

INSURANCE

CHAPTER 60

INSURANCE DIVISION

HISTORICAL. Prior to 1868 there were no laws relating to insurance except a few sections found in the "Corporations for Profit" chapter, and in the penal code.

L. 1868, c. 22, regulating foreign and domestic insurance companies, was amended by L. 1869, c. 44. A board of insurance commissioners, consisting of the state treasurer, state auditor, and attorney general, administered the act and collected the two per cent premium tax from foreign corporations.

L. 1872, c. 1, was the first comprehensive insurance code, superseding earlier laws on the subject. It established a reciprocal general insurance law relating to domestic and foreign companies; created an insurance department under a commissioner; and revised the laws applicable to all classes of insurance, particularly fire, life, and marine.

L. 1895, c. 175, was "an act to revise and codify the insurance laws of the state," and constituted a complete insurance code, entirely superseding the 1872 law as amended. This code, as revised in 1905, variously amended, and compiled in the succeeding edition of the statutes, constitutes our present insurance law found in Minnesota statutes, beginning with chapter 60.

Appointment of a deputy commissioner was first authorized by L. 1889, c. 245.

A department of commerce under the supervision and control of a commission composed of the commissioners of banks, insurance, and securities was created by L. 1925, c. 426, s. 8. Certain designated tasks are imposed on the department of commerce, but the three divisions function independently.

60.02 DEFINITIONS.

A contract whereby the issuer obligated itself to perform for the holder acts of value in case of his loss or damage is a contract of insurance. *State v Bean*, 193 M 113, 258 NW 18.

Where there is conflict between the provisions of an insurance policy form, and terms inserted in such form to cover a particular case, the latter must be accepted as disclosing the true intent of the parties. *Biwabik Concrete Co. v. U.S.F. & G. Co.* 206 M 239, 288 NW 394.

An annuity contract, authorized by statute to be issued by a life insurance company, is not a "security" of the sort dealt with by the blue sky law, and so is not subject to the administration powers of the securities commission. *Bates v Equitable Life*, 206 M 482, 288 NW 834.

Rider or endorsement on endowment policy of insurance issued on life of airline pilot killed in the crash of a plane he was piloting, which reduced insurer's liability under the policy to an amount equal to policy reserve "in the event of the death of the insured directly or indirectly as the result of service, travel or flight in any species of air-craft," is void as in violation of provision of section 61.30. *Shank v Fidelity Mutual*, 221 M 124, 21 NW(2d) 235.

Records accumulated by an agent in the course of soliciting policies, referred to as "expirations" and which in effect are copies of policies issued to insured, date of issuance, name of insured, date of expiration, amount of premiums, property covered, and terms of insurance, belong to the agent as a property right for any interference with which the agent may seek redress in court. *Northwest Underwriters v Hamilton*, 56 F. Supp. 826, 151 F(2d) 389.

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Duty of insurance company to give notice of termination. 13 MLR 741.

Effect of falsification of insurance application by soliciting agent. 16 MLR 422.

The making of a contract of insurance in Minnesota. 17 MLR 567.

Sales warranties as insurance contracts. 26 MLR 664.

60.03 RIGHTS, POWERS, AND DUTIES.

The rules and regulations of the insurance department when promulgated pursuant to statute, are supplementary and not in conflict with the statutory provisions governing issuance of group life insurance, have the force and effect of law. OAG Jan. 17, 1946 (253-B-4).

60.04 OFFICIAL STAFF, SALARIES, DUTIES.

Information acquired by an agent while acting as agent for principal, belongs to no principal; but when the agent is engaged in soliciting insurance on his own behalf, and places it with some company of his choice, records and expiration information is the property of the soliciting agent. *Northwest Underwriters v Hamilton*, 151 F(2d) 389.

There is no statutory provision by which the state fire marshal may appoint city firemen, who are arson investigators but have no power to take affirmations and give oaths, as deputy fire marshals without pay. Any person, city fireman or otherwise, appointed a deputy would be subject to the provisions of the civil service act in matters of compensation, seniority, and otherwise. OAG April 2, 1947 (197).

60.27 ACCEPTANCE OF LAWS.

Where foreign insurance company has not complied with applicable Minnesota statutes, Minnesota courts will not lend their aid to enforce the contract though the policy was issued in another state upon written application mailed from Minnesota to the home office of the insurance company. *Bothwell v Buckbee, Mears Co.* 166 M 285, 207 NW 724; 169 M 516, 211 NW 478, 48 S.C. 124.

The fundamental essential of mutual insurance, that the insured and the insurer are identical, will not permit a mutual company to write surety bonds for public officials. The facts involved in writing such bonds are inherently incompatible with mutual insurance. *State ex rel v Wells*, 167 M 198, 208 NW 659.

