

1.1 A bill for an act

1.2 relating to appropriations; appropriating money to Department of Commerce  
1.3 and Public Utilities Commission to finance activities related to commerce and  
1.4 energy; modifying provisions related to Telecommunications Access Minnesota  
1.5 assessments, insurance audits, insurers and insurance products, certain financial  
1.6 institutions, regulated activities related to certain mortgage transactions and  
1.7 professionals, and debt management and debt settlement services; providing  
1.8 penalties and remedies; appropriating and allocating federal stimulus money for  
1.9 various energy programs; amending Minnesota Statutes 2008, sections 45.011,  
1.10 subdivision 1; 45.027, subdivision 1; 46.04, subdivision 1; 46.05; 46.131,  
1.11 subdivision 2; 47.58, subdivision 1; 47.60, subdivisions 1, 3, 6; 48.21; 58.05,  
1.12 subdivision 3; 58.06, subdivision 2; 58.126; 58.13, subdivision 1; 60A.124;  
1.13 60A.14, subdivision 1; 60B.03, subdivision 15; 60L.02, subdivision 3; 61B.19,  
1.14 subdivision 4; 61B.28, subdivisions 4, 8; 67A.01; 67A.06; 67A.07; 67A.14,  
1.15 subdivisions 1, 7; 67A.18, subdivision 1; 216B.62, subdivisions 3, 4, 5, by  
1.16 adding a subdivision; 237.295, subdivisions 2, 3; 325E.311, subdivision 6;  
1.17 332A.02, subdivisions 5, 8, 9, 10, 13, by adding a subdivision; 332A.04,  
1.18 subdivision 6; 332A.08; 332A.10; 332A.11, subdivision 2; 332A.14; proposing  
1.19 coding for new law in Minnesota Statutes, chapters 60A; 61A; 67A; proposing  
1.20 coding for new law as Minnesota Statutes, chapter 332B; repealing Minnesota  
1.21 Statutes 2008, sections 60A.129; 61B.19, subdivision 6; 67A.14, subdivision 5;  
1.22 67A.17; 67A.19; Minnesota Rules, parts 2675.2180; 2675.7100; 2675.7110;  
1.23 2675.7120; 2675.7130; 2675.7140.

1.24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.25 **ARTICLE 1**

1.26 **APPROPRIATIONS**

1.27 Section 1. **SUMMARY OF APPROPRIATIONS.**

1.28 The amounts shown in this section summarize direct appropriations, by fund, made  
1.29 in this article.

	<u>2010</u>	<u>2011</u>	<u>Total</u>
1.30 <u>General</u>	<u>\$ 28,041,000</u>	<u>\$ 27,041,000</u>	<u>\$ 55,082,000</u>



3.1	<u>Subd. 3. <b>Petroleum Tank Release Cleanup</b></u>		
3.2	<u><b>Board</b></u>	<u>1,084,000</u>	<u>1,084,000</u>
3.3	<u>This appropriation is from the petroleum</u>		
3.4	<u>tank release cleanup fund. The base funding</u>		
3.5	<u>for this program ends June 30, 2012.</u>		
3.6	<u>Subd. 4. <b>Administrative Services</b></u>	<u>4,300,000</u>	<u>4,300,000</u>
3.7	<u>Subd. 5. <b>Telecommunications</b></u>	<u>1,010,000</u>	<u>1,010,000</u>
3.8	<u>Subd. 6. <b>Market Assurance</b></u>	<u>7,421,000</u>	<u>7,421,000</u>
3.9	<u>                    Appropriations by Fund</u>		
3.10	<u>General</u>	<u>6,670,000</u>	<u>6,670,000</u>
3.11	<u>Workers'</u>		
3.12	<u>Compensation</u>	<u>751,000</u>	<u>751,000</u>
3.13	<u>Subd. 7. <b>Office of Energy Security</b></u>	<u>3,990,000</u>	<u>2,990,000</u>
3.14	<u>Subd. 8. <b>Telecommunications Access</b></u>		
3.15	<u><b>Minnesota</b></u>	<u>300,000</u>	<u>300,000</u>
3.16	<u>\$300,000 the first year and \$300,000</u>		
3.17	<u>the second year are for transfer to the</u>		
3.18	<u>commissioner of human services to</u>		
3.19	<u>supplement the ongoing operational expenses</u>		
3.20	<u>of the Minnesota Commission Serving</u>		
3.21	<u>Deaf and Hard-of-Hearing People. This</u>		
3.22	<u>appropriation is from the telecommunication</u>		
3.23	<u>access Minnesota fund, and is added to</u>		
3.24	<u>the commission's base. This appropriation</u>		
3.25	<u>consolidates, and is not in addition to,</u>		
3.26	<u>appropriation language from Laws 2006,</u>		
3.27	<u>chapter 282, article 11, section 4, and</u>		
3.28	<u>Laws 2007, chapter 57, article 2, section 3,</u>		
3.29	<u>subdivision 7.</u>		
3.30	<u>Sec. 4. <b>PUBLIC UTILITIES COMMISSION</b></u>	<u>\$ 5,433,000</u>	<u>\$ 5,433,000</u>

3.31       Sec. 5. Minnesota Statutes 2008, section 45.027, subdivision 1, is amended to read:

3.32               Subdivision 1. **General powers.** In connection with the duties and responsibilities  
3.33 entrusted to the commissioner, and Laws 1993, chapter 361, section 2, the commissioner  
3.34 of commerce may:

4.1 (1) make public or private investigations within or without this state as the  
4.2 commissioner considers necessary to determine whether any person has violated or is  
4.3 about to violate any law, rule, or order related to the duties and responsibilities entrusted  
4.4 to the commissioner;

4.5 (2) require or permit any person to file a statement in writing, under oath or otherwise  
4.6 as the commissioner determines, as to all the facts and circumstances concerning the  
4.7 matter being investigated;

4.8 (3) hold hearings, upon reasonable notice, in respect to any matter arising out of the  
4.9 duties and responsibilities entrusted to the commissioner;

4.10 (4) conduct investigations and hold hearings for the purpose of compiling  
4.11 information related to the duties and responsibilities entrusted to the commissioner;

4.12 (5) examine the books, accounts, records, and files of every licensee, and of every  
4.13 person who is engaged in any activity regulated; the commissioner or a designated  
4.14 representative shall have free access during normal business hours to the offices and  
4.15 places of business of the person, and to all books, accounts, papers, records, files, safes,  
4.16 and vaults maintained in the place of business;

4.17 (6) publish information which is contained in any order issued by the commissioner;

4.18 ~~and~~

4.19 (7) require any person subject to duties and responsibilities entrusted to the  
4.20 commissioner, to report all sales or transactions that are regulated. The reports must  
4.21 be made within ten days after the commissioner has ordered the report. The report is  
4.22 accessible only to the respondent and other governmental agencies unless otherwise  
4.23 ordered by a court of competent jurisdiction; and

4.24 (8) assess a licensee the necessary expenses of the investigation performed by the  
4.25 department when an investigation is made by order of the commissioner. The cost of the  
4.26 investigation shall be determined by the commissioner and is based on the salary cost  
4.27 of investigators or assistants and at an average rate per day or fraction thereof so as to  
4.28 provide for the total cost of the investigations. All money collected must be deposited  
4.29 into the general fund.

4.30 Sec. 6. Minnesota Statutes 2008, section 60A.14, subdivision 1, is amended to read:

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

4.34 (a) by township mutual fire insurance companies;

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

- 5.1 (2) for filing annual statements, \$15;
- 5.2 (3) for each annual certificate of authority, \$15;
- 5.3 (4) for filing bylaws \$25 and amendments thereto, \$10;
- 5.4 (b) by other domestic and foreign companies including fraternal and reciprocal
- 5.5 exchanges;
- 5.6 (1) for filing an application for an initial certification of authority to be admitted
- 5.7 to transact business in this state, \$1,500;
- 5.8 (2) for filing certified copy of certificate of articles of incorporation, \$100;
- 5.9 (3) for filing annual statement, \$225;
- 5.10 (4) for filing certified copy of amendment to certificate or articles of incorporation,
- 5.11 \$100;
- 5.12 (5) for filing bylaws, \$75 or amendments thereto, \$75;
- 5.13 (6) for each company's certificate of authority, \$575, annually;
- 5.14 (c) the following general fees apply:
- 5.15 (1) for each certificate, including certified copy of certificate of authority, renewal,
- 5.16 valuation of life policies, corporate condition or qualification, \$25;
- 5.17 (2) for each copy of paper on file in the commissioner's office 50 cents per page,
- 5.18 and \$2.50 for certifying the same;
- 5.19 (3) for license to procure insurance in unadmitted foreign companies, \$575;
- 5.20 (4) for valuing the policies of life insurance companies, one cent per \$1,000 of
- 5.21 insurance so valued, provided that the fee shall not exceed \$13,000 per year for any
- 5.22 company. The commissioner may, in lieu of a valuation of the policies of any foreign life
- 5.23 insurance company admitted, or applying for admission, to do business in this state, accept
- 5.24 a certificate of valuation from the company's own actuary or from the commissioner of
- 5.25 insurance of the state or territory in which the company is domiciled;
- 5.26 (5) for receiving and filing certificates of policies by the company's actuary, or by
- 5.27 the commissioner of insurance of any other state or territory, \$50;
- 5.28 (6) for each appointment of an agent filed with the commissioner, \$10;
- 5.29 (7) for filing forms, rates, and compliance certifications under section 60A.315, ~~\$90~~
- 5.30 \$140 per filing, or ~~\$75~~ \$125 per filing when submitted via electronic filing system. Filing
- 5.31 fees may be paid on a quarterly basis in response to an invoice. Billing and payment may
- 5.32 be made electronically;
- 5.33 (8) for annual renewal of surplus lines insurer license, \$300.
- 5.34 The commissioner shall adopt rules to define filings that are subject to a fee.

5.35 Sec. 7. Minnesota Statutes 2008, section 216B.62, subdivision 3, is amended to read:

6.1 Subd. 3. **Assessing all public utilities.** The department and commission shall  
6.2 quarterly, at least 30 days before the start of each quarter, estimate the total of their  
6.3 expenditures in the performance of their duties relating to ~~(1)~~ public utilities under ~~section~~  
6.4 ~~216A.085~~, sections 216A.085 and 216B.01 to 216B.67, other than amounts chargeable  
6.5 to public utilities under subdivision 2 ~~or~~ 6, and ~~(2)~~ ~~alternative energy engineering~~  
6.6 ~~activity under section 216C.261~~ 7, or 8. The remainder, ~~except the amount assessed~~  
6.7 ~~against cooperatives and municipalities for alternative energy engineering activity under~~  
6.8 ~~subdivision 5~~, shall be assessed by the commission and department to the several public  
6.9 utilities in proportion to their respective gross operating revenues from retail sales of gas  
6.10 or electric service within the state during the last calendar year. The assessment shall be  
6.11 paid into the state treasury within 30 days after the bill has been transmitted via mail,  
6.12 personal delivery, or electronic service to the several public utilities, which shall constitute  
6.13 notice of the assessment and demand of payment thereof. The total amount which may  
6.14 be assessed to the public utilities, under authority of this subdivision, shall not exceed  
6.15 one-sixth of one percent of the total gross operating revenues of the public utilities  
6.16 during the calendar year from retail sales of gas or electric service within the state. The  
6.17 assessment for the third quarter of each fiscal year shall be adjusted to compensate for the  
6.18 amount by which actual expenditures by the commission and department for the preceding  
6.19 fiscal year were more or less than the estimated expenditures previously assessed.

6.20 Sec. 8. Minnesota Statutes 2008, section 216B.62, subdivision 4, is amended to read:

6.21 Subd. 4. **Objections.** Within 30 days after the date of the transmittal of any bill as  
6.22 provided by ~~subdivisions~~ subdivision 2 and 3, 7, or 8, the public utility against which  
6.23 the bill has been rendered may file with the commission objections setting out the  
6.24 grounds upon which it is claimed the bill is excessive, erroneous, unlawful or invalid.  
6.25 The commission shall within 60 days hold a hearing and issue an order in accordance  
6.26 with its findings. The order shall be appealable in the same manner as other final orders  
6.27 of the commission.

6.28 Sec. 9. Minnesota Statutes 2008, section 216B.62, subdivision 5, is amended to read:

6.29 Subd. 5. **Assessing cooperatives and municipals.** The commission and department  
6.30 may charge cooperative electric associations, generation and transmission cooperative  
6.31 electric associations, municipal power agencies, and municipal electric utilities their  
6.32 proportionate share of the expenses incurred in the review and disposition of resource  
6.33 plans, adjudication of service area disputes, proceedings under section 216B.1691,  
6.34 216B.2425, or 216B.243, and the costs incurred in the adjudication of complaints over

7.1 service standards, practices, and rates. Cooperative electric associations electing to  
7.2 become subject to rate regulation by the commission pursuant to section 216B.026,  
7.3 subdivision 4, are also subject to this section. Neither a cooperative electric association  
7.4 nor a municipal electric utility is liable for costs and expenses in a calendar year in excess  
7.5 of the limitation on costs that may be assessed against public utilities under subdivision  
7.6 2. A cooperative electric association, generation and transmission cooperative electric  
7.7 association, municipal power agency, or municipal electric utility may object to and appeal  
7.8 bills of the commission and department as provided in subdivision 4.

7.9 ~~The department shall assess cooperatives and municipalities for the costs of~~  
7.10 ~~alternative energy engineering activities under section 216C.261. Each cooperative and~~  
7.11 ~~municipality shall be assessed in proportion that its gross operating revenues for the sale~~  
7.12 ~~of gas and electric service within the state for the last calendar year bears to the total of~~  
7.13 ~~those revenues for all public utilities, cooperatives, and municipalities.~~

7.14 Sec. 10. Minnesota Statutes 2008, section 216B.62, is amended by adding a  
7.15 subdivision to read:

7.16 Subd. 7. **Assessing all utilities.** The department shall assess public utilities,  
7.17 cooperative electric associations, and municipal utilities for the costs of activities under  
7.18 chapter 216C. The department shall not assess for costs of grants, loans, or other aids or  
7.19 for costs that can be recovered through other assessment authority. Each public utility,  
7.20 cooperative, and municipal utility shall be assessed in the proportion that its gross  
7.21 operating revenue for the sale of gas and electric service within the state for the last  
7.22 calendar year bears to the total of those revenues for all public utilities, cooperatives,  
7.23 and municipalities.

7.24 Sec. 11. Minnesota Statutes 2008, section 237.295, subdivision 2, is amended to read:

7.25 Subd. 2. **Assessment of costs.** The department and commission shall quarterly, at  
7.26 least 30 days before the start of each quarter, estimate the total of their expenditures  
7.27 in the performance of their duties relating to telephone companies, other than amounts  
7.28 chargeable to telephone companies under subdivision 1, 5, ~~or~~ 6, or 7. The remainder  
7.29 must be assessed by the department to the telephone companies operating in this state  
7.30 in proportion to their respective gross jurisdictional operating revenues during the last  
7.31 calendar year. The assessment must be paid into the state treasury within 30 days after the  
7.32 bill has been transmitted via mail, personal delivery, or electronic service to the telephone  
7.33 companies. The bill constitutes notice of the assessment and demand of payment. The  
7.34 total amount that may be assessed to the telephone companies under this subdivision may

8.1 not exceed three-eighths of one percent of the total gross jurisdictional operating revenues  
8.2 during the calendar year. The assessment for the third quarter of each fiscal year must be  
8.3 adjusted to compensate for the amount by which actual expenditures by the commission  
8.4 and department for the preceding fiscal year were more or less than the estimated  
8.5 expenditures previously assessed. A telephone company with gross jurisdictional  
8.6 operating revenues of less than \$5,000 is exempt from assessments under this subdivision.

8.7 Sec. 12. Minnesota Statutes 2008, section 237.295, subdivision 3, is amended to read:

8.8 Subd. 3. **Objection.** Within 30 days after the date of the transmittal of any bill  
8.9 as provided by subdivisions 1, 2, 5, ~~and 6~~, or 7, the parties to the proceeding, against  
8.10 which the bill has been assessed, may file with the commission objections setting out the  
8.11 grounds upon which it is claimed the bill is excessive, erroneous, unlawful, or invalid.  
8.12 The commission shall within 60 days issue an order in accordance with its findings. The  
8.13 order is appealable in the same manner as other final orders of the commission.

## 8.14 **ARTICLE 2**

### 8.15 **DEFINITIONS; GOALS; LEGISLATIVE REVIEW**

8.16 Section 1. **FEDERAL STIMULUS FUNDING; GOAL OF ENERGY**  
8.17 **PROGRAMS.**

8.18 Subdivision 1. **Definitions.** For the purposes of articles 2 to 6, the following terms  
8.19 have the meaning given them.

8.20 (a) "Act" means the American Recovery and Reinvestment Act of 2009.

8.21 (b) "Commissioner" means the commissioner of commerce.

8.22 (c) "Stimulus funding" or "funding" means funding provided to the state under  
8.23 the act for:

8.24 (1) energy efficiency and conservation block grants authorized under subtitle E of  
8.25 title V of the federal Energy Independence and Security Act of 2007, United States Code,  
8.26 title 42, section 17151 et seq.;

8.27 (2) the Weatherization Assistance Program authorized under part A of title IV of the  
8.28 federal Energy Conservation and Production Act, United States Code, title 42, section  
8.29 6861, et seq.; and

8.30 (3) the State Energy Program authorized under part D of title III of the federal  
8.31 Energy Policy and Conservation Act, United States Code, title 42, section 6321, et seq.

8.32 Subd. 2. **Stimulus funding allocation and use goals.** To the extent allowed by  
8.33 federal law and regulation and consistent with the purposes and principles of the act,

9.1 stimulus funding must be allocated and expended under articles 2 to 4 for activities that  
9.2 best achieve the following goals:

9.3 (1) job retention and creation;

9.4 (2) improved energy efficiency and increased renewable energy production capacity;

9.5 (3) coordination with and leveraging of other resources to increase the total benefits

9.6 derived from stimulus funding;

9.7 (4) timely implementation of funded activities;

9.8 (5) long-term sustainability of benefits derived from stimulus funds;

9.9 (6) geographic distribution across the state; and

9.10 (7) compliance with the disadvantaged business enterprise outreach requirements in

9.11 Minnesota Statutes, section 16C.16, subdivision 4.

9.12 **EFFECTIVE DATE.** This section is effective the day following final enactment.

9.13 Sec. 2. **LEGISLATIVE REVIEW.**

9.14 The Office of Energy Security shall, prior to expending any stimulus funds, submit  
9.15 to the chairs and ranking minority members of the senate and house of representatives  
9.16 committees with primary jurisdiction over energy policy and finance the criteria it  
9.17 proposes to use to rank the programs in articles 2 to 6 in order to allocate stimulus funding  
9.18 among the programs. Comments on the proposed criteria must be submitted to the Office  
9.19 of Energy Security within ten working days of receipt of the criteria. The Office of Energy  
9.20 Security shall consider the comments before establishing the final allocation criteria, and  
9.21 shall submit a report on the amount of stimulus funds allocated to each of the programs  
9.22 under articles 2 to 6 the chairs and ranking minority members of the senate and house of  
9.23 representatives committees with primary jurisdiction over energy policy and finance  
9.24 within ten working days of establishing the stimulus funding allocations.

9.25 **EFFECTIVE DATE.** This section is effective the day following final enactment.

## 9.26 **ARTICLE 3**

### 9.27 **ENERGY EFFICIENCY**

9.28 Section 1. **WEATHERIZATION.**

9.29 Subdivision 1. **Allocation of funds.** All stimulus funds for weatherization must be  
9.30 allocated by the director of the Office of Energy Security, consistent with federal allocation  
9.31 requirements and state allocation formulas in the state weatherization plan. Existing  
9.32 providers of weatherization services must be fully utilized, consistent with effective  
9.33 program delivery, before additional providers of weatherization services are added.

10.1           Subd. 2. **Rental units.** Programs that include rental units must be developed,  
10.2 including developing procedures to increase low-income rental unit participation in  
10.3 programs. Priority must be given to serving the largest number of new weatherization  
10.4 clients consistent with federal eligibility requirements.

10.5           **EFFECTIVE DATE.** This section is effective the day following final enactment.

10.6           Sec. 2. **LOCAL GOVERNMENT AND SCHOOL DISTRICT BUILDING**  
10.7 **RENOVATIONS.**

10.8           The Office of Energy Security must coordinate the use of stimulus funds with the  
10.9 local public building enhanced energy-efficiency program under Minnesota Statutes,  
10.10 section 216C.43. The Office of Energy Security shall prioritize lighting upgrades, energy  
10.11 recommissioning, and other cost-effective energy projects that are ready for immediate  
10.12 implementation. Stimulus funds may be used for, but are not limited to, grants for a portion  
10.13 of costs incurred by local governments to implement energy efficiency improvements  
10.14 under the local public building enhanced energy-efficiency program. The Office of Energy  
10.15 Security may require a local government, as a condition of receiving a grant, to commit to  
10.16 implement future activities, including, but not limited to, staff training, that are designed  
10.17 to create additional energy or operating savings to the local government. The Office of  
10.18 Energy Security shall coordinate with the Department of Education to prioritize school  
10.19 district projects for funding under this section, consistent with the principles of statewide  
10.20 geographic distribution of projects, optimized energy savings, and an improved learning  
10.21 environment for schoolchildren.

10.22           **EFFECTIVE DATE.** This section is effective the day following final enactment.

10.23           Sec. 3. **STATE GOVERNMENT BUILDINGS.**

10.24           The Department of Administration shall develop a plan and procedures to select,  
10.25 fund, and implement projects using stimulus funds. The plan and procedures shall  
10.26 prioritize lighting upgrades, energy-efficient windows, energy recommissioning, and other  
10.27 cost-effective energy projects that are ready for immediate implementation. Funds may be  
10.28 used for, but are not limited to, grants for a portion of costs incurred by state agencies in  
10.29 implementing energy efficiency improvements. The Department of Administration may  
10.30 require a state agency, as a condition of receiving stimulus funds, to commit to implement  
10.31 future activities, including, but not limited to, staff training, that are designed to create  
10.32 additional energy or operating savings to the state agency.

10.33           **EFFECTIVE DATE.** This section is effective the day following final enactment.

11.1 Sec. 4. **RESIDENTIAL ENERGY EFFICIENCY PROGRAMS.**

11.2 The Office of Energy Security shall coordinate with the Minnesota Housing Finance  
11.3 Agency to use stimulus funds in conjunction with the Minnesota Housing Finance  
11.4 Agency's existing financing programs to improve energy efficiency in dwellings.

11.5 **EFFECTIVE DATE.** This section is effective the day following final enactment.

