

CHAPTER 60A

GENERAL INSURANCE POWERS

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60A.01 SCOPE.

This chapter includes the provisions relating to administration in general and the provisions applicable to insurance in general.

History: 1967 c 395 art 1 s 1

60A.02 DEFINITIONS.

Subdivision 1. **Terms.** Unless the language or context clearly indicates that a different meaning is intended, the following terms shall, for the purposes of chapters 60A to 72A, 69, 70A and 299F, have the meanings ascribed to them.

Subd. 2. **Commissioner.** "Commissioner" means the commissioner of commerce of the state of Minnesota and, in the commissioner's absence or disability, a deputy or other person duly designated to act in the commissioner's place.

Subd. 2a. **Continued.** An insurance policy that is issued for a term in excess of one year or that has no specified term or that is designated as being continuous is "continued" each year on the anniversary date of the issuance of the policy.

Subd. 3. **Insurance.** "Insurance" is any agreement whereby one party, for a consideration, undertakes to indemnify another to a specified amount against loss or damage from specified causes, or to do some act of value to the assured in case of such loss or damage. A program of self-insurance, self-insurance revolving fund or pool established under section 471.981 is not insurance for purposes of this subdivision.

Subd. 4. **Company or insurance company.** "Company" or "insurance company" includes every insurer, corporation, business trust, or association engaged in insurance as principal, but for purposes of this subdivision does not include a political subdivision providing self-insurance or establishing a pool under section 471.981, subdivision 3.

Subd. 5. **Domestic.** "Domestic" shall designate those companies incorporated or organized in this state.

Subd. 6. **Foreign.** "Foreign," when used without limitations, shall designate those companies incorporated in any other state or country.

Subd. 7. **Insurance agent or insurance agency.** An "insurance agent" or "insurance agency" is a person acting under express authority from, and an appointment pursuant to section 60A.17 by, 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, a corporation, or other entity, including an insurance agency.

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 [Repealed, 1981 c 307 s 22]

Subd. 9. **Net assets.** "Net assets" means that portion of the excess of the entire assets of an insurance company over its entire liabilities, exclusive of capital, and inclusive of policy liability, available for the payment of its obligations, including capital stock in this state and including as assets deferred premiums on policies written within three months and actually in force; and, in the case of a mutual marine or fire and marine company, its subscription funds and premium notes not more than 30 days past due and uncollected. In the case of a mutual fire insurance company, there shall be included as assets premium notes absolutely payable within six months from date and given for policies actually in force, when such notes are not more than 30 days overdue. Unpaid guaranty fund subscriptions shall not be included as assets, and guaranty fund certificates upon which there is no liability of the company until all of its other obligations and liabilities are paid shall not be included as a liability.

Subd. 10. **Earned premiums.** "Earned premiums" includes gross premiums charged on all policies written, including all determined excess and additional premiums, less return premiums, other than premiums returned to policyholders as dividends, and less reinsurance premiums and premiums on policies canceled, and less unearned premiums on policies in force. Any participating company which has charged in its premiums a loading solely for dividends shall not be required to include such loading in its earned premiums; provided, a statement of the amount of such loading has been filed and approved by the commissioner.

Subd. 11. **Unearned premiums, insurance reserve, net value policies, and premium reserve.** "Unearned premiums," "insurance reserve," "net value policies," and "premium reserve" severally refer to the liability of an insurance company upon its insurance contracts other than accrued claims computed by rules on valuation herein established.

Subd. 12. **Profits.** "Profits" of a mutual insurance company means that portion of its net earnings not required for payment of losses and expenses, nor set apart for any lawful purposes.

Subd. 13. **Loss payments and loss expense payments.** The terms "loss payments" and "loss expense payments" include all payments to claimants, including payments for medical and surgical attendance, legal expense, salaries and expenses of investigators, adjusters, and field representatives, rents, stationery, telegraph and telephone charges, postage, salaries and expenses of office employees, home office expenses, and

all other payments made on account of claims, whether such payments shall be allocated to specific claims or unallocated.

Subd. 14. Compensation. The term "compensation" relates to all insurance effected by virtue of statutes providing compensation to employees for personal injuries irrespective of fault of the employer.

Subd. 15. Liability. The term "liability" relates to all insurance, except compensation insurance, against loss or damage from accident to or injuries suffered by an employee or other person and for which the insured is liable.

Subd. 16. Department of commerce. "Department of commerce" of the state of Minnesota also means department of commerce or commissioner of commerce.

Subd. 17. Leasehold estate. The term "leasehold estate" means an estate in land which includes the ground lease covering the land and any improvements thereon.

Subd. 18. State. "State" means any state of the United States of America, the District of Columbia, the commonwealth of Puerto Rico and any other possessions of the United States.

History: 1967 c 395 art 1 s 2; 1969 c 494 s 1,2; 1971 c 24 s 9; 1980 c 529 s 1,2; 1981 c 307 s 1; 1983 c 289 s 114 subd 1; 1983 c 328 s 1; 1984 c 655 art 1 s 92; 1Sp1985 c 10 s 49; 1986 c 444; 1989 c 260 s 1

60A.03 COMMISSIONER OF COMMERCE.

Subdivision 1. Commissioner; appointment. The commissioner of commerce shall be appointed by the governor under the provisions of section 15.06. All of the commissioner's time shall be devoted to the duties of the office.

Subd. 2. Powers of commissioner. (1) **Enforcement.** The commissioner shall have and exercise the power to enforce all the laws of this state relating to insurance, and shall enforce all the provisions of the laws of this state relating to insurance.

(2) **Department of commerce.** The commissioner shall have and possess all the rights and powers and perform all the duties heretofore vested by law in the commissioner of commerce, except that applications for registrations of securities and brokers' licenses under sections 80A.01 to 80A.31, and all matters pertaining to such registrations and licenses, application for the organization and establishment of new financial institutions under sections 46.041, 46.043, and 46.044, applications by insuring companies for licenses to carry on business within the state, and all matters pertaining to such licenses, and applications for the consolidation of insuring companies transacting business within the state, shall be determined by the commissioner in the manner provided by the laws defining the powers and duties of the commissioner of commerce, and the state securities commission, respectively, or, in the absence of any law prescribing the procedure, by such reasonable procedure as the commission, as defined in chapter 45, may prescribe.

Subd. 3. Commissioner may appoint. (1) **Official staff.** The commissioner may appoint a deputy or assistant commissioner of commerce to assist in the commissioner's duties, an actuary, a chief examiner, a statistician, and such assistants to these employees and such stenographic and clerical help as may be required for the proper conduct of the department of commerce.

(2) **Duties of departmental officials.** In the absence or disability of the commissioner, the commissioner's duties shall be performed by the deputy or assistant commissioner of commerce. The actuary of the department shall, under the direction of the commissioner, make such valuation of life insurance policies as shall be necessary, from time to time, to the proper supervision of life insurance companies transacting business in this state, and shall perform such other actuarial duties, including the visitation and examination of insurance companies, as the commissioner may prescribe. The chief and assistant examiners shall, under the direction of the commissioner, devote their principal time to necessary or required examinations of insurance companies, and perform such other duties as the commissioner may prescribe. Other salaried employees of the department of commerce shall be under the direction of the commissioner and

perform such duties, in connection with the department of commerce, as the commissioner may prescribe.

(3) **Consulting actuary, appointment and compensation.** The commissioner may, when the commissioner shall deem it necessary, appoint any experienced and competent professional insurance actuary to personally make or conduct, or assist in making or conducting, an examination of any insurance company admitted, or applying for admission, to do business in this state, on condition that the commissioner shall have previously filed with the secretary of state a written declaration designating such person, by name and address, as a consulting actuary of the department of commerce. In this case, the commissioner shall fix a reasonable compensation for the actuary on a per diem basis for the actual time employed in making or conducting, or assisting to make or conduct, the examination, which compensation, together with the amount of the necessary expenses actually incurred by the actuary, including expenses of any necessary appraisal or clerical assistance, shall be charged to the company and paid by it to the actuary.

(4) **Appraiser, appointment and compensation.** The commissioner, when deeming it necessary, may appoint any qualified person to make an appraisal of any or all of the assets of any such company. Such person shall be paid such reasonable fees for the appraisal as may be approved by the commissioner and shall also be paid necessary expenses actually incurred in connection with the services. Such compensation and expenses shall be paid by the company.

Subd. 4. [Repealed, 1969 c 7 s 2]

Subd. 5. **Examination fees and expenses.** When any visitation, examination, or appraisal is made by order of the commissioner, the company being examined, visited, or appraised, including fraternal, township mutuals, reciprocal exchanges, nonprofit service plan corporations, health maintenance organizations, vendors of risk management services licensed under section 60A.23, or self-insurance plans or pools established under section 176.181 or 471.982, shall pay to the department of commerce the necessary expenses of the persons engaged in the examination, visit, or appraisal plus the per diem salary fees of the employees of the department of commerce who are conducting or participating in the examination, visitation, or appraisal. The per diem salary fees may be based upon the approved examination fee schedules of the National Association of Insurance Commissioners or otherwise determined by the commissioner. All of these fees and expenses must be paid into the department of commerce revolving fund.

Subd. 6. **Examination revolving fund.** (1) **Revolving fund created.** There is hereby created the department of commerce examination revolving fund for the purpose of carrying on the examination of foreign and domestic insurance companies.

(2) **Money in revolving fund.** Such fund shall consist of the \$7,500 appropriated therefor and the money transferred to it as herein provided, which are reappropriated to the commissioner of commerce for the purpose of this subdivision.

(3) **Fund to be kept in state treasury.** Such fund shall be kept in the state treasury and shall be paid out in the manner prescribed by law for money therein.

(4) **Purposes for which fund may be expended.** Such fund shall be used for the payment of per diem salaries and expenses of special examiners and appraisers, and the expenses of the commissioner of commerce, deputy commissioner of commerce, chief examiner, actuary other than a consulting actuary appointed under subdivision 3, clause (3) hereof, regular salaried examiners and other employees of the department of commerce when participating in examinations. Expenses include meals, lodging, laundry, transportation, and mileage. The salary of regular employees of the division of insurance shall not be paid out of this fund.

(5) **Collections to be deposited in fund.** All moneys collected by the division of insurance from insurance companies for fees and expenses of examinations, shall be deposited in the insurance division examination revolving fund.

(6) **Payments from such fund.** Upon authorization by the commissioner of com-

merce, the moneys due each examiner or employee engaged in an examination shall be paid from the insurance division examination revolving fund in the manner prescribed by law.

(7) **Excess over \$7,500 canceled into general fund.** The balance in such fund on June 30 of each year in excess of \$7,500 shall be forthwith canceled into the general fund.

Subd. 7. [Repealed, 1969 c 707 s 1; 1969 c 1129 art 4 s 11]

Subd. 8. **Computation of net value; life insurance.** (1) **Domestic insurers.** The commissioner shall compute, yearly, the net value of all outstanding policies in every company authorized to insure lives in this state, calculated upon the basis stated in section 61A.25.

(2) **Foreign insurers.** The commissioner may accept the valuation made by the insurance commissioner of the state under whose authority a life company was organized, when that valuation has been made on sound and recognized principles and on the legal basis provided in section 61A.25, or its equivalent, when furnished with a certificate of that commissioner setting forth that value on the last day of the preceding year. Every such life company which fails to promptly furnish this certificate shall, on demand, furnish the commissioner detailed lists of all its policies and securities, and shall be liable for all charges and expenses resulting therefrom.

Subd. 9. **Confidentiality of information.** The commissioner may not be required to divulge any information obtained in the course of the supervision of insurance companies, or the examination of insurance companies, including examination related correspondence and workpapers, until the examination report is finally accepted and issued by the commissioner, and then only in the form of the final public report of examinations. This subdivision does not apply to the extent the commissioner is required or permitted by law, or ordered by a court of law to testify or produce evidence in a civil or criminal proceeding. For purposes of this subdivision, a subpoena is not an order of a court of law.

History: 1967 c 395 art 1 s 3; 1969 c 7 s 3; 1969 c 399 s 1; 1969 c 707 s 1; 1969 c 1129 art 4 s 11; 1976 c 2 s 35; 1977 c 305 s 17; 1978 c 470 s 1; 1983 c 289 s 114 subd 1; 1983 c 328 s 2; 1984 c 655 art 1 s 92; 1985 c 248 s 20; 1986 c 444; 1990 c 573 s 19

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 fraternals, 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 the commissioner's discretion, there is cause to believe the commissioner 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 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 prac-

tice 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.

Subd. 6. Penalty. Notwithstanding section 72A.05, any person who violates or aids and abets any violation of a written order issued pursuant to this section may be fined not more than \$10,000 for each violation of the order in an action commenced in Ramsey county by the attorney general on behalf of the state of Minnesota and the money so recovered shall be paid into the general fund.

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: 1967 c 591 s 1; 1969 c 234 s 1,2; 1969 c 399 s 1; 1981 c 211 s 1-7; 1984 c 628 art 3 s 11; 1986 c 444

60A.032 COMMISSIONER'S ORDERS, REPORT.

When, upon receipt of an examination report, the commissioner forwards to the company an order based on the report, the commissioner shall immediately report the fact to the governor and the attorney general. Within 20 days after submission of the report the commissioner shall submit to the governor and attorney general a supplementary report if the company has not complied with the order.

History: 1969 c 7 s 1; 1986 c 444

60A.04 [Repealed, 1969 c 708 s 62]

60A.05 SUSPENSION OF AUTHORITY.

Subdivision 1. Companies. If the commissioner believes, 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 the commissioner believes protection of the interests of policyholders, claimants, or the general public requires summary action, the commissioner may revoke or suspend all certificates of authority granted to it or its agents. The commissioner shall cause notification of the action 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 is 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 is 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. The court shall make any proper order or decree and enforce it by any appropriate process. If the order or decree is adverse to

the petitioning company, an appeal may be taken as in other civil cases. In the case of appeal, the commissioner may issue an order revoking the right of the petitioning company to do business in this state until the final determination of the question. Neither this section nor any proceedings under it shall affect any criminal prosecutions or proceeding for the enforcement of any fine, penalty, or forfeiture.

Subd. 2. Self-insurance entities. The authority granted pursuant to chapter 62H and sections 65B.48, 176.181, 471.617, and 471.982 or any other law of the state of Minnesota to form self-insurance entities or otherwise act as a self-insurer immediately terminates upon any filing to commence bankruptcy proceedings in regard to the self-insurance entity or self-insurer without further action by the commissioner.

History: 1967 c 395 art 1 s 5; 1969 c 707 s 2; 1981 c 211 s 8; 1983 c 247 s 28; 1984 c 592 s 6; 1986 c 444

60A.051 SUSPENSION OF CERTIFICATE OF AUTHORITY; COMPANIES.

Subdivision 1. Grounds. The commissioner of commerce may deny an application for a certificate of authority, or, after a hearing, may suspend or revoke the certificate of authority of an authorized insurer, or deny the renewal thereof, if the commissioner finds that:

(a) the board of directors or the principal management of such company is incompetent or untrustworthy or so lacking in insurance company managerial experience as to make its operation hazardous to its policyholders, its stockholders, or to the insurance buying public, or

(b) such company is controlled directly or indirectly through ownership, management, reinsurance transactions or other business relations by any person or persons whose business operations are or have been marked by manipulation of any assets, reinsurance, or accounts as to create a hazard to the company's policyholders, stockholders, or to the insurance buying public.

Subd. 2. Hearing and review. Any person aggrieved by the commissioner of commerce's action taken pursuant to the authority granted by this section shall be entitled to a hearing before the department of commerce after which the department shall make a final determination with regard to such company's certificate of authority or the application therefor. Any person aggrieved by a determination made by the department of commerce shall be entitled to judicial review in the manner provided by chapter 14.

Subd. 3. Rules. The commissioner of commerce shall have the authority to issue rules designed to implement subdivision 1 in the manner provided by chapter 14.

Subd. 4. Stay pending hearing. During the pendency of such hearing before the department of commerce, the order of suspension, revocation, or denial of renewal of a certificate of authority shall be stayed.

Subd. 5. Additional protective measures. Whenever the commissioner, after an examination, deems management of an insurer to be so untrustworthy or so lacking in insurance experience that its further transaction of business will be hazardous to its policyholders, to its creditors, or to the public, or for any other reasons specified herein or in section 60A.05 or chapter 60B, the commissioner may proceed under said section 60A.05 or chapter 60B.

History: 1967 c 310 s 1-5; 1969 c 6 s 11; 1969 c 708 s 63; 1982 c 424 s 130; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1985 c 248 s 70; 1986 c 444

60A.06 KINDS OF INSURANCE PERMITTED.

Subdivision 1. Statutory lines. Insurance corporations may be authorized to transact in any state or territory in the United States, in the Dominion of Canada, and in foreign countries, when specified in their charters or certificates of incorporation, either as originally granted or as thereafter amended, any of the following kinds of business, upon the stock plan, or upon the mutual plan when the formation of such mutual companies is otherwise authorized by law; and business trusts as authorized by law of this state shall only be authorized to transact in this state the following kind of business hereinafter specified in clause (7) hereof when specified in their "declaration of trust":

(1) To insure against loss or damage to property on land and against loss of rents and rental values, leaseholds of buildings, use and occupancy and direct or consequential loss or damage caused by fire, smoke or smudge, water or other fluid or substance, lightning, windstorm, tornado, cyclone, earthquake, collapse and slippage, rain, hail, frost, snow, freeze, change of temperature, weather or climatic conditions, excess or deficiency of moisture, floods, the rising of waters, oceans, lakes, rivers or their tributaries, bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped power, electrical power interruption or electrical breakdown from any cause, railroad equipment, motor vehicles or aircraft, accidental injury to sprinklers, pumps, conduits or containers or other apparatus erected for extinguishing fires, explosion, whether fire ensues or not, except explosions on risks specified in clause (3); provided, however, that there may be insured hereunder the following: (a) explosion of any kind originating outside the insured building or outside of the building containing the property insured, (b) explosion of pressure vessels which do not contain steam or which are not operated with steam coils or steam jackets; and (c) risks under home owners multiple peril policies;

(2)(a) To insure vessels, freight, goods, wares, merchandise, specie, bullion, jewels, profits, commissions, bank notes, bills of exchange, and other evidences of debt, bottomry and respondentia interest, and every insurance appertaining to or connected with risks of transportation and navigation on and under water, on land or in the air;

(b) To insure all personal property floater risks;

(3) To insure against any loss from either direct or indirect damage to any property or interest of the assured or of another, resulting from the explosion of or injury to (a) any boiler, heater or other fired pressure vessel; (b) any unfired pressure vessel; (c) pipes or containers connected with any of said boilers or vessels; (d) any engine, turbine, compressor, pump or wheel; (e) any apparatus generating, transmitting or using electricity; (f) any other machinery or apparatus connected with or operated by any of the previously named boilers, vessels or machines; and including the incidental power to make inspections of and to issue certificates of inspection upon, any such boilers, apparatus, and machinery, whether insured or otherwise;

(4) To make contracts of life and endowment insurance, to grant, purchase, or dispose of annuities or endowments of any kind; and, in such contracts, or in contracts supplemental thereto to provide for additional benefits in event of death of the insured by accidental means, total permanent disability of the insured, or specific dismemberment or disablement suffered by the insured, or acceleration of life or endowment or annuity benefits in advance of the time they would otherwise be payable;

(5)(a) To insure against loss or damage by the sickness, bodily injury or death by accident of the assured or dependents;

(b) To insure against the legal liability, whether imposed by common law or by statute or assumed by contract, of employers for the death or disablement of, or injury to, employees;

(6) To guarantee the fidelity of persons in fiduciary positions, public or private, or to act as surety on official and other bonds, and for the performance of official or other obligations;

(7) To insure owners and others interested in real estate against loss or damage, by reason of defective titles, encumbrances, or otherwise;

(8) To insure against loss or damage by breakage of glass, located or in transit;

(9)(a) To insure against loss by burglary, theft, or forgery;

(b) To insure against loss of or damage to moneys, coins, bullion, securities, notes, drafts, acceptance or any other valuable paper or document, resulting from any cause, except while in the custody or possession of and being transported by any carrier for hire or in the mail;

(c) To insure individuals by means of an all risk type of policy commonly known as the "personal property floater" against any kind and all kinds of loss of or damage to, or loss of use of, any personal property other than merchandise;

(d) To insure against loss or damage by water or other fluid or substance;

(10) To insure against loss from death of domestic animals and to furnish veterinary service;

(11) To guarantee merchants and those engaged in business, and giving credit, from loss by reason of giving credit to those dealing with them; this shall be known as credit insurance;

(12) To insure against loss or damage to automobiles or other vehicles or aircraft and their contents, by collision, fire, burglary, or theft, and other perils of operation, and against liability for damage to persons, or property of others, by collision with such vehicles or aircraft, and to insure against any loss or hazard incident to the ownership, operation, or use of motor or other vehicles or aircraft;

(13) To insure against liability for loss or damage to the property or person of another caused by the insured or by those for whom the insured is responsible, including insurance of medical, hospital, surgical, funeral or other related expense of the insured or other person injured, irrespective of legal liability of the insured, when issued with or supplemental to policies of liability insurance;

(14) To insure against loss of or damage to any property of the insured, resulting from the ownership, maintenance or use of elevators, except loss or damage by fire;

(15) To insure against attorneys fees, court costs, witness fees and incidental expenses incurred in connection with the use of the professional services of attorneys at law.

Subd. 2. Other lines. Any insurance corporation or association heretofore or hereafter licensed to transact within the state any of the kinds or classes of insurance specifically authorized under the laws of this state may, when authorized by its charter, transact within and without the state any lines of insurance germane to its charter powers and not specifically provided for under the laws of this state when these lines, or combinations of lines, of insurance are not in violation of the constitution or the laws of the state and, in the opinion of the commissioner, not contrary to public policy, provided the company or association shall first obtain authority of the commissioner and meet such requirements as to capital or surplus, or both, as the commissioner shall prescribe. These additional hazards may be insured against by attachment to, or in extension of, any policy which the company may be authorized to issue under the laws of this state. This subdivision shall apply to companies operating upon the stock or mutual plan, reciprocal or interinsurance exchanges.

Subd. 3. Limitation on combination policies. (a) Unless specifically authorized by subdivision 1, clause (4), it is unlawful to combine in one policy coverage permitted by subdivision 1, clauses (4) and (5)(a). This subdivision does not prohibit the simultaneous sale of these products, but the sale must involve two separate and distinct policies.

(b) This subdivision does not apply to group policies.

(c) This subdivision does not apply to policies permitted by subdivision 1, clause (4), that contain benefits providing acceleration of life, endowment, or annuity benefits in advance of the time they would otherwise be payable.

History: 1967 c 395 art 1 s 6; 1969 c 7 s 5; 1973 c 634 s 1; 1986 c 444; 1986 c 455 s 4; 1989 c 125 s 1,2

60A.07 AUTHORIZATION AND REQUIREMENTS.

Subdivision 1. Incorporation. Except when the manner of organization is specifically otherwise provided in sections dealing with these insurers, domestic insurance corporations shall be organized under and governed by chapter 300. The articles or certificate of incorporation must meet the requirements of section 300.025, except section 300.025, clause (7).

Subd. 2. Powers of insurers. Corporations may be formed for carrying on any one branch of the business of insurance authorized by law, or any two or more branches

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thereof, which are permitted by law to be transacted by one company; and business trusts as authorized by law of this state may be formed for carrying on the kind of business of insurance specified in section 60A.06, subdivision 1, clause (7).

Subd. 3. Acceptance of laws. Every company, domestic or foreign, shall file with the commissioner its acceptance of the provisions of the insurance laws of the state of Minnesota, and its charter and any amendments thereto, and each such company shall be governed thereby and by those laws relative to corporations in general, so far as applicable and not otherwise specifically provided. No foreign company shall be denied a license in this state because its corporate powers exceed those which it is permitted to exercise under the laws of this state, but no foreign company, which does outside of this state any kind or combination of kinds of insurance not permitted to be done in this state by similar domestic companies, now or hereafter organized, shall be or continue to be authorized to do an insurance business in this state if the commissioner of commerce finds, after ten days notice sent by certified mail to the home office of the company involved, and an opportunity to be heard, that the doing of such kind or combination of kinds of insurance business impairs the financial solvency of the company or its financial ability to meet its obligations incurred in this state, or finds that the doing of such kinds or combination of kinds of insurance business is prejudicial to the interests of policyholders, creditors or the people of this state.

Subd. 4. License required. No insurance company or association, or fraternal beneficiary association, not specifically exempted therefrom by law, shall transact the business of insurance in this state unless it shall hold a license therefor from the commissioner.

