

CHAPTER 60A

INSURANCE DIVISION

60A.02	Definitions.	60A.198	Transaction of surplus lines insurance.
60A.031	Examinations.	60A.199	Examinations.
60A.05	Suspension of authority.	60A.20	Repealed.
60A.11	Investments for domestic companies.	60A.201	Placement of insurance by licensee.
60A.111	Qualified assets to required liabilities; ratio.	60A.202	Placement of insurance by licensee.
60A.13	Annual statement, inquiries, abstracts, publication thereof.	60A.203	Licensees to file evidence of transactions.
60A.14	Fees.	60A.204	Additional charges and fees.
60A.15	Taxation of insurance companies.	60A.205	Compensation.
60A.17	Agents; solicitors.	60A.206	Qualification as eligible surplus lines insurer.
60A.195	Citation.	60A.207	Policies to include notice.
60A.196	Definitions.	60A.208	Licensee association.
60A.197	Rates and forms.	60A.209	Insurance procured from ineligible insurers.
		60A.23	Miscellaneous.

60A.02 DEFINITIONS.

[For text of subs 1 to 6, see M.S.1980]

Subd. 7. **Insurance agent.** An “insurance agent” is a person acting under express authority from an insurer and on its behalf to solicit insurance, or to appoint other agents to solicit insurance, or to write and countersign policies of insurance, or to collect premiums therefor within this state, or to exercise any or all these powers when so authorized by the insurer. The term “person” includes a natural person, a partnership, or a corporation.

Subd. 8. *[Repealed, 1981 c 307 s 22]*

[For text of subs 9 to 18, see M.S.1980]

History: 1981 c 307 s 1

60A.031 EXAMINATIONS.

Subdivision 1. **Power to examine.** (1) **Insurers and other licensees.** At any time and for any reason related to the enforcement of the insurance laws, the commissioner may examine the affairs and conditions of any foreign or domestic insurance company, including reciprocals and fraternal, licensee or applicant for a license under the insurance laws, or any other person or organization of persons doing or in the process of organizing to do any insurance business in this state, and of any licensed advisory organization serving any of the foregoing in this state.

(2) **Who may be examined.** The commissioner in making any examination of an insurance company as authorized by this section may, if in his discretion, he has cause to believe he is unable to obtain relevant information from such insurance company, examine any person, association, or corporation:

(a) transacting, having transacted, or being organized to transact the business of insurance in this state;

(b) engaged in or proposing to be engaged in the organization, promotion, or solicitation of shares or capital contributions to or aiding in the formation of a domestic insurance company;

(c) holding shares of capital stock of an insurance company for the purpose of controlling the management thereof as voting trustee or otherwise;

(d) having a contract, written or oral, pertaining to the management or control of an insurance company as general agent, managing agent, attorney-in-fact, or otherwise;

(e) which has substantial control directly or indirectly over an insurance company whether by ownership of its stock or otherwise, or owning stock in any domestic insurance company, which stock constitutes a substantial proportion of either the stock of the domestic insurance company or of the assets of the owner thereof;

(f) which is a subsidiary or affiliate of an insurance company;

(g) which is a licensed agent or solicitor or has made application for the licenses;

(h) engaged in the business of adjusting losses or financing premiums.

Nothing contained in this clause (2) shall authorize the commissioner to examine any person, association, or corporation which is subject to regular examination by another division of the commerce department of this state. The commissioner shall notify the other division when an examination is deemed advisable.

Subd. 2. [Repealed, 1981 c 211 s 42]

Subd. 2a. **Purpose, scope, and notice of examination.** An examination may, but need not, cover comprehensively all aspects of the examinee's affairs, practices, and conditions. The commissioner shall determine the nature and scope of each examination and in doing so shall take into account all available relevant factors concerning the financial and business affairs, practices and conditions of the examinee. For examinations undertaken pursuant to this section, the commissioner shall issue an order stating the scope of the examination and designating the person responsible for conducting the examination. A copy of the order shall be provided to the examinee.

Subd. 3. **Access to examinee.** The commissioner, or the designated person, shall have free access during normal business hours to all books, records, securities, documents, and any or all papers relating to the property, assets, business, and affairs of any company, applicant, association, or person which may be examined pursuant to this act for the purpose of ascertaining, appraising, and evaluating the assets, conditions, affairs, operations, ability to fulfill obligations, and compliance with all the provisions of law of the company or person insofar as any of the above pertain to the business of insurance of a person, organization, or corporation transacting, having transacted, or being organized to transact business in this state. Every company or person being examined, its officers, directors, and agents, shall provide to the commissioner or the designated person convenient and free access at all reasonable hours at its office to all its books, records, securities, documents, any or all papers relating to the property, assets, business, and affairs of the company or person. The officers, directors, and agents of the company or person shall facilitate the examination and aid in the examination so far as it is in their power to do so.

Subd. 4. **Examination report; foreign and domestic companies.** The commissioner shall make a full and true report of every examination conducted pursuant to this chapter, which shall include (1) a statement of findings of fact relating to the financial status and other matters ascertained from the books, papers, records, documents, and other evidence obtained by investigation and examination or ascertained from the testimony of officers, agents, or other persons examined under oath concerning the business, affairs, assets, obligations, ability to fulfill obligations, and compliance with all the provisions of the law of the company, applicant, organization, or person subject to this chapter and (2) a summary of important points noted in the report, conclusions, recommendations and suggestions as may reasonably be warranted from the facts so ascertained in the

MINNESOTA STATUTES 1981 SUPPLEMENT

examinations. The report of examination shall be verified by the oath of the examiner in charge thereof, and shall be prima facie evidence in any action or proceedings in the name of the state against the company, applicant, organization, or person upon the facts stated therein.

Subd. 5. **Order; foreign and domestic companies.** Within a reasonable time of receipt of an examination report the commissioner may issue an order to the examinee directing compliance within a time specified in the order or by law with one or more of the following:

(a) to restore within the time and extent prescribed by law or the commissioner's order any deficiency, whenever its capital, reserves or surplus have become impaired,

(b) to cease and desist from transaction of any business or from any business practice which if transacted or continued might result in the examinee's condition or further transaction of business being hazardous to its policyholders, its creditors, or the public,

(c) to cease and desist from any other violation of its charter or any law of the state.

[For text of subd 6, see M.S.1980]

Subd. 7. **Alternatives to examinations.** (1) **Audits or actuarial evaluations.** In lieu of all or part of an examination under this chapter, or in addition to it, the commissioner may require an independent audit by certified public accountants approved by the commissioner or an actuarial evaluation by actuaries approved by the commissioner of any persons subject to the examination requirement of subdivision 1.

(2) **Reports.** In lieu of all or part of an examination under this section, the commissioner may accept the report of an audit made by certified public accountants approved by the commissioner or actuarial evaluation by actuaries approved by the commissioner or the report of an examination made by the insurance department of another state, of the examination made by another government agency in this state, the federal government or another state.

Subd. 8. **Power to make rules.** The commissioner may promulgate any rules which may be necessary to the administration of subdivisions 1 to 7.

History: 1981 c 211 s 1-7

60A.05 SUSPENSION OF AUTHORITY.

If the commissioner is of the opinion, upon examination or other evidence, that a foreign or domestic insurance company is in an unsound condition or, if a life insurance company, that its actual funds are less than its liabilities, or that it is insolvent; or if a foreign or domestic insurance company has failed to comply with the law, or if it, its officers, or agents, refuse to submit to examination, or to perform any legal obligation in relation thereto, and he believes protection of the interests of policyholders, claimants, or the general public requires summary action, he may revoke or suspend all certificates of authority granted to it or its agents, and shall cause notification thereof to be published in a newspaper authorized to publish annual statements of insurance companies, and no new business shall thereafter be done by it, or its agents, in this state while the default or disability continues, nor until its authority to do business is restored by the commissioner. The revocation or suspension will be effective ten days after notice to the company unless the ground for revocation or suspension relates only to the financial condition or soundness of the company or to a deficiency in its assets, in

which case revocation and suspension will be effective upon notice to the company. The notice shall specify the particulars of the supposed violation. The district court of any county, upon petition of the company, shall summarily hear and determine the question whether the ground for revocation or suspension exists, and shall make any proper order or decree therein, and enforce the same by any appropriate process. If the order or decree is adverse to the petitioning company, an appeal therefrom may be taken to the supreme court; and, in the case of appeal, the commissioner may issue his order revoking the right of the petitioning company to do business in this state until the final determination of the question by the supreme court. Neither this section nor any proceedings thereunder shall affect any criminal prosecutions or proceeding for the enforcement of any fine, penalty, or forfeiture.

History: 1981 c 211 s 8

60A.11 INVESTMENTS FOR DOMESTIC COMPANIES.

[For text of subd 1, see M.S.1980]

Subd. 2. [Repealed, 1981 c 211 s 42]

Subd. 3. [Repealed, 1981 c 211 s 42]

Subd. 4. [Repealed, 1981 c 211 s 42]

Subd. 5. [Repealed, 1981 c 211 s 42]

[For text of subds 5a and 5b, see M.S.1980]

Subd. 6. [Repealed, 1981 c 211 s 42]

Subd. 7. **Investments in name of company or nominee and prohibitions.** No officer, director, or member of any committee passing on investments shall borrow any of such funds, or become, directly or indirectly, liable as a surety or endorser for or on account of loans thereof to others, or receive to his own use any fee, brokerage, commission, gift, or other consideration for, or on account of, any loan made by or on behalf of the company.

Subd. 8. [Repealed, 1981 c 211 s 42]

Subd. 9. **General considerations.** The following considerations shall apply in the interpretation of this section:

(a) This section shall apply to the investments of insurance companies other than life insurance companies;

(b) The purpose of this section is to protect and further the interests of policyholders, claimants, creditors and the public by providing standards for the development and administration of programs for the investment of the assets of domestic companies. These standards and the investment programs developed by companies shall take into account the safety of company's principal, investment yield and growth, stability in the value of the investment, the liquidity necessary to meet the company's expected business needs, and investment diversification;

(c) All financial terms relating to insurance companies shall have the meanings assigned to them under statutory accounting methods. All financial terms relating to non-insurance companies shall have the meanings assigned to them under generally accepted accounting principles;

(d) Investments shall be valued in accordance with the valuation procedures established by the National Association of Insurance Commissioners, unless the commissioner requires or finds another method of valuation reasonable under the circumstances; and

(e) A company may elect to hold an investment which qualifies under more than one section, under the section of its choice. Nothing herein shall prevent a company from electing to hold an investment under a section different from the one in which it previously held the investment.