11.6 Sec. 5. **TRAINING AND WORKFORCE DEVELOPMENT.**

11.7 (a) The Department of Employment and Economic Development, in consultation  
11.8 with the Office of Energy Security and the Office of Higher Education, shall develop a  
11.9 plan and procedures to:

11.10 (1) allocate stimulus funds to training programs to train energy professionals needed  
11.11 to implement the energy programs described in sections 2 to 4, including but not limited to  
11.12 energy auditors, energy managers, and building operators;

11.13 (2) coordinate, oversee, and monitor the training and certification of energy  
11.14 professionals; and

11.15 (3) allocate stimulus funding for the purposes of clauses (1) and (2) and to training  
11.16 providers.

11.17 (b) Training strategies must be designed to meet the wide range of facilities  
11.18 managers and building sizes and types, and must protect the occupational health and safety  
11.19 of workers employed on these energy projects. Technical skills training must include  
11.20 insulation, air sealing, and mechanical work.

11.21 (c) The plan must include procedures to:

11.22 (1) train individuals already employed in implementing energy programs;

11.23 (2) recruit individuals to be trained to perform work in energy projects using  
11.24 stimulus funding who are unemployed, especially targeting communities experiencing  
11.25 disproportionately high rates of unemployment, including, but not limited to, low-income,  
11.26 rural, or tribal communities and individuals in construction trades and crafts; and

11.27 (3) ensure that the full capacity of current training providers is utilized, including,  
11.28 but not limited to, opportunities industrialization centers, skilled trades labor unions, tribal  
11.29 colleges or nonprofits working in tribal communities, community action partnerships,  
11.30 utility companies, higher education institutions, and nonprofit organizations with  
11.31 demonstrated expertise in energy efficiency.

11.32 **EFFECTIVE DATE.** This section is effective the day following final enactment.

11.33 Sec. 6. **ACCOUNTABILITY AND TRANSPARENCY REPORTING.**

12.1 The director of the Office of Energy Security, after compiling information supplied  
12.2 by the Departments of Administration, Education, and Employment and Economic  
12.3 Development, and the Office of Higher Education, shall report on the progress of the  
12.4 programs funded under articles 2 to 6 to the house of representatives and senate committees  
12.5 with jurisdiction over energy finance and workforce development policy by September 1,  
12.6 2009, January 15, 2010, April 1, 2010, and September 1, 2010. The report must include a  
12.7 complete accounting of all stimulus funds spent on the programs funded under articles 2 to  
12.8 6, to the extent allowable by state and federal law, including, but not limited to:

12.9 (1) the specific projects funded, including the location, building owner, and project  
12.10 manager;

12.11 (2) the number of jobs retained or created by each project;

12.12 (3) the total calculated and actual energy savings for each project;

12.13 (4) the remaining balances in each stimulus fund;

12.14 (5) the nonstimulus funding leveraged by stimulus funds for each project;

12.15 (6) the training courses provided, including the location and provider of courses  
12.16 offered, the funding source for each training course, and the total number of trainees; and

12.17 (7) compliance with prevailing wage, veterans, and disadvantaged business  
12.18 enterprise requirements.

12.19 **EFFECTIVE DATE.** This section is effective the day following final enactment.

## 12.20 **ARTICLE 4**

### 12.21 **RENEWABLE ENERGY**

12.22 Section 1. **RENEWABLE ENERGY GRANT PROGRAM.**

12.23 (a) The commissioner of commerce shall establish a program to award grants to  
12.24 energy projects that meet the following conditions:

12.25 (1) the project qualifies as a community-based energy development (C-BED) project,  
12.26 as defined in Minnesota Statutes, section 216B.1612, subdivision 2, paragraph (g);

12.27 (2) for wind projects, the project is located in an area where the measured wind  
12.28 resource is Class 4 or above;

12.29 (3) the project begins commercial operation after July 1, 2009;

12.30 (4) the project does not receive renewable energy payment incentives under  
12.31 Minnesota Statutes, section 216C.41; and

12.32 (5) the project meets any other conditions established under the American Recovery  
12.33 and Reinvestment Act of 2009, Public Law 111-5, for use of these funds.

13.1 (b) The department shall develop an application form, application review procedures,  
13.2 criteria that projects must meet in order to be considered for a grant award, procedures  
13.3 and guidelines for project monitoring and evaluation, and other administrative procedures  
13.4 necessary to fully implement a grant program.

13.5 (c) The maximum grant to a project is \$500,000.

13.6 (d) No more than two projects in a single county may receive a grant under this  
13.7 section.

13.8 (e) No C-BED qualifying owner may financially participate in more than one project  
13.9 that receives a grant under this section.

13.10 (f) Grant awards must be geographically dispersed throughout the state.

13.11 **EFFECTIVE DATE.** This section is effective the day following final enactment.

13.12 Sec. 2. **RENEWABLE ELECTRIC GENERATION FACILITY REBATES.**

13.13 (a) The commissioner shall establish a program to award rebates to qualifying  
13.14 facilities that generate electricity from a renewable source and that:

13.15 (1) begin operation after July 1, 2009;

13.16 (2) meet all other conditions established under the act; and

13.17 (3) provide electricity to:

13.18 (i) a homeowner's primary residence; or

13.19 (ii) a business, with 20 or fewer full-time employees.

13.20 (b) The commissioner shall develop an application form, application review  
13.21 procedures, criteria that projects must meet in order to be considered for a rebate,  
13.22 procedures and guidelines for project monitoring and evaluation, and other administrative  
13.23 procedures necessary to fully implement a rebate program.

13.24 (c) The owner of a qualifying facility may apply to the commissioner for a rebate of  
13.25 the lesser of \$2,500 or 35 percent of the cost of the electric generation facility, including  
13.26 installation costs.

13.27 (d) The commissioner shall award rebates only from funds appropriated for that  
13.28 purpose and to the extent of those appropriations. Grants must be made to applicants in  
13.29 the order of the time of receipt of a complete application.

13.30 (e) For purposes of this section:

13.31 (1) "Qualifying facility" means an electric generation facility with a capacity of less  
13.32 than 40 kilowatts that generates electricity from a renewable energy source.

13.33 (2) "Renewable energy source" means:

13.34 (i) solar;

13.35 (ii) wind;

- 14.1           (iii) hydroelectric;  
14.2           (iv) hydrogen, provided that after January 1, 2010, the hydrogen must be generated  
14.3 from the resources listed in this clause; or  
14.4           (v) biomass, which includes, without limitation, landfill gas; an anaerobic digester  
14.5 system; and the predominantly organic components of wastewater effluent, sludge, or  
14.6 related by-products from publicly owned treatment works, but not including incineration  
14.7 of wastewater sludge to produce electricity.

14.8           **EFFECTIVE DATE.** This section is effective the day following final enactment.

14.9           Sec. 3. **SOLAR ENERGY PROJECTS IN PUBLIC BUILDINGS AND**  
14.10 **SCHOOLS.**

14.11           (a) The commissioner shall establish a program to award grants to:

14.12           (1) local units of government to pay the costs of installing solar energy projects to  
14.13 generate energy used in public buildings; or

14.14           (2) to school districts to pay the costs of installing solar energy projects to generate  
14.15 energy used in K-12 schools.

14.16           (b) To be eligible to receive a grant, a project must:

14.17           (1) begin operation after July 1, 2009; and

14.18           (2) meet all other conditions established under the act.

14.19           (c) The commissioner shall develop an application form, application review  
14.20 procedures, criteria that a project must meet in order to be considered for a grant award,  
14.21 procedures and guidelines for project monitoring and evaluation, and other administrative  
14.22 procedures necessary to fully implement a grant program.

14.23           (d) In awarding grants, the commissioner must determine, at a minimum, the  
14.24 following:

14.25           (1) that the physical condition of the building is sufficient to support the efficient  
14.26 operation of the solar energy project;

14.27           (2) that there is no significant possibility that the building may close within ten  
14.28 years, which determination, for a school, must be based on enrollment projections; and

14.29           (3) that the projected cumulative energy savings exceed the grant amount within 15  
14.30 years for a qualifying solar thermal project, and within 20 years for a photovoltaic device.

14.31           (e) In awarding grants, the commissioner must also consider:

14.32           (1) the reliability and cost-effectiveness of the solar technology to be installed;

14.33           (2) the extent to which the proposal effectively coordinates with the conservation  
14.34 and energy efficiency programs offered by the energy utilities serving the building in

15.1 which the project is located, and with the public building enhanced energy efficiency  
15.2 program under section 216C.43, if applicable;

15.3 (3) life cycle energy use reductions and greenhouse gas emissions reductions  
15.4 projected per dollar of installed cost of the project; and

15.5 (4) the geographic distribution of grant recipients throughout the state.

15.6 (f) For the purposes of this section:

15.7 (1) "public building" means any publicly owned building, sports arena, or other  
15.8 facility of a county, city, or other local unit of government; and

15.9 (2) "solar energy" means:

15.10 (i) a photovoltaic device, as defined in Minnesota Statutes, section 216C.06,  
15.11 subdivision 16; or

15.12 (ii) a qualifying thermal project, as defined in Minnesota Statutes, section  
15.13 216B.2411, subdivision 2, that includes modifications made to a distribution system to  
15.14 distribute heating or cooling throughout a building.

15.15 **EFFECTIVE DATE.** This section is effective the day following final enactment.

## 15.16 **ARTICLE 5**

### 15.17 **MISCELLANEOUS PROGRAMS**

15.18 Section 1. **ENERGY PROGRAMS IN COMMERCIAL AND INDUSTRIAL**  
15.19 **BUILDINGS.**

15.20 (a) The commissioner shall establish a program to award grants to commercial  
15.21 and industrial facilities for the purpose of installing energy-efficiency improvements or  
15.22 creating renewable energy sources to generate electricity or to heat or cool a building. To  
15.23 be eligible to receive a grant, a project must:

15.24 (1) begin commercial operation after July 1, 2009; and

15.25 (2) meet all other conditions established under the act.

15.26 (b) The commissioner shall develop an application form, application review  
15.27 procedures, criteria that a project must meet in order to be considered for a grant award,  
15.28 procedures and guidelines for project monitoring and evaluation, and other administrative  
15.29 procedures necessary to fully implement a grant program.

15.30 (c) For the purposes of this section, "renewable energy source" means:

15.31 (i) solar;

15.32 (ii) wind;

15.33 (iii) hydroelectric;

16.1 (iv) hydrogen, provided that after January 1, 2010, the hydrogen must be generated  
16.2 from the resources listed in this clause; or

16.3 (v) biomass, which includes, without limitation, landfill gas; an anaerobic digester  
16.4 system; and the predominantly organic components of wastewater effluent, sludge, or  
16.5 related by-products from publicly owned treatment works, but not including incineration  
16.6 of wastewater sludge to produce electricity.

16.7 **EFFECTIVE DATE.** This section is effective the day following final enactment.

16.8 Sec. 2. **ENERGY EDUCATION, TRAINING, AND DATA SYSTEMS.**

16.9 The Office of Energy Security shall establish programs to work with teachers and  
16.10 other energy experts to include energy issues in K-12 curricula; develop training and  
16.11 certification programs for technicians to install and service wind and solar energy systems;  
16.12 and upgrade data systems to enable accurate tracking of energy savings resulting from the  
16.13 conservation improvement program and other state energy programs.

16.14 **EFFECTIVE DATE.** This section is effective the day following final enactment.

16.15 Sec. 3. **ENERGY EFFICIENCY GRANTS TO LOCAL GOVERNMENTS.**

16.16 The Office of Energy Security shall establish a grant program to award grants to  
16.17 local units of government to enhance energy efficiency and reduce energy use. Energy  
16.18 efficiency and conservation block grant funds may be used for grants for planning,  
16.19 consultant services, energy audits, implementing energy-efficient building codes and  
16.20 inspection services, energy efficiency renovations, street lighting, and the installation of  
16.21 renewable energy devices deployed on public buildings.

16.22 **ARTICLE 6**

16.23 **APPROPRIATIONS**

16.24 Section 1. **WEATHERIZATION ASSISTANCE PROGRAM APPROPRIATION.**

16.25 Of the funds available to the state of Minnesota from the federal stimulus funding for  
16.26 the weatherization assistance program under the American Recovery and Reinvestment  
16.27 Act of 2009, Public Law 111-5, \$131,937,411 is appropriated to the commissioner of  
16.28 commerce. The funds must be administered consistent with the requirements in article 3,  
16.29 section 1.

16.30 Sec. 2. **ENERGY EFFICIENCY AND CONSERVATION BLOCK PROGRAM**  
16.31 **APPROPRIATION.**

17.1 Of the funds available to the state of Minnesota from the federal stimulus funding  
17.2 for the Energy Efficiency and Conservation Block Grant Program under the American  
17.3 Recovery and Reinvestment Act of 2009, Public Law 111-5, \$10,644,100, is appropriated  
17.4 to the commissioner of commerce. The appropriation must be distributed as follows:

17.5 (1) \$6,546,121 is for energy efficiency grants to local government in article 5,  
17.6 section 3; and

17.7 (2) \$4,097,979, is for local government and school district buildings consistent  
17.8 with the requirements in article 3, section 2.

17.9 **EFFECTIVE DATE.** This section is effective the day following final enactment.

17.10 **Sec. 3. STATE ENERGY PROGRAM APPROPRIATION.**

17.11 Of the funds available to the state of Minnesota from the federal stimulus funding  
17.12 for the State Energy Program under the American Recovery and Reinvestment Act of  
17.13 2009, Public Law 111-5, \$54,172,000 is appropriated to the commissioner of commerce.

17.14 Of this amount:

17.15 (1) \$10,650,000 is for local government and school district buildings consistent  
17.16 with the requirements in article 3, section 2;

17.17 (2) \$8,000,000 is for state government buildings consistent with the requirements in  
17.18 article 3, section 3;

17.19 (3) \$12,000,000 is for the residential energy financing program in article 3, section 5;

17.20 (4) \$12,000,000 is for renewable energy programs, including, but not limited to, the  
17.21 programs specified in article 4;

17.22 (6) \$5,000,000 is for grants to commercial and industrial facilities for energy  
17.23 efficiency and renewable energy projects in article 5, section 1;

17.24 (7) \$5,022,000 is for energy education, training, and information and data systems in  
17.25 article 5, section 2; and

17.26 (8) \$1,500,000 is for a grant to the Board of Trustees of the Minnesota State Colleges  
17.27 and Universities for the International Renewable Energy Technology Institute (IRETI) to  
17.28 be located at Minnesota State University, Mankato, as a public and private partnership to  
17.29 support applied research in renewable energy and energy efficiency to aid in the transfer of  
17.30 technology from Sweden to Minnesota and to support technology commercialization from  
17.31 companies located in Minnesota and throughout the world.

17.32 **EFFECTIVE DATE.** This section is effective the day following final enactment.

18.1 **ARTICLE 1**

18.2 **DEPARTMENT OF COMMERCE; OTHER REGULATORY PROVISIONS**

18.3 Section 1. Minnesota Statutes 2008, section 47.58, subdivision 1, is amended to read:

18.4 Subdivision 1. **Definitions.** For the purposes of this section, the terms defined in this  
18.5 subdivision have the meanings given them.

18.6 (a) "Reverse mortgage loan" means a loan:

18.7 (1) Made to a borrower wherein the committed principal amount is paid to the  
18.8 borrower in equal or unequal installments over a period of months or years, interest is  
18.9 assessed, and authorized closing costs are incurred as specified in the loan agreement;

18.10 (2) Which is secured by a mortgage on residential property owned solely by the  
18.11 borrower; and

18.12 (3) Which is due when the committed principal amount has been fully paid to the  
18.13 borrower, or upon sale of the property securing the loan, or upon the death of the last  
18.14 surviving borrower, or upon the borrower terminating use of the property as principal  
18.15 residence so as to disqualify the property from the homestead credit given in chapter 290A.

18.16 (b) "Lender" means any bank subject to chapter 48, credit union subject to chapter  
18.17 52, savings bank organized and operated pursuant to chapter 50, savings association  
18.18 subject to chapter 51A, any residential mortgage originator subject to chapter 58, or any  
18.19 insurance company as defined in section 60A.02, subdivision 4. "Lender" also includes  
18.20 any federally chartered bank supervised by the comptroller of the currency or federally  
18.21 chartered savings association supervised by the Federal Home Loan Bank Board or  
18.22 federally chartered credit union supervised by the National Credit Union Administration,  
18.23 to the extent permitted by federal law.

18.24 (c) "Borrower" includes any natural person holding an interest in severalty or as joint  
18.25 tenant or tenant-in-common in the property securing a reverse mortgage loan.

18.26 (d) "Outstanding loan balance" means the current net amount of money owed by the  
18.27 borrower to the lender whether or not that sum is suspended pursuant to the terms of the  
18.28 reverse mortgage loan agreement or is immediately due and payable. The outstanding  
18.29 loan balance is calculated by adding the current totals of the items described in clauses (1)  
18.30 to (5) and subtracting the current totals of the item described in clause (6):

18.31 (1) The sum of all payments made by the lender which are necessary to clear the  
18.32 property securing the loan of any outstanding mortgage encumbrance or mechanics or  
18.33 material supplier's lien.

18.34 (2) The total disbursements made by the lender to date pursuant to the loan  
18.35 agreement as formulated in accordance with subdivision 3.

19.1 (3) All taxes, assessments, insurance premiums and other similar charges paid to  
19.2 date by the lender pursuant to subdivision 6, which charges were not reimbursed by the  
19.3 borrower within 60 days.

19.4 (4) All actual closing costs which the borrower has deferred, if a deferral provision  
19.5 is contained in the loan agreement as authorized by subdivision 7.

19.6 (5) The total accrued interest to date, as authorized by subdivision 5.

19.7 (6) All payments made by the borrower pursuant to subdivision 4.

19.8 (e) "Actual closing costs" mean reasonable charges or sums ordinarily paid at the  
19.9 time of closing for the following, whether or not retained by the lender:

19.10 (1) Any insurance premiums on policies covering the mortgaged property including  
19.11 but not limited to premiums for title insurance, fire and extended coverage insurance, flood  
19.12 insurance, and private mortgage insurance.

19.13 (2) Abstracting, title examination and search, and examination of public records  
19.14 related to the mortgaged property.

19.15 (3) The preparation and recording of any or all documents required by law or custom  
19.16 for closing a reverse mortgage loan agreement.

19.17 (4) Appraisal and survey of real property securing a reverse mortgage loan.

19.18 (5) A single service charge, which service charge shall include any consideration,  
19.19 not otherwise specified in this section as an "actual closing cost," paid by the borrower to  
19.20 the lender for or in relation to the acquisition, making, refinancing or modification of a  
19.21 reverse mortgage loan, and shall also include any consideration received by the lender  
19.22 for making a commitment for a reverse mortgage loan, whether or not an actual loan  
19.23 follows the commitment. The service charge shall not exceed one percent of the bona fide  
19.24 committed principal amount of the reverse mortgage loan.

19.25 (6) Charges and fees necessary for or related to the transfer of real property securing  
19.26 a reverse mortgage loan or the closing of a reverse mortgage loan agreement paid by the  
19.27 borrower and received by any party other than the lender.

19.28 Sec. 2. Minnesota Statutes 2008, section 47.60, subdivision 1, is amended to read:

19.29 Subdivision 1. **Definitions.** For purposes of this section, the terms defined have  
19.30 the meanings given them:

19.31 (a) "Consumer small loan" is a loan transaction in which cash is advanced to a  
19.32 borrower for the borrower's own personal, family, or household purpose. A consumer  
19.33 small loan is a short-term, unsecured loan to be repaid in a single installment. The cash  
19.34 advance of a consumer small loan is equal to or less than \$350. A consumer small loan

20.1 includes an indebtedness evidenced by but not limited to a promissory note or agreement  
20.2 to defer the presentation of a personal check for a fee.

20.3 (b) "Consumer small loan lender" is a financial institution as defined in section  
20.4 47.59 or a person business entity registered with the commissioner and engaged in the  
20.5 business of making consumer small loans.

20.6 Sec. 3. Minnesota Statutes 2008, section 47.60, subdivision 3, is amended to read:

20.7 Subd. 3. **Filing.** Before a person business entity other than a financial institution  
20.8 as defined by section 47.59 engages in the business of making consumer small loans to  
20.9 Minnesota residents, the person business entity shall file with the commissioner as a  
20.10 consumer small loan lender. The filing must be on a form prescribed by the commissioner  
20.11 together with a fee of \$250 for each place of business and contain the following  
20.12 information in addition to the information required by the commissioner:

20.13 (1) evidence that the filer has available for the operation of the business at the  
20.14 location specified, liquid assets of at least \$50,000; and

20.15 (2) a biographical statement on the principal person responsible for the operation  
20.16 and management of the business to be certified.

20.17 Revocation of the filing ~~and the right to engage in the business of a consumer small~~  
20.18 ~~loan lender~~ is the same as in the case of a regulated lender license in section 56.09.

20.19 For purposes of this subdivision, "business entity" includes one that does not have a  
20.20 physical location in Minnesota that makes a consumer small loan electronically via the  
20.21 Internet.

20.22 Sec. 4. Minnesota Statutes 2008, section 47.60, subdivision 6, is amended to read:

20.23 Subd. 6. **Penalties for violation.** A person business entity or the person's entity's  
20.24 members, officers, directors, agents, and employees who violate or participate in the  
20.25 violation of any of the provisions of this section may be liable in the same manner as in  
20.26 section 56.19.

20.27 Sec. 5. Minnesota Statutes 2008, section 48.21, is amended to read:

20.28 **48.21 REAL ESTATE; RESTRICTIONS ON HOLDING.**

20.29 Subdivision 1. **Specific restrictions.** (a) A bank may purchase, carry as an asset,  
20.30 and convey real estate only:

20.31 (1) as provided for in section 47.10;

20.32 (2) if acquired through foreclosure of a mortgage given to it in good faith as security  
20.33 for loans made by or money due to it;

21.1 (3) if conveyed to it in satisfaction of debts previously contracted in good faith in  
21.2 the course of its dealings;

21.3 (4) if acquired by sale on execution or judgment of a court in its favor; or

21.4 (5) if reasonably necessary to mitigate or avoid loss on a loan or investment  
21.5 theretofore made.

21.6 (b) Real estate acquired under clauses (2) to (5) shall be carried as an asset only in  
21.7 accordance with rules the commissioner prescribes. The maximum period for holding  
21.8 other real estate as an asset shall be five years, provided that upon application to the  
21.9 commissioner, the commissioner may approve the possession of such real estate by a bank  
21.10 for a period longer than five years, but not to exceed an additional five years, if:

21.11 (1) the bank has made a good faith attempt to dispose of the real estate within the  
21.12 initial five-year period; or

21.13 (2) disposal within the initial five-year period would be detrimental to the bank.

21.14 Subd. 2. **Real estate holdings not bank liabilities.** Real estate owned by a bank  
21.15 as a result of actions authorized in clauses (2) to (5) of subdivision 1 and subsequently  
21.16 sold to any buyer on a contract for deed may not be considered creating a liability to a  
21.17 bank for purposes of section 48.24.

21.18 Subd. 3. **Real estate holdings not sold; authority to write off.** Notwithstanding  
21.19 any rules of the commissioner to the contrary, if real estate owned by a bank pursuant to  
21.20 clauses (2) to (5) of subdivision 1 is not sold or otherwise disposed of within the maximum  
21.21 period ~~established by rule by the commissioner~~, the bank may write off any remaining  
21.22 balance at a rate not less than one-fifth of that balance each subsequent calendar year.