Subd. 5. [Repealed, 1969 c 7 s 6]

Subd. 5a. Financial requirements; stock companies. No insurance company operating upon the stock plan shall be initially authorized to transact any one of the kinds of business enumerated in section 60A.06, subdivision 1, clauses (1) to (15), unless it shall have paid-up capital stock and surplus of not less than the amounts specified below. Except as otherwise provided by this subdivision, after initial authorization has been granted, surplus shall be constantly maintained in an amount not less than one-half of the surplus originally required for that kind of business. If the kind of business being transacted is of the type authorized by section 60A.06, subdivision 1, clause (4), surplus shall be constantly maintained after initial authorization in an amount not less than 25 percent of the amount of surplus originally required.

	Paid Up Capital Stock	Surplus
Clause (1),	\$350,000	\$350,000
Clause (2),	\$350,000	\$350,000
Clause (3),	\$200,000	\$200,000
Clause (4),	\$1,000,000	\$2,000,000
Clause (5a),	\$500,000	\$1,000,000
Clause (5b),	\$500,000	\$1,000,000
Clause (6),	\$500,000	\$500,000
Clause (7),	\$500,000	\$500,000
Clause (8),	\$200,000	\$200,000
Clause (9),	\$200,000	\$200,000
Clause (10),	\$200,000	\$200,000
Clause (11),	\$350,000	\$700,000
Clause (12),	\$500,000	\$1,000,000
Clause (13),	\$500,000	\$1,000,000
Clause (14),	\$200,000	\$200,000
Clause (15),	\$350,000	\$350,000

Subd. 5b. Financial requirements; mutual companies. No insurance company operating upon the mutual plan as provided in chapter 66A, shall be authorized to transact any one of the kinds of business enumerated in section 60A.06, subdivision 1, clauses (1) to (3) and (5) to (15), unless in addition to the requirements specified in chapter 66A it shall have met the following requirements as to surplus: As to a mutual company

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operating on a nonassessable basis, an initial surplus of not less than the amount of surplus enumerated in subdivision 5a for a stock company authorized to transact that kind of business, provided that after initial authorization has been granted, the surplus shall thereafter be constantly maintained in an amount equal to not less than one-half of such initial surplus; as to a mutual company operating on an assessable basis, an initial surplus of not less than one-half of the amount of surplus enumerated in subdivision 5a for a stock company authorized to transact that kind of business, provided that after initial authorization has been granted, the surplus shall thereafter be constantly maintained in an amount equal to not less than one-half of such initial surplus.

No insurance company operating upon the mutual plan shall be authorized to transact the kind of business enumerated in section 60A.06, subdivision 1, clause (4), unless it shall have surplus of not less than \$3,000,000; provided that after initial authorization has been granted, the surplus shall thereafter be constantly maintained in an amount of not less than \$1,500,000.

No insurance company operating upon the mutual plan, other than as provided in chapter 66A, shall be authorized to transact the kind of business enumerated in section 60A.06, subdivision 1, clause (5) (a), unless it shall have a surplus of not less than \$1,500,000; provided that after initial authorization has been granted, the surplus thereafter shall be constantly maintained in the amount of not less than \$1,000,000.

Subd. 5c. Authorization to transact more than one kind of business. Any insurance corporation authorized to transact the kinds of business specified in section 60A.06, subdivision 1, clause (4) may also transact the kinds of business specified in section 60A.06, subdivision 1, clause (5) (a), upon meeting the following financial requirements: As to companies operating upon the stock plan, paid-up capital stock of not less than \$1,000,000 and an initial surplus of not less than \$2,000,000 which surplus shall thereafter be constantly maintained in the amount of not less than \$500,000; as to companies operating on the mutual plan, an initial surplus of not less than \$3,000,000 which shall thereafter be constantly maintained in the amount of not less than \$1,500,000.

Any insurance corporation which prior to January 1, 1949 was authorized to transact personal injury liability insurance and also the kinds of business specified in section 60A.06, subdivision 1, clauses (4) and (5) shall continue to be authorized to transact personal injury liability insurance, providing the corporation continues to meet the revised financial requirements of this subdivision.

Any stock company may, when authorized by its articles of incorporation, transact any two or more of the kinds of business specified in section 60A.06, subdivision 1, clauses (1) to (3) and (5) to (15), upon meeting the following financial requirements: paid-up capital stock of not less than \$1,000,000 and an initial surplus of not less than \$1,000,000 which surplus shall thereafter be constantly maintained in the amount of not less than \$500,000; provided, however, that if the sum of the capital stock and surplus requirements specified in subdivision 5a for the kinds of business to be transacted is less than the amount of the capital stock and surplus requirements stated in the foregoing clauses of this sentence, then the company may transact those kinds of business upon meeting the capital stock and surplus requirements specified in subdivision 5a for those kinds of business. Any insurance company operating upon the mutual plan as provided in chapter 66A, may, when authorized by its articles of incorporation, transact any two or more of the kinds of business specified in section 60A.06, subdivision 1, clauses (1) to (3) and (5) to (15), upon meeting the following requirements as to surplus which shall be in addition to the requirements specified in chapter 66A: as to mutual companies operating on a nonassessable basis, an initial surplus of not less than \$1,000,000, which surplus shall thereafter be constantly maintained in the amount of not less than \$500,000; as to mutual companies operating on an assessable basis, an initial surplus of not less than \$750,000, which surplus shall thereafter be constantly maintained in the amount of not less than \$375,000; provided, however, that if the sum of the surplus requirements specified in subdivisions 5a and 5b for the kinds of business to be transacted is less than the amount of the surplus requirements stated in the foregoing

clauses of this sentence, then the company may transact those kinds of business upon meeting the surplus requirements specified in subdivisions 5a and 5b for those kinds of business.

Subd. 5d. Application. All insurance companies shall meet the requirements of subdivisions 5a to 5d, except as provided in this subdivision. Any company authorized to transact a particular kind of insurance as specified in section 60A.06, subdivision 1, on April 9, 1976 may continue until January 1, 1983 to conduct the same kind of insurance by meeting and maintaining the applicable capital, surplus, and guaranty fund requirements which were in effect immediately prior to April 9, 1976. On and after January 1, 1983, all companies shall be required to meet the applicable capital, constantly maintained surplus, and guaranty fund requirements of subdivisions 5a, 5b, and 5c.

Notwithstanding the foregoing provisions of this subdivision with respect to the deferred date of compliance, after April 9, 1976:

(1) Any insurance company which seeks authority to transact an additional kind of insurance shall, as a condition to the granting of the authority, immediately comply with the applicable capital, constantly maintained surplus, and guaranty fund requirements of subdivisions 5a, 5b, and 5c for all of its authorized kinds of business.

(2) If any person acquires control of an insurance company, the insurance company shall as of the date of the acquisition of control comply with the applicable capital, constantly maintained surplus, and guaranty fund requirements of subdivisions 5a, 5b, and 5c for all of its authorized kinds of business. For purposes of this clause, the term "control" shall be defined as provided in section 60D.01, subdivision 4, and the term "person" shall be defined as provided in section 60D.01, subdivision 7.

Subd. 5e. Minimum requirements; deficiency. Whenever the commissioner finds that the capital or surplus of a stock company, or the surplus of a mutual company, is less than the minimum requirements prescribed by this section, the commissioner shall determine the amount of the deficiency and issue an order in writing requiring the insurance company to restore the deficiency within such reasonable period as the commissioner shall designate. The commissioner may, by order served upon the insurance company, prohibit the insurance company from issuing any new policies while the deficiency exists. If at the expiration of the designated period the insurance company has not restored the deficiency and filed proof satisfactory to the commissioner, the commissioner shall proceed against the insurance company as provided in chapter 60B; provided, however, that if the surplus of a mutual company operating on the nonassessable basis declines below the minimum requirement prescribed by this section for such a company, and if its surplus is equal to or greater than the minimum requirement for a mutual company operating on the assessable basis, it may continue to write on the assessable basis by issuing only assessable policies.

Subd. 6. Reduction of capital stock. When the capital of any domestic stock company is impaired, it may, upon a vote of the majority of the stock, reduce the same to not less than the legal minimum. In this case no part of its assets shall be distributed to the stockholders. Any such company whose capital is not impaired may, by a two-thirds vote of its stock and with the consent of the commissioner, reduce the same to not less than the legal minimum capital and surplus required for such a company. In either case, within ten days after the meeting at which the reduction was made, the company shall submit to the commissioner a certified statement of the proceedings thereof, including the amount of the reduction and its assets and liabilities, verified by its president, secretary, and a majority of its directors. The commissioner shall examine the facts and, if they conform to law and the commissioner is of opinion that injury to the public will not result, the commissioner shall endorse approval upon the statement. Upon filing the same with the secretary of state and paying a filing fee of \$5, and duly amending its certificate of incorporation in conformity therewith, it may transact business upon the reduced capital as though the same were its original capital, and the commissioner shall issue a license to that effect. The company may thereafter, by a majority vote of its directors, require the return of every original stock certificate in exchange

for a new certificate for such number of shares as each stockholder is entitled to, in the proportion that the reduced capital bears to the original.

Subd. 7. New certificate of authority. Upon application, the commissioner shall examine the proceedings of any domestic company to increase or reduce its capital stock and, when found conformable to law, shall revoke the old and issue a new certificate of authority to the company to transact business upon the increased or reduced capital.

Subd. 8. Special provisions as to mutual companies. (1) Amendment of articles or certificate of incorporation. The certificate of incorporation or articles of association of any domestic insurance company without capital stock, now or hereafter organized and existing under the laws of this state, may be amended in respect to any matter which an original certificate of incorporation or articles of association of a corporation of the same kind might lawfully have contained by the adoption of a resolution specifying the proposed amendment, at a regular meeting of the members thereof or at a special meeting called for that expressly stated purpose, by the affirmative vote of a majority of the members present, in person or by proxy, at the meeting, and by causing the resolution to be embraced in a certificate duly executed by its president and secretary or other presiding and recording officers, under its corporate seal, and approved, filed, recorded, and published in the manner prescribed by law for the execution, approval, filing, recording, and publishing of a like original certificate of incorporation or articles of association.

(2) Renewal of corporate existence. Any domestic insurance company or corporation having no capital stock, heretofore or hereafter organized and existing under the laws of this state, whose period of duration has expired or is about to expire, may, on or before the date of the expiration, or within six months after the date of expiration, renew its corporate existence from the date of such expiration for any period permitted by the laws of this state, by the adoption of a resolution to that effect by the affirmative vote of three-fourths of the members present, in person or by proxy, at a regular meeting of the members, or at any special meeting called for that expressly stated purpose, and by causing the resolution to be embraced in a certificate duly executed by its president and secretary or other presiding and recording officers, under its corporate seal, and approved, filed, recorded, and published in the manner prescribed by law for the execution, approval, filing, recording, and publishing of an original certificate of incorporation or articles of association.

(3) Bylaws. The bylaws of any domestic insurance corporation without capital stock, in cases where the bylaws must be adopted or approved by the members thereof, may be adopted, altered, or amended at a regular meeting of the members thereof, or at a special meeting called for that expressly stated purpose, by the affirmative vote of a majority of the members present, in person or by proxy, at the meeting.

(4) Conversion of a domestic mutual into a stock insurance corporation. A domestic mutual corporation may be converted into a stock insurance corporation as follows:

(a) Action by board of directors. The board of directors shall adopt a plan of conversion.

(b) Plan of conversion. (i) The plan of conversion shall provide that, upon consummation of the conversion, each policyholder at the date of the passage of the resolution by the board of directors shall be entitled to such shares of stock of the new company as the policyholder's equitable share of the surplus of the company will purchase. This equitable share shall be determined by independent certified auditors or consulting actuaries and shall be subject to approval by the commissioner. If a policyholder's equitable share of the surplus of the company produces a fractional share, the policyholder shall be given the option of either receiving the value of the fractional share in cash or of purchasing the fractional part of a share that will entitle the policyholder to a full share.

(ii) No shares of the corporation being organized shall be issued or subscribed for, formally or informally, directly or indirectly during the conversion except as authorized under subparagraph (i).

(iii) The corporation shall not pay compensation or remuneration of any kind to any person in connection with the proposed conversion, except at reasonable rates for printing costs, and for legal and other professional fees for services actually rendered.

(iv) The plan of conversion shall include a copy of the proposed articles of incorporation which shall comply with the requirements of chapter 300. Except as otherwise specifically provided, the corporation resulting from conversion under this section shall be deemed to have been organized as of the date of issuance of the initial certificate of authority to the mutual corporation being converted.

(c) **Approval by policyholders.** Within 30 days after its adoption by the board of directors, the plan of conversion shall be submitted to the policyholders for approval by the affirmative vote of a majority of the policyholders entitled to vote, in the manner prescribed by subparagraph (1). Every policyholder as of the date of the adoption under subparagraph (a) shall be entitled to one vote for each policy held. Only such policyholders shall be entitled to vote.

(d) **Approval by the commissioner.** (i) Within 30 days after its adoption by the policyholders, the plan of conversion shall be submitted to the commissioner with an application for approval.

(ii) The commissioner shall not approve if the value of single shares is set at a figure that substantially burdens policyholders who wish to purchase a fractional share under subparagraph (b)(i).

(iii) If the commissioner finds that the plan of conversion has been duly approved by the policyholders, that the conversion would not violate any law and would not be contrary to the interests of the policyholders, the commissioner shall approve the plan of conversion and shall issue a new certificate of authority to the corporation.

(e) **Conversion.** After filing an amendment of the articles of incorporation as provided by chapter 300, the corporation shall become a stock corporation and shall no longer be a mutual corporation, and the board of directors shall execute the plan of conversion.

(f) **Securities regulation.** The filing with the commissioner of commerce of a certified copy of the plan of conversion as adopted by the policyholders and approved by the commissioner shall constitute registration under chapter 80A, of the securities authorized to be issued to policyholders thereunder.

Subd. 9. Retaliatory provision. When the laws of any other state, territory, or country prohibit the organization of or do not provide for the organization of or the licensing in that state, territory, or country of a class or kind of insurance companies or associations organized under the laws of this state and authorized to transact the business of insurance in this state, then companies or associations of the same kind or class of the other state, territory, or country shall not be licensed to do business in this state.

This provision shall not apply to companies or associations, organized under the laws of another state, now licensed to do business in this state.

Subd. 10. Special provisions as to life companies. (1) **Prerequisites of life companies.** No mutual life company shall be qualified to issue any policy until applications for at least \$200,000 of insurance, upon lives of at least 200 separate residents, have been actually and in good faith made, accepted, and entered upon its books and at least one full annual premium thereunder, based upon the authorized table of mortality, received in cash or in absolutely payable and collectible notes. A duplicate receipt for each premium, conditioned for the return thereof unless the policy be issued within one year thereafter, shall be issued, and one copy delivered to the applicant and the other filed with the commissioner, together with the certificate of a solvent authorized bank in the state, of the deposit therein of such cash and notes, aggregating the amount aforesaid, specifying the maker, payee, date, maturity, and amount of each. Such cash and notes shall be held by it not longer than one year, and at or before the expiration thereof to be by it paid or delivered, upon the written order of the commissioner, to such company or applicants, respectively.

(2) **Foreign companies may become domestic.** Any company organized under the

laws of any other state or country, which might have been originally incorporated under the laws of this state, and which has been admitted to do business therein for either or both the purpose of life or accident insurance, upon complying with all the requirements of law relative to the execution, filing, recording and publishing of original certificates and payment of incorporation fees by like domestic corporations, therein designating its principal place of business at a place in this state, may become a domestic corporation, and be entitled to like certificates of its corporate existence and license to transact business in this state, and be subject in all respects to the authority and jurisdiction thereof.

(3) **Temporary capital stock of mutual life companies.** A new mutual life insurance company which has complied with the provisions of clause (1) of this subdivision or an existing mutual life insurance company may establish, a temporary capital of, such amount not less than \$100,000, as may be approved by the commissioner. Such temporary capital shall be invested by the company in the same manner as is provided for the investment of its other funds. Out of the net surplus of the company the holders of the temporary capital stock may receive a dividend of not more than eight percent per annum, which may be cumulative. This capital stock shall not be a liability of the company except that it shall be retired as soon as, but not before, the surplus of the company remaining after its retirement shall be not less than the temporary capital so established. At the time for the retirement of this capital stock, the holders shall be entitled to receive from the company the par value thereof and any dividends thereon due and unpaid, and thereupon the stock shall be surrendered and canceled, and the right to vote thereon shall cease.

Subd. 11. **Officers and employees bonded.** Every company shall provide a fidelity bond for its officers and employees. The bond shall be in the amount deemed necessary by the commissioner to adequately protect the public.

History: 1967 c 395 art 1 s 7; 1969 c 7 s 7-13; 1969 c 598 s 1; 1969 c 708 s 63; 1973 c 634 s 2-4; 1976 c 213 s 1-4; 1978 c 465 s 1,2; 1978 c 674 s 60; 1980 c 516 s 2; 1983 c 216 art 1 s 15; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 313 s 2; 1986 c 444

60A.076 MANAGEMENT OF INSURER; APPROVAL BY COMMISSIONER.

Subdivision 1. No insurer qualified to transact business in this state shall make any contract whereby any person or persons is granted or is to enjoy in fact the management of the insurer to the substantial exclusion of its board of directors, or to have the controlling or preemptive right to produce substantially all insurance business for the insurer, unless such contract is filed with the commissioner for approval. The contract shall be deemed approved 30 days after filing unless disapproved by the commissioner within such 30 day period, subject to such reasonable extension of time as the commissioner may require by notice given within such 30 days. The commissioner shall not unreasonably withhold approval. Any disapproval shall be delivered to the insurer in writing, stating the grounds therefor.

Subd. 2. The commissioner shall disapprove any such contract if the commissioner finds that

(a) it subjects the insurer to excessive charges considering the financial condition of the company; or

(b) the contract extends for an unreasonable period of time; or

(c) the contract does not contain fair and adequate standards of performance by the persons granted management powers; or

(d) the persons empowered under the contract to manage the company lack the ability, experience or integrity to manage the company for the proper interests of its policyholders, or its creditors, or the public;

(e) the contract contains provisions which impair the proper interests of the insurer's stockholders, policyholders, members, creditors, or the public.

History: 1967 c 363 s 1,2; 1986 c 444

60A.08 CONTRACTS OF INSURANCE.

Subdivision 1. Policy to contain entire contract. A statement in full of the conditions of insurance shall be incorporated in or attached to every policy, and neither the application of the insured nor the bylaws of the company shall be considered as a warranty or a part of the contract, except in so far as they are so incorporated or attached.

Subd. 2. Corporate name; origin and financial statements. Every company, domestic or foreign, shall conduct its business, display all signs and advertisements, and issue all policies, circulars, and other documents and publications in this state, in its own corporate name, and every foreign company shall state conspicuously upon a sign at each agency the state or country of its organization. When a company publishes its assets, it shall in the same connection, and with equal conspicuousness, publish its liabilities, computed on the basis allowed for its annual statements; and any publication purporting to show its capital shall state only the amount thereof which has been actually paid in cash.

Subd. 3. Renewal; new policy. Any insurance policy terminating by its provisions at a specified expiration date or limited as to term by any statute and not otherwise renewable may be renewed or extended at the option of the insurer, at the premium rate then required therefor, for a specific additional period or periods by a certificate, and without requiring the issuance of a new policy more than once in any five-year period.

Subd. 4. Contracts; application of Minnesota law; prohibitions. All contracts of insurance on property, lives, or interests in this state, shall be deemed to be made in this state.

It shall be unlawful for any person, firm, or corporation to solicit or make, or aid in soliciting or making, any contract of insurance not authorized by the laws of this state.

Subd. 5. Signatures required. All insurance policies shall be signed by the secretary or an assistant secretary, and by the president or vice-president, or in their absence, by two directors of the insurer. The signatures may be facsimile signatures.

Subd. 6. Bankruptcy or insolvency clause. Every bond or policy of insurance issued in this state insuring against either actual loss suffered by the insured, and imposed by law for damages on account of personal injury, death, or injury to property caused by accident, or legal liability imposed upon the insured by reason of such injuries or death, shall, notwithstanding anything in the policy to the contrary, be deemed to contain the following condition:

The bankruptcy or insolvency of the insured shall not relieve the insurer of any of its obligations under this policy, and in case an execution against the insured on a final judgment is returned unsatisfied, then such judgment creditor shall have a right of action on this policy against the company to the same extent that the insured would have, had the insured paid the final judgment.

Subd. 7. Unsatisfied judgment. When a judgment has been rendered by any court in this state against any company holding the commissioner's certificate, and an execution issued thereon has been returned unsatisfied, in whole or in part, and a certified transcript of the docket entry and the court administrator's certificate of those facts is filed with the commissioner, the commissioner shall forthwith revoke its certificate and give one week's published notice thereof. No new certificate shall issue until such judgment has been fully satisfied and proof thereof filed with the commissioner, and the expenses and fees incurred are paid. During this revocation neither the company, nor any of its officers or agents, shall issue any new policy, take any risk, or transact any business, except such as is absolutely necessary in closing up its affairs in this state.

Subd. 8. Policies on which premiums are determined by audits. Any insurance company licensed to do business in this state which issues policies of insurance in this state upon which the premium is determined by means of an audit shall within 60 days from the date of the expiration of any insurance policy so issued request from the insured a statement of the facts and figures necessary to determine the premium thereon. The

insured shall furnish such statement of facts and figures within 60 days of the date of the request. Upon failure of the insured to comply within the time specified, then the provisions of this subdivision shall not apply as to such insured. Within 12 months from the date of the expiration of the policy, or within such longer time as the commissioner of commerce may for cause shown direct, the insurer unless it elects to accept the insured's statement shall make a final audit. Failure to make such final audit within the time herein provided shall constitute a waiver of the insurer's right to make such audit and an election to accept the statement furnished by the insured as a basis for determining the premium on such policy. In the event an audit discloses that the insured submitted to the insurer a fraudulent statement of facts and figures, then the insured shall be liable for three times the normal premium. This subdivision shall not apply to policies issued covering workers' compensation.

Subd. 9. Misrepresentation by applicant. No oral or written misrepresentation made by the assured, or in the assured's behalf, in the negotiation of insurance, shall be deemed material, or defeat or avoid the policy, or prevent its attaching, unless made with intent to deceive and defraud, or unless the matter misrepresented increases the risk of loss.

This subdivision shall not apply to life insurance or accident and health insurance.

Subd. 10. Legal expense insurance. No contract of insurance written pursuant to the authority to transact the kind of business enumerated in section 60A.06, subdivision 1, clause (15) shall include any provision interfering with the attorney-client relationship.

Subd. 11. Directors' and officers' liability policies. No misrepresentation or omission made in an application or negotiation for any policy providing directors and officers liability coverage for directors or officers of a corporation shall defeat or avoid coverage or prevent the policy from attaching for a director or officer unless the director or officer has signed the application and has actual knowledge of the facts misrepresented or omitted. The application shall be attached to and incorporated into the contract. This subdivision applies with respect to all policies governed by this chapter or issued or renewed in this state.

Subd. 12. Rented vehicles. All commercial automobile liability policies must provide coverage for rented vehicles as required in chapter 65B.

This coverage can be excess over any and all specific motor vehicle coverage that is applicable.

Subd. 13. Reduction of limits by costs of defense prohibited. (a) No insurer shall issue or renew a policy of liability insurance in this state that reduces the limits of liability stated in the policy by the costs of legal defense.

(b) This subdivision does not apply to:

- (1) professional liability insurance with limits of liability greater than \$100,000, including directors' and officers' and errors and omissions liability insurance;
- (2) environmental impairment liability insurance;
- (3) insurance policies issued to large commercial risks; or
- (4) coverages that the commissioner determines to be appropriate which will be published in the manner prescribed for surplus lines insurance in section 60A.201, subdivision 4.

(c) For purposes of this subdivision, "large commercial risks" means an insured whose gross annual revenues in the fiscal year preceding issuance of the policy were at least \$10,000,000.

History: 1967 c 395 art 1 s 8; 1973 c 634 s 5; 1975 c 359 s 23; 1977 c 195 s 1; 1979 c 115 s 1; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1985 c 251 s 1; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1988 c 611 s 1; 1989 c 260 s 2,3

60A.081 AIRCRAFT INSURANCE.

