

CHAPTER 72A

PROHIBITIONS; PENALTIES; REGULATION OF TRADE PRACTICES;  
UNAUTHORIZED INSURERS FALSE ADVERTISING PROCESS ACT

Sec.	SCOPE	Sec.	
72A.01	Scope	72A.22	Hearing; witnesses; production of books
<b>PROHIBITIONS AND PENALTIES IN GENERAL</b>		72A.23	Decision and order thereon
72A.02	Violations as to policies of insurance	72A.24	Enforcement of sections 72A.17 to 72A.32
72A.03	Agent of insurer; procuring premiums by fraud	72A.25	Unfair competition
72A.04	False statements in application	72A.26	Intervention
72A.05	Failure to make report or comply with law	72A.27	Appeal to supreme court
72A.06	Failure to file annual statement; suspension of license; false statement; penalties	72A.28	Violations and penalties
72A.07	Violations of laws relating to agents, penalties	72A.29	Concurrent remedies
72A.08	Laws against rebate	72A.30	Evidential privilege denied; immunity; waiver
72A.09	Violations where offense is not specifically designated	72A.31	Certain acts deemed unfair method of competition
72A.10	Failure to appear or obstructing commissioner	72A.32	Violations, procedure
72A.11	Complainant entitled to one-half of fine in certain cases	72A.321	Affiliation with funeral establishment
72A.12	Life insurance	<b>UNAUTHORIZED INSURERS FALSE ADVERTISING PROCESS ACT</b>	
72A.13	Accident and health insurance, violations of certain sections; penalties	72A.33	Purpose of act, construction
72A.15	Penalty for violation of law providing for insurance in unlicensed companies	72A.34	Definitions
72A.16	Mutual companies	72A.35	Notice to domiciliary supervisory official
<b>REGULATION OF TRADE PRACTICES</b>		72A.36	Action by commissioner
72A.17	Purpose of sections 72A.17 to 72A.32	72A.37	Service upon unauthorized insurer
72A.18	Definitions	72A.38	Constitutionality
72A.19	Unfair methods and unfair or deceptive acts and practices prohibited	72A.39	Citation
72A.20	Methods, acts and practices which are defined as unfair or deceptive	72A.40	Purpose
72A.21	Power of commissioner	72A.41	Transacting business without certificate of authority prohibited
		72A.42	Commissioner may enjoin unauthorized company
		72A.43	Service of process upon unauthorized company by commissioner
		72A.44	Penalty
		72A.45	Nonapplication

SCOPE

**72A.01 SCOPE.** This chapter includes certain prohibitions and penalties. Other prohibitions and penalties may be found in other articles of Laws 1967, Chapter 395, and other state laws.

[1967 c 395 art 12 s 1]

PROHIBITIONS AND PENALTIES IN GENERAL

**72A.02 VIOLATIONS AS TO POLICIES OF INSURANCE.** Every company, and every officer and agent of any company, making, issuing, delivering, or tendering any policy of insurance of any kind, or directing any of the same to be done, in wilful violation of any of the provisions of law, for a first offense, shall be guilty of a misdemeanor, and for each subsequent offense, of a gross misdemeanor; and, in addition to all other penalties prescribed by law, every company issuing any such policy shall be disqualified from doing any insurance business in this state until the payment of all fines imposed and for one year thereafter.

[1967 c 395 art 12 s 2]

**72A.03 AGENT OF INSURER; PROCURING PREMIUMS BY FRAUD.** Every insurance agent who acts for another in negotiating a contract of insurance by an insurance company shall be held to be the company's agent for the purpose of collecting or securing the premiums therefor, whatever conditions or stipulations may be contained in the contract or policy. When any such agent by fraudulent representations procures payment, or an obligation for the payment, of an insurance premium he shall be guilty, for the first offense, of a misdemeanor, and for each subsequent offense, of a gross misdemeanor.

[1967 c 395 art 12 s 3]

**72A.04 FALSE STATEMENTS IN APPLICATION.** Every solicitor, agent, examining physician, or other person who knowingly or wilfully makes a false or fraudulent statement in, or relative to, any application for insurance or membership for any purpose shall be guilty of a gross misdemeanor.

[1967 c 395 art 12 s 4]

**72A.05 FAILURE TO MAKE REPORT OR COMPLY WITH LAW.** Every officer and agent of any insurance company required to make any report or perform

# MINNESOTA STATUTES 1974

1093

## REGULATION OF TRADE PRACTICE; PROHIBITIONS 72A.08

any act who shall neglect or refuse to comply with such requirement, and every agent, solicitor, or collector of the corporation in this state who falls or neglects to procure from the commissioner a certificate of authority to do such business, or who falls or refuses to comply with, or violates, any provision of the insurance law, shall be guilty, for the first offense, of a misdemeanor, and for each subsequent offense, of a gross misdemeanor.

[1967 c 395 art 12 s 5]

**72A.06 FAILURE TO FILE ANNUAL STATEMENT; SUSPENSION OF LICENSE; FALSE STATEMENT; PENALTIES.** The license and authority of any insurance company licensed and authorized to do business in this state which neglects to file its annual statement in the form prescribed and within the time specified by law may in the discretion of the commissioner be suspended during the time the company may be so in default. Any company which shall write any new business in this state while its license is so suspended and after it shall have been notified by the commissioner by a notice mailed to the home office of the company that its license has been suspended shall forfeit to the state the sum of \$25 for each contract of insurance entered into by it after being so notified that its license and authority have been so suspended. The notification shall be mailed by registered letter and deemed to have been received by the company at its home office in the usual course of the mails. Any insurance company willfully making a false annual or other required statement shall forfeit \$500 to the state. Either or both of these forfeitures may be recovered in a civil action brought by and in the name of the state and the money recovered shall be paid into the state treasury.

[1967 c 395 art 12 s 6]

**72A.07 VIOLATIONS OF LAWS RELATING TO AGENTS, PENALTIES.** Any person, firm, or corporation violating, or failing to comply with, any of the provisions of section 60A.17 and any person who acts in any manner in the negotiation or transaction of unlawful insurance with an insurance company not licensed to do business in the state, or who, as principal or agent, violates any provision of law relating to the negotiation or effecting of contracts of insurance, shall be guilty of a misdemeanor. The duty of a strict observance and enforcement of this law and prosecution for any violation thereof is hereby expressly imposed upon the commissioner of insurance, and upon the filing of a complaint in a court of competent jurisdiction against any person violating any provisions of this section, it shall be the duty of the county attorney of the county in which the violation occurred to prosecute such person. Upon the conviction of any agent or solicitor of any violation of the provisions of section 60A.17, the commissioner shall suspend the authority of such agent or solicitor to transact any insurance business within the state for a period of not less than three months. Any insurer employing an agent and failing to procure a license, as required by section 60A.17, or permitting such agent to transact business for it within the state before such license has been procured, shall pay the commissioner, for the use of the state, a penalty of \$25 for each offense; and, in the event of failure to pay the penalty within ten days after notice from the commissioner, the authority of the insurer to do business in this state shall be revoked by the commissioner until the penalty is paid, and no insurer shall be readmitted until it shall have complied with all the terms and conditions imposed for admission in the first instance; provided, that any action taken by the commissioner under the provisions of this section shall be subject to review by the district court of the county in which the office of the commissioner is located.

