

CHAPTER 60K

INSURANCE AGENTS, LICENSING

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60K.01 DEFINITIONS.

Unless the language or context clearly indicates that a different meaning is intended, the definitions in section 60A.01 are applicable to this chapter.

History: 1992 c 564 art 3 s 3

60K.02 INSURANCE AGENTS; SOLICITORS LICENSE.

Subdivision 1. 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 benefit societies, until that person obtains from the commissioner a license for that purpose. The license must specifically set forth the name of the person authorized to act as an 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 a 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.

Subd. 2. 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.

Subd. 3. Transition. (a) 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.

(b) 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.

Subd. 4. Criminal penalties. 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.

History: 1992 c 564 art 3 s 4

60K.03 LICENSE APPLICATION.

Subdivision 1. **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 (6), at the time the agent becomes licensed. The application and appointment must 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.

Subd. 2. **Resident agent.** The commissioner shall issue a resident insurance agent's license to a qualified resident of this state as follows:

(a) 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 constitutes an election of residency in this state. A license issued upon an application claiming residency in this state is void if the licensee, while holding a resident license in this state, also holds, or makes application for, a resident license in, or thereafter claims to be a resident of, any other state or jurisdiction or if the licensee ceases to be a resident of this state; provided, however, if the applicant is a resident of a community or trade area, the border of which is contiguous with the state line of this state, the applicant may qualify for a resident license in this state and at the same time hold a resident license from the contiguous state.

(b) 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 must be held at a reasonable time and place designated by the commissioner.

(c) 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.

(d) 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 paragraph. 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.

(e) 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.

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

(g) 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 section 60K.12 is exempt from the requirement of a written examination.

Subd. 3. 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:

(a) 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.

(b) The commissioner shall not issue a license to a 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 an action, suit, or proceeding instituted by or on behalf of an interested person arising out of the applicant's insurance business in this state. This designation constitutes 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 a licensee in an action or proceeding begun in a court of competent jurisdiction of this state may be made in compliance with section 45.028, subdivision 2.

(c) A nonresident license terminates 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.

Subd. 4. Term. All licenses issued pursuant to this section remain in force until voluntarily terminated by the licensee, not renewed as prescribed in section 60K.06, or until suspended or revoked by the commissioner. A voluntary termination occurs 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 also occurs upon the happening of the event described in subdivision 3, paragraph (c).

Every licensed agent shall notify the commissioner within 30 days of a change of name, address, or information contained in the application.

Subd. 5. 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 (6). The notice of appointment must be on a form prescribed by the commissioner.

Subd. 6. 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 60K.06, subdivision 2, paragraph (a).

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

Subd. 7. Exceptions. The following are exempt from the general licensing requirements prescribed by this section:

- (1) agents of township mutuals who are exempted pursuant to section 60K.04;
- (2) fraternal benefit society representatives exempted pursuant to section 60K.05;
- (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 the 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 for insurance;
- (5) employees of a creditor who enroll debtors for credit life, credit accident and health, or credit involuntary unemployment insurance; provided the employees receive no commission or fee for it;
- (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.

History: 1992 c 564 art 3 s 5; 1993 c 343 s 6; 1994 c 632 art 4 s 27-29

60K.04 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.

History: 1992 c 564 art 3 s 6

60K.05 FRATERNAL BENEFIT SOCIETY REPRESENTATIVES.

Representatives of fraternal benefit societies who solicit and negotiate insurance contracts shall be deemed to be insurance agents and subject to the licensing requirements as set forth in section 60K.03, subdivision 1; provided, that no insurance agent's license shall be required of:

- (1) any officer, employee, or secretary of a fraternal benefit society 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
- (2) any agent or representative of a fraternal benefit society 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 society. 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 society 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 society.

History: 1992 c 564 art 3 s 7

60K.06 FEES.

Subdivision 1. **Renewal fees.** (a) Each agent licensed pursuant to section 60K.03 shall pay in accordance with the procedure adopted by the commissioner a renewal fee as prescribed by subdivision 2.

(b) Every agent, corporation, limited liability company, and partnership renewal license is valid for a period of 24 months. The commissioner may stagger the implementation of the 24-month licensing program so that approximately one-half of the licenses will expire on October 31 of each even-numbered year and the other half on October 31 of each odd-numbered year. Those licensees who will receive a 12-month license on November 1, 1994, because of the staggered implementation schedule, will pay for the license a fee reduced by an amount equal to one-half the fee for renewal of the license.