Subdivision 1. No policy of insurance issued or delivered in this state covering any

loss, damage, expense, or liability arising out of the ownership, maintenance, or use of an aircraft, shall exclude or deny coverage because the aircraft is operated in violation of federal or civil air regulations, state law or rules, or local ordinances. This section does not prohibit the use of specific exclusions or conditions in the policy which relate to:

- (1) Certification of an aircraft in a stated category by the federal aviation administration.
- (2) Certification of a pilot in a stated category by the federal aviation administration.
- (3) Establishing requirements for pilot experience.
- (4) Establishing limitations on the use of the aircraft.

Subd. 2. Except as provided in subdivision 1, no policy of insurance issued or delivered in this state covering an aircraft equipped with passenger seats and covering liability hazards shall be issued excluding coverage for injury to or death of passengers or nonpassengers except as to a policy of insurance exclusively covering "commercial operations" as defined by section 360.013, subdivision 11, where the pilot of the aircraft has in force a separate policy of insurance providing for coverage on the aircraft as required by section 360.59, subdivision 10.

Subd. 3. The provisions of this section shall not apply as to any policy issued covering aircraft being used in air commerce as defined by section 360.511, subdivision 4.

History: 1969 c 629 s 1; 1976 c 241 s 1; 1985 c 248 s 70

60A.082 GROUP INSURANCE; BENEFITS CONTINUED IF INSURER CHANGED.

A person covered under group life, group accidental death and dismemberment, group disability income or group medical expense insurance, shall not be denied benefits to which the person is otherwise entitled solely because of a change in the insurance company writing the coverage or in the group contract applicable to the person. In the case of one or more carriers replacing or remaining in place after one or more plans have been discontinued, each carrier shall accept any person who was covered under the discontinued plan or plans without denial of benefits to which other persons in the group covered by that carrier are entitled. "Insurance company" shall include a service plan corporation under chapter 62C or 62D.

The commissioner shall promulgate rules to carry out this section. Nothing in this section shall preclude an employer, union or association from reducing the level of benefits under any group insurance policy or plan.

History: 1980 c 459 s 1; 1984 c 464 s 1; 1986 c 444

60A.084 NOTIFICATION ON GROUP POLICIES.

An employer providing life or health benefits may not change benefits, limit coverage, or otherwise restrict participation until the certificate holder or enrollee has been notified of any changes, limitations, or restrictions. Notice in a format which meets the requirements of the Employee Retirement Income Security Act, United States Code Annotated, title 29, sections 1001 to 1461, is satisfactory for compliance with this section.

History: 1987 c 337 s 3

60A.09 LIMITS OF RISK; REINSURANCE.

Subdivision 1. **Maximum risk.** No company other than a company authorized to transact the kind of business specified in section 60A.06, subdivision 1, clause (7), shall insure or reinsure in a single risk a larger sum than one-tenth of its net assets, and no company authorized to transact the kind of business specified in section 60A.06, subdivision 1, clause (7), shall insure or reinsure in a single risk a larger sum than two-thirds

of its net assets; provided, that in the case of a company with net assets of more than \$50,000, any portion of the risk which has been reinsured, as authorized by the laws of this state, shall be deducted before determining the limitation of risk prescribed by this subdivision; and, provided, that a mutual insurance company organized under clause (2)(a) of section 66A.08, subdivision 2, may insure in a single risk, consisting of a creamery or a cheese factory, a sum equal to one percent of its insurance in force.

Subd. 2. Reinsurance to be reported by companies other than life. If any company, other than life, shall, directly or indirectly, effect the reinsurance of any risk taken by it, or any part thereof, it shall make a sworn report thereof to the commissioner, at the time of filing its annual statement, or at such other time as the commissioner may request.

Subd. 3. Penalty for violation. Every company effecting any reinsurance in violation of the foregoing provisions, and every agent effecting or negotiating the same, shall severally be guilty of a misdemeanor.

Subd. 4. Reinsurance as to life insurance. No domestic life insurance company, without permission of the commissioner, shall reinsure any portion of any individual risk in a company not authorized to do business in this state.

Subd. 5. Reinsurance. (1) **Definitions.** For the purposes of this subdivision, the word "insurer" shall be deemed to include the word "reinsurer," and the words "issue policies of insurance" shall be deemed to include the words "make contracts of reinsurance."

(2) **Conditions and requirements.** Every insurer authorized to issue policies in this state may reinsure in any other insurer any part or all of any risk or risks assumed by it; but such reinsurance, unless effected (1) with an insurer authorized to issue policies in this state, or (2) with an insurer similarly authorized in another state, territory, or district of the United States, and showing the same standards of solvency and meeting the same statutory and departmental rules which would be required of or prescribed for such insurer were it at the time of such reinsurance authorized in this state to issue policies covering risks of the same kind or kinds as those reinsured, shall not reduce the reserve or other liability to be charged to the ceding insurer; provided, that nothing in this subdivision shall be construed to permit to a ceding insurer any reduction of reserve or liability through reinsurance effected with an unauthorized insurer. In case such reinsurance effected with an insurer so authorized or so recognized for reinsurance in this state, the ceding insurer shall thereafter be charged on the gross premium basis with an unearned premium liability representing the proportion of such obligation retained by it, and the insurer to which the business is ceded shall be charged with an unearned premium liability representing the proportion of such obligation ceded to it, calculated in the same way. The two parties to the transaction shall together carry the same reserve as the ceding insurer would have carried had it retained the risk.

(3) **Reinsurance of more than 75 percent of insurance liabilities.** Any contract of reinsurance whereby an insurer cedes more than 75 percent of the total of its outstanding insurance liabilities shall, if such insurer is incorporated by or, if an insurer of a foreign country, has its principal office in this state, be subject to the approval, in writing, by the commissioner.

(4) **Actual unearned premium reserve to be carried as liability.** Nothing in this subdivision shall be deemed to permit the ceding insurer to receive, through the cession of the whole of any risk or risks, any advantage in respect to its unearned premium reserve that would reduce the same below the actual amount thereof.

(5) **Aircraft risks.** An insurer authorized to transact the business specified in section 60A.06, subdivision 1, clauses (4) and (5)(a), may through reinsurance assume any risk arising from, related to, or incident to the manufacture, ownership, or operation of aircraft and may retrocede any portion thereof; provided, however, that no insurer may undertake any such reinsurance business without the prior approval of the commissioner and such reinsurance business shall be subject to any regulations which may be promulgated by the commissioner. Any such reinsurance business may be provided through pooling arrangements with other insurers for purposes of spreading the insurance risk.

Subd. 6. Bulk reinsurance, regulation. (1) No bulk reinsurance agreement entered into by an insurance company, other than life insurance companies, having a capital and surplus or surplus of \$5,000,000 or less, shall be used to reduce the liabilities or expense of the reinsured company until and unless the agreement has been filed with and approved by the commissioner. The commissioner will be deemed to have approved any agreement filed unless the commissioner notifies the insurance company of disapproval within 30 days or requests a reasonable extension of time within such 30 days.

(2) No filing shall be made pursuant to the foregoing clause (1) unless the reinsurance agreement be certified under oath by responsible officers of the reinsurer and the reinsured to contain the entire agreement between the parties to the reinsurance agreement.

Misrepresentations contained in the reinsurance agreement or in any information supplied to the commissioner relative thereto shall be subject to the penalties for perjury.

(3) It shall be unlawful for any reinsurance agreement to contain any provisions which have the effect of nullifying the liability which the reinsurer purports to assume.

(4) For the purposes of this subdivision, "bulk reinsurance" shall mean any quota share, surplus aid or portfolio reinsurance agreement which, of itself or in combination with other similar agreements, assumes 20 percent or more of the liability of the reinsured company.

(5) Every company effecting any bulk reinsurance in violation of the foregoing provisions, and every person effecting or negotiating the same, shall severally be guilty of a misdemeanor.

(6) Reinsurance agreements filed hereunder shall not be matters of public record, but this shall not be construed to limit the disclosure of reinsurance agreements in examination reports.

Subd. 7. Title insurance risks. For a company authorized to transact a kind of business specified in section 60A.06, subdivision 1, clause (7), the term "single risk" as used in this section shall mean the insured amount of any policy or contract unless two or more policies or contracts are simultaneously issued on different estates in identical real property, in which event, it means the sum of the insured amounts of all such policies or contracts; provided, any policy or contract that insures a mortgage interest that is excepted in a fee or leasehold policy or contract, and which does not exceed the insured amount of the fee or leasehold policy or contract, shall be excluded in computing the amount of a single risk.

History: 1967 c 395 art 1 s 9; Ex1967 c 10 s 1-6; 1973 c 391 s 1; 1978 c 465 s 3; 1980 c 505 s 1,2; 1985 c 248 s 70; 1986 c 444; 1989 c 260 s 4

60A.10 DEPOSITS.

Subdivision 1. Domestic companies. (1) **Deposit as security for all policyholders required.** No company in this state, other than farmers' mutual, or real estate title insurance companies, shall do business in this state unless it has on deposit with the commissioner, for the protection of both its resident and nonresident policyholders, securities to an amount, the actual market value of which, exclusive of interest, shall never be less than \$200,000 until July 1, 1986, \$300,000 until July 1, 1987, \$400,000 until July 1, 1988, and \$500,000 on and after July 1, 1988 or one-half the applicable financial requirement set forth in section 60A.07, whichever is less. The securities shall be retained under the control of the commissioner as long as any policies of the depositing company remain in force.

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

(3) **Protection of deposit from levy.** No judgment creditor or other claimant may

levy upon any securities held on deposit with, or for the account of, the commissioner. Upon the entry of an order by a court of competent jurisdiction for the rehabilitation, liquidation or conservation of any depositing company as provided in chapter 60B, that company's deposit together with any accrued income thereon shall be transferred to the commissioner as rehabilitator, liquidator, or conservator.

Subd. 2. Like requirement for foreign companies. Any insurance company of any other state of the United States may file with the commissioner a certificate of the insurance commissioner of the other state that, as such officer, there is held in trust by the certifying commissioner and on deposit for the benefit of all the policyholders of the company a deposit of an amount not less than that required by subdivision 1 in par value of such securities as are required or permitted to be deposited by the laws of that state, these securities to be of the character in which insurance companies are authorized to invest under the laws of that state, stating the items of the securities so held, and that the commissioner is satisfied that these securities are worth the value so certified. No deposit shall be required in this state while the deposit, so certified, remains.

Subd. 2a. Special deposits. The commissioner may require a special deposit of an individual foreign insurer for the protection of its Minnesota policyholders or claimants. The special deposit may be required, to a maximum amount of \$500,000. In the event of the filing of a delinquency petition against the insurer in Minnesota, the deposit is subject to chapters 60B, 60C, and 61A.

Subd. 3. Deposits in compliance with other laws or of foreign companies. The commissioner shall receive and hold in official trust deposits made by any domestic company in compliance with the laws of any other state, to enable it to do business in that state, and in like manner hold deposits made by a foreign company under any law of this state. The company making the deposit shall be entitled to the income thereof and, from time to time, with the commissioner's consent, when not inconsistent with the law under which it was made, may exchange, in whole or in part, the securities composing the deposit for other approved securities of equal value. Upon application by a domestic company, the commissioner may return the whole or any portion of the securities so deposited by it, if satisfied that they are subject to no liability. Upon like application, the commissioner may return to a foreign company any deposit made by it when it appears that the company has ceased to do business in this state or the United States, and the commissioner is satisfied that it is not subject to any liability in this state, or upon the order of any court of competent jurisdiction. A foreign company which has made a deposit, its trustees, receiver, resident manager, or any creditor or policyholder thereof, may, at any time, institute in the district court of Ramsey county an action against the state and other proper parties to enforce and terminate the trust created by the deposit. The commissioner shall immediately notify the governor of the action, and furnish the necessary information to answer in behalf of the state, and shall carry out such order and decree as the court shall make therein.

Subd. 4. Safekeeping of securities on deposit. No later than July 1, 1975, all securities held on deposit with the commissioner pursuant to the laws of this state, or in accordance with an order of the commissioner, shall be deposited for the account of the commissioner in such state or national bank in this state as the depositing insurer may designate and the commissioner may approve. Said deposits shall be made and maintained in accordance with a custodial agreement between the bank and the depositing insurer in a form approved by the commissioner which shall provide as a minimum that (1) the fees of the custodian are to be the obligation of the depositing insurer, and (2) there shall be no exchange, release or transfer of any deposited security unless the commissioner has assented thereto in writing. Securities evidenced by the Federal Reserve book entry system may be deposited in the name of the commissioner of commerce for the benefit of all policyholders of the depositor.

Subd. 5. [Repealed, 1969 c 494 s 4]

Subd. 6. Rules. The commissioner of commerce shall have the power to make such rules as may be necessary for the execution of the functions vested in the commissioner by this section.

History: 1967 c 395 art 1 s 10; 1969 c 494 s 3; 1974 c 425 s 1-3; 1978 c 465 s 4; 1983

c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1Sp1985 c 10 s 50; 1986 c 444; 1986 c 455 s 5

60A.101 [Repealed, 1988 c 674 s 22]

60A.11 INVESTMENTS FOR DOMESTIC COMPANIES.

Subdivision 1. Requirement for payment of capital stock. The capital of every stock company shall be paid in full, in cash, within six months from the date of its certificate of incorporation, and thereupon a majority of the directors shall certify, under oath, to the commissioner that such payment, in cash, has been made by the stockholders for their respective shares, and is held as the capital of the company, and until then no policy shall be issued.

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]

Subd. 5a. [Repealed, 1982 c 424 s 9]

Subd. 5b. [Repealed, 1982 c 424 s 9]

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 for personal 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 apply in the interpretation of this section:

(a) This section applies 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 must 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 have the meanings assigned to them under statutory accounting methods. All financial terms relating to noninsurance companies have the meanings assigned to them under generally accepted accounting principles;

(d) Investments must 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;

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

(f) An investment which qualifies under any provision of the law governing investments of insurance companies when acquired will continue to be a qualified investment for as long as it is held by the insurance company.

Subd. 10. Definitions. The following terms have the meaning assigned in this subdivision for purposes of this section and section 60A.111:

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(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 or any other clearing agency registered with the federal securities and exchange commission pursuant to the Federal Securities Exchange Act of 1934, section 17A, Euro-clear Clearance System Limited and CEDEL S.A., 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 must be determined in accordance with, section 60D.01, subdivision 4;

(d) "Custodian bank" means a bank or trust company or a branch of a bank or trust company that is acting as custodian and is supervised and examined by state or federal authority having supervision over the bank or trust company or with respect to a company's foreign investments only by the regulatory authority having supervision over banks or trust companies in the jurisdiction in which the bank, trust company, or branch is located, and specifically includes Euro-clear Clearance System Limited and CEDEL S.A., acting as custodians;

(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" include bonds, notes, debentures, transportation equipment certificates, repurchase agreements, bank certificates of deposit, time deposits, bankers' acceptances, and other 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 nonterminable 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 19 or 23, (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 on 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 nonrecurring 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 1-1/4 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 commerce 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. The commissioner may waive the requirement in clause (4) unless the company's written premiums exceed 300 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 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. United States 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 bank obligations. (a) Certificates of deposits, time deposits, and bankers' acceptances issued by and other obligations guaranteed by any bank organized under the laws of the United States or any state thereof or of the Dominion of Canada or any province thereof. A company may not invest more than five percent of its admitted assets in the obligations of any one bank and may not hold at any time more than ten percent of the outstanding obligations of any one bank. A letter of credit issued by a member bank which qualifies under the guidelines of the National Association of Insurance Commissioners as a clean, irrevocable letter of credit which contains an "evergreen clause," may be accepted as a guaranty of other investments and in lieu of cash to secure loans of securities.

(b) Obligations issued or guaranteed by the International Bank for Reconstruction and Development, the Asian Development Bank, the Inter-American Development Bank, the African Development Bank, the Export-Import Bank, the World Bank or any United States government sponsored organization of which the United States is a member, if 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 these 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 paragraph (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; provided, however, that a company may invest in the obligations of a corporation without regard to this paragraph if: (1) the company is wholly owned by the issuer and affiliates of the issuer of the obligations; (2) the company insures solely the issuer of the obligations and its affiliates; (3) the issuer has a net worth, determined on a consolidated basis, which equals or exceeds \$100,000,000; and (4) the issuer and its affiliates forego any and all claims they may have against the Minnesota insurance guaranty association pursuant to chapter 60C in the event of the insolvency of the company. This does not affect the rights of any unaffiliated third party claimant under section 60C.09, subdivision 1.

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 listed or regularly 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 investment 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, if the organization or acquisition and the holding of the company is subject to the prior approval of the commissioner of commerce, which approval must be given upon good cause shown and is 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, if the investments of the subsidiary are considered direct investments for purposes of this chapter and are 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 complementary 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);

(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;

(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; and

(d) A company may invest in the securities of any face amount certificate company, unit investment trust, or management type investment company, registered or in the process of registration under the Federal Investment Company Act of 1940 as from time to time amended, provided that the aggregate of all these investments other than in securities of money market mutual funds or mutual funds investing primarily in United States government securities, determined at cost, shall not exceed five percent of its admitted assets; investments may be made under this clause without regard to the percentage limitations applicable to investments in voting securities.

(e) A company may invest in any proportion of the shares or investment units of an investment company or investment trust, whether or not registered under the Federal Investment Company Act of 1940, which is managed by an insurance company, member bank, trust company regulated by state or federal authority or an investment manager or adviser registered under the Federal Investment Advisers Act of 1940 or qualified to manage the investments of an investment company registered under the Federal Investment Company Act of 1940, provided that the investments of the investment company or investment trust are qualified investments made under this section and that the articles of incorporation, bylaws, trust agreement, investment management agreement, or some other governing instrument limits its investments to investments qualified under this section.

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 only acquire, hold, and convey real estate which:

(1) has been mortgaged to it in good faith by way of security for loans previously contracted, or for money due;

(2) has been conveyed to it in satisfaction of debts previously contracted in the course of its dealings;

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

(4) is 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) must be sold and disposed of within five years after the company has acquired title to it, or within five years after it has ceased to be necessary for the accommodation of the company's business, and the company must not hold this property for a longer period unless the company elects to hold the real estate under another section, or unless it procures a certificate from the commissioner of commerce 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, including oil and gas and other mineral interests, 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. The company must 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 must 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 any foreign investments which are required as a condition of doing business in the foreign country or necessary for the convenient accommodation of its foreign business. An investment is considered necessary for the convenient accommodation of the insurance company's foreign business only if it is demonstrably and directly related in size and purpose to the company's foreign insurance operations; and

(b) a company may also invest not more than a total of two percent of its admitted assets in any combination of:

(1) the obligations of foreign governments, corporations, or business trusts;

(2) obligations of federal, provincial, or other political subdivisions backed by the full faith and credit of the foreign governmental unit;

(3) or in the stocks or stock equivalents or obligations of foreign corporations or business trusts not qualifying for investment under subdivision 12, if the obligations, stocks or stock equivalents are listed or regularly traded on the London, Paris, Zurich, or Tokyo stock exchange or any similar regular securities exchange not disapproved by the commissioner within 30 days following notice from the company of its intention to invest in these securities.

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 adequately secured by a qualifying letter of credit issued by a member bank or by cash or by the pledge of any investment authorized by any of the preceding subdivisions if:

(a) The collateral is legally assigned or delivered to the company;

(b) The company has 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 collateral must at the time of delivery or assignment have a market value of at least, in the case of cash, equal to and, in all other cases, 1-1/4 times the amount of the unpaid balance of the obligations.

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 or sell 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.** (a) The commissioner may adopt appropriate rules to carry out the purpose and provisions of this section.

(b) A company may make qualified investments in any additional securities or

property of any kind with the written order of the commissioner. This approval is at the discretion of the commissioner.

(c) Nothing authorized in this subdivision negates or reduces the investment authority granted in subdivisions 1 to 25.

History: 1967 c 395 art 1 s 11; 1969 c 7 s 14-16; 1969 c 494 s 5-11; 1974 c 64 s 4,5; 1978 c 465 s 5; 1981 c 211 s 9-26,42; 1Sp1981 c 4 art 4 s 6,7; 1982 c 424 s 10,11; 1982 c 622 s 1; 1983 c 289 s 114 subd 1; 1983 c 340 s 1-8; 1984 c 382 s 3; 1984 c 655 art 1 s 92; 1Sp1985 c 16 art 2 s 17; 1986 c 444; 1987 c 189 s 1,2

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 and that the combined financial resources of the insurance company members of any insurance holding company system of which the company is a member are not adequate to counterbalance that fact, the commissioner may require the company to submit to the commissioner for 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. [Repealed, 1983 c 340 s 18]

Subd. 4a. Prohibition. If the commissioner determines that the company does not have unrestricted surplus, the commissioner may prohibit that company from purchasing 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. The commissioner may exempt any insurer from the requirements of this subdivision.

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.

Subd. 6. Factors considered. The commissioner, in exercising discretion under this section, may take into consideration the size, the lines of business, and the dispersion of risks of the company, and the consolidated assets and surplus as regards policyholders of the other insurers of the insurance holding company system of which the company is a member and any other factors deemed relevant by the commissioner.

History: 1981 c 211 s 27; 1983 c 340 s 9-11; 1986 c 444

60A.12 ASSETS AND LIABILITIES.

Subdivision 1. Valuation and admissibility of life company assets. In valuing the assets which compose the legal reserve of a life company, its real estate, stocks, and bonds shall be so rated that the average annual income thereof shall not be less than three percent, and if any asset produces less it shall be rated at its value upon a three percent basis. Loans and credits shall not be allowed for more than their face value, nor shall any asset be appraised for more than its market value. Only such assets shall be allowed as are available for payment of losses in this state, including an electronic com-

puter or data processing machine or system heretofore or hereafter purchased for use in connection with the business of a life company, provided such machine or system shall have an original cost of not less than one hundred thousand dollars nor more than three percent of the admitted assets of the company and such cost shall be amortized in full over a period not to exceed ten full calendar years. Any deposit or fund set apart as security for a particular liability may be set off to an amount not exceeding such liability. The amount of any interest bearing lien against any policy or loan thereon, not exceeding the net value or premium reserve of such policy, computed under the provisions of this chapter, may likewise be allowed against liability thereunder. Stockholders' obligations of any description shall not be rated as part of the assets of any company, unless secured by sufficient approved collateral.

Subd. 2. Admitted assets of insurance companies other than life. The admitted assets of an insurance company other than life shall include, in addition to all other admitted assets, an electronic computer or data processing machine or system heretofore or hereafter purchased for use in connection with the business of the company, provided that such machine or system shall have an original cost of not less than \$100,000 nor more than three percent of the admitted assets of the company and such cost shall be amortized in full over a period not to exceed ten full calendar years.

Subd. 3. Valuation of evidences of indebtedness. All bonds or other evidences of debt, having a fixed term and rate, held by an insurance company or fraternal beneficiary association authorized to do business in this state may, if amply secured and not in default as to principal and interest, be valued as follows: If purchased at par, at the par value; if purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield, in the meantime, the effective rate of interest at which the purchase was made; provided, that the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase; and, provided, that the commissioner shall have full discretion in determining the method of calculating values according to the foregoing rule. If the notes or bonds secured by mortgage or trust deed in the nature thereof which the federal housing administrator has insured, or made a commitment to insure, are purchased above par, they may, if not in default as to principal and interest, be valued during the first five years after purchase on the basis of the purchase price adjusted in equal annual installments to bring the value to par at the end of five years.

Subd. 4. Unearned premiums reserve. (1) **For companies other than life or title.** To determine the policy liability of any company other than life or title insurance, and the amount the company shall hold as reserve, the commissioner shall take 50 percent of the aggregate premiums, on policies running one year or less from date of policy, and a pro rata amount on policies running more than one year from date of policy, except upon inland and marine risks, which the commissioner shall compute by charging 50 percent of the amount of premium written in its policies upon yearly risks and upon risks covering more than one passage not terminated, and the full amount of premiums written in policies upon all other inland and marine risks not terminated. In case of any fire and marine company with less than \$200,000 capital admitted to transact in this state fire business only, the full amount of premiums written in its marine and inland navigation and transportation policies shall be charged as liability.

(2) **Special provisions for mutual fire companies with a contingent liability.** In case of a mutual fire insurance company with a policyholders' contingent liability fixed by its bylaws and in its policies as provided by law, to determine the amount of this reinsurance reserve, the commissioner shall take 25 percent of the aggregate premiums running one year or less from date of policy, and 50 percent of the pro rata amount on policies running more than one year from date of policy.