Subd. 10. **Definitions.** The following terms shall have the meaning assigned in this subdivision for purposes of this section:

(a) "Admitted assets", for purposes of computing percentage limitations on particular types of investments, means the assets as shown by the company's annual statement, required by section 60A.13, as of the December 31 immediately preceding the date the company acquires the investment;

(b) "Clearing corporation" means The Depository Trust Company and, with the approval of the commissioner, any other clearing corporation as defined in section 336.8-102;

(c) "Control" has the meaning assigned to that term in, and shall be determined in accordance with, section 60D.01, subdivision 4;

(d) "Custodian bank" means a bank or trust company that is supervised and examined by state or federal authority having supervision over banks and is acting as custodian;

(e) "Issuer" means the corporation, business trust, governmental unit, partnership, association, individual or other entity which issues or on behalf of which is issued any form of obligation;

(f) "Member bank" means a national bank, state bank or trust company which is a member of the Federal Reserve System;

(g) "National securities exchange" means an exchange registered under section 6 of the Securities Exchange Act of 1934 or an exchange regulated under the laws of the Dominion of Canada;

(h) "Obligations" shall include bonds, notes, debentures, transportation equipment certificates, repurchase agreements, and obligations for the payment of money not in default as to payments of principal and interest on the date of investment, whether constituting general obligations of the issuer or payable only out of certain revenues or certain funds pledged or otherwise dedicated for payment. Leases are considered obligations if the lease is assigned for the benefit of the company and is non-terminable by the lessee or lessees thereunder upon foreclosure of any lien upon the leased property, and rental payments are sufficient to amortize the investment over the primary lease term;

(i) "Qualified assets" means the sum of (1) all investments qualified in accordance with this section other than investments in affiliates and subsidiaries, (2) investments in obligations of affiliates as defined in section 60D.01, subdivision 2 secured by real or personal property sufficient to qualify the investment under subdivision 11 or 15, (3) qualified investments in subsidiaries, as defined in section 60D.01, subdivision 9, on a consolidated basis with the insurance company without allowance for goodwill or other intangible value, and (4) cash on hand and deposit, agent's balances or uncollected premiums not due more than 90 days, assets held pursuant to section 60A.12, subdivision 2, investment income due and accrued, funds due or on deposit or recoverable on loss payments under contracts of reinsurance entered into pursuant to section 60A.09, premium bills and notes receivable, federal income taxes recoverable, and equities and deposits in pools and associations;

(j) "Qualified net earnings" means that the net earnings of the issuer after elimination of extraordinary non-recurring items of income and expense and

before income taxes and fixed charges over the five immediately preceding completed fiscal years, or its period of existence if less than five years, has averaged not less than one and one-quarter times its average annual fixed charges applicable to the period;

(k) "Required liabilities" means the sum of (1) total liabilities as required to be reported in the company's most recent annual report to the commissioner of insurance of this state, (2) for companies operating under the stock plan, the minimum paid-up capital and surplus required to be maintained pursuant to section 60A.07, subdivision 5a, (3) for companies operating under the mutual or reciprocal plan, the minimum amount of surplus required to be maintained pursuant to section 60A.07, subdivision 5b, and (4) the amount, if any, by which the company's loss and loss adjustment expense reserves exceed 350 percent of its surplus as it pertains to policyholders as of the same date. In addition to the required amounts pursuant to clauses (1) to (4), the commissioner may, at his or her discretion, require that the amount of any apparent reserve deficiency that may be revealed by one to five year loss and loss adjustment expense development analysis for the five years reported in the company's most recent annual statement to the commissioner be added to required liabilities; and

(l) "Unrestricted surplus" means the amount by which qualified assets exceed 110 percent of required liabilities.

Subd. 11. **Investments in name of company or nominee and prohibitions.** A company's investments shall be held in its own name or the name of its nominee, except that:

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

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

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

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

(b) A company may loan stocks or obligations held by it under this chapter to a broker-dealer registered under the Securities and Exchange Act of 1934 or a member bank. The loan must be evidenced by a written agreement which provides:

(1) That the loan will be fully collateralized by cash or obligations issued or guaranteed by the United States or an agency or an instrumentality thereof, and that the collateral will be adjusted each business day during the term of the loan to maintain the required collateralization in the event of market value changes in the loaned securities or collateral;

(2) That the loan may be terminated by the company at any time, and that the borrower will return the loaned stocks or obligations or their equivalent within five business days after termination;

(3) That the company has the right to retain the collateral or use the collateral to purchase investments equivalent to the loaned securities if the borrower defaults under the terms of the agreement and that the borrower remains liable for any losses and expenses incurred by the company due to default that are not covered by the collateral;

(c) A company may participate through a member bank in the Federal Reserve book-entry system, and the records of the member bank shall at all times show that the investments are held for the company or for specific accounts of the company; or

(d) An investment may consist of an individual interest in a pool of obligations or a fractional interest in a single obligation if the certificate of participation or interest or the confirmation of participation or interest in the investment shall be issued in the name of the company or the name of the custodian bank or the nominee of either and if the certificate or confirmation must, if held by a custodian bank, be kept separate and apart from the investments of others so that at all times the participation may be identified as belonging solely to the company making the investment.

Where an investment is not evidenced by a certificate, except as provided in paragraph (c), adequate evidence of the company's investment shall be obtained from the issuer or its transfer or recording agent and retained by the company, a custodian bank, or clearing corporation. Adequate evidence, for purposes of this subdivision, shall mean a written receipt or other verification issued by the depository or issuer or a custodian bank which shows that the investment is held for the company. Transfers of ownership of investments held as described in paragraphs (a), clause (3), (c) and (d) may be evidenced by bookkeeping entry on the books of the issuer of the investment or its transfer or recording agent or the clearing corporation without physical delivery of certificates, if any, evidencing the company's investment.

Subd. 12. **Investments.** The investments authorized under the following subdivisions of this section shall constitute admitted assets for a company.

Subd. 13. **U.S. government obligations.** Obligations issued or guaranteed by the United States or an agency or instrumentality of the United States, including rights to purchase these obligations if those rights are traded upon a contract market designated and regulated by a federal agency.

Subd. 14. **Certain development bank obligations.** Obligations issued or guaranteed by the International Bank for Reconstruction and Development, the Asian Development Bank, the Inter-American Development Bank, the Export-Import Bank, the World Bank or any United States government sponsored organization of which the United States is a member, provided the principal and interest is payable in United States dollars. A company may not invest more than five percent of its total admitted assets in the obligations of any one of these banks or organizations, and may not invest more than a total of 15 percent of its total admitted assets in the obligations of all such banks and organizations.

Subd. 15. **State obligations.** Obligations issued or guaranteed by any state of the United States or by any political subdivision thereof or by any instrumentality of any state or political subdivision.

Subd. 16. **Canadian government obligations.** Obligations issued or guaranteed by the Dominion of Canada or by any agency or province thereof, or by any political subdivision of any province or by an instrumentality of any province or political subdivision thereof.

Subd. 17. **Corporate and business trust obligations.** Obligations issued, assumed or guaranteed by a corporation or business trust organized under the laws of the United States or any state of the United States, or the laws of Canada or any province of Canada, or obligations traded on a national securities exchange on the following conditions:

(a) A company may invest in any obligations traded on a national securities exchange;

(b) A company may also invest in any obligations which are secured by adequate security located in the United States or Canada;

(c) A company may also invest in previously outstanding or newly issued obligations not qualifying for investment under paragraphs (a) or (b) if the corporation or business trust has qualified net earnings. If the obligations are not newly issued, neither principal nor interest payments on the obligations shall have been in arrears (1) for an aggregate of 90 days during the three year period preceding the date of investment, or (2) where the obligations have been outstanding for less than 90 days, during the period the obligations have been outstanding;

(d) A company may invest in federal farm loan bonds and may invest up to 20 percent of its total admitted assets in the obligations of farm mortgage debenture companies; and

(e) A company may not invest more than five percent of its admitted assets in the obligations of any one corporation or business trust.

Subd. 18. **Stocks.** Stocks issued or guaranteed by any corporation incorporated under the laws of the United States or any state of the United States, or the laws of Canada or any province of Canada, or stocks or stock equivalents traded on a national securities exchange on the following conditions:

(a) A company may invest in preferred stocks traded on a national securities exchange and may also invest in other preferred stocks if the issuer has qualified net earnings and if current or cumulative dividends are not then in arrears;

(b) A company may invest in common stocks, common stock equivalents or securities convertible into common stock or common stock equivalents of any corporation or business trust, provided:

(1) The common stock, common stock equivalent or convertible issue is publicly traded on a national securities exchange, or the corporation or business trust has qualified net earnings;

(2) A company may invest up to two percent of its admitted assets in common stock, common stock equivalents or convertible issues which do not meet the requirements of clause (1);

(3) At no time may a company acquire or hold voting control of a corporation or business trust through its ownership of common stock, common stock equivalents or other securities, except that a company may organize and hold, or acquire and hold more than 50 percent of the common stock of (a) a corporation providing advisory, banking, management or sale services to an investment company or to an insurance company, (b) a data processing or computer service company, (c) a mortgage loan corporation engaged in the business of making, originating, purchasing or otherwise acquiring or investing in, and servicing or selling or otherwise disposing of loans secured by mortgages on real property, (d) a corporation if its business is owning and managing or leasing personal property, (e) a corporation providing securities underwriting services or acting as a securities broker or dealer, (f) a real property holding, developing, managing, brokerage or leasing corporation, (g) any domestic or foreign insurance company, (h) any alien

insurance company; provided, that the organization or acquisition and the holding of the company shall be subject to the prior approval of the insurance commissioner, which approval shall be given upon good cause shown and which approval shall be deemed to have been given if the commissioner does not disapprove of the organization or acquisition within 30 days after notification by the company, (i) an investment subsidiary to acquire and hold investments which the company could acquire and hold directly, provided that the investments of the subsidiary shall be considered direct investments for purposes of this chapter and shall be subject to the same percentage limitations, requirements and restrictions as are contained herein, or (j) any corporation whose business has been approved by the commissioner as complimentary or supplementary to the business of the company. The percentage of common stock may be less than 50 percent if the prior approval of the commissioner is obtained. A company may invest up to an aggregate of ten percent of its admitted assets under subclauses (a) to (e) of this clause (3); and

(4) A company may invest in the common stock of any corporation owning investments in foreign companies used for purposes of legal deposit, when the insurance company transacts business therein direct or as reinsurance; and

(c) A company may invest in warrants and rights granted by an issuer to purchase stock of the issuer if the stock of the issuer at the time of the acquisition of the warrant or right to purchase, would qualify as an investment under paragraph (a) or (b) whichever is applicable. A company shall not invest more than two percent of its assets under this paragraph. Any stock actually acquired through the exercise of a warrant or right to purchase may be included in paragraph (a) or (b), whichever is applicable, only if the stock meets the standards prescribed in the clause at the time of acquisition of the stock.