[1967 c 395 art 12 s 7]

**72A.08 LAWS AGAINST REBATE.** Subdivision 1. **Rebate defined and prohibited.** No insurance company or association, however constituted or entitled, doing business in this state, nor any officer, agent, subagent, solicitor, employee, intermediary, or representative thereof, shall make or permit any advantage or distinction in favor of any insured individual, firm, corporation, or association with respect to the amount of premium named in, or to be paid on, any policy of insurance, or shall offer to pay or allow directly or indirectly or by means of any device or artifice, as inducements to insurance, any rebate or premium payable on the policy, or any special favor or advantage in the dividends or other profit to accrue thereon, or any valuable consideration or inducement not specified in the policy contract of insurance, or give, sell, or purchase, offer to give, sell or purchase, as inducement to insure or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, part-

nership, or individual, or any dividends or profits accrued or to accrue thereon, or anything of value, not specified in the policy.

**Subd. 2. Insured prohibited from receiving rebates.** No person shall receive or accept from any such company or association, or from any of its officers, agents, subagents, solicitors, employees, intermediaries, or representatives, or any other person any such rebate of premium payable on the policy, or any special favor or advantage in the dividends or other financial profits accrued, or to accrue, thereon, or any valuable consideration or inducement not specified in the policy of insurance. No person shall be excused from testifying, or from producing any books, papers, contracts, agreements, or documents, at the trial of any other person, copartnership, association, or company charged with violation of any provision of this section on the ground that the testimony or evidence may tend to incriminate; but no person shall be prosecuted for any act concerning which he shall be compelled to so testify or produce evidence, documentary or otherwise, except for perjury committed in so testifying.

**Subd. 3. Penalty for rebate.** Any company, association, or individual violating any provisions of this section, whether the violation be in the giving or accepting of anything herein prohibited, shall be punished by a fine of not less than \$60 nor more than \$200.

**Subd. 4. Exceptions.** The provisions of this section shall not apply to any policy procured by officers, agents, subagents, employees, intermediaries, or representatives wholly and solely upon property of which they are, respectively, the owner at the time of procuring the policy, where the officers, agents, subagents, employees, intermediaries, or representatives are, and have been for more than six months prior to the issuing of the policy, regularly employed by, or connected with, the company or association issuing the policy; and any life insurance company doing business in this state may issue industrial policies of life or endowment insurance, with or without annuities, with special rates of premiums less than the usual rates of premiums for these policies, to members of labor organizations, credit unions, lodges, beneficial societies, or similar organizations, or employees of one employer, who, through their secretary or employer, may take out insurance in an aggregate of not less than 50 members and pay their premiums through the secretary or employer.

[1967 c 395 art 12 s 8]

**72A.09 VIOLATIONS WHERE OFFENSE IS NOT SPECIFICALLY DESIGNATED.** Whoever violates any provision of the insurance law where the nature of the offense is not specifically designated herein shall be guilty, for the first offense, of a misdemeanor, and for each subsequent offense, of a gross misdemeanor.

[1967 c 395 art 12 s 9]

**72A.10 FAILURE TO APPEAR OR OBSTRUCTING COMMISSIONER.** Whoever without justifiable cause neglects, upon due summons, to appear and testify before the commissioner, or obstructs the commissioner, or deputy or assistant commissioner, in his examination of an insurance company, shall be guilty, for the first offense, of a misdemeanor, and for each subsequent offense, of a gross misdemeanor.

[1967 c 395 art 12 s 10]

**72A.11 COMPLAINANT ENTITLED TO ONE-HALF OF FINE IN CERTAIN CASES.** The person, other than the commissioner, or deputy or assistant commissioner, upon whose complaint a conviction is had for violation of the law prohibiting insurance in or by foreign companies not authorized to do business in this state, shall be entitled to one-half the fine recovered upon sentence therefor.

[1967 c 395 art 12 s 11]

**72A.12 LIFE INSURANCE. Subdivision 1. Issue of prohibited life policies.** Every officer or agent of a life insurance company who shall issue any policy in violation of any order or other prohibition by the commissioner made pursuant to law, shall be guilty, for the first offense, of a misdemeanor, and for each subsequent offense, of a gross misdemeanor.

**Subd. 2. Misrepresentation by insurer or agent.** No life insurance company doing business in this state, and no officer, director or agent thereof, shall issue or circulate, or cause or permit to be issued or circulated, any estimate, illustration, circular or statement of any sort misrepresenting the terms of any policy issued by it or the benefits or advantages promised thereby, or the dividends

# MINNESOTA STATUTES 1974

1095

## REGULATION OF TRADE PRACTICE; PROHIBITIONS 72A.13

or shares of surplus to be received thereon, or shall use any name or title of any policy or class of policies misrepresenting the true nature thereof.

Any person violating the provisions of this subdivision shall be guilty of a misdemeanor, and the license of any company which shall authorize or permit a violation of this subdivision shall be revoked.

**Subd. 3. Discrimination in accepting risks.** No life insurance company or agent, all other conditions being equal, shall make any discrimination in the acceptance of risks, in rates, premiums, dividends, or benefits of any kind, or by way of rebates, between persons of the same class, or on account of race; and upon request of any person whose application has been rejected, the company shall furnish him, in writing, the reasons therefor, including a certificate of the examining physician that such rejection was not for any racial cause. Every company violating either of the foregoing provisions shall forfeit not less than \$500, nor more than \$1,000, and every officer, agent, or solicitor violating the same shall be guilty of a gross misdemeanor; and the commissioner shall revoke the license of such company and its agents, and grant no new license within one year thereafter.

**Subd. 4. Discrimination; rebates.** No life insurance company doing business in this state shall make or permit any distinction or discrimination in favor of individuals between insureds of the same class and equal expectation of life in the amount or payment of premiums or rates charged for policies of life or endowment insurance, or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the contracts it makes; nor shall any such company or agent thereof make any contract of insurance or agreement as to such contract other than as plainly expressed in the policy issued thereon; nor shall any such company or any officer, agent, solicitor, or representative thereof pay, allow or give, or offer to pay, allow or give, directly or indirectly, as inducement to insurance, any rebate of premium payable on the policy, or any special favor or advantage in the dividends or other benefits to accrue thereon or any paid employment or contract for services of any kind, or any valuable consideration or inducement whatever not specified in the policy contract of insurance.

Any violation of the provisions of this subdivision shall be a misdemeanor and punishable as such.