(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 November 1. Applications for renewal of a license are timely filed if received by the commissioner on or before October 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 October 15.

Subd. 2. **Licensing fees.** (a) In addition to the fees and charges provided for examinations, each agent licensed pursuant to section 60K.03 shall pay to the commissioner:

(1) a fee of \$60 per license for an initial license issued to an individual agent, and a fee of \$60 for each renewal;

(2) a fee of \$160 for an initial license issued to a partnership, limited liability company, or corporation, and a fee of \$120 for each renewal;

(3) a fee of \$75 for an initial amendment (variable annuity) to a license, and a fee of \$50 for each renewal;

(4) a fee of \$500 for an initial surplus lines agent's license, and a fee of \$500 for each renewal;

(5) for issuing a duplicate license, \$10; and

(6) for issuing licensing histories, \$20.

(b) 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 November 1 of the renewal year. Applications for renewal of a license are timely filed if received by the commissioner on or before the 15th day preceding the license renewal date of the applicant 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 on or before the 15th day preceding the licensing renewal date of the applicant.

(c) Initial licenses issued under this section must be valid for a period not to exceed two years. The commissioner shall assign an expiration date to each initial license so that approximately one-half of all licenses expire each year. Each initial license must expire on October 31 of the expiration year assigned by the commissioner.

(d) All fees shall be retained by the commissioner and are nonreturnable, except that an overpayment of any fee must be refunded upon proper application.

Subd. 3. **Initial license expiration; fee reduction.** If an initial license issued under subdivision 2, paragraph (a), expires less than 12 months after issuance, the license fee must be reduced by an amount equal to one-half the fee for a renewal of the license.

History: 1992 c 564 art 3 s 8; 1994 c 632 art 4 s 30

NOTE: This section was also amended by Laws 1994, chapter 485, section 14, to read as follows:

"60K.06 Fees.

Subdivision 1. **Renewal fees.** (a) Each agent licensed pursuant to section 60K.03 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 October 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 November 1. Applications for renewal of a license are timely filed if received by the commissioner on or before October 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 October 15.

Subd. 2. **Licensing fees.** (a) In addition to the fees and charges provided for examinations, each agent licensed pursuant to section 60K.03 shall pay to the commissioner:

- (1) for issuing an initial license to an individual agent, \$30 per year;
- (2) for issuing an initial agent's license to a partnership or corporation, \$100 per year;
- (3) for issuing an amendment (variable annuity) to a license, \$50 per year;
- (4) for renewing an amendment, \$25 per year;
- (5) for renewing an individual agent's license, \$30 per year;
- (6) for renewing a license issued to a corporation or partnership, \$60 per year;
- (7) for issuing and renewing a surplus lines agent's license, \$250 per year;
- (8) for issuing duplicate licenses, \$10.

(b) Every agent, corporation, and partnership license expires on October 31.

(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 November 1. Applications for renewal of a license are timely filed if received by the commissioner on or before October 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 October 15.

(d) All fees shall be retained by the commissioner and shall be nonreturnable, except that an overpayment of any fee shall be the subject of a refund upon proper application."

60K.07 TEMPORARY LICENSES.

Subdivision 1. **Examination.** 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 (1) receipt by the applicant of the resident license, or (2) the expiration of 90 days from the date on which the temporary license was granted.

Subd. 2. **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 considers a temporary license necessary for the servicing of an insurance business in the following cases:

(1) 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;

(2) 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;

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

(4) in any other circumstance where the commissioner considers that the public interest will best be served by the issuance of a temporary license.

History: 1992 c 564 art 3 s 9

60K.08 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 insur-

ance for which the agent is licensed in other insurers duly authorized to transact business in this state, but the 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.

History: 1992 c 564 art 3 s 10

60K.09 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.

History: 1992 c 564 art 3 s 11

60K.10 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 the 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 (1) the insurer or any of its officers, employees, or representatives submitting or providing the document, record, or statement, or (2) any person, firm, or corporation furnishing in good faith to the insurer the information upon which the reasons for termination are based.

History: 1992 c 564 art 3 s 12

60K.11 DENIAL, REVOCATION, SUSPENSION, AND CENSURE OF LICENSES.

Subdivision 1. **Grounds.** The commissioner may by order take any or all of the following actions:

- (1) deny, suspend, or revoke an insurance agent or agency license;
- (2) censure the licensee; or
- (3) impose a civil penalty as provided for in section 45.027, subdivision 6.