Subd. 19. **Mortgages on real estate.** Loans or obligations secured by a mortgage or a trust deed on real estate located in any state of the United States or in any province of the Dominion of Canada, on the following conditions:

(a) A leasehold estate constitutes real estate under this section if its unexpired term on the date of investment is at least five years longer than the term of the obligation secured by it. The obligation must be repayable within the leasehold term in annual or more frequent installments, except that obligations for commercial purposes may begin up to five years after the date of the obligations. The mortgage must entitle the company upon default to be subrogated to all rights of the lessor under the leasehold;

(b) The real estate to which the mortgage applies must be (1) improved with permanent buildings, or (2) used for agriculture or pasture, or (3) income-producing, including but not limited to parking lots and leases, royalty or other mineral interests in properties producing oil, gas or other minerals and interests in properties for the harvesting of forest products, or (4) subject to a definite plan for the commencement of development within five years;

(c) The real estate to which the mortgage applies must be otherwise unencumbered when the mortgage loan is funded except as provided in paragraph (d) and except for encumbrances which do not unreasonably interfere with the intended use of the real estate as security;

(d) The real estate to which the mortgage applies may be subject to a prior mortgage or trust deed if (1) the amount of the obligation is equal to the sum of the company's loan and the other outstanding indebtedness and (2) the company has control over the payments under the prior mortgage or trust deed;

(e) The amount of the obligation may not exceed 80 percent of the real estate. If the amount of the obligation exceeds 66 2/3 percent of the market value of the real estate, principal payments must commence within five years after the date of the mortgage loan and principal and interest on the loan shall be fully amortized by regular installments payable during the term of the loan without irregular or balloon payments, unless the schedule of irregular or balloon payments is more favorable to the insurer than regular installments of equal amount would be. The market value shall be established by the written certification of a real estate appraiser qualified to appraise the particular type of real estate involved;

(f) The maximum term of any obligation shall be 40 years, except as provided in paragraph (g) and except for obligations secured by a mortgage or trust deed which are or are to be insured by a private mortgage insurance company approved by the commissioner;

(g) The maximum amount and term limitations in paragraphs (e) and (f) shall not apply to obligations secured by mortgage or trust deed which are insured or guaranteed by the United States or any agency or instrumentality of the United States;

(h) A company may invest in mortgage participation certificates and pools issued or administered by a bank or banks and secured by first mortgages or trust deeds on improved real estate located in the United States provided the private placement memorandum, prospectus or other offering circular, or a written agreement with the issuer of the certificate or other pool interest provides that each loan meets the requirements of this subdivision;

(i) Notwithstanding the restrictions in paragraph (e), if a company disposes of real estate acquired by it under subdivision 20, it may take back a purchase money mortgage from its vendee in an amount up to 90 percent of the purchase price; and

(j) The vendor's equity in a contract for deed shall be treated as a mortgage for purposes of this subdivision.

Subd. 20. **Real estate.** (a) Except as provided in paragraphs (b) to (d), a company may acquire, hold, and convey real estate only for the following purposes and in the following manner:

(1) Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted, or for moneys due;

(2) Such as shall have been conveyed to it in satisfaction of debts previously contracted in the course of its dealings;

(3) Such as shall have been purchased at sales on judgments, decrees or mortgages obtained or made for the debts; and

(4) Such as shall be subject to a contract for deed under which the company holds the vendor's interest to secure the payments the vendee is required to make thereunder.

All the real estate specified in clauses (1) to (3) shall be sold and disposed of within five years after the company shall have acquired title to the same, or within five years after the same shall have ceased to be necessary for the accommodation of its business, and it shall not hold this property for a longer period unless the company elects to hold such real estate under another section, or unless it shall procure a certificate from the commissioner of insurance that its interest will suffer materially by the forced sale thereof, in which event the time for the sale may be extended to the time the commissioner directs in the certificate.

(b) A company may acquire and hold real estate for the convenient accommodation of its business.

(c) A company may acquire real estate or any interest in real estate as an investment for the production of income, and may hold, improve or otherwise develop, subdivide, lease, sell and convey real estate so acquired directly or as a joint venture or through a limited or general partnership in which the company is a partner.

(d) A company may also hold real estate (1) if the purpose of the acquisition is to enhance the sale value of real estate previously acquired and held by the company under this section, and (2) if the company expects the real estate so acquired to qualify under paragraph (b) or (c) above within five years after acquisition.

(e) A company may, after securing the approval of the commissioner, acquire and hold real estate for the purpose of providing necessary living quarters for its employees; provided, that the company shall dispose of the real estate within five years after it has ceased to be necessary for that purpose unless the commissioner agrees to extend the holding period upon application by the company.

(f) A company may not invest more than 25 percent of its total admitted assets in real estate. The cost of any parcel of real estate held for both the accommodation of business and for the production of income shall be allocated between the two uses annually. No more than three percent of its total admitted assets may be invested in real estate held under paragraph (e).

Subd. 21. Foreign investments. Obligations of and investments in foreign countries, on the following conditions:

(a) A company may acquire and hold other investments in foreign countries which are required as a condition of doing business in the foreign country; and

(b) A company may also invest not more than a total of two percent of its admitted assets in the obligations of foreign governments, corporations or business trusts, or in the stocks or stock equivalents of foreign corporations or business trusts not qualifying for investment under subdivision 10, if the obligations, stocks or stock equivalents are regularly traded on the London, Paris, Zurich, or Tokyo stock exchange or any similar exchange approved by the commissioner.

Subd. 22. Personal property under lease. Personal property for intended lease or rental in the United States or Canada. A company may not invest more than five percent of its admitted assets under this subdivision.

Subd. 23. Collateral loans. Obligations secured by the pledge of any investment authorized by any of the preceding subdivisions, on the following conditions:

(a) The pledged investment shall be legally assigned or delivered to the company;

(b) The company shall reserve the right to declare the obligation immediately due and payable if the security thereafter depreciates to the point where the investment would not qualify under paragraph (c); provided, that additional qualifying security may be pledged to allow the investment to remain qualified;

(c) The pledged investment shall at the time of purchase have a market value of at least one and one-quarter times the amount of the unpaid balance of the obligations; and

(d) A company may not invest more than five percent of its total admitted assets under this subdivision.

Subd. 24. Options. (a) A company may sell exchange-traded call options against stocks or other securities owned by the company and may purchase exchange-traded call options in a closing transaction against a call option previously written by the company.

(b) A company may purchase other exchange-traded call options, and may sell or purchase exchange-traded put options only if, to the extent and on terms and conditions the commissioner determines to be consistent with the purposes of this section.

Subd. 25. **Unrestricted surplus.** A company may invest its unrestricted surplus, in securities or property of any kind, without restriction or limitation except as may be imposed on business corporations in general.

Subd. 26. **Rules.** The commissioner may promulgate appropriate rules to carry out the purpose and provisions of this section.

History: 1981 c 211 s 9-26,42; 1Sp1981 c 4 art 4 s 6,7

60A.111 QUALIFIED ASSETS TO REQUIRED LIABILITIES; RATIO.

Subdivision 1. **Report.** Annually, or more frequently if determined by the commissioner to be necessary for the protection of policyholders, each foreign, alien and domestic insurance company other than a life insurance company shall report to the commissioner the ratio of its qualified assets to its required liabilities.

Subd. 2. **Plan.** If the commissioner determines that the required liabilities of any company are greater than its qualified assets, the commissioner may require the company to submit to the commissioner for his approval a plan by which the company undertakes to bring the ratio of its required liabilities to its qualified assets, expressed as a percentage, up to at least 100 percent within a reasonable period, usually not exceeding five years.

Subd. 3. **Power of commissioner.** If, following a hearing on notice to the company, the commissioner determines that a company's plan is inadequate or the insurer is not making satisfactory progress toward increasing the ratio of its qualified assets to its required liabilities and that no satisfactory alternatives are available, the commissioner may institute rehabilitation proceedings against a domestic company under chapter 60B. Where the company is not a domestic insurance company, the commissioner may impose restrictions on the company as a condition to the company obtaining a new or renewal certificate of authority to transact business in this state, and may where circumstances so justify revoke or rescind any certificate previously issued.

Subd. 4. **Limitation on purchases of assets.** An insurer which does not have unrestricted surplus shall not purchase any asset which is not a qualified asset as defined in section 60A.11 unless a request is made of the commissioner and the request is not denied within 15 days.

Subd. 5. **Denial of certificate.** No insurer other than a life insurer which does not have unrestricted surplus as of December 31 of the immediately preceding year shall be issued a certificate of authority.

History: 1981 c 211 s 27

60A.13 ANNUAL STATEMENT, INQUIRIES, ABSTRACTS, PUBLICATION THEREOF.

Subdivision 1. **Annual statements required.** Every insurance company, including fraternal beneficiary associations, and reciprocal exchanges, doing business in this state, shall transmit to the commissioner, annually, on or before March first, in the form prescribed by the commissioner, a verified statement of its entire business and condition during the preceding calendar year. In addition, the commissioner may require the filing of any other information determined to be reasonably necessary for the continual enforcement of these laws. The statement

MINNESOTA STATUTES 1981 SUPPLEMENT

may be limited to the insurer's business and condition in the United States unless the commissioner finds that the business conducted outside the United States may detrimentally affect the interests of policyholders in this state. The statements shall also contain a verified schedule showing all details required by law for assessment and taxation. The statement or schedules shall be in the form and shall contain all matters the commissioner may prescribe, and it may be varied as to different types of insurers so as to elicit a true exhibit of the condition of each insurer.

[For text of subd 2, see M.S.1980]

Subd. 3a. **Annual audit.** Every insurance company doing business in this state, including fraternal beneficiary associations, reciprocal exchanges, service plan corporations licensed pursuant to chapter 62G, and legal service plans licensed pursuant to chapter 62G, unless exempted by the commissioner pursuant to subdivision 4a or by subdivision 7 shall have an annual audit of the financial activities of the most recently completed fiscal year performed by an independent certified public accountant as prescribed by the commissioner, and shall file the report of this audit with the commissioner not more than six months following the close of the company's fiscal year. Any insurer required by this subdivision to file an annual audit which does not currently have its financial statement audited shall file its first audit with the commissioner not later than June 30, 1983. All other insurers shall file their annual audits beginning June 30, 1982.

Subd. 4a. **Rules.** The commissioner shall promulgate any rules which may be necessary to administer subdivision 3a.

[For text of subd 5, see M.S.1980]

Subd. 6. **Company or agent cannot continue business unless statement is filed.** No company or agent thereof shall transact any new business in this state after May thirty-first in any year unless it shall have previously transmitted the statement to the commissioner and filed the statement with the National Association of Insurance Commissioners with the required filing fee.

[For text of subd 7, see M.S.1980]

History: 1981 c 211 s 28-31

60A.14 FEES.

Subdivision 1. **Fees other than examination fees.** In addition to the fees and charges provided for examinations, the following fees shall be paid to the commissioner for deposit in the general fund:

(a) By township mutual fire insurance companies:

(1) For filing certificate of incorporation \$25 and amendments thereto, \$10;

(2) For filing annual statements, \$15;

(3) For each annual certificate of authority, \$15;

(4) For filing bylaws \$25 and amendments thereto, \$10.