**Subd. 5. Political contributions prohibited.** No insurance company or association, including fraternal beneficiary associations, doing business in this state, shall, directly or indirectly, pay or use, or offer, consent or agree to pay or use, any money or property for or in aid of any political party, committee or organization, or for or in aid of any corporation, joint stock or other association organized or maintained for political purposes, or for or in aid of any candidate for political office, or for nomination for such office, or for any political purpose whatsoever, or for reimbursement or indemnification of any person for money or property so used. Any officer, director, stockholder, attorney or agent of any corporation or association which violates any of the provisions of this section, who participates in, aids, abets, or advises or consents to any such violation, and any person who solicits or knowingly receives any money or property in violation of this section, shall be guilty of a gross misdemeanor, and any officer aiding or abetting in any contribution made in violation of this section shall be liable to the company or association for the amount so contributed. No person shall be excused from attending and testifying, or producing any books, papers or other documents before any court or magistrate, upon any investigation, proceeding or trial, for a violation of any of the provisions of this section, upon the ground, or for the reason, that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate or degrade him; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be used against him upon any criminal investigation or proceeding.

[1967 c 395 art 12 s 12]

**72A.13 ACCIDENT AND HEALTH INSURANCE, VIOLATIONS OF CERTAIN SECTIONS; PENALTIES.** Any company, corporation, association, society, or other insurer, or any officer or agent thereof, which or who issues or delivers to any person in this state any policy in wilful violation of the provisions of sections

# MINNESOTA STATUTES 1974

## 72A.15 REGULATION OF TRADE PRACTICE; PROHIBITIONS

1096

62A.01 to 62A.10, shall be punished by a fine of not more than \$100 for each offense, and the commissioner may revoke the license of any company, corporation, association, society, or other insurer of another state or country, or of the agent thereof, which or who wilfully violates any provision of sections 62A.01 to 62A.10.

[1967 c 395 art 12 s 13]

- 72A.14 [Renumbered 65B.13]
- 72A.141 [Renumbered 65B.14]
- 72A.142 [Renumbered 65B.15]
- 72A.143 [Renumbered 65B.16]
- 72A.144 [Renumbered 65B.17]
- 72A.145 [Renumbered 65B.18]
- 72A.146 [Renumbered 65B.19]
- 72A.147 [Renumbered 65B.20]
- 72A.148 [Renumbered 65B.21]
- 72A.149 [Renumbered 65B.22]
- 72A.1491 [Renumbered 65B.23]
- 72A.1492 [Renumbered 65B.24]
- 72A.1493 [Renumbered 65B.25]
- 72A.1494 [Renumbered 65B.26]
- 72A.1495 [Renumbered 65B.27]

**72A.15 PENALTY FOR VIOLATION OF LAW PROVIDING FOR INSURANCE IN UNLICENSED COMPANIES.** Every person licensed to procure insurance in an unlicensed foreign company who fails to file the affidavit and statement required in such case or who wilfully makes a false affidavit or statement shall forfeit his license and be guilty, for the first offense, of a misdemeanor, and for each subsequent offense, of a gross misdemeanor.

[1967 c 395 art 12 s 15]

**72A.16 MUTUAL COMPANIES.** Subdivision 1. **Unlawful procurement or use of proxy.** Every officer or agent of a domestic mutual insurance company who shall solicit, receive, procure to be obtained, or use, a proxy vote in violation of any provision of law shall be guilty of a gross misdemeanor.

Subd. 2. **Guaranty against assessment.** Every director, officer, or agent of an insurance company who officially or privately gives a guaranty to a policyholder thereof against an assessment for which he would otherwise be liable shall be guilty of a misdemeanor.

[1967 c 395 art 12 s 16]

### REGULATION OF TRADE PRACTICES

**72A.17 PURPOSE OF SECTIONS 72A.17 TO 72A.32.** The purpose of sections 72A.17 to 72A.32 is to regulate trade practices in the business of insurance in accordance with the intent of congress as expressed in the Act of Congress of March 9, 1945 (Public Law 15, 79th Congress), by defining, or providing for the determination of, all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.

[1967 c 395 art 12 s 17]

**72A.18 DEFINITIONS.** Subdivision 1. **General.** Unless the context clearly indicates otherwise, the following terms, when used in sections 72A.17 to 72A.32, shall have the meanings, respectively ascribed to them in this section.

Subd. 2. **Person.** "Person" means any individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyds insurer, fraternal benefit society, or any other legal entity, engaged in the business of insurance, including an agent, a solicitor, or an adjuster and for the purposes of sections 72A.31 and 72A.32 "person" shall in addition mean any person, firm or corporation even though not engaged in the business of insurance.

[1967 c 395 art 12 s 18]

**72A.19 UNFAIR METHODS AND UNFAIR OR DECEPTIVE ACTS AND PRACTICES PROHIBITED.** No person shall engage in this state in any trade practice which is defined in sections 72A.17 to 72A.32 as or determined pursuant

# MINNESOTA STATUTES 1974

1097

## REGULATION OF TRADE PRACTICE; PROHIBITIONS 72A.20

to sections 72A.17 to 72A.32 to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

[1967 c 395 art 12 s 19]

**72A.20 METHODS, ACTS AND PRACTICES WHICH ARE DEFINED AS UNFAIR OR DECEPTIVE.** Subdivision 1. Schedule of unfair methods. The following are hereby defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

(1) **Misrepresentations and false advertising of policy contracts.** Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies, or making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates, or using any name or title of any policy or class of policies misrepresenting the true nature thereof, or making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender his insurance;

(2) **False information and advertising generally.** Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station, or in any other way, an advertisement, announcement, or statement, containing any assertion, representation, or statement with respect to the business of insurance, or with respect to any person in the conduct of his insurance business, which is untrue, deceptive, or misleading;

(3) **Defamation.** Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance;

(4) **Boycott, coercion and intimidation.** Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion, or intimidation, resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance;

(5) **False financial statements.** Filing with any supervisory or other public official, or making, publishing, disseminating, circulating, or delivering it to any person, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer with intent to deceive;

(6) **False entries.** Making any false entry in any book, report, or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom such insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, wilfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report, or statement of such insurer;

(7) **Stock operations and advisory board contracts.** Issuing or delivering, or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance;

(8) **Discrimination.** Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract;

(9) **Discrimination between individuals of the same class.** Making or permitting any unfair discrimination between individuals of the same class and of

essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

(10) **Rebates.** Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of life insurance, annuity, or accident and health insurance, or agreement as to such contract, other than as plainly expressed in the contract issued thereon, or paying or allowing or giving, or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving or selling or purchasing, or offering to give, sell, or purchase, as inducement to such insurance or annuity, or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract;

(11) **Application to certain sections.** Any violation of any provision of the following sections of this chapter not set forth in clauses (1) to (10) of this subdivision: section 72A.12, subdivisions 2, 3, and 4, section 72A.16, subdivision 2, sections 72A.03 and 72A.04, section 72A.08, subdivision 1 as modified by section 72A.08, subdivision 4, and section 65B.13;

(12) **Unfair service.** Causing or permitting with such frequency to indicate a general business practice the claims and complaints of insureds to be processed in an unreasonable length of time, or in an unfair, deceptive, or fraudulent manner, or in violation of such regulations as the commissioner of insurance shall make in the public interest to insure the prompt, fair, and honest processing of such claims and complaints.