21.23 Sec. 6. Minnesota Statutes 2008, section 58.05, subdivision 3, is amended to read:

21.24 Subd. 3. **Certificate of exemption.** A person must obtain a certificate of exemption  
21.25 from the commissioner to qualify as an exempt person under section 58.04, subdivision 1,  
21.26 paragraph (c), a financial institution under clause (2), or by order of the commissioner  
21.27 under clause (6); or under section 58.04, subdivision 2, paragraph (b), as a financial  
21.28 institution under clause ~~(3)~~ (4), or by order of the commissioner under clause ~~(7)~~ (8).

21.29 Sec. 7. Minnesota Statutes 2008, section 58.06, subdivision 2, is amended to read:

21.30 Subd. 2. **Application contents.** (a) The application must contain the name and  
21.31 complete business address or addresses of the license applicant. The license applicant  
21.32 must be a partnership, limited liability partnership, association, limited liability company,  
21.33 corporation, or other form of business organization, and the application must contain the  
21.34 names and complete business addresses of each partner, member, director, and principal

22.1 officer. The application must also include a description of the activities of the license  
22.2 applicant, in the detail and for the periods the commissioner may require.

22.3 (b) ~~An~~ A residential mortgage originator applicant must submit one of the following:

22.4 (1) evidence which shows, to the commissioner's satisfaction, that either the federal  
22.5 Department of Housing and Urban Development or the Federal National Mortgage  
22.6 Association has approved the residential mortgage originator applicant as a mortgagee;

22.7 (2) a surety bond or irrevocable letter of credit in the amount of not less than  
22.8 \$50,000 in a form approved by the commissioner, issued by an insurance company or bank  
22.9 authorized to do so in this state. The bond or irrevocable letter of credit must be available  
22.10 for the recovery of expenses, fines, and fees levied by the commissioner under this chapter  
22.11 and for losses incurred by borrowers. The bond or letter of credit must be submitted with  
22.12 the license application, and evidence of continued coverage must be submitted with each  
22.13 renewal. Any change in the bond or letter of credit must be submitted for approval by the  
22.14 commissioner within ten days of its execution; or

22.15 (3) a copy of the residential mortgage originator applicant's most recent audited  
22.16 financial statement, including balance sheet, statement of income or loss, statements of  
22.17 changes in shareholder equity, and statement of changes in financial position. Financial  
22.18 statements must be as of a date within 12 months of the date of application.

22.19 (c) The application must also include all of the following:

22.20 (1) an affirmation under oath that the applicant:

22.21 (i) is in compliance with the requirements of section 58.125;

22.22 (ii) will maintain a perpetual roster of individuals employed as residential mortgage  
22.23 originators, including employees and independent contractors, which includes the ~~date~~  
22.24 dates that mandatory testing, initial education ~~was~~, and continuing education were  
22.25 completed. In addition, the roster must be made available to the commissioner on demand,  
22.26 within three business days of the commissioner's request;

22.27 (iii) will advise the commissioner of any material changes to the information  
22.28 submitted in the most recent application within ten days of the change;

22.29 (iv) will advise the commissioner in writing immediately of any bankruptcy petitions  
22.30 filed against or by the applicant or licensee;

22.31 (v) will maintain at all times either a net worth, net of intangibles, of at least  
22.32 \$250,000 or a surety bond or irrevocable letter of credit in the amount of at least \$50,000;

22.33 (vi) complies with federal and state tax laws; and

22.34 (vii) complies with sections 345.31 to 345.60, the Minnesota unclaimed property  
22.35 law;

23.1 (2) information as to the mortgage lending, servicing, or brokering experience of the  
23.2 applicant and persons in control of the applicant;

23.3 (3) information as to criminal convictions, excluding traffic violations, of persons in  
23.4 control of the license applicant;

23.5 (4) whether a court of competent jurisdiction has found that the applicant or persons  
23.6 in control of the applicant have engaged in conduct evidencing gross negligence, fraud,  
23.7 misrepresentation, or deceit in performing an act for which a license is required under  
23.8 this chapter;

23.9 (5) whether the applicant or persons in control of the applicant have been the subject  
23.10 of: an order of suspension or revocation, cease and desist order, or injunctive order, or  
23.11 order barring involvement in an industry or profession issued by this or another state or  
23.12 federal regulatory agency or by the Secretary of Housing and Urban Development within  
23.13 the ten-year period immediately preceding submission of the application; and

23.14 (6) other information required by the commissioner.

23.15 Sec. 8. Minnesota Statutes 2008, section 58.126, is amended to read:

23.16 **58.126 EDUCATION AND TESTING REQUIREMENT.**

23.17 (a) No individual shall engage in residential mortgage origination or make residential  
23.18 mortgage loans, whether as an employee or independent contractor, before the completion  
23.19 of ~~15~~ 20 hours of educational training which has been approved by the commissioner, and  
23.20 covering state and federal laws concerning residential mortgage lending.

23.21 (b) In addition to the initial education requirements in paragraph (a), each individual  
23.22 must also complete eight hours of continuing education annually. The education must  
23.23 include:

23.24 (1) three hours of federal law and regulations;

23.25 (2) two hours of ethics, which must include fraud, consumer protection, and fair  
23.26 lending; and

23.27 (3) two hours of standards governing nontraditional mortgage lending.

23.28 (c) The commissioner may by rule establish testing requirements for individuals  
23.29 subject to the requirements of paragraphs (a) and (b). An individual must satisfy the  
23.30 testing requirements established by the commissioner before engaging in residential  
23.31 mortgage loan origination or making residential mortgage loans.

23.32 **EFFECTIVE DATE.** This section is effective September 1, 2009, and applies to  
23.33 license applications and renewals made on or after that date.

24.1 Sec. 9. Minnesota Statutes 2008, section 58.13, subdivision 1, is amended to read:

24.2 Subdivision 1. **Generally.** (a) No person acting as a residential mortgage originator  
24.3 or servicer, including a person required to be licensed under this chapter, and no person  
24.4 exempt from the licensing requirements of this chapter under section 58.04, except as  
24.5 otherwise provided in paragraph (b), shall:

24.6 (1) fail to maintain a trust account to hold trust funds received in connection with a  
24.7 residential mortgage loan;

24.8 (2) fail to deposit all trust funds into a trust account within three business days of  
24.9 receipt; commingle trust funds with funds belonging to the licensee or exempt person; or  
24.10 use trust account funds for any purpose other than that for which they are received;

24.11 (3) unreasonably delay the processing of a residential mortgage loan application,  
24.12 or the closing of a residential mortgage loan. For purposes of this clause, evidence of  
24.13 unreasonable delay includes but is not limited to those factors identified in section 47.206,  
24.14 subdivision 7, clause (d);

24.15 (4) fail to disburse funds according to its contractual or statutory obligations;

24.16 (5) fail to perform in conformance with its written agreements with borrowers,  
24.17 investors, other licensees, or exempt persons;

24.18 (6) charge a fee for a product or service where the product or service is not actually  
24.19 provided, or misrepresent the amount charged by or paid to a third party for a product  
24.20 or service;

24.21 (7) fail to comply with sections 345.31 to 345.60, the Minnesota unclaimed property  
24.22 law;

24.23 (8) violate any provision of any other applicable state or federal law regulating  
24.24 residential mortgage loans including, without limitation, sections 47.20 to 47.208, and  
24.25 47.58;

24.26 (9) make or cause to be made, directly or indirectly, any false, deceptive, or  
24.27 misleading statement or representation in connection with a residential loan transaction  
24.28 including, without limitation, a false, deceptive, or misleading statement or representation  
24.29 regarding the borrower's ability to qualify for any mortgage product;

24.30 (10) conduct residential mortgage loan business under any name other than that  
24.31 under which the license or certificate of exemption was issued;

24.32 (11) compensate, whether directly or indirectly, coerce or intimidate an appraiser for  
24.33 the purpose of influencing the independent judgment of the appraiser with respect to the  
24.34 value of real estate that is to be covered by a residential mortgage or is being offered as  
24.35 security according to an application for a residential mortgage loan;

25.1 (12) issue any document indicating conditional qualification or conditional approval  
25.2 for a residential mortgage loan, unless the document also clearly indicates that final  
25.3 qualification or approval is not guaranteed, and may be subject to additional review;

25.4 (13) make or assist in making any residential mortgage loan with the intent that the  
25.5 loan will not be repaid and that the residential mortgage originator will obtain title to  
25.6 the property through foreclosure;

25.7 (14) provide or offer to provide for a borrower, any brokering or lending services  
25.8 under an arrangement with a person other than a licensee or exempt person, provided that  
25.9 a person may rely upon a written representation by the residential mortgage originator that  
25.10 it is in compliance with the licensing requirements of this chapter;

25.11 (15) claim to represent a licensee or exempt person, unless the person is an employee  
25.12 of the licensee or exempt person or unless the person has entered into a written agency  
25.13 agreement with the licensee or exempt person;

25.14 (16) fail to comply with the record keeping and notification requirements identified  
25.15 in section 58.14 or fail to abide by the affirmations made on the application for licensure;

25.16 (17) represent that the licensee or exempt person is acting as the borrower's agent  
25.17 after providing the nonagency disclosure required by section 58.15, unless the disclosure  
25.18 is retracted and the licensee or exempt person complies with all of the requirements of  
25.19 section 58.16;

25.20 (18) make, provide, or arrange for a residential mortgage loan that is of a lower  
25.21 investment grade if the borrower's credit score or, if the originator does not utilize credit  
25.22 scoring or if a credit score is unavailable, then comparable underwriting data, indicates  
25.23 that the borrower may qualify for a residential mortgage loan, available from or through  
25.24 the originator, that is of a higher investment grade, unless the borrower is informed that  
25.25 the borrower may qualify for a higher investment grade loan with a lower interest rate  
25.26 and/or lower discount points, and consents in writing to receipt of the lower investment  
25.27 grade loan;

25.28 For purposes of this section, "investment grade" refers to a system of categorizing  
25.29 residential mortgage loans in which the loans are: (i) commonly referred to as "prime" or  
25.30 "subprime"; (ii) commonly designated by an alphabetical character with "A" being the  
25.31 highest investment grade; and (iii) are distinguished by interest rate or discount points  
25.32 or both charged to the borrower, which vary according to the degree of perceived risk  
25.33 of default based on factors such as the borrower's credit, including credit score and  
25.34 credit patterns, income and employment history, debt ratio, loan-to-value ratio, and prior  
25.35 bankruptcy or foreclosure;

26.1 (19) make, publish, disseminate, circulate, place before the public, or cause to be  
26.2 made, directly or indirectly, any advertisement or marketing materials of any type, or any  
26.3 statement or representation relating to the business of residential mortgage loans that is  
26.4 false, deceptive, or misleading;

26.5 (20) advertise loan types or terms that are not available from or through the licensee  
26.6 or exempt person on the date advertised, or on the date specified in the advertisement.

26.7 For purposes of this clause, advertisement includes, but is not limited to, a list of sample  
26.8 mortgage terms, including interest rates, discount points, and closing costs provided by  
26.9 licensees or exempt persons to a print or electronic medium that presents the information  
26.10 to the public;

26.11 (21) use or employ phrases, pictures, return addresses, geographic designations, or  
26.12 other means that create the impression, directly or indirectly, that a licensee or other  
26.13 person is a governmental agency, or is associated with, sponsored by, or in any manner  
26.14 connected to, related to, or endorsed by a governmental agency, if that is not the case;

26.15 (22) violate section 82.49, relating to table funding;

26.16 (23) make, provide, or arrange for a residential mortgage loan all or a portion  
26.17 of the proceeds of which are used to fully or partially pay off a "special mortgage"  
26.18 unless the borrower has obtained a written certification from an authorized independent  
26.19 loan counselor that the borrower has received counseling on the advisability of the  
26.20 loan transaction. For purposes of this section, "special mortgage" means a residential  
26.21 mortgage loan originated, subsidized, or guaranteed by or through a state, tribal, or  
26.22 local government, or nonprofit organization, that bears one or more of the following  
26.23 nonstandard payment terms which substantially benefit the borrower: (i) payments vary  
26.24 with income; (ii) payments of principal or interest are not required or can be deferred under  
26.25 specified conditions; (iii) principal or interest is forgivable under specified conditions;  
26.26 or (iv) where no interest or an annual interest rate of two percent or less is charged in  
26.27 connection with the loan. For purposes of this section, "authorized independent loan  
26.28 counselor" means a nonprofit, third-party individual or organization providing homebuyer  
26.29 education programs, foreclosure prevention services, mortgage loan counseling, or credit  
26.30 counseling certified by the United States Department of Housing and Urban Development,  
26.31 the Minnesota Home Ownership Center, the Minnesota Mortgage Foreclosure Prevention  
26.32 Association, AARP, or NeighborWorks America;

26.33 (24) make, provide, or arrange for a residential mortgage loan without verifying  
26.34 the borrower's reasonable ability to pay the scheduled payments of the following, as  
26.35 applicable: principal; interest; real estate taxes; homeowner's insurance, assessments,  
26.36 and mortgage insurance premiums. For loans in which the interest rate may vary, the

27.1 reasonable ability to pay shall be determined based on a fully indexed rate and a repayment  
27.2 schedule which achieves full amortization over the life of the loan. For all residential  
27.3 mortgage loans, the borrower's income and financial resources must be verified by tax  
27.4 returns, payroll receipts, bank records, or other similarly reliable documents.

27.5 Nothing in this section shall be construed to limit a mortgage originator's or exempt  
27.6 person's ability to rely on criteria other than the borrower's income and financial resources  
27.7 to establish the borrower's reasonable ability to repay the residential mortgage loan,  
27.8 including criteria established by the United States Department of Veterans Affairs or the  
27.9 United States Department of Housing and Urban Development for interest rate reduction  
27.10 refinancing loans or streamline loans, or criteria authorized or promulgated by the  
27.11 Federal National Mortgage Association or Federal Home Loan Mortgage Corporation;  
27.12 however, such other criteria must be verified through reasonably reliable methods and  
27.13 documentation. The mortgage originator's analysis of the borrower's reasonable ability  
27.14 to repay may include, but is not limited to, consideration of the following items, if  
27.15 verified: (1) the borrower's current and expected income; (2) current and expected cash  
27.16 flow; (3) net worth and other financial resources other than the consumer's equity in the  
27.17 dwelling that secures the loan; (4) current financial obligations; (5) property taxes and  
27.18 insurance; (6) assessments on the property; (7) employment status; (8) credit history; (9)  
27.19 debt-to-income ratio; (10) credit scores; (11) tax returns; (12) pension statements; and  
27.20 (13) employment payment records, provided that no mortgage originator shall disregard  
27.21 facts and circumstances that indicate that the financial or other information submitted by  
27.22 the consumer is inaccurate or incomplete. A statement by the borrower to the residential  
27.23 mortgage originator or exempt person of the borrower's income and resources or sole  
27.24 reliance on any single item listed above is not sufficient to establish the existence of the  
27.25 income or resources when verifying the reasonable ability to pay.

27.26 (25) engage in "churning." As used in this section, "churning" means knowingly or  
27.27 intentionally making, providing, or arranging for a residential mortgage loan when the  
27.28 new residential mortgage loan does not provide a reasonable, tangible net benefit to the  
27.29 borrower considering all of the circumstances including the terms of both the new and  
27.30 refinanced loans, the cost of the new loan, and the borrower's circumstances;

27.31 (26) the first time a residential mortgage originator orally informs a borrower of the  
27.32 anticipated or actual periodic payment amount for a first-lien residential mortgage loan  
27.33 which does not include an amount for payment of property taxes and hazard insurance,  
27.34 the residential mortgage originator must inform the borrower that an additional amount  
27.35 will be due for taxes and insurance and, if known, disclose to the borrower the amount of  
27.36 the anticipated or actual periodic payments for property taxes and hazard insurance. This

28.1 same oral disclosure must be made each time the residential mortgage originator orally  
28.2 informs the borrower of a different anticipated or actual periodic payment amount change  
28.3 from the amount previously disclosed. A residential mortgage originator need not make  
28.4 this disclosure concerning a refinancing loan if the residential mortgage originator knows  
28.5 that the borrower's existing loan that is anticipated to be refinanced does not have an  
28.6 escrow account; or

28.7 (27) make, provide, or arrange for a residential mortgage loan, other than a reverse  
28.8 mortgage pursuant to United States Code, title 15, chapter 41, if the borrower's compliance  
28.9 with any repayment option offered pursuant to the terms of the loan will result in negative  
28.10 amortization during any six-month period.

28.11 (b) Paragraph (a), clauses (24) through (27), do not apply to a state or federally  
28.12 chartered bank, savings bank, or credit union, an institution chartered by Congress under  
28.13 the Farm Credit Act, or to a person making, providing, or arranging a residential mortgage  
28.14 loan originated or purchased by a state agency or a tribal or local unit of government. This  
28.15 paragraph supersedes any inconsistent provision of this chapter.

28.16 Sec. 10. Minnesota Statutes 2008, section 60A.124, is amended to read:

28.17 **60A.124 INDEPENDENT AUDIT.**

28.18 The audit report of the independent certified public accountant that performs the  
28.19 audit of an insurer's annual statement as required under section ~~60A.129~~ 60A.1291,  
28.20 subdivision ~~3 2~~, ~~paragraph (a)~~, should contain a statement as to whether anything, in  
28.21 connection with their audit, came to their attention that caused them to believe that the  
28.22 insurer failed to adopt and consistently apply the valuation procedure as required by  
28.23 sections 60A.122 and 60A.123.

28.24 Sec. 11. **60A.1291 ANNUAL AUDIT.**

28.25 Subdivision 1. Definitions. The definitions in this subdivision apply to this section.

28.26 (a) "Accountant" and "independent public accountant" mean an independent certified  
28.27 public accountant or accounting firm in good standing with the American Institute of  
28.28 Certified Public Accountants and in all states in which the accountant or firm is licensed  
28.29 or is required to be licensed to practice. For Canadian and British companies, the term  
28.30 means a Canadian-chartered or British-chartered accountant.

28.31 (b) "Audit committee" means a committee or equivalent body established by the  
28.32 board of directors of an entity for the purpose of overseeing the accounting and financial  
28.33 reporting processes of an insurer or group of insurers, and audits of financial statements of  
28.34 the insurer or group of insurers. The audit committee of any entity that controls a group of

29.1 insurers may be deemed to be the audit committee for one or more of these controlled  
29.2 insurers solely for the purposes of this section at the election of the controlling person  
29.3 under subdivision 15, paragraph (e). If an audit committee is not designated by the insurer,  
29.4 the insurer's entire board of directors constitutes the audit committee.

29.5 (c) "Indemnification" means an agreement of indemnity or a release from liability  
29.6 where the intent or effect is to shift or limit in any manner the potential liability of the  
29.7 person or firm for failure to adhere to applicable auditing or professional standards,  
29.8 whether or not resulting in part from knowing of other misrepresentations made by the  
29.9 insurer or its representatives.

29.10 (d) "Independent board member" has the same meaning as described in subdivision  
29.11 15, paragraph (c).

29.12 (e) "Internal control over financial reporting" means a process effected by an entity's  
29.13 board of directors, management and other personnel designed to provide reasonable  
29.14 assurance regarding the reliability of the financial statements, for example, those items  
29.15 specified in subdivision 4, paragraphs (a), clauses (2) to (6), (b), and (c), and includes  
29.16 those policies and procedures that:

29.17 (1) pertain to the maintenance of records that, in reasonable detail, accurately and  
29.18 fairly reflect the transactions and dispositions of assets;

29.19 (2) provide reasonable assurance that transactions are recorded as necessary to permit  
29.20 preparation of the financial statements, for example, those items specified in subdivision 4,  
29.21 paragraphs (a), clauses (2) to (6), (b), and (c), and that receipts and expenditures are being  
29.22 made only in accordance with authorizations of management and directors; and

29.23 (3) provide reasonable assurance regarding prevention or timely detection of  
29.24 unauthorized acquisition, use or disposition of assets that could have a material effect on  
29.25 the financial statements, for example, those items specified in subdivision 4, paragraphs  
29.26 (a), clauses (2) to (6), (b), and (c).

29.27 (f) "SEC" means the United States Securities and Exchange Commission.

29.28 (g) "Section 404" means Section 404 of the Sarbanes-Oxley Act of 2002 and the  
29.29 SEC's rules and regulations promulgated under it.

29.30 (h) "Section 404 report" means management's report on "internal control over  
29.31 financial reporting" as defined by the SEC and the related attestation report of the  
29.32 independent certified public accountant as described in paragraph (a).

29.33 (i) "SOX compliant entity" means an entity that either is required to be  
29.34 compliant with, or voluntarily is compliant with, all of the following provisions of the  
29.35 Sarbanes-Oxley Act of 2002: (i) the preapproval requirements of Section 201 (section  
29.36 10A(i) of the Securities Exchange Act of 1934); (ii) the audit committee independence

30.1 requirements of Section 301 (section 10A(m)(3) of the Securities Exchange Act of 1934);  
30.2 and (iii) the internal control over financial reporting requirements of Section 404 (Item  
30.3 308 of SEC Regulation S-K).

30.4 Subd. 2. **Filing requirements.** Every insurance company doing business in this  
30.5 state, including fraternal benefit societies, reciprocal exchanges, service plan corporations  
30.6 licensed pursuant to chapter 62C, and legal service plans licensed pursuant to chapter  
30.7 62G, unless exempted by the commissioner pursuant to subdivision 9, paragraph (a), or by  
30.8 subdivision 18, shall have an annual audit of the financial activities of the most recently  
30.9 completed calendar year performed by an independent certified public accountant, and  
30.10 shall file the report of this audit with the commissioner on or before June 1 for the  
30.11 immediately preceding year ending December 31. The commissioner may require an  
30.12 insurer to file an audited financial report earlier than June 1 with 90 days' advance notice  
30.13 to the insurer.

30.14 Extensions of the June 1 filing date may be granted by the commissioner for 30-day  
30.15 periods upon a showing by the insurer and its independent certified public accountant of  
30.16 the reasons for requesting the extension and a determination by the commissioner of good  
30.17 cause for the extension.

30.18 The request for extension must be submitted in writing not less than ten days before  
30.19 the due date in sufficient detail to permit the commissioner to make an informed decision  
30.20 with respect to the requested extension.

30.21 If an extension is granted in accordance with this subdivision, a similar extension of  
30.22 30 days is granted to the filing of management's report of internal control over financial  
30.23 reporting.

30.24 Every insurer required to file an annual audited financial report pursuant to this  
30.25 subdivision shall designate a group of individuals as constituting its audit committee. The  
30.26 audit committee of an entity that controls an insurer may be deemed to be the insurer's  
30.27 audit committee for purposes of this subdivision at the election of the controlling person.