(b) By other domestic and foreign companies including fraternal and reciprocal exchanges:

(1) For filing certified copy of certificate of articles of incorporation, \$50;

(2) For filing annual statement, \$30;

(3) For filing certified copy of amendment to certificate or articles of incorporation, \$50;

- (4) For filing bylaws or amendments thereto, \$10;
- (5) For each company's certificate of authority, \$30, annually.
- (c) The following general fees apply:
 - (1) For each certificate, including certified copy of certificate of authority, renewal, valuation of life policies, corporate condition or qualification, \$5;
 - (2) For each copy of paper on file in the commissioner's office 50 cents per page, and \$2.50 for certifying the same;
 - (3) For license to procure insurance in unadmitted foreign companies, \$10;
 - (4) For receiving and forwarding each notice, proof of loss, summons, complaint or other process served upon the commissioner of insurance, as attorney for service of process upon any non-resident agent or insurance company, including reciprocal exchanges, \$5, which amount shall be paid by the party serving the same and may be taxed as other costs in the action;
 - (5) For valuing the policies of life insurance companies, one cent per one thousand dollars of insurance so valued. The commissioner may, in lieu of a valuation of the policies of any foreign life insurance company admitted, or applying for admission, to do business in this state, accept a certificate of valuation from the company's own actuary or from the commissioner of insurance of the state or territory in which the company is domiciled;
 - (6) For receiving and filing certificates of policies by the company's actuary, or by the commissioner of insurance of any other state or territory, \$50;
 - (7) For issuing a license, \$15, and for issuing an amended or duplicate license, \$3;
 - (8) For an application, examination, or re-examination for one class of license, \$15 and an additional \$15 for an application, examination, or re-examination for the second class of license;
 - (9) For each appointment of an agent filed with the commissioner, a domestic insurer shall remit \$5 annually and all other insurers shall remit \$3 annually.

[For text of subd 2, see M.S.1980]

History: 1981 c 307 s 2

60A.15 TAXATION OF INSURANCE COMPANIES.

Subdivision 1. **Domestic and foreign companies other than town and farmers' mutual and domestic mutuals other than life.** On or before April 15, June 15, and December 15 of each year following December 31, 1971, every domestic and foreign company, except town and farmers' mutual insurance companies and domestic mutual insurance companies other than life, shall pay to the state treasurer through the commissioner of insurance installments equal to one-third of the insurer's total estimated tax for the current year based on a sum equal to two percent of the gross premiums less return premiums on all direct business received by it in this state, or by its agents for it, in cash or otherwise, during such year, excepting premiums written for marine insurance as specified in subdivision 6. If unpaid by such dates penalties of ten percent shall accrue thereon, and thereafter such sum and penalties shall draw interest at the rate of one percent per month until paid. Failure of a company to make payments of at least one-third of either (a) the total tax paid during the previous calendar year or (b) 80 percent of the actual tax for the current calendar year shall subject the company to the penalty and interest provided in this subdivision.

[For text of subs 2 to 13, see M.S.1980]

History: 1981 c 356 s 272

60A.17 AGENTS; SOLICITORS.

Subdivision 1. **License.** (a) **Requirement.** No person shall act or assume to act as an insurance agent in the solicitation or procurement of applications for insurance, nor in the sale of insurance or policies of insurance, nor in any manner aid as an insurance agent in the negotiation of insurance by or with an insurer, including resident agents or reciprocal or interinsurance exchanges and fraternal beneficiary associations, until that person shall obtain from the commissioner a license therefor. The license shall specifically set forth the name of the person so authorized to act as agent and the class or classes of insurance for which that person is authorized to solicit or countersign policies. An insurance agent may qualify for a license in the following classes: (1) life and health; and (2) property and casualty.

No insurer shall appoint any natural person, partnership, or corporation to act as an insurance agent on its behalf until that natural person, partnership, or corporation obtains a license as an insurance agent.

(b) **Partnerships and corporations.** A license issued to a partnership or corporation shall be solely in the name of the entity to which it is issued; provided, that each partner, director, officer, stockholder, or employee of the licensed entity who is personally engaged in the solicitation or negotiation of a policy of insurance on behalf of the licensed entity shall be personally licensed as an insurance agent.

Upon request by the commissioner, each partnership and corporation licensed as an insurance agent shall provide the commissioner with a list of the names of each partner, director, officer, stockholder, and employee who is required to hold a valid insurance agent's license.

(c) **Transition.** (1) Any agent who is qualified for life or accident and health as of June 1, 1981 shall be deemed to have qualified for a life and health license under Laws 1981, Chapter 307 and been appointed by an insurer which has submitted a written requisition for a license for that agent as of June 1, 1981.

(2) Any agent who is qualified for one or more lines of insurance, excluding life or accident and health and farm property liability as of June 1, 1981 shall be deemed to have qualified for a property and casualty license under Laws 1981, Chapter 307 and been appointed by any insurer which has submitted a written requisition for a license for that agent as of June 1, 1981.

Subd. 1a. **License application.** (a) **Procedure.** An application for a license to act as an insurance agent shall be made to the commissioner by the person who seeks to be licensed and shall be accompanied by a money order or cashier's check payable to the state treasurer for the amount of the examination fee prescribed by section 60A.14, subdivision 1, paragraph (c), clause (8). All examination fees shall be nonrefundable. The applicant shall have six months from the date of payment of the examination fee to take the exam. The application for license shall be accompanied by a written appointment from an admitted insurer authorizing the applicant to act as its agent under one or both classes of license. The insurer must also submit its check payable to the state treasurer for the amount of the appointment fee prescribed by section 60A.14, subdivision 1, paragraph (c), clause (9) at the time the agent becomes licensed. The application and appointment shall be on forms prescribed by the commissioner.

If the applicant is a natural person, no license shall be issued until that natural person has become qualified.

If the applicant is a partnership or corporation, no license shall be issued until at least one natural person who is a partner, director, officer, stockholder, or employee shall be licensed as an insurance agent.

(b) **Resident agent.** The commissioner shall issue a resident insurance agent's license to a qualified resident of this state as follows:

(1) A person may qualify as a resident of this state if that person resides in this state or the principal place of business of that person is maintained in this state. Application for a license claiming residency in this state for licensing purposes, shall constitute an election of residency in this state. Any license issued upon an application claiming residency in this state shall be void if the licensee, while holding a resident license in this state, also holds, or makes application for, a resident license in, or thereafter claims to be a resident of, any other state or jurisdiction or if the licensee ceases to be a resident of this state; provided, however, if the applicant is a resident of a community or trade area, the border of which is contiguous with the state line of this state, the applicant may qualify for a resident license in this state and at the same time hold a resident license from the contiguous state;

(2) The commissioner shall subject each applicant who is a natural person to a written examination as to the applicant's competence to act as an insurance agent. The examination shall be held at a reasonable time and place designated by the commissioner;

(3) The examination shall be approved for use by the commissioner and shall test the applicant's knowledge of the lines of insurance, policies, and transactions to be handled under the class of license applied for, of the duties and responsibilities of the licensee, and pertinent insurance laws of this state;

(4) The examination shall be given only after the applicant has completed a program of studies in a school, which shall include a school conducted by an admitted insurer, a correspondence course given by an admitted insurer, or other course of study. The course of study shall consist of the equivalent of 45 hours study for each line for which a license application is made. After January 1, 1982, the program of studies or study course shall have been approved by the commissioner in order to qualify under this clause. If the applicant has been previously licensed for the particular line of insurance in the state of Minnesota, the requirement of a program of studies or a study course shall be waived. A certification of compliance by an admitted insurer shall accompany the agent's license application. This program of studies in a school or a study course shall not apply to farm property perils and farm liability applicants, or to agents writing such other lines of insurance as the commissioner may exempt from examination by order;

(5) The applicant must pass the examination with a grade determined by the commissioner to indicate satisfactory knowledge and understanding of the class or classes of insurance for which the applicant seeks qualification. The commissioner shall inform the applicant as to whether or not the applicant has passed;

(6) An applicant who has failed to pass an examination may take subsequent examinations. Examination fees for subsequent examinations shall not be waived; and

(7) Any applicant for a license covering the same class or classes of insurance for which the applicant was licensed under a similar license in this state, other than a temporary license, within the three years preceding the date of the application shall be exempt from the requirement of a written examination, unless the previous license was revoked or suspended by the commissioner.

(c) **Nonresident agent.** The commissioner shall issue a nonresident insurance agent's license to a qualified person who is a resident of another state or country as follows:

(1) A person may qualify for a license under this section as a nonresident only if that person holds a license in another state, province of Canada, or other foreign country which, in the opinion of the commissioner, qualifies that person for the same activity as that for which a license is sought;

(2) The commissioner shall not issue a license to any nonresident applicant until that person files with the commissioner a designation of the commissioner and the commissioner's successors in office as the applicant's true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of any interested person arising out of the applicant's insurance business in this state. This designation shall constitute an agreement that this service of process is of the same legal force and validity as personal service of process in this state upon that applicant.

Service of process upon any licensee in any action or proceeding commenced in any court of competent jurisdiction of this state may be made by serving the commissioner with appropriate copies of the process along with payment of the fee pursuant to section 60A.14, subdivision 1, paragraph (c), clause (4). The commissioner shall forward a copy of the process by registered or certified mail to the licensee at the last known address of record or principal place of business of the licensee; and

(3) A nonresident license shall terminate automatically when the resident license for that class of license in the state, province, or foreign country in which the licensee is a resident is terminated for any reason.

(d) **Denial.** (1) If the commissioner finds that an applicant for a resident or nonresident license has not fully met the requirements for licensing, the commissioner shall refuse to issue the license and shall promptly give written notice to both the applicant and the appointing insurer of the denial, stating the grounds for the denial. All fees which accompanied the application and appointment shall be deemed earned and shall not be refundable.

(2) The commissioner may also deny issuance of a license for any cause that would subject the license of a licensee to suspension or revocation.

(3) The applicant may make a written demand upon the commissioner for a hearing within 30 days of the denial of a license to determine whether the reasons stated for the denial were lawful. The hearing shall be held pursuant to chapter 15.

(e) **Term.** All licenses issued pursuant to this section shall remain in force until voluntarily terminated by the licensee or until suspended or revoked by the commissioner. A voluntary termination shall occur when the license is surrendered to the commissioner with the request that it be terminated or when the licensee dies, or when the licensee is dissolved or its existence is terminated. In the case of a nonresident license, a voluntary termination shall also occur upon the happening of the event described in paragraph (c), clause (3).

Every licensed agent shall notify the commissioner within 30 days of any change in address or change in state of residency.

