, may bring a declaratory judgment action seeking a court order declaring the policy valid.

(c) The right of a life insurance policy owner to bring a declaratory judgment action applies only to policies issued in Minnesota prior to the effective date of the Insurable Interest Act and that have a death benefit equal to or greater than one million dollars. Only the owner of record of a life insurance policy on the effective date of this section may bring a declaratory judgment action under this section.

**EFFECTIVE DATE.** This section is effective the day following final enactment and shall sunset on December 31, 2016.

Sec. 4. Minnesota Statutes 2012, section 60A.10, subdivision 1, is amended to read:

Subdivision 1. **Domestic companies.** (1) **Deposit as security for all policyholders required.** No company in this state, other than farmers' mutual, or real estate title ~~insurance companies~~ insurers, shall do business in this state unless it has on deposit with the commissioner, for the protection of both its resident and nonresident policyholders, securities to an amount, the actual market value of which, exclusive of interest, shall never be less than \$500,000 or one-half the applicable financial requirement set forth in sections 60A.07, 66A.32, and 66A.33, whichever is less. The securities shall be retained under the control of the commissioner as long as any policies of the depositing company remain in force.

(2) **Securities defined.** For the purpose of this subdivision, the word "securities" means bonds or other obligations of, or bonds or other obligations insured or guaranteed by, the United States, any state of the United States, any municipality of this state, or any agency or instrumentality of the foregoing.

(3) **Protection of deposit from levy.** No judgment creditor or other claimant may levy upon any securities held on deposit with, or for the account of, the commissioner. Upon the entry of an order by a

court of competent jurisdiction for the rehabilitation, liquidation or conservation of any depositing company as provided in chapter 60B, that company's deposit together with any accrued income thereon shall be transferred to the commissioner as rehabilitator, liquidator, or conservator.

Sec. 5. Minnesota Statutes 2012, section 60K.54, subdivision 2, is amended to read:

Subd. 2. **Criminal prosecutions.** Within 30 days of the ~~initial pretrial hearing date~~ criminal prosecution begins, a producer shall report to the commissioner any criminal prosecution of the producer taken in any jurisdiction. The report must include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents. In addition, a producer shall report to the commissioner within ten days any conviction, guilty plea, or plea of nolo contendere to any felony or gross misdemeanor.

For purposes of this subdivision, the date the criminal prosecution begins is the date the indictment is returned or the date the criminal complaint is filed.

Sec. 6. Minnesota Statutes 2012, section 61A.282, subdivision 1, is amended to read:

Subdivision 1. **Requirements.** A company's investments shall be held in its corporate name or its nominee name, except that:

(a) Investments may be held in the name of a clearing corporation or of a custodian bank or in the name of the nominee of either under the following conditions:

(1) The clearing corporation, custodian bank, or nominee must be legally authorized to hold the particular investment for the account of others;

(2) Where the investment is evidenced by a certificate and held in the name of a custodian bank or the nominee of a custodian bank, a written agreement shall provide that certificates so deposited shall at all times be kept separate and apart from other deposits with the depository, so that at all times they may be identified as belonging solely to the company making the deposit; or

(3) Where a clearing corporation is to act as depository, the investment may be merged or held in bulk in the clearing corporation's name, or in the name of its nominee, together with any other investments deposited with the clearing corporation by any other person, if a written agreement provides that adequate evidence of the deposit will be obtained and retained by the company or a custodian bank.

As used in this subdivision, the term "custodian bank" means a bank or trust company licensed by the United States or any state thereof.

(b) A company may participate, through a bank or trust company which is a member of the Federal Reserve System, in the Federal Reserve's book-entry system, if the records of the member bank or trust company at all times show that the investments are held for the company and/or for specific accounts of the company.

(c) If an investment consists of an individual interest in a pool of obligations, or of a fractional interest in a single obligation, the certificate of participation or interest, or the confirmation of participation or interest in the investment, shall be held in the manner set forth in paragraph (a) or held in the name of the company.

(d) Where an investment is not evidenced by a certificate, except as provided in paragraph (b), adequate evidence of the company's investment shall be obtained from the issuer or its transfer or recording agent and

retained by the company, a custodian bank, or clearing corporation. Adequate evidence, for purposes of this section, shall mean a written receipt or other verification issued by the depository or issuer or a custodian bank which shows that the investment is held for the company. Transfers of ownership of investments held as described in paragraphs (a)(3), (b), and (c) may be evidenced by bookkeeping entry on the books of the issuer of the investment or its transfer or recording agent or the clearing corporation without physical delivery of certificates, if any, evidencing the company's investment.

(e) Investments or cash posted as collateral or variation margin (other than initial margin amounts) in connection with qualified financial contracts, as defined in section 60B.03, subdivision 22, are not subject to this subdivision.

**Sec. 7. [65A.285] SURCHARGE PROHIBITION.**

Subdivision 1. **Surcharge prohibition.** An insurer may not impose a surcharge on homeowners insurance solely as a result of a consumer inquiry.

Subd. 2. **Definitions.** For purposes of this section:

(1) "consumer inquiry" means a telephone call or other communication made to an insurer that does not result in a paid claim and that is in regard to the general terms or conditions of or coverage offered under an insurance policy. The term includes a question concerning the process for filing a claim and whether a policy will cover a loss; and

(2) "surcharge" means an increase in premium for a policy, including the removal of a claim-free discount.

Sec. 8. Minnesota Statutes 2012, section 66A.01, is amended to read:

**66A.01 SCOPE OF CHAPTER.**

This chapter shall apply to mutual insurance companies other than: assessment benefit associations, fraternal benefit societies, township mutual insurance companies and title ~~insurance companies~~ insurers. Sections 66A.08 to 66A.311 do not apply to mutual life insurance companies.

Sections 60A.07, subdivision 1, clauses (1) and (2); 66A.34; 66A.35; 66A.36; 66A.37; 66A.38; and 66A.39, do not apply to mutual property and casualty insurance companies.

Sec. 9. Minnesota Statutes 2012, section 68A.01, subdivision 2, is amended to read:

**Subd. 2. Guaranty fund and investment thereof.** Before issuing any policy or other contract of guaranty or insurance, every real estate title ~~insurance company~~ insurer shall set apart and keep separate a guaranty fund of \$100,000 or an amount equal to two-fifths of its capital stock whichever is the greater. The guaranty fund shall be invested according to law.

Sec. 10. Minnesota Statutes 2012, section 68A.02, subdivision 1, is amended to read:

**Subdivision 1. 1964-2001 premium reserve.** Upon issuance of each contract of title insurance issued on or after January 1, 1964, through January 1, 2001, by a domestic real estate title ~~insurance company~~ insurer, there shall be reserved initially a sum equal to ten percent of the original premium charged therefor.

At the end of each calendar year following the year in which the contract of title insurance is issued, there shall be a reduction in the sum so reserved in the amount of one-twentieth of such sum. On any contract of title insurance issued prior to January 1, 1964, by a domestic real estate title ~~insurance company~~ insurer, a reserve shall be set up on January 1, 1964, and thereafter maintained in such sum as would have been required if the foregoing requirements with respect to title insurance reserves had existed at and after the date of the contract of title insurance. Such sums herein required to be reserved shall at all times and for all purposes be considered and constitute unearned portions of the original premiums on such contracts of title insurance, shall be charged as a reserve liability of the real estate title ~~insurance company~~ insurer in determining its financial condition, and, for the purpose of applying the provisions of section 60A.23, subdivision 4, shall be deemed to constitute the whole amount of the premiums on the unexpired risks of such real estate title ~~insurance company~~ insurer.

Sec. 11. Minnesota Statutes 2012, section 68A.04, subdivision 1, is amended to read:

Subdivision 1. **Direct risk premiums.** For purposes of this chapter, "direct risk premiums" means the charge for title insurance made by a title ~~insurance company~~ insurer or its agents according to the ~~company's~~ insurer's rate filing approved by the commissioner of commerce without a deduction for commissions paid to or retained by the agent and is that portion of the fee charged by a title ~~insurance company~~ insurer to an insured or an applicant for insurance for the assumption by the title ~~insurance company~~ insurer of the risk created by the issuance of the title insurance policy. Direct risk premiums of a title ~~insurance company~~ insurer do not include any other charge or fee for abstracting, searching, or examining the title, or for escrow, closing, or other related services.

Sec. 12. Minnesota Statutes 2012, section 82.55, subdivision 4, is amended to read:

Subd. 4. **Closing agent; real estate closing agent.** "Closing agent" or "real estate closing agent" means any person whether or not acting as an agent for a title ~~company~~ insurance agent, a licensed attorney, real estate broker, or real estate salesperson, who for another and with or without a commission, fee, or other valuable consideration or with or without the intention or expectation of receiving a commission, fee, or other valuable consideration, directly or indirectly provides closing services incident to the sale, trade, lease, or loan of residential real estate, including drawing or assisting in drawing papers incident to the sale, trade, lease, or loan, or advertises or claims to be engaged in these activities.

