

CHAPTER 71

INSURANCE DIVISION; FIRE INSURANCE RATING BUREAUS; RECIPROCAL EXCHANGES; FOREIGN COMPANIES; AND MISCELLANEOUS

**71.01 FIRE INSURANCE RATING BUREAUS; EXAMINATION.**

HISTORY. 1915 c. 101 s. 1; G.S. 1923 s. 3604; M.S. 1927 s. 3604.

**71.02 DISCRIMINATORY RATES FORBIDDEN; WRITTEN STATEMENTS OF VARIATION FILED.**

HISTORY. 1915 c. 101 s. 2; G.S. 1923 s. 3605; M.S. 1927 s. 3605.

**71.03 FIRE INSURANCE COMPANIES MEMBERS OF RATING BUREAU.**

HISTORY. 1915 c. 101 s. 3; G.S. 1923 s. 3606; M.S. 1927 s. 3606.

**71.04 RISKS INSPECTED.**

HISTORY. 1915 c. 101 s. 4; G.S. 1923 s. 3607; M.S. 1927 s. 3607.

**71.05 RATING AGREEMENTS SUBMITTED FOR APPROVAL TO COMMISSIONER.**

HISTORY. 1915 c. 101 s. 5; G.S. 1923 s. 3608; M.S. 1927 s. 3608; 1929 c. 321 s. 1.

**71.06 COMMISSIONER TO REVIEW RATE FIXED BY BUREAU; APPEALS; APPLICATION.**

HISTORY. 1915 c. 101 ss. 6, 8; G.S. 1923 ss. 3609; 3611; M.S. 1927 ss. 3609, 3611; 1929 c. 321 s. 2.

**71.07 RECIPROCAL OR INTERINSURANCE CONTRACTS.**

HISTORY. 1913 c. 464 ss. 1, 2; G.S. 1913 ss. 3360, 3361; G.S. 1923 ss. 3587, 3588; M.S. 1927 ss. 3587, 3588; 1945 c. 594 s. 1.

NATURE. A reciprocal or interinsurance exchange is something more than a partnership and less than an insurance corporation. It falls within the class of unincorporated companies and is therefore subject to adjudication in bankruptcy. In re Minn. Ins. Underwriters, 36 F(2d) 371.

Neither a school district nor a county may become a member of a reciprocal or inter-insurance exchange. A reciprocal is not a mutual insurance company. 1942 OAG 148, March 28, 1941 (249B-16).

**71.08 WHAT MUST BE FILED WITH COMMISSIONER.**

HISTORY. 1913 c. 464 s. 3; G.S. 1913 s. 3362; 1917 c. 352 s. 1; 1919 c. 512 s. 1; G.S. 1923 s. 3589; M.S. 1927 s. 3589.

**71.09 COMMISSIONER AS AGENT FOR SERVICE.**

HISTORY. 1913 c. 464 s. 4; G.S. 1913 s. 3363; G.S. 1923 s. 3590; M.S. 1927 s. 3590.

**71.10 MAXIMUM AMOUNT OF INDEMNITY.**

HISTORY. 1913 c. 464 s. 5; G.S. 1913 s. 3364; G.S. 1923 s. 3591; M.S. 1927 s. 3591.

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### 71.11 RESERVE FUND.

HISTORY. 1913 c. 464 s. 6; G.S. 1913 s. 3365; 1917 c. 352 s. 2; 1919 c. 512 s. 2; G.S. 1923 s. 3592; M.S. 1927 s. 3592.

### 71.12 ANNUAL REPORT.

HISTORY. 1913 c. 464 s. 7; G.S. 1913 s. 3366; G.S. 1923 s. 3593; M.S. 1927 s. 3593.

### 71.13 EXCHANGE OF CONTRACTS.

HISTORY. 1913 c. 464 ss. 8, 12; G.S. 1913 ss. 3367, 3371; G.S. 1923 ss. 3594, 3598; M.S. 1927 ss. 3594, 3598.

### 71.14 CERTIFICATE OF AUTHORITY TO BE SECURED.

HISTORY. 1913 c. 464 s. 10; G.S. 1913 s. 3369; G.S. 1923 s. 3596; M.S. 1927 s. 3596.

### 71.15 ANNUAL LICENSE FEE.

HISTORY. 1913 c. 464 s. 11; G.S. 1913 s. 3370; G.S. 1923 s. 3597; M.S. 1927 s. 3597.