(f) **Subsequent appointments.** A person who holds a valid agent's license from this state may solicit applications for insurance on behalf of an admitted insurer with which the licensee does not have a valid appointment on file with the commissioner; provided, that the licensee has permission from the insurer to

solicit insurance on its behalf and, provided further, that the insurer upon receipt of the application for insurance submits a written notice of appointment to the commissioner accompanied by its check payable to the state treasurer in the amount of the appointment fee prescribed by section 60A.14, subdivision 1, paragraph (c), clause (9). The notice of appointment shall be on a form prescribed by the commissioner.

(g) **Amendment of license.** An application to the commissioner to amend a license to reflect a change of name, or to include an additional class of license, or for any other reason, shall be on forms provided by the commissioner and shall be accompanied by the applicant's surrendered license and a money order or cashier's check payable to the state treasurer for the amount of fee specified in section 60A.14, subdivision 1, paragraph (c), clause (7).

An applicant who surrenders an insurance license pursuant to this clause retains licensed status until an amended license is received.

(h) **Exceptions.** The following are exempt from the general licensing requirements prescribed by this section:

(1) Agents of township mutuals who are exempted pursuant to subdivision 1b;
(2) Fraternal beneficiary association representatives exempted pursuant to subdivision 1c;

(3) Any regular salaried officer or employee of a licensed insurer, without license or other qualification, may act on behalf of that licensed insurer in the negotiation of insurance for that insurer; provided that a licensed agent must participate in the sale of any such insurance;

(4) Employers and their officers or employees, and the trustees or employees of any trust plan, to the extent that the employers, officers, employees, or trustees are engaged in the administration or operation of any program of employee benefits for the employees of the employers or employees of their subsidiaries or affiliates involving the use of insurance issued by a licensed insurance company; provided, that the activities of the officers, employees and trustees are incidental to clerical or administrative duties and their compensation does not vary with the volume of insurance or applications therefor;

(5) Employees of a creditor who enroll debtors for life or accident and health insurance; provided the employees receive no commission or fee therefor; and

(6) Clerical or administrative employees of an insurance agent who take insurance applications or receive premiums in the office of their employer, if the activities are incidental to clerical or administrative duties and the employee's compensation does not vary with the volume of the applications or premiums.

Subd. 1b. Township mutual agents. No agent for a township mutual shall be required to take an examination to become eligible for an agent's license in farm property perils and farm liability if it is certified by one or more township mutual companies that the agent has been acting in the capacity of an agent at least since January 1, 1971, and no new examination shall be required for eligibility for a license in farm property perils and farm liability for a licensed agent in farm windstorm and hail insurance who was licensed prior to January 1, 1971.

Subd. 1c. Fraternal beneficiary association representatives. Representatives of fraternal beneficiary associations who solicit and negotiate insurance contracts shall be deemed to be insurance agents and subject to the licensing requirements as set forth in subdivision 1a; provided, that no insurance agent's license shall be required of:

MINNESOTA STATUTES 1981 SUPPLEMENT

(a) Any officer, employee, or secretary of a fraternal beneficiary association, or of any subordinate lodge or branch who devotes substantially all of that person's time to activities other than the solicitation or negotiation of insurance contracts and who receives no commission or other compensation directly dependent upon the number or amount of contracts solicited or negotiated; or

(b) Any agent or representative of a fraternal beneficiary association who devotes, or intends to devote, less than 50 percent of that person's time to the solicitation and procurement of insurance contracts for that association. Any person who in the preceding calendar year has solicited and procured life insurance in excess of \$50,000 face amount, or, in the case of any other kinds of insurance which the association may write, on the persons of more than 25 individuals, and who has received or will receive a commission or other compensation in the total amount of \$1,000 or more, shall be presumed to be devoting, or intending to devote, 50 percent of that person's time to the solicitation or procurement of insurance contracts for that association.

Subd. 2. [Repealed, 1981 c 307 s 22]

Subd. 2a. [Repealed, 1981 c 307 s 22]

Subd. 2b. [Repealed, 1981 c 307 s 22]

Subd. 2c. **Mandatory temporary licenses.** The commissioner shall grant a temporary insurance agent's license to a person who has submitted an application for a resident license which is accepted by the commissioner and who has successfully completed the examination, if any, required by the commissioner. The temporary license shall be granted no later than the date upon which the applicant receives written notice from the commissioner that the application for resident license has been accepted by the commissioner and that the person has passed any required examination. A temporary license will permit the applicant to act as an insurance agent for the original appointing insurer for the class of business specified therein until the earlier of (a) receipt by the applicant of the resident license, or (b) the expiration of 90 days from the date on which the temporary license was granted.

Subd. 2d. **Permissive temporary license.** The commissioner may issue a temporary license to a person to act as an insurance agent for a period not to exceed 90 days, which may be extended as determined by the commissioner, without requiring an examination if the commissioner deems that a temporary license is necessary for the servicing of an insurance business in the following cases:

(a) To an agent licensed as a resident agent in another state where the commissioner determines that the foreign license is substantially the equivalent of that being applied for from the state of Minnesota and where the agent has been transferred into this state with the intention of becoming a resident, working as an insurance agent, and obtaining a resident license from the state of Minnesota;

(b) To the surviving spouse or next of kin, or to the administrator or executor, or to an employee of a deceased licensed insurance agent, or to the spouse, next of kin, an employee or legal guardian of a disabled licensed insurance agent;

(c) To the designee of a licensed insurance agent entering upon active service in the armed forces of the United States; or

(d) In any other circumstance where the commissioner deems that the public interest will best be served by the issuance of a temporary license.

Subd. 3. **Brokerage business.** Every insurance agent duly licensed to transact business in this state shall have the right to procure the insurance of risks, or

parts of risks, in the class or classes of insurance for which he is licensed in other insurers duly authorized to transact business in this state, but such insurance shall only be consummated through a duly licensed resident agent of the insurer taking the risk. If the law of another state requires a non-resident agent who is a resident agent of Minnesota to pay a portion of the premium to or share commissions with a licensed resident agent of that state, then the licensed resident agent of Minnesota when consummating and countersigning for a licensed non-resident agent of that state shall receive five percent of the total premium or 25 percent of the commission, whichever is less.

Subd. 4. [Repealed, 1981 c 307 s 22]

Subd. 5. **Unfit person not to be employed by insurer.** No insurer, its officers, agents, or managers, shall knowingly make application to the commissioner for appointment of a person as its agent where that person is known to the insurer, its officers, agents, or managers, making the application, to be unfit or disqualified to be licensed as an insurance agent, and immediately upon the discovery by the insurer, its officers, agents, or managers, having supervision of the agent, of the unfitness or disqualification, the insurer, or the officers, agents, or managers, shall forthwith inform the commissioner, in writing of their decision to terminate their appointment of this agent; nor shall any insurer retain in its employ any agent known by it to be disqualified or unfit to be licensed as an insurance agent.

Subd. 5a. [Repealed, 1981 c 307 s 22]

Subd. 5b. **Term of appointments.** All appointments of agents by insurers pursuant to this section shall remain in force for one year unless sooner terminated voluntarily by the appointing insurer or the license of the agent has for any reason been terminated during the appointment year. The original appointing insurer, as well as any subsequent appointing insurer, may terminate their appointment of an agent at any time by giving written notice thereof to the commissioner and by sending a copy thereof to the last known address of the agent. The effective date of the termination shall be the date of receipt of the notice by the commissioner unless another date is specified by the insurer in the notice. Within 30 days after the insurer gives notice of termination to the commissioner, the insurer shall furnish the agent with a current statement of the agent's commission account.

Accompanying the notice of a termination given to the commissioner by the insurer shall be a statement of the specific reasons constituting the cause of termination. Any document, record, or statement relating to the agent which is disclosed or furnished to the commissioner contemporaneously with, or subsequent to, the notice of termination shall be deemed confidential by the commissioner and a privileged communication. The document, record, or statement furnished to the commissioner shall not be admissible in whole or in part for any purpose in any action or proceeding against (a) the insurer or any of its officers, employees, or representatives, submitting or providing the document, record or statement, or (b) any person, firm, or corporation furnishing in good faith to the insurer the information upon which the reasons for termination are based.

The agent may request of the commissioner and the commissioner shall disclose to the agent the specific reason or reasons for termination.

Subd. 6. **Persons who shall not be licensed as agents.** No person shall be licensed by the commissioner as an insurance agent if the commissioner shall be satisfied that the person is incompetent or unqualified to act as an insurance agent, or that the person does not in good faith intend to carry on the business of insurance agent, or intends to secure a license for the sole purpose of writing insurance upon the agent's own life or property; or that the person is untrust-

MINNESOTA STATUTES 1981 SUPPLEMENT

worthy or of bad moral character; or that the person has unreasonably failed to pay over to any insurer, agent, or policyholder or member of any insurance company or association entitled thereto, the whole or any part of any premium or return premium, or moneys or other thing of value in the agent's hands, arising out of any insurance transaction, and due or payable to or belonging to any policyholder or other person, firm or corporation; or that the person has wilfully misrepresented to any person, firm or corporation the terms or conditions of any policy or contract of insurance or the financial standing or condition or manner of doing business of any insurer or agent; or that the person has deceived or defrauded, or attempted to deceive or defraud, any person, firm, or corporation in connection with any insurance transaction, or that the person has been dishonest in connection with any insurance transaction, or that the person has urged or procured any person, firm, or corporation to lapse any policy or contract of insurance in any company or association which is now or has been licensed to do business in the state, to the damage of the person, firm, or corporation, or that the person has violated any of the provisions of the laws of this state in any way relating to insurance or the transaction or negotiation of insurance, or insurance agents, or any lawful ruling of the commissioner.

Subd. 6a. [Repealed, 1981 c 307 s 22]

Subd. 6b. **Fees for services.** No person shall charge a fee for any services rendered in connection with the solicitation, negotiation or servicing of any insurance contract unless:

(a) prior to rendering the services, a written statement is provided disclosing:

- (1) the services for which fees are charged;
- (2) the amount of the fees;
- (3) that the fees are charged in addition to premiums; and
- (4) that premiums include a commission;

(b) all fees charged are reasonable in relation to the services rendered.