30.28 Subd. 3. **Exemptions.** Foreign and alien insurers filing audited financial reports in  
30.29 another state under the other state's requirements of audited financial reports which have  
30.30 been found by the commissioner to be substantially similar to these requirements are  
30.31 exempt from this subdivision if a copy of the audited financial report, communication of  
30.32 internal control related matters noted in an audit, accountant's letter of qualifications, and  
30.33 report on significant deficiencies in internal controls, which are filed with the other state,  
30.34 are filed with the commissioner in accordance with the filing dates specified in subdivision  
30.35 2 (Canadian insurers may submit accountants' reports as filed with the Canadian Dominion  
30.36 Department of Insurance); and a copy of any notification of adverse financial condition

31.1 report filed with the other state is filed with the commissioner within the time specified  
31.2 in subdivision 11. Foreign or alien insurers required to file management's report of  
31.3 internal control over financial reporting in another state are exempt from filing the report  
31.4 in this state provided the other state has substantially similar reporting requirements and  
31.5 the report is filed with the commissioner of the other state within the time specified.

31.6 This subdivision does not prohibit or in any way limit the commissioner from ordering,  
31.7 conducting, and performing examinations of insurers under the authority of this chapter.

31.8 Subd. 4. **Contents of annual audit; financial report.** (a) The annual audited  
31.9 financial report must report, in conformity with statutory accounting practices required  
31.10 or permitted by the commissioner of insurance of the state of domicile, the financial  
31.11 position of the insurer as of the end of the most recent calendar year and the results of  
31.12 its operations, cash flows, and changes in capital and surplus for the year ended. The  
31.13 annual audited financial report must include:

31.14 (1) a report of an independent certified public accountant;

31.15 (2) a balance sheet reporting admitted assets, liabilities, capital, and surplus;

31.16 (3) a statement of operations;

31.17 (4) a statement of cash flows;

31.18 (5) a statement of changes in capital and surplus; and

31.19 (6) notes to the financial statements.

31.20 (b) The notes required under paragraph (a) are those required by the appropriate  
31.21 National Association of Insurance Commissioners (NAIC) annual statement instructions  
31.22 and National Association of Insurance Commissioners Accounting Practices and  
31.23 Procedures Manual and include reconciliation of differences, if any, between the audited  
31.24 statutory financial statements and the annual statement filed under section 60A.13,  
31.25 subdivision 1, with a written description of the nature of these differences.

31.26 (c) The financial statements included in the audited financial report must be prepared  
31.27 in a form and using language and groupings substantially the same as the relevant sections  
31.28 of the annual statement of the insurer filed with the commissioner. The financial statement  
31.29 must be comparative, presenting the amounts as of December 31 of the current year and  
31.30 the amounts as of the immediately preceding December 31. In the first year in which  
31.31 an insurer is required to file an audited financial report, the comparative data may be  
31.32 omitted. The amounts may be rounded to the nearest \$1,000, and all immaterial amounts  
31.33 may be combined.

31.34 Subd. 5. **Designation of independent certified public accountant.** Each insurer  
31.35 required by this section to file an annual audited financial report must notify the  
31.36 commissioner in writing of the name and address of the independent certified public

32.1 accountant or accounting firm retained to conduct the annual audit within 60 days after  
32.2 becoming subject to the annual audit requirement. The insurer shall obtain from the  
32.3 accountant a letter which states that the accountant is aware of the provisions that relate  
32.4 to accounting and financial matters in the insurance laws and the rules of the insurance  
32.5 regulatory authority of the state of domicile. The letter shall affirm that the accountant will  
32.6 express an opinion on the financial statements in terms of their conformity to the statutory  
32.7 accounting practices prescribed or otherwise permitted by that insurance regulatory  
32.8 authority, specifying the exceptions believed to be appropriate. A copy of the accountant's  
32.9 letter shall be filed with the commissioner.

32.10 Subd. 6. **Report of disagreements.** If an accountant who was the accountant for  
32.11 the immediately preceding filed audited financial report is dismissed or resigns, the  
32.12 insurer shall notify the commissioner of this event within five business days. Within  
32.13 ten business days of this notification, the insurer shall also furnish the commissioner  
32.14 with a separate letter stating whether in the 24 months preceding this event there were  
32.15 any disagreements with the former accountant on any matter of accounting principles or  
32.16 practices, financial statement disclosure, or auditing scope or procedure, which, if not  
32.17 resolved to the satisfaction of the former accountant, would have caused that person to  
32.18 make reference to the subject matter of the disagreement in connection with the opinion  
32.19 on the financial statements. The disagreements required to be reported in response to this  
32.20 subdivision include both those resolved to the former accountant's satisfaction and those  
32.21 not resolved to the former accountant's satisfaction. Disagreements contemplated by this  
32.22 subdivision are those disagreements between personnel of the insurer responsible for  
32.23 presentation of its financial statements and personnel of the accounting firm responsible  
32.24 for rendering its report. The insurer shall also in writing request the former accountant  
32.25 to furnish a letter addressed to the insurer stating whether the accountant agrees with  
32.26 the statements contained in the insurer's letter and, if not, stating the reasons for any  
32.27 disagreement. The insurer shall furnish this responsive letter from the former accountant  
32.28 to the commissioner together with its own.

32.29 Subd. 7. **Qualifications of independent certified public accountant.** (a) The  
32.30 commissioner shall not recognize any person or firm as a qualified independent certified  
32.31 public accountant that is not in good standing with the American Institute of Certified  
32.32 Public Accountants and in all states in which the accountant is licensed or is required  
32.33 to be licensed to practice, or for a Canadian or British company, that is not a chartered  
32.34 accountant. Except as otherwise provided, an independent certified public accountant must  
32.35 be recognized as qualified as long as the person conforms to the standards of the person's  
32.36 profession, as contained in the Code of Professional Conduct of the American Institute

33.1 of Certified Public Accountants and the Code of Professional Conduct of the Minnesota  
33.2 Board of Public Accountancy or similar code and the person is properly licensed in good  
33.3 standing with all required state boards of accountancy.

33.4 (b) The lead or coordinating audit partner, having primary responsibility for the  
33.5 audit, may not act in that capacity for more than five consecutive years. The person shall  
33.6 be disqualified from acting in that or a similar capacity for the same company or its  
33.7 insurance subsidiaries or affiliates for a period of five consecutive years. An insurer may  
33.8 make application to the commissioner for relief from this rotation requirement on the  
33.9 basis of unusual circumstances. This application must be made at least 30 days before  
33.10 the end of the calendar year. The commissioner may consider the following factors in  
33.11 determining if the relief should be granted:

33.12 (1) number of partners, expertise of the partners, or the number of insurance clients  
33.13 in the currently registered firm;

33.14 (2) premium volume of the insurer; or

33.15 (3) number of jurisdictions in which the insurer transacts business.

33.16 The insurer shall file, with its annual statement filing, the approval for relief from this  
33.17 paragraph with the states that it is licensed in or doing business in and with the NAIC. If  
33.18 the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the  
33.19 approval in an electronic format acceptable to the NAIC.

33.20 (c) The commissioner shall not recognize as a qualified independent certified public  
33.21 accountant, nor accept an annual audited financial report, prepared in whole or in part by  
33.22 an accountant who provides to an insurer, contemporaneously with the audit, the following  
33.23 nonaudit services:

33.24 (1) bookkeeping or other services related to the accounting records or financial  
33.25 statements of the insurer;

33.26 (2) financial information systems design and implementation;

33.27 (3) appraisal or valuation services, fairness opinions, or contribution in-kind reports;

33.28 (4) actuarially oriented advisory services involving the determination of amounts  
33.29 recorded in the financial statements. The accountant may assist an insurer in understanding  
33.30 the methods, assumptions, and inputs used in the determination of amounts recorded in the  
33.31 financial statement only if it is reasonable to conclude that the services provided will not  
33.32 be subject to audit procedures during an audit of the insurer's financial statements. An  
33.33 accountant's actuary may also issue an actuarial opinion or certification on an insurer's  
33.34 reserves if the following conditions have been met:

33.35 (i) neither the accountant nor the accountant's actuary has performed any  
33.36 management functions or made any management decisions;

34.1 (ii) the insurer has competent personnel, or engages a third-party actuary, to estimate  
34.2 the loss reserves for which management takes responsibility; and

34.3 (iii) the accountant's actuary tests the reasonableness of the reserves after the  
34.4 insurer's management has determined the amount of the loss reserves;

34.5 (5) internal audit outsourcing services;

34.6 (6) management functions or human resources;

34.7 (7) broker or dealer, investment adviser, or investment banking services;

34.8 (8) legal services or expert services unrelated to the audit; and

34.9 (9) any other services that the commissioner determines, by rule, are impermissible.

34.10 (d) The commissioner shall not recognize as a qualified independent certified public  
34.11 accountant, nor accept any audited financial report, prepared in whole or in part by any  
34.12 natural person who has been convicted of fraud, bribery, a violation of the Racketeer  
34.13 Influenced and Corrupt Organizations Act, United States Code, title 18, sections 1961 to  
34.14 1968, or any dishonest conduct or practices under federal or state law, has been found to  
34.15 have violated the insurance laws of this state with respect to any previous reports submitted  
34.16 under this section, or has demonstrated a pattern or practice of failing to detect or disclose  
34.17 material information in previous reports filed under the provisions of this section.

34.18 (e) The commissioner, after notice and hearing under chapter 14, may find that  
34.19 the accountant is not qualified for purposes of expressing an opinion on the financial  
34.20 statements in the annual audited financial report. The commissioner may require the  
34.21 insurer to replace the accountant with another whose relationship with the insurer is  
34.22 qualified within the meaning of this section.

34.23 **Subd. 8. Exemptions to qualifications of certified public accountant.** (a) Insurers  
34.24 having direct written and assumed premiums of less than \$100,000,000 in any calendar  
34.25 year may request an exemption from subdivision 7, paragraph (c). The insurer shall  
34.26 file with the commissioner a written statement discussing the reasons why the insurer  
34.27 should be exempt from these provisions. If the commissioner finds, upon review of this  
34.28 statement, that compliance with this section would constitute a financial or organizational  
34.29 hardship upon the insurer, an exemption may be granted.

34.30 (b) A qualified independent certified public accountant who performs the audit  
34.31 may engage in other nonaudit services, including tax services, that are not described in  
34.32 subdivision 7, paragraph (c), only if the activity is approved in advance by the audit  
34.33 committee, in accordance with paragraph (c).

34.34 (c) All auditing services and nonaudit services provided to an insurer by the qualified  
34.35 independent certified public accountant of the insurer must be preapproved by the audit  
34.36 committee. The preapproval requirement is waived with respect to nonaudit services if

35.1 the insurer is a SOX compliant entity or a direct or indirect wholly owned subsidiary of a  
35.2 SOX compliant entity or:

35.3 (1) the aggregate amount of all such nonaudit services provided to the insurer  
35.4 constitutes not more than five percent of the total amount of fees paid by the insurer to  
35.5 its qualified independent certified public accountant during the fiscal year in which the  
35.6 nonaudit services are provided;

35.7 (2) the services were not recognized by the insurer at the time of the engagement to  
35.8 be nonaudit services; and

35.9 (3) the services are promptly brought to the attention of the audit committee and  
35.10 approved before the completion of the audit by the audit committee or by one or more  
35.11 members of the audit committee who are the members of the board of directors to whom  
35.12 authority to grant such approvals has been delegated by the audit committee.

35.13 (d) The audit committee may delegate to one or more designated members of the  
35.14 audit committee the authority to grant the preapprovals required by paragraph (c). The  
35.15 decisions of any member to whom this authority is delegated must be presented to the full  
35.16 audit committee at each of its scheduled meetings.

35.17 (e) The commissioner shall not recognize an independent certified public accountant  
35.18 as qualified for a particular insurer if a member of the board, president, chief executive  
35.19 officer, controller, chief financial officer, chief accounting officer, or any person serving in  
35.20 an equivalent position for that insurer, was employed by the independent certified public  
35.21 accountant and participated in the audit of that insurer during the one-year period preceding  
35.22 the date that the most current statutory opinion is due. This paragraph applies only to  
35.23 partners and senior managers involved in the audit. An insurer may make application to  
35.24 the commissioner for relief from this paragraph on the basis of unusual circumstances.

35.25 (f) The insurer shall file, with its annual statement filing, the approval for relief with  
35.26 the states that it is licensed in or doing business in and the NAIC. If the nondomestic state  
35.27 accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic  
35.28 format acceptable to the NAIC.

35.29 Subd. 9. **Consolidated or combined audits.** (a) The commissioner may allow  
35.30 an insurer to file consolidated or combined audited financial statements required by  
35.31 subdivision 2, in lieu of separate annual audited financial statements, where it can be  
35.32 demonstrated that an insurer is part of a group of insurance companies that has a pooling  
35.33 or 100 percent reinsurance agreement which substantially affects the solvency and  
35.34 integrity of the reserves of the insurer and the insurer cedes all of its direct and assumed  
35.35 business to the pool. An affiliated insurance company not meeting these requirements may  
35.36 be included in the consolidated or combined audited financial statements, if the company's

36.1 total admitted assets are less than five percent of the consolidated group's total admitted  
36.2 assets. If these circumstances exist, then the company may file a written application to  
36.3 file consolidated or combined audited financial statements. This application must be for  
36.4 a specified period.

36.5 (b) Upon written application by a domestic insurer, the commissioner may  
36.6 authorize the domestic insurer to include additional affiliated insurance companies in the  
36.7 consolidated or combined audited financial statements. A foreign insurer must obtain the  
36.8 prior written authorization of the commissioner of its state of domicile in order to submit  
36.9 an application for authority to file consolidated or combined audited financial statements.  
36.10 This application must be for a specified period.

36.11 (c) A consolidated annual audit filing must include a columnar consolidated or  
36.12 combining worksheet. Amounts shown on the audited consolidated or combined financial  
36.13 statement must be shown on the worksheet. Amounts for each insurer must be stated  
36.14 separately. Noninsurance operations may be shown on the worksheet on a combined or  
36.15 individual basis. Explanations of consolidating or eliminating entries must be shown on  
36.16 the worksheet. A reconciliation of any differences between the amounts shown in the  
36.17 individual insurer columns of the worksheet and comparable amounts shown on the annual  
36.18 statement of the insurers must be included on the worksheet.

36.19 **Subd. 10. Scope of audit and report of independent certified public accountant.**  
36.20 Financial statements furnished pursuant to subdivision 4 must be examined by an  
36.21 independent certified public accountant. The audit of the insurer's financial statements  
36.22 must be conducted in accordance with generally accepted auditing standards. In  
36.23 accordance with AICPA Statement on Auditing Standards (SAS) No. 109, Understanding  
36.24 the Entity and its Environment and Assessing the Risks of Material Misstatement, or its  
36.25 replacement, the independent certified public accountant should obtain an understanding  
36.26 of internal control sufficient to plan the audit. To the extent required by SAS No. 109,  
36.27 for those insurers required to file a management's report of internal control over financial  
36.28 reporting pursuant to subdivision 17, the independent certified public accountant should  
36.29 consider (as that term is defined in SAS No. 102, Defining Professional Requirements in  
36.30 Statements on Auditing Standards or its replacement) the most recently available report in  
36.31 planning and performing the audit of the statutory financial statements. Consideration  
36.32 should be given to other procedures illustrated in the Financial Condition Examiners  
36.33 Handbook promulgated by the National Association of Insurance Commissioners as the  
36.34 independent certified public accountant deems necessary.

36.35 **Subd. 11. Notification of adverse financial condition.** The insurer required to  
36.36 furnish the annual audited financial report shall require the independent certified public

37.1 accountant to provide written notice within five business days to the board of directors of  
37.2 the insurer or its audit committee of any determination by that independent certified public  
37.3 accountant that the insurer has materially misstated its financial condition as reported to  
37.4 the commissioner as of the balance sheet date currently under audit or that the insurer does  
37.5 not meet the minimum capital and surplus requirement of sections 60A.07, 66A.32, and  
37.6 66A.33 as of that date. An insurer required to file an annual audited financial report who  
37.7 received a notification of adverse financial condition from the accountant shall file a  
37.8 copy of the notification with the commissioner within five business days of the receipt  
37.9 of the notification. The insurer shall provide the independent certified public accountant  
37.10 making the notification with evidence of the report being furnished to the commissioner.  
37.11 If the independent certified public accountant fails to receive the evidence within the  
37.12 required five-day period, the independent certified public accountant shall furnish to the  
37.13 commissioner a copy of the notification to the board of directors or its audit committee  
37.14 within the next five business days. No independent certified public accountant is liable in  
37.15 any manner to any person for any statement made in connection with this subdivision if  
37.16 the statement is made in good faith in compliance with this subdivision. If the accountant  
37.17 becomes aware of facts which might have affected the audited financial report after  
37.18 the date it was filed, the accountant shall take the action prescribed by AU section  
37.19 561, Subsequent Discovery of Facts Existing at the Date of the Auditor's Report of the  
37.20 Professional Standards issued by the American Institute of Certified Public Accountants,  
37.21 or its replacement.

37.22 Subd. 12. **Communication of internal control related matters noted in an**  
37.23 **audit.** In addition to the annual audited financial report, each insurer shall furnish the  
37.24 commissioner with a written communication as to any unremediated material weaknesses  
37.25 in its internal control over financial reporting noted during the audit. The communication  
37.26 must be prepared by the accountant within 60 days after the filing of the annual audited  
37.27 financial report, and must contain a description of any unremediated material weakness, as  
37.28 the term material weakness is defined by SAS No. 115, Communicating Internal Control  
37.29 Related Matters Identified in an Audit, as of December 31 immediately preceding so as  
37.30 to coincide with the audited financial report discussed in subdivision 2 in the insurer's  
37.31 internal control over financial reporting noted by the accountant during the course of their  
37.32 audit of the financial statements. If no unremediated material weaknesses were noted, the  
37.33 communication should so state.

37.34 The insurer is required to provide a description of remedial actions taken or  
37.35 proposed to correct unremediated material weaknesses, if the actions are not described in  
37.36 the accountant's communication.

38.1           Subd. 13. Accountant's letter of qualification. The accountant shall furnish the  
38.2 insurer in connection with, and for inclusion in, the filing of the annual audited financial  
38.3 report, a letter stating that the accountant is independent with respect to the insurer and  
38.4 conforms to the standards of the accountant's profession as contained in the Code of  
38.5 Professional Conduct of the American Institute of Certified Public Accountants and the  
38.6 Code of Professional Conduct of the Minnesota Board of Accountancy or similar code;  
38.7 the background and experience in general, and the experience in audits of insurers of the  
38.8 staff assigned to the engagement and whether each is an independent certified public  
38.9 accountant; that the accountant understands that the annual audited financial report and the  
38.10 opinion on it will be filed in compliance with this statute and that the commissioner will  
38.11 be relying on this information in the monitoring and regulation of the financial position of  
38.12 insurers; that the accountant consents to the requirements of subdivision 14 and that the  
38.13 accountant consents and agrees to make available for review by the commissioner, or the  
38.14 commissioner's designee or appointed agent, the work papers, as defined in subdivision  
38.15 14; a representation that the accountant is properly licensed in good standing by the  
38.16 appropriate state licensing authorities and is a member in good standing in the American  
38.17 Institute of Certified Public Accountants; and a representation that the accountant complies  
38.18 with subdivision 7. Nothing in this section prohibits the accountant from utilizing staff  
38.19 the accountant deems appropriate where use is consistent with the standards prescribed  
38.20 by generally accepted auditing standards.

38.21           Subd. 14. Availability and maintenance of independent certified public  
38.22 accountants' work papers. Work papers are the records kept by the independent certified  
38.23 public accountant of the procedures followed, tests performed, information obtained, and  
38.24 conclusions reached pertinent to the independent certified public accountant's audit of the  
38.25 financial statements of an insurer. Work papers may include audit planning documents,  
38.26 work programs, analyses, memoranda, letters of confirmation and representation,  
38.27 management letters, abstracts of company documents, and schedules or commentaries  
38.28 prepared or obtained by the independent certified public accountant in the course of the  
38.29 audit of the financial statements of an insurer and that support the accountant's opinion.  
38.30 Every insurer required to file an audited financial report shall require the accountant,  
38.31 through the insurer, to make available for review by the examiners the work papers  
38.32 prepared in the conduct of the audit and any communications related to the audit between  
38.33 the accountant and the insurer. The work papers must be made available at the offices of  
38.34 the insurer, at the offices of the commissioner, or at any other reasonable place designated  
38.35 by the commissioner. The insurer shall require that the accountant retain the audit work  
38.36 papers and communications until the commissioner has filed a report on examination

39.1 covering the period of the audit but no longer than seven years after the period reported  
39.2 upon, provided retention of the working papers beyond the seven years is not required by  
39.3 other professional or regulatory requirements. In the conduct of the periodic review by  
39.4 the examiners, it must be agreed that photocopies of pertinent audit work papers may be  
39.5 made and retained by the commissioner. These copies shall be part of the commissioner's  
39.6 work papers and must be given the same confidentiality as other examination work papers  
39.7 generated by the commissioner.

39.8 Subd. 15. **Requirements for audit committee.** (a) The audit committee must  
39.9 be directly responsible for the appointment, compensation, and oversight of the work  
39.10 of any accountant including resolution of disagreements between management and the  
39.11 accountant regarding financial reporting for the purpose of preparing or issuing the audited  
39.12 financial report or related work pursuant to this regulation. Each accountant shall report  
39.13 directly to the audit committee.

39.14 (b) Each member of the audit committee must be a member of the board of directors  
39.15 of the insurer or a member of the board of directors of an entity elected pursuant to  
39.16 paragraph (e) and subdivision 1, paragraph (b).

39.17 (c) In order to be considered independent for purposes of this section, a member of  
39.18 the audit committee may not, other than in his or her capacity as a member of the audit  
39.19 committee, the board of directors, or any other board committee, accept any consulting,  
39.20 advisory, or other compensatory fee from the entity or be an affiliated person of the entity  
39.21 or any subsidiary of the entity. However, if law requires board participation by otherwise  
39.22 nonindependent members, that law shall prevail and such members may participate in the  
39.23 audit committee and be designated as independent for audit committee purposes, unless  
39.24 they are an officer or employee of the insurer or one of its affiliates.

39.25 (d) If a member of the audit committee ceases to be independent for reasons outside  
39.26 the member's reasonable control, that person, with notice by the responsible entity to the  
39.27 state, may remain an audit committee member of the responsible entity until the earlier of  
39.28 the next annual meeting of the responsible entity or one year from the occurrence of the  
39.29 event that caused the member to be no longer independent.

39.30 (e) To exercise the election of the controlling person to designate the audit committee  
39.31 for purposes of this section, the ultimate controlling person shall provide written notice to  
39.32 the commissioners of the affected insurers. Notification must be made timely before the  
39.33 issuance of the statutory audit report and include a description of the basis for the election.  
39.34 The election can be changed through notice to the commissioner by the insurer, which  
39.35 shall include a description of the basis for the change. The election remains in effect for  
39.36 perpetuity, until rescinded.