60.28 SOLICITATION OF CERTAIN CONTRACTS FORBIDDEN.

Where the legislature has prescribed a statutory form of policy any provision to the contrary in such a contract is ineffective. But in the absence of a statute governing the form or content of the policy, the parties to it are free to incorporate such provisions and conditions as they desire, subject only to such restrictions of law as are parties to other voluntary contracts. *Maryland Casualty v American Lumber Co.* 204 M 43, 282 NW 806.

When the company approving the extension of its agent, sent notification of cancellation of policy as of July 10, 1939, retaining the premium to that date, it became liable in damages where the accident occurred on July 2. *Abeln v Iowa Mutual*, 208 M 582, 295 NW 54.

Right to make contract embraced in the concept of liberty guaranteed by the fourteenth amendment implies only freedom from arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in community's interest. A state statute which substitutes arbitration for court trial in determination of amount of loss under fire insurance policy affords due process of law. *Hardware Dealer's Mutual v Glidden*, 52 SC 69.

60.29 CAPITAL STOCK REQUIRED; BUSINESS WHICH MAY BE TRANSACTED.

Amended by L. 1947, c. 295, s. 1.

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Subd. 1. (12) After a policy had been delivered and premium paid, the insurer arranged with the insured to return the premium and secure back the policy, covering the risk until the insured obtained new coverage. The insured having obtained a policy in another company, a telephone conversation took place in which the agent for the insurer agreed to send back the rebate check by messenger and the insured to surrender the policy to the messenger. An accident having occurred while the papers were in transit, and before exchange of the papers, and the later insurer having paid the loss, and in the instant case brings suit for contribution, it is for the jury to decide whether or not there was in fact a cancellation of the first policy. *Merchants Mutual v St. Paul Mercury*, 218 M 386, 16 NW(2d) 463.

60.291 LIMITATION ON SECTION 60.29.

HISTORY. L. 1947, c. 295, s. 2.

60.31 INSURANCE NOT SPECIFICALLY AUTHORIZED BY LAW TRANSACTED UPON AUTHORIZATION BY COMMISSIONER.

An annuity contract is not a "security" of the sort dealt with by the blue sky law. The statutes clearly permit life insurance companies to issue annuity policies under the supervision of the Commission of Insurance. *Bates v Equitable Life*, 206 M 485, 288 NW 834.

60.33 RETALIATORY PROVISION.

A state may prohibit a non-resident insurance company from doing business within it without first complying with prescribed conditions, and can refuse aid of its courts in enforcing a contract which involves a violation of its laws. *Bothwell v Buckbee*, *Mears*, 48 SC 124.

60.34 DEPOSITS WITH COMMISSIONER.

Surety companies must comply with the provisions of section 60.34. *Minnesota Mutual v Wells*, 167 M 198, 208 NW 659.

60.36 AGENTS AND PERSONS AUTHORIZED TO ACT.

Liability to agents for renewal commissions of the new insurer who has acquired by assignment the rights of the original insurer. 26 MLR 562.

60.40 INVESTMENTS.

As to taxation the legislature clearly recognizes a distinction between real property held for purposes of the insurance business, such as an office building, and real property acquired through mortgage foreclosure. Where an insurance company owns a farm which is operated by owner and tenant as tenants in common, each owning one-half of the live stock, machinery and grain, the personal property is taxable. 1944 OAG 382, July 20, 1943 (254).

60.49 REAL ESTATE.

See, Section 61.12 as to real estate holdings.

Farms owned by insurance companies and operated by tenants in common, each owning one-half of the livestock and equipment, are taxable on ad valorem basis. 1944 OAG 382, July 20, 1943 (254).

60.50 POLICY TO EMBRACE CONDITIONS.

While it is important that ambiguous language should not be permitted to serve as trap for policy holders, it is equally important, to the insured as well as the insurer, that the provisions of insurance policies which are clearly and definitely set forth in appropriate language and upon which the calculations of the

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company are based, should be maintained unimpaired. *Rein v New York Life*, 210 M 435, 299 NW 385.

While an insurance policy, prepared by the insurer and replete with legal and technical terms, should be construed most favorably to the insured; an insured under an automobile indemnity policy, by agreeing to be responsible for medical, surgical and hospital bills of injured party, his sister-in-law, did not assume any "liability" within exclusion clause of policy relieving insurer of any obligation for any liability assumed by the insurer. *Preferred Accident v Onali*, 125 F(2d) 580.

The making of a contract of insurance in Minnesota. 17 MLR 566.

60.57 COMMISSION TO HEAR PETITION; DISPOSING OF SURPLUS ASSETS.

The insurance commission before approving a consolidation of two companies should direct the disposal or distribution of any surplus. *Austin v National Casualty*, 125 M 390, 147 NW 281.