Subd. 6c. **Revocation or suspension of license.** (a) The commissioner may suspend or revoke an insurance agent's license issued to a natural person or impose a civil penalty appropriate to the offense, not to exceed \$5,000 upon that licensee, if, after notice and hearing, the commissioner finds as to that licensee any one or more of the following conditions:

- (1) Any materially untrue statement in the license application;
- (2) Any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner at the time of issuance;
- (3) Violation of, or noncompliance with, any insurance law or violation of any rule or order of the commissioner or of a commissioner of insurance of another state or jurisdiction;

(4) Obtaining or attempting to obtain any license through misrepresentation or fraud;

(5) Improperly withholding, misappropriating, or converting to the licensee's own use any moneys belonging to a policyholder, insurer, beneficiary, or other person, received by the licensee in the course of the licensee's insurance business;

(6) Misrepresentation of the terms of any actual or proposed insurance contract;

(7) Conviction of a felony or of a gross misdemeanor or misdemeanor involving moral turpitude;

(8) That the licensee has been found guilty of any unfair trade practice, as defined in chapters 60A to 72A, or of fraud;

(9) That in the conduct of the agent's affairs under the license, the licensee has used fraudulent, coercive, or dishonest practices, or the licensee has been shown to be incompetent, untrustworthy, or financially irresponsible;

(10) That the agent's license has been suspended or revoked in any other state, province, district, territory, or foreign country;

(11) That the licensee has forged another's name to an application for insurance; or

(12) That the licensee has violated subdivision 6b.

(b) The commissioner may suspend or revoke an insurance agent's license issued to a partnership or corporation or impose a civil penalty not to exceed \$5,000 upon that licensee, if, after notice and hearing, the commissioner finds as to that licensee, or as to any partner, director, shareholder, officer, or employee of that licensee, any one or more of the conditions set forth in paragraph (a).

(c) A revocation of a license shall prohibit the licensee from making a new application for a license for at least one year. Further, the commissioner may, as a condition of relicensure, require the applicant to file a reasonable bond for the protection of the citizens of this state, which bond shall be maintained by the licensee in full force for a period of five years immediately following issuance of the license, unless the commissioner at his or her discretion shall after two years permit the licensee to sooner terminate the maintenance filing of the bond.

(d) Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of chapter 60A or of any rule or order of the commissioner:

(1) The commissioner may issue and cause to be served upon the person an order requiring the person to cease and desist from the violation. The order shall give reasonable notice of the time and place of hearing and shall state the reasons for the entry of the order. A hearing shall be held not later than seven days after the issuance of the order unless the person requests a delay. After the hearing and within 30 days of filing of any exceptions to the hearing examiner's report, the commissioner shall issue an order vacating the cease and desist order or making it permanent as the facts require. All hearings shall be conducted in accordance with the provisions of chapter 15. If the person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, the person shall be deemed in default, and the proceeding may be determined against the person upon consideration of the cease and desist order, the allegations of which may be deemed to be true;

(2) In any proceeding under chapter 60A relating to injunction, the request for injunction may be brought on for hearing and disposition upon an order to show cause returnable upon not more than eight days notice to the defendant. The case shall have precedence over other matters on the court calendar and shall not be continued without the consent of the state of Minnesota, except upon good cause shown to the court, and then only for a reasonable length of time as may be necessary in the opinion of the court to protect the rights of the defendant.

Subd. 7. [Repealed, 1981 c 307 s 22]

Subd. 7a. **Surrender, loss, or destruction of license.** (a) The commissioner shall promptly notify the licensee and all appointing insurers, where applicable, of any suspension, revocation, or termination of the licensee's agent's license by the commissioner. Upon receipt of the notice of suspension or revocation of a license, the licensee shall immediately deliver it to the commissioner.

MINNESOTA STATUTES 1981 SUPPLEMENT

(b) An agent whose resident or nonresident license is terminated as provided in subdivision 6b, shall deliver the terminated license to the commissioner by personal delivery or by mail within 30 days after the date of termination.

(c) The commissioner may issue a duplicate license for any lost, stolen, or destroyed license issued pursuant to this section upon an affidavit of the licensee concerning the facts of the loss, theft, or destruction, and the payment of a fee of \$3 by money order or cashier's check payable to the state treasurer.

(d) An insurance agent shall notify the commissioner within 30 days of any fine imposed on that agent by another state or of a suspension or revocation of license by the commissioner of insurance of this or any other state.

[For text of subd 8, see M.S.1980]

Subd. 9. [Repealed, 1981 c 307 s 22]

Subd. 9a. **Powers of the commissioner.** The commissioner shall have the full power to order the appearance of any person to appear before him in relation to any matter which is, by the provisions of the laws of this state relating to insurance, a subject of inquiry or investigation, and may require the production of any book, paper, or document deemed pertinent.

Subd. 10. **Commissions or compensation.** No commission or other compensation shall be paid or allowed by any person, firm, or corporation to any other person, firm, or corporation acting, or assuming to act, as an insurance agent without a license therefor. A duly licensed agent may pay commissions or assign or direct that commissions be paid to a partnership of which the agent is a member, employee or agent, or to a corporation of which the agent is an officer, employee or agent. This section shall not prevent the payment or receipt of renewal or other deferred commissions to or by any person solely because the person has ceased to hold a license to act as an insurance agent.

[For text of subd 11, see M.S.1980]

Subd. 12. **Liability for placing insurance in unauthorized company.** Any person, regardless of whether that person is required to be licensed as an insurance agent, who participates in any manner in the sale of any insurance policy or certificate, or any other contract providing benefits, for or on behalf of any company which is required to be, but which is not authorized to engage in the business of insurance in this state, other than pursuant to section 60A.20, shall be personally liable for all premiums, whether earned or unearned, paid by the insured, and the premiums may be recovered by the insured. In addition, that person shall be personally liable for any loss the insured has sustained or may sustain if the loss is one resulting from a risk or hazard covered in the issued policy, certificate, or contract or which would have been covered if the policy, certificate, or contract had been issued to the purchaser of the insurance.

Subd. 13. **Agents; variable contracts.** (a) **License required.** No person shall sell or offer for sale a contract on a variable basis unless prior to making any solicitation or sale the person has obtained from the commissioner a license therefor. The license shall only be granted, upon the written requisition of an insurer, to a qualified person who holds a current license authorizing the person to solicit and sell life insurance and annuity contracts in this state. To become qualified, a person shall complete a written application on a form prescribed by the commissioner and shall take and pass an examination prescribed by the commissioner. Prior to the taking of the examination, or upon re-examination, the applicant shall transmit to the commissioner, by money order or cashier's check payable to the state treasurer, an examination fee of \$10.

MINNESOTA STATUTES 1981 SUPPLEMENT

265

INSURANCE DIVISION 60A.196

(b) **Exceptions.** (1) Any officer of a licensed insurer may, without license or other qualification, act in its behalf in the negotiation and consummation of contracts on a variable basis.

(2) Any person who, on July 1, 1969, holds a valid license authorizing the person to solicit and sell life insurance and annuity contracts and who also holds a valid license issued by the securities and real estate division of the department of commerce authorizing the person to sell or offer for sale contracts on a variable basis shall be issued a license by the commissioner of insurance upon application therefor and payment of a \$2 fee, which license shall expire on May 31, 1970, unless renewed by an insurer as provided in paragraph (a).

(3) Any person who holds a valid license to solicit and sell life insurance and annuity contracts may solicit and sell contracts on a variable basis without acquiring a license under this subdivision if the contract is based on an account which is excluded from the definition of investment company under the Investment Company Act of 1940, 15 U.S.C. 80a-3(11).

(c) **Rules.** The commissioner may by rules waive or modify any of the foregoing requirements or prescribe additional requirements deemed necessary for the proper sale and solicitation of contracts on a variable basis.

[For text of subd 14, see M.S.1980]

Subd. 15. **Rules.** The commissioner may adopt rules pursuant to chapter 15 to further implement and administer the provisions of this section.

Subd. 16. **Penalties.** Whenever the commissioner has found an agent or agency has repeatedly violated or established a pattern of violations of any insurance law while directly representing a particular insurer, the commissioner shall so notify the insurer in writing. Thereafter, the insurer shall have a reasonable amount of time to take appropriate action. If after the notice and expiration of a reasonable amount of time, the commissioner finds that the insurer failed to take reasonable action, the commissioner may subject the insurer to a civil penalty not to exceed \$5,000.

History: 1981 c 307 s 3-21

60A.195 CITATION.

Sections 60A.195 to 60A.209 shall be known and may be cited as the Minnesota surplus lines insurance act.

History: 1981 c 221 s 1

60A.196 DEFINITIONS.

Unless the context otherwise requires, the following terms have the meanings given them for the purposes of sections 60A.195 to 60A.209:

(a) "Surplus lines insurance" means insurance placed with an insurer permitted to transact the business of insurance in this state only pursuant to sections 60A.195 to 60A.209.

(b) "Eligible surplus lines insurer" means an insurer recognized as eligible to write insurance business under sections 60A.195 to 60A.209 but not licensed by any other Minnesota law to transact the business of insurance.

(c) "Ineligible surplus lines insurer" means an insurer not recognized as an eligible surplus lines insurer pursuant to sections 60A.195 to 60A.209 and not licensed by any other Minnesota law to transact the business of insurance.

MINNESOTA STATUTES 1981 SUPPLEMENT

(d) "Surplus lines licensee" or "licensee" means a person licensed under sections 60A.195 to 60A.209 to place insurance with an eligible or ineligible surplus lines insurer.

(e) "Association" means an association registered under section 60A.208.

(f) "Alien insurer" means any insurer which is incorporated or otherwise organized outside of the United States.

(g) "Insurance laws" means chapters 60 to 79 inclusive.

History: 1981 c 221 s 2

60A.197 RATES AND FORMS.

(a) Rates used by eligible and ineligible surplus lines insurers shall not be subject to the insurance laws except that a rate shall not be unfairly discriminatory.

(b) Forms used by eligible and ineligible surplus lines insurers pursuant to sections 60A.195 to 60A.209 shall not be subject to the insurance laws, except that a policy shall not contain language which misrepresents the true nature of the policy or class of policies.

History: 1981 c 221 s 3

60A.198 TRANSACTION OF SURPLUS LINES INSURANCE.

Subdivision 1. **License required.** A person shall not act in any other manner as an agent or broker in the transaction of surplus lines insurance unless licensed under sections 60A.195 to 60A.209.

Subd. 2. **Compliance with statutory provisions.** A person shall not offer, solicit, make a quotation on, sell, or issue a policy of insurance, binder, or any other evidence of insurance with an eligible or ineligible surplus lines insurer, except in compliance with sections 60A.195 to 60A.209.

Subd. 3. **Procedure for obtaining license.** A person licensed as a resident agent in this state pursuant to other law may obtain a surplus lines license by doing the following:

(a) Filing an application in the form and with the information the commissioner may reasonably require to determine the ability of the applicant to act in accordance with sections 60A.195 to 60A.209;

(b) Maintaining a resident agent license in this state;

(c) Delivering to the commissioner a financial guarantee bond from a surety acceptable to the commissioner for the greater of the following:

(1) \$5,000; or

(2) The largest semiannual surplus lines premium tax liability incurred by him in the immediately preceding five years; and

(d) Agreeing to file with the commissioner no later than February 15 and August 15 annually, a sworn statement of the charges for insurance procured or placed and the amounts returned on the insurance canceled under the license for the preceding six month period ending December 31 and June 30 respectively, and at the time of the filing of this statement, paying the commissioner a tax on premiums equal to three percent of the total written premiums less cancellations.