40.1 (f) The audit committee shall require the accountant that performs for an insurer any  
40.2 audit required by this section to timely report to the audit committee in accordance with  
40.3 the requirements of SAS No. 114, The Auditor's Communication with Those Charged  
40.4 with Governance, including:

40.5 (1) all significant accounting policies and material permitted practices;

40.6 (2) all material alternative treatments of financial information within statutory  
40.7 accounting principles that have been discussed with management officials of the insurer,  
40.8 ramifications of the use of the alternative disclosures and treatments, and the treatment  
40.9 preferred by the accountant; and

40.10 (3) other material written communications between the accountant and the  
40.11 management of the insurer, such as any management letter or schedule of unadjusted  
40.12 differences.

40.13 (g) If an insurer is a member of an insurance holding company system, the reports  
40.14 required by paragraph (f) may be provided to the audit committee on an aggregate basis  
40.15 for insurers in the holding company system, provided that any substantial differences  
40.16 among insurers in the system are identified to the audit committee.

40.17 (h) The proportion of independent audit committee members shall meet or exceed  
40.18 the following criteria:

40.19 (1) for companies with prior calendar year direct written and assumed premiums \$0  
40.20 to \$300,000,000, no minimum requirements;

40.21 (2) for companies with prior calendar year direct written and assumed premiums  
40.22 over \$300,000,000 to \$500,000,000, majority of members must be independent; and

40.23 (3) for companies with prior calendar year direct written and assumed premiums  
40.24 over \$500,000,000, 75 percent or more must be independent.

40.25 (i) An insurer with direct written and assumed premium, excluding premiums  
40.26 reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less  
40.27 than \$500,000,000 may make application to the commissioner for a waiver from the  
40.28 requirements of this subdivision based upon hardship. The insurer shall file, with its  
40.29 annual statement filing, the approval for relief from this subdivision with the states that  
40.30 it is licensed in or doing business in and the NAIC. If the nondomestic state accepts  
40.31 electronic filing with the NAIC, the insurer shall file the approval in an electronic format  
40.32 acceptable to the NAIC.

40.33 This subdivision does not apply to foreign or alien insurers licensed in this state or  
40.34 an insurer that is a SOX compliant entity or a direct or indirect wholly-owned subsidiary  
40.35 of a SOX compliant entity.

41.1            **Subd. 16. Conduct of insurer in connection with the preparation of required**  
41.2 **reports and documents.** (a) No director or officer of an insurer shall, directly or indirectly:

41.3            (1) make or cause to be made a materially false or misleading statement to an  
41.4 accountant in connection with any audit, review, or communication required under this  
41.5 section; or

41.6            (2) omit to state, or cause another person to omit to state, any material fact necessary  
41.7 in order to make statements made, in light of the circumstances under which the statements  
41.8 were made, not misleading to an accountant in connection with any audit, review, or  
41.9 communication required under this section.

41.10           (b) No officer or director of an insurer, or any other person acting under the direction  
41.11 thereof, shall directly or indirectly take any action to coerce, manipulate, mislead, or  
41.12 fraudulently influence any accountant engaged in the performance of an audit pursuant to  
41.13 this section if that person knew or should have known that the action, if successful, could  
41.14 result in rendering the insurer's financial statements materially misleading.

41.15           (c) For purposes of paragraph (b), actions that, "if successful, could result in  
41.16 rendering the insurer's financial statements materially misleading" include, but are not  
41.17 limited to, actions taken at any time with respect to the professional engagement period to  
41.18 coerce, manipulate, mislead, or fraudulently influence an accountant:

41.19           (1) to issue or reissue a report on an insurer's financial statements that is not  
41.20 warranted in the circumstances due to material violations of statutory accounting  
41.21 principles prescribed by the commissioner, generally accepted auditing standards, or  
41.22 other professional or regulatory standards;

41.23           (2) not to perform audit, review, or other procedures required by generally accepted  
41.24 auditing standards or other professional standards;

41.25           (3) not to withdraw an issued report; or

41.26           (4) not to communicate matters to an insurer's audit committee.

41.27           **Subd. 17. Management's report of internal control over financial reporting.**

41.28           (a) Every insurer required to file an audited financial report pursuant to this section that  
41.29 has annual direct written and assumed premiums, excluding premiums reinsured with the  
41.30 Federal Crop Insurance Corporation and Federal Flood Program, of \$500,000,000 or  
41.31 more, shall prepare a report of the insurer's or group of insurers' internal control over  
41.32 financial reporting, as these terms are defined in subdivision 1. The report must be filed  
41.33 with the commissioner along with the communication of internal control related matters  
41.34 noted in an audit described under subdivision 12. Management's report of internal control  
41.35 over financial reporting shall be as of December 31 immediately preceding.

42.1 (b) Notwithstanding the premium threshold in paragraph (a), the commissioner may  
42.2 require an insurer to file management's report of internal control over financial reporting if  
42.3 the insurer is in any RBC level event, or meets any one or more of the standards of an  
42.4 insurer deemed to be in hazardous financial condition as pursuant to sections 606.20  
42.5 to 606.22.

42.6 (c) An insurer or a group of insurers that is:

42.7 (1) directly subject to Section 404;

42.8 (2) part of a holding company system whose parent is directly subject to Section 404;

42.9 (3) not directly subject to Section 404 but is a SOX compliant entity; or

42.10 (4) a member of a holding company system whose parent is not directly subject to  
42.11 Section 404 but is a SOX compliant entity;

42.12 may file its or its parent's Section 404 report and an addendum in satisfaction of this

42.13 requirement provided that those internal controls of the insurer or group of insurers

42.14 having a material impact on the preparation of the insurer's or group of insurers' audited

42.15 statutory financial statements, consisting of those items included in subdivision 4,

42.16 paragraphs (a), clauses (2) to (6), (b), and (c), were included in the scope of the Section

42.17 404 report. The addendum shall be a positive statement by management that there are

42.18 no material processes with respect to the preparation of the insurer's or group of insurers'

42.19 audited statutory financial statements, consisting of those items included in subdivision 4,

42.20 paragraphs (a), clauses (2) to (6), (b), and (c), excluded from the Section 404 report. If

42.21 there are internal controls of the insurer or group of insurers that have a material impact on

42.22 the preparation of the insurer's or group of insurers' audited statutory financial statements

42.23 and those internal controls were not included in the scope of the Section 404 report, the

42.24 insurer or group of insurers may either file (i) a report under this subdivision, or (ii) the

42.25 Section 404 report and a report under this subdivision for those internal controls that have

42.26 a material impact on the preparation of the insurer's or group of insurers' audited statutory

42.27 financial statements not covered by the Section 404 report.

42.28 (d) Management's report of internal control over financial reporting shall include:

42.29 (1) a statement that management is responsible for establishing and maintaining

42.30 adequate internal control over financial reporting;

42.31 (2) a statement that management has established internal control over financial

42.32 reporting and an assertion, to the best of management's knowledge and belief, after diligent

42.33 inquiry, as to whether its internal control over financial reporting is effective to provide

42.34 reasonable assurance regarding the reliability of financial statements in accordance with

42.35 statutory accounting principles;

43.1 (3) a statement that briefly describes the approach or processes by which  
43.2 management evaluated the effectiveness of its internal control over financial reporting;

43.3 (4) a statement that briefly describes the scope of work that is included and whether  
43.4 any internal controls were excluded;

43.5 (5) disclosure of any unremediated material weaknesses in the internal control over  
43.6 financial reporting identified by management as of December 31 immediately preceding.

43.7 Management is not permitted to conclude that the internal control over financial reporting  
43.8 is effective to provide reasonable assurance regarding the reliability of financial statements  
43.9 in accordance with statutory accounting principles if there is one or more unremediated  
43.10 material weaknesses in its internal control over financial reporting;

43.11 (6) a statement regarding the inherent limitations of internal control systems; and

43.12 (7) signatures of the chief executive officer and the chief financial officer or  
43.13 equivalent position or title.

43.14 (e) Management shall document and make available upon financial condition  
43.15 examination the basis upon which its assertions, required in paragraph (d), are made.

43.16 Management may base its assertions, in part, upon its review, monitoring, and testing of  
43.17 internal controls undertaken in the normal course of its activities.

43.18 (1) Management has discretion as to the nature of the internal control framework  
43.19 used, and the nature and extent of documentation, in order to make its assertion in a  
43.20 cost-effective manner and, as such, may include assembly of or reference to existing  
43.21 documentation.

43.22 (2) Management's report on internal control over financial reporting, required by  
43.23 paragraph (a), and any documentation provided in support of the report during the course  
43.24 of a financial condition examination, must be kept confidential by the Department of  
43.25 Commerce.

43.26 Subd. 18. **Exemptions.** (a) Upon written application of any insurer, the  
43.27 commissioner may grant an exemption from compliance with the provisions of this  
43.28 section. In order to receive an exemption, an insurer must demonstrate to the satisfaction  
43.29 of the commissioner that compliance would constitute a financial or organizational  
43.30 hardship upon the insurer. An exemption may be granted at any time and from time  
43.31 to time for specified periods. Within ten days from the denial of an insurer's written  
43.32 request for an exemption, the insurer may request in writing a hearing on its application  
43.33 for an exemption. This hearing must be held in accordance with chapter 14. Upon written  
43.34 application of any insurer, the commissioner may permit an insurer to file annual audited  
43.35 financial reports on some basis other than a calendar year basis for a specified period. An  
43.36 exemption may not be granted until the insurer presents an alternative method satisfying

44.1 the purposes of this section. Within ten days from a denial of a written request for an  
44.2 exemption, the insurer may request in writing a hearing on its application. The hearing  
44.3 must be held in accordance with chapter 14.

44.4 (b) This section applies to all insurers, unless otherwise indicated, required to file  
44.5 an annual audit by subdivision 2, except insurers having less than \$1,000,000 of direct  
44.6 written premiums in this state in any calendar year and fewer than 1,000 policyholders  
44.7 or certificate holders of directly written policies nationwide at the end of the calendar  
44.8 year, are exempt from this section for that year, unless the commissioner makes a  
44.9 specific finding that compliance is necessary for the commissioner to carry out statutory  
44.10 responsibilities, except that insurers having assumed premiums from reinsurance contracts  
44.11 or treaties of \$1,000,000 or more are not exempt.

44.12 Subd. 19. **Canadian and British companies.** (a) In the case of Canadian and  
44.13 British insurers, the annual audited financial report means the annual statement of total  
44.14 business on the form filed by these companies with their domiciliary supervision authority  
44.15 and duly audited by an independent chartered accountant.

44.16 (b) For these insurers the letter required in subdivision 5 shall state that the  
44.17 accountant is aware of the requirements relating to the annual audited statement filed  
44.18 with the commissioner under subdivision 2, and shall affirm that the opinion expressed  
44.19 is in conformity with those requirements.

44.20 Subd. 20. **Commercial mortgage loan valuation procedures.** A report of the  
44.21 independent certified public accountant that performs the audit of an insurer's annual  
44.22 statement as required under subdivision 2, shall be filed and contain a statement as to  
44.23 whether anything in connection with the audit came to the accountant's attention that  
44.24 caused the accountant to believe that the insurer failed to adopt and consistently apply the  
44.25 valuation procedures as required by sections 60A.122 and 60A.123.

44.26 Subd. 21. **Examinations.** (a) The commissioner or a designated representative shall  
44.27 determine the nature, scope, and frequency of examinations under this section conducted  
44.28 by examiners under section 60A.031. These examinations may cover all aspects of the  
44.29 insurer's assets, condition, affairs, and operations and may include and be supplemented  
44.30 by audit procedures performed by independent certified public accountants. Scheduling  
44.31 of examinations will take into account all relevant matters with respect to the insurer's  
44.32 condition, including results of the National Association of Insurance Commissioners,  
44.33 Insurance Regulatory Information Systems, changes in management, results of market  
44.34 conduct examinations, and audited financial reports. The type of examinations performed  
44.35 by examiners under this section must be compliance examinations, targeted examinations,  
44.36 and comprehensive examinations.

45.1 (b) Compliance examinations will consist of a review of the accountant's workpapers  
45.2 defined under this section and a general review of the insurer's corporate affairs and  
45.3 insurance operations to determine compliance with the Minnesota insurance laws and  
45.4 the rules of the Department of Commerce. The examiners may perform alternative or  
45.5 additional examination procedures to supplement those performed by the accountant  
45.6 when the examiners determine that the procedures are necessary to verify the financial  
45.7 condition of the insurer.

45.8 (c) Targeted examinations may cover limited areas of the insurer's operations as  
45.9 the commissioner may deem appropriate.

45.10 (d) Comprehensive examinations will be performed when the report of the  
45.11 accountant as provided for in subdivision 7, paragraph (b), the notification required by  
45.12 subdivision 7, paragraph (c), the results of compliance or targeted examinations, or other  
45.13 circumstances indicate in the judgment of the commissioner or a designated representative  
45.14 that a complete examination of the condition and affairs of the insurer is necessary.

45.15 (e) Upon completion of each targeted, compliance, or comprehensive examination,  
45.16 the examiner appointed by the commissioner shall make a full and true report on the  
45.17 results of the examination. Each report shall include a general description of the audit  
45.18 procedures performed by the examiners and the procedures of the accountant that  
45.19 the examiners may have utilized to supplement their examination procedures and the  
45.20 procedures that were performed by the registered independent certified public accountant  
45.21 if included as a supplement to the examination.

45.22 Subd. 22. **Penalties.** An annual statement, report, or document related to the  
45.23 business of insurance must not be filed with the commissioner or issued to the public if it  
45.24 is signed by anyone who is represented in the instrument as an "accountant," unless the  
45.25 person is qualified as defined by this section. A violation of this subdivision is a violation  
45.26 of section 72A.19 and punishable in accordance with section 72A.25.

45.27 **EFFECTIVE DATE.** (a) Domestic insurers retaining a certified public accountant  
45.28 on the effective date of this section who qualify as independent shall comply with this  
45.29 section for the year ending December 31, 2010, and each year thereafter unless the  
45.30 commissioner permits otherwise.

45.31 (b) Domestic insurers not retaining a certified public accountant on the effective  
45.32 date of this section who qualifies as independent shall meet the following schedule for  
45.33 compliance unless the commissioner permits otherwise.

45.34 (1) As of December 31, 2010, file with the commissioner an audited financial report.

45.35 (2) For the year ending December 31, 2010, and each year thereafter, such insurers  
45.36 shall file with the commissioner all reports and communication required by this section.

46.1 (c) Foreign insurers shall comply with this section for the year ending December 31,  
46.2 2010, and each year thereafter, unless the commissioner permits otherwise.

46.3 (d) The requirements of subdivision 7, paragraph (b), are in effect for audits of the  
46.4 year beginning January 1, 2010, and thereafter.

46.5 (e) The requirements of subdivision 15 are in effect January 1, 2010. An insurer or  
46.6 group of insurers that is not required to have independent audit committee members or  
46.7 only a majority of independent audit committee members, as opposed to a supermajority,  
46.8 because the total written and assumed premium is below the threshold and subsequently  
46.9 becomes subject to one of the independence requirements due to changes in premium has  
46.10 one year following the year the threshold is exceeded, but not earlier than January 1,  
46.11 2010, to comply with the independence requirements. Likewise, an insurer that becomes  
46.12 subject to one of the independence requirements as a result of a business combination  
46.13 has one calendar year following the date of acquisition or combination to comply with  
46.14 the independence requirements.

46.15 (f) An insurer or group of insurers that is not required to file a report because the total  
46.16 written premium is below the threshold and subsequently becomes subject to the reporting  
46.17 requirements has two years following the year the threshold is exceeded, but not earlier  
46.18 than December 31, 2010, to file a report. Likewise, an insurer acquired in a business  
46.19 combination has two calendar years following the date of acquisition or combination to  
46.20 comply with the reporting requirements.

46.21 (g) The requirements and provisions contained in this section are effective January  
46.22 1, 2010, and thereafter.

46.23 Sec. 12. Minnesota Statutes 2008, section 60B.03, subdivision 15, is amended to read:

46.24 Subd. 15. **Insolvency.** "Insolvency" means:

46.25 (a) For an insurer organized under sections 67A.01 to 67A.26, the inability to pay  
46.26 any uncontested debt as it becomes due ~~or any other loss within 30 days after the due date~~  
46.27 ~~specified in the first assessment notice issued pursuant to section 67A.17.~~

46.28 (b) For any other insurer, that it is unable to pay its debts or meet its obligations  
46.29 as they mature or that its assets do not exceed its liabilities plus the greater of (1) any  
46.30 capital and surplus required by law to be constantly maintained, or (2) its authorized and  
46.31 issued capital stock. For purposes of this subdivision, "assets" includes one-half of the  
46.32 maximum total assessment liability of the policyholders of the insurer, and "liabilities"  
46.33 includes reserves required by law. For policies issued on the basis of unlimited assessment  
46.34 liability, the maximum total liability, for purposes of determining solvency only, shall be

47.1 deemed to be that amount that could be obtained if there were 100 percent collection of an  
47.2 assessment at the rate of ten mills per dollar of insurance written by it and in force.

47.3 Sec. 13. Minnesota Statutes 2008, section 60L.02, subdivision 3, is amended to read:

47.4 Subd. 3. **Additional requirements.** (a) In order to be eligible to be governed by  
47.5 sections 60L.01 to 60L.15, the insurer must meet the requirements specified under this  
47.6 subdivision.

47.7 (b) The insurer shall:

47.8 (1) have been in continuous operation for a minimum of five years; and

47.9 (2) maintain a minimum claims-paying, financial strength, or equivalent rating from  
47.10 at least one nationally recognized statistical rating organization in one of the organization's  
47.11 three highest rating categories for the time period during which sections 60L.01 to 60L.15  
47.12 apply to the insurer. For purposes of this subdivision, the rating must be based on a  
47.13 review of the insurer by the nationally recognized statistical rating organization with the  
47.14 cooperation of the insurer; must not depend on a guarantee or other credit enhancement  
47.15 from another entity; and must not be modified or otherwise qualified to show dependence  
47.16 of the rating on the performance or a contractual obligation of, or the insurer's affiliation  
47.17 with, another insurer.

47.18 (c) The insurer or an affiliate, as defined in section 60D.15, subdivision 2, of the  
47.19 insurer shall employ at least one individual as a professional investment manager for  
47.20 the insurer's investments whom the board of directors or trustees of the insurer finds  
47.21 is qualified on the basis of experience, education or training, competence, personal  
47.22 integrity, and who conducts professional investment management activities in accordance  
47.23 with the Code of Ethics and Standards of Professional Conduct of the Association for  
47.24 Investment Management and Research. For purposes of complying with this paragraph,  
47.25 an employee of an affiliate may only be used if they are responsible for managing the  
47.26 insurer's investments.

47.27 (d) The board of directors of the insurer must annually adopt a resolution finding  
47.28 that the insurer or an affiliate, as defined in section 60D.15, subdivision 2, of the insurer  
47.29 has employed a professional investment manager for the insurer's investments with  
47.30 sufficient expertise and has sufficient other resources to implement and monitor the  
47.31 insurer's investment policies and strategies.

47.32 (e) In the report required under section ~~60A.129~~ 60A.1291, subdivision ~~3~~ 12,  
47.33 ~~paragraph (1)~~, the insurer's independent auditor shall not have identified any significant  
47.34 deficiencies in the insurer's internal control structure related to investments during any of

48.1 the five years immediately preceding the date on which sections 60L.01 to 60L.15 begin to  
48.2 apply to the insurer, and as long as sections 60L.01 to 60L.15 apply to the insurer.

48.3 Sec. 14. 61A.258 **PRENEED INSURANCE PRODUCTS; MINIMUM**  
48.4 **MORTALITY STANDARDS FOR RESERVES AND NONFORFEITURE VALUES.**

48.5 Subdivision 1. Definitions. For the purposes of this section, the following terms  
48.6 have the meanings given them:

48.7 (1) "2001 CSO Mortality Table (2001 CSO)" means that mortality table, consisting  
48.8 of separate rates of mortality for male and female lives, developed by the American  
48.9 Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table  
48.10 developed by the Society of Actuaries Individual Life Insurance Valuation Mortality  
48.11 Task Force, and adopted by the National Association of Insurance Commissioners  
48.12 (NAIC) in December 2002. The 2001 CSO Mortality Table (2001 CSO) is included in  
48.13 the Proceedings of the NAIC (2nd Quarter 2002). Unless the context indicates otherwise,  
48.14 the "2001 CSO Mortality Table (2001 CSO)" includes both the ultimate form of that  
48.15 table and the select and ultimate form of that table and includes both the smoker and  
48.16 nonsmoker mortality tables and the composite mortality tables. It also includes both the  
48.17 age-nearest-birthday and age-last-birthday bases of the mortality tables;

48.18 (2) "Ultimate 1980 CSO" means the Commissioners' 1980 Standard Ordinary Life  
48.19 Valuation Mortality Tables (1980 CSO) without ten-year selection factors, incorporated  
48.20 into the 1980 amendments to the NAIC Standard Valuation Law approved in December  
48.21 1983; and

48.22 (3) "preneed insurance" is any life insurance policy or certificate that is issued  
48.23 in combination with, in support of, with an assignment to, or as a guarantee for a  
48.24 prearrangement agreement for goods and services to be provided at the time of and  
48.25 immediately following the death of the insured. Goods and services may include, but  
48.26 are not limited to embalming, cremation, body preparation, viewing or visitation, coffin  
48.27 or urn, memorial stone, and transportation of the deceased. The status of the policy or  
48.28 contract as preneed insurance is determined at the time of issue in accordance with the  
48.29 policy form filing.

48.30 Subd. 2. Minimum valuation mortality standards. For preneed insurance  
48.31 contracts, the minimum mortality standard for determining reserve liabilities and  
48.32 nonforfeiture values for both male and female insureds shall be the Ultimate 1980 CSO.

48.33 Subd. 3. Minimum valuation interest rate standards. (a) The interest rates used  
48.34 in determining the minimum standard for valuation of preneed insurance shall be the  
48.35 calendar year statutory valuation interest rates as defined in section 61A.25.

49.1 (b) The interest rates used in determining the minimum standard for nonforfeiture  
49.2 values for preneed insurance shall be the calendar year statutory nonforfeiture interest  
49.3 rates as defined in section 61A.24.

49.4 Subd. 4. **Minimum valuation method standards.** (a) The method used in  
49.5 determining the standard for the minimum valuation of reserves of preneed insurance shall  
49.6 be the method defined in section 61A.25.

49.7 (b) The method used in determining the standard for the minimum nonforfeiture  
49.8 values for preneed insurance shall be the method defined in section 61A.24.

49.9 **EFFECTIVE DATE; TRANSITION RULES.** (a) This section is effective January  
49.10 1, 2009, and applies to preneed insurance policies and certificates issued on or after that  
49.11 date.

49.12 (b) For preneed insurance policies issued on or after the effective date of this  
49.13 section and before January 1, 2012, the 2001 CSO may be used as the minimum standard  
49.14 for reserves and minimum standard for nonforfeiture benefits for both male and female  
49.15 insureds.