Sec. 13. Minnesota Statutes 2012, section 82.641, subdivision 6, is amended to read:

Subd. 6. **Exemption.** The following persons, when acting as closing agents, are exempt from the requirements of this section and sections 82.75 and 82.81 unless otherwise required in this chapter:

(1) a direct employee of a title ~~insurance company~~ insurer authorized to do business in this state, or a direct employee of a title ~~company~~ insurance agent, or a person who has an agency agreement with a title ~~insurance company~~ insurer or a title ~~company~~ insurance agent in which the agent agrees to perform closing services on the title ~~insurance company's~~ insurer's or title ~~company's~~ insurance agent's behalf and the title ~~insurance company~~ insurer or title ~~company~~ insurance agent assumes responsibility for the actions of the agent as if the agent were a direct employee of the title ~~insurance company~~ insurer or title ~~company~~ insurance agent;

(2) a licensed attorney or a direct employee of a licensed attorney;

(3) a licensed real estate broker or salesperson;

(4) a direct employee of a licensed real estate broker if the broker maintains all funds received in connection with the closing services in the broker's trust account;

(5) a bank, trust company, savings association, credit union, industrial loan and thrift company, regulated lender under chapter 56, public utility, or land mortgage or farm loan association organized under the laws of this state or the United States, when engaged in the transaction of businesses within the scope of its corporate powers as provided by law;

(6) a title ~~insurance company~~ insurer authorized to do business in this state; and

(7) a title ~~company~~ insurance agent that has a contractual agency relationship with a title ~~insurance company~~ insurer authorized to do business in this state, where the title ~~insurance company~~ insurer assumes responsibility for the actions of the title ~~company~~ insurance agent and its employees or agents as if they were employees or agents of the title ~~insurance company~~ insurer.

Sec. 14. Minnesota Statutes 2012, section 82.81, subdivision 8, is amended to read:

Subd. 8. **Closing services.** No real estate broker, salesperson, or closing agent shall require a person to use any particular lender, licensed attorney, real estate broker, real estate salesperson, real estate closing agent, or title ~~company~~ insurance agent in connection with a residential real estate closing.

Sec. 15. Minnesota Statutes 2012, section 297I.01, subdivision 9, is amended to read:

Subd. 9. **Gross premiums.** "Gross premiums" means total premiums paid by policyholders and applicants of policies, whether received in the form of money or other valuable consideration, on property, persons, lives, interests and other risks located, resident, or to be performed in this state, but excluding consideration and premiums for reinsurance assumed from other insurance companies.

(a) "Gross premiums" includes the total consideration paid to bail bond agents for bail bonds.

(b) For title ~~insurance companies~~ insurers, "gross premiums" means the charge for title insurance made by a title ~~insurance company~~ insurer or its agents according to the ~~company's~~ insurer's rate filing approved by the commissioner of commerce without a deduction for commissions paid to or retained by the agent. Gross premiums of a title ~~insurance company~~ insurer does not include any other charge or fee for abstracting, searching, or examining the title, or escrow, closing, or other related services.

(c) "Gross premiums" includes any workers' compensation special compensation fund premium surcharge pursuant to section 176.129.

(d) "Gross premiums" for nonadmitted insurance includes any payment made as consideration for an insurance contract for such insurance, including premium deposits, assessments, fees, and any other compensation given in consideration for a contract of insurance. Gross premiums does not include the stamping fee, as provided under section 60A.2085, subdivision 7, nor the operating assessment, as provided under section 60A.208, subdivision 8.

Sec. 16. Minnesota Statutes 2012, section 327C.095, subdivision 11, is amended to read:

Subd. 11. **Affidavit of compliance.** After a park is sold, a park owner or other person with personal knowledge may record an affidavit with the county recorder or registrar of titles in the county in which the park is located certifying compliance with subdivision 6 or 7 or that subdivisions 6 and 7 are not applicable.

The affidavit may be used as proof of the facts stated in the affidavit. A person acquiring an interest in a park or a title ~~insurance company~~ insurer or attorney who prepares, furnishes, or examines evidence of title may rely on the truth and accuracy of statements made in the affidavit and is not required to inquire further as to the park owner's compliance with subdivisions 6 and 7. When an affidavit is recorded, the right to purchase provided under subdivisions 6 and 7 terminate, and if registered property, the registrar of titles shall delete the memorials of the notice and affidavit from future certificates of title.

Sec. 17. Minnesota Statutes 2013 Supplement, section 332A.02, subdivision 8, is amended to read:

**Subd. 8. Debt management services provider.** "Debt management services provider" means any person offering or providing debt management services to a debtor domiciled in this state, regardless of whether or not a fee is charged for the services and regardless of whether the person maintains a physical presence in the state. This term includes any person to whom debt management services are delegated, and does not include services performed by the following when engaged in the regular course of their respective businesses and professions:

- (1) exempt attorneys at law, escrow agents, accountants, broker-dealers in securities;
- (2) state or national banks, credit unions, trust companies, savings associations, title ~~insurance companies~~ insurers, insurance companies, and all other lending institutions duly authorized to transact business in Minnesota;
- (3) persons who, as employees on a regular salary or wage of an employer not engaged in the business of debt management, perform credit services for their employer;
- (4) public officers acting in their official capacities and persons acting as a debt management services provider pursuant to court order;
- (5) any person while performing services incidental to the dissolution, winding up, or liquidation of a partnership, corporation, or other business enterprise;
- (6) the state, its political subdivisions, public agencies, and their employees;
- (7) collection agencies, provided that the services are provided to a creditor;
- (8) "qualified organizations" designated as representative payees for purposes of the Social Security and Supplemental Security Income Representative Payee System and the federal Omnibus Budget Reconciliation Act of 1990, Public Law 101-508;
- (9) accelerated mortgage payment providers. "Accelerated mortgage payment providers" are persons who, after satisfying the requirements of sections 332.30 to 332.303, receive funds to make mortgage payments to a lender or lenders, on behalf of mortgagors, in order to exceed regularly scheduled minimum payment obligations under the terms of the indebtedness. The term does not include: (i) persons or entities described in clauses (1) to (8); (ii) mortgage lenders or servicers, industrial loan and thrift companies, or regulated lenders under chapter 56; or (iii) persons authorized to make loans under section 47.20, subdivision 1. For purposes of this clause and sections 332.30 to 332.303, "lender" means the original lender or that lender's assignee, whichever is the current mortgage holder;
- (10) trustees, guardians, and conservators; and
- (11) debt settlement services providers.

Sec. 18. Minnesota Statutes 2012, section 386.66, is amended to read:

**386.66 BOND OR ABTRACTER'S LIABILITY INSURANCE POLICY.**

Before a license shall be issued, the applicant shall file with the commissioner an annual bond or abstracter's liability insurance policy for each license year, to be approved by the commissioner, running to the state of Minnesota in the penal sum of at least \$100,000 conditioned for the payment by such abstracter of any damages that may be sustained by or accrue to any person by reason of or on account of any error, deficiency or mistake arising wrongfully or negligently in any abstract, or continuation thereof, or in any certificate showing ownership of, or interest in, or liens upon any lands in the state of Minnesota, whether registered or not, made by and issued by such abstracter, provided however, that the aggregate liability of the surety to all persons under such bond shall in no event exceed the amount of such bond. If the applicant intends to engage in the business of abstracting in any county having more than 200,000 inhabitants, the bond or insurance policy required herein shall be in the penal sum of at least \$250,000. Applicants that are title ~~insurance companies~~ insurers regulated by chapter 68A and licensed pursuant to sections 60A.02 and 60A.06, subdivision 1, clause (7), and their employees or those having cash or securities on deposit with the state of Minnesota in an amount equal to the said bond or insurance policy shall be exempt from furnishing the bond or an insurance policy herein required but shall be liable to the same extent as if a bond or insurance policy has been given and filed. The bond or insurance policy required hereunder shall be written by some surety or other company authorized to do business in this state issuing bonds or abstracter's liability insurance policies and shall be issued for a period of one or more years, and renewed for one year at the date of expiration as principal continues in business.

Sec. 19. Minnesota Statutes 2012, section 507.401, subdivision 1, is amended to read:

Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section.

(b) "Assignment of rents and profits" means an assignment, whether in a separate document or in a mortgage, of any of the benefits accruing under a recorded or unrecorded lease or tenancy existing, or subsequently created, on property encumbered by a mortgage, which is given as additional security for the debt secured by the mortgage.

(c) "Mortgage" means a mortgage or mortgage lien, including any assignment of rents and profits given as additional security for the debt secured by that lien, on an interest in real property in this state given to secure a loan in the original principal amount of \$1,500,000 or less.

(d) "Mortgagee" means:

(1) the grantee of a mortgage; or

(2) if a mortgage has been assigned of record, the last person to whom the mortgage has been assigned of record.

(e) "Mortgage servicer" means the last person to whom a mortgagor or the mortgagor's successor in interest has been instructed by a mortgagee to send payments on a loan secured by a mortgage. A person transmitting a payoff statement is the mortgage servicer for the mortgage described in the payoff statement.