Subd. 4. **Licensee's powers.** A surplus lines licensee may do any or all of the following:

(a) Place insurance on risks in this state with eligible surplus lines insurers;

(b) Place insurance on risks in this state with ineligible surplus lines insurers in strict compliance with section 60A.209. If the insurance is provided through the participation of several surplus lines insurers and the licensee has reason to believe that a substantial portion of the insurance would be assumed by eligible surplus lines insurers, then with respect to the ineligible surplus lines insurers, the insured or the insured's representative shall be informed as provided in section 60A.209, subdivision 1, clause (a); or

(c) Engage in any other acts expressly or implicitly authorized by sections 60A.195 to 60A.209 and the other insurance laws.

Subd. 5. **Disclosures.** Before placement of insurance with an eligible surplus lines insurer, a surplus lines licensee shall inform an insured or the insured's representative that coverage may be placed in conformance with sections 60A.195 to 60A.209 with an insurer not licensed in this state and that payment of loss is not guaranteed in the event of insolvency of the eligible surplus lines insurer.

History: 1981 c 221 s 4

60A.199 EXAMINATIONS.

If the commissioner considers it necessary, he may examine the books and records of a surplus lines licensee to determine whether the licensee is conducting business in accordance with sections 60A.195 to 60A.209. For the purposes of facilitating examinations, the licensee shall allow the commissioner free access at reasonable times to all of the licensee's books and records relating to the transactions to which sections 60A.195 to 60A.209 apply. If an examination is conducted, the cost of the examination shall be paid by the insurer.

History: 1981 c 221 s 5

60A.20 [Repealed, 1981 c 221 s 15]

60A.201 PLACEMENT OF INSURANCE BY LICENSEE.

Subdivision 1. **Restrictions.** Insurance shall not be placed by the surplus lines licensee with an eligible or ineligible surplus lines insurer when coverage is available from a licensed insurer.

Subd. 2. **Availability of other coverage; presumption.** There shall be a rebuttable presumption that the following coverages are available from a licensed insurer:

- (a) All mandatory automobile insurance coverages required by chapter 65B;
- (b) Private passenger automobile physical damage coverage;
- (c) Homeowners and property insurance on owner occupied dwellings whose value is less than \$500,000. This figure shall be changed annually by the commissioner by the same percentage as the consumer price index for the Minneapolis-St. Paul metropolitan area is changed;
- (d) Any coverage readily available from three or more licensed insurers unless the licensed insurers quote a premium and terms not competitive with a premium and terms quoted by an eligible surplus lines insurer; and
- (e) Workers' compensation insurance, except excess workers' compensation insurance which is not available from the workers' compensation reinsurance association.

Subd. 3. **Unavailability of other coverage; presumption.** There shall be a rebuttable presumption that the following coverages are unavailable from a licensed insurer:

(a) Coverages on a list of unavailable coverages maintained by the commissioner pursuant to subdivision 4;

(b) Coverages where one portion of the risk is acceptable to licensed insurers but another portion of the same risk is not acceptable. The entire coverage may be placed with eligible surplus lines insurers if it can be shown that the eligible surplus lines insurer will accept the entire coverage but not the rejected portion alone; and

(c) Any coverage that the licensee is unable to procure after diligent search among licensed insurers.

Subd. 4. **Lists of unavailable lines of insurance; maintenance.** The commissioner shall maintain on a current basis a list of those lines of insurance for which coverages are believed by the commissioner to be generally unavailable from licensed insurers. The commissioner shall republish a list and make available to all licensees the list every six months. Any person may request in writing that the commissioner add or remove coverage from the current list at the next publication of the list. The commissioner's determinations of coverages to be added to or removed from the list shall not be subject to the administrative procedure act but prior to making determinations the commissioner shall provide opportunity for comment from interested parties.

History: 1981 c 221 s 6

60A.202 PLACEMENT OF INSURANCE BY LICENSEE.

Subdivision 1. **Restriction.** Only a surplus lines licensee shall issue evidence of placement of insurance with an eligible or ineligible surplus lines insurer.

Subd. 2. **Written communication of coverage to be delivered.** A licensee shall, within seven working days after the date on which the risk was bound or the insured or applicant was advised that coverage has been or will be obtained, deliver to the insured or the insured's representative a policy, a written binder, a certificate or other written evidence of insurance placed with an eligible or ineligible surplus lines insurer.

Subd. 3. **Contents of written communication.** The written communication showing that insurance has been obtained shall identify all known surplus lines insurers directly assuming any risk of loss. If there is more than one surplus lines insurer, any document issued or certified by the licensee pursuant to subdivision 2 shall specify, to the extent known by the licensee, whether the obligation is joint or several, and if the obligation is several, the proportion of the obligation assumed by each insurer.

History: 1981 c 221 s 7

60A.203 LICENSEES TO FILE EVIDENCE OF TRANSACTIONS.

Each surplus lines licensee shall keep a separate account of each transaction entered into pursuant to sections 60A.195 to 60A.209. Evidence of these transactions shall be filed with the commissioner in the form, manner, and time designated by the commissioner or if designated by the commissioner, with an association.

History: 1981 c 221 s 8

60A.204 ADDITIONAL CHARGES AND FEES.

Subdivision 1. **Placement fees.** A surplus lines licensee may charge, in addition to the premium charged by an eligible or ineligible surplus lines insurer, a

fee to cover the cost incurred in the placement of the policy which exceeds \$25, but only to the extent that the actual additional cost incurred for services performed by persons or entities unrelated to the licensee exceeds that amount.

Subd. 2. **Regulation of fees.** A fee charged pursuant to subdivision 1 shall not be excessive or discriminatory. The licensee shall maintain complete documentation of all fees charged. Those fees shall not be included as part of the premium for purposes of the computation of the premium taxes.

Subd. 3. **Commission charges.** Notwithstanding the provisions of subdivision 1, a licensee may add a commission charge if the insurer quotes a rate net of commission and the commission is not excessive or discriminatory.

History: 1981 c 221 s 9

60A.205 COMPENSATION.

Subdivision 1. **Authorization.** A surplus lines licensee may be compensated by an eligible surplus lines insurer and the licensee may compensate a licensed resident agent in this state for obtaining surplus lines insurance business. A licensed resident agent authorized by the licensee may collect a premium on behalf of the licensee, and as between the insured and the licensee, the licensee shall be considered to have received the premium if the premium payment has been made to the agent.

Subd. 2. **Consequences of receipt.** If an eligible surplus lines insurer has assumed a risk, and if the premium for that risk has been received by the licensee who placed the insurance, then as between the insurer and the insured, the insurer shall be considered to have received the premium due to it for the coverage and shall be liable to the insured for any loss covered by the insurance and for the unearned premium upon cancellation of the insurance, regardless of whether the licensee is indebted to the insurer.

History: 1981 c 221 s 10

60A.206 QUALIFICATION AS ELIGIBLE SURPLUS LINES INSURER.

Subdivision 1. **Insurers to be recognized by the commissioner.** A surplus lines licensee shall place surplus lines insurance only with insurers which are in a stable and unimpaired financial condition. An insurer recognized by the commissioner as an eligible surplus lines insurer pursuant to subdivision 2 shall be considered to meet the requirements of this subdivision. Recognition as an eligible surplus lines insurer shall be conditioned upon the insurers continued compliance with sections 60A.195 to 60A.209.

Subd. 2. **Application for recognition.** An insurer not otherwise licensed to engage in the business of insurance in Minnesota may apply for recognition as an eligible surplus lines insurer by filing an application in the form and with the information as reasonably required by the commissioner regarding the insurer's financial stability, reputation, integrity and operating plans. The commissioner may delegate to an association the power to process and make recommendations on applications for recognition as an eligible surplus lines insurer. Notwithstanding delegation by the commissioner, an applicant may file an application directly with the commissioner.

Subd. 3. **Standards to be met by insurers.** (a) The commissioner shall recognize the insurer as an eligible surplus lines insurer when satisfied that the insurer is in a stable, unimpaired financial condition and that the insurer is qualified to provide coverage in compliance with sections 60A.195 to 60A.209. If filed with full supporting documentation before July 1 of any year, applications

MINNESOTA STATUTES 1981 SUPPLEMENT

submitted under subdivision 2 shall be acted upon by the commissioner before December 31 of the year of submission.

(b) The commissioner shall not authorize an insurer as an eligible surplus lines insurer unless the insurer continuously maintains capital and surplus of at least \$3,000,000 and transaction of business by the insurer is not hazardous, financially or otherwise, to its policyholders, its creditors, or the public. Each alien surplus lines insurer shall have current financial data filed with the National Association of Insurance Commissioners Non-admitted Insurers Information Office.

Subd. 4. Removal of insurers. When the commissioner considers it necessary, he may request information about or examine the affairs of any eligible surplus lines insurer at the expense of the insurer, to determine whether the insurer should continue to remain on the list of eligible surplus lines insurers. If the commissioner determines that it is in the public interest to remove an insurer from the list because the insurer no longer meets the requirements of sections 60A.195 to 60A.209, or is no longer qualified to provide coverage under sections 60A.195 to 60A.209, the commissioner shall do so. If an insurer removed from the list desires a hearing pursuant to the administrative procedure act, the hearing shall be scheduled within 30 days following request for the hearing.

Subd. 5. Trust fund to be maintained. Before recognition as an eligible surplus lines insurer in this state, an alien insurer shall maintain a trust fund in the United States in cash, marketable securities, or other substantially equivalent instruments of at least \$1,500,000 with a United States bank which is a member of the Federal Reserve System or which is on deposit with regulatory authorities in this or another state for the benefit of all United States policyholders and beneficiaries. A trust fund required under this subdivision shall not have an expiration date which is at any time less than five years in the future, on a continuing basis.

Subd. 6. Alternative means of compliance. Subdivisions 3 and 5 shall not apply to unincorporated, individual alien insurers which, in place of the requirements prescribed in subdivisions 3 and 5, maintain assets as provided in subdivision 3 and hold in trust for all policyholders and beneficiaries in the United States not less than \$50,000,000 in the aggregate.

Subd. 7. Appointment of agent for service of process. Each eligible surplus lines insurer shall appoint the commissioner as its resident agent, for purposes of service of process.

History: 1981 c 221 s 11

60A.207 POLICIES TO INCLUDE NOTICE.

Each policy, cover note, or instrument evidencing surplus lines insurance from an eligible surplus lines insurer which is delivered to an insured or a representative of an insured shall have printed, typed, or stamped in red ink upon its face in not less than 10 point type, the following notice: "THIS INSURANCE IS ISSUED PURSUANT TO THE MINNESOTA SURPLUS LINES INSURANCE ACT. THE INSURER IS AN ELIGIBLE SURPLUS LINES INSURER BUT IS NOT OTHERWISE LICENSED BY THE STATE OF MINNESOTA. IN CASE OF INSOLVENCY, PAYMENT OF CLAIMS IS NOT GUARANTEED." This notice shall not be covered or concealed in any manner.