49.16 (c) If an insurer elects to use the 2001 CSO as a minimum standard for any policy  
49.17 issued on or after the effective date of section 1 and before January 1, 2012, the insurer  
49.18 shall provide, as a part of the actuarial opinion memorandum submitted in support of  
49.19 the company's asset adequacy testing, an annual written notification to the domiciliary  
49.20 commissioner. The notification shall include:

49.21 (1) a complete list of all preneed policy forms that use the 2001 CSO as a minimum  
49.22 standard;

49.23 (2) a certification signed by the appointed actuary stating that the reserve  
49.24 methodology employed by the company in determining reserves for the preneed policies  
49.25 issued after the effective date and using the 2001 CSO as a minimum standard, develops  
49.26 adequate reserves (For the purposes of this certification, the preneed insurance policies  
49.27 using the 2001 CSO as a minimum standard cannot be aggregated with any other  
49.28 policies.); and

49.29 (3) supporting information regarding the adequacy of reserves for preneed insurance  
49.30 policies issued after the effective date of section 1 and using the 2001 CSO as a minimum  
49.31 standard for reserves.

49.32 (d) Preneed insurance policies issued on or after January 1, 2012, must use the  
49.33 Ultimate 1980 CSO in the calculation of minimum nonforfeiture values and minimum  
49.34 reserves.

49.35 Sec. 15. Minnesota Statutes 2008, section 61B.19, subdivision 4, is amended to read:

50.1 Subd. 4. **Limitation of benefits.** The benefits for which the association may become  
50.2 liable shall in no event exceed the lesser of:

50.3 (1) the contractual obligations for which the insurer is liable or would have been  
50.4 liable if it were not an impaired or insolvent insurer; or

50.5 (2) subject to the limitation in clause (5), with respect to any one life, regardless of  
50.6 the number of policies or contracts:

50.7 (i) ~~\$300,000~~ \$500,000 in life insurance death benefits, but not more than ~~\$100,000~~  
50.8 \$130,000 in net cash surrender and net cash withdrawal values for life insurance;

50.9 (ii) ~~\$300,000~~ \$500,000 in health insurance benefits, including any net cash surrender  
50.10 and net cash withdrawal values;

50.11 (iii) ~~\$100,000~~ \$250,000 in annuity net cash surrender and net cash withdrawal values;

50.12 (iv) ~~\$300,000~~ \$410,000 in present value of annuity benefits for structured settlement  
50.13 annuities or for annuities in regard to which periodic annuity benefits, for a period of not  
50.14 less than the annuitant's lifetime or for a period certain of not less than ten years, have  
50.15 begun to be paid, on or before the date of impairment or insolvency; or

50.16 (3) subject to the limitations in clauses (5) and (6), with respect to each individual  
50.17 resident participating in a retirement plan, except a defined benefit plan, established under  
50.18 section 401, 403(b), or 457 of the Internal Revenue Code of 1986, as amended through  
50.19 December 31, 1992, covered by an unallocated annuity contract, or the beneficiaries  
50.20 of each such individual if deceased, in the aggregate, ~~\$100,000~~ \$250,000 in net cash  
50.21 surrender and net cash withdrawal values;

50.22 (4) where no coverage limit has been specified for a covered policy or benefit, the  
50.23 coverage limit shall be ~~\$300,000~~ \$500,000 in present value;

50.24 (5) in no event shall the association be liable to expend more than ~~\$300,000~~  
50.25 \$500,000 in the aggregate with respect to any one life under clause (2), items (i), (ii), (iii),  
50.26 (iv), and clause (4), and any one individual under clause (3);

50.27 (6) in no event shall the association be liable to expend more than ~~\$7,500,000~~  
50.28 \$10,000,000 with respect to all unallocated annuities of a retirement plan, except a defined  
50.29 benefit plan, established under section 401, 403(b), or 457 of the Internal Revenue Code  
50.30 of 1986, as amended through December 31, 1992. If total claims from a plan exceed  
50.31 ~~\$7,500,000~~ \$10,000,000, the ~~\$7,500,000~~ \$10,000,000 shall be prorated among the  
50.32 claimants;

50.33 (7) for purposes of applying clause (2)(ii) and clause (5), with respect only to  
50.34 health insurance benefits, the term "any one life" applies to each individual covered by a  
50.35 health insurance policy;

51.1 (8) where covered contractual obligations are equal to or less than the limits stated in  
 51.2 this subdivision, the association will pay the difference between the covered contractual  
 51.3 obligations and the amount credited by the estate of the insolvent or impaired insurer, if  
 51.4 that amount has been determined or, if it has not, the covered contractual limit, subject  
 51.5 to the association's right of subrogation;

51.6 (9) where covered contractual obligations exceed the limits stated in this subdivision,  
 51.7 the amount payable by the association will be determined as though the covered  
 51.8 contractual obligations were equal to those limits. In making the determination, the estate  
 51.9 shall be deemed to have credited the covered person the same amount as the estate would  
 51.10 credit a covered person with contractual obligations equal to those limits; or

51.11 (10) the following illustrates how the principles stated in clauses (8) and (9) apply.  
 51.12 The example illustrated concerns hypothetical claims subject to the limit stated in clause  
 51.13 (2)(iii). The principles stated in clauses (8) and (9), and illustrated in this clause, apply  
 51.14 to claims subject to any limits stated in this subdivision.

51.15 CONTRACTUAL OBLIGATIONS OF:

51.16		\$50,000	
51.17			Guaranty
51.18	Estate		Association
51.19	0% recovery	\$ 0	\$ 50,000
51.20	from estate		
51.21	25% recovery	\$ 12,500	\$ 37,500
51.22	from estate		
51.23	50% recovery	\$ 25,000	\$ 25,000
51.24	from estate		
51.25	75% recovery	\$ 37,500	\$ 12,500
51.26	from estate		
51.27		\$100,000	
51.28			Guaranty
51.29	Estate		Association
51.30	0% recovery	\$ 0	\$ 100,000
51.31	from estate		
51.32	25% recovery	\$ 25,000	\$ 75,000
51.33	from estate		
51.34	50% recovery	\$ 50,000	\$ 50,000
51.35	from estate		
51.36	75% recovery	\$ 75,000	\$ 25,000
51.37	from estate		
51.38		\$200,000	
51.39			Guaranty
51.40	Estate		Association
51.41	0% recovery	\$ 0	\$ 100,000
51.42	from estate		

52.1	25% recovery	\$ 50,000	\$ 75,000
52.2	from estate		
52.3	50% recovery	\$ 100,000	\$ 50,000
52.4	from estate		
52.5	75% recovery	\$ 150,000	\$ 25,000
52.6	from estate		

52.7 For purposes of this subdivision, the commissioner shall determine the discount rate  
52.8 to be used in determining the present value of annuity benefits.

52.9 **EFFECTIVE DATE.** This section is effective the day following final enactment  
52.10 and applies to member insurers who are first determined to be impaired or insolvent on or  
52.11 after that date. Member insurers who are subject to an order of impairment in effect on the  
52.12 effective date but are not declared insolvent until after the effective date shall continue to  
52.13 be governed by the law in effect prior to the effective date.

52.14 Sec. 16. Minnesota Statutes 2008, section 61B.28, subdivision 4, is amended to read:

52.15 Subd. 4. **Prohibited sales practice.** No person, including an insurer, agent, or  
52.16 affiliate of an insurer, shall make, publish, disseminate, circulate, or place before the  
52.17 public, or cause directly or indirectly, to be made, published, disseminated, circulated,  
52.18 or placed before the public, in any newspaper, magazine, or other publication, or in the  
52.19 form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television  
52.20 station, or in any other way, an advertisement, announcement, or statement, written or  
52.21 oral, which uses the existence of the Minnesota Life and Health Insurance Guaranty  
52.22 Association for the purpose of sales, solicitation, or inducement to purchase any form of  
52.23 insurance covered by sections 61B.18 to 61B.32. The notice required by subdivision 8  
52.24 is not a violation of this subdivision nor is it a violation of this subdivision to explain  
52.25 verbally to an applicant or potential applicant the coverage provided by the Minnesota  
52.26 Life and Health Insurance Guaranty Association at any time during the application process  
52.27 or thereafter. This subdivision does not apply to the Minnesota Life and Health Insurance  
52.28 Guaranty Association or an entity that does not sell or solicit insurance. ~~A person violating~~  
52.29 ~~this section is guilty of a misdemeanor.~~

52.30 Sec. 17. Minnesota Statutes 2008, section 61B.28, subdivision 8, is amended to read:

52.31 Subd. 8. **Form.** The form of notice referred to in subdivision 7, paragraph (a),  
52.32 is as follows:

52.33 ".....  
52.34 .....  
52.35 ....."

53.1 (insert name, current address, and  
53.2 telephone number of insurer)

53.3 NOTICE CONCERNING POLICYHOLDER RIGHTS IN AN  
53.4 INSOLVENCY UNDER THE MINNESOTA LIFE AND HEALTH  
53.5 INSURANCE GUARANTY ASSOCIATION LAW

53.6 If the insurer that issued your life, annuity, or health insurance policy becomes  
53.7 impaired or insolvent, you are entitled to compensation for your policy from the assets of  
53.8 that insurer. The amount you recover will depend on the financial condition of the insurer.

53.9 In addition, residents of Minnesota who purchase life insurance, annuities, or health  
53.10 insurance from insurance companies authorized to do business in Minnesota are protected,  
53.11 SUBJECT TO LIMITS AND EXCLUSIONS, in the event the insurer becomes financially  
53.12 impaired or insolvent. This protection is provided by the Minnesota Life and Health  
53.13 Insurance Guaranty Association.

53.14 Minnesota Life and Health Insurance Guaranty Association  
53.15 (insert current  
53.16 address and telephone number)

53.17 The maximum amount the guaranty association will pay for all policies issued on  
53.18 one life by the same insurer is limited to ~~\$300,000~~ \$500,000. Subject to this ~~\$300,000~~  
53.19 \$500,000 limit, the guaranty association will pay up to ~~\$300,000~~ \$500,000 in life  
53.20 insurance death benefits, ~~\$100,000~~ \$130,000 in net cash surrender and net cash withdrawal  
53.21 values for life insurance, ~~\$300,000~~ \$500,000 in health insurance benefits, including any  
53.22 net cash surrender and net cash withdrawal values, ~~\$100,000~~ \$250,000 in annuity net  
53.23 cash surrender and net cash withdrawal values, ~~\$300,000~~ \$410,000 in present value of  
53.24 annuity benefits for annuities which are part of a structured settlement or for annuities  
53.25 in regard to which periodic annuity benefits, for a period of not less than the annuitant's  
53.26 lifetime or for a period certain of not less than ten years, have begun to be paid on or  
53.27 before the date of impairment or insolvency, or if no coverage limit has been specified  
53.28 for a covered policy or benefit, the coverage limit shall be ~~\$300,000~~ \$500,000 in present  
53.29 value. Unallocated annuity contracts issued to retirement plans, other than defined benefit  
53.30 plans, established under section 401, 403(b), or 457 of the Internal Revenue Code of  
53.31 1986, as amended through December 31, 1992, are covered up to ~~\$100,000~~ \$250,000 in  
53.32 net cash surrender and net cash withdrawal values, for Minnesota residents covered by  
53.33 the plan provided, however, that the association shall not be responsible for more than  
53.34 ~~\$7,500,000~~ \$10,000,000 in claims from all Minnesota residents covered by the plan. If  
53.35 total claims exceed ~~\$7,500,000~~ \$10,000,000, the ~~\$7,500,000~~ \$10,000,000 shall be prorated  
53.36 among all claimants. These are the maximum claim amounts. Coverage by the guaranty  
53.37 association is also subject to other substantial limitations and exclusions and requires  
53.38 continued residency in Minnesota. If your claim exceeds the guaranty association's limits,

54.1 you may still recover a part or all of that amount from the proceeds of the liquidation of  
54.2 the insolvent insurer, if any exist. Funds to pay claims may not be immediately available.  
54.3 The guaranty association assesses insurers licensed to sell life and health insurance in  
54.4 Minnesota after the insolvency occurs. Claims are paid from this assessment.

54.5 THE COVERAGE PROVIDED BY THE GUARANTY ASSOCIATION IS NOT  
54.6 A SUBSTITUTE FOR USING CARE IN SELECTING INSURANCE COMPANIES  
54.7 THAT ARE WELL MANAGED AND FINANCIALLY STABLE. IN SELECTING AN  
54.8 INSURANCE COMPANY OR POLICY, YOU SHOULD NOT RELY ON COVERAGE  
54.9 BY THE GUARANTY ASSOCIATION.

54.10 THIS NOTICE IS REQUIRED BY MINNESOTA STATE LAW TO ADVISE  
54.11 POLICYHOLDERS OF LIFE, ANNUITY, OR HEALTH INSURANCE POLICIES  
54.12 OF THEIR RIGHTS IN THE EVENT THEIR INSURANCE CARRIER BECOMES  
54.13 FINANCIALLY INSOLVENT. THIS NOTICE IN NO WAY IMPLIES THAT THE  
54.14 COMPANY CURRENTLY HAS ANY TYPE OF FINANCIAL PROBLEMS. ALL LIFE,  
54.15 ANNUITY, AND HEALTH INSURANCE POLICIES ARE REQUIRED TO PROVIDE  
54.16 THIS NOTICE."

54.17 Additional language may be added to the notice if approved by the commissioner  
54.18 prior to its use in the form. This section does not apply to fraternal benefit societies  
54.19 regulated under chapter 64B.

54.20 Sec. 18. Minnesota Statutes 2008, section 67A.01, is amended to read:

54.21 **67A.01 NUMBER OF MEMBERS REQUIRED, PROPERTY AND**  
54.22 **TERRITORY.**

54.23 Subdivision 1. Number of members. (a) It shall be lawful for any number of  
54.24 persons, not less than 25, residing in adjoining ~~townships~~ counties in this state, who shall  
54.25 collectively own property worth at least \$50,000, to form themselves into a corporation  
54.26 for mutual insurance against loss or damage by the perils listed in section 67A.13.

54.27 ~~(b) Except as otherwise provided in this section, the company shall operate in no~~  
54.28 ~~more than 150 adjoining townships in the aggregate at the same time. The company may,~~  
54.29 ~~if approval has been granted by the commissioner, operate in more than 150 adjoining~~  
54.30 ~~townships in the aggregate at the same time, subject to a maximum of 300 townships.~~  
54.31 ~~If the company confines its operations to one county it may transact business in that~~  
54.32 ~~county by so providing in its certificate of incorporation. In case of merger of two or~~  
54.33 ~~more companies having contiguous territories, the surviving company in the merger may~~  
54.34 ~~transact business in the entire territory of the merged companies, but the territory of the~~  
54.35 ~~surviving company in the merger must not be larger than 300 townships.~~

55.1 Subd. 2. Authorized territory. (a) A township mutual fire insurance company may  
55.2 be authorized to write business in up to nine adjoining counties in the aggregate at the  
55.3 same time. If policyholder surplus is at least \$500,000 as reported in the company's last  
55.4 annual financial statement filed with the commissioner, the company may, if approval has  
55.5 been granted by the commissioner, be authorized to write business in ten or more counties  
55.6 in the aggregate at the same time, subject to a maximum of 20 adjoining counties, in  
55.7 accordance with the following schedule:

55.8	<u>Number of</u>	<u>Surplus</u>
55.9	<u>Counties</u>	<u>Requirement</u>
55.10	<u>10</u>	<u>\$500,000</u>
55.11	<u>11</u>	<u>600,000</u>
55.12	<u>12</u>	<u>700,000</u>
55.13	<u>13</u>	<u>800,000</u>
55.14	<u>14</u>	<u>900,000</u>
55.15	<u>15</u>	<u>1,000,000</u>
55.16	<u>16</u>	<u>1,100,000</u>
55.17	<u>17</u>	<u>1,200,000</u>
55.18	<u>18</u>	<u>1,300,000</u>
55.19	<u>19</u>	<u>1,400,000</u>
55.20	<u>20</u>	<u>1,500,000</u>

55.21 (b) In the case of a merger of two or more companies having contiguous territories,  
55.22 the surviving company in the merger may transact business in the entire territory of the  
55.23 merged companies; however, the territory of the surviving company in the merger may not  
55.24 be larger than 20 counties.

55.25 (c) A township mutual fire insurance company may write new and renewal insurance  
55.26 on property in cities within the company's authorized territory having a population less  
55.27 than 25,000. A township mutual may continue to write new and renewal insurance once  
55.28 the population increases to 25,000 or greater provided that amended and restated articles  
55.29 are filed with the commissioner along with a certification that such city's population has  
55.30 increased to 25,000 or greater.

55.31 (d) A township mutual fire insurance company may write new and renewal insurance  
55.32 on property in cities within the company's authorized territory with a population of 25,000  
55.33 or greater, but less than 150,000, if approval has been granted by the commissioner.  
55.34 No township mutual fire insurance company shall insure any property in cities with a  
55.35 population of 150,000 or greater.

55.36 (e) If a township mutual fire insurance company provides evidence to the  
55.37 commissioner that the company had insurance in force on December 31, 2007, in a city  
55.38 within the company's authorized territory with a population of 25,000 or greater, but less

56.1 than 150,000, the company may write new and renewal insurance on property in that city  
56.2 provided that the company files amended and restated articles by July 31, 2010, naming  
56.3 that city.

56.4 Sec. 19. Minnesota Statutes 2008, section 67A.06, is amended to read:

56.5 **67A.06 POWERS OF CORPORATION.**

56.6 Every corporation formed under the provisions of sections 67A.01 to 67A.26,  
56.7 shall have power:

56.8 (1) to have succession by its corporate name for the time stated in its certificate of  
56.9 incorporation;

56.10 (2) to sue and be sued in any court;

56.11 (3) to have and use a common seal and alter the same at pleasure;

56.12 (4) to acquire, by purchase or otherwise, and to hold, enjoy, improve, lease,  
56.13 encumber, and convey all real and personal property necessary for the purpose of its  
56.14 organization, subject to such limitations as may be imposed by law or by its articles of  
56.15 incorporation;

56.16 (5) to elect or appoint in such manner as it may determine all necessary or proper  
56.17 officers, agents, boards, and committees, fix their compensation, and define their powers  
56.18 and duties;

56.19 (6) to make and amend consistently with law bylaws providing for the management  
56.20 of its property and the regulation and government of its affairs;

56.21 (7) to wind up and liquidate its business in the manner provided by chapter 60B; ~~and~~

56.22 (8) to indemnify certain persons against expenses and liabilities as provided in  
56.23 section 302A.521. In applying section 302A.521 for this purpose, the term "members"  
56.24 shall be substituted for the terms "shareholders" and "stockholders-"; and

56.25 (9) to eliminate or limit a director's personal liability to the company or its members  
56.26 for monetary damages for breach of fiduciary duty as a director. A company shall not  
56.27 eliminate or limit the liability of a director:

56.28 (i) for breach of loyalty to the company or its members;

56.29 (ii) for acts or omissions made in bad faith or with intentional misconduct or  
56.30 knowing violation of law;

56.31 (iii) for transactions from which the director derived an improper personal benefit; or

56.32 (iv) for acts or omissions occurring before the date that the provisions in the articles  
56.33 eliminating or limiting liability become effective.

57.1 Sec. 20. Minnesota Statutes 2008, section 67A.07, is amended to read:

57.2 **67A.07 PRINCIPAL OFFICE.**

57.3 The principal office of a township mutual fire insurance company shall be located in  
57.4 a ~~township or in a city in a township~~ county in which the company is authorized to do  
57.5 business.

57.6 Sec. 21. Minnesota Statutes 2008, section 67A.14, subdivision 1, is amended to read:

57.7 Subdivision 1. **Kinds of property; property outside authorized territory.** (a)

57.8 Township mutual fire insurance companies may insure qualified property. Qualified  
57.9 property means dwellings, household goods, appurtenant structures, farm buildings, farm  
57.10 personal property, churches, church personal property, county fair buildings, community  
57.11 and township meeting halls and their usual contents.

57.12 (b) Township mutual fire insurance companies may extend coverage to include  
57.13 an insured's secondary property if the township mutual fire insurance company covers  
57.14 qualified property belonging to the insured. Secondary property means any real or  
57.15 personal property that is not considered qualified property for a township mutual fire  
57.16 insurance company to cover under this chapter. The maximum amount of coverage that a  
57.17 township mutual fire insurance company may write for secondary property is 25 percent of  
57.18 the total limit of liability of the policy issued to an insured covering the qualified property.

57.19 (c) A township mutual fire insurance company may insure any real or personal  
57.20 property, including qualified or secondary property, subject to the limitations in  
57.21 subdivision 1, paragraph (b), located outside the limits of the territory in which the  
57.22 company is authorized by its certificate or articles of incorporation to transact business, if  
57.23 the company is already covering qualified property belonging to the insured, inside the  
57.24 limits of the company's territory.

57.25 (d) A township mutual fire insurance company may insure property temporarily  
57.26 outside of the authorized territory of the township mutual fire insurance company.

57.27 Sec. 22. Minnesota Statutes 2008, section 67A.14, subdivision 7, is amended to read:

57.28 Subd. 7. **Amount of insurable risk.** No township mutual fire insurance company  
57.29 shall insure or reinsure a single risk or hazard in a larger sum than the greater of \$3,000, or  
57.30 one tenth of its net assets plus two tenths of a mill of its insurance in force; provided that  
57.31 no portion of any such risk or hazard which shall have been reinsured, as authorized by  
57.32 the laws of this state, shall be included in determining the limitation of risk prescribed  
57.33 by this subdivision.

58.1 Sec. 23. [67A.175] SURPLUS REQUIREMENTS.

58.2 Subdivision 1. **Minimum.** Township mutual fire insurance companies shall maintain  
58.3 a minimum policyholders' surplus of \$300,000 at all times.

58.4 Subd. 2. **Corrective action plan; filing.** A township mutual fire insurance company  
58.5 that falls below the \$300,000 minimum surplus requirement must file a corrective action  
58.6 plan with the commissioner. The plan shall state how the company will correct its surplus  
58.7 deficiency. The plan must be submitted within 45 days of the company falling below the  
58.8 minimum surplus level.

58.9 Subd. 3. **Corrective action plan; commissioner's notification.** Within 30 days  
58.10 after the submission by a township mutual fire insurance company of a corrective action  
58.11 plan, the commissioner shall notify the insurer whether the plan may be implemented or  
58.12 is, in the judgment of the commissioner, unsatisfactory. If the commissioner determines  
58.13 the plan is unsatisfactory, the notification to the company must set forth the reasons for the  
58.14 determination, and may set forth proposed revisions that will render the plan satisfactory  
58.15 in the judgment of the commissioner. Upon notification from the commissioner, the  
58.16 insurer shall prepare a revised corrective action plan that may incorporate by reference  
58.17 any revisions proposed by the commissioner, and shall submit the revised plan to the  
58.18 commissioner within 45 days.