(f) "Mortgagor" means the grantor of a mortgage.

(g) "Partial release" means the release of specified parcels of land from a mortgage.

(h) "Payoff statement" means a statement of the amount of:

(1) the unpaid balance of a loan secured by a mortgage, including principal, interest, and any other charges properly due under or secured by the mortgage, and interest on a per day basis for the unpaid balance; or

(2) the portion of the unpaid balance of the loan secured by the mortgage required by the mortgagee or mortgage servicer to be paid as a condition for the issuance of a partial release.

(i) "Record" means to record with the county recorder or file with the registrar of titles.

(j) "Title ~~insurance company~~ insurer" means a corporation or other business entity authorized and licensed to transact the business of insuring titles to interests in real property in this state under chapter 68A.

Sec. 20. Minnesota Statutes 2012, section 507.401, subdivision 2, is amended to read:

Subd. 2. **Certificate of release.** An officer or duly appointed agent of a title ~~insurance company~~ insurer may, on behalf of a mortgagor or a person who acquired from the mortgagor title to all or a part of the property described in a mortgage, execute a certificate of release that complies with the requirements of this section and record the certificate of release in the real property records of each county in which the mortgage is recorded if a satisfaction or release of the mortgage has not been executed and recorded after the date payment in full of the loan secured by the mortgage was sent in accordance with a payoff statement furnished by the mortgagee or the mortgage servicer.

Sec. 21. Minnesota Statutes 2012, section 507.401, subdivision 3, is amended to read:

Subd. 3. **Contents.** A certificate of release executed under this section must contain substantially all of the following:

(1) the name of the mortgagor, the name of the original mortgagee, and, if applicable, the mortgage servicer, the date of the mortgage, the date of recording, and volume and page or document number in the real property records where the mortgage is recorded, together with similar information for the last recorded assignment of the mortgage;

(2) if applicable, the date of any assignment of rents and profits, the date of its recording, and its volume and page or document number in the real property records where it has been recorded or filed, together with similar information for the last recorded assignment thereof;

(3) a statement that the mortgage was in the original principal amount of \$1,500,000 or less;

(4) a statement that the person executing the certificate of release is an officer or a duly appointed agent of a title ~~insurance company~~ insurer authorized and licensed to transact the business of insuring titles to interests in real property in this state under chapter 68A;

(5) a statement that the certificate of release is made on behalf of the mortgagor or a person who acquired title from the mortgagor to all or a part of the property described in the mortgage;

(6) a statement that the mortgagee or mortgage servicer provided a payoff statement which was used to make full or partial payment of the unpaid balance of the loan secured by the mortgage;

(7) a statement that full or partial payment of the unpaid balance of the loan secured by the mortgage was made in accordance with the written or verbal payoff statement; and

(8) where the certificate of release affects only a portion of the land encumbered by the mortgage, a legal description of the portion being released.

Sec. 22. Minnesota Statutes 2012, section 507.401, subdivision 4, is amended to read:

Subd. 4. **Execution.** (a) A certificate of release authorized by subdivision 2 must be executed and acknowledged as required by law in the case of a deed and may be executed by a duly appointed agent of a title ~~insurance company~~ insurer, but such delegation to an agent by a title ~~insurance company~~ insurer shall not relieve the title ~~insurance company~~ insurer of any liability for damages caused by its agent for the wrongful or erroneous execution of a certificate of release.

(b) The appointment of agent must be executed and acknowledged as required by law in the case of a deed and must state:

(1) the title ~~insurance company~~ insurer as the grantor;

(2) the identity of the person, partnership, or corporation authorized to act as agent to execute and record certificates of release provided for in this section on behalf of the title ~~insurance company~~ insurer;

(3) that the agent has the full authority to execute and record certificates of release provided for in this section on behalf of the title ~~insurance company~~ insurer;

(4) the term of appointment of the agent; and

(5) that the agent has consented to and accepts the terms of the appointment.

(c) A single appointment of agent may be recorded in each county in each recording or filing office. A separate appointment of agent shall not be necessary for each certificate of release. For registered land the appointment of agent shall be shown as a memorial on each certificate of title on which a mortgage to be released by a certificate of release under this section is a memorial. The appointment of agent may be rerecorded where necessary to establish authority of the agent, but such authority shall continue until a revocation of appointment is recorded in the office of the county recorder, or registrar of titles, where the appointment of agent was recorded.

Sec. 23. Minnesota Statutes 2012, section 507.401, subdivision 5, is amended to read:

Subd. 5. **Effect.** For purposes of releasing the mortgage, a certificate of release containing the information and statements provided for in subdivision 3 and executed as provided in this section is prima facie evidence of the facts contained in it, is entitled to be recorded with the county recorder or registrar of titles, and operates as a release of the mortgage described in the certificate of release. The county recorder and the registrar of titles shall rely upon it to release the mortgage. Recording of a wrongful or erroneous certificate of release by a title ~~insurance company~~ insurer or its agent shall not relieve the mortgagor, or the mortgagor's successors or assigns, from any personal liability on the loan or other obligations secured by the mortgage. In addition to any other remedy provided by law, a title ~~insurance company~~ insurer wrongfully or erroneously recording a certificate of release under this section shall be liable to the mortgagee for actual damage sustained due to the recordings of the certificate of release.

Sec. 24. Minnesota Statutes 2012, section 507.45, subdivision 4, is amended to read:

Subd. 4. **Choice of closer; notice.** (a) No real estate salesperson, broker, attorney, auctioneer, builder, title ~~company~~ agent, financial institution, or other person making a mortgage loan may require a person to

use any particular licensed attorney, real estate broker, real estate salesperson, or real estate closing agent in connection with a residential real estate closing.

(b) All listing agreements must include a notice informing sellers of their rights under this subdivision. The notice must require the seller to indicate in writing whether it is acceptable to the seller to have the licensee arrange for closing services or whether the seller wishes to arrange for others to conduct the closing. The notice must also include the disclosure of any controlled business arrangement, as the term is defined in United States Code, title 12, section 1602, between the licensee and the real estate closing agent through which the licensee proposes to arrange closing services.

Sec. 25. Minnesota Statutes 2012, section 515B.4-109, is amended to read:

**515B.4-109 ESCROW DEPOSITS.**

All earnest money paid or deposits made in connection with the purchase or reservation of units from or with a declarant shall be deposited in an escrow account controlled jointly by the declarant and the purchaser, or controlled by a licensed title ~~insurance company~~ insurer or agent thereof, an attorney representing either the declarant or the purchaser, a licensed real estate broker, an independent bonded escrow company, or a governmental agency or instrumentality. The escrow account shall be in an institution whose deposits are insured by a governmental agency or instrumentality. The money or deposits shall be held in the escrow account until (i) delivered to the declarant at closing; (ii) delivered to the declarant because of the purchaser's default under a reservation agreement or a contract to purchase the unit; (iii) delivered to the purchaser pursuant to the provisions of section 515B.4-106 or the provisions of a reservation agreement or a contract to purchase; or (iv) delivered for payment of construction costs pursuant to a written agreement between the declarant and the purchaser.

Sec. 26. Minnesota Statutes 2013 Supplement, section 559.202, subdivision 3, is amended to read:

Subd. 3. **Content of the notice.** The notice must contain the following verbatim language:

**"IMPORTANT INFORMATION ABOUT CONTRACTS FOR DEED**

**Know What You Are Getting Into**

(1) A contract for deed is a complex legal agreement. You are NOT a tenant. Mortgage foreclosure laws don't apply.

(2) You should know ALL of your obligations and rights before you sign a purchase agreement or contract for deed.

(3) You (seller must circle one):

- DO
- (a) DO NOT have to pay homeowner's insurance.
- DO
- (b) DO NOT have to pay property taxes.
- (c) DO DO have to make and pay for some or all of the  
NOT repairs or maintenance, as described in the  
contract for deed.

(4) After some time, you may need to make a large lump sum payment (called a "balloon payment"). Know when it is due and how much it will be. You'll probably need to get a new mortgage, another financial arrangement, or pay for the balance in cash at that time.

(5) If you miss just a single payment or can't make the balloon payment, the seller can cancel your contract. You will likely lose all the money you have already paid. You will likely lose your ability to purchase the home. The seller can begin an eviction action against you in just a few months.

(6) Within four months of signing the contract for deed, you must "record" it in the office of the county recorder or registrar of titles in the county in which the property is located. If you do not do so, you could face a fine.

### **Key Things Highly Recommended Before You Sign**

(1) Get advice from a lawyer or the Minnesota Home Ownership Center at 1-866-462-6466 or go to [www.hocmn.org](http://www.hocmn.org). To find a lawyer through the Minnesota State Bar Association, go to [www.mnfindalawyer.com](http://www.mnfindalawyer.com).

(2) Get an independent, professional appraisal of the property to learn what it is worth.

(3) Get an independent, professional inspection of the property.