**Subd. 2. Practices not held to be discrimination or rebates.** Nothing in subdivision 1, clauses (8) and (10), or in section 72A.12, subdivisions 3 and 4, shall be construed as including within the definition of discrimination or rebates any of the following practices:

(1) In the case of any contract of life insurance or annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the company and its policyholders;

(2) In the case of life insurance policies issued on the industrial debt plan, making allowance, to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer, in an amount which fairly represents the saving in collection expense;

(3) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year.

[1967 c 395 art 12 s 20; 1973 c 474 s 1]

**72A.21 POWER OF COMMISSIONER.** The commissioner shall have power to examine and investigate into the affairs of every person engaged in the business of insurance in this state in order to determine whether that person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by section 72A.19.

[1967 c 395 art 12 s 21]

**72A.22 HEARING; WITNESSES; PRODUCTION OF BOOKS.** Subdivision 1. **Statement of charges and notice of hearing.** Whenever the commissioner has reason to believe that any person has been engaged or is engaging in this state in any unfair method of competition or any unfair or deceptive act or practice, defined in section 72A.20, and that a proceeding by him in respect thereto would be to the interest of the public, he shall issue and serve upon that person a statement of the charges in that respect and a notice of a hearing thereon to be held at a time and place fixed in the notice, which shall not be less than 20 days after the date of the service thereof.

**Subd. 2. Appearance; intervention.** At the time and place fixed for such hearing said person shall have an opportunity to be heard and to show cause why an

order should not be made by the commissioner requiring him to cease and desist from the acts, methods, or practices so complained of. Upon good cause shown, the commissioner shall permit any person to intervene, appear and be heard at such hearing by counsel or in person.

Subd. 3. **Formal rules of pleading or evidence not required.** Nothing contained in sections 72A.17 to 72A.32 shall require the observance at any such hearing of formal rules of pleading or evidence.

Subd. 4. **Hearing.** The commissioner, upon such a hearing, may administer oaths, examine and cross-examine witnesses, receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance, and require the production of books, papers, records, correspondence, or other documents which he deems relevant to the inquiry. The commissioner, upon such a hearing, may, and upon the request of any party shall, cause to be made a stenographic record of all the evidence and all the proceedings had at the hearing. If no stenographic record is made and if a judicial review is sought, the commissioner shall prepare a statement of the evidence and proceeding for use on review. In case of a refusal of any person to comply with any subpoena issued hereunder or to testify with respect to any matter concerning which he may be lawfully interrogated, the district court of Ramsey county or of the county where the hearing is being held, on application of the commissioner, may issue an order requiring that person to comply with the subpoena and to testify; and any failure to obey any such order of the court may be punished by the court as a contempt thereof.

Subd. 5. **Service.** Statements of charges, notices, orders, and other processes of the commissioner under sections 72A.17 to 72A.32 may be served by anyone duly authorized by the commissioner, either in the manner provided by law for service of process in civil actions or by registering and mailing a copy thereof to the person affected by the statement, notice, order, or other process at his residence or principal office or place of business. A verified return by the person serving the statement, notice, order, or other process, setting forth the manner of such service, or the return postcard receipt for a copy of the statement, notice, order, or other process, registered and mailed as aforesaid, shall be proof of the service of the same.

[1967 c 395 art 12 s 22]

**72A.23 DECISION AND ORDER THEREON.** Subdivision 1. **Determination by commissioner; findings.** If, after a hearing, as provided in section 72A.22, the commissioner shall determine that the method of competition or the act or practice in question is defined in section 72A.20, and that the person complained of has engaged in that method of competition, act, or practice, in violation of sections 72A.17 to 72A.32 he shall reduce his findings to writing and shall issue and cause to be served upon the person charged with the violation an order requiring him to cease and desist from engaging in that method of competition, act or practice.

Subd. 2. **Modification of order.** Until the expiration of the time allowed under section 72A.24, subdivision 1, for filing a petition for review, if no such petition has been duly filed within that time, or, if a petition for review has been filed within that time, then until the transcript of the record in the proceeding has been filed in the district court, as hereinafter provided, the commissioner may at any time, upon such notice and in such manner as he shall deem proper, modify or set aside in whole or in part any order issued by him under this section.

Subd. 3. **Commissioner may reopen, modify, or set aside.** After the expiration of the time allowed for filing such a petition for review, if no such petition has been duly filed within that time, the commissioner may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any order issued by him under this section, whenever in his opinion conditions of fact or of law have so changed as to require such action, or if the public interest shall so require.

[1967 c 395 art 12 s 23]

**72A.24 ENFORCEMENT OF SECTIONS 72A.17 TO 72A.32.** Subdivision 1. **Court proceedings; review.** Any person required by an order of the commissioner under section 72A.23 to cease and desist from engaging in any unfair method of competition or any unfair or deceptive act or practice defined in section 72A.20 may obtain a review of that order by filing in the district court of Ramsey county, within 20 days from the date of the service of such order, a written petition praying that the order of the commissioner be set aside. A copy of the petition shall be forthwith served upon the commissioner, and thereupon the commissioner forth-



with shall certify and file in that court a transcript of the entire record in the proceeding, including all the evidence taken and the findings and order of the commissioner. Upon the filing of the petition and transcript, said court shall have jurisdiction of the proceeding and of the questions determined therein, shall determine whether the filing of such petition shall operate as a stay of the order of the commissioner, and shall have power to make and enter upon the pleadings, evidence, and proceedings set forth in the transcript a decree modifying, affirming, or reversing the order of the commissioner, in whole or in part. The findings and order of the commissioner shall be given the same effect as is given to determinations of administrative bodies on review by certiorari.

**Subd. 2. Court order.** To the extent that the order of the commissioner is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of the order of the commissioner.

**Subd. 3. Rehearing.** If, before the entry of the decree of the court, either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that said additional evidence is material and that there were reasonable grounds for the failure to adduce it in the proceeding before the commissioner, the court may order said additional evidence to be taken before the commissioner and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commissioner may modify his findings of fact, or make new findings, by reason of the additional evidence so taken and shall file those modified or new findings and his recommendation, if any, for the modification or setting aside of his original order, with the return of the additional evidence. Any such additional evidence, modified or new findings, and recommendation shall be considered by the court in making and entering its final decree, together with the matters submitted in the original transcript.

**Subd. 4. Final cease and desist order.** A cease and desist order issued by the commissioner under section 72A.23 shall become final:

(1) Upon the expiration of the time allowed for filing a petition for review if no such petition has been duly filed within such time; except that the commissioner may thereafter modify or set aside his order to the extent provided in section 72A.23, subdivision 3; or

(2) Upon the final decision of the court if the court directs that the order of the commissioner be affirmed or the petition for review dismissed.