### 71.16 FOREIGN COMPANIES; REQUIREMENTS; CERTIFICATES.

HISTORY. 1895 c. 175 s. 77; 1899 c. 234 s. 3; R.L. 1905 s. 1705; G.S. 1913 s. 3591; G.S. 1923 s. 3711; M.S. 1927 s. 3711.

SCOPE. This section covers individuals, whether acting singly or in partnerships or associations, as well as corporations. *State v Beardsley*, 88 M 20, 92 NW 472.

A foreign company, by virtue of a license granted under this section, can lawfully take a mortgage and foreclose it by advertisement without complying with any other statute. *Morris v Penn Mutual*, 196 M 403, 265 NW 278.

A foreign insurance company had its license to do business in this state revoked and thereafter its liabilities were assumed by another foreign company which had never been licensed. Held, that jurisdiction over the assuming company could be obtained by service on the commissioner in actions on contracts negotiated while the original company was licensed in Minnesota. *Braunstein v Frat. Union of Am.* 133 M 8, 157 NW 721; *Kulberg v Frat. Union of Am.* 131 M 131, 154 NW 748.

SERVICE OF PROCESS. The service provided for by this section is not limited to causes of action arising out of business transacted in this state by an insurance company with one of our residents. *Enger v Midland Nat. Life Ins. Co.* 176 M 143, 222 NW 901.

The stipulation is irrevocable as to liability arising out of the company's policies issued while it is in force. Defendant's contention that since the sole consideration for the stipulation was the license to do business in this state, when the latter was revoked, the stipulation became revocable, was overruled. *Magoffin v Mut. R.F.L. Ass'n*, 87 M 260, 91 NW 1115, 94 Am. St. Rep. 699.

Service in an action for taxes against a foreign company may be made upon the commissioner even after the company's license has been revoked. The state, not the commissioner, is the real party in interest and he is not, by virtue of his official position, incapacitated from representing the corporation for acceptance of service. *State v Queen City F. Ins. Co.* 114 M 471, 131 NW 628.

This method of service is cumulative only, not exclusive. *Baldinger v Rockford Ins. Co.* 80 M 147, 82 NW 1083.

A stipulation as to service filed by a garnishee does not give it a domicile in this state for all purposes or bring into this state the situs of a debt which it owes elsewhere by reason of business transacted elsewhere. *Swed.-Am. Nat. Bank v Bleeker*, 72 M 383, 75 NW 740, 71 Am. St. Rep. 492, 42 LRA 283.

This method of service applies to the writ of mandamus also. *State ex rel v Brotherhood of Am. Yeomen*, 111 M 39, 126 NW 404.

The provisions requiring the insurance commissioner to forward copies of process served on him to the corporation at its home office is no part of the service but a mere duty imposed on the commissioner. *Becker v Brotherhood of Am. Yeomen*, 111 M 39, 126 NW 404.

See *Culp, Constitutional Problems Arising From Service of Process on Foreign Corporations*, 19 MLR 375; Note, 10 MLR 520.

**EFFECT OF NON-COMPLIANCE.** A foreign company which has not complied cannot recover on contract insuring property in this state. *Bothwell v Buckbee, Mears Co.* 166 M 285, 207 NW 724, affirmed in 275 U.S. 274, 72 L. Ed. 277, 48 Sup. Ct. 124; *Seamans v Christian Bros. Mill Co.* 66 M 205, 68 NW 1065.

A foreign company cannot set up its non-compliance with the statutes of this state to defeat a policyholder's recovery on a policy issued by it. *Ganser v Firemen's Fund Ins. Co.* 34 M 372, 25 NW 943; *Strampe v Minn. Farm. Mutual*, 109 M 364, 123 NW 1083, 134 Am. St. Rep. 781; *Wold v Minn. Comm. Mens Ass'n*, 136 M 380, 162 NW 461.

**GUARANTIES FOR THE PROTECTION OF POLICYHOLDERS.** The requirement that guaranties for the protection of policyholders required of domestic companies be provided includes use of the arbitration clause of the standard policy. Compulsory use of this clause does not violate the Fourteenth Amendment. *Hdwe. Dealers Mutual v Glidden Co.*, 284 U. S. 155, 76 L.Ed. 217, 52 Sup. Ct. 69.