(4) Buy title insurance or ask a real estate lawyer for a "title opinion."

(5) Check with the city or county to find out if there are inspection reports or unpaid utility bills.

(6) Check with a title company agent or the county where the property is located to find out if there is a mortgage or other lien on the property and if the property taxes have been paid.

(7) Ensure that your interest rate does not exceed the maximum allowed by law by calling the Department of Commerce to get a recorded message for the current month's maximum rate.

### **If You Are Entering into a Purchase Agreement**

(1) If you haven't already signed the contract for deed, you can cancel the purchase agreement (and get all your money back) if you do so within five business days after getting this notice.

(2) To cancel the purchase agreement, you must follow the provisions of Minnesota Statutes, section 559.217, subdivision 4. Ask a lawyer for help."

## **ARTICLE 5**

### **MODEL HOLDING COMPANY ACT CHANGES**

Section 1. Minnesota Statutes 2012, section 60D.09, is amended to read:

#### **60D.09 CRIMINAL PROCEEDINGS PENALTIES.**

Subdivision 1. **Failure to file registration statement; civil penalty.** An insurer failing, without just cause, to file a registration statement as required in section 60D.19 shall pay a penalty of \$1,000 for each

day's delay, to be recovered by the commissioner and paid into the general fund. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

**Subd. 2. Failure to provide notice and filing regarding affiliated transaction or agreement; civil penalty.** An insurer failing, without just cause, to provide the appropriate notice and filing under section 60D.20 regarding an affiliated transaction or agreement, shall pay a penalty of \$5,000, to be recovered by the commissioner and paid into the general fund.

**Subd. 3. Certain contracts and agreements; cease and desist and void orders.** Whenever it appears to the commissioner that an insurer subject to sections 60D.15 to 60D.29 or a director, officer, employee, or agent of an insurer has engaged in a transaction or entered into a contract that is subject to section 60D.20 and that would have been disapproved by the commissioner, the commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing, the commissioner may also order the insurer to void any contracts and restore the status quo if the action is in the best interest of the policyholders, creditors, or the public.

**Subd. 4. Criminal penalties.** Whenever it appears to the commissioner that any insurer or any director, officer, employee or agent thereof has committed a willful violation of sections 60D.15 to 60D.29, the commissioner may cause criminal proceedings to be instituted by the district court for the county in which the principal office of the insurer is located or if such insurer has no such office in the state, then by the District Court for Ramsey County against such insurer or the responsible director, officer, employee or agent thereof. Any person who willfully violates sections 60D.15 to 60D.29 shall be guilty, for the first offense, of a misdemeanor, and for each subsequent offense, of a gross misdemeanor.

Sec. 2. Minnesota Statutes 2012, section 60D.15, is amended by adding a subdivision to read:

**Subd. 4a. Enterprise risk.** "Enterprise risk" means an activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurer's risk-based capital to fall into company action level as set forth in sections 60A.50 to 60A.696 or would cause the insurer to be in hazardous financial condition in accordance with the standards of section 60G.20.

Sec. 3. Minnesota Statutes 2012, section 60D.17, subdivision 1, is amended to read:

**Subdivision 1. Filing requirements.** (a) No person other than the issuer shall: (1) make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities or, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, the person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of the insurer; or (2) enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time the offer, request, or invitation is made or the agreement is entered into, or before the acquisition of the securities if no offer or agreement is involved, the person has filed with the commissioner and has sent to the insurer, a statement containing the information required by this section and the offer, request, invitation, agreement, or acquisition has been approved by the commissioner in the manner prescribed in this section.

(b) For purposes of this section, a controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer, in any manner, shall file with the commissioner, with a copy to the

insurer, confidential notice of its proposed divestiture at least 30 days before the cessation of control. The commissioner shall determine those instances in which the party or parties seeking to divest or to acquire a controlling interest in an insurer will be required to file for and obtain approval of the transaction.

(c) With respect to a transaction subject to this section, the acquiring person must also file a preacquisition notification with the commissioner, which must contain the information set forth in section 60D.18, subdivision 3, paragraph (b). A failure to file the notification may be subject to penalties specified in section 60D.18, subdivision 5.

(d) For purposes of this section, a domestic insurer includes a person controlling a domestic insurer unless the person as determined by the commissioner is either directly or through its affiliates primarily engaged in business other than the business of insurance. However, the person shall file a preacquisition notification with the commissioner containing the information set forth in section 60D.18, subdivision 3, paragraph (b), 30 days before the proposed effective date of the acquisition. Failure to file is subject to section 60D.18, subdivision 5. For the purposes of this section, "person" does not include any securities broker holding, in the usual and customary brokers function, less than 20 percent of the voting securities of an insurance company or of any person that controls an insurance company.

(e) The statement filed with the commissioner pursuant to subdivisions 1 and 2 must remain confidential until the transaction is approved by the commissioner, except that all attachments filed with the statement remain confidential after the approval unless the commissioner, in the commissioner's discretion, determines that confidential treatment of any of this information will interfere with enforcement of this section.

Sec. 4. Minnesota Statutes 2012, section 60D.17, subdivision 2, is amended to read:

Subd. 2. **Content of statement.** The statement to be filed with the commissioner shall be made under oath or affirmation and shall contain the following ~~information~~:

(a) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subdivision 1 is to be effected, hereinafter called "acquiring party"; and

(1) if the person is an individual, the principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years; and

(2) if the person is not an individual, a report of the nature of its business operations during the past five years or for a lesser period as the person and any predecessors have been in existence; an informative description of the business intended to be done by the person and the person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. The list must include for each individual the information required by clause (1).

(b) The source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction in which funds were or are to be obtained for this purpose, including any pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing the consideration, provided, however, that where a source of the consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing the statement so requests.

(c) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each acquiring party, or for a lesser period as the acquiring party and

any predecessors have been in existence, and similar unaudited information as of a date not earlier than 90 days before the filing of the statement.

(d) Any plans or proposals that each acquiring party may have to liquidate the insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.

(e) The number of shares of any security referred to in subdivision 1 that each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in subdivision 1 and a statement as to the method by which the fairness of the proposal was arrived at.

(f) The amount of each class of any security referred to in subdivision 1 that is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

(g) A full description of any contracts, arrangements, or understandings with respect to any security referred to in subdivision 1 in which any acquiring party is involved, including but not limited to, transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description must identify the persons with whom the contracts, arrangements, or understandings have been entered into.

(h) A description of the purchase of any security referred to in subdivision 1 during the 12 calendar months preceding the filing of the statement, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid for it.

(i) A description of any recommendations to purchase any security referred to in subdivision 1 made during the 12 calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of the acquiring party.

(j) Copies of all tender offers for, requests, or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subdivision 1 and, if distributed, of additional soliciting material relating to them.

(k) The term of any agreement, contract, or understanding made with or proposed to be made with any broker-dealer as to solicitation of securities referred to in subdivision 1 for tender, and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard to it.

(l) An agreement by the person required to file the statement referred to in subdivision 1 that it will provide the annual report, specified in section 60D.19, subdivision 11a, for so long as control exists.

(m) A consent by the person required to file the statement referred to in subdivision 1 that the person and all subsidiaries within its control in the insurance holding company system will provide information to the commissioner upon request as necessary to evaluate enterprise risk to the insurer.

(†)(n) Additional information the commissioner may by rule prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.

If the person required to file the statement referred to in subdivision 1 is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information called for by paragraphs (a) to (†)(n) must be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group, and each person who controls the partner or member. If a partner,

member, or person is a corporation, or the person required to file the statement referred to in subdivision 1 is a corporation the commissioner may require that the information called for by paragraphs (a) to ~~(h)~~ (n) be given with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent of the outstanding voting securities of the corporation.

If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to the insurer pursuant to this section, an amendment setting forth the change, together with copies of all documents and other material relevant to the change, must be filed with the commissioner and sent to the insurer within two business days after the person learns of the change.

Sec. 5. Minnesota Statutes 2012, section 60D.17, subdivision 4, is amended to read:

**Subd. 4. Approval by commissioner; hearings.** (a) The commissioner shall approve any merger or other acquisition of control referred to in subdivision 1 unless, after a public hearing, the commissioner finds that:

(1) after the change of control, the domestic insurer referred to in subdivision 1 would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed, unless the domestic insurer is in rehabilitation or other court-ordered supervision and the acquiring party commits to a plan that would enable the domestic insurer to satisfy the requirements for the issuance of a license within a reasonable amount of time;

(2) the effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein in applying the competitive standard in this subdivision:

(i) the informational requirements of section 60D.18, subdivision 3, paragraph (b), and the standards of section 60D.18, subdivision 4, paragraph (c), shall apply;

(ii) the merger or other acquisition shall not be disapproved if the commissioner finds that any of the situations meeting the criteria provided by section 60D.18, subdivision 4, paragraph (c), exist; and

(iii) the commissioner may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time;

(3) the financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders;

(4) the plans or proposals that the acquiring party has to liquidate the insurer, sell its assets, or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest;

(5) the competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or

(6) the acquisition is likely to be hazardous or prejudicial to the insurance buying public.