58.19 Sec. 24. Minnesota Statutes 2008, section 67A.18, subdivision 1, is amended to read:

58.20 Subdivision 1. **By member.** Any member may terminate membership in the  
58.21 company by giving written notice or returning the member's policy to the secretary ~~and~~  
58.22 ~~paying the withdrawing member's share of all existing claims.~~

58.23 Sec. 25. **REPEALER.**

58.24 Subdivision 1. **Annual audits.** Minnesota Statutes 2008, section 60A.129, is  
58.25 repealed.

58.26 Subd. 2. **Township mutual insured properties, joint or partial risks, and**  
58.27 **assessments.** Minnesota Statutes 2008, sections 67A.14, subdivision 5; 67A.17; and  
58.28 67A.19, are repealed.

58.29 Subd. 3. **Banking procedures; real estate tax records.** Minnesota Rules, part  
58.30 2675.2180, is repealed.

58.31 Subd. 4. **Debt prorating companies.** Minnesota Rules, parts 2675.7100;  
58.32 2675.7110; 2675.7120; 2675.7130; and 2675.7140, are repealed.

58.33 Subd. 5. **Guaranty association; inflation indexing.** Minnesota Statutes 2008,  
58.34 section 61B.19, subdivision 6, is repealed.

ARTICLE 8

DEBT MANAGEMENT AND DEBT SETTLEMENT SERVICE

59.1  
59.2  
59.3 Section 1. Minnesota Statutes 2008, section 45.011, subdivision 1, is amended to read:

59.4 Subdivision 1. **Scope.** As used in chapters 45 to 83, 155A, 332, 332A, 332B,  
59.5 345, and 359, and sections 325D.30 to 325D.42, 326B.802 to 326B.885, and 386.61 to  
59.6 386.78, unless the context indicates otherwise, the terms defined in this section have  
59.7 the meanings given them.

59.8 Sec. 2. Minnesota Statutes 2008, section 46.04, subdivision 1, is amended to read:

59.9 Subdivision 1. **General.** The commissioner of commerce, referred to in chapters 46  
59.10 to 59A, and ~~chapter 332A~~, and 332B as the commissioner, is vested with all the powers,  
59.11 authority, and privileges which, prior to the enactment of Laws 1909, chapter 201, were  
59.12 conferred by law upon the public examiner, and shall take over all duties in relation to  
59.13 state banks, savings banks, trust companies, savings associations, and other financial  
59.14 institutions within the state which, prior to the enactment of chapter 201, were imposed  
59.15 upon the public examiner. The commissioner of commerce shall exercise a constant  
59.16 supervision, either personally or through the examiners herein provided for, over the  
59.17 books and affairs of all state banks, savings banks, trust companies, savings associations,  
59.18 credit unions, industrial loan and thrift companies, and other financial institutions doing  
59.19 business within this state; and shall, through examiners, examine each financial institution  
59.20 at least once every 24 calendar months. In satisfying this examination requirement, the  
59.21 commissioner may accept reports of examination prepared by a federal agency having  
59.22 comparable supervisory powers and examination procedures. With the exception of  
59.23 industrial loan and thrift companies which do not have deposit liabilities and licensed  
59.24 regulated lenders, it shall be the principal purpose of these examinations to inspect and  
59.25 verify the assets and liabilities of each and so far investigate the character and value of  
59.26 the assets of each institution as to determine with reasonable certainty that the values are  
59.27 correctly carried on its books. Assets and liabilities shall be verified in accordance with  
59.28 methods of procedure which the commissioner may determine to be adequate to carry out  
59.29 the intentions of this section. It shall be the further purpose of these examinations to  
59.30 assess the adequacy of capital protection and the capacity of the institution to meet usual  
59.31 and reasonably anticipated deposit withdrawals and other cash commitments without  
59.32 resorting to excessive borrowing or sale of assets at a significant loss, and to investigate  
59.33 each institution's compliance with applicable laws and rules. Based on the examination  
59.34 findings, the commissioner shall make a determination as to whether the institution

60.1 is being operated in a safe and sound manner. None of the above provisions limits the  
60.2 commissioner in making additional examinations as deemed necessary or advisable. The  
60.3 commissioner shall investigate the methods of operation and conduct of these institutions  
60.4 and their systems of accounting, to ascertain whether these methods and systems are  
60.5 in accordance with law and sound banking principles. The commissioner may make  
60.6 requirements as to records as deemed necessary to facilitate the carrying out of the  
60.7 commissioner's duties and to properly protect the public interest. The commissioner may  
60.8 examine, or cause to be examined by these examiners, on oath, any officer, director,  
60.9 trustee, owner, agent, clerk, customer, or depositor of any financial institution touching  
60.10 the affairs and business thereof, and may issue, or cause to be issued by the examiners,  
60.11 subpoenas, and administer, or cause to be administered by the examiners, oaths. In  
60.12 case of any refusal to obey any subpoena issued under the commissioner's direction,  
60.13 the refusal may at once be reported to the district court of the district in which the bank  
60.14 or other financial institution is located, and this court shall enforce obedience to these  
60.15 subpoenas in the manner provided by law for enforcing obedience to subpoenas of the  
60.16 court. In all matters relating to official duties, the commissioner of commerce has the  
60.17 power possessed by courts of law to issue subpoenas and cause them to be served and  
60.18 enforced, and all officers, directors, trustees, and employees of state banks, savings banks,  
60.19 trust companies, savings associations, and other financial institutions within the state,  
60.20 and all persons having dealings with or knowledge of the affairs or methods of these  
60.21 institutions, shall afford reasonable facilities for these examinations, make returns and  
60.22 reports to the commissioner of commerce as the commissioner may require; attend and  
60.23 answer, under oath, the commissioner's lawful inquiries; produce and exhibit any books,  
60.24 accounts, documents, and property as the commissioner may desire to inspect, and in all  
60.25 things aid the commissioner in the performance of duties.

60.26 Sec. 3. Minnesota Statutes 2008, section 46.05, is amended to read:

60.27 **46.05 SUPERVISION OVER FINANCIAL INSTITUTIONS.**

60.28 Every state bank, savings bank, trust company, savings association, debt management  
60.29 services provider, debt settlement services provider, and other financial institutions shall  
60.30 be at all times under the supervision and subject to the control of the commissioner  
60.31 of commerce. If, and whenever in the performance of duties, the commissioner finds  
60.32 it necessary to make a special investigation of any financial institution under the  
60.33 commissioner's supervision, and other than a complete examination, the commissioner  
60.34 shall make a charge therefor to include only the necessary costs thereof. Such a fee shall  
60.35 be payable to the commissioner on the commissioner's making a request for payment.

61.1 Sec. 4. Minnesota Statutes 2008, section 46.131, subdivision 2, is amended to read:

61.2 Subd. 2. **Assessment authority.** Each bank, trust company, savings bank, savings  
61.3 association, regulated lender, industrial loan and thrift company, credit union, motor  
61.4 vehicle sales finance company, debt management services provider, debt settlement  
61.5 services provider, and insurance premium finance company organized under the laws of  
61.6 this state or required to be administered by the commissioner of commerce shall pay  
61.7 into the state treasury its proportionate share of the cost of maintaining the Department  
61.8 of Commerce.

61.9 Sec. 5. Minnesota Statutes 2008, section 325E.311, subdivision 6, is amended to read:

61.10 Subd. 6. **Telephone solicitation.** "Telephone solicitation" means any voice  
61.11 communication over a telephone line for the purpose of encouraging the purchase or  
61.12 rental of, or investment in, property, goods, or services, whether the communication is  
61.13 made by a live operator, through the use of an automatic dialing-announcing device as  
61.14 defined in section 325E.26, subdivision 2, or by other means. Telephone solicitation  
61.15 does not include communications:

61.16 (1) to any residential subscriber with that subscriber's prior express invitation or  
61.17 permission; or

61.18 (2) by or on behalf of any person or entity with whom a residential subscriber has a  
61.19 prior or current business or personal relationship.

61.20 Telephone solicitation also does not include communications if the caller is identified by a  
61.21 caller identification service and the call is:

61.22 (i) by or on behalf of an organization that is identified as a nonprofit organization  
61.23 under state or federal law, unless the organization is a debt management services provider  
61.24 defined in section 332A.02 or a debt settlement services provider defined in section  
61.25 332B.02;

61.26 (ii) by a person soliciting without the intent to complete, and who does not in  
61.27 fact complete, the sales presentation during the call, but who will complete the sales  
61.28 presentation at a later face-to-face meeting between the solicitor who makes the call  
61.29 and the prospective purchaser; or

61.30 (iii) by a political party as defined under section 200.02, subdivision 6.

61.31 Sec. 6. Minnesota Statutes 2008, section 332A.02, is amended by adding a subdivision  
61.32 to read:

61.33 Subd. 2a. **Advertise.** "Advertise" means to solicit business through any means or  
61.34 medium.

62.1 Sec. 7. Minnesota Statutes 2008, section 332A.02, subdivision 5, is amended to read:

62.2 Subd. 5. **Controlling or affiliated party.** "Controlling or affiliated party" means  
62.3 any person or entity that controls or is controlled, directly or indirectly ~~controlling,~~  
62.4 ~~controlled by,~~ or is under common control with another person. Controlling or affiliated  
62.5 party includes, but is not limited to, employees, officers, independent contractors,  
62.6 corporations, partnerships, and limited liability corporations.

62.7 Sec. 8. Minnesota Statutes 2008, section 332A.02, subdivision 8, is amended to read:

62.8 Subd. 8. **Debt management services provider.** "Debt management services  
62.9 provider" means any person offering or providing debt management services to a debtor  
62.10 domiciled in this state, regardless of whether or not a fee is charged for the services and  
62.11 regardless of whether the person maintains a physical presence in the state. This term  
62.12 includes any person to whom duties under a debt management services agreement or  
62.13 debt management services plan are delegated, and does not include services performed  
62.14 by the following when engaged in the regular course of their respective businesses and  
62.15 professions:

62.16 (1) attorneys at law, escrow agents, accountants, broker-dealers in securities;

62.17 (2) state or national banks, trust companies, savings associations, title insurance  
62.18 companies, insurance companies, and all other lending institutions duly authorized to  
62.19 transact business in Minnesota, ~~provided no fee is charged for the service;~~

62.20 (3) persons who, as employees on a regular salary or wage of an employer not  
62.21 engaged in the business of debt management, perform credit services for their employer;

62.22 (4) public officers acting in their official capacities and persons acting as a debt  
62.23 management services provider pursuant to court order;

62.24 (5) any person while performing services incidental to the dissolution, winding up,  
62.25 or liquidation of a partnership, corporation, or other business enterprise;

62.26 (6) the state, its political subdivisions, public agencies, and their employees;

62.27 (7) ~~credit unions and collection agencies, provided no fee is charged for the service~~  
62.28 that the services are provided to a creditor;

62.29 (8) "qualified organizations" designated as representative payees for purposes of the  
62.30 Social Security and Supplemental Security Income Representative Payee System and the  
62.31 federal Omnibus Budget Reconciliation Act of 1990, Public Law 101-508;

62.32 (9) accelerated mortgage payment providers. "Accelerated mortgage payment  
62.33 providers" are persons who, after satisfying the requirements of sections 332.30 to  
62.34 332.303, receive funds to make mortgage payments to a lender or lenders, on behalf  
62.35 of mortgagors, in order to exceed regularly scheduled minimum payment obligations

63.1 under the terms of the indebtedness. The term does not include: (i) persons or entities  
63.2 described in clauses (1) to (8); (ii) mortgage lenders or servicers, industrial loan and  
63.3 thrift companies, or regulated lenders under chapter 56; or (iii) persons authorized to  
63.4 make loans under section 47.20, subdivision 1. For purposes of this clause and sections  
63.5 332.30 to 332.303, "lender" means the original lender or that lender's assignee, whichever  
63.6 is the current mortgage holder;

63.7 (10) trustees, guardians, and conservators; ~~and~~

63.8 (11) debt settlement services providers; and

63.9 (12) credit unions.

63.10 Sec. 9. Minnesota Statutes 2008, section 332A.02, subdivision 9, is amended to read:

63.11 Subd. 9. **Debt management services.** "Debt management services" means the  
63.12 provision of any ~~one or more of the following services in connection with debt incurred~~  
63.13 ~~primarily for personal, family, or household services:~~

63.14 ~~(1) managing the financial affairs of an individual by distributing income or money~~  
63.15 ~~to the individual's creditors;~~

63.16 ~~(2) receiving funds for the purpose of distributing the funds among creditors in~~  
63.17 ~~payment or partial payment of obligations of a debtor; or~~

63.18 ~~(3) adjusting, prorating, pooling, or liquidating the indebtedness of a debtor whereby~~  
63.19 a debt management services provider assists in managing the financial affairs of a debtor  
63.20 by distributing periodic payments to the debtor's creditors from funds that the debt  
63.21 management services provider receives from the debtor and where the primary purpose  
63.22 of the services is to effect repayment of debt incurred primarily for personal, family, or  
63.23 household services.

63.24 Any person so engaged or holding out as so engaged is deemed to be engaged in the  
63.25 provision of debt management services regardless of whether or not a fee is charged for  
63.26 such services.

63.27 Sec. 10. Minnesota Statutes 2008, section 332A.02, subdivision 10, is amended to read:

63.28 Subd. 10. **Debtor.** "Debtor" means the person for whom the debt ~~prorating service~~  
63.29 ~~is~~ management services are performed.

63.30 Sec. 11. Minnesota Statutes 2008, section 332A.02, subdivision 13, is amended to read:

63.31 Subd. 13. **Debt settlement services provider.** "Debt settlement services provider"  
63.32 ~~means any person engaging in or holding out as engaging in the business of negotiating,~~  
63.33 ~~adjusting, or settling debt incurred primarily for personal, family, or household purposes~~

64.1 ~~without holding or receiving the debtor's funds or personal property and without paying~~  
64.2 ~~the debtor's funds to, or distributing the debtor's property among, creditors~~ has the  
64.3 meaning given in section 332B.02, subdivision 10. The term shall not include persons  
64.4 listed in subdivision 8, clauses (1) to (10).

64.5 Sec. 12. Minnesota Statutes 2008, section 332A.04, subdivision 6, is amended to read:

64.6 Subd. 6. **Right of action on bond.** If the registrant has failed to account to a debtor  
64.7 or distribute to the debtor's creditors the amounts required by this chapter ~~and, or has~~  
64.8 failed to perform any of the services promised in the debt management services agreement  
64.9 ~~between the debtor and registrant, the registrant is in default.~~ The debtor or the debtor's  
64.10 legal representative or receiver, the commissioner, or the attorney general, shall have, in  
64.11 addition to all other legal remedies, a right of action in the name of the debtor on the bond  
64.12 or the security given under this section, for loss suffered by the debtor, not exceeding the  
64.13 face amount of the bond or security, and without the necessity of joining the registrant  
64.14 in the suit or action based on the default.

64.15 Sec. 13. Minnesota Statutes 2008, section 332A.08, is amended to read:

64.16 **332A.08 DENIAL OF REGISTRATION.**

64.17 The commissioner, with notice to the applicant by certified mail sent to the address  
64.18 listed on the application, may deny an application for a registration upon finding that  
64.19 the applicant:

64.20 (1) has submitted an application required under section 332A.04 that contains  
64.21 incorrect, misleading, incomplete, or materially untrue information. An application is  
64.22 incomplete if it does not include all the information required in section 332A.04;

64.23 (2) has failed to pay any fee or pay or maintain any bond required by this chapter,  
64.24 or failed to comply with any order, decision, or finding of the commissioner made under  
64.25 and within the authority of this chapter;

64.26 (3) has violated any provision of this chapter or any rule or direction lawfully made  
64.27 by the commissioner under and within the authority of this chapter;

64.28 (4) or any controlling or affiliated party has ever been convicted of a crime or found  
64.29 civilly liable for an offense involving moral turpitude, including forgery, embezzlement,  
64.30 obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or any  
64.31 other similar offense or violation, or any violation of a federal or state law or regulation  
64.32 in connection with activities relating to the rendition of debt management services or  
64.33 any consumer fraud, false advertising, deceptive trade practices, or similar consumer  
64.34 protection law;

65.1 (5) has had a registration or license previously revoked or suspended in this state or  
65.2 any other state or the applicant or licensee has been permanently or temporarily enjoined  
65.3 by any court of competent jurisdiction from engaging in or continuing any conduct or  
65.4 practice involving any aspect of the debt management services provider business; or  
65.5 any controlling or affiliated party has been an officer, director, manager, or shareholder  
65.6 owning more than a ten percent interest in a debt management services provider whose  
65.7 registration has previously been revoked or suspended in this state or any other state, or  
65.8 who has been permanently or temporarily enjoined by any court of competent jurisdiction  
65.9 from engaging in or continuing any conduct or practice involving any aspect of the debt  
65.10 management services provider business;

65.11 (6) has made any false statement or representation to the commissioner;

65.12 (7) is insolvent;

65.13 (8) refuses to fully comply with an investigation or examination of the debt  
65.14 management services provider by the commissioner;

65.15 (9) has improperly withheld, misappropriated, or converted any money or properties  
65.16 received in the course of doing business;

65.17 (10) has failed to have a trust account with an actual cash balance equal to or greater  
65.18 than the sum of the escrow balances of each debtor's account;

65.19 (11) has defaulted in making payments to creditors on behalf of debtors as required  
65.20 by agreements between the provider and debtor; ~~or~~

65.21 (12) has used fraudulent, coercive, or dishonest practices, or demonstrated  
65.22 incompetence, untrustworthiness, or financial irresponsibility in this state or elsewhere; or

65.23 (13) has been shown to have engaged in a pattern of failing to perform the services  
65.24 promised.

65.25 Sec. 14. Minnesota Statutes 2008, section 332A.10, is amended to read:

65.26 **332A.10 WRITTEN DEBT MANAGEMENT SERVICES AGREEMENT.**

65.27 Subdivision 1. **Written agreement required.** (a) A debt management services  
65.28 provider may not perform any debt management services or receive any money related  
65.29 to a debt management services plan until the provider has obtained a debt management  
65.30 services agreement that contains all terms of the agreement between the debt management  
65.31 services provider and the debtor.

65.32 (b) A debt management services agreement must:

65.33 (1) be in writing, dated, and signed by the debt management services provider and  
65.34 the debtor;

66.1           (2) conspicuously indicate whether or not the debt management services provider  
66.2 is registered with the Minnesota Department of Commerce and include any registration  
66.3 number; and

66.4           (3) be written in the debtor's primary language if the debt management services  
66.5 provider advertised in that language.

66.6           (c) The registrant must furnish the debtor with a copy of the signed contract upon  
66.7 execution.

66.8           Subd. 2. **Actions prior to written agreement.** No person may provide debt  
66.9 management services for a debtor or execute a debt management services agreement  
66.10 unless the person first has:

66.11           (1) provided the debtor individualized counseling and educational information  
66.12 that, at a minimum, addresses managing household finances, managing credit and debt,  
66.13 budgeting, and personal savings strategies;

66.14           (2) prepared in writing and provided to the debtor, in a form that the debtor may  
66.15 keep, an individualized financial analysis and a proposed debt management services  
66.16 plan listing the debtor's known debts with specific recommendations regarding actions  
66.17 the debtor should take to reduce or eliminate the amount of the debts, including written  
66.18 disclosure that debt management services are not suitable for all debtors and that there are  
66.19 other ways, including bankruptcy, to deal with indebtedness;

66.20           (3) made a determination supported by an individualized financial analysis that the  
66.21 debtor can reasonably meet the requirements of the proposed debt management services  
66.22 plan and that there is a net tangible benefit to the debtor of entering into the proposed debt  
66.23 management services plan; ~~and~~

66.24           (4) prepared, in a form the debtor may keep, a written list identifying all known  
66.25 creditors of the debtor that the provider reasonably expects to participate in the plan  
66.26 and the creditors, including secured creditors, that the provider reasonably expects not  
66.27 to participate; and

66.28           (5) disclosed, in addition to the written disclosure on the agreement required under  
66.29 subdivision 1, whether or not the debt management services provider is registered with the  
66.30 Minnesota Department of Commerce and any registration number.

66.31           Subd. 3. **Required ~~terms~~ provisions.** (a) Each debt management services  
66.32 agreement must contain the following ~~terms~~ provisions, which must be disclosed  
66.33 prominently and clearly in bold print on the front page of the agreement, segregated by  
66.34 bold lines from all other information on the page:

66.35           (1) the origination fee amount to be paid by the debtor and whether all or a portion  
66.36 of the ~~initial~~ origination fee amount is refundable or nonrefundable;

67.1 (2) the monthly fee amount or percentage to be paid by the debtor; and

67.2 (3) the total amount of fees reasonably anticipated to be paid by the debtor over  
67.3 the term of the agreement.

67.4 (b) Each debt management services agreement must also contain the following:

67.5 (1) a disclosure that if the amount of debt owed is increased by interest, late fees,  
67.6 over the limit fees, and other amounts imposed by the creditors, the length of the debt  
67.7 management services agreement will be extended and remain in force and that the total  
67.8 dollar charges agreed upon may increase at the rate agreed upon in the original contract  
67.9 agreement;

67.10 (2) a prominent statement describing the terms upon which the debtor may cancel  
67.11 the contract as set forth in section 332A.11;

67.12 (3) a detailed description of all services to be performed by the debt management  
67.13 services provider for the debtor;

67.14 (4) the debt management services provider's refund policy; and

67.15 (5) the debt management services provider's principal business address and the name  
67.16 and address of its agent in this state authorized to receive service of process.

67.17 Subd. 4. **Prohibited terms.** The following terms shall not be included in the debt  
67.18 management services agreement:

67.19 (1) a hold harmless clause;

67.20 (2) a confession of judgment, or a power of attorney to confess judgment against the  
67.21 debtor or appear as the debtor in any judicial proceeding;

67.22 (3) a waiver of the right to a jury trial, if applicable, in any action brought by  
67.23 or against a debtor;

67.24 (4) an assignment of or an order for payment of wages or other compensation for  
67.25 services;

67.26 (5) a provision in which the debtor agrees not to assert any claim or defense arising  
67.27 out of the debt management services agreement;

67.28 (6) a waiver of any provision of this chapter or a release of any obligation required  
67.29 to be performed on the part of the debt management services provider; or

67.30 (7) a mandatory arbitration or choice of law clause.

67.31 Subd. 5. **New debt management services agreements; modification of existing**  
67.32 **agreements.** (a) Separate and additional debt management services agreements that  
67.33 comply with this chapter may be entered into by the debt management services provider  
67.34 and the debtor provided that no additional ~~initial~~ origination fee may be charged by the  
67.35 debt management services provider.