History: 1981 c 221 s 12

60A.208 LICENSEE ASSOCIATION.

Subdivision 1. **Licensee's right to associate.** Surplus lines licensees may associate and the commissioner may register the association for one or more of the following purposes:

- (a) Advising the commissioner as to the availability of surplus lines coverage and market practices and standards for surplus lines insurers and licensees;
- (b) Collecting and furnishing records and statistics; or
- (c) Submitting recommendations regarding administration of sections 60A.195 to 60A.209.

Subd. 2. **Filing requirements.** (a) Each association shall file with the commissioner for approval all of the following:

- (1) A copy of the association's constitution and articles of agreement or association, or the association's certificate of incorporation and bylaws and any rules governing the association's activities; and
- (2) An agreement that, as a condition of continued registration under subdivision 1, the commissioner may examine the association.

(b) Each association shall file with the commissioner and keep current all of the following:

- (1) A list of members; and
- (2) The name and address of a resident of this state upon whom notices or orders of the commissioner or process issued by the commissioner may be served.

Subd. 3. **Commissioner's powers; suspension of registration.** The commissioner may refuse to register, or may suspend or revoke the registration of an association for any of the following reasons:

- (a) It reasonably appears that the association will not be able to carry out the purposes of sections 60A.195 to 60A.209;
- (b) The association fails to maintain and enforce rules which will assure that members of the association and persons associated with those members comply with sections 60A.195 to 60A.209, other applicable chapters of the insurance laws and rules promulgated under either;
- (c) The rules of the association do not assure a fair representation of its members in the selection of directors and in the administration of its affairs;
- (d) The rules of the association do not provide for an equitable allocation of reasonable dues, fees, and other charges among members;
- (e) The rules of the association impose a burden on competition; or
- (f) The association fails to meet other applicable requirements prescribed in sections 60A.195 to 60A.209.

Subd. 4. **Membership limited to licensees.** An association shall deny membership to any person who is not a licensee.

Subd. 5. **Association is voluntary.** No licensee may be compelled to join an association as a condition of receiving a license or continuing to be licensed under sections 60A.195 to 60A.209.

Subd. 6. **Financial statement to be filed.** Each association shall annually file a certified audited financial statement.

Subd. 7. **Reports and recommendations by the association.** An association may submit reports and make recommendations to the commissioner regarding the financial condition of any eligible surplus lines insurer. These reports and

recommendations shall not be considered to be public information. There shall not be liability on the part of, or a cause of action of any nature shall not arise against, eligible surplus lines insurers, the association or its agents or employees, the directors, or the commissioner or authorized representatives of the commissioner, for statements made by them in any reports or recommendations made under this subdivision.

Subd. 8. Operating assessment. (a) Upon request from the association, the commissioner may approve the levy of an assessment of not more than one-half of one percent of premiums charged pursuant to sections 60A.195 to 60A.209 for operation of the association to the extent that the operation relieves the commissioner of duties otherwise required of the commissioner pursuant to sections 60A.195 to 60A.209. Any assessment so approved may be subtracted from the premium tax owed by the licensee.

(b) The association may revoke the membership and the commissioner may revoke the license in this state, of any licensee who fails to pay an assessment when due, if the assessment has been approved by the commissioner.

History: 1981 c 221 s 13

60A.209 INSURANCE PROCURED FROM INELIGIBLE INSURERS.

Subdivision 1. Authorization; regulation. A resident of this state may obtain insurance from an ineligible surplus lines insurer in this state through a surplus lines licensee. The licensee shall first attempt to place the insurance with a licensed insurer, or if that is not possible, with an eligible surplus lines insurer. If coverage is not obtainable from a licensed insurer or an eligible surplus lines insurer, the licensee shall certify to the commissioner, on a form prescribed by the commissioner, that these attempts were made. Upon obtaining coverage from an ineligible surplus lines insurer, the licensee shall:

(a) Have printed, typed, or stamped in red ink upon the face of the policy in not less than 10 point type the following notice: "THIS INSURANCE IS ISSUED PURSUANT TO THE MINNESOTA SURPLUS LINES INSURANCE ACT. THIS INSURANCE IS PLACED WITH AN INSURER THAT IS NOT LICENSED BY THE STATE NOR RECOGNIZED BY THE INSURANCE COMMISSIONER AS AN ELIGIBLE SURPLUS LINES INSURER. IN CASE OF ANY DISPUTE RELATIVE TO THE TERMS OR CONDITIONS OF THE POLICY OR THE PRACTICES OF THE INSURER, THE INSURANCE COMMISSIONER WILL NOT BE ABLE TO ASSIST IN THE DISPUTE. IN CASE OF INSOLVENCY, PAYMENT OF CLAIMS IS NOT GUARANTEED." The notice may not be covered or concealed in any manner; and

(b) Collect from the insured appropriate premium taxes and report the transaction to the commissioner on a form prescribed by the commissioner. If the insured fails to pay the taxes when due, the insured shall be subject to a civil fine of not more than \$1,000, plus accrued interest from the inception of the insurance.

Subd. 2. Penalty. Except as provided in this section, a person who assists or in any manner aids directly or indirectly in the procurement of insurance from an ineligible surplus lines insurer in this state is guilty of a misdemeanor, punishable by imprisonment for not more than one year, or by a fine of not more than \$1,000, or both.

Subd. 3. Duty to report. Each insured in this state who procures, causes to be procured, or continues or renews insurance with an ineligible surplus lines insurer or any self-insurer in this state who procures or continues excess of loss,

catastrophe, or other insurance upon a subject of insurance resident, located, or to be performed within this state, other than insurance procured pursuant to section 60A.201 or subdivision 1 of this section shall file a written report regarding the insurance with the commissioner on forms prescribed by the commissioner and furnished to the insured upon request. The report shall be filed within 30 days after the date the insurance was procured, continued, or renewed and shall be accompanied by the tax on the premiums of two percent. The report shall show all of the following:

- (a) The name and address of the insured;
- (b) The name and address of the insurer;
- (c) The subject of the insurance;
- (d) A general description of the coverage;
- (e) The amount of premium currently charged for the insurance; and
- (f) Any additional pertinent information reasonably requested by the commissioner.

Subd. 4. **Allocation of premiums according to location of subject matter.** If the insurance described in subdivision 1 also covers a subject of insurance residing, located, or to be performed outside this state, for the purposes of this section, a proper pro rata portion of the entire premium payable for all of that insurance shall be allocated according to the subjects of insurance residing, located, or to be performed in this state.

Subd. 5. **Acts constituting procurement of insurance in the state.** Any insurance placed with an ineligible surplus lines insurer procured through negotiations or an application in whole or in part occurring or made within or from without this state, or for which premiums in whole or in part are remitted directly or indirectly from within this state, shall be considered to be insurance procured, continued, or renewed in this state under subdivision 3.

Subd. 6. **Ineligible surplus lines insurers; liability on policies or contracts.** Except with respect to placement pursuant to section 60A.198, subdivision 4, if an ineligible insurer offering benefits under a written contract which constitutes the transaction of insurance or which offers benefits substantially similar to benefits under policies of insurance, whether or not the benefits are identified or described as insurance, fails to pay a claim or loss within the provision of the contract, any person who assisted or aided, directly or indirectly, in the procurement of the contract shall be liable to the person to whom the obligations are owed for the full amount of the claim or loss, in the manner provided by the contract.

History: 1981 c 221 s 14

60A.23 MISCELLANEOUS.

[For text of subds 1 to 7, see M.S.1980]

Subd. 8. **Self insurance plan administrators; vendors of risk management services.** (1) **Scope.** This subdivision applies to any vendor of risk management services and to any entity which administers, for compensation, a self insurance plan. This subdivision shall not apply (a) to an insurance company authorized to transact insurance in this state, as defined by section 60A.06, subdivision 1, clauses (4) and (5); (b) to a service plan corporation, as defined by section 62C.02, subdivision 6; (c) to a health maintenance organization, as defined by section 62D.02, subdivision 4; (d) to an employer directly operating a self insurance plan for its employees' benefits or (e) to a nonprofit insurance trust administered and

MINNESOTA STATUTES 1981 SUPPLEMENT

operated for the benefit of employer participants and established prior to January 1, 1979.

(2) **Definitions.** For purposes of this subdivision the following terms have the meanings given them.

(a) "Administering a self insurance plan" means (i) processing, reviewing or paying claims, (ii) establishing or operating funds and accounts, or (iii) otherwise providing necessary administrative services in connection with the operation of a self insurance plan.

(b) "Employer" means an employer, as defined by section 62E.02, subdivision 2.

(c) "Entity" means any association, corporation, partnership, sole proprietorship, trust, or other business entity engaged in or transacting business in this state.

(d) "Self insurance plan" means a plan providing life, medical or hospital care, accident, sickness or disability insurance, as an employee fringe benefit, which is not directly insured or provided by a licensed insurer, service plan corporation, or health maintenance organization.

(e) "Vendor of risk management services" means an entity providing for compensation actuarial, financial management, accounting, legal or other services for the purpose of designing and establishing a self insurance plan for an employer.

(3) **License.** No vendor of risk management services or entity administering a self insurance plan may transact such business in this state unless it is licensed to do so by the commissioner. An applicant for a license shall state in writing the type of activities it seeks authorization to engage in and the type of services it seeks authorization to provide. The license shall be granted only when the commissioner is satisfied that the entity possesses the necessary organization, background, expertise, and financial integrity to supply the services sought to be offered. The commissioner may issue a license subject to restrictions or limitations upon the authorization, including the type of services which may be supplied or the activities which may be engaged in. The license fee shall be \$100. All licenses are for a period of two years.

(4) **Regulatory restrictions; powers of the commissioner.** To assure that self insurance plans are financially solvent, are administered in a fair and equitable fashion, and are processing claims and paying benefits in a prompt, fair, and honest manner, vendors of risk management services and entities administering self insurance plans are subject to the supervision and examination by the commissioner. Vendors of risk management services, entities administering self insurance plans, and self insurance plans established or operated by them are subject to the trade practice requirements of sections 72A.19 to 72A.30.

(5) **Rule making authority.** To carry out the purposes of this subdivision, the commissioner may promulgate administrative rules, including emergency rules, pursuant to sections 15.0411 to 15.052. These rules may:

(a) Establish reporting requirements for administrators of self insurance plans;

(b) Establish standards and guidelines to assure the adequacy of financing, reinsuring, and administration of self insurance plans;

(c) Establish bonding requirements or other provisions assuring the financial integrity of entities administering self insurance plans; or

(d) Establish other reasonable requirements to further the purposes of this subdivision.

History: 1Sp1981 c 4 art 2 s 44,45