(b) The public hearing referred to in paragraph (a) must be held 30 days after the statement required by subdivision 1 is filed, and at least 20 days' notice of it shall be given by the commissioner to the person

filing the statement. Not less than seven days notice of the public hearing shall be given by the person filing the statement to the insurer and to other persons designated by the commissioner. The commissioner shall make a determination within 30 days after the conclusion of the hearing. At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected by it may present evidence, examine and cross-examine witnesses, and offer oral and written arguments and may conduct discovery proceedings in the same manner as is presently allowed in the district courts of this state. All discovery proceedings must be concluded not later than three days before the start of the public hearing.

(c) If the proposed acquisition of control will require the approval of more than one commissioner, the public hearing referred to in paragraph (b) may be held on a consolidated basis upon request of the person filing the statement referred to in subdivision 1. The person shall file the statement referred to in subdivision 1 with the National Association of Insurance Commissioners (NAIC) within five days of making the request for a public hearing. A commissioner may opt out of a consolidated hearing, and shall provide notice to the applicant of the opt-out within ten days of the receipt of the statement referred to in subdivision 1. A hearing conducted on a consolidated basis must be public and must be held within the United States before the commissioners of the states in which the insurers are domiciled. The commissioners shall hear and receive evidence. A commissioner may attend the hearing, in person or by telecommunication. In this paragraph, the term "commissioner" when used in reference to an official from a state other than Minnesota means the state official charged with the responsibility of supervising the business of insurance in that state.

(d) In connection with a change of control of a domestic insurer, any determination by the commissioner that the person acquiring control of the insurer shall be required to maintain or restore the capital of the insurer to the level required by the laws and regulations of this state shall be made not later than 60 days after the date of notification of the change in control submitted pursuant to section 60D.17, subdivision 1.

~~(e)~~ (e) The commissioner may retain at the acquiring person's expense any attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control.

Sec. 6. Minnesota Statutes 2012, section 60D.17, subdivision 6, is amended to read:

Subd. 6. **Violations.** The following are violations of this section:

(1) the failure to file any statement, amendment, or other material required to be filed pursuant to subdivision 1 or 2; or

(2) the effectuation or any attempt to effectuate an acquisition of control of, divestiture of, or merger with, a domestic insurer unless the commissioner has approved it.

Sec. 7. Minnesota Statutes 2012, section 60D.17, subdivision 7, is amended to read:

Subd. 7. **Jurisdiction, consent to service of process.** The courts of this state have jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the commissioner under this section, and overall actions involving the person arising out of violations of this section, and the person is deemed to have performed acts equivalent to and constituting an appointment by the person of the commissioner to be the person's true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of violations of this section. Copies of all lawful process shall be served on the commissioner ~~and transmitted by registered or certified mail by the commissioner to the person at the person's last known address in compliance with section 45.028, subdivision 2.~~

Sec. 8. Minnesota Statutes 2012, section 60D.18, subdivision 2, is amended to read:

Subd. 2. **Scope.** (a) Except as exempted in paragraph (b), this section applies to any acquisition in which there is a change in control of an insurer authorized to do business in this state.

(b) This section does not apply to the following:

~~(1) an acquisition subject to approval or disapproval by the commissioner pursuant to section 60D.17;~~

~~(2) (1) a purchase of securities solely for investment purposes so long as such securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in this state. If a purchase of securities results in a presumption of control under section 60D.15, subdivision 4, it is not solely for investment purposes unless the commissioner of the insurer's state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and such disclaimer action or affirmative finding is communicated by the domiciliary commissioner to the commissioner of this state;~~

~~(3) (2) the acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if preacquisition notification is filed with the commissioner in accordance with subdivision 3, paragraph (a), 30 days before the proposed effective date of the acquisition. However, the preacquisition notification is not required for exclusion from this section, if the acquisition would otherwise be excluded from this section by any other clause of this paragraph;~~

~~(4) (3) the acquisition of already affiliated persons;~~

~~(5) (4) an acquisition if, as an immediate result of the acquisition;~~

~~(i) in no market would the combined market share of the involved insurers exceed five percent of the total market;~~

~~(ii) there would be no increase in any market share; or~~

~~(iii) in no market would the combined market share of the involved insurers exceed 12 percent of the total market; and the market share increases by more than two percent of the total market.~~

For the purpose of this clause, a market means direct written insurance premium in this state for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state;

~~(6) (5) an acquisition for which a preacquisition notification would be required pursuant to this section due solely to the resulting effect on the ocean marine insurance line of business; and~~

~~(7) (6) an acquisition of an insurer whose domiciliary commissioner affirmatively finds that the insurer is in failing condition; there is a lack of feasible alternative to improving the condition; the public benefits of improving the insurer's condition through the acquisition exceed the public benefits that would arise from not lessening competition; and the findings are communicated by the domiciliary commissioner to the commissioner of this state.~~

Sec. 9. Minnesota Statutes 2012, section 60D.18, subdivision 6, is amended to read:

Subd. 6. **Inapplicable provisions.** Sections 60D.24, ~~paragraphs (b) and (c)~~ subdivisions 2 and 3; and ~~60D.26 60D.25~~ do not apply to acquisitions covered under subdivision 2.

Sec. 10. Minnesota Statutes 2012, section 60D.19, subdivision 1, is amended to read:

Subdivision 1. **Registration.** Every domestic insurer that is authorized to do business in this state and that is a member of an insurance holding company system shall register with the commissioner, ~~except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile that are substantially similar to those contained in:~~

~~(1) this section;~~

~~(2) section 60D.20, subdivisions 1, paragraph (a), 2, and 4; and~~

~~(3) either section 60D.20, subdivision 1, paragraph (b), or a provision such as the following: Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within 15 days after the end of the month in which it learns of each such change or addition.~~

Any insurer that is subject to registration under this section shall register within 15 days after it becomes subject to registration, and annually thereafter by June 1 of each year for the previous calendar year, unless the commissioner for good cause shown extends the time for registration, and then within such extended time. The commissioner may require any insurer authorized to do business in the state that is a member of an insurance holding company system, and that is not subject to registration under this section, to furnish a copy of the registration statement, the summary specified in subdivision 3 or other information filed by the insurance company with the insurance regulatory authority of domiciliary jurisdiction.

Sec. 11. Minnesota Statutes 2012, section 60D.19, subdivision 2, is amended to read:

Subd. 2. **Information and form required.** Every insurer subject to registration shall file the registration statement with the commissioner on a form and in a format prescribed by the National Association of Insurance Commissioners, ~~which shall contain~~ containing the following current information:

(1) the capital structure, general financial condition, ownership, and management of the insurer and any person controlling the insurer;

(2) the identity and relationship of every member of the insurance holding company system;

(3) the following agreements in force, and transactions currently outstanding or that have occurred during the last calendar year between the insurer and its affiliates:

(i) loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(ii) purchases, sales, or exchange of assets;

(iii) transactions not in the ordinary course of business;

(iv) guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(v) all management agreements, service contracts, and all cost-sharing arrangements;

- (vi) reinsurance agreements;
- (vii) dividends and other distributions to shareholders; and
- (viii) consolidated tax allocation agreements;

(4) any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system; ~~and~~

(5) if requested by the commissioner, financial statements of or within an insurance holding company system and all affiliates including, but not limited to, annual audited financial statements filed with the United States Securities and Exchange Commission (SEC) pursuant to the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended. An insurer required to file financial statements pursuant to this clause may satisfy the request by providing the commissioner with the most recently filed parent corporation financial statements that have been filed with the SEC;

~~(5) (6) other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner;~~

(7) statements that the insurer's board of directors oversees corporate governance and internal controls and that the insurer's officers or senior management have approved and implemented, and continue to maintain and monitor, corporate governance and internal control procedures; and

(8) any other information required by the commissioner by rule.

Sec. 12. Minnesota Statutes 2012, section 60D.19, subdivision 3, is amended to read:

Subd. 3. **Summary of changes to registration statement.** All registration statements must contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

Sec. 13. Minnesota Statutes 2012, section 60D.19, subdivision 11, is amended to read:

Subd. 11. **Disclaimer.** Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or the disclaimer may be filed by the insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation. ~~After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section that may arise out of the insurer's relationship with the person unless and until the commissioner disallows the disclaimer. The commissioner shall disallow the disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance. A disclaimer of affiliation is deemed to have been granted unless the commissioner, within 30 days following receipt of a complete disclaimer, notifies the filing party that the disclaimer is disallowed. In the event of disallowance, the disclaiming party may request an administrative hearing, which must be granted. The disclaiming party is relieved of its duty to register under this section if approval of the disclaimer has been granted by the commissioner, or if the disclaimer is deemed to have been approved.~~

Sec. 14. Minnesota Statutes 2012, section 60D.19, is amended by adding a subdivision to read:

Subd. 11a. **Enterprise risk filing.** The ultimate controlling person of an insurer subject to registration shall also file an annual enterprise risk report. The report must, to the best of the ultimate controlling person's

knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report must be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.