[1967 c 395 art 12 s 24]

**72A.25 UNFAIR COMPETITION.** Subdivision 1. **Statement of charges; service; hearing.** Whenever the commissioner has reason to believe that any person engaged in the business of insurance is engaged in this state in any method of competition or in any act or practice in the conduct of that business which is not defined in section 72A.20, that said method of competition is unfair or that said act or practice is unfair or deceptive and that a proceeding by him in respect thereto would be to the interest of the public, he may issue and serve upon that person a statement of the charges in that respect and a notice of a hearing thereon to be held at a time and place fixed in the notice, which shall not be less than 20 days after the date of the service thereof. Each such hearing shall be conducted in the same manner as the hearings provided for in section 72A.22, and the provisions of that section as to service are made applicable to proceedings under this section. Upon good cause shown, the commissioner shall permit any person to intervene, appear and be heard at such hearing by counsel or in person. The commissioner shall, after the hearing, make a report in writing in which he shall state his findings as to the facts and shall serve a copy thereof upon the person upon whom he served his statement of charges.

**Subd. 2. Application for injunction.** If the report charges a violation of sections 72A.17 to 72A.32 and if the method of competition, act, or practice charged by him has not been discontinued, the commissioner may, through the attorney general, at any time after 20 days after the service of the report, cause a petition to be filed in the district court within the district wherein the person against whom the charges were made resides, or that wherein he has his principal place of business, to enjoin and restrain that person from engaging in the method, act, or practice charged. A transcript of the proceedings before the commissioner, including all evidence taken and the report and findings, shall be filed with the petition. Upon the filing of the petition and transcript the court shall have jurisdiction of the

# MINNESOTA STATUTES 1974

1101

## REGULATION OF TRADE PRACTICE; PROHIBITIONS 72A.28

proceedings and shall have power to make and enter appropriate orders in connection therewith and to issue such writs as are ancillary to its jurisdiction or necessary in its judgment to prevent injury to the public pendente lite.

**Subd. 3. Order enjoining and restraining.** If the court finds that the method of competition complained of is unfair or that the act or practice complained of is unfair and deceptive, and that the proceeding by the commissioner with respect thereto is to the interests of the public, it shall issue its order enjoining and restraining the continuance of that method of competition, act, or practice. The findings of the commissioner shall be given the same effect as those of a referee appointed pursuant to Minnesota Statutes, Section 546.36.

**Subd. 4. Rehearing.** If either party shall apply to the court before the entry of its order for leave to adduce additional evidence, and shall show to the satisfaction of the court that said additional evidence is material and that there were reasonable grounds for the failure to adduce it in the proceeding before the commissioner, the court may order said additional evidence to be taken before the commissioner and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commissioner may modify his findings of fact, or make new findings, by reason of the additional evidence so taken, and shall file those modified or new findings with the return of the additional evidence. Any such additional evidence and modified or new findings shall be considered by the court in making and entering its final order, together with the matters submitted in the original transcript.

[1967 c 395 art 12 s 25]

**72A.26 INTERVENTION.** If the report of the commissioner does not charge a violation of sections 72A.17 to 72A.32, any intervenor in the proceedings may, within 20 days after the service of the report upon him, cause a petition to be filed in the district court of Ramsey county for a review of that report. Notice of the filing of the intervenor's petition shall be given to the commissioner and to the person upon whom the statement of charges was originally served. The commissioner shall, within 20 days after the service upon him of the notice of filing the petition, file a transcript of the proceedings before him, including all evidence taken and his report and findings, and the person upon whom the statement of charges was originally served shall have 20 days after the service upon him of notice of filing the petition in which to file an answer. The proceedings before the court shall conform to those provided for by section 72A.25. Upon such a review the court shall have authority to issue appropriate orders and writs in connection therewith, including, if the court finds it is to the interest of the public, orders enjoining and restraining the continuance of any method of competition, act, or practice which it finds, notwithstanding the report of the commissioner, constitutes a violation of sections 72A.17 to 72A.32.

[1967 c 395 art 12 s 26]

**72A.27 APPEAL TO SUPREME COURT.** Any decree or order of a district court made and entered under section 72A.24 or order of such a court made under section 72A.25 shall be subject to review by appeal to the supreme court, but any such appeal must be taken within the time prescribed by law for taking appeals from orders of the district courts.

[1967 c 395 art 12 s 27]

**72A.28 VIOLATIONS AND PENALTIES.** Subdivision 1. Any person who violates a cease and desist order of the commissioner under section 72A.23, after it has become final and while such order is in effect, shall forfeit and pay to the state of Minnesota a sum not to exceed \$10,000 for each violation, which may be recovered in a civil action. In determining the amount of the penalty the question of whether the violation was wilful shall be taken into consideration. In addition to recovering a penalty, the commissioner of insurance may revoke or suspend, in accordance with section 60A.05, any or all certificates of authority granted to any insurance company which violates a cease and desist order of the commissioner under section 72A.23, after it has become final and while such order is in effect. Nothing herein shall be construed as limiting a court in enforcing its own orders.

**Subd. 2.** After a cease and desist order issued by the commissioner becomes final under section 72A.24, subdivision 4, any person found to have violated section 72A.19 may be required by the commissioner to pay a penalty, for the use of the state, of not less than \$500 and not more than \$5,000 for each offense. Any insurer

which fails to pay the penalty within ten days after notice from the commissioner shall be subject to having any or all of its certificates of authority suspended by the commissioner in accordance with section 60A.05 until the penalty is paid.

[1967 c 395 art 12 s 28; 1973 c 474 s 2]

**72A.29 CONCURRENT REMEDIES.** Subdivision 1. **Liability under other laws.** No order of the commissioner, or order or decree of any district court, under sections 72A.17 to 72A.32 shall in any way relieve or absolve any person affected by such order or decree from any liability under any other laws of this state.

Subd. 2. **Concurrent powers.** The powers vested in the commissioner by sections 72A.17 to 72A.32 shall be additional to any other powers to enforce any penalties, fines, or forfeitures authorized by law with respect to the methods, acts, and practices hereby declared to be unfair or deceptive.

[1967 c 395 art 12 s 29]

**72A.30 EVIDENTIAL PRIVILEGE DENIED; IMMUNITY; WAIVER.** If any person shall ask to be excused from attending and testifying or from producing any books, papers, records, correspondence, or other documents at any hearing on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, and shall notwithstanding be directed to give such testimony or produce such evidence, he must nonetheless comply with such direction, but he shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence pursuant thereto, and no testimony so given or evidence produced shall be received against him upon any criminal action, investigation, or proceeding; provided, however, that no such individual so testifying shall be exempt from prosecution or punishment for any perjury committed by him while so testifying, and the testimony or evidence so given or produced shall be admissible against him upon any criminal action, investigation, or proceeding concerning such perjury, nor shall he be exempt from the refusal, revocation, or suspension of any license, permission, or authority conferred, or to be conferred, pursuant to the insurance law of this state. Any such individual may execute, acknowledge, and file in the office of the commissioner a statement expressly waiving such immunity or privilege in respect to any transaction, matter, or thing specified in the statement, and thereupon the testimony of that person or any evidence in relation to that transaction, matter, or thing may be received or produced before any judge or justice, court, tribunal, grand jury, or otherwise, and, if so received or produced, that individual shall not be entitled to any immunity or privilege on account of any testimony he may so give or evidence so produced.