(3) **Casualty companies writing liability or workers' compensation.** In case of a casualty insurance company writing insurance against loss or damage resulting from accident to or injuries suffered by an employee or other person and for which the insured is liable, and under insurance against loss from liability on account of the death of or injury to an employee not caused by the negligence of an employer, the commis-

sioner shall charge as a liability, in addition to the capital stock and all other outstanding indebtedness of the corporation:

The premium reserve on policies in force, equal to 50 percent of the gross premiums charged for covering the risks; provided, that the commissioner may charge a premium reserve equal to the unearned portions of the gross premiums charged, computed on each respective risk from the date of the issuance of the policy.

(4) **Provision for annual payment term policies.** A policy for a term of years on which the premium is payable annually shall be considered a policy for one year.

Subd. 5. Loss reserves. (1) **For other than liability and workers' compensation.** The reserve for outstanding losses under policies other than workers' compensation and liability policies shall be at least equal to the aggregate estimated amounts due or to become due on account of all the losses and claims of which the corporation has received notice. The loss reserve shall also include the estimated liability on any notices received by the corporation of the occurrence of any event which may result in a loss, and the estimated liability for all losses which have occurred but on which no notice has been received. For the purpose of these reserves, the corporation shall keep a complete and itemized record showing all losses and claims on which it has received notice, including all notices received by it of the occurrence of any event which may result in a loss.

When, in the judgment of the commissioner, the loss reserves, calculated in accordance with the foregoing provisions, are inadequate, the commissioner may require the corporation to maintain additional reserves.

(2) **For liability losses.** The reserve for outstanding losses and loss expenses incurred under liability policies during each of the three years immediately preceding the date of the statement shall be not less than 60 percent of the earned liability premium for each of the three corresponding years immediately preceding the date of the statement, less all loss and loss expense payments made under claims incurred during each of those years.

(3) **For compensation claims.** The reserve for outstanding losses and loss expenses incurred under workers' compensation policies shall be at least equal to the following amounts:

(a) For all compensation claims under policies written more than three years prior to the date of the statement, the present values, at four percent interest, of the determined and the estimated future payments;

(b) For all compensation claims under policies written in the three years immediately preceding the date of the statement, the reserve shall be not less than 65 percent of the earned compensation premiums for each of the three years, less all loss and loss expense payments made in connection with the claims under policies written in each of the corresponding years. For the first year of the three-year period, the reserve shall be not less than the present value, at four percent interest, of the determined and the estimated unpaid compensation claims under policies written during that year.

Subd. 6. [Repealed, 1978 c 465 s 15]

Subd. 7. Liability and workers' compensation reserves subject to increase. When, in the judgment of the commissioner, the liability or compensation loss reserves of any supervised insurer, calculated in accordance with the foregoing provisions, are inadequate, the commissioner may require such insurer to maintain additional reserves based upon estimated individual claims or otherwise.

Subd. 8. Liability and workers' compensation experience to be included in annual statement. Each insurer that writes liability or compensation policies shall include in the annual statement required by law a schedule of its experience thereunder in such form as the commissioner may prescribe.

Subd. 9. Exemption. This section shall not apply to farmers' mutual insurance companies.

History: 1967 c 395 art 1 s 12; 1975 c 359 s 23; 1978 c 465 s 6; 1986 c 444

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

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 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.

Subd. 1a. In addition, on or before March 1 of each year, an insurance company, including reciprocal exchanges, doing business in Minnesota shall file with the commissioner of revenue a copy of the annual statement required by subdivision 1. A company that fails to file a copy of the statement with the commissioner is subject to the penalties in section 72A.061.

Subd. 2. **Commissioner may inquire and require reply under oath.** The commissioner may also address to any insurer, including fraternal beneficiary associations, township mutuals and interinsurance exchanges, or its officers, any inquiry in relation to its transactions or conditions, or any matter connected therewith. Every insurer, or person so addressed, shall reply in writing to such inquiry promptly and truthfully, and such reply shall be verified, if required by the commissioner, by such individual or by such officer or officers of an insurer as the commissioner shall designate.

Subd. 3. [Repealed, 1978 c 793 s 98]

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. 4. [Repealed, 1978 c 793 s 98]

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

Subd. 5. **Renewal license based on approved statement.** Upon the approval of the statement the commissioner shall issue a renewal license for the succeeding year beginning June first. Any license to a company or its agent, issued after the approval of the statement, shall expire May thirty-first of the year following.

Subd. 6. **Company or agent cannot continue business unless statement is filed.** No company shall transact any new business in this state after May thirty-first in any year unless it shall have previously transmitted its annual statement to the commissioner and filed a copy of its statement with the National Association of Insurance Commissioners. The commissioner may by order annually require that each insurer pay the required fee to the National Association of Insurance Commissioners for the filing of annual statements, but the fee shall not be more than 50 percent greater than the fee set by the National Association of Insurance Commissioners on January 1, 1984. The

fee shall be based on the relative premium volume of each insurer. The commissioner's order shall not be subject to chapter 14.

Subd. 7. Exceptions. To file statement. No fraternal beneficiary association, nor any social corporation paying only sick benefits not exceeding \$250 in any one year, or funeral benefits, or aiding those dependent on a member not more than \$350, nor any subordinate lodge or council which is, or whose members are, assessed for benefits which are payable by a grand body, shall be required to make such statements.

Subd. 8. Annual reports. Each insurer licensed to write property and casualty insurance in this state, as a supplement to the annual statement required by this section, shall submit a report on a form furnished by the commissioner separately showing its direct writings in Minnesota and in the United States on: liquor liability, product liability, medical malpractice, and any other line so designated by the commissioner on January 1 of each year.

The supplemental reports must include the following data for the previous year ending on the 31st day of December:

- (1) direct premiums written;
- (2) direct premiums earned;
- (3) net investment income, including net realized capital gains and losses, using appropriate estimates where necessary;
- (4) incurred claims, developed as the sum, and with figures provided for, of the following:
 - (a) dollar amount of claims closed with payment, plus
 - (b) reserves for reported claims at the end of the current year, minus
 - (c) reserves for reported claims at the end of the previous year, plus
 - (d) reserves for incurred but not reported claims at the end of the current year, minus
 - (e) reserves for incurred but not reported claims at the end of the previous year, plus
 - (f) reserves for loss adjustment expense at the end of the current year, minus
 - (g) reserves for loss adjustment expense at the end of the previous year;
- (5) actual incurred expenses allocated separately to loss adjustment, commissions, other acquisition costs, general office expenses, taxes, licenses and fees, and all other expenses;
- (6) net underwriting gain or loss; and
- (7) net operation gain or loss, including net investment income.

This report is due by the first of May of each year and the report due May 1, 1987 must cover the last six months of 1986. The commissioner shall annually compile and review all reports submitted by insurers pursuant to this section. These filings must be published and made available to any interested insured or citizen.

History: 1967 c 395 art 1 s 13; 1978 c 793 s 58; 1981 c 211 s 28-31; 1984 c 592 s 7,8; 1985 c 210 art 1 s 1; 1986 c 444; 1986 c 455 s 6

60A.131 OTHER BUSINESS AND INSURANCE INTERESTS, DISCLOSURE.

Subdivision 1. If requested by the commissioner, an insurance company authorized to do business in this state shall disclose to the commissioner any changes in the principal management and directors of the company from that listed on page one of the annual statement within ten days of such change.

Subd. 2. Every insurance company authorized to do business in this state shall notify the commissioner within ten days after receipt of notice of any acquisition by any person, association or corporation of stock or other equity security in said insurer where such transaction, directly or indirectly, either involves five percent or more of any class of any equity security of said insurer, or such acquisition results in ownership of five percent or more of any equity security of said insurer.

Subd. 3. All principal management and directors of the company as listed on page one of its annual statement, and any person, association or corporation or any person or persons managing such company under a management contract, who are directly or indirectly the beneficial owners of more than five percent of any class of any equity security of a stock insurer or guaranty fund of a mutual insurer, shall disclose all other interests in excess of five percent which they may have in insurance agencies, other insurance companies, premium finance companies and any other companies whose principal business relates directly to the writing of insurance or the handling of claims, within 30 days following May 21, 1967. Any such interests acquired after May 21, 1967, shall be reported to the commissioner within 30 days after acquisition thereof.

Subd. 4. Every company applying for an initial certificate of authority to do business in this state shall file with the application a statement giving the information required in subdivision 3 as to its principal management, directors and affected holders of its equity securities.

History: 1967 c 609 s 1-4; 1Sp1985 c 10 s 51

60A.14 FEES.

Subdivision 1. **Fees other than examination fees.** In addition to the fees and charges provided for examinations, the following fees must 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, \$100;
 - (2) for filing annual statement, \$225;
 - (3) for filing certified copy of amendment to certificate or articles of incorporation, \$100;
 - (4) for filing bylaws, \$75 or amendments thereto, \$75;
 - (5) for each company's certificate of authority, \$575, 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, \$15;
 - (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, \$575;
 - (4) for receiving and forwarding each notice, proof of loss, summons, complaint or other process served upon the commissioner of commerce, as attorney for service of process upon any nonresident agent or insurance company, including reciprocal exchanges, \$15 plus the cost of effectuating service by certified mail, which amount must be paid by the party serving the notice and may be taxed as other costs in the action;
 - (5) for valuing the policies of life insurance companies, one cent per \$1,000 of insurance so valued, provided that the fee shall not exceed \$1,000 per year for any company. 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 an initial license to an individual agent, \$20 per license, for issuing an initial agent's license to a partnership or corporation, \$50, and for issuing an amendment (variable annuity) to a license, \$20, and for renewal of amendment, \$20;

(8) for each appointment of an agent filed with the commissioner, a domestic insurer shall remit \$5 and all other insurers shall remit \$3;

(9) for renewing an individual agent's license, \$20 per year per license, and for renewing a license issued to a corporation or partnership, \$50 per year;

(10) for issuing and renewing a surplus lines agent's license, \$150;

(11) for issuing duplicate licenses, \$5;

(12) for issuing licensing histories, \$10;

(13) for filing forms and rates, \$50 per filing;

(14) for annual renewal of surplus lines insurer license, \$300.

The commissioner shall adopt rules to define filings that are subject to a fee.

Subd. 2. Retaliatory provisions. When, by the laws of any other state or nation, any fines, penalties, licenses, or fees additional to, or in excess of, those imposed by this section upon foreign insurance companies and their agents, are imposed upon insurance companies of this state or their agents doing business in such state, the same fines, penalties, licenses, and fees shall be imposed upon all insurance companies of that state and their agents doing business in this state, so long as such laws of such other state remain in force.

History: 1967 c 395 art 1 s 14; 1969 c 7 s 17; 1969 c 291 s 4; 1974 c 5 s 1; 1978 c 470 s 2; 1978 c 793 s 59; 1981 c 307 s 2; 1983 c 289 s 114 subd 1; 1983 c 328 s 3; 1984 c 592 s 9; 1984 c 655 art 1 s 92; 1987 c 358 s 94; 1Sp1989 c 1 art 10 s 2

60A.15 TAXATION OF INSURANCE COMPANIES.

Subdivision 1. Domestic and foreign companies. (a) On or before April 15, June 15, and December 15 of each year, every domestic and foreign company, including town and farmers' mutual insurance companies and domestic mutual insurance companies, shall pay to the commissioner of revenue installments equal to one-third of the insurer's total estimated tax for the current year. Except as provided in paragraph (b), installments must be based on a sum equal to two percent of the premiums described in paragraph (c).

(b) For town and farmers' mutual insurance companies and mutual property and casualty insurance companies other than those (i) writing life insurance, or (ii) whose total assets on December 31, 1989, exceeded \$1,600,000,000, the installments must be based on an amount equal to the following percentages of the premiums described in paragraph (c):

(1) for premiums paid after December 31, 1988, and before January 1, 1992, one percent; and

(2) for premiums paid after December 31, 1991, one-half of one percent.

(c) Installments under paragraph (a) or (b) are percentages of gross premiums less return premiums on all direct business received by the insurer 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.

(d) Failure of a company to make payments of at least one-third of either (1) the total tax paid during the previous calendar year or (2) 80 percent of the actual tax for the current calendar year shall subject the company to the penalty and interest provided in this section, unless the total tax for the current tax year is \$500 or less.

Subd. 1a. Addition to the tax. In case of any underpayment of installments by an insurer, there shall be added to the tax for the taxable year an amount determined at the rate specified in section 270.75 upon the amount of underpayment.

Subd. 1b. Amount of underpayment. For purposes of subdivision 1a, the amount of the underpayment shall be the excess of: (1) the amount of the installment; over (2) the amount, if any, of the installment paid on or before the last date prescribed for payment.

Subd. 1c. **Period of underpayment.** The period of the underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier:

- (1) on March 1 following the close of the taxable year;
- (2) with respect to any portion of the underpayment, the date on which that portion is paid. For purposes of this clause, a payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent the payment exceeds the amount of the installment determined under subdivision 1c, clause (1) for the installment date.

Subd. 1d. **Definition of tax.** The term "tax" means the tax imposed by this chapter.

Subd. 1e. **Failure to file an estimate.** In the case of an insurer which fails to file an estimated tax for a taxable year when one is required, the period of the underpayment shall run from the installment dates as set forth in subdivision 1 or 2 to whichever of the periods set forth in subdivision 1c is the earlier.

Subd. 2. [Repealed, 1987 c 268 art 2 s 38]

Subd. 2a. **Procedure for filing and adjustment of statements and taxes.** (a) Every insurer required to pay a premium tax in this state shall make and file a statement of estimated premium taxes for the period covered by the installment tax payment. Such the installment tax payment. Such statement shall be in the form prescribed by the commissioner of revenue.

(b) On or before March 1, annually every insurer subject to taxation under this section shall make an annual return for the preceding calendar year setting forth such information as the commissioner of revenue may reasonably require on forms prescribed by the commissioner.

(c) On March 1, the insurer shall pay any additional amount due for the preceding calendar year; if there has been an overpayment, such overpayment may be credited without interest on the estimated tax due April 15.

(d) If unpaid by this date penalties and interest as provided in section 290.53, subdivision 1, shall be imposed.

Subd. 3. [Repealed, 1969 c 1001 s 11]

Subd. 4. **Return premiums defined.** "Return premiums," as used in this section, means any dividend or any unused or unabsorbed portion of premium deposit or assessment that shall be applied toward the payment of any premium, premium deposit, or assessment due from the policyholder or member upon a continuance or renewal of the insurance on account of which such dividend was earned or premium deposit or assessment paid and any portion of premium returned by the company upon cancellation or termination of a policy or membership, except surrender values paid upon the cancellation and surrender of policies or certificates of life insurance.

Subd. 5. **Municipality defined.** As used in this section "municipality" means a city of any class, a town, or a township.

Subd. 6. **Marine insurance companies.** Every domestic and foreign company shall pay to the commissioner of revenue on or before June 1 annually a sum equal to five percent of its taxable underwriting profit, ascertained as hereinafter provided, with respect to all insurance written within this state, during the preceding calendar year, upon hulls, freights, or disbursements, or upon goods, wares, merchandise and all other personal property and interests therein, in course of exportation from, importation into any country, or transportation coastwise, including transportation by land or water from point of origin to final destination in respect to, appertaining to, or in connection with, any and all risks or perils of navigation, transit or transportation, and while being prepared for, and while awaiting shipment, and during any delays, storage, transshipment or reshipment incident thereto, including war risks and marine builder's risks. If unpaid by such date, penalties and interest as provided by section 289A.60, subdivision 1, shall be imposed.

The underwriting profit on such insurance written within this state shall be that

proportion of the total underwriting profit of such insurer from such insurance written within the United States which the amount of net premiums of such insurer from such insurance written within this state bears to the amount of net premiums of such insurer from such insurance written within the United States.

The underwriting profit of such insurer on such insurance written within the United States shall be determined by deducting from the net earned premiums on such marine insurance written within the United States during the taxable year, meaning thereby the calendar year next preceding the date on which such tax is due, the following items:

(a) Net losses incurred, meaning gross losses incurred during such calendar year under such marine insurance contracts written within the United States, less reinsurance claims collected or collectible and less net salvages or recoveries collected or collectible from any source applicable to the corresponding losses under such contracts;

(b) Net expenses incurred in connection with such marine contracts, including all state and federal taxes in connection therewith; but in no event shall the aggregate amount of such net expenses deducted exceed 40 percent of the net premiums on such marine insurance contracts, ascertained as hereinafter provided; and

(c) Net dividends paid or credited to policyholders on such marine insurance contracts.

In determining the amount of such tax, net earned premiums on such marine insurance contracts written within the United States during the taxable year shall be arrived at as follows:

From gross premiums written on such contracts during the taxable year deduct any and all return premiums, premiums on policies not taken, premiums paid for reinsurance of such contracts and net unearned premiums on all such outstanding contracts at the end of the taxable year; and add to such amount net unearned premiums on such outstanding marine insurance contracts at the end of the calendar year next preceding the taxable year.

In determining the amount of such tax, net expenses incurred shall be determined as the sum of the following:

(d) Specific expenses incurred on such marine insurance business, consisting of all commissions, agency expenses, taxes, licenses, fees, loss adjustment expenses, and all other expenses incurred directly and specifically in connection with such business, less recoveries or reimbursements on account of or in connection with such commissions or other expenses collected or collectible because of reinsurance or from any other source.

(e) General expenses incurred on such marine insurance business, consisting of that proportion of general or overhead expenses incurred in connection with such business which the net premiums on such marine insurance written during the taxable year bear to the total net premiums written by such insurer from all classes of insurance written by it during the taxable year. Within the meaning of this paragraph, general or overhead expenses shall include salaries of officers and employees, printing and stationery, all taxes of this state and of the United States, except as included in paragraph (d) last above, and all other expenses of such insurer, not included in paragraph (d) last above, after deducting expenses specifically chargeable to any or all other classes of insurance business.

In determining the amount of such tax, the taxable underwriting profit of such insurer on such marine insurance business written within this state, shall be ascertained as follows:

(f) In the case of every such insurer which has written any such business within this state during three calendar years immediately preceding the year in which such taxes were payable, the taxable underwriting profit shall be determined by adding or subtracting, as the case may be, the underwriting profit or loss on all such insurance written within the United States, ascertained as hereinbefore provided, for each of such three years, and dividing by three.

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(g) In the case of every such insurer other than as specified in paragraph (f) last above, such taxable underwriting profit, if any, shall be the underwriting profit, if any, on such marine insurance business written within this state during the taxable year, ascertained as hereinbefore provided; but after such insurer has written such marine insurance business within this state during three calendar years, an adjustment shall be made on the three year average basis by ascertaining the amount of tax payable in accordance with paragraph (f) last above.

The tax hereinbefore provided shall be paid annually by every insurer authorized to do in this state the business of marine insurance during any one or more of the next preceding three calendar years, and the calendar year next preceding such June first shall be deemed the taxable year within the meaning of this section.

Every insurer liable to pay the tax hereinbefore provided shall, on or before the first day of June in each year, file with the commissioner of revenue a tax return in the form prescribed by the commissioner.

The tax provided for in this section shall apply to the business of the year ending December 31, 1952, and to subsequent years.

Subd. 7. These taxes are in lieu of all other taxes except those on real property in this state. In the case of a domestic or foreign company such sums are in lieu of all other taxes, except those upon real property owned by it in this state, which is taxed the same as like property of individuals.

Subd. 8. Examination of returns; assessments; refunds. The commissioner of revenue shall, as soon as practicable after a return required by this section is filed, examine the same and make any investigation or examination of the company's records and accounts that the commissioner may deem necessary for determining the correctness of the return. The tax computed by the commissioner on the basis of such examination and investigation shall be the tax to be paid by such company. If the tax found due shall be greater than the amount reported as due on the company's return, the commissioner shall assess a tax in the amount of such excess and the whole amount of such excess shall be paid to the commissioner of revenue within 60 days after notice of the amount and demand for its payment shall have been mailed to the company by the commissioner. If the understatement of the tax on the return was false and fraudulent with intent to evade the tax, the installments of the tax shown by the company on its return which have not yet been paid shall be paid to the state treasurer within 30 days after notice of the amount thereof and demand for payment shall have been mailed to the company by the commissioner. If the amount of the tax found due by the commissioner shall be less than that reported as due on the company's return, the excess shall be refunded to the company in the manner provided by subdivision 12, (except that no demand therefor shall be necessary), if they have already paid the whole of such tax, or credited against any unpaid installment thereof; provided, that no refundment shall be made except as provided in subdivision 12, after the expiration of 3-1/2 years after the filing of the return.

If the commissioner examines returns of a company for more than one year, the commissioner may issue one order covering the several years under consideration reflecting the aggregate refund or additional tax due.

The notices and demands provided for by subdivisions 8 to 10, shall be in such form as the commissioner may determine (including a statement) and shall contain a brief explanation of the computation of the tax and shall be sent by mail to the company at the address given in its return, if any, and if no such address is given, then to the last known address.

Subd. 9. Failure to file return, false or fraudulent return filed. If any company required by this section to file any return shall fail to do so within the time prescribed or shall make, willfully or otherwise, an incorrect, false, or fraudulent return, it shall, on the written demand of the commissioner of revenue, file such return, or corrected return, within 60 days after the mailing of such written demand and at the same time pay the whole tax, or additional tax, due on the basis thereof. If such company shall fail within that time to file such return, or corrected return, the commissioner shall

make for it a return, or corrected return, from personal knowledge and from such information as the commissioner can obtain through testimony, or otherwise, and assess a tax on the basis thereof, which tax (less any payments theretofore made on account of the tax for the taxable year covered by such return) shall be paid within 60 days after the commissioner has mailed to such company a written notice of the amount thereof and demand for its payment. Any such return or assessment made by the commissioner on account of the failure of the company to make a return, or a corrected return, shall be prima facie correct and valid, and the company shall have the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto.

Subd. 9a. Failure to file; penalties and interest. In case of any failure to make and file a return as required by this chapter within the time prescribed by law or prescribed by the commissioner of revenue in pursuance of law there shall be added to the tax penalties and interest as provided in section 289A.60, subdivision 2.

Subd. 9b. Intent to evade tax; penalty. If any company, with intent to evade the tax imposed by this chapter, fails to file any return required by this chapter or with such intent files a false or fraudulent return there shall also be imposed on it a penalty as provided in section 289A.60, subdivision 6.

Subd. 9c. Negligence or intentional disregard; penalty. If any part of any additional assessment is due to negligence or intentional disregard of the statute or a rule (but without intent to defraud), there shall be added to the tax a penalty as provided in section 289A.60, subdivision 5.

Subd. 9d. Criminal provisions. In addition to the penalties hereinbefore prescribed, the provisions of section 289A.63, subdivisions 1 and 3, shall apply to persons required by chapter 60A to make a return.

Subd. 10. Collection of tax. The tax required to be paid by this section may be collected in an ordinary action at law by the commissioner of revenue against the company. In any action commenced pursuant to this section, upon the filing of an affidavit of default, the court administrator of the district court wherein the action was commenced shall enter judgment for the state for the amount demanded in the complaint together with costs and disbursements.

Subd. 11. Appeals. Either party to an action or a judgment for the recovery of any taxes, interest, or penalties under subdivision 10, may appeal as in other civil cases.

Subd. 12. Overpayments, claims for refund. (1) Procedure, time limit, appropriation. A company who has paid, voluntarily or otherwise, or from whom there has been collected an amount of tax for any year in excess of the amount legally due for that year, may file with the commissioner of revenue a claim for a refund of the excess. Except as provided in subdivision 11, no claim or refund shall be allowed or made after 3-1/2 years from the date prescribed for filing the return (plus any extension of time granted for filing the return but only if filed within the extended time) or after two years from the date of overpayment, whichever period is longer, unless before the expiration of the period a claim is filed by the company. For this purpose, a return or amended return claiming an overpayment constitutes a claim for refund.

Upon the filing of a claim, the commissioner shall examine it, shall make and file written findings denying or allowing the claim in whole or in part, and shall mail a notice thereof to the company at the address stated upon the return. If the claim is allowed in whole or in part, the commissioner shall issue a certificate for the refundment of the excess paid by the company, with interest at the rate specified in section 270.76 computed from the date of the payment of the tax until the date the refund is paid or the credit is made to the company. The commissioner of finance shall pay the refund out of the proceeds of the taxes imposed by this section, as other state moneys are expended. As much of the proceeds of the taxes as necessary are appropriated for that purpose.

(2) Denial of claim, court proceedings. If the claim is denied in whole or in part, the commissioner shall mail an order of denial to the company in the manner prescribed in subdivision 8. An appeal from this order may be taken to the Minnesota tax

court in the manner prescribed in section 271.06, or the company may commence an action against the commissioner to recover the denied overpayment. The action may be brought in the district court of the district in the county of its principal place of business, or in the district court for Ramsey county. The action in the district court must be commenced within 18 months following the mailing of the order of denial to the company. If a claim for refund is filed by a company and no order of denial is issued within six months of the filing, the company may commence an action in the district court as in the case of a denial, but the action must be commenced within two years of the date that the claim for refund was filed.