Sec. 15. Minnesota Statutes 2012, section 60D.19, subdivision 12, is amended to read:

Subd. 12. **Violations.** The failure to file a registration statement or any summary of the registration statement or enterprise risk filing required by this section within the time specified for the filing is a violation of this section.

Sec. 16. Minnesota Statutes 2012, section 60D.20, subdivision 1, is amended to read:

Subdivision 1. **Transactions within a an insurance holding company system.** (a) Transactions within a an insurance holding company system to which an insurer subject to registration is a party are subject to the following standards:

(1) the terms shall be fair and reasonable;

(2) agreements for cost-sharing services and management shall include the provisions required by rule issued by the commissioner;

~~(2)~~ (3) charges or fees for services performed shall be reasonable;

~~(3)~~ (4) expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;

~~(4)~~ (5) the books, accounts, and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions including this accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties; and

~~(5)~~ (6) the insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(b) The following transactions involving a domestic insurer and any person in its insurance holding company system, including amendments or modifications of affiliate agreements previously filed pursuant to this section, which are subject to any materiality standards contained in clauses (1) to (7), may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into the transaction at least 30 days prior thereto, or a shorter period the commissioner permits, and the commissioner has not disapproved it within this period. The notice for amendments or modifications must include the reasons for the change and the financial impact on the domestic insurer. Informal notice must be reported, within 30 days after a termination of a previously filed agreement , to the commissioner for determination of the type of filing required, if any:

(1) sales, purchases, exchanges, loans or extensions of credit, guarantees, or investments provided the transactions are equal to or exceed: (i) with respect to nonlife insurers, the lesser of three percent of the insurer's admitted assets, or 25 percent of surplus as regards policyholders; (ii) with respect to life insurers, three percent of the insurer's admitted assets; each as of the 31st day of December next preceding;

(2) loans or extensions of credit to any person who is not an affiliate, where the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit provided the transactions are equal to or exceed: (i) with respect to nonlife insurers, the lesser of three percent of the insurer's admitted assets or 25 percent of surplus as regards policyholders; (ii) with respect to life insurers, three percent of the insurer's admitted assets; each as of the 31st day of December next preceding;

(3) reinsurance agreements or modifications to those agreements, including: (i) all reinsurance pooling agreements; and (ii) agreements in which the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or a change in the insurer's liabilities in any of the next three years, equals or exceeds five percent of the insurer's surplus as regards policyholders, as of the 31st day of December next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the insurer;

(4) all management agreements, service contracts, tax allocation agreements, guarantees, and all cost-sharing arrangements; and

(5) guarantees when made by a domestic insurer; provided, however, that a guarantee which is quantifiable as to amount is not subject to the notice requirements of this paragraph unless it exceeds the lesser of one-half of one percent of the insurer's admitted assets or ten percent of surplus as regards policyholders as of the 31st day of December next preceding. Further, all guarantees which are not quantifiable as to amount are subject to the notice requirements of this paragraph;

(6) direct or indirect acquisitions or investments in a person that controls the insurer or in an affiliate of the insurer in an amount which, together with its present holdings in the investments, exceeds two and one-half percent of the insurer's surplus to policyholders. Direct or indirect acquisitions or investments in subsidiaries acquired pursuant to section 60D.16, or in nonsubsidiary insurance affiliates that are subject to the provisions of sections 60D.15 to 60D.29, are exempt from this requirement; and

~~(5)~~ (7) any material transactions, specified by regulation, which the commissioner determines may adversely affect the interests of the insurer's policyholders.

Nothing contained in this section authorizes or permits any transactions that, in the case of an insurer not a member of the same insurance holding company system, would be otherwise contrary to law.

(c) A domestic insurer may not enter into transactions which are part of a plan or series of like transactions with persons within the insurance holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the commissioner determines that the separate transactions were entered into over any 12-month period for the purpose, the commissioner may exercise the authority under section 60D.25.

(d) The commissioner, in reviewing transactions pursuant to paragraph (b), shall consider whether the transactions comply with the standards set forth in paragraph (a), and whether they may adversely affect the interests of policyholders.

(e) The commissioner shall be notified within 30 days of any investment of the domestic insurer in any one corporation if the total investment in the corporation by the insurance holding company system exceeds ten percent of the corporation's voting securities.

Sec. 17. Minnesota Statutes 2012, section 60D.20, subdivision 3, is amended to read:

Subd. 3. **Management of domestic insurers subject to registration.** (a) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with ~~this chapter~~ sections 60D.15 to 60D.29.

(b) Nothing in ~~this chapter~~ sections 60D.15 to 60D.29 precludes a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property, or services with one or more other persons under arrangements meeting the standards of subdivision 1, paragraph (a), clause (1).

(c) Not less than one-third of the directors of a ~~publicly traded~~ domestic insurer, and not less than one-third of the members of each committee of the board of directors of any ~~publicly traded~~ domestic insurer shall be persons who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or any such entity. At least one such person must be included in any quorum for the transaction of business at any meeting of the board of directors or any committee of the board.

(d) The board of directors of a ~~publicly traded~~ domestic insurer shall establish ~~an audit committee having a majority~~ one or more committees comprised solely of directors who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or any such entity. The committee or committees shall have responsibility for selecting independent certified public accountants and reviewing the scope and results of the independent audit and any internal audit nominating candidates for director for election by shareholders or policyholders, evaluating the performance of officers deemed to be principal officers of the insurer, and recommending to the board of directors the selection and compensation of the principal officers.

(e) Paragraphs (c) and (d) do not apply to a domestic insurer if the person controlling the insurer is, such as an insurer, or a general business corporation the principal business of which is insurance, having a mutual insurance holding company, or a publicly held corporation, has a board of directors and committees of the board that meet the requirements of paragraphs (c) and (d) with respect to the controlling entity.

(f) An insurer may make application to the commissioner for a waiver from the requirements of this subdivision, if the insurer's annual direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, is less than \$300,000,000. An insurer may also make application to the commissioner for a waiver from the requirements of this subdivision based upon unique circumstances. The commissioner may consider various factors including, but not limited to, the type of business entity, volume of business written, availability of qualified board members, or ownership or organizational structure of the entity.

Sec. 18. Minnesota Statutes 2012, section 60D.21, subdivision 1, is amended to read:

Subdivision 1. **Power of commissioner.** Subject to the limitation contained in this section and in addition to the powers that the commissioner has under chapter 60A relating to the examination of insurers, the commissioner shall also have the power to ~~order any insurer registered under section 60D.19 to produce records, books, or other information papers in the possession of the insurer or its affiliates as are reasonably necessary to ascertain the financial condition of the insurer or to determine compliance with this chapter. In the event the insurer fails to comply with the order, the commissioner shall have the power to examine the affiliates to obtain the information~~ examine an insurer registered under section 60D.19 and its affiliates

to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party, or by an entity or combination of entities within the insurance holding company system, or by the insurance holding company system on a consolidated basis.

Sec. 19. Minnesota Statutes 2012, section 60D.21, is amended by adding a subdivision to read:

Subd. 1a. **Access to books and records.** (a) The commissioner may order an insurer registered under section 60D.19 to produce the records, books, or other information papers in the possession of the insurer or its affiliates that are reasonably necessary to determine compliance with sections 60D.15 to 60D.29.

(b) To determine compliance with sections 60D.15 to 60D.29, the commissioner may order an insurer registered under section 60D.19 to produce information not in the possession of the insurer if the insurer can obtain access to the information pursuant to contractual relationships, statutory obligations, or other method. In the event the insurer cannot obtain the information requested by the commissioner, the insurer shall provide the commissioner a detailed explanation of the reason that the insurer cannot obtain the information and the identity of the holder of the information. Whenever it appears to the commissioner that the detailed explanation is without merit, the commissioner may require, after notice and hearing, the insurer to pay a penalty of \$5,000 for each day's delay, or may suspend or revoke the insurer's license.

Sec. 20. Minnesota Statutes 2012, section 60D.21, is amended by adding a subdivision to read:

Subd. 4. **Compelling production.** In the event the insurer fails to comply with an order, the commissioner may examine the affiliates to obtain the information. The commissioner may also issue subpoenas, administer oaths, and to examine under oath any person for purposes of determining compliance with this section. Upon the failure or refusal of a person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order is punishable as contempt of court. Every person is obliged to attend as a witness at the place specified in the subpoena, when subpoenaed, anywhere within the state. The person is entitled to the same fees and mileage, if claimed, as a witness in district court. The fees, mileage, and actual expense, if any, necessarily incurred in securing the attendance of witnesses and their testimony, must be itemized and charged against, and be paid by, the company being examined.