[1967 c 395 art 12 s 30]

**72A.31 CERTAIN ACTS DEEMED UNFAIR METHOD OF COMPETITION.** Subdivision 1. No person, firm or corporation engaged in the business of financing the purchase of real or personal property or of lending money on the security of real or personal property or who acts as agent or broker for one who purchases real property and borrows money on the security thereof, and no trustee, director, officer, agent or other employee of any such person, firm, or corporation shall directly or indirectly require, as a condition precedent to such purchase or financing the purchase of such property or to loaning money upon the security of a mortgage thereon, or as a condition prerequisite for the renewal or extension of any such loan or mortgage or for the performance of any other act in connection therewith, that the person, firm or corporation making such purchase or for whom such purchase is to be financed or to whom the money is to be loaned or for whom such extension, renewal or other act is to be granted or performed negotiate any policy of insurance or renewal thereof covering such property through a particular agent, or insurer, or refuse to accept any policy of insurance covering such property because it was not negotiated through or with any particular agent, or insurer. This section shall not prevent the disapproval of the insurer or a policy of insurance by any such person, firm, corporation, trustee, director, officer, agent or employee where there are reasonable grounds for believing that such insurance is unsatisfactory as to placement with an unauthorized insurer, the financial solvency of the insurer, adequacy of the coverage, adequacy of the insurer to assume the risk to be insured, the assessment features to which the policy is subject, or other grounds which are not arbitrary, unreasonable or discriminatory, nor shall this section forbid the securing of insurance or a renewal thereof at the request of the borrower or

# MINNESOTA STATUTES 1974

1103

## REGULATION OF TRADE PRACTICE; PROHIBITIONS 72A.35

because of the borrower's failure to furnish the necessary insurance or renewal thereof.

Upon notice of any such disapproval of an insurer or a policy of insurance, the commissioner may order the approval of the insurer or the acceptance of the tendered policy of insurance, or both, if he determines such disapproval is not in accordance with the foregoing requirements. Failure to comply with such an order of the insurance commissioner shall be deemed a violation of this section.

Subd. 2. It shall be unlawful in connection with any contract or subcontract calling for any construction work for a public agency to require, directly or indirectly, that any insurance or bond be purchased or renewed through a particular agent or insurer.

[1967 c 395 art 12 s 31; 1969 c 229 s 1; 1969 c 433 s 1]

**72A.32 VIOLATIONS, PROCEDURE.** Any violation of section 72A.31 shall constitute an unfair method of competition and the person, firm or corporation practicing the same shall be proceeded against under the provisions of sections 72A.21 to 72A.25, inclusive.

[1967 c 395 art 12 s 32]

**72A.321 AFFILIATION WITH FUNERAL ESTABLISHMENT.** No insurance company shall be operated directly or indirectly in affiliation or connection with any funeral director or funeral establishment, nor shall an insurance company contract, by assignment or otherwise, to pay insurance or its benefits, or any part of either, to any funeral director or funeral establishment predetermined or designated by it, so as to deprive the family or representatives of the deceased policyholder from, or in any way to control them in, obtaining for his funeral and burial, funeral services and supplies in the open market.

[1967 c 422 s 13]

### UNAUTHORIZED INSURERS FALSE ADVERTISING PROCESS ACT

**72A.33 PURPOSE OF ACT, CONSTRUCTION.** The purpose of sections 72A.33 to 72A.39 is to subject to the jurisdiction of the insurance commissioner of this state and to the jurisdiction of the courts of this state insurers not authorized to transact business in this state which place in or send into this state any false advertising designed to induce residents of this state to purchase insurance from insurers not authorized to transact business in this state. The legislature declares it is in the interest of the citizens of this state who purchase insurance from insurers which solicit insurance business in this state in the manner set forth in the preceding sentence that such insurers be subject to the provisions of sections 72A.33 to 72A.39. In furtherance of such state interest, the legislature herein provides a method of substituted service of process upon such insurers and declares that in so doing, it exercises its power to protect its residents and also exercises powers and privileges available to the state by virtue of Public Law 15, 79th Congress of the United States, Chapter 20, 1st Session, S. 340, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states; the authority provided herein to be in addition to any existing powers of this state. The provisions of sections 72A.33 to 72A.39 shall be liberally construed.

[1967 c 395 art 12 s 33]

**72A.34 DEFINITIONS.** Subdivision 1. **Scope.** When used in sections 72A.33 to 72A.39 the terms defined in this section shall have the meanings given them in this section.

Subd. 2. **Unfair trade practice act.** Unfair trade practice act shall mean the act relating to regulation of trade practices as defined in sections 72A.17 to 72A.32.

Subd. 3. **Residents.** Residents shall mean and include persons, partnerships or corporations, domestic, alien, or foreign.

[1967 c 395 art 12 s 34]

**72A.35 NOTICE TO DOMICILIARY SUPERVISORY OFFICIAL.** No unauthorized foreign or alien insurer of the kind described in section 72A.33 shall make, issue, circulate or cause to be made, issued or circulated, to residents of this state any estimate, illustration, circular, pamphlet, or letter, or cause to be made in any newspaper, magazine or other publication or over any radio or television

station, any announcement or statement to such residents misrepresenting its financial condition or the terms of any contracts issued or to be issued or the benefits or advantages promised thereby, or the dividends or share of the surplus to be received thereon in violation of the unfair trade practice act, and whenever the commissioner shall have reason to believe that any such insurer is engaging in such unlawful advertising, it shall be his duty to give notice of such fact by registered mail to such insurer and to the insurance supervisory official of the domiciliary state of such insurer. For the purpose of this section, the domiciliary state of an alien insurer shall be deemed to be the state of entry or the state of the principal office in the United States.

[1967 c 395 art 12 s 35]

**72A.36 ACTION BY COMMISSIONER.** If after 30 days following the giving of the notice mentioned in section 72A.35 such insurer has failed to cease making, issuing, or circulating such false representations or causing the same to be made, issued or circulated in this state, and if the commissioner has reason to believe that a proceeding by him in respect to such matters would be to the interest of the public, and that such insurer is issuing or delivering contracts of insurance to residents of this state or collecting premiums on such contracts or doing any of the acts enumerated in section 72A.37, he shall take action against such insurer under the unfair trade practice act.