(3) **Consent to extend time.** If the commissioner and the company have, within the periods prescribed in clause (1), consented in writing to any extension of time for the assessment of the tax, the period within which a claim for refund may be filed, or a refund may be made or allowed, if no claim is filed, shall be the period within which the commissioner and the company have consented to an extension for the assessment of the tax and six months thereafter. The period within which a claim for refund may be filed shall not expire prior to two years after the tax was paid.

(4) **Overpayments; refunds.** If the amount determined to be an overpayment exceeds the taxes imposed by this section, the amount of excess shall be considered an overpayment. An amount paid as tax constitutes an overpayment even if in fact there was no tax liability with respect to which the amount was paid.

Notwithstanding any other provision of law to the contrary, in the case of any overpayment, the commissioner, within the applicable period of limitations, shall refund any balance of more than one dollar to the company if the company requests the refund.

Subd. 13. **No liability in case of compliance with laws of other states.** Each domestic insurance company, and its officers, directors, and trustees, may comply with any law of any state, territory, or political subdivision of either, which imposes any license, or tax, and pay same, unless, prior to such payment, such law is expressly held invalid by the United States Supreme Court. No such company, officer, director, or trustee shall be subject to liability by reason of any such compliance or payment either heretofore or hereafter made.

Subd. 14. [Repealed, 1Sp1985 c 10 s 123]

History: 1967 c 395 art 1 s 15; 1969 c 1001 s 1; 1971 c 575 s 1-3; 1973 c 123 art 5 s 7; 1973 c 492 s 14; 1981 c 356 s 272; 1983 c 247 s 29,30; 1984 c 558 art 1 s 1-7; 1984 c 592 s 10-26; 1Sp1985 c 14 art 15 s 1; 1986 c 444; 1Sp1986 c 1 art 7 s 1; 1Sp1986 c 3 art 1 s 82; 1987 c 268 art 2 s 1; art 17 s 41; 1988 c 719 art 2 s 1; 1Sp1989 c 1 art 10 s 3; 1990 c 480 art 1 s 46; art 6 s 1; 1990 c 604 art 2 s 1

60A.151 [Repealed, 1989 c 324 s 29]

60A.16 MERGERS AND CONSOLIDATIONS.

Subdivision 1. **Scope.** (1) **Domestic insurance corporations.** Any two or more domestic insurance corporations, formed for any of the purposes for which stock, mutual, or stock and mutual insurance corporations might be formed under the laws of this state, may be

(a) merged into one of such domestic insurance corporations, or

(b) consolidated into a new insurance corporation to be formed under the laws of this state.

(2) **Domestic and foreign insurance corporations.** Any such domestic insurance corporations and any foreign insurance corporations formed to carry on any insurance business for the conduct of which an insurance corporation might be organized under the laws of this state, may be

(a) merged into one of such domestic insurance corporations, or

(b) merged into one of such foreign insurance corporations, or

(c) consolidated into a new insurance corporation to be formed under the laws of this state, or

(d) consolidated into a new insurance corporation to be formed under the laws of the government under which one of such foreign insurance corporations was formed, provided that each of such foreign insurance corporations is authorized by the laws of the government under which it was formed to effect such merger or consolidation.

Subd. 2. Procedure to be followed. (1) Agreement. The merger or consolidation of insurance corporations can be effected only as a result of a joint agreement entered into, approved, and filed as follows:

(a) The board of directors of each of such insurance corporations as desire to merge or consolidate may, by majority vote, enter into a joint agreement signed by such directors and prescribing the terms and conditions of merger or consolidation, the mode of carrying the same into effect, with such other details and provisions as are deemed necessary. In the case of merging or consolidating stock insurance corporations or stock and mutual insurance corporations, such joint agreement may prescribe that stock of one or more of such corporations shall be converted, in whole or in part, into stock or other securities of a corporation which is not a merging or consolidating corporation or into cash.

(b) The agreement shall be submitted to the shareholders or members, as the case may be, of each of the merging or consolidating insurance corporations, at a special meeting duly called for the purpose of considering and acting upon the agreement, and if the holders of two-thirds of the voting power of the shareholders or members present or represented at the meeting of each such insurance corporation shall vote for the adoption of the agreement, then that fact shall be certified on the agreement by the secretary of each insurance corporation, and the agreement so adopted and certified shall be signed and acknowledged by the president and secretary of each of said insurance corporations; provided, however, that in the case of a merger, except one whereby any shares of the surviving insurance corporation are to be converted into shares or other securities of another corporation or into cash, the agreement need not be submitted to the shareholders or members of that one of the insurance corporations into which it has been agreed the others shall be merged, but the agreement may be signed and acknowledged by the president and secretary of such insurance corporation at the direction of the board of directors.

(c) The agreement so adopted, certified and acknowledged shall be delivered to the commissioner of commerce, who, if the agreement is reasonable and if the provisions thereof providing for any transfer of assets and assumption of liabilities are fair and equitable to the claimants and policyholders, shall place a certificate of approval on the agreement and shall file the agreement in the commissioner's office, and a copy of the agreement, certified by the commissioner of commerce, shall be filed for record in the office of the secretary of state and in the offices of the county recorders of the counties in this state in which any of the corporate parties to the agreement have their home or principal offices, and of any counties in which any of the corporate parties have land, title to which will be transferred as a result of the merger or consolidation.

(2) Articles of incorporation of new company. (a) If the joint agreement is for a consolidation into a new insurance corporation to be formed under any law or laws of this state, articles of incorporation for such new insurance corporation shall be prepared and delivered to the commissioner of commerce together with the agreement as provided in clause (1) hereof.

(b) Such articles shall be prepared, executed, approved, filed and recorded in the form and manner prescribed in, or applicable to, the particular law or laws under which the new insurance corporation is to be formed.

Subd. 3. Consummation of merger. (1) A merger of one or more insurance corporations into a domestic insurance corporation shall be effective when the joint agreement has been approved and filed in the office of the commissioner of commerce.

(2) A consolidation of insurance corporations into a new domestic insurance corporation shall be effective when the joint agreement and the new articles of incorporation have been approved and filed in the office of the commissioner of commerce.

(3) A merger or consolidation of one or more domestic insurance corporations into a foreign insurance corporation shall be effective according to the provisions of law of the jurisdiction in which such foreign insurance corporation was formed, but not until the joint agreement has been adopted, certified and acknowledged, and copies thereof approved and filed in accordance with subdivision 2, clause (1).

Subd. 4. Effect of merger or consolidation. Upon the consummation of the merger or consolidation as provided in subdivision 3, the effect of such merger or consolidation shall be:

(1) That the several corporate parties to the joint agreement shall be one insurance corporation, which shall be

(a) in the case of a merger, that one of the constituent insurance corporations into which it has been agreed the others shall be merged and which shall survive the merger for that purpose, or

(b) in the case of a consolidation, the new insurance corporation into which it has been agreed the others shall be consolidated;

(2) The separate existence of the constituent insurance corporations shall cease, except that of the surviving insurance corporation in the case of a merger;

(3) The surviving or new insurance corporation, as the case may be, shall possess all the rights, privileges and franchises possessed by each of the former insurance corporations so merged or consolidated except that such surviving or new corporation shall not thereby acquire authority to engage in any insurance business or exercise any right which an insurance corporation may not be formed under the laws of this state to engage in or exercise;

(4) All the property, real, personal and mixed, of each of the constituent insurance corporations, and all debts due on whatever account to any of them, including without limitation subscriptions for shares, premiums on existing policies, and other choses in action belonging to any of them, shall be taken and be deemed to be transferred to and invested in such surviving or new insurance corporation, as the case may be, without further act or deed;

(5) The surviving or new insurance corporation shall be responsible for all the liabilities and obligations of each of the insurance corporations merged or consolidated, in accordance with the terms of the agreement for merger or consolidation; but the rights of the creditors of the constituent insurance corporations, or of any persons dealing with such insurance corporations shall not be impaired by such merger or consolidation, and any claim existing or action or proceeding pending by or against any of the constituent insurance corporations may be prosecuted to judgment as if the merger or consolidation had not taken place, or the surviving or new insurance corporation may be proceeded against or substituted in its place.

Subd. 5. Nonconsenting shareholders. (1) When an insurance corporation having capital stock has become a party to a merger or consolidation agreement, as hereinbefore provided, any shareholder of such an insurance corporation who voted against the merger or consolidation at the meeting at which it was authorized, may, at any time within 20 days after such authorization was given, object thereto in writing and demand payment for the shares held.

(2) If, after such a demand by a shareholder, the insurance corporation and the shareholder cannot agree upon the value of the shares at the time the merger or consolidation was authorized, such value shall be ascertained by three disinterested persons, one of whom shall be named by the shareholder, another by the insurance corporation and the third by the two thus chosen. The finding of the appraisers shall be final, and if their award is not paid by the insurance corporation within 30 days after it is made, it may be recovered in an action by the shareholder against the insurance corporation. The liability of the insurance corporation to the dissenting shareholder for the value of the shares so agreed upon or awarded shall also be a liability of the surviving or new insurance corporation, as the case may be. Upon payment by the insurance corporation or by the surviving or new corporation to the shareholder of the agreed or awarded price

of the shares, the shareholder shall forthwith transfer and assign the shares held at, and in accordance with, the request of the corporation.

(3) A shareholder shall not be entitled to payment for shares under the provisions of this subdivision unless the value of the corporate assets which would remain after such payment would be at least equal to the aggregate amount of its debts and liabilities including outstanding capital stock.

Subd. 6. Disclosure of expenses; prohibitions and penalty. All actual expenses and costs incident to proceedings under the provisions of this section shall be paid by the surviving or new company and an itemized statement of the expenses and costs shall be filed with the commissioner prior to formal approval. No officer of any such company or employee of the department of commerce, shall receive any compensation, gratuity or otherwise, directly or indirectly, for in any manner aiding, promoting, or assisting in such consolidation or merger.

Any officer, director, or stockholder of any company, or any employee of the state, violating, or consenting to the violation of, the provisions of this subdivision shall be punished by a fine of not less than \$20,000 and by imprisonment for not less than one year.

History: 1967 c 395 art 1 s 16; 1973 c 521 s 1; 1976 c 181 s 2; 1983 c 289 s 114 subd 1; 1984 c 628 art 3 s 11; 1984 c 655 art 1 s 92; 1986 c 444

60A.161 INSURER DOMESTICATION AND CONVERSION.

Subdivision 1. Approval as a domestic insurer. Any insurer that is organized under the laws of any other state and is admitted to do business in this state for the purpose of writing insurance may become a domestic insurer of this state by complying with all of the requirements of law relative to the organization and licensing of a domestic insurer of the same type and by designating its principal place of business at a place in this state. The domestic insurer will be entitled to like certificates and licenses to transact business in this state and is subject to the authority and jurisdiction of this state.

Subd. 2. Conversion to foreign insurer. A domestic insurer of this state may, upon the approval of the commissioner, transfer its domicile to any other state in which it is admitted to transact the business of insurance, and upon the transfer shall cease to be a domestic insurer and shall be admitted to this state if qualified as a foreign insurer. The commissioner shall approve any proposed transfer unless the commissioner determines that the transfer is not in the interest of the policyholders of this state.

Subd. 3. Effects. The certificate of authority, agents appointments and licenses, rates, policy forms, and other items which the commissioner of commerce allows, in the commissioner's discretion, which are in existence at the time any insurer licensed to transact the business of insurance in this state transfers its corporate domicile to this or any other state by redomestication, merger, consolidation, or any other lawful method shall continue in full force and effect upon such transfer if such insurer remains duly qualified to transact the business of insurance in this state. All outstanding policies of any transferring insurer remain in full force and effect and need not be endorsed as to the new name of the company or its new location unless so ordered by the commissioner. However, every transferring insurer shall notify the commissioner of the details of the proposed transfer and shall file promptly resulting amendments to corporate documents filed or required to be filed with the commissioner.

Subd. 4. Authority to adopt rules. The commissioner of commerce may adopt rules to carry out the purposes of this section.

History: 1990 c 424 s 1

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 obtains from the commissioner a license therefor. The license must 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 or reappoint 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 must 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 is qualified for a life and health license under Laws 1981, chapter 307 and is 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 is qualified for a property and casualty license under Laws 1981, chapter 307 and is appointed by any insurer which has submitted a written requisition for a license for that agent as of June 1, 1981.

(d) **Penalties.** (1) A person who acts or assumes to act as an insurance agent without a valid license issued by the commissioner is guilty of a gross misdemeanor.

(2) In addition to any other penalty, the commissioner may, in the manner prescribed by chapter 14, impose a civil penalty, not to exceed \$500 per violation, on a person who acts or assumes to act as an insurance agent without a valid license issued by the commissioner.

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. 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

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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 classroom studies in a school, which shall not include a school sponsored by, offered by, or affiliated with an insurance company or its agents; except that this limitation does not preclude a bona fide professional association of agents, not acting on behalf of an insurer, from offering courses. The course of study shall consist of 30 hours of classroom study devoted to the basic fundamentals of insurance for those seeking a Minnesota license for the first time, 15 hours devoted to specific life and health topics for those seeking a life and health license, and 15 hours devoted to specific property and casualty topics for those seeking a property and casualty license. 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 the organization offering the course shall accompany the applicant'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. An applicant whose license is not renewed under subdivision 20 is exempt from the requirement of a written examination.

(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. If a license is denied pursuant to this clause, the provisions of subdivision 6c, paragraph (c), apply.

(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 14.

(e) **Term.** All licenses issued pursuant to this section shall remain in force until voluntarily terminated by the licensee, not renewed as prescribed in subdivision 1d, 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 of name, address, or information contained in the application.

(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 check payable to the state treasurer for the amount of fee specified in section 60A.14, subdivision 1, paragraph (c).

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;

(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; and

(7) rental vehicle companies and their employees in connection with the offer of rental vehicle personal accident insurance under section 72A.125.

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:

(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. 1d. Renewal fee. (a) Each agent licensed pursuant to this section shall annually pay in accordance with the procedure adopted by the commissioner a renewal fee as prescribed by section 60A.14, subdivision 1, paragraph (c), clause (10).

(b) Every agent, corporation, and partnership license expires on May 31 of the year for which period a license is issued.

(c) Persons whose applications have been properly and timely filed who have not received notice of denial of renewal are approved for renewal and may continue to transact business whether or not the renewed license has been received on or before June 1. Applications for renewal of a license are timely filed if received by the commissioner on or before May 15 of the year due, on forms duly executed and accompanied by appropriate fees. An application mailed is considered timely filed if addressed to the commissioner, with proper postage, and postmarked by May 15.

(d) The commissioner may issue licenses for agents, corporations, or partnerships for a three-year period. If three-year licenses are issued, the fee is three times the annual license fee.

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. **Temporary licenses.** The commissioner may grant a temporary insurance agent's license to a person who has successfully completed the examination, if any, required by the commissioner. The temporary license may be granted as of the date upon which the applicant receives written notice from the commissioner 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 the agent is licensed in other insurers duly authorized to transact business in this state, but such insurance shall only be consummated through a duly appointed resident agent of the insurer taking the risk. If the law of another state requires a nonresident 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 nonresident 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 until terminated voluntarily by the appointing insurer or the license of the agent has for any reason been terminated during the appointment. 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 untrustworthy 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 willfully 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 by order suspend or revoke an insurance agent's or agency's license issued to a natural person or impose a civil penalty appropriate to the offense, not to exceed \$5,000 upon that licensee, or both, 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 money 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 by order suspend or revoke an insurance agent's or insurance agency's license issued to a partnership or corporation or impose a civil penalty as provided for in section 45.027, subdivision 6, upon that licensee, or both; 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 two years from the effective date of the revocation. Further, the commissioner shall, as a condition of relicensure, require the applicant to obtain a performance bond issued by an insurer authorized to transact business in this state in the amount of \$20,000 or a greater amount the commissioner considers appropriate for the protection of citizens of this state. The bond shall be filed with the commissioner, with the state of Minnesota as obligee, conditioned for the prompt payment to any aggrieved person entitled to payment of any amounts received by the licensee or to protect any aggrieved person from loss resulting from fraudulent, deceptive, dishonest, or other prohibited practices arising out of any transaction when the licensee was licensed or performed acts for which a license is required under this chapter. The bond shall remain operative for as long as that licensee is licensed. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this section. The bond required by this subdivision must provide coverage for all matters arising during the period of licensure.

(d) The commissioner may, in the manner prescribed by chapter 14, impose a civil penalty not to exceed \$5,000 upon a person whose license has lapsed, or been suspended, revoked, or otherwise terminated, for engaging in conduct prohibited by paragraph (a) before, during, or after the period of licensure.

Subd. 6d. **Show cause orders.** If the commissioner determines that one of the conditions listed in subdivision 6c exists, the commissioner may issue an order requiring a licensee or an applicant for a license to show cause why the license should not be revoked or the application denied. The order must be calculated to give reasonable notice of the time and place for hearing thereon, and must state the reasons for the entry of the order. The commissioner may by order summarily suspend a license pending final determination of an order to show cause. If a license is suspended pending final determination of an order to show cause, a hearing on the merits must be held within 30 days of the issuance of the order of suspension. All hearings must be conducted in accordance with chapter 14. After the hearing, the commissioner shall enter an order making a disposition of the matter as the facts require. If the licensee or applicant fails to appear at a hearing of which that person has been duly notified, the person is in default, and the proceeding may be determined against that person upon consideration of the order to show cause, the allegations of which may be deemed to be true. The commissioner may adopt rules of procedure concerning all proceedings conducted pursuant to this subdivision.

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.

(b) An agent whose resident or nonresident license is terminated as provided in subdivision 6c, 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 commerce of this state or the commissioner of insurance of any other state.

Subd. 8. **Redress of person aggrieved.** Any person aggrieved by any ruling or order of the commissioner may appeal therefrom to any district court of the state by serving written notice of such intention upon the commissioner, specifying the court, within ten days after the same is made. The commissioner shall thereupon file with the court administrator a certified copy of the order or ruling and findings of fact upon which the same are based, which shall be prima facie evidence of the facts therein stated. Thereupon the court shall summarily hear and determine the questions involved on the appeal.

Subd. 8a. **Communications with department.** An applicant or licensee shall respond to requests for information, documents, or other requests from the department within the time specified in the request or, if no time is specified, within 30 days of the mailing of the request by the department. Applicants and licensees shall appear before the commissioner or the commissioner's representative when requested to do so and shall bring all documents or materials which the commissioner or the commissioner's representative has requested.

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 the commissioner 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.

Subd. 11. Insurer's agent. Any person who solicits insurance is the agent of the insurer and not the agent of the insured.

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 sections 60A.195 to 60A.209, 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.

(b) **Exceptions.** (1) Any regularly salaried officer or employee of a licensed insurer may, without license or other qualification, act on behalf of that licensed insurer in the negotiation of a contract on a variable basis, provided that a licensed agent must participate in the sale of any contract.

(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 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 commerce 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, United States Code, title 15, section 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.

Subd. 14. Altering existing policies; written binders required. Any insurance agent having express authority to bind coverage, who orally agrees on behalf of an insurer to provide insurance coverage, or to alter an existing insurance agreement, shall execute and deliver a written memorandum or binder containing the terms of the oral agreement to the insured within three business days from the time the oral agreement is entered into. The commissioner may suspend or revoke the license of any agent who fails to comply with this subdivision in accordance with the provisions of subdivisions 7 to 9.

Subd. 15. **Rules.** The commissioner may adopt rules pursuant to chapter 14 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.

Subd. 17. **Premiums.** All premiums or other monies received by an agent from an insured or applicant for insurance must be forthwith deposited directly in a business checking, savings, or other similar account maintained by the agent or agency, unless the moneys are forwarded directly to the designated insurer.

Subd. 18. **Personal solicitation of insurance sales.** (a) **Definitions.** For the purposes of this subdivision, the following terms have the meanings given them:

(1) "agent" means a person, copartnership, or corporation required to be licensed pursuant to subdivision 1.

(2) "personal solicitation" means any contact by an agent, or any person acting on behalf of an agent, made for the purpose of selling or attempting to sell insurance, when either the agent or a person acting for the agent contacts the buyer by telephone or in person, except: an attempted sale in which the buyer personally knows the identity of the agent, the name of the general agency, if any, which the agent represents, and the fact that the agent is an insurance agent; an attempted sale in which the prospective purchaser of insurance initiated the contact; or a personal contact which takes place at the agent's place of business.

(b) **Disclosure requirement.** Before a personal solicitation, the agent or person acting for an agent shall, at the time of initial personal contact or communication with the potential buyer, clearly and expressly disclose:

- (1) the name of the person making the contact or communication;
- (2) the name of the agent, general agency, or insurer that person represents;
- (3) the fact that the agent, agency, or insurer is in the business of selling insurance.

(c) **False representation of government affiliation.** No agent or person acting for an agent shall make any communication to a potential buyer that indicates or gives the impression that the agent is acting on behalf of a government agency.

Subd. 19. **Privacy of client.** Except as otherwise provided by law, no insurance agent may disclose nor cause to be disclosed to any other person the identity of a person insured through the agent without the consent of the insured.

Subd. 20. **Tax clearance certificate.** (a) The commissioner may not issue or renew a license under this section if the commissioner of revenue notifies the commissioner and the licensee or applicant for a license that the licensee or applicant owes the state delinquent taxes in the amount of \$500 or more. The commissioner may issue or renew the license only if (1) the commissioner of revenue issues a tax clearance certificate and (2) the commissioner of revenue or the licensee or applicant forwards a copy of the clearance to the commissioner. The commissioner of revenue may issue a clearance certificate only if the licensee or applicant does not owe the state any uncontested delinquent taxes.

(b) For purposes of this subdivision, the following terms have the meanings given.

(1) "Taxes" are all taxes payable to the commissioner of revenue, including penalties and interest due on those taxes.

(2) "Delinquent taxes" do not include a tax liability if (i) an administrative or court action that contests the amount or validity of the liability has been filed or served, (ii) the appeal period to contest the tax liability has not expired, or (iii) the licensee or applicant has entered into a payment agreement to pay the liability and is current with the payments.

(c) In lieu of the notice and hearing requirements of subdivisions 6c and 6d, when a licensee or applicant is required to obtain a clearance certificate under this subdivision, a contested case hearing must be held if the licensee or applicant requests a hearing in writing to the commissioner of revenue within 30 days of the date of the notice provided in paragraph (a). The hearing must be held within 45 days of the date the commissioner of revenue refers the case to the office of administrative hearings. Notwithstanding any law to the contrary, the licensee or applicant must be served with 20 days' notice in writing specifying the time and place of the hearing and the allegations against the licensee or applicant. The notice may be served personally or by mail.

(d) The commissioner shall require all licensees or applicants to provide their social security number and Minnesota business identification number on all license applications. Upon request of the commissioner of revenue, the commissioner must provide to the commissioner of revenue a list of all licensees and applicants, including the name and address, social security number, and business identification number. The commissioner of revenue may request a list of the licensees and applicants no more than once each calendar year.

Subd. 21. Suitability of insurance. In recommending the purchase of any life, endowment, long-term care, annuity, life-endowment, or Medicare supplement insurance to a customer, an agent must have reasonable grounds for believing that the recommendation is suitable for the customer, and must make reasonable inquiries to determine suitability. The suitability of a recommended purchase of insurance will be determined by reference to the totality of the particular customer's circumstances, including, but not limited to, the customer's income, the customer's need for insurance, and the values, benefits, and costs of the customer's existing insurance program, if any, when compared to the values, benefits, and costs of the recommended policy or policies.

History: 1967 c 395 art 1 s 17; 1969 c 7 s 18-20; 1969 c 285 s 1; 1969 c 290 s 1; 1969 c 291 s 1,2; 1969 c 331 s 1; 1969 c 332 s 1; 1969 c 548 s 1; 1969 c 752 s 17; 1971 c 193 s 1,2; 1971 c 282 s 1,2; 1971 c 707 s 1; 1974 c 426 s 1; 1974 c 476 s 1; 1976 c 221 s 1; 1977 c 194 s 1; 1977 c 243 s 1-3; 1980 c 516 s 2; 1980 c 596 s 7; 1981 c 307 s 3-21; 1982 c 424 s 130; 1982 c 622 s 2,3; 1983 c 216 art 1 s 16; 1983 c 263 s 1-6; 1983 c 289 s 114 subd 1; 1983 c 328 s 4,5; 1984 c 592 s 28-33; 1984 c 640 s 32; 1984 c 655 art 1 s 14,92; 1Sp1985 c 10 s 52; 1986 c 444; 1Sp1986 c 1 art 7 s 2,3; 1Sp1986 c 3 art 1 s 82; 1987 c 336 s 7; 1987 c 337 s 4-7; 1987 c 384 art 2 s 14; 1989 c 184 art 2 s 1; 1989 c 258 s 1,2; 1989 c 260 s 5; 1990 c 415 s 2

60A.1701 CONTINUING INSURANCE EDUCATION.