60.581 MERGER.

HISTORY. L. 1947, c. 294, s. 1.

60.582 AGREEMENT; APPROVAL.

HISTORY. L. 1947, c. 294, s. 2.

60.583 ARTICLES OF INCORPORATION OF NEW COMPANY.

HISTORY. L. 1947, c. 294, s. 3.

60.584 CONSUMMATION OF MERGER.

HISTORY. L. 1947, c. 294, s. 4.

60.585 EFFECT OF MERGER.

HISTORY. L. 1947, c. 294, s. 5.

60.586 NON-CONSENTING SHAREHOLDERS.

HISTORY. L. 1947, c. 294, s. 6.

60.587 NOT TO INCLUDE CERTAIN OTHER COMPANIES.

HISTORY. L. 1947, c. 294, s. 7.

60.59 ANNUAL STATEMENTS.

A foreign insurance corporation which owns no real or personal property within the state does not possess the interest necessary to entitle it to question the constitutionality of a tax on premiums which is in lieu of all taxes except those on real and personal property of foreign corporations and the real property of domestic corporations. *State v Casualty Mutual*, 213 M 220, 6 NW(2d) 800.

The tax imposed by section 60.63 on premiums of insurance companies received "during the preceding calendar year" is not a license tax to continue in business during the following year, but a tax on premiums for the year during which they were received. *State v Casualty Mutual*, 213 M 222, 6 NW(2d) 800.

An insurance agent must obtain a license each year expiring May 31, but it is within the discretion of the department to issue it voluntarily or to require an application and statement. OAG Jan. 14, 1946 (256).

60.63 TAXATION OF INSURANCE COMPANIES.

While the legislature has a wide discretion in classifying property for the purposes of taxation, the classification must be based on differences which furnish a

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reasonable ground for making a distinction between the classes. The classifications made by L. 1915, c. 184, violates the constitutional requirement that "taxes shall be uniform upon the same class of subjects" and cannot be sustained. *State v Minnesota Farmers Mutual*, 145 M 231, 176 NW 756.

As to taxation, the legislature clearly recognizes a distinction between real property held for the purposes of the insurance business, such as an office building, and real property acquired through mortgage foreclosure. 1944 OAG 382, July 20, 1943 (254).

Town and farmers mutual insurance companies are liable for premium tax only on business written in municipalities having organized fire departments. OAG July 12, 1945 (254-D).

Power of state to levy premium tax on gross premiums of foreign insurance corporations from risks within the state. 30 MLR 545.

60.65 LICENSES.

A renewal license is a new and separate license and in law not a continuation of the existing license, consequently, since the 1945 amendment to section 60.68, section 60.69 modifies section 60.65. OAG Jan. 14, 1946 (256).

60.68 SOLICITORS, QUALIFICATIONS, APPLICATIONS, REVOCATION OF LICENSE.

While the discretion of the commissioner in granting or refusing a license must not be exercised in an arbitrary manner, the commissioner has the right to inquire into and appraise the history of the agent, and it would not be abuse of discretion to refuse a license where the agent confined his writing of policies to properties of his own or those of his family. OAG Aug. 30, 1943 (249-A-1).

60.69 REVOCATION OF LICENSE, MANNER OF.

A final order or judgment of the district court, in special representation or other non-judicial proceedings coming to that court by statutory appeal or other appropriate method of review, may be removed to the supreme court by appeal as in ordinary civil actions. Certiorari to review does not lie in such cases. *Neumann v Edwards*, 146 M 179, 178 NW 589.

60.76 REDRESS OF PERSON AGGRIEVED; POWERS OF COMMISSIONER.

See, *Neumann v Edwards*, 146 M 179, 178 NW 589, under section 60.69.

60.85 MISREPRESENTATION BY APPLICANT.

Where an insurer customarily dates policies of insurance as of the day of application instead of the day of issuance, its soliciting agents have implied authority to enter into contracts of insurance with applicants for the interim between the application and acceptance. *Glens Falls v Swanstrom*, 203 M 68, 279 NW 845.

Effect of misrepresentation in application due to negligence or fault of insurance agent. *Estoppel*. 15 MLR 595.

Effect of unresponsive statements made by assured in policy. 16 MLR 213.

Truth of statements in the application. 17 MLR 588.

Innocent misrepresentation of health in insurance applications. 28 MLR 141.

60.87 COMMISSIONER AS RECEIVER.

The district court may in its discretion appoint insurance commissioner receiver, and where an attorney is employed by the receiver the attorney acts and is paid under the authority and direction of the court. OAG Sept. 30, 1943 (250).