[1967 c 395 art 12 s 36]

**72A.37 SERVICE UPON UNAUTHORIZED INSURER.** Subdivision 1. **Acts constituting appointment of commissioner as attorney.** Any of the following acts in this state, effected by mail or otherwise, by any such unauthorized foreign or alien insurer: (1) The issuance or delivery of contracts of insurance to residents of this state; (2) the solicitation of applications for such contracts; (3) the collection of premiums, membership fees, assessments or other considerations for such contracts; or (4) any other transaction of insurance business; is equivalent to and shall constitute an appointment by such insurer of the commissioner of insurance and his successor or successors in office, to be its true and lawful attorney, upon whom may be served all statements of charges, notices and lawful process in any proceeding instituted in respect to the misrepresentations set forth in section 72A.35 under the provisions of the unfair trade practice act, or in any action, suit or proceeding for the recovery of any penalty therein provided, and any such act shall be signification of its agreement that such service of statement of charges, notices or process is of the same legal force and validity as personal service of such statement of charges, notices or process in this state, upon such insurer.

Subd. 2. **Method of service.** Service of a statement of charges and notices under said unfair trade practice act shall be made by any deputy or employee of the department of insurance delivering to and leaving with the commissioner or some person in apparent charge of his office, two copies thereof. Service of process issued by any court in any action, suit or proceeding to collect any penalty under said act provided, shall be made by delivering and leaving with the commissioner, or some person in apparent charge of his office, two copies thereof. The commissioner shall forthwith cause to be mailed by registered mail one of the copies of such statement of charges, notices or process to the defendant at its last known principal place of business, and shall keep a record of all statements of charges, notices and process so served. Such service of statement of charges, notices or process shall be sufficient provided they shall have been so mailed and the defendant's receipt or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the person mailing such letter showing a compliance herewith are filed with the commissioner in the case of any statement of charges or notices, or with the clerk of the court in which such action is pending in the case of any process, on or before the date the defendant is required to appear or within such further time as may be allowed.

Subd. 3. **Service on agents and certain others.** Service of statement of charges, notices and process in any such proceeding, action or suit shall in addition to the manner provided in subdivision 2 of this section be valid if served upon any person within this state who on behalf of such insurer is

- (1) soliciting insurance, or
- (2) making, issuing or delivering any contract of insurance, or

# MINNESOTA STATUTES 1974

1105

## REGULATION OF TRADE PRACTICE; PROHIBITIONS 72A.41

(3) collecting or receiving in this state any premium for insurance; and a copy of such statement of charges, notices or process is sent within ten days thereafter by registered mail by or on behalf of the commissioner to the defendant at the last known principal place of business of the defendant, and the defendant's receipt, or the receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter, the name and address of the person to whom the letter is addressed, and the affidavit of the person mailing the same showing a compliance herewith, are filed with the commissioner in the case of any statement of charges or notices, or with the clerk of the court in which such action is pending in the case of any process, on or before the date the defendant is required to appear or within such further time as the court may allow.

**Subd. 4. Cease or desist order.** No cease or desist order under this section shall be entered until the expiration of 30 days from the date of the filing of the affidavit of compliance.

**Subd. 5. Other methods of service.** Service of process and notice under the provisions of sections 72A.33 to 72A.39 shall be in addition to all other methods of service provided by law, and nothing in sections 72A.33 to 72A.39 shall limit or prohibit the right to serve any statement of charges, notices or process upon any insurer in any other manner now or hereafter permitted by law.

[1967 c 395 art 12 s 37]

**72A.38 CONSTITUTIONALITY.** If any provision of sections 72A.33 to 72A.39 or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of sections 72A.33 to 72A.39 which can be given effect without the invalid provision or application, and to this end the provisions of sections 72A.33 to 72A.39 are declared to be severable.

[1967 c 395 art 12 s 38]

**72A.39 CITATION.** Sections 72A.33 to 72A.39 may be cited as the unauthorized insurers false advertising process act.

[1967 c 395 art 12 s 39]

**72A.40 PURPOSE.** The legislature declares that it is a subject of concern that many residents of this state hold policies of insurance issued or delivered in this state by insurers not authorized to do insurance business in this state. The legislature further declares that it desires to protect residents of this state against acts by insurers not authorized to do an insurance business in this state, to maintain fair and honest insurance markets, to protect the premium tax revenues of this state, to protect authorized insurers who are subject to strict regulation from unfair competition by unauthorized insurers, and to protect against the evasion of the insurance regulatory laws of this state. In furtherance of the state interest, the legislature herein provides a method for substituted service of process upon unauthorized insurers. The legislature declares that in so doing it exercises its power to protect residents of this state and to define what constitutes doing an insurance business in this state, and also exercises powers and privileges available to this state by virtue of Public Law 79-15, 59 Statutes at Large 33, as amended, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states.

[1967 c 590 s 1]

**72A.41 TRANSACTING BUSINESS WITHOUT CERTIFICATE OF AUTHORITY PROHIBITED.** Subdivision 1. It shall be unlawful for any company to enter into a contract of insurance as an insurer or to transact insurance business in this state, as set forth in subdivision 2 of this section, without a certificate of authority from the commissioner; provided that this subdivision shall not apply to: (a) contracts of insurance procured by agents under the authority of section 60A.20; (b) contracts of reinsurance and contracts of ocean or wet marine and transportation insurance; (c) transactions in this state involving a policy lawfully solicited, written and delivered outside of this state covering only subjects of insurance not resident, located or expressly to be performed in this state at the time of issuance and which transactions are subsequent to the issuance of such policy; (d) transactions in this state involving group or blanket insurance and group annuities where the master policy of such groups was lawfully issued and delivered in a state in which the company was authorized to do an insurance business; (e) transactions in this state involving a policy of insurance or annuity issued prior to

# MINNESOTA STATUTES 1974

## 72A.42 REGULATION OF TRADE PRACTICE; PROHIBITIONS

1106

July 1, 1967; or (f) contract of insurance procured under the authority of section 60A.19, subdivision 8; or (g) transactions in this state involving contracts of insurance covering property or risks not located in this state.

Subd. 2. Any of the following acts in this state, effected by mail or otherwise by an unauthorized insurer, shall be included among those deemed to constitute transacting insurance business in this state: (a) the issuance or delivery of a contract of insurance or annuity to a resident of this state; (b) the solicitation of an application for such a contract; (c) the collection of a premium, membership fee, assessment or other consideration for such a contract; or (d) the transaction of any matter subsequent to the execution of such a contract and arising out of it.

Subd. 3. The failure of a company to obtain a certificate of authority shall not impair the validity of any act or contract of such company and shall not prevent such company from defending any action in any court of this state, but no company transacting insurance business in this state without a certificate of authority shall be permitted to maintain an action in any court of this state to enforce any right, claim or demand arising out of the transaction of such business until such company shall have obtained a certificate of authority. Nor shall an action be maintained in any court of this state by any successor or assignee of such company on any such right, claim or demand originally held by such company until a certificate of authority shall have been obtained by such company or by a company which has acquired all or substantially all of its assets.