Subdivision 1. Definition. For the purposes of this section, "course" means a course, program of instruction, or seminar of continuing insurance education. A "professional designation examination" means a written, proctored, and graded examination the passage of which leads to a bona fide insurance or financial planning professional designation used by agents.

Subd. 2. Applicability. This section applies to all natural persons licensed by this state to sell classes of insurance for which licensing examinations are required.

Subd. 3. Exemptions. This section does not apply to:

(a) persons soliciting or selling solely on behalf of companies organized and operating according to chapter 67A; or

(b) persons holding life and health, or property and casualty licenses who, by February 28 of each year, certify to the commissioner in writing that they will sell only credit life, credit health, and credit property insurance, during that year and do in fact so limit their sale of insurance.

Subd. 4. Continuing insurance education advisory task force. The commissioner of commerce may appoint a continuing insurance education advisory task force consisting of 13 members. All members must be residents of Minnesota. Three members must neither be employed by an insurance company nor licensed as an insurance agent. These

three members are not eligible to be chair and are compensated according to section 15.059, subdivision 6. Each of the other ten members must be actively engaged in some activity in the insurance industry in this state and have a principal office located in this state. These ten members serve without compensation, but are paid reasonable and necessary expenses incurred in the performance of their duties in the same amount and in the same manner as state employees. Three of these ten members must be employed in capacities other than as licensed agents by insurance companies authorized to do business in this state. The remaining seven members must be licensed insurance agents actively engaged in the solicitation and sale of insurance and currently subject to continuing education requirements. Membership on the advisory task force must represent, to the extent possible, the various phases of the insurance industry and especially the several classes of insurance.

The commissioner shall appoint the members of the task force. Before making appointments to the advisory task force, the commissioner shall solicit nominations from the several professional organizations representing persons selling insurance in this state and from the organizations representing companies authorized to do business in this state.

Subd. 5. Powers of the advisory task force. (a) Applications for approval of individuals responsible for monitoring course offerings must be submitted to the commissioner on forms prescribed by the commissioner and must be accompanied by a fee of not more than \$50 payable to the state of Minnesota for deposit in the general fund. A fee of \$5 for each hour or fraction of one hour of course approval sought must be forwarded with the application for course approval. If the advisory task force is created, it shall make recommendations to the commissioner regarding the accreditation of courses sponsored by institutions, both public and private, which satisfy the criteria established by this section, the number of credit hours to be assigned to the courses, and rules which may be promulgated by the commissioner. The advisory task force shall seek out and encourage the presentation of courses.

(b) If the advisory task force is created, it shall make recommendations and provide subsequent evaluations to the commissioner regarding procedures for reporting compliance with the minimum education requirement.

(c) The advisory task force shall recommend the approval or disapproval of professional designation examinations that meet the criteria established by this section and the number of continuing education credit hours to be awarded for passage of the examination. In order to be approved, a professional designation examination must:

(1) lead to a recognized insurance or financial planning professional designation used by agents; and

(2) conclude with a written examination that is proctored and graded.

Subd. 6. Powers of the commissioner. (a) The commissioner shall make the final determination as to accreditation and assignment of credit hours for courses.

(b) The commissioner shall adopt procedures for reporting compliance with the minimum education requirement. These procedures are not subject to the rulemaking provisions of chapter 14.

(c) The commissioner shall promulgate rules according to chapter 14 to carry out the purposes of this section.

Subd. 7. Criteria for course accreditation. (a) The commissioner may accredit a course only to the extent it is designed to impart substantive and procedural knowledge of the insurance field. The burden of demonstrating that the course satisfies this requirement is on the individual or organization seeking accreditation. The commissioner shall approve any educational program approved by Minnesota Continuing Legal Education relating to the insurance field.

(b) The commissioner shall approve or disapprove professional designation examinations that are recommended for approval by the advisory task force. In order for an agent to receive full continuing education credit for a professional designation examination, the agent must pass the examination. An agent may not receive credit for class-

room instruction preparing for the professional designation examination and also receive continuing education credit for passing the professional designation examination.

(c) The commissioner may not accredit a course:

- (1) that is designed to prepare students for a license examination;
- (2) in mechanical office or business skills, including typing, speedreading, use of calculators, or other machines or equipment;
- (3) in sales promotion, including meetings held in conjunction with the general business of the licensed agent;
- (4) in motivation, the art of selling, psychology, or time management;
- (5) unless the student attends classroom instruction conducted by an instructor approved by the department of commerce; or
- (6) which can be completed by the student at home or outside the classroom without the supervision of an instructor approved by the department of commerce.

Subd. 8. Minimum education requirement. Each person subject to this section shall complete annually a minimum of 15 credit hours of courses accredited by the commissioner. Any person teaching or lecturing at an accredited course qualifies for 1-1/2 times the number of credit hours that would be granted to a person completing the accredited course. No more than 7-1/2 credit hours per year may be credited to a person for courses sponsored by, offered by, or affiliated with an insurance company or its agents. Courses sponsored by, offered by, or affiliated with an insurance company or agent may restrict its students to agents of the company or agency.

Subd. 9. Waiver of requirements. (a) The commissioner may grant a waiver or an extension of time up to 90 days to complete the minimum education requirement to an individual upon a showing of good cause. It is the licensed person's responsibility to request a waiver or extension on a form prescribed by the commissioner. As of the day the licensed person properly files a request for a waiver or extension, the license remains in effect until the commissioner notifies the licensed person of the commissioner's decision. The commissioner may approve a waiver or extension subject to any reasonable conditions. The person's license remains in effect during the compliance period determined by the commissioner. If the licensed person fails to comply with any reasonable conditions imposed by the commissioner, the commissioner shall terminate the license. If the request for a waiver or extension is denied by the commissioner, the licensed person shall have 30 days within which to satisfy the minimum education requirement involved in the request for a waiver or extension. If the minimum education requirement is not satisfied within the compliance period, the commissioner shall terminate the person's license.

(b) Upon application on a form prescribed by the commissioner, the commissioner may grant a waiver of the minimum education requirement to a licensee who is no longer actively engaged in the solicitation and sale of insurance. A licensed person seeking a waiver from the requirements of this section may be required to submit information to the commissioner that substantiates the person's retirement or inactive status. A licensed person receiving a waiver from the commissioner may maintain and renew a license but may not solicit or sell new insurance business while this waiver is in effect. A licensee may, for a fee, continue to service an insurance policy for which the licensee is the agent of record, if the policy is in force at the time the waiver is granted. An insurer may not terminate a service contract or refuse to pay compensation because the waiver does not allow the licensee to solicit or sell new insurance.

For the purposes of receiving renewal commissions and other benefits or compensation from insurers, an agent receiving a waiver under this paragraph is considered to be the holder of a valid insurance agent license in this state.

Subd. 10. Reporting. (a) After completing the minimum education requirement, each person subject to this section shall file or cause to be filed a compliance report in accordance with the procedures adopted by the commissioner.

(b) An institution offering an accredited course shall comply with the procedure for reporting compliance adopted by the commissioner.

(c) If a person subject to this section completes a nonaccredited course, that person may submit a written report to the advisory committee accompanied by a fee of not more than \$10 payable to the state of Minnesota for deposit in the general fund. This report must be accompanied by proof satisfactory to the commissioner that the person has completed the minimum education requirement for the annual period during which the nonaccredited course was completed. Upon the recommendation of the advisory committee that the course satisfies the criteria for course accreditation, the commissioner may approve the nonaccredited course and shall so inform the person. If the nonaccredited course is approved by the commissioner, it may be used to satisfy the minimum education requirement for the person's next annual compliance period.

Subd. 11. Enforcement. If a person subject to this section fails to complete the minimum education or reporting requirement or to pay the prescribed fees for any annual period, no license may be renewed or continued in force for that person for any class of insurance beginning June 1 of the year due and that person may not act as an insurance agent until the person has demonstrated to the satisfaction of the commissioner that all requirements of this section have been complied with or that a waiver or extension has been obtained.

History: 1983 c 289 s 114 subd 1; 1983 c 328 s 6; 1984 c 552 s 3; 1984 c 578 s 2; 1984 c 592 s 34-36; 1984 c 655 art 1 s 92; 1Sp1985 c 10 s 53,54; 1986 c 444; 1987 c 337 s 8-10; 1989 c 231 s 1-5

60A.171 REHABILITATION AND CANCELLATION OF AGENCY CONTRACTS BY FIRE AND CASUALTY LOSS INSURANCE COMPANIES.

Subdivision 1. After an agency contractual relationship has been in effect for a period of three years, an insurance company writing fire or casualty loss insurance in this state may not terminate the agency contractual relationship with any appointed agent unless the company has attempted to rehabilitate the agent as provided in subdivision 3a and gives the agent notice in writing of the termination at least three months in advance.

Subd. 2. The company shall at the request of the agent renew any insurance contract written by the agent for the company for not more than one year for fire or casualty loss insurance during a period of nine months after the effective date of the termination, but in the event any risk does not meet current underwriting standards of the company, the company may decline its renewal, provided that the company shall give the agent not less than 60 days notice of its intention not to renew the contract of insurance.

Subd. 3. No new business shall be written by the agent for the company after the effective date of the termination without the written approval of the company, or a limited contract. The agent may increase liability on renewal or in force business for not more than one year for the insured after the effective date of the termination if the increased liability meets the current underwriting standards of the company.

Subd. 3a. (a) Following proper notice as required under subdivision 1, and prior to the effective date of termination of the agency contract, in an effort to avoid termination, the company shall negotiate in good faith in an effort to reach mutual agreement with the agent on a written plan for rehabilitation.

(b) The rehabilitation plan must be in writing and must contain the following elements:

- (1) identification by the company of the problem areas which need rehabilitation;
- (2) what the agent must do to avoid termination;
- (3) how the company intends to assist the agent to avoid termination;
- (4) the mutually agreed upon corrective action to be undertaken by the agent and the specific target dates for accomplishment;
- (5) periodic meeting dates at which the status of rehabilitation will be reviewed; and
- (6) the term of the written plan which must extend for at least one year after the notice of termination.

(c) All agency contracts in existence on May 13, 1987, are subject to the rehabilitation requirement under subdivision 1. The rehabilitation plan need not be incorporated into the agency contract.

Subd. 4. Nothing contained in this section prohibits the earlier termination of an amendment or addendum subsequent to the inception date of the original agency agreement provided that the subsequent amendment or addendum provides for termination on shorter notice and the agent agrees in writing to the earlier termination.

Subd. 5. During the term of the contract the company shall not refuse to renew such business from the agent as would be in accordance with the company's current underwriting standards.

Subd. 6. The provisions of this section do not apply to the termination of an agent's contract for insolvency, abandonment, gross and willful misconduct, or failure to pay over to the company money due to the company after receipt by the agent of a written demand therefor, or after revocation of the agent's license by the commissioner of commerce; nor to the termination of agents who write insurance business exclusively for one company or agents in the direct employ of the company.

Subd. 7. All future and presently existing agency contractual relationships between an agent and a company writing fire or casualty loss insurance in this state are subject to the provisions of this section.

Subd. 8. If it is found, after notice and an opportunity to be heard as determined by the commissioner of commerce, that an insurance company has violated this section, the insurance company shall be subject to a civil action by the agent for actual damages suffered because of the premature termination of the contract by the company.

History: 1977 c 287 s 1; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444; 1987 c 92 s 1-3

60A.172 INSURANCE AGENCY CONTRACTS; CANCELLATION.

(a) An insurer may not cancel a written agreement with an agent or reduce or restrict an agent's underwriting authority with respect to property or casualty insurance, based solely on the loss ratio experience on that agent's book of business, if: the insurer required the agent to submit the application for underwriting approval, all material information on the application was fully completed, and the agent has not omitted or altered any information provided by the applicant.

(b) For purposes of this section, "loss ratio experience" means the ratio of premiums paid divided by the claims paid during the previous two-year period.

(c) This section applies only to agents who write 80 percent or more of their gross annual insurance business for one company or any or all of its subsidiaries, and are not in the direct employ of the company.

History: 1987 c 288 s 1; 1989 c 170 s 1

60A.173 EFFECTIVE DATE.

Section 60A.172 is effective January 1, 1987, and applies to cancellations begun as of that date. As a condition of doing business in the state of Minnesota, an insurer shall promptly reinstate any agreements canceled under section 60A.172 and shall restore any authority reduced or restricted under section 60A.172 from January 1, 1987, until the day following final enactment of this act.

History: 1987 c 288 s 2

60A.174 SEVERABILITY.

If section 60A.173 is determined by a final, nonappealable order of any Minnesota or federal court of competent jurisdiction to be invalid or unconstitutional, section 60A.172 is effective the day following final enactment.

History: 1987 c 288 s 3

60A.175 AGENT COMMISSIONS.

An insurer that cancels a written agreement with an agent under section 60A.171 or 60A.172 must pay to the agent terminated all commissions earned by that agent prior to or after termination.

History: 1989 c 170 s 2

60A.176 DEFINITIONS.

Subdivision 1. **Application.** The definitions in this section apply to this section and section 60A.177.

Subd. 2. **Agency.** "Agency" means an agency contractual relationship that has been in effect five years or more.

Subd. 3. **Agent.** "Agent" means an agent who is not an employee of the insurer and who writes 80 percent or more of the agent's business through one insurer or its subsidiaries.

Subd. 4. **Insurer.** "Insurer" means an insurance company writing property or casualty loss insurance in this state through agents.

History: 1990 c 457 s 1

60A.177 INVOLUNTARY TERMINATION OF AN AGENT BY THE INSURER.

Subdivision 1. **Termination review process.** An insurer shall establish a termination review process for an agent involuntarily terminated by the insurer. The review process is available for use at the option of the agent. The review process must be completed within 15 days of the request or before the date of termination, whichever is later.

Subd. 2. **Notice; hearing.** If an agent is terminated by an insurer, the agent may request a hearing before the board of review. If an insurer initiates the termination of an agent's agreement, the written notice of termination must advise the agent of the agent's right to a hearing before the board of review. Upon receipt of an agent's request for a hearing, the commissioner shall establish a hearing date within 30 days of the request or longer with the approval of the agent and the insurer. The agent and the insurer shall be notified in writing of the date, time, and place of the hearing.

Subd. 3. **Board of review.** A three-member board of review shall be selected from a list of ten agents and ten insurer representatives compiled by the commissioner. One member shall be selected by the agent, one by the insurer, and one by the commissioner. The board member selected by the agent may not be a relative of the agent. The board members selected by the agent and insurer may not be presently or formerly associated with an insurer represented by the agent. An insurer is immune from civil liability to the agent for disclosures made at the hearing. This immunity does not extend to disclosures made in bad faith or with knowledge of their falseness.

Subd. 4. **Board's determination.** Upon completion of the hearing, the board of review shall determine if the termination of the agent's agreement is justified. If in the opinion of the board of review an involuntary termination is not justified, and in the absence of a reasonable contractual financial provision for termination as determined by the commissioner, the commissioner shall order the insurer to pay an amount of compensation that the commissioner considers appropriate to the agent.

If in the opinion of the board of review a voluntary termination was not voluntary and the insurer is not justified in terminating the agent's agreement, and in the absence of a reasonable contractual financial provision for termination as determined by the commissioner, the commissioner shall order the insurer to pay an amount of compensation that the commissioner considers appropriate to the agent.

Subd. 5. **Appeal.** An order of the commissioner or a determination of the board of review under subdivision 4 may be appealed to district court by either party for a trial de novo. If the insurer appeals and the agent prevails, the insurer is responsible for the agent's legal fees as approved by the court.

Subd. 6. **Civil penalty.** A person who intimidates or coerces a member of the board

of review is subject to a civil penalty imposed by the commissioner in an amount not to exceed \$25,000.

Subd. 7. **Exemption.** This section does not apply to an agent whose license has expired, is revoked, or is currently under suspension.

History: 1990 c 457 s 2

60A.18 SALE BY VENDING MACHINES; SCOPE AND REQUIREMENTS.

Subdivision 1. **General requirement.** No insurance shall be offered for sale, issued or sold by or from any vending machine or appliance or any other medium, device or object designed or used for vending purposes, herein called a device, except as provided in this section.

Subd. 2. **Conditions.** Resident insurance agents and solicitors licensed under this section to solicit for and to sell policies of personal travel accident insurance providing benefits for accidental bodily injury or accidental death may also solicit applications for and issue or sell such insurance by means of devices supervised by them and placed in locations for convenience of the traveling public, upon the following conditions only:

(1) That each policy to be sold by or from a device is reasonably suited for sale and issuance through a device, and that use of such device therefor in a particular proposed location would be of material convenience to the traveling public;

(2) That the type of device proposed to be used is reasonably suitable and practical for the purpose;

(3) That reasonable means, as determined by the commissioner, are provided for informing the prospective purchaser of any such policy of the benefits, limitations and exclusions of the policy, the premium rates therefor, the name and address of the agent and the name and home office address of the insuring company;

(4) That such device shall be so constructed and operated that it shall retain, or shall be provided with a suitable place for deposit and safe keeping of, a copy of the application, which shall show the date of the application, name and address of the applicant and the beneficiary, and the amount of insurance;

(5) That no policy of insurance sold by or from a device shall be for a period of time longer than the duration of a specified one-way trip or round trip of not to exceed 180 days;

(6) That such device shall have provided on it or immediately adjacent thereto, in a prominent location, adequate envelopes for use of purchasers in mailing policies vended through such device, or that the policy itself, if designed to permit such procedure, may be mailed without an envelope; provided, however, the commissioner may in writing delivered to the agent modify or waive these requirements;

(7) That each such device shall be supervised, inspected and tested by the agent with such frequency as may reasonably be necessary or as may reasonably be required by the commissioner, and should any device not be in good working condition the agent shall promptly cause a notice to be displayed thereon that the same is out of order, and cause said device to be promptly removed from service until it is in proper working order;

(8) That prompt refund by the agent is provided to each applicant or prospective applicant of money deposited in any defective device and for which no insurance, or a less amount than paid for, is actually received;

(9) In addition to, and without limiting the general powers of the commissioner to regulate and supervise insurance business in this state, the commissioner may establish such other and additional rules for types and locations of devices authorized hereunder, their maintenance and operation and the methods to be used by the agent in the solicitation and sale of insurance by means of such devices as shall be reasonable and necessary.

Subd. 3. **License, application, contents.** The application for a license for each device to be used shall be made by the agent in such form and with such information

as shall be prescribed by the commissioner. A fee of \$20 for each device shall be paid at the time of making application. Upon approval of the application, the commissioner shall issue to the agent a special vending machine license. The license shall apply to a specific device or to any device of identical type which, after written notice by the agent to the commissioner, is substituted for it. The license shall specify the name and address of the agent, the name and home office address of the insuring company, the name or other identifying information of the policy or policies to be sold, the serial number or other identification of the device and the address, including the location on the premises, where the device is to be in operation; provided, however, that a device for which a license has been issued for operation at a specific address may be transferred to a different address during the license year upon written notice to the commissioner at the time of such transfer. The license for each device shall expire on May 31st of each year, but may be renewed from year to year by the commissioner upon approval of the application by the agent and the furnishing of such information as shall be requested by the commissioner, and the payment of \$20 for each license year or part thereof for each device. Proof of the existence of a subsisting license shall be displayed on or about each such device in use in such manner as the commissioner may reasonably require.

Subd. 4. Suspension or revocation of license. The license for each device shall be subject to expiration, suspension or revocation coincidentally with that of the agent or the insuring company. The commissioner also may suspend or revoke the license as to any device concerning which the commissioner finds any conditions upon which the device was licensed as referred to in subdivision 2 have been violated, or no longer exist, or that the device is being used or operated by the agent in violation of the laws of this state; provided, that before suspending or revoking a license for a device, the commissioner shall conduct a hearing in the manner prescribed in chapter 72A, and shall make a determination upon the basis of the standards, conditions and requirements of this section.

History: 1967 c 395 art 1 s 18; 1984 c 592 s 37; 1985 c 248 s 70; 1986 c 444

60A.19 FOREIGN COMPANIES.

Subdivision 1. Requirements. Any insurance company of another state, upon compliance with all laws governing such corporations in general and with the foregoing provisions so far as applicable and the following requirements, shall be admitted to do business in this state:

(1) It shall deposit with the commissioner a certified copy of its charter or certificate of incorporation and its bylaws, and a statement showing its financial condition and business, verified by its president and secretary or other proper officers;

(2) It shall furnish the commissioner satisfactory evidence of its legal organization and authority to transact the proposed business and that its capital, assets, deposits with the proper official of its own state, amount insured, number of risks, reserve and other securities, and guaranties for protection of policyholders, creditors, and the public, comply with those required of like domestic companies;

(3) By a duly executed instrument filed in the office of the commissioner, it shall appoint the commissioner and successors in office its lawful attorneys in fact and therein irrevocably agree that legal process in any action or proceeding against it may be served upon them with the same force and effect as if personally served upon it, so long as any of its liability exists in this state;

(4) It shall appoint, as its agents in this state, residents thereof, and obtain from the commissioner a license to transact business;

(5) Regardless of what lines of business an insurer of another state is seeking to write in this state, the lines of business it is licensed to write in its state of incorporation shall be the basis for establishing the financial requirements it must meet for admission in this state or for continuance of its authority to write business in this state;

(6) No insurer of another state shall be admitted to do business in this state for a line of business that it is not authorized to write in its state of incorporation.

Subd. 2. Service of garnishee process. When garnishee process is served upon the commissioner, as attorney for any insurance company, no garnishee fee shall be paid the commissioner. After the receipt of copy of the process the insurance company may demand of the attorney of the person making the garnishee the proper fees, and if the demand is not complied with before the day fixed for the disclosure of the garnishee, the proceeding may be dismissed.

Subd. 3. Commissioner appointed attorney for service of process. Before any corporation, association, or company issuing policies of insurance of any character and not organized or existing pursuant to the laws of this state is admitted to or authorized to transact the business of insurance in this state, it shall, by a duly executed instrument to be filed in the office of the commissioner, constitute and appoint the commissioner and successors in office its true and lawful attorney, upon whom proofs of loss, any notice authorized or required by any contract with the company to be served on it, summonses and all lawful processes in any action or legal proceeding against it may be served, and that the authority thereof shall continue in force irrevocable so long as any liability of the company remains outstanding in this state.

This instrument shall contain a provision and agreement declaring that the company, association, or corporation desires to transact the business of insurance in this state, and that it will accept a license therefor according to the laws of this state.

In case of the failure of any such insurance company to comply with any of the provisions of this subdivision and subdivision 4, or if it shall violate any of the conditions or agreements contained in the instrument filed, its right to transact insurance business in this state shall cease and it shall be the duty of the commissioner to immediately declare its license revoked; and, in case of revocation, the company shall not be again licensed to transact business in this state for the period of one year from date of the revocation.

Subd. 4. Fees. The commissioner shall be entitled to charge and receive a fee prescribed by section 60A.14, subdivision 1, paragraph (c), clause (4), for each notice, proof of loss, summons, or other process served under the provisions of this subdivision and subdivision 3, to be paid by the persons serving the same. The service of process is made by delivering to and leaving with the commissioner two copies thereof for each company being served.

Subd. 5. Provision as to alien companies. (1) Deposit. Such company of any foreign country, except fraternal beneficiary associations, shall not be admitted until, besides complying with the foregoing requirements, it has made a deposit with the commissioner in accordance with section 60A.10, subdivision 4, or with the proper officer of some other state of the United States, of a sum not less than the deposit required of a like company by the laws of this state and this deposit shall be of the same class of securities and subject to the same limitations required for the deposit of domestic companies that must by law maintain a deposit.

This deposit shall be in exclusive trust for all its policyholders and creditors in the United States, and for all purposes of the insurance laws shall be deemed assets of the company.

(2) Trustees, investments and funds. Any company of a foreign country may duly appoint one or more citizens of the United States, approved by the commissioner, to hold funds or other property for the benefit of its policyholders and creditors therein. A certified copy of their appointment and of the instrument of trust shall be filed with the commissioner, who shall have the same authority in the premises as in the case of the affairs of all companies. These funds shall be invested in the same securities as required of other insurance companies and, together with the deposits required, shall constitute the assets of the company in respect to its policyholders and creditors in the United States.