In order to take this action the commissioner must find that the order is in the public interest and that the applicant, licensee, or in the case of an insurance agency, partner, director, shareholder, officer, or agent of that insurance agency:

(i) does not intend to or is not in good faith carrying on the business of an insurance agent;

(ii) has filed an application for a license which is incomplete in any material respect or contains any statement which, in light of the circumstances under which it is made, contains any misrepresentation, or is false, misleading, or fraudulent;

(iii) has engaged in an act or practice, whether or not such act or practice involves the business of insurance, which demonstrates that the applicant or licensee is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act as an insurance agent or agency;

(iv) has pled guilty, with or without explicitly admitting guilt, pled nolo contendere, or been convicted of a felony, gross misdemeanor, or misdemeanor involving moral turpitude, including, but not limited to, assault or similar conduct;

(v) has violated or failed to comply with any of the provisions of the insurance laws including chapter 45 or chapters 60A to 72A or any rule or order under those chapters;

(vi) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the insurance business;

(vii) has violated or failed to comply with any order of the insurance regulator of any other state or jurisdiction;

(viii) has had an insurance agent or agency license denied, suspended, or revoked, has been censured or reprimanded, has been the subject of any other discipline imposed by, or has paid or has been required to pay a monetary penalty or fine to, another state or jurisdiction;

(ix) has misrepresented the terms of any actual or proposed insurance contract;

(x) has engaged in any fraudulent, coercive, deceptive, or dishonest act or practice whether or not such act or practice involves the business of insurance;

(xi) has improperly withheld, misappropriated, or converted to the licensee's or applicant's own use any money belonging to a policyholder, insurer, beneficiary, or other person; or

(xii) has forged another's name to any document whether or not the document relates to an application for insurance or a policy of insurance.

Subd. 2. Licensees. If the commissioner determines that one of the conditions listed in subdivision 1 exists, the commissioner may issue an order requiring a licensee to show cause why any or all of the following should not occur: (1) the license revocation or suspension; (2) censuring of the licensee; or (3) the imposition of a civil penalty. The order shall be calculated to give reasonable notice of the time and place for hearing on the matter, and shall state the reasons for the entry of the order. The commissioner may by order summarily suspend a license pending final determination of any order to show cause. If a license is suspended pending final determination of an order to show cause, a hearing on the merits shall be held within 30 days of the issuance of the order of suspension. All hearings shall be conducted in accordance with the provisions of chapter 14. After the hearing, the commissioner shall enter an order disposing of the matter as the facts require. If the licensee fails to appear at a hearing after having been duly notified of it, the licensee shall be considered in default, and the proceeding may be determined against the licensee upon consideration of the order to show cause, the allegations of which may be considered to be true.

Subd. 3. Applicants. Whenever it appears to the commissioner that a license application should be denied pursuant to subdivision 1, the commissioner shall promptly give a written notice to the applicant of the denial. The notice must state the grounds for the denial and give reasonable notice of the rights of the applicant to request a hearing. A hearing must be held not later than 30 days after the request for the hearing is received by the commissioner unless the applicant and the department of commerce agree that the hearing may be held at a later date. If no hearing is requested within 30 days of service of the notice, the denial will become final. All hearings shall be con-

ducted in accordance with the provisions of chapter 14. After the hearing, the commissioner shall enter an order making such disposition as the facts require. If the applicant fails to appear at a hearing after having been duly notified of it, the person shall be considered in default, and the proceeding may be determined against the applicant upon consideration of the notice denying application, the allegations of which may be considered to be true. All fees accompanying the application and appointment are considered earned and are not refundable.

Subd. 4. Actions against lapsed license. If a license lapses, is surrendered, withdrawn, terminated, or otherwise becomes ineffective, the commissioner may institute a proceeding under this subdivision within two years after the license was last effective and enter a revocation or suspension order as of the last date on which the license was in effect, or impose a civil penalty as provided for in section 45.027, subdivision 6.

Subd. 5. Notification of action taken by other state. 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. 6. Conditions for relicensure. 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 reapplication, 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 in the event the commissioner grants the application. 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. The bond required by this subdivision must provide coverage for all matters arising during the period of licensure.

History: 1992 c 564 art 3 s 13

60K.12 TAX CLEARANCE CERTIFICATE.