[1967 c 590 s 2; 1969 c 6 s 17]

**72A.42 COMMISSIONER MAY ENJOIN UNAUTHORIZED COMPANY.** Subdivision 1. Whenever the commissioner believes, from evidence satisfactory to him, that any company is violating or about to violate the provisions of section 72A.41, the commissioner may, through the attorney general of this state, cause a complaint to be filed in the district court of Ramsey County to enjoin and restrain such company from continuing such violation or engaging therein or doing any act in furtherance thereof. The court shall have jurisdiction of the proceeding and shall have the power to make and enter an order or judgment awarding such preliminary or final injunctive relief as in its judgment is proper.

Subd. 2. The attorney general may proceed in the courts of this state or any reciprocal state to enforce an order or decision in any court proceeding or in any administrative proceeding before the commissioner of insurance.

(a) Definition—In this section:

(1) "Reciprocal state" means any state or territory of the United States the laws of which contain procedures substantially similar to those specified in this section for the enforcement of foreign decrees issued by courts located in other states or territories of the United States, against any insurer incorporated or authorized to do business in said state or territory.

(2) "Foreign decree" means any decree or order in equity or in law, including without being limited thereto, final money judgments for penalties and fines of a court located in a "reciprocal state", including a court of the United States located therein, against any insurer incorporated or authorized to do business in this state.

(3) "Qualified party" means a state regulatory agency acting in its capacity to enforce the insurance laws of its state.

(b) List of Reciprocal States: The insurance commissioner of this state shall determine which states and territories qualify as reciprocal states and shall maintain at all times an up-to-date list of such states.

(c) Filing and Status of Foreign Decrees: a copy of any foreign decree authenticated in accordance with the statutes of this state may be filed in the office of the clerk of District Court of Ramsey County of this state. The clerk, upon verifying with the insurance commissioner that the decree or order qualifies as a "foreign decree" shall treat the foreign decree in the same manner as a decree of District Court of Ramsey County of this state. A foreign decree so filed has the same effect and shall be deemed as a decree of District Court of Ramsey County of this state, and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a decree of District Court of Ramsey County of this state and may be enforced or satisfied in like manner.

(d) Notice of filing:

(1) At the time of the filing of the foreign decree, the attorney general shall

# MINNESOTA STATUTES 1974

1107

## REGULATION OF TRADE PRACTICE; PROHIBITIONS 72A.43

make and file with the clerk of the court an affidavit setting forth the name and last known post office address of the defendant.

(2) Promptly upon the filing of the foreign decree and the affidavit, the clerk shall mail notice of the filing of the foreign decree to the defendant at the address given and to the insurance commissioner of this state and shall make a note of the mailing in the docket. In addition, the attorney general may mail a notice of the filing of the foreign decree to the defendant and to the insurance commissioner of this state and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the attorney general has been filed.

(3) No execution or other process for enforcement of a foreign decree filed hereunder shall issue until 30 days after the date the decree is filed.

(e) Stay:

(1) If the defendant shows the District Court of Ramsey County that an appeal from the foreign decree is pending or will be taken, or that a stay of execution has been granted, the court may stay enforcement of the foreign decree until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the defendant has furnished the security for the satisfaction of the decree required by the state in which it was rendered.

(2) If the defendant shows the District Court of Ramsey County any ground upon which enforcement of a decree of District Court of Ramsey County of this state would be stayed, the court may stay enforcement of the foreign decree for an appropriate period, upon requiring the same security for satisfaction of the decree which is required in this state.

(f) Fees: Any person filing a foreign decree shall pay to the clerk of court as a fee for docketing, transcription or other enforcement proceedings, the amount provided for decrees of the District Court of Ramsey County.

[1967 c 590 s 3; 1969 c 459 s 1]

**72A.43 SERVICE OF PROCESS UPON UNAUTHORIZED COMPANY BY COMMISSIONER.** Subdivision 1. Any act of entering into a contract of insurance or annuity as an insurer or transacting insurance business in this state as set forth in subdivision 2 of section 72A.41, by an unauthorized company is equivalent to and shall constitute an appointment by such company of the secretary of state and his successor or successors in office to be its true and lawful attorney upon whom may be served all lawful process in any action or proceeding against it, arising out of a violation of section 72A.41, and any of such acts shall be a signification of its agreement that any such process against it which is so served shall be of the same legal force and validity as personal service of process in this state upon such company.

Subd. 2. Service of such process shall be made by delivering and leaving with the secretary of state two copies thereof and the payment to the secretary of state of the fee prescribed by law. The secretary of state shall forthwith mail by registered mail one of the copies of such process to such company at its last known principal place of business, and shall keep a record of all process so served upon him. Such process shall be sufficient service upon such company provided notice of such service and a copy of the process are, within ten days thereafter, sent by registered mail by or on behalf of the commissioner to such company at its last known principal place of business, and such company's receipt, or receipt issued by the post office with which the letter is registered, and an affidavit of compliance herewith by or on behalf of the commissioner, are filed with the clerk of the court in which such action or proceeding is pending on or before the return date of such process or within such further time as the court may allow.

Subd. 3. The court in any action or proceeding in which service is made in the manner provided in subdivision 2 may, in its discretion, order such postponement as may be necessary to afford such company reasonable opportunity to defend such action or proceeding.

Nothing in this section is to be construed to prevent an unauthorized company from filing a motion to quash a writ or to set aside service thereof made in the manner provided in subdivision 2 on the ground that such unauthorized company has not done any of the acts referred to in subdivision 1.

Subd. 4. No judgment by default shall be entered in any such action or pro-



# MINNESOTA STATUTES 1974

## 72A.44 REGULATION OF TRADE PRACTICE; PROHIBITIONS

1108

ceeding until the expiration of 30 days from the date of the filing of the affidavit of compliance.

Subd. 5. Nothing contained in this section shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon any company in any other manner now or hereafter permitted by law.

[1967 c 590 s 4]

**72A.44 PENALTY.** Any company that violates subdivision 1 of section 72A.41, shall be required to pay a penalty of not less than \$100 nor more than \$1000 for each offense, to be recovered on behalf of the state.

[1967 c 590 s 5]

**72A.45 NONAPPLICATION.** Sections 72A.40 to 72A.45 shall not apply to any life insurance company organized and operated, without profit to any private shareholder or individual, exclusively for the purpose of aiding educational or scientific institutions organized and operated without profit to any private shareholder or individual by issuing insurance and annuity contracts direct from the home office of the company and without agents or representatives in this state only to or for the benefit of the institutions and to individuals engaged in the services of the institutions; provided such company agrees to appoint the commissioner, and his successors in office, as its attorney to receive service of legal process issued against it in Minnesota, such appointment to be irrevocable and to bind the company and any successors in interest and to remain in effect as long as there is in force in this state any contract made by that company or any obligation arising therefor; nor shall sections 72A.40 to 72A.45 apply to any insurance or annuity contracts issued by such a life insurance company.

[1967 c 590 s 6]