Subd. 6. Retaliatory provisions. (1) When by the laws of any other state or country any taxes, fines, deposits, penalties, licenses, or fees, other than assessments made by an insurance guaranty association or similar organization, in addition to or in excess of those imposed by the laws of this state upon foreign insurance companies and their

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agents doing business in this state, other than assessments made pursuant to section 60C.06, are imposed on insurance companies of this state and their agents doing business in that state or country, or when any conditions precedent to the right to do business in that state are imposed by the laws thereof, beyond those imposed upon these foreign companies by the laws of this state, the same taxes, fines, deposits, penalties, licenses, fees, and conditions precedent shall be imposed upon every similar insurance company of that state or country and their agents doing or applying to do business in this state so long as these foreign laws remain in force.

(2) In the event that a domestic insurance company, after complying with all reasonable laws and rulings of any other state or country, is refused permission by that state or country to transact business therein after the commissioner of commerce of Minnesota has determined that that company is solvent and properly managed and after the commissioner has so certified to the proper authority of that other state or country, then, and in every such case, the commissioner may forthwith suspend or cancel the certificate of authority of every insurance company organized under the laws of that other state or country to the extent that it insures, or seeks to insure, in this state against any of the risks or hazards which that domestic company seeks to insure against in that other state or country. Without limiting the application of the foregoing provision, it is hereby determined that any law or ruling of any other state or country which prescribes to a Minnesota domestic insurance company the premium rate or rates for life insurance issued or to be issued outside that other state or country shall not be reasonable.

(3) This section does not apply to insurance companies organized or domiciled in a state or country, the laws of which do not impose retaliatory taxes, fines, deposits, penalties, licenses, or fees or which grant, on a reciprocal basis, exemptions from retaliatory taxes, fines, deposits, penalties, licenses, or fees to insurance companies domiciled in this state.

Subd. 7. Policy not invalidated by occurrence of hostilities. No policy of insurance issued to a resident of this state shall be invalidated by the occurrence of hostilities between any foreign country and the United States.

Subd. 8. Insurance from unlicensed foreign companies. Any person, firm, or corporation desiring to obtain insurance upon any property, interests, or risks of any nature other than life insurance in this state in companies not authorized to do business therein shall give bond to the commissioner of commerce in such sum as the commissioner shall deem reasonable, with satisfactory resident sureties, conditioned that the obligors, on the expiration of a license to obtain such insurance, shall pay to the commissioner of revenue, for the use of the state, a tax of two percent upon the gross premiums paid by the licensee. Thereupon the commissioner of commerce shall issue such license, good for one year, and all insurance procured thereunder shall be lawful and valid and the provisions of all policies thereof shall be deemed in accordance, and construed as if identical in effect, with the standard policy prescribed by the laws of this state and the insurers may enter the state to perform any act necessary or proper in the conduct of the business. This bond may be enforced by the commissioner of commerce in the commissioner's name in any district court. The licensee shall file with the commissioner of commerce on June 30 and December 31 annually a verified statement of the aggregate premiums paid and returned premiums received on account of such insurance.

History: 1967 c 395 art 1 s 19; 1969 c 291 s 3; 1971 c 145 s 21; 1974 c 425 s 4; 1977 c 195 s 2; 1978 c 465 s 7; 1983 c 289 s 114 subd 1; 1984 c 592 s 38,39; 1984 c 609 s 3; 1984 c 655 art 1 s 92; 1986 c 444; 1Sp1989 c 1 art 10 s 4

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. "Ineligible surplus lines insurer" includes a risk retention group as defined under the Liability Risk Retention Act, Public Law Number 99-563.

(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; 1987 c 337 s 11

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 an 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 an agent's 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 the applicant in the immediately preceding five years; and

(d) agreeing to file with the commissioner of revenue 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; and

(e) annually paying a fee as prescribed by section 60A.14, subdivision 1, paragraph (c), clause (10).

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.

Subd. 6. Allocation of premiums according to location of subject matter. If the insurance described in subdivision 4 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 must be allocated according to the subjects of insurance residing, located, or to be performed in this state.

History: 1981 c 221 s 4; 1983 c 328 s 7; 1984 c 592 s 40; 1986 c 444; 1987 c 337 s 12; 1989 c 260 s 6; 1990 c 480 art 6 s 2

60A.199 EXAMINATIONS.

Subdivision 1. Examination of books and records. If the commissioner considers it necessary, the commissioner 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 surplus line agent or agency.

Subd. 2. Examination of returns; assessment; refunds. The commissioner of revenue shall, as soon as practicable after a return required by section 60A.198 is filed, examine it and make any investigation or examination of the licensee's records and accounts that the commissioner deems necessary for determining the correctness of the return. The tax computed by the commissioner on the basis of the examination and investigation is the tax to be paid by the licensee. If the tax found due is greater than the amount reported due on the licensee's return, the commissioner shall assess a tax in the amount of the excess and the whole amount of the excess shall be paid to the commissioner within 60 days after notice of the amount and demand for its payment is mailed to the licensee by the commissioner. If the amount of the tax found due by the commissioner is less than that reported due on the licensee's return, the excess shall be refunded to the licensee in the manner provided by this section. No refund shall be made except as provided in this section after the expiration of 3-1/2 years after the filing of the return.

If the commissioner examines returns of a licensee for more than one year, the

commissioner may issue one order covering the several years under consideration reflecting the aggregate refund or additional tax due.

The notices and demands provided for by this section shall be in the form the commissioner determines, including a statement, and shall contain a brief explanation of the computation of the tax and shall be sent by mail to the licensee at the address given on the return. If the address is not given, then they will be sent to the last known address.

At the request of the commissioner of revenue, the commissioner of commerce may examine and investigate the returns under section 60A.198 that the commissioner of revenue designates. The commissioner of commerce shall report to the commissioner of revenue the results of the examination in the manner required by the commissioner of revenue.

Subd. 3. Failure to file; false or fraudulent return. If any licensee required by section 60A.198 to file any return fails to do so within the time prescribed or makes, willfully or otherwise, an incorrect, false, or fraudulent return, the licensee must, on the written demand of the commissioner of revenue, file the return, or corrected return, within 60 days after the mailing of the written demand and at the same time pay the whole tax, or additional tax, due on the basis thereof. If the licensee fails within that time to file the return, or corrected return, the commissioner shall make a return, or corrected return, from personal knowledge and from the information obtainable through testimony, or otherwise, and assess a tax on the basis thereof. The tax assessed, less any payments theretofore made on account of the tax for the taxable year covered by the return, must be paid within 60 days after the commissioner has mailed to the licensee a written notice of the amount thereof and demand for payment. Any return or assessment made by the commissioner on account of the failure of the licensee to make a return, or a corrected return, is prima facie correct and valid, and the licensee has the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto.

Subd. 4. Failure to file; penalties and interest. In case of any failure to make and file a return as required by this chapter within the time prescribed by law or prescribed by the commissioner in pursuance of law there shall be added to the tax penalties and interest as provided in section 289A.60, subdivision 2.

Subd. 5. Intent to evade tax; penalty. If any licensee with intent to evade the tax imposed by this chapter, fails to file any return required by this chapter or with such intent files a false or fraudulent return there shall also be imposed on it a penalty as provided in section 289A.60, subdivision 6.

Subd. 6. Negligence or intentional disregard; penalty. If any part of any additional assessment is due to negligence or intentional disregard of the statute or a rule (but without intent to defraud), there shall be added to the tax a penalty as provided in section 289A.60, subdivision 5.

Subd. 7. Collection of tax. The tax required to be paid by section 60A.198 may be collected in any ordinary action at law by the commissioner of revenue against the licensee. In any action commenced pursuant to this section, upon the filing of an affidavit of default, the court administrator of the district court wherein the action was commenced shall enter judgment for the state for the amount demanded in the complaint together with costs and disbursements.

Subd. 8. Refund procedure; time limit; appropriation. A licensee which has paid, voluntarily or otherwise, or from which there was collected an amount of tax for any year in excess of the amount legally due for that year, may file with the commissioner of revenue a claim for a refund of the excess. Except as provided in subdivision 3, no claim or refund shall be allowed or made after 3-1/2 years from the date prescribed for filing the return (plus any extension of time granted for filing the return but only if filed within the extended time) or after two years from the date of overpayment, whichever period is longer, unless before the expiration of the period a claim is filed by the licensee. For this purpose, a return or amended return claiming an overpayment constitutes a claim for refund.

Upon the filing of a claim the commissioner shall examine it, shall make written findings thereon denying or allowing the claim in whole or in part, and shall mail a notice thereof to the licensee at the address stated upon the return. If the claim is allowed in whole or in part, the commissioner shall issue a certificate for a refund of the excess paid by the licensee, with interest at the rate specified in section 270.76 computed from the date of the payment of the tax until the date the refund is paid or credit is made to the licensee. The commissioner of finance shall cause the refund to be paid as other state moneys are expended. So much of the proceeds of the taxes as is necessary are appropriated for that purpose.

Subd. 9. Denial of claim; court proceedings. If the claim is denied in whole or in part, the commissioner shall mail an order of denial to the licensee in the manner prescribed in this section. An appeal from this order may be taken to the Minnesota tax court in the manner prescribed in section 271.06, or the licensee may commence an action against the commissioner to recover the denied overpayment. The action may be brought in the district court of the district in which lies the county of its principal place of business, or in the district court for Ramsey county. The action in the district court shall be commenced within 18 months following the mailing of the order of denial to the licensee. If a claim for refund is filed by a licensee and no order of denial is issued within six months of the filing, the licensee may commence an action in the district court as in the case of a denial, but the action must be commenced within two years of the date that the claim for refund was filed.

Subd. 10. Consent to extend time. If the commissioner and the licensee have, within the periods prescribed by this section, consented in writing to any extension of time for the assessment of the tax, the period within which a claim for refund may be filed, or a refund may be made or allowed, if no claim is filed, is the period within which the commissioner and the licensee have consented to an extension for the assessment of the tax and six months thereafter, the period within which a claim for refund may be filed shall not expire prior to two years after the tax was paid.

Subd. 11. Overpayment; refunds. If the amount determined to be an overpayment exceeds the taxes imposed by section 60A.198, the amount of excess shall be considered an overpayment. An amount paid as tax shall constitute an overpayment even if in fact there was no tax liability with respect to which the amount was paid.

Notwithstanding any other provision of law to the contrary, in the case of any overpayment the commissioner, within the applicable period of limitations, shall refund any balance of more than \$10 if the licensee so requests.

History: 1981 c 221 s 5; 1984 c 592 s 41; 1Sp1985 c 14 art 15 s 2; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1987 c 268 art 2 s 2-10; art 17 s 41; 1990 c 480 art 1 s 46

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, accompanied by a license fee of \$500. 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 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 Nonadmitted Insurers Information Office.

Subd. 4. Removal of insurers. When the commissioner considers it necessary, the commissioner 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; 1986 c 444; 1987 c 358 s 95

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:

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(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 COMMISSIONER OF COMMERCE 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 COMMISSIONER OF COMMERCE 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 of revenue 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 \$3,000, 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 shall file a written report regarding the insurance with the commissioner of revenue on forms prescribed by the commissioner of revenue 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 of revenue.

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; 1983 c 289 s 114 subd 1; 1984 c 628 art 3 s 11; 1984 c 655 art 1 s 92; 1987 c 268 art 2 s 11,12

60A.2095 CONSTRUCTION.

Nothing in sections 60A.195 to 60A.209 shall be construed to permit the state to impose requirements beyond those granted by the Liability Risk Retention Act, Public Law Number 99-563.

History: 1987 c 337 s 13

60A.21 UNAUTHORIZED INSURERS PROCESS ACT.

Subdivision 1. Purpose. The purpose of the unauthorized insurers process act is to subject certain insurers to the jurisdiction of courts of this state in suits by or on behalf of insureds or beneficiaries under insurance contracts.

The legislature declares that it is a subject of concern that many residents of this state hold policies of insurance issued or delivered in this state by insurers while not authorized to do business in this state, thus presenting to such residents the often insuperable obstacle of resorting to distant forums for the purpose of asserting legal rights under such policies. In furtherance of such state interest the legislature herein provides a method of substituted service of process upon such insurers and declares that in so doing it exercises its power to protect its residents and to define for the purpose of this statute what constitutes doing business in this state and also exercises powers and privileges available to the state by virtue of Public Law Number 15, 79th Congress of the United States, chapter 20, 1st Session, section 340, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states.

Subd. 2. Service of process upon unauthorized insurer. (1) Any of the following acts in this state effected by mail or otherwise by an unauthorized foreign or alien insurer: (a) the issuance or delivery of contracts of insurance to residents of this state or to corporations authorized to do business therein; (b) the solicitation of applications for such contracts; (c) the collection of premiums, membership fees, assessments, or other considerations for such contracts; or (d) any other transaction of insurance business, is equivalent to and shall constitute an appointment by such insurer of the commissioner of commerce and the commissioner's successor or successors in office to be its true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such contract of insurance and any such act shall be signification of its agreement that such service of process is of the same legal force and validity as personal service of process in this state upon such insurer.

(2) Such service of process shall be made by delivering to and leaving with the commissioner of commerce or some person in apparent charge of that office two copies thereof and the payment to that person of a filing fee as prescribed by section 60A.14, subdivision 1, paragraph (c), clause (4). The commissioner of commerce shall forthwith mail by certified mail one of the copies of such process to the defendant at its last known principal place of business and shall keep a record of all process so served upon the commissioner. Such service of process is sufficient provided notice of such service and a copy of the process are sent within ten days thereafter by certified mail by plaintiff or plaintiff's attorney to the defendant at its last known principal place of business and the defendant's receipt, or receipt issued by the post office with which the letter is certified showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the court administrator of the court in which such action is pending on or before the date the defendant is required to appear or within such further time as the court may allow.

(3) Service of process in any such action, suit, or proceeding shall in addition to the manner provided in clause (2) of this subdivision be valid if served upon any person within this state who, in this state on behalf of such insurer, is: (a) soliciting insurance, or (b) making, issuing, or delivering any contract of insurance, or (c) collecting or receiving any premium, membership fee, assessment, or other consideration for insurance; and if a copy of such process is sent within ten days thereafter by certified mail

by the plaintiff or plaintiff's attorney to the defendant at the last known principal place of business of the defendant and the defendant's receipt, or the receipt issued by the post office with which the letter is certified showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the administrator of the court in which such action is pending on or before the date the defendant is required to appear or within such further time as the court may allow.

(4) No plaintiff or complainant shall be entitled to a judgment by default under this subdivision until the expiration of 30 days from the date of the filing of the affidavit of compliance.

(5) Nothing in this subdivision contained shall limit or abridge the right to serve any process, notice, or demand upon any insurer in any other manner now or hereafter permitted by law.

(6) The provisions of this section shall not apply to surplus line insurance lawfully effectuated under Minnesota law, or to reinsurance, nor to any action or proceeding against an unauthorized insurer arising out of:

(a) Wet marine and transportation insurance;

(b) Insurance on or with respect to subjects located, resident, or to be performed wholly outside this state, or on or with respect to vehicles or aircraft owned and principally garaged outside this state;

(c) Insurance on property or operations of railroads engaged in interstate commerce; or

(d) Insurance on aircraft or cargo of such aircraft, or against liability, other than employer's liability, arising out of the ownership, maintenance, or use of such aircraft, where the policy or contract contains a provision designating the commissioner as its attorney for the acceptance of service of lawful process in any action or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such policy, or where the insurer enters a general appearance in any such action.

Subd. 3. Defense of action by unauthorized insurer. (1) Before any unauthorized foreign or alien insurer shall file or cause to be filed any pleading in any action, suit, or proceeding instituted against it such unauthorized insurer shall: (a) Deposit with the administrator of the court in which such action, suit, or proceeding is pending cash or securities or file with such administrator a bond with good and sufficient sureties to be approved by the court in an amount to be fixed by the court sufficient to secure the payment of any final judgment which may be rendered in such action; or (b) procure a certificate of authority to transact the business of insurance in this state.

(2) The court in any action, suit, or proceeding in which service is made in the manner provided in clauses (2) or (3) of subdivision 2 hereof, may, in its discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of clause (1) of this subdivision and to defend such action.

(3) Nothing in clause (1) is to be construed to prevent an unauthorized foreign or alien insurer from filing a motion to quash a writ or to set aside service thereof made in the manner provided in clauses (2) and (3) of subdivision 2 hereof on the ground either (a) that such unauthorized insurer has not done any of the acts enumerated in clause (1) of subdivision 2 hereof, or (b) that the person on whom service was made pursuant to clause (3) of subdivision 2 hereof, was not doing any of the acts therein enumerated.

Subd. 4. Attorney fees and judgment. In any action hereunder against an unauthorized foreign or alien insurer upon a contract of insurance issued or delivered in this state to a resident thereof or to a corporation authorized to do business therein, if the insurer has failed for 30 days after demand prior to the commencement of the action to make payment in accordance with the terms of the contract and it appears to the court that such refusal was vexatious and without reasonable cause, the court may allow to the plaintiff a reasonable attorney fee and include such fee in any judgment that may

be rendered in such action. Failure of an insurer to defend any such action shall be deemed prima facie evidence that its failure to make payment was vexatious and without reasonable cause.

Subd. 5. Constitutionality. If any provision of this section or the application thereof to any person or circumstances is held invalid such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application and to this end the provisions of this section are declared to be severable.

Subd. 6. Citation. This section may be cited as the unauthorized insurers process act.

History: 1967 c 395 art 1 s 21; 1978 c 674 s 60; 1983 c 289 s 114 subd 1; 1984 c 592 s 42; 1984 c 655 art 1 s 92; 1986 c 444; 1Sp1986 c 3 art 1 s 82

60A.22 SPECIAL PROVISIONS AS TO STOCK COMPANIES; STOCKHOLDERS, OFFICERS, DIRECTORS AND INVESTORS.

Subdivision 1. Shareholders' rights. (1) If an insurance corporation has given notice to shareholders of a proposal to amend the articles of incorporation, which proposed amendment would substantially change the corporate purposes or would extend the duration of the corporation, a shareholder may, at any time prior to the date of the meeting at which such proposed amendment is to be voted upon, file a written objection to such amendment in the office of the secretary or president of the corporation and demand payment for shares held; provided, that such demand shall be of no force and effect if such shareholder votes in favor of the amendment, or at any time consents thereto in writing, or if the proposed amendment be not in fact effected.

(2) If, after such a demand by a shareholder, the corporation and the shareholder cannot agree upon the fair cash value of the shares at the time such amendment was authorized, such value shall be determined by three disinterested appraisers, one of whom shall be named by the shareholder, another by the corporation, and the third by the two thus chosen. The determination of a majority of the appraisers in good faith made shall be final, and if the amount so determined is not paid by the corporation within 30 days after it is made, such amount may be recovered in an action by the shareholder against the corporation. The corporation shall not be required to make payment of such amount except upon transfer to it of the shares for which such payment was demanded and upon surrender of the certificate or certificates evidencing the same.

(3) A shareholder shall not be entitled to payment for shares under the provisions of this subdivision unless the value of the corporate assets which would remain after such payment would be at least equal to the aggregate amount of its debts and liabilities exclusive of stated capital.

Subd. 2. Transactions of principal stockholders, directors, and officers in equity securities. (1) Every person who is directly or indirectly the beneficial owner of more than ten percent of any class of any equity security of a domestic stock insurance company, or who is a director or an officer of such company, shall file in the office of the commissioner of commerce on or before January 31, 1966, or within ten days after becoming such beneficial owner, director, or officer, a statement, in such form as the commissioner of commerce may prescribe, of the amount of all equity securities of such company of which that person is the beneficial owner, and within ten days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file in the office of the commissioner of commerce a statement, in such form as the commissioner of commerce may prescribe, indicating ownership at the close of the calendar month and such changes in ownership as may have occurred during such calendar month.

(2) For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of that person's relationship to such company, any profit realized by that person from any purchase and sale, or any sale and purchase, of any equity security of such company within any period

of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the company, irrespective of any intention on the part of such beneficial owner, director, or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the company, or by the owner of any security of the company in the name and in behalf of the company if the company shall fail or refuse to bring such suit within 60 days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than two years after the date such profit was realized. This clause shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the commissioner of commerce by rules may exempt as not comprehended within the purpose of this clause.

(3) It shall be unlawful for any such beneficial owner, director, or officer, directly or indirectly, to sell any equity security of such company if the person selling the security or that person's principal (a) does not own the security sold, or (b) if owning the security, does not deliver it against such sale within 20 days thereafter, or does not within five days after such sale deposit it in the mails or other usual channels of transportation; but no person shall be deemed to have violated this clause on proving, notwithstanding the exercise of good faith, the inability to make such delivery or deposit within such time, or without causing undue inconvenience or expense.

(4) The provisions of clause (2) shall not apply to any purchase and sale, or sale and purchase, and the provisions of clause (3) shall not apply to any sale, of any equity security of a domestic stock insurance company not then or theretofore held by the person in an investment account, by a dealer in the ordinary course of business and incident to the establishment or maintenance by the person of a primary or secondary market, otherwise than on an exchange as defined in the federal Securities Exchange Act of 1934, for such security. The commissioner of commerce may, by such rules as the commissioner deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

(5) The provisions of this subdivision shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules as the commissioner of commerce may adopt in order to carry out the purposes of this subdivision.

Subd. 3. Regulation of proxies, consents and authorizations. (1) It shall be unlawful for any person, in contravention of such rules as the commissioner of commerce may prescribe as necessary or appropriate in the public interest or for the protection of investors, to solicit or to permit the use of that person's name to solicit any proxy or consent or authorization in respect of any equity security of a domestic stock insurance company.

(2) Unless proxies, consents, or authorizations in respect of an equity security of a domestic stock insurance company are solicited by or on behalf of the management of such company from the holders of record of such security in accordance with the rules prescribed under clause (1), prior to any annual or other meeting of the holders of such security, such company shall, in accordance with such rules as the commissioner of commerce may prescribe as necessary or appropriate in the public interest or for the protection of investors, if required thereby, file with the commissioner of commerce and transmit to all holders of record of such security information substantially equivalent to the information which would be required to be transmitted if a solicitation were made.

Subd. 4. Securities excepted. The provisions of subdivisions 2 and 3 hereof shall not apply to equity securities of a domestic stock insurance company if (a) any equity security of such company shall be registered, or shall be required to be registered, pursuant to section 12 of the federal Securities Exchange Act of 1934, or if (b) such company

shall not have equity securities held of record by 100 or more persons on the last day of the year next preceding the year in which the provisions of subdivisions 2 and 3 hereof would apply except for the provisions of this clause (b).

Subd. 5. Rules. The commissioner of commerce shall have the power to make such rules as may be necessary for the execution of the functions vested in the commissioner by subdivisions 2 and 3 hereof, and may for such purpose classify domestic stock insurance companies, securities, and other persons or matters within the commissioner's jurisdiction. No provision of subdivisions 2 and 3 hereof imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule of the commissioner of commerce, notwithstanding that such rule may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

Subd. 6. Definitions. (1) The term "equity security" when used in this section means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the commissioner of commerce shall deem to be of similar nature and consider necessary or appropriate, by such rules as the commissioner may prescribe in the public interest or for the protection of investors, to treat as an equity security.

(2) The term "domestic stock insurance company" when used in this section includes a domestic stock and mutual insurance company as defined in sections 61A.33 to 61A.38.

History: 1967 c 395 art 1 s 22; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1985 c 248 s 70; 1986 c 444

60A.23 MISCELLANEOUS.

Subdivision 1. Liability of directors and officers generally. If a company be at any time under liability for losses exceeding its net assets, and the president and directors, or any of them, knowing it, directly or indirectly, issue or consent to the issue of further insurance, each shall be personally liable for any loss under this insurance; and if any of them insures or allows to be insured on a single risk a larger sum than is authorized by law, that person shall be personally liable for any loss thereon above the amount which might lawfully be insured.

Subd. 2. Liability of directors and officers of mutual company. No director or other officer of any mutual company shall, officially or privately, guarantee a policyholder thereof against an assessment to which the policyholder would otherwise be liable. When the directors of any mutual company fail for 30 days after entry of any judgment, or for six months after the accruing of any other indebtedness against it, to levy and deliver for collection any assessment required by law for payment thereof, or to apply the proceeds thereof in either case, each shall be personally liable for the amount thereof, and for all debts and claims then outstanding or which may accrue until the assessment shall be levied and put in process of collection. When the treasurer unreasonably fails to collect and properly apply the proceeds of any such assessment the treasurer shall be personally liable, not exceeding the total assessment, to any person entitled thereto, and shall be repaid only out of funds thereafter collected thereon.