Sec. 21. **[60D.215] SUPERVISORY COLLEGES.**

Subdivision 1. **Power of commissioner.** With respect to any insurer registered under section 60D.19, and in accordance with subdivision 3, the commissioner may also participate in a supervisory college for a domestic insurer that is part of an insurance holding company system with international operations in order to determine compliance by the insurer with sections 60D.15 to 60D.29. The powers of the commissioner with respect to supervisory colleges include, but are not limited to, the following:

- (1) initiating the establishment of a supervisory college;
- (2) clarifying the membership and participation of other supervisors in the supervisory college;
- (3) clarifying the functions of the supervisory college and the role of other regulators, including the establishment of a groupwide supervisor;
- (4) coordinating the ongoing activities of the supervisory college, including planning meetings, supervisory activities, and processes for information sharing; and

(5) establishing a crisis management plan.

Subd. 2. **Expenses.** Each registered insurer subject to this section is liable for and shall pay the reasonable expenses of the commissioner's participation in a supervisory college in accordance with subdivision 3, including reasonable travel expenses. For purposes of this section, a supervisory college may be convened as either a temporary or permanent forum for communication and cooperation between the regulators charged with the supervision of the insurer or its affiliates, and the commissioner may establish a regular assessment to the insurer for the payment of these expenses.

Subd. 3. **Supervisory college.** In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management, and governance processes, and as part of the examination of individual insurers in accordance with section 60D.21, the commissioner may participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates, including other state, federal, and international regulatory agencies. The commissioner may enter into agreements in accordance with section 60D.22 providing the basis for cooperation between the commissioner and the other regulatory agencies, and the activities of the supervisory college. Nothing in this section delegates to the supervisory college the authority of the commissioner to regulate or supervise the insurer or its affiliates within its jurisdiction.

Sec. 22. Minnesota Statutes 2012, section 60D.22, is amended to read:

**60D.22 CONFIDENTIAL TREATMENT CONFIDENTIALITY.**

Subdivision 1. **Classification protection and use of information by commissioner.** All information, documents, and copies of them obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to section 60D.20 and all information reported pursuant to sections 60D.18 and 60D.19, shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the commissioner, the National Association of Insurance Commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected, notice and opportunity to be heard, determines that the interest of policyholders or the public will be served by the publication, in which event the commissioner may publish all or any part in the manner the commissioner considers appropriate. Documents, materials, or other information in the possession or control of the department that are obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to section 60D.21 and all information reported pursuant to sections 60D.17, except as provided in section 60D.17, subdivision 1, paragraph (e); 60D.18; 60D.19; and 60D.20, are classified as confidential or protected nonpublic or both, are not subject to subpoena, and are not subject to discovery or admissible in evidence in a private civil action. However, the commissioner may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The commissioner shall not otherwise make the documents, materials, or other information public without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected by this action notice and opportunity to be heard, determines that the interest of policyholders, shareholders, or the public will be served by the publication of it, in which event the commissioner may publish all or any part in the manner the commissioner deems appropriate.

Subd. 2. **Testimonial privilege.** Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner or with whom these documents, materials, or other information are shared pursuant to sections 60D.15 to 60D.29 is permitted

or required to testify in a private civil action concerning documents, materials, or information subject to subdivision 1 that are classified as confidential, protected nonpublic, or both.

Subd. 3. **Sharing of information.** In order to assist in the performance of the commissioner's duties, the commissioner:

(1) may share documents, materials, or other information, including the confidential, protected nonpublic, and privileged documents, materials, or information subject to this section, with other state, federal, and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, including members of any supervisory college described in section 60D.215, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material, or other information, and has verified in writing the legal authority to maintain confidentiality;

(2) notwithstanding clause (1), may only share confidential, protected nonpublic, and privileged documents, materials, or information reported pursuant to section 60D.19 with commissioners of states having statutes or regulations substantially similar to subdivision 1 and who have agreed in writing not to disclose this information;

(3) may receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information from the NAIC and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential, protected nonpublic, or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(4) shall enter into written agreements with the NAIC governing sharing and use of information provided pursuant to sections 60D.15 to 60D.29 consistent with this clause that shall:

(i) specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC and its affiliates and subsidiaries pursuant to sections 60D.15 to 60D.29, including procedures and protocols for sharing by the NAIC with other state, federal, or international regulators;

(ii) specify that ownership of information shared with the NAIC and its affiliates and subsidiaries pursuant to sections 60D.15 to 60D.29 remains with the commissioner and the NAIC's use of the information is subject to the direction of the commissioner;

(iii) require prompt notice to be given to an insurer whose confidential or protected nonpublic information in the possession of the NAIC pursuant to sections 60D.15 to 60D.29 is subject to a request or subpoena to the NAIC for disclosure or production; and

(iv) require the NAIC and its affiliates and subsidiaries to consent to intervention by an insurer in any judicial or administrative action in which the NAIC and its affiliates and subsidiaries may be required to disclose confidential or protected nonpublic information about the insurer shared with the NAIC and its affiliates and subsidiaries pursuant to sections 60D.15 to 60D.29.

Subd. 4. **Responsibility for administration, execution, and enforcement.** The sharing of information by the commissioner pursuant to sections 60D.15 to 60D.29 does not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution, and enforcement of the provisions of sections 60D.15 to 60D.29.

Subd. 5. **Disclosure not deemed to be waiver of privilege or confidentiality.** No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information occurs as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subdivision 3.

Subd. 6. **Classification protection and use by others.** Documents, materials, or other information in the possession or control of the NAIC pursuant to sections 60D.15 to 60D.29 are confidential, protected nonpublic, or privileged, are not subject to subpoena, and are not subject to discovery or admissible in evidence in a private civil action.

## ARTICLE 6

### RISK ASSESSMENT AND OWN RISK AND SOLVENCY ASSESSMENT MODEL ACT

#### Section 1. **[60D.50] PURPOSE AND SCOPE.**

(a) The purpose of sections 60D.50 to 60D.58 is to provide the requirements for maintaining a risk management framework and completing an Own Risk and Solvency Assessment (ORSA) and provide guidance and instructions for filing an ORSA Summary Report with the commissioner.

(b) Sections 60D.50 to 60D.58 apply to all insurers domiciled in this state unless exempt pursuant to section 60D.55.

#### Sec. 2. **[60D.51] DEFINITIONS.**

Subdivision 1. **Scope.** For purposes of sections 60D.50 to 60D.58, the terms in this section have the meanings given them.

Subd. 2. **Insurance group.** For the purpose of conducting an ORSA, "insurance group" means those insurers and affiliates included within an insurance holding company system as defined in section 60D.15, subdivision 5.

Subd. 3. **Insurer.** "Insurer" has the meaning given in section 60D.15, subdivision 6, except that it does not include agencies, authorities, or instrumentalities of the United States, its possessions or territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

Subd. 4. **Own Risk and Solvency Assessment or ORSA.** "Own Risk and Solvency Assessment" or "ORSA" means a confidential internal assessment, appropriate to the nature, scale, and complexity of an insurer or insurance group, conducted by that insurer or insurance group of the material and relevant risks associated with the insurer's or insurance group's current business plan, and the sufficiency of capital resources to support those risks.

Subd. 5. **ORSA Guidance Manual.** "ORSA Guidance Manual" means the current version of the Own Risk and Solvency Assessment Guidance Manual developed and adopted by the National Association of Insurance Commissioners (NAIC) and as amended from time to time. A change in the ORSA Guidance Manual is effective on the January 1 following the calendar year in which the changes have been adopted by the NAIC.

Subd. 6. **ORSA Summary Report.** "ORSA Summary Report" means a confidential high-level summary of an insurer's or insurance group's ORSA.

Sec. 3. **[60D.52] RISK MANAGEMENT FRAMEWORK.**

An insurer shall maintain a risk management framework to assist the insurer with identifying, assessing, monitoring, managing, and reporting on its material and relevant risks. This requirement may be satisfied if the insurance group of which the insurer is a member maintains a risk management framework applicable to the operations of the insurer.

Sec. 4. **[60D.53] ORSA REQUIREMENT.**

Subject to section 60D.55, an insurer, or the insurance group of which the insurer is a member, shall regularly conduct an ORSA consistent with a process comparable to the ORSA Guidance Manual. The ORSA must be conducted no less than annually but also at any time when there are significant changes to the risk profile of the insurer or the insurance group of which the insurer is a member.

Sec. 5. **[60D.54] ORSA SUMMARY REPORT.**

Subdivision 1. **Required submission.** Upon the commissioner's request and no more than once per year, an insurer shall submit to the commissioner an ORSA Summary Report or any combination of reports that together contain the information described in the ORSA Guidance Manual, applicable to the insurer or the insurance group of which it is a member. Notwithstanding any request from the commissioner, if the insurer is a member of an insurance group, the insurer shall submit the reports required by this subdivision if the commissioner is the lead state commissioner of the insurance group as determined by the procedures adopted by the National Association of Insurance Commissioners.