The prohibition against the conduct of the combination of fire and fidelity insurance is a provision or guaranty for the protection of policyholders, creditors, and the public within the meaning of this section. *State ex rel v Brown*, 189 M. 497, 250 NW 2.

**MEETING REQUIREMENTS OF DOMESTIC COMPANIES.** The commissioner is not authorized to consider the similarity of names between that of a company already doing business here and an applicant. The language of the first sentence of this section refers to compliance with the laws governing the admission of foreign companies and not to the laws regulating the organization of domestic corporations. 1918 OAG 363.

The capital stock of a foreign company applying for admission must be paid in cash before a license to do business may be granted it. 1908 OAG 128.

**EVIDENCE.** Noncompliance with this section is a matter of defense. A foreign company need not affirmatively establish compliance with the section when it brings suit on a contract made by it. *Langworthy v Garding*, 74 M 325, 329, 77 NW 207; *Fid. & Cas. Co. v Eickhoff*, 63 M 170, 65 NW 351, 56 Am. St. Rep. 464, 30 LRA 586.

Certificates of the commissioner granted to a foreign company are only prima facie evidence of the right of the company to do business in this state. *Swing v Red River Lbr. Co.* 105 M 336, 117 NW 442.

**VENUE.** A foreign company, although it has complied with all the provisions and conditions of this section, may be sued in any county of the state which the plaintiff designates in his complaint. *Eickhoff v Fid. & Cas. Co.* 74 M 139, 76 NW 1030.

#### **71.17 SERVICE OF GARNISHEE PROCESS.**

**HISTORY.** 1905 c. 229 s. 7; G.S. 1913 s. 3250; G.S. 1923 s. 3712; M.S. 1927 s. 3712.

#### **71.18 COMMISSIONER APPOINTED ATTORNEY FOR SERVICE OF PROCESS.**

**HISTORY.** 1911 c. 312 s. 1; G.S. 1913 s. 3592; G.S. 1923 s. 3713; M.S. 1927 s. 3713.

See *Bothwell v Buckbee, Mears Co.* 166 M 285, 207 NW 724, affirmed in 275 U.S. 274, 72 L.Ed. 279, 48 Sup. Ct. 124; *Enger v Midland National*, 176 M 143, 222

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NW 901; and State ex rel v Brotherhood of Am. Yeomen, 111 M 39, 126 NW 704, under section 71.16 above.

**WHAT NOTICES MAY BE ACCEPTED.** The commissioner may accept notice of default of a contractor for an insurance company which is a surety on the contractor's bond. 1912 OAG 408.

### 71.19 FEES; APPOINTMENT OF ADDITIONAL CLERK.

**HISTORY.** 1911 c. 312 s. 3; G.S. 1913 s. 3594; G.S. 1923 s. 3715; M.S. 1927 s. 3715.

### 71.20 DEPOSIT MADE WITH COMMISSIONER.

**HISTORY.** 1895 c. 175 s. 78; R.L. 1905 s. 1706; 1909 c. 478 s. 1; G.S. 1913 s. 3595; G.S. 1923 s. 3716; M.S. 1927 s. 3716.

### 71.21 TRUSTEES APPOINTED, WHEN.

**HISTORY.** 1895 c. 175 s. 80; R.L. 1905 s. 1707; G.S. 1913 s. 3598; G.S. 1923 s. 3719; M.S. 1927 s. 3719.

### 71.22 METHOD OF INSURANCE; WAR; REINSURANCE.

**HISTORY.** 1895 c. 175 s. 83; R.L. 1905 s. 1708; G.S. 1913 s. 3599; G.S. 1923 s. 3720; M.S. 1927 s. 3720.

Insurance collectors need not be licensed by the insurance commissioner. 1910 OAG 505.

### 71.23 RETALIATORY PROVISIONS.

**HISTORY.** 1907 c. 420 s. 1; G.S. 1913 s. 3600; G.S. 1923 s. 3721; M.S. 1927 s. 3721.

**NOT APPLICABLE.** In the absence of any judicial construction of its law by a foreign state or of a practical administration of it in a manner prejudicial to foreign corporations, our retaliatory act should not be deemed applicable if it is doubtful how the foreign law would be construed. State v Fid. & Cas. Ins. Co. 39 M 538, 41 NW 108.