Subd. 3. Conflict of interest and compensation in mutual fire company. No officer or other person employed to determine the character of a risk, and decide the question of its acceptance by any mutual fire company other than a town or farmers company, shall receive a commission or other payment therefrom, but that person's compensation shall be by fixed salary and such share, if any, of the net profits as the directors may determine; and such officer or person shall not be an employee of any other officer or agent of the company, nor interested in the officer's or agent's business.

Subd. 4. Dividends; limitations. No domestic stock company shall declare a dividend either in cash or stock, except from its actual net surplus computed as required by law in its annual statement; nor shall any such company which has ceased to do new

business divide any portion of its assets, except surplus, until it shall have performed or canceled its policy obligations. It may declare and pay, annually, semiannually or quarterly from its surplus, cash dividends of not more than ten percent of its capital stock and surplus in any year and, if the dividends in any one year are less than ten percent, the difference may be made up in any subsequent year or years from surplus accumulations. It may pay such dividend as the directors deem prudent out of any surplus remaining after charging, in addition to all liabilities except unearned premiums, an amount equal to the whole amount of premiums on unexpired risks and deducting from the assets all securities and accounts receivable on which no part of the principal or interest has been paid within the preceding year, or for which foreclosure or suit has been commenced, or upon which judgment obtained has remained more than two years unsatisfied and on which interest has not been paid, and also deducting all liens due and unpaid on any of its property.

Subd. 5. Provisions as to fidelity and surety companies. (1) Requirements and acceptability. No company for guaranteeing the fidelity of persons in fiduciary positions, public or private, or for acting as surety, shall transact any business in this state until it shall have satisfied the commissioner that it has complied with all the provisions of law and obtained the commissioner's certificate to that effect. Thereupon it shall be authorized to execute as sole or joint surety any bond, undertaking, or recognizance which, by any municipal or other law, or by the rules or regulations of any municipal or other board, body, organization, or officer, is required or permitted to be made, given, tendered, or filed for the security or protection of any person, corporation, or municipality, or any department thereof, or of any other organization, conditioned for the doing or omitting of anything in such bond or other instrument specified or provided; and any and all courts, judges, officers, and heads of departments, boards, and municipalities required or permitted to accept or approve of the sufficiency of any such bond or instrument may in their discretion accept the same when executed, or the conditions thereof guaranteed solely or jointly by any such company, and the same shall be in all respects full compliance with every law or other provisions for the execution or guaranty by one surety or by two or more sureties, or that sureties shall be residents or householders, or freeholders, or all or either.

(2) **Limits of risk.** No fidelity or surety company shall insure or reinsure in a single risk, less any portion thereof reinsured, a larger sum than one-tenth of its net assets.

Subd. 6. Company's principal place of business to be designated. When a company establishes any agency in a place other than that of its principal place of business, all signs, cards, pamphlets, or other printed matter issued shall designate such principal place.

Subd. 7. [Repealed, 1989 c 330 s 37]

Subd. 8. Self-insurance or insurance plan administrators who are 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 or insurance plan. This subdivision does 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 an entity which administers a program of health benefits established pursuant to a collective bargaining agreement between an employer, or group or association of employers, and a union or unions.

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

(a) "Administering a self-insurance or 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 or 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 or insurance plan" means a plan providing life, medical or hospital care, accident, sickness or disability insurance, as an employee fringe benefit, or a plan providing liability coverage for any other risk or hazard, which is or 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 or insurance plan for an employer.

(3) **License.** No vendor of risk management services or entity administering a self-insurance or insurance plan may transact this 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 may 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 is \$100. All licenses are for a period of two years.

(4) **Regulatory restrictions; powers of the commissioner.** To assure that self-insurance or 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 insurance or self-insurance plans are subject to the supervision and examination by the commissioner. Vendors of risk management services, entities administering insurance or self-insurance plans, and insurance or self-insurance plans established or operated by them are subject to the trade practice requirements of sections 72A.19 to 72A.30.

(5) **Rulemaking authority.** To carry out the purposes of this subdivision, the commissioner may adopt rules, including emergency rules, pursuant to sections 14.001 to 14.69. These rules may:

(a) establish reporting requirements for administrators of insurance or self-insurance plans;

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

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

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

History: 1967 c 395 art 1 s 23; Ex1967 c 1 s 6; 1969 c 497 s 1; 1975 c 145 s 1; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1978 c 465 s 8; 1980 c 528 s 1; 1Sp1981 c 4 art 2 s 44,45; 1982 c 424 s 130; 1983 c 154 s 1; 1983 c 289 s 114 subd 1; 1983 c 328 s 8; 1984 c 592 s 43; 1984 c 655 art 1 s 92; 1986 c 444; 1987 c 337 s 14; 1987 c 358 s 96; 1990 c 422 s 10

60A.24 EXEMPTIONS FROM INSURANCE LAWS OF THIS STATE.

The following are exempt from all insurance laws of the state: All organizations listed in section 64B.38 of the laws relating to fraternal beneficiary associations.

History: 1967 c 395 art 1 s 24; 1985 c 49 s 41

60A.25 INSOLVENT COMPANIES.

Subdivision 1. Notification of policyholders. Whenever any foreign or domestic insurance company authorized to transact the business of insurance in Minnesota is adjudicated insolvent, or whenever its policies are declared null and void by court

order, the commissioner of commerce shall ascertain the names and last known addresses of all Minnesota policyholders of said company, and shall notify all Minnesota policyholders within 30 days of such adjudication or court order. In the case of foreign insurers authorized to do business in this state, the commissioner of commerce may elect to notify all of the company's licensed agents in Minnesota with a directive that the agents notify all insureds of the company's insolvency or that its policies have been declared null and void.

Subd. 2. Remittance of premiums. Every agency contract written by an insurance company writing property and casualty insurance in Minnesota shall contain or be construed to contain the following provision: "Notwithstanding any other provision of this contract, the obligation of the agent to remit written premiums to the company shall be changed upon the commencement of any administrative or legal proceeding by any state against the carrier regarding its financial condition. After the commencement of the proceedings, the obligation of the agent to remit premiums shall be confined to the premiums earned before the commencement of the proceedings. The agent shall not owe or remit to the company or to the liquidator or receiver any premiums that are unearned as of the date of the commencement of the delinquency proceedings, and any unearned premiums in the possession of the agent on the date shall be returned promptly by the agent to the insured or, with the approval of the insured, be used to purchase new coverage for the insured with a different insurer.

History: 1967 c 368 s 1; 1971 c 527 s 1; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 455 s 7

60A.26 SUSPENSION OF INSURERS, NOTICE TO OTHER STATES.

The commissioner of commerce shall notify the insurance departments of all other states whenever, under any law then in effect, the commissioner suspends the right of a foreign or domestic insurer to transact business in this state.

History: 1967 c 369 s 1; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444

60A.27 DISCIPLINE OF INSURER BY ANOTHER STATE; NOTICE TO COMMISSIONER.

Subdivision 1. An insurance company licensed to transact business in this state is hereby required to notify the commissioner of commerce within 30 days of the happening of any one or more of the following:

- (1) the suspension or revocation of its right to transact business in another state;
- (2) the receipt by the insurance company of an order to show why its license should not be suspended or revoked; or
- (3) the imposition of a penalty by any other state for any violation of the insurance laws of such other state.

Subd. 2. Any insurance company which fails to notify the commissioner of commerce within 30 days of the happening of any of the foregoing shall be subject to a penalty of not more than \$500, or suspension, or both.

History: 1967 c 448 s 1,2; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92

60A.28 DOCUMENTS FILED WITH COMMISSIONER, VERIFICATION.

The commissioner of commerce may require that any document required by law to be filed with the commissioner, be accompanied by a sworn verification of its contents by a responsible officer of the corporation filing it. The commissioner shall prescribe the form of the verification by rule.

History: 1967 c 457 s 1; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444

60A.29 NONPROFIT RISK INDEMNIFICATION TRUST ACT.

Subdivision 1. Title. This section may be cited as the "nonprofit risk indemnification trust act."

Subd. 2. **Purpose.** The purpose of this section is to authorize the establishment of trust funds for the purpose of indemnifying nonprofit beneficiary organizations and their officers, directors, and agents for financial loss due to the imposition of legal liability or for damage or destruction of property, and to regulate the operation of trust funds established under this section.

Subd. 3. **Approval of commissioner.** No trust fund with the purpose of indemnifying multiple nonprofit beneficiary organizations shall be established without the prior approval of the commissioner of the department of commerce. The commissioner shall withhold approval of any trust fund that fails to comply with the provisions and requirements of this section.

Subd. 4. **Eligible beneficiaries.** No organization, corporation, agency, or program shall be a beneficiary of any trust fund established under this section unless it is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954, as amended through December 30, 1985. No trust fund established under this section shall agree to indemnify the state of Minnesota, any political subdivision of the state, or any hospital licensed pursuant to section 144.55. No trust fund established under this section shall indemnify any beneficiary for loss or damage to property permanently located outside the boundaries of this state or for legal liabilities arising from operations or activities occurring outside this state, except where those operations or activities are of a nonroutine nature; provided, however, that this restriction shall not apply to a beneficiary which is incorporated under the laws of this state and has its principal office located in this state.

Subd. 5. **Ineligible risks.** No trust fund established under this section shall indemnify any beneficiary for liabilities incurred under the workers' compensation act, or for benefits provided to employees pursuant to any medical, dental, life, or disability income protection plan.

Subd. 6. **Benefit schedules.** Every trust fund established under this section shall establish in its bylaws or plan of operation a schedule of benefits, to be approved by the commissioner, governing the indemnification of beneficiaries of the trust. The schedule of benefits shall include all conditions, limitations, and exclusions relevant to indemnification.

Subd. 7. **Indemnification agreements.** Every trust fund established under this section shall provide each of its beneficiaries with a written indemnification agreement specifying the rights and obligations of the trust fund and the beneficiary under the agreement. Each form of indemnification agreement shall be filed with and approved by the commissioner.

Subd. 8. **Contributions.** The trust fund shall establish contributions required of beneficiaries necessary to fund the operations of the fund. All contribution schedules shall be filed with and approved by the commissioner prior to use. Contributions must be based on sound actuarial principles and be adequate to fund the operation of the trust fund. Contributions may not be excessive, in relation to the benefits provided, or unfairly discriminatory.

Subd. 9. **Multiple trust agreements prohibited.** No trust fund established under this section shall enter into an agreement with any other trust fund whereby the risks assumed by each are pooled or shared.

Subd. 10. **Board of trustees.** Every trust fund established under this section shall be governed by a board of no fewer than five trustees. The initial trustees need not be appointed or elected by the beneficiaries of the trust fund. During the second year following the creation of an authorized trust fund, at least one-fourth of all its trustees in office shall have been elected or appointed by the beneficiaries. After the end of the second year following the creation of an authorized trust fund, a majority of all trustees in office shall have been elected or appointed by the beneficiaries. All trustees serving during the first two years following the creation of an authorized trust fund shall be elected or appointed for one-year terms. All trustees serving thereafter shall be elected or appointed for two-year terms, provided that the trustees may be elected or appointed for one-year terms to the extent necessary in order to create staggered terms. Any

trustee may be removed at any time, with or without cause, by a majority vote of the beneficiaries. The board of trustees shall meet no fewer than four times each year.

Subd. 11. Trustees; compensation. No trustee shall be paid a salary or receive other compensation for service as a trustee, except that the bylaws or plan of operation may provide for reimbursement for actual expenses incurred on behalf of the trust fund and for the payment of a reasonable per diem amount for attendance at meetings of the board.

Subd. 12. Bylaws; plan of operation. The trustees of each trust fund authorized under this section shall cause to be adopted a set of bylaws or plan of operation which shall govern the operation of the trust fund. All bylaws or plans of operation or amendments to them are subject to prior approval by the commissioner. The commissioner shall adopt rules governing the content and approval of bylaws or plans of operation.

Subd. 13. Financial statement; report on operations. Every trust fund authorized under this section shall, by June 1 of every year, file with the commissioner a financial statement for the previous year's operations. The financial statement must include the opinion of a certified public accountant that the statement was prepared in conformity with generally accepted accounting principles. Also by June 1 of every year, every trust fund must file with the commissioner, on forms provided by the department, a report summarizing the trust fund's operations during the previous year.

Subd. 14. Financial standards. Every authorized trust fund shall have and maintain financial assets sufficient to satisfy all current and future financial obligations and responsibilities to beneficiaries. The commissioner shall adopt rules establishing minimum financial standards for authorized trust funds.

Subd. 15. Contracts; fees. Authorized trust funds may enter into contracts with risk management service providers, actuarial consultants, or other vendors as are necessary to ensure the effective and efficient operation of the trust fund. Fees paid to vendors for services provided must not be excessive.

Subd. 16. Reinsurance. Authorized trust funds may insure or reinsure their obligations and liabilities with:

(1) insurance companies authorized to do business in Minnesota, pursuant to section 60A.06;

(2) insurance companies similarly authorized in any other state of the United States;

(3) insurance companies not authorized in Minnesota or any other state if the unauthorized insurance company establishes reinsurance security in favor of the ceding trust fund conforming to the general rules for allowance of reinsurance credits stated in the Financial Condition Examiners Handbook adopted by the National Association of Insurance Commissioners; or

(4) other trust funds organized under this section or under similar laws of any other state if the reinsuring trust fund establishes reinsurance security as specified in clause (3) in favor of the ceding trust fund.

Subd. 17. Interbeneficiary cause of action. No beneficiary shall have any cause of action against any other beneficiary arising solely out of the insolvency or inability of the trust fund to meet its obligations.

Subd. 18. Examination. The commissioner may examine authorized trust funds to the same extent and with the same purpose as is provided, with respect to insurance companies, by section 60A.031.

Subd. 19. Security deposit. As a condition of authorization, every trust fund shall deposit with the commissioner an acceptable security of a value equal to not less than \$500,000. In the event that a trust fund fails to honor the obligations assumed by it under trust agreements issued to its beneficiaries, use of the security deposit shall revert to the commissioner for the purpose of executing the trust fund's obligations to its beneficiaries. The commissioner shall adopt rules governing the amount of security required and the acceptable forms of security.

Subd. 20. **Rules.** The commissioner may adopt rules to enforce and administer the requirements of this section.

Subd. 21. **Trust funds not subject to insurance rules.** Trust funds established under this section shall not be considered insurance companies or to be in the business of insurance nor shall they be subject to regulation by the commissioner, except as provided for in this section.

Subd. 22. **Foreign trust funds.** A trust fund organized and existing under the laws of another state for the sole purpose of indemnifying nonprofit beneficiary organizations and their officers, directors, and agents for financial loss due to the imposition of legal liability or for damage or destruction of property, as provided in subdivisions 2 and 4, may apply to the commissioner for authority to operate within this state, provided that:

(1) the trust fund has been continuously in operation for a period of not less than five years prior to the date it applies for authorization under this subdivision, during which period it must have issued only nonassessable indemnification agreements to its beneficiaries, and during each of those years the trust fund received not less than \$1,000,000 in contributions from beneficiaries for protections afforded by the trust fund;

(2) the trust fund has been authorized by and is subject to regulation and examination by the department of insurance of its domiciliary state;

(3) the trust fund must file with the commissioner its trust agreement, bylaws or plan of operation, schedule of benefits, forms of indemnification agreements, and contribution schedules applicable to beneficiaries in this state;

(4) the trust fund must be governed by a board of not fewer than five trustees, all of whom must be elected by the beneficiaries of the trust fund, and none of whom may receive compensation for service as a trustee;

(5) the trust fund has, as of the last day of the calendar year immediately prior to its application for authority, a net fund balance surplus of not less than \$1,000,000, as evidenced by its financial statements certified by an independent certified public accountant in accordance with generally accepted accounting principles consistently applied; and

(6) the trust fund must, upon and at all times after authorization by the commissioner, maintain a registered office within this state.

Subd. 23. **Standards for authorization.** Within 60 days after receipt of the documents specified under subdivision 22 and supporting evidence which establishes compliance with the standards set forth under that subdivision, the commissioner shall grant to the trust fund a certificate of authority to conduct operations in this state. The operations in this state are subject to the limitations and standards set forth in subdivisions 4 to 22. In the event an authorized foreign trust fund violates one of those subdivisions or the rules of the commissioner applicable to foreign trust funds, the commissioner may suspend or revoke the certificate of authority.

Subd. 24. **Rules.** The commissioner may adopt rules to enforce and administer requirements of subdivisions 22 and 23.

History: 1985 c 248 s 70; 1986 c 455 s 8; 1987 c 337 s 15-20

60A.30 RENEWAL OF INSURANCE POLICY WITH ALTERED RATES.

If an insurance company licensed to do business in this state offers or purports to offer to renew any commercial liability and/or property insurance policy at less favorable terms as to the dollar amount of coverage or deductibles, higher rates, and/or higher rating plan, the new terms, the new rates and/or rating plan may take effect on the renewal date of the policy if the insurer has sent to the policyholder notice of the new terms, new rates and/or rating plan at least 60 days prior to the expiration date. If the insurer has not so notified the policyholder, the policyholder may elect to cancel the renewal policy within the 60-day period after receipt of the notice. Earned premium for the period of coverage, if any, shall be calculated pro rata upon the prior rate. This subdivision does not apply to ocean marine insurance, accident and health insurance, and reinsurance.

This section does not apply if the change relates to guide "a" rates or excess rates also known as "consent to rates."

History: 1986 c 455 s 58; 1987 c 337 s 21

60A.31 WORKER'S COMPENSATION INSURANCE.

In addition to the requirements of Minnesota Statutes 1984, section 176.185, subdivision 1, a policy of insurance issued to cover the liability to pay compensation under Minnesota Statutes 1984, chapter 176, shall comply with sections 60A.30 and 60A.35 to 60A.38.

History: 1986 c 455 s 59; 1987 c 337 s 22

CROP HAIL INSURANCE RATE FILING

60A.32 RATE FILING FOR CROP HAIL INSURANCE.

An insurer issuing policies of insurance against crop damage by hail in this state shall file its insurance rates with the commissioner. The insurance rates must be filed before April 1 of the year in which a policy is issued.

History: 1988 c 688 art 9 s 1

CANCELLATION AND RENEWAL

60A.35 SCOPE.

Except as specifically limited in section 60A.30, sections 60A.35 to 60A.38 apply to all commercial liability and/or property insurance policies issued by companies licensed to do business in this state except ocean marine insurance, accident and health insurance, excess insurance, surplus lines insurance, and reinsurance.

History: 1987 c 337 s 23

60A.36 MIDTERM CANCELLATION.

Subdivision 1. **Reason for cancellation.** No insurer may cancel a policy of commercial liability and/or property insurance during the term of the policy, except for one or more of the following reasons:

- (1) nonpayment of premium;
- (2) misrepresentation or fraud made by or with the knowledge of the insured in obtaining the policy or in pursuing a claim under the policy;
- (3) actions by the insured that have substantially increased or substantially changed the risk insured;
- (4) refusal of the insured to eliminate known conditions that increase the potential for loss after notification by the insurer that the condition must be removed;
- (5) substantial change in the risk assumed, except to the extent that the insurer should reasonably have foreseen the change or contemplated the risk in writing the contract;
- (6) loss of reinsurance by the insurer which provided coverage to the insurer for a significant amount of the underlying risk insured. A notice of cancellation under this clause shall advise the policyholder that the policyholder has ten days from the date of receipt of the notice to appeal the cancellation to the commissioner of commerce and that the commissioner will render a decision as to whether the cancellation is justified because of the loss of reinsurance within five business days after receipt of the appeal;
- (7) a determination by the commissioner that the continuation of the policy could place the insurer in violation of the insurance laws of this state; or
- (8) nonpayment of dues to an association or organization, other than an insurance association or organization, where payment of dues is a prerequisite to obtaining or continuing the insurance. This provision for cancellation for failure to pay dues does

not apply to persons who are retired at 62 years of age or older or who are disabled according to social security standards.

Subd. 2. **Notice.** Cancellation under subdivision 1, clauses (2) to (8), shall not be effective before 60 days after notice to the policyholder. The notice of cancellation shall contain a specific reason for cancellation as provided in subdivision 1.

A policy shall not be canceled for nonpayment of premium pursuant to subdivision 1, clause (1), unless the insurer, at least ten days before the effective cancellation date, has given notice to the policyholder of the amount of premium due and the due date. The notice shall state the effect of nonpayment by the due date. No cancellation for nonpayment of premium shall be effective if payment of the amount due is made before the effective date in the notice.

Subd. 3. **New policies.** Subdivisions 1 and 2 do not apply to any insurance policy that has not been previously renewed if the policy has been in effect less than 90 days at the time the notice of cancellation is mailed or delivered. No cancellation under this subdivision is effective until at least ten days after the written notice to the policyholder.

Subd. 4. **Longer term policies.** A policy may be issued for a term longer than one year or for an indefinite term with a clause providing for cancellation by the insurer for the reasons stated in subdivision 1 by giving notice as required by subdivision 2 at least 60 days before any anniversary date.

History: 1987 c 337 s 24

60A.37 NONRENEWAL.

Subdivision 1. **Notice required.** At least 60 days before the date of expiration provided in the policy, a notice of intention not to renew the policy beyond the agreed expiration date must be made to the policyholder by the insurer. If the notice is not given at least 60 days before the date of expiration provided in the policy, the policy shall continue in force until 60 days after a notice of intent not to renew is received by the policyholder.

Subd. 2. **Exceptions.** This section does not apply if the policyholder has insured elsewhere, has accepted replacement coverage, or has requested or agreed to nonrenewal.

History: 1987 c 337 s 25

60A.38 INTERPRETATION AND PENALTIES.

Subdivision 1. **Sections not exclusive.** Sections 60A.35 to 60A.38 are not exclusive, and the commissioner may also consider other provisions of Minnesota law to be applicable to the circumstances or situations addressed by sections 60A.35 to 60A.38. The rights provided by sections 60A.35 to 60A.38 are in addition to and do not prejudice any other rights the policyholder may have at common law, under statute, or rules.

Subd. 2. **Penalties.** A violation of any provisions of sections 60A.35 to 60A.38 shall be deemed to be an unfair trade practice in the business of insurance and shall subject the violator to the penalties provided by sections 72A.17 to 72A.32 in addition to any other penalty provided by law.

Subd. 3. **Notices required.** All notices required by sections 60A.35 to 60A.38 shall only be made by first class mail addressed to the policyholder's last known address or by delivery to the policyholder's last known address. Notice by first class mail is effective upon deposit in the United States mail. In addition to giving notice to the policyholder, the insurer must also give notice to the agent of record, if any, in the manner specified for the policyholder.

Subd. 4. **Proof of mailing notice.** Unless otherwise specifically required, United States Postal Service proof of mailing of the notice of cancellation, reduction in the limits of liability of coverage, or nonrenewal of an insurance policy is sufficient proof the proper notice has been given.

History: 1987 c 337 s 26; 1990 c 475 s 1

VOLUNTEER FIRE ANNUITY CONTRACT BUSINESS

60A.40 APPROVAL OF VOLUNTEER FIRE ANNUITY CONTRACT BUSINESS.

No insurance company that issues single premium annuity contracts may enter into an annuity contract with a volunteer firefighters relief association in this state unless the insurance company has been authorized to conduct this type of business by the commissioner. If the commissioner finds that the insurance company is rated according to a recognized national rating agency or organization among the top 25 percent of all insurance companies doing this type of business and is so situated and has sufficient capabilities to service these contracts throughout the state, the commissioner shall approve the insurance company for the conduct of this type of business.

History: 1988 c 709 art 7 s 1

60A.41 SUBROGATION AGAINST INSURED. PROHIBITED.

(a) An insurance company providing insurance coverage or its reinsurer for that underlying insurance coverage may not proceed against its insured in a subrogation action where the loss was caused by the nonintentional acts of the insured.

(b) An insurance company providing insurance coverage or its reinsurer for that underlying insurance coverage may not subrogate itself to the rights of its insured to proceed against another person if that other person is insured for the same loss, by the same company. This provision applies only if the loss was caused by the nonintentional acts of the person against whom subrogation is sought.

(c) This provision does not apply to or affect claims of a surety against its principal.

(d) Nothing in this section prevents an insurer from allocating the loss internally to the at-fault insured for purposes of underwriting, agency, and claims information.

History: 1989 c 201 s 1; 1990 c 399 s 1