Subd. 2. **Attestation.** The reports in subdivision 1 shall include a signature of the insurer's or insurance group's chief risk officer or other executive having responsibility for the oversight of the insurer's enterprise risk management process attesting to the best of the executive's belief and knowledge that the insurer applies the enterprise risk management process described in the ORSA Summary Report and that a copy of the report has been provided to the insurer's board of directors or the appropriate committee of the board.

Subd. 3. **Alternative compliance.** An insurer may comply with subdivision 1 by providing the most recent and substantially similar reports provided by the insurer or another member of an insurance group of which the insurer is a member to the commissioner of another state, or to a supervisor or regulator of a foreign jurisdiction, if that report provides information that is comparable to the information described in the ORSA Guidance Manual. A report in a language other than English must be accompanied by a translation of the report into the English language.

Sec. 6. **[60D.55] EXEMPTION.**

Subdivision 1. **Annual premium levels.** An insurer is exempt from the requirements of sections 60D.50 to 60D.58 if:

(1) the insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$500,000,000; and

(2) the insurance group of which the insurer is a member has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$1,000,000,000.

**Subd. 2. Summary report required.** (a) If an insurer qualifies for exemption pursuant to subdivision 1, clause (1), but the insurance group of which the insurer is a member does not qualify for exemption pursuant to subdivision 1, clause (2), then the ORSA Summary Report that may be required pursuant to section 60D.54 must include every insurer within the insurance group. This requirement may be satisfied by the submission of more than one ORSA Summary Report for any combination of insurers, provided any combination of reports includes every insurer within the insurance group.

(b) If an insurer does not qualify for exemption pursuant to subdivision 1, clause (1), but the insurance group of which it is a member qualifies for exemption pursuant to subdivision 1, clause (2), then the only ORSA Summary Report that may be required pursuant to section 60D.54 is the report applicable to that insurer.

**Subd. 3. Waiver.** An insurer that does not qualify for exemption pursuant to subdivision 1 may apply to the commissioner for a waiver from the requirements of sections 60D.50 to 60D.58 based on unique circumstances. In deciding whether to grant the insurer's request for waiver, the commissioner may consider the type and volume of business written, ownership and organizational structure, and any other factor the commissioner considers relevant to the insurer or insurance group of which the insurer is a member. If the insurer is part of an insurance group with insurers domiciled in more than one state, the commissioner shall coordinate with the lead state commissioner and with the other domiciliary commissioners in considering whether to grant the insurer's request for a waiver.

**Subd. 4. Additional requirements.** Notwithstanding the exemptions in this section, the commissioner may require that an insurer maintain a risk management framework, conduct an ORSA, and file an ORSA Summary Report:

(1) based on unique circumstances including, but not limited to, the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests; and

(2) if the insurer has risk-based capital for a company action level event as set forth in section 60A.52 or 60A.62, meets one or more of the standards of an insurer deemed to be in a hazardous financial condition pursuant to section 60G.20, or otherwise exhibits qualities of a troubled insurer as determined by the commissioner.

**Subd. 5. Consequences of loss of exemption.** If an insurer that qualifies for an exemption pursuant to subdivision 1 subsequently no longer qualifies for that exemption due to changes in premium as reflected in the insurer's most recent annual statement or in the most recent annual statements of the insurers within the insurance group of which the insurer is a member, the insurer has one year following the year the threshold is exceeded to comply with sections 60D.50 to 60D.58.

## **Sec. 7. [60D.56] CONTENTS OF ORSA SUMMARY REPORT.**

**Subdivision 1. Preparation and documentation.** The ORSA Summary Report shall be prepared by the insurer consistent with the ORSA Guidance Manual, subject to the requirements of subdivision 2. Documentation and supporting information shall be maintained by the insurer and made available upon examination or upon request of the commissioner.

**Subd. 2. Review.** The review of the ORSA Summary Report, and any additional requests for information, shall be made by the commissioner using similar procedures currently used in the analysis and examination of multistate or global insurers and insurance groups.

Sec. 8. **[60D.57] CONFIDENTIALITY.**

Subdivision 1. **Classification protection and use of information by commissioner.** Documents, materials, or other information, including the ORSA Summary Report, in the possession of or control of the department that are obtained by, created by, or disclosed to the commissioner or any other person under sections 60D.50 to 60D.58 are recognized by this state as being confidential and containing trade secrets. Those documents, materials, or other information are classified as confidential or protected nonpublic or both, are not subject to subpoena, and are not subject to discovery or admissible in evidence in a private civil action. However, the commissioner may use the documents, materials, or other information in the furtherance of a regulatory or legal action brought as a part of the commissioner's official duties. The commissioner shall not otherwise make the documents, materials, or other information public without the prior written consent of the insurer.

Subd. 2. **Testimonial privilege.** Neither the commissioner nor any person who received documents, materials, or other ORSA-related information, through examination or otherwise, while acting under the authority of the commissioner or with whom the documents, materials, or other information are shared pursuant to sections 60D.50 to 60D.58 is permitted or required to testify in a private civil action concerning documents, materials, or information subject to subdivision 1 that are classified as confidential, protected nonpublic, or both.

Subd. 3. **Sharing of information.** In order to assist in the performance of the commissioner's regulatory duties, the commissioner:

(1) may, upon request, share documents, materials, or other ORSA-related information, including the confidential, protected nonpublic, and privileged documents, materials, or information subject to subdivision 1, including proprietary and trade secret documents and materials with other state, federal, and international financial regulatory agencies, including members of a supervisory college, as defined in section 60D.215, with the National Association of Insurance Commissioners and with third-party consultants designated by the commissioner, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the ORSA-related documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality;

(2) may receive documents, materials, or other ORSA-related information, including otherwise confidential and privileged documents, materials, or information, including proprietary and trade secret information or documents, from regulatory officials of other foreign or domestic jurisdictions, including members of a supervisory college, as defined in section 60D.215, and from the National Association of Insurance Commissioners, and shall maintain as confidential, protected nonpublic, or privileged documents, materials, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(3) shall enter into a written agreement with the National Association of Insurance Commissioners or a third-party consultant governing sharing and use of information provided pursuant to sections 60D.50 to 60D.58, consistent with this subdivision that:

(i) specifies procedures and protocols regarding the confidentiality and security of information shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to sections 60D.50 to 60D.58, including procedures and protocols for sharing by the National Association of Insurance Commissioners with other state regulators from states in which the insurance group has domiciled insurers. The agreement must provide that the recipient agrees in writing to maintain the confidentiality and privileged

status of the ORSA-related documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality;

(ii) specifies that ownership of information shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to sections 60D.50 to 60D.58 remains with the commissioner and the National Association of Insurance Commissioner's or a third-party consultant's use of the information is subject to the direction of the commissioner;

(iii) prohibits the National Association of Insurance Commissioners or a third-party consultant from storing the information shared pursuant to sections 60D.50 to 60D.58 in a permanent database after the underlying analysis is completed;

(iv) requires prompt notice to be given to an insurer whose confidential or protected nonpublic information in the possession of the National Association of Insurance Commissioners or a third-party consultant pursuant to sections 60D.50 to 60D.58 is subject to a request or subpoena to the National Association of Insurance Commissioners or a third-party consultant for disclosure or production;

(v) requires the National Association of Insurance Commissioners or a third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the National Association of Insurance Commissioners or a third-party consultant may be required to disclose confidential or protected nonpublic information about the insurer shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to sections 60D.50 to 60D.58; and

(vi) in the case of an agreement involving a third-party consultant, provides for the insurer's written consent.

**Subd. 4. Responsibility for administration, execution, and enforcement.** The sharing of information and documents by the commissioner pursuant to sections 60D.50 to 60D.58 does not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution, and enforcement of sections 60D.50 to 60D.58.

**Subd. 5. Disclosure not deemed to be waiver of privilege or confidentiality.** No waiver of an applicable privilege or claim of confidentiality in the documents, proprietary and trade secret materials, or other ORSA-related information occurs as a result of disclosure of ORSA-related information or documents to the commissioner under this subdivision or as a result of sharing as authorized in sections 60D.50 to 60D.58.

**Subd. 6. Classification, protection, and use of information by others.** Documents, materials, or other information in the possession or control of the National Association of Insurance Commissioners or a third-party consultant pursuant to sections 60D.50 to 60D.58 are confidential, protected nonpublic, and privileged, are not subject to subpoena, and are not subject to discovery or admissible in evidence in a private civil action.

#### Sec. 9. **[60D.58] SANCTIONS.**

An insurer failing, without just cause, to timely file the ORSA Summary Report as required in sections 60D.50 to 60D.58 shall pay a penalty of \$1,000 for each day's delay to be recovered by the commissioner and to be paid into the general fund. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

Sec. 10. **EFFECTIVE DATE.**

The requirements of sections 1 to 9 are effective January 1, 2015. The first filing of the ORSA Summary Report is in 2015 pursuant to Minnesota Statutes, section 60D.54.

Presented to the governor May 1, 2014

Signed by the governor May 5, 2014, 4:23 p.m.