Resumé of cases relating to retaliatory statutes. Liberty Nat'l v Read, 24 F. Supp. 109.

This section is a retaliatory measure and not a reciprocal. Its purpose is to raise revenue to protect Minnesota companies doing business in other states from unreasonable taxes, fees, deposits, penalties or licenses. The taxes or charges should be offset item by item. 1942 OAG 87, Oct. 15, 1942 (254D).

See 16 MLR 433 on the validity of retaliatory legislation.

### 71.24 INSURANCE FROM UNLICENSED FOREIGN COMPANIES.

**HISTORY.** 1895 c. 175 s. 82; R.L. 1905 s. 1649; G.S. 1913 s. 3331; G.S. 1923 s. 3722; M.S. 1927 s. 3722.

**NOT AGENT'S LICENSE.** The license contemplated by this section was not intended to be an agent's license but is a mere authority for the licensee to obtain, in an unauthorized company, insurance only for himself or for the firm or corporation in whose behalf the license was issued. 1906 OAG 229.

The Minnesota state high school league may not secure a license under the provisions of this section. Policies of insurance may be written only as provided by statute. 1936 OAG 272, Feb. 19, 1935 (249a-13).

### 71.25 LLOYDS' PLAN FOR MUTUAL COMPANIES; REQUISITES FOR QUALIFICATION.

**HISTORY.** 1895 c. 175 s. 85; 1905 c. 130; 1913 c. 534 s. 1; G.S. 1913 s. 3327; G.S. 1923 s. 3533; M.S. 1927 s. 3533.

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## 71.26 RENEWAL OF LICENSE.

HISTORY. 1913 c. 534 s. 2; G.S. 1913 s. 3328; G.S. 1923 s. 3534; M.S. 1927 s. 3534.

## 71.27 MUTUAL COMPANIES; WHEN PERMITTED.

HISTORY. 1895 c. 175 s. 36; 1897 c. 258; 1899 c. 198; 1903 c. 92, 347; R.L. 1905 s. 1684; G.S. 1913 s. 3329; G.S. 1923 s. 3535; M.S. 1927 s. 3535.

## 71.28 MUTUAL FIRE COMPANIES; POLICIES, WHEN AUTHORIZED.

HISTORY. 1895 c. 175 s. 36; 1907 c. 258; 1899 c. 198; 1903 cc. 92, 347; 1905 c. 117 s. 1; R.L. 1905 s. 1648; G. S. 1913 s. 3330; G.S. 1923 s. 3536; 1925 c. 172; M.S. 1927 s. 3536.

## 71.29 POWERS.

HISTORY. 1935 c. 97 s. 1; M. Supp. s. 3536-1.

## 71.30 HAIL INSURANCE, POLICIES, LOSS ADJUSTMENT.

HISTORY. 1927 c. 419; M.S. 1927 s. 3532-1.

## 71.31 FIDELITY AND SURETY COMPANIES.

HISTORY. 1895 c. 175 s. 56; R.L. 1905 s. 1686; G.S. 1913 s. 3432; G.S. 1923 s. 3710; M.S. 1927 s. 3710.

## 71.32 CERTAIN STATE PROPERTY INSURED BY CONSERVATOR OF RURAL CREDIT; STATE PRISON ALSO INSURED.

HISTORY. 1919 c. 256 s. 1; G.S. 1923 s. 3599; M.S. 1927 s. 3599; 1929 c. 78.

NOT APPLICABLE. This section does not prevent the board of regents from insuring university property. 1930 OAG 341.

The state may contract with mutual companies provided the limitation on contingent liability is within prescribed limits. OAG Jan. 3, 1945 (487c-4).

The state or its agencies may purchase boiler insurance. OAG Feb. 10, 1945 (252k).

## 71.33 LACK OF CARE IN KEEPING PROPERTY SAFE FROM FIRE LOSS NON-FEASANCE IN OFFICE.

HISTORY. 1919 c. 256 s. 4; G.S. 1923 s. 3602; M.S. 1927 s. 3602.

## 71.34 VIOLATIONS; PENALTIES.

HISTORY. 1913 c. 464 s. 9; G.S. 1913 s. 3368; 1915 c. 101 s. 7; G.S. 1923 ss. 3595, 3610; M.S. 1927 ss. 3595, 3610.