Subdivision 1. Requirement for issuance or renewal of license. In addition to the provisions of section 60K.11, the commissioner may not issue or renew a license 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 certificate 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.

Subd. 2. Definitions. For purposes of this section, the following terms have the meanings given them:

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

(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.

Subd. 3. Contested case hearing. In lieu of the notice and hearing requirements of section 60K.11, when a licensee or applicant is required to obtain a clearance certificate under this section, 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 subdivision 1. 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.

Subd. 4. Identification required. 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.

History: 1992 c 564 art 3 s 14

60K.13 SURRENDER, LOSS, OR DESTRUCTION OF LICENSE.

Subdivision 1. Notification. 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.

Subd. 2. Return of license. An agent whose resident or nonresident license is terminated, as provided in section 60K.11, shall deliver the terminated license to the commissioner by personal delivery or by mail within 30 days after the date of termination.

Subd. 3. Duplicate license. 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.

History: 1992 c 564 art 3 s 15

60K.14 PROHIBITED ACTS; REQUIRED ACTS.

Subdivision 1. Personal solicitation of insurance sales. (a) Definitions. For the purposes of this section, the following terms have the meanings given them:

(1) "agent" means a person, copartnership, or corporation required to be licensed pursuant to section 60K.02; and

(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: (i) 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; (ii) an attempted sale in which the prospective purchaser of insurance initiated the contact; or (iii) 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; and

(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. 2. 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:

- (1) before rendering the services, a written statement is provided disclosing:
 - (i) the services for which fees are charged;
 - (ii) the amount of the fees;
 - (iii) that the fees are charged in addition to premiums; and
 - (iv) that premiums include a commission; and
- (2) all fees charged are reasonable in relation to the services rendered.

Subd. 3. 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 subdivision does 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. 4. Suitability of insurance. In recommending the purchase of any life, endowment, individual accident and sickness, 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.

Subd. 5. Premiums. All premiums or other money 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 money is forwarded directly to the designated insurer.

Subd. 6. 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. 7. Disclosure of commissions. Before selling any health plan as defined in section 62A.011, subdivision 3, an agent shall disclose in writing to the prospective purchaser the amount of any commission or other compensation the agent will receive as a direct result of the sale. The disclosure may be expressed in dollars or as a percentage of the premium. The amount disclosed need not include any anticipated renewal commissions.

History: 1992 c 564 art 3 s 16; 1993 c 345 art 5 s 3; 1994 c 485 s 15; 1994 c 625 art 10 s 2

60K.15 INSURER'S AGENT.

Any person who solicits insurance is the agent of the insurer and not the agent of the insured.

History: 1992 c 564 art 3 s 17

60K.16 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.

History: 1992 c 564 art 3 s 18

60K.17 AGENTS; VARIABLE CONTRACTS.

Subdivision 1. 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.

Subd. 2. Exceptions. (a) 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.

(b) 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).

Subd. 3. Rules. The commissioner may by rule waive or modify any of the requirements in this section or prescribe additional requirements considered necessary for the proper sale and solicitation of contracts on a variable basis.

History: 1992 c 564 art 3 s 19

60K.18 ALTERING EXISTING POLICIES; WRITTEN BINDERS REQUIRED.

An 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.

History: 1992 c 564 art 3 s 20

60K.19 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, at the time of license renewal, certify to the commissioner in writing that they will sell only credit life, credit accident and health, credit involuntary unemployment, 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 \$100 payable to the state of Minnesota for deposit in the general fund. A fee of \$10 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 classroom 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; or
- (5) 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, except that home-study courses may be accredited by the commissioner if the student is a non-resident agent residing in a state which is not contiguous to Minnesota.

Subd. 8. Minimum education requirement. Each person subject to this section shall complete a minimum of 30 credit hours of courses accredited by the commissioner during each 24-month licensing period after the expiration of his or her initial licensing period. At least 15 of the 30 credit hours must be completed during the first 12 months of the 24-month licensing period. Any person whose initial licensing period extends more than six months shall complete 15 hours of courses accredited by the commissioner during the initial license period. 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 15 credit hours per licensing period may be credited to a person for courses sponsored by, offered by, or affiliated with an insurance company or its agents. Continuing education must be earned no later than September 30 of the renewal year. 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; 1992 c 513 art 3 s 25; 1992 c 564 art 1 s 19,20; 1993 c 343 s 7; 1994 c 632 art 4 s 31