68.1 (b) Any modification of an existing debt management services agreement, including  
68.2 any increase in the number or amount of debts included in the debt management ~~service~~  
68.3 services agreement, must be in writing and signed by both parties, except that the signature  
68.4 of the debtor is not required if:

68.5 (1) a creditor is added to or deleted from a debt management services agreement  
68.6 at the request of the debtor or a debtor voluntarily increases the amount of a payment,  
68.7 provided the debt management services provider must provide an updated payment  
68.8 schedule to the debtor within seven days; or

68.9 (2) the payment amount to a creditor in the agreement increases by \$10 or less  
68.10 and the total payment amount to all creditors increases a total of \$20 or less as a result  
68.11 of incorrect or incomplete information provided by the debtor regarding the amount of  
68.12 debt owed a creditor, provided the debt management services provider must notify the  
68.13 debtor of the increase within seven days.

68.14 No fees, charges, or other consideration may be demanded from the debtor for  
68.15 the modification, other than an increase in the amount of the monthly maintenance fee  
68.16 established in the original debt management services agreement.

68.17 Sec. 15. Minnesota Statutes 2008, section 332A.11, subdivision 2, is amended to read:

68.18 Subd. 2. **Notice of debtor's right to cancel.** A debt management services  
68.19 agreement must contain, on its face, in an easily readable ~~typeface~~ type immediately  
68.20 adjacent to the space for signature by the debtor, the following notice: "Right To Cancel:  
68.21 You have the right to cancel this contract at any time on ten days' written notice."

68.22 Sec. 16. Minnesota Statutes 2008, section 332A.14, is amended to read:

68.23 **332A.14 PROHIBITIONS.**

68.24 ~~A registrant~~ (a) No debt management services provider shall not:

68.25 (1) purchase from a creditor any obligation of a debtor;

68.26 (2) use, threaten to use, seek to have used, or seek to have threatened the use of any  
68.27 legal process, including but not limited to garnishment and repossession of personal  
68.28 property, against any debtor while the debt management services agreement between the  
68.29 registrant and the debtor remains executory;

68.30 (3) advise, counsel, or encourage a debtor to stop paying a creditor ~~until a debt~~  
68.31 ~~management services plan is in place~~, or imply, infer, encourage, or in any other way  
68.32 indicate, that it is advisable to stop paying a creditor;

69.1            (4) sanction or condone the act by a debtor of ceasing payments or imply, infer,  
69.2            or in any manner indicate that the act of ceasing payments is advisable or beneficial to  
69.3            the debtor;

69.4            ~~(4)~~ (5) require as a condition of performing debt management services the purchase  
69.5            of any services, stock, insurance, commodity, or other property or any interest therein  
69.6            either by the debtor or the registrant;

69.7            ~~(5)~~ (6) compromise any debts unless the prior written approval of the debtor has  
69.8            been obtained to such compromise and unless such compromise inures solely to the  
69.9            benefit of the debtor;

69.10           ~~(6)~~ (7) receive from any debtor as security or in payment of any fee a promissory  
69.11           note or other promise to pay or any mortgage or other security, whether as to real or  
69.12           personal property;

69.13           ~~(7)~~ (8) lend money or provide credit to any debtor if any interest or fee is charged,  
69.14           or directly or indirectly collect any fee for referring, advising, procuring, arranging, or  
69.15           assisting a consumer in obtaining any extension of credit or other debtor service from a  
69.16           lender or debt management services provider;

69.17           ~~(8)~~ (9) structure a debt management services agreement that would result in negative  
69.18           amortization of any debt in the plan;

69.19           ~~(9)~~ (10) engage in any unfair, deceptive, or unconscionable act or practice in  
69.20           connection with any service provided to any debtor;

69.21           ~~(10)~~ (11) offer, pay, or give any material cash fee, gift, bonus, premium, reward, or  
69.22           other compensation to any person for referring any prospective customer to the registrant  
69.23           or for enrolling a debtor in a debt management services plan, or provide any other  
69.24           incentives for employees or agents of the debt management services provider to induce  
69.25           debtors to enter into a debt management services plan;

69.26           ~~(11)~~ (12) receive any cash, fee, gift, bonus, premium, reward, or other compensation  
69.27           from any person other than the debtor or a person on the debtor's behalf in connection  
69.28           with activities as a registrant, provided that this paragraph does not apply to a registrant  
69.29           which is a bona fide nonprofit corporation duly organized under chapter 317A or under  
69.30           the similar laws of another state;

69.31           ~~(12)~~ (13) enter into a contract with a debtor unless a thorough written budget analysis  
69.32           indicates that the debtor can reasonably meet the requirements of the financial adjustment  
69.33           plan and will be benefited by the plan;

69.34           ~~(13)~~ (14) in any way charge or purport to charge or provide any debtor credit  
69.35           insurance in conjunction with any contract or agreement involved in the debt management  
69.36           services plan;

70.1 ~~(14)~~ (15) operate or employ a person who is an employee or owner of a collection  
70.2 agency or process-serving business; or  
70.3 ~~(15)~~ (16) solicit, demand, collect, require, or attempt to require payment of a sum  
70.4 that the registrant states, discloses, or advertises to be a voluntary contribution to a debt  
70.5 management services provider or designee from the debtor.

70.6 Sec. 17. **[332B.02] DEFINITIONS.**

70.7 Subdivision 1. **Scope.** Unless a different meaning is clearly indicated by the context,  
70.8 for the purposes of this chapter, the terms defined in this section have the meanings given  
70.9 them.

70.10 Subd. 2. **Advertise.** "Advertise" means to solicit business through any means or  
70.11 medium.

70.12 Subd. 3. **Aggregate debt.** "Aggregate debt" means the total of principal and interest  
70.13 that is owed by the debtor to the creditors at the time of execution of the debt settlement  
70.14 agreement.

70.15 Subd. 4. **Attorney general.** "Attorney general" means the attorney general of the  
70.16 state of Minnesota.

70.17 Subd. 5. **Commissioner.** "Commissioner" means the commissioner of commerce.

70.18 Subd. 6. **Controlling or affiliated party.** "Controlling or affiliated party" means  
70.19 any person or entity that controls or is controlled, directly or indirectly, or is under  
70.20 common control with another person. Controlling or affiliated party includes, but is not  
70.21 limited to, employees, officers, independent contractors, corporations, partnerships, and  
70.22 limited liability corporations.

70.23 Subd. 7. **Debt settlement services.** "Debt settlement services" means any one or  
70.24 more of the following activities:

70.25 (1) offering to provide advice, or offering to act or acting as an intermediary between  
70.26 a debtor and one or more of the debtor's creditors, where the primary purpose of the  
70.27 advice or action is to obtain a settlement for less than the full amount of debt, whether  
70.28 in principal, interest, fees, or other charges, incurred primarily for personal, family, or  
70.29 household purposes including, but not limited to, offering debt negotiation, debt reduction,  
70.30 or debt relief services; or

70.31 (2) advising, encouraging, assisting, or counseling a debtor to accumulate funds in  
70.32 an account for future payment of a reduced amount of debt to one or more of the debtor's  
70.33 creditors.

71.1 Any person so engaged or holding out as so engaged is deemed to be engaged in  
71.2 the provision of debt settlement services, regardless of whether or not a fee is charged for  
71.3 such services.

71.4 Subd. 8. **Debt settlement services agreement.** "Debt settlement services  
71.5 agreement" means the written contract between the debt settlement services provider  
71.6 and the debtor.

71.7 Subd. 9. **Debt settlement services plan.** "Debt settlement services plan" means the  
71.8 debtor's individualized package of debt settlement services set forth in the debt settlement  
71.9 services agreement.

71.10 Subd. 10. **Debt settlement services provider.** "Debt settlement services provider"  
71.11 means any person offering or providing debt settlement services to a debtor domiciled  
71.12 in this state, regardless of whether or not a fee is charged for the services and regardless  
71.13 of whether the person maintains a physical presence in the state. The term includes any  
71.14 person to whom duties under a debt management agreement or debt management plan  
71.15 are delegated.

71.16 Subd. 11. **Person.** "Person" means an individual, firm, partnership, association,  
71.17 or corporation.

71.18 Sec. 18. **[332B.03] REQUIREMENT OF REGISTRATION.**

71.19 On or after August 1, 2009, it is unlawful for any person, whether or not located  
71.20 in this state, to operate as a debt settlement services provider or provide debt settlement  
71.21 services including, but not limited to, offering, advertising, or executing or causing to be  
71.22 executed any debt settlement services or debt settlement services agreement, except as  
71.23 authorized by law, without first becoming registered as provided in this chapter. Debt  
71.24 settlement services providers may continue to provide debt settlement services without  
71.25 complying with this chapter to those debtors who entered into a contract to participate  
71.26 in a debt settlement services plan prior to August 1, 2009, but may not enter into a debt  
71.27 settlement services agreement with a debt on or after August 1, 2009, without complying  
71.28 with this chapter.

71.29 Sec. 19. **[332B.04] REGISTRATION.**

71.30 Subdivision 1. **Form.** Application for registration to operate as a debt settlement  
71.31 services provider in this state must be made in writing to the commissioner, under oath, in  
71.32 the form prescribed by the commissioner, and must contain:

71.33 (1) the full name of each principal of the entity applying;

72.1 (2) the address, which must not be a post office box, and the telephone number and,  
72.2 if applicable, the e-mail address, of the applicant;

72.3 (3) consent to the jurisdiction of the courts of this state;

72.4 (4) the name and address of the registered agent authorized to accept service of  
72.5 process on behalf of the applicant or appointment of the commissioner as the applicant's  
72.6 agent for purposes of accepting service of process;

72.7 (5) disclosure of:

72.8 (i) whether any controlling or affiliated party has ever been convicted of a crime  
72.9 or found civilly liable for an offense involving moral turpitude, including forgery,  
72.10 embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to  
72.11 defraud, or any other similar offense or violation, or any violation of a federal or state  
72.12 law or regulation in connection with activities relating to the rendition of debt settlement  
72.13 services or involving any consumer fraud, false advertising, deceptive trade practices, or  
72.14 similar consumer protection law;

72.15 (ii) any judgments, private or public litigation, tax liens, written complaints,  
72.16 administrative actions, or investigations by any government agency against the applicant  
72.17 or any officer, director, manager, or shareholder owning more than five percent interest  
72.18 in the applicant, unresolved or otherwise, filed or otherwise commenced within the  
72.19 preceding ten years;

72.20 (iii) whether the applicant or any person employed by the applicant has had a record  
72.21 of having defaulted in the payment of money collected for others, including the discharge  
72.22 of debts through bankruptcy proceedings; and

72.23 (iv) whether the applicant's license or registration to provide debt settlement services  
72.24 in any other state has ever been revoked or suspended;

72.25 (6) a copy of the applicant's standard debt settlement services agreement that the  
72.26 applicant intends to execute with debtors;

72.27 (7) proof of accreditation; and

72.28 (8) any other information and material as the commissioner may require.

72.29 The commissioner may, for good cause shown, temporarily waive any requirement  
72.30 of this subdivision.

72.31 Subd. 2. **Term and scope of registration.** A registration is effective until 11:59  
72.32 p.m. on December 31 of the year for which the application for registration is filed or until  
72.33 it is surrendered by the registrant or revoked or suspended by the commissioner. The  
72.34 registration is limited solely to the business of providing debt settlement services.

72.35 Subd. 3. **Fees; bond.** An applicant for registration as a debt settlement services  
72.36 provider must comply with the requirements of section 332A.04, subdivisions 3, 4, and 5.

73.1            Subd. 4. **Right of action on bond.** If the registrant has failed to account to a debtor,  
73.2 or has failed to perform any of the services promised, the registrant is in default. The  
73.3 debtor or the debtor's legal representative or receiver, the commissioner, or the attorney  
73.4 general, shall have, in addition to all other legal remedies, a right of action in the name of  
73.5 the debtor on the bond or the security given under this section, for loss suffered by the  
73.6 debtor, not exceeding the face amount of the bond or security, and without the necessity of  
73.7 joining the registrant in the suit or action based on the default.

73.8            Subd. 5. **Registrant list.** The commissioner must maintain a list of registered debt  
73.9 settlement services providers. The list must be made available to the public in written  
73.10 form upon request and on the Department of Commerce Web site.

73.11           Subd. 6. **Renewal of registration.** Each year, each registrant under the provisions  
73.12 of this chapter must not, more than 60 nor less than 30 days before its registration is to  
73.13 expire, apply to the commissioner for renewal of its registration on a form prescribed by  
73.14 the commissioner. The application must be signed by the registrant under penalty of  
73.15 perjury, contain current information on all matters required in the original application, and  
73.16 be accompanied by a payment of \$250. The registrant must maintain a continuous surety  
73.17 bond that satisfies the requirements of section 332A.04, subdivision 4. The renewal is  
73.18 effective for one year. The commissioner may, for good cause shown, temporarily waive  
73.19 any requirement of this section.

73.20           Sec. 20. **[332B.05] DENIAL, SUSPENSION, REVOCATION, OR**  
73.21 **NONRENEWAL OF REGISTRATION.**

73.22           Subdivision 1. **Denial.** The commissioner, with notice to the applicant by certified  
73.23 mail sent to the address listed on the application, may deny an application for a registration  
73.24 for any of the reasons specified under section 332A.08.

73.25           Subd. 2. **Suspension, revocation, or nonrenewal.** The commissioner may suspend,  
73.26 revoke, or refuse to renew any registration issued under this chapter, or may levy a civil  
73.27 penalty under section 45.027, or any combination of actions, if the debt settlement services  
73.28 provider or any controlling or affiliated person has committed any act or omission for  
73.29 which the commissioner could have refused to issue an initial registration.

73.30           Subd. 3. **Procedure.** Suspension, revocation, or nonrenewal must be upon notice  
73.31 and under the conditions prescribed in section 332A.09, subdivision 1. Upon issuance of  
73.32 an order suspending, revoking, or refusing to renew a registration, the commissioner:

73.33           (1) shall follow the procedure established in section 332A.09, subdivision 2; and

73.34           (2) may follow the procedure specified in section 332A.09, subdivision 3, concerning  
73.35 the appointment of a receiver for funds of sanctioned registrants.

74.1       Sec. 21. [332B.06] WRITTEN DEBT SETTLEMENT SERVICES AGREEMENT;  
74.2 DISCLOSURES; TRUST ACCOUNT.

74.3       Subdivision 1. **Written agreement required.** (a) A debt settlement services  
74.4 provider may not perform, or impose any charges or receive any payment for, any debt  
74.5 settlement services until the provider and the debtor have executed a debt settlement  
74.6 services agreement that contains all terms of the agreement between the debt settlement  
74.7 services provider and the debtor and complies with all the applicable requirements of  
74.8 this chapter.

74.9       (b) A debt settlement services agreement must:

74.10       (1) be in writing, dated, and signed by the debt settlement services provider and  
74.11 the debtor;

74.12       (2) conspicuously indicate whether or not the debt settlement services provider is  
74.13 registered with the Minnesota Department of Commerce and include any registration  
74.14 number; and

74.15       (3) be written in the debtor's primary language if the debt settlement services  
74.16 provider advertises in that language.

74.17       (c) The registrant must furnish the debtor with a copy of the signed contract upon  
74.18 execution.

74.19       Subd. 2. **Actions prior to executing a written agreement.** No person may provide  
74.20 debt settlement services for a debtor or execute a debt settlement services agreement  
74.21 unless the person first has:

74.22       (1) provided the debtor individualized counseling that, at a minimum, addresses  
74.23 managing household finances, managing credit and debt, budgeting, personal savings  
74.24 strategies, and a detailed description of all the various ways to reduce or eliminate the  
74.25 debt, which must, at a minimum, include bankruptcy; and

74.26       (2) prepared in writing and provided to the debtor, in a form the debtor may keep,  
74.27 an individualized financial analysis of the debtor's financial circumstances, including  
74.28 income and liabilities, and made a determination supported by the individualized financial  
74.29 analysis that:

74.30       (i) the debt settlement plan proposed for addressing the debt is suitable for the  
74.31 individual debtor;

74.32       (ii) the debtor can reasonably meet the requirements of the proposed debt settlement  
74.33 services plan; and

74.34       (iii) there is a net tangible benefit to the debtor of entering into the proposed debt  
74.35 settlement services plan.

75.1 Subd. 3. Disclosures. (a) A person offering to provide or providing debt settlement  
75.2 services must disclose both orally and in writing whether or not the person is registered  
75.3 with the Minnesota Department of Commerce and any registration number.

75.4 (b) No person may provide debt settlement services unless the person first has  
75.5 provided, both orally and in writing, on a single sheet of paper, separate from any other  
75.6 document or writing, the following verbatim notice:

75.7 **WARNING**

75.8 We CANNOT GUARANTEE that you will successfully reduce or eliminate your  
75.9 debt.

75.10 You SHOULD NOT stop paying your creditors.

75.11 Fees, interest, and other charges will continue to mount up during the (insert  
75.12 number) months this plan is in effect.

75.13 Even if you sign up for this service:

75.14 • YOUR WAGES OR BANK ACCOUNT MAY STILL BE GARNISHED.

75.15 • YOU MAY STILL BE CONTACTED BY CREDITORS.

75.16 • YOU MAY STILL BE SUED BY CREDITORS for the money you owe.

75.17 Even if we do settle your debt, YOU MAY STILL HAVE TO PAY TAXES on  
75.18 the amount forgiven.

75.19 Your credit rating may be adversely affected.

75.20 (c) The heading, "WARNING," must be in bold, underlined, 28-point type, and the  
75.21 remaining text must be in 14-point type, with a double space between each statement.

75.22 (d) The disclosure and notice required under this subdivision must be provided in  
75.23 the debtor's primary language if the debt settlement provider advertises in that language.

75.24 Subd. 4. Required information. (a) Each debt settlement services agreement must  
75.25 contain the following information, which must be disclosed prominently and clearly in  
75.26 bold print on the front page of the agreement, segregated by bold lines from all other  
75.27 information on the page:

75.28 (1) the origination fee amount to be paid by the debtor and whether all or part of the  
75.29 origination fee is refundable or nonrefundable; and

75.30 (2) the service fee formula and the total amount of service fees reasonably  
75.31 anticipated to be paid by the debtor over the term of the agreement.

75.32 (b) Each debt settlement services agreement must also contain the following:

75.33 (1) a prominent statement describing the terms upon which the debtor may cancel  
75.34 the contract as set forth in section 332B.07;

75.35 (2) a detailed description of all services to be performed by the debt settlement  
75.36 services provider for the debtor;

76.1 (3) the debt settlement services provider's refund policy;

76.2 (4) the debt settlement services provider's principal business address, which must  
76.3 not be a post office box, and the name and address of its agent in this state authorized to  
76.4 receive service of process; and

76.5 (5) the name of each creditor the debtor has listed and the aggregate debt owed to  
76.6 each creditor that will be the subject of settlement.

76.7 Subd. 5. **Prohibited terms.** A debt settlement services agreement may not contain  
76.8 any of the terms prohibited under section 332A.10, subdivision 4.

76.9 Subd. 6. **New debt settlement services agreements; modifications of existing**  
76.10 **agreements.** (a) Separate and additional debt settlement services agreements that comply  
76.11 with this chapter may be entered into by the debt settlement services provider and the  
76.12 debtor, provided that no additional origination fee may be charged by the debt settlement  
76.13 services provider.

76.14 (b) Any modification of an existing debt settlement services agreement, including  
76.15 any increase in the number or amount of debts included in the debt settlement services  
76.16 agreement, must be in writing and signed by both parties. No fee may be charged to  
76.17 modify an existing agreement.

76.18 Subd. 7. **Payments held in trust.** If the registrant holds funds for the debtor, the  
76.19 registrant must maintain a separate trust account and deposit in the account all payments  
76.20 received from the moment that the funds are available, except that the registrant may  
76.21 commingle the payment with the registrant's own property or funds, but only to the extent  
76.22 necessary to ensure the maintenance of a minimum balance if the financial institution at  
76.23 which the trust account is held requires a minimum balance to avoid the assessment of  
76.24 fees or penalties for failure to maintain a minimum balance. All disbursements, whether  
76.25 to the debtor or to the creditors of the debtor, or to the registrant, must be made from  
76.26 such account.

76.27 Sec. 22. **[332B.07] RIGHT TO CANCEL.**

76.28 Subdivision 1. **Debtor's right to cancel.** (a) A debtor has the right to cancel a debt  
76.29 settlement services agreement without cause at any time upon ten days' written notice  
76.30 to the debt settlement services provider.

76.31 (b) In the event of cancellation, the debt settlement services provider must, within  
76.32 ten days of the cancellation, notify the debtor's creditors of the cancellation and provide  
76.33 a refund of all funds paid by or for the debtor to the debt settlement services provider,  
76.34 except for the origination fee specified in section 332B.09, subdivision 1.

77.1            Subd. 2. **Notice of debtor's right to cancel.** A debt settlement services agreement  
77.2 must contain, on its face, in an easily readable type immediately adjacent to the space for  
77.3 signature by the debtor, the following notice: "Right to Cancel: You have the right to  
77.4 cancel this contract at any time on ten days' written notice."

77.5            Subd. 3. **Automatic termination.** Upon the payment of all listed or settled debts  
77.6 and fees, the debt settlement services agreement must automatically terminate, and all  
77.7 unexpended funds paid by or for the debtor to the debt settlement services provider must  
77.8 be immediately returned to the debtor.

77.9            Subd. 4. **Debt settlement services provider's right to cancel.** (a) A debt settlement  
77.10 services provider may cancel a debt settlement services agreement with good cause upon  
77.11 30 days' written notice to the debtor.

77.12            (b) Within ten days after the cancellation, the debt settlement services provider must:

77.13            (1) notify the debtor's creditors of the cancellation; and

77.14            (2) return to the debtor all funds paid by or for the debtor to the debt settlement  
77.15 provider, except for the origination fee specified in section 332B.09, subdivision 1.

77.16            Sec. 23. **[332B.08] BOOKS, RECORDS, AND INFORMATION.**

77.17            Subdivision 1. **Records retention; annual report.** Every registrant must keep, and  
77.18 use in the registrant's business, such books, accounts, and records, including electronic  
77.19 records, as will enable the commissioner to determine whether the registrant is complying  
77.20 with this chapter and the rules, orders, and directives adopted by the commissioner under  
77.21 this chapter. Every registrant must preserve such books, accounts, and records for at least  
77.22 six years after making the final entry on any transaction recorded therein. Examinations  
77.23 of the books, records, and method of operations conducted under the supervision of the  
77.24 commissioner shall be done at the cost of the registrant. The cost must be assessed as  
77.25 determined under section 46.131.

77.26            Subd. 2. **Annual report.** On or before March 15 of each calendar year, each  
77.27 registrant must file a report with the commissioner containing such information as the  
77.28 commissioner may require about the preceding calendar year. The report must be in a  
77.29 form the commissioner prescribes.

77.30            Subd. 3. **Statements to debtors.** (a) Each registrant must:

77.31            (1) maintain and make available records and accounts that will enable each debtor to  
77.32 ascertain the amounts paid to the creditors of the debtor. A statement showing amounts  
77.33 received from the debtor, disbursements to each creditor, amounts that any creditor has  
77.34 agreed to as payment in full for any debt owed the creditor by the debtor, charges deducted  
77.35 by the registrant, and other information as the commissioner may prescribe, must be

78.1 furnished by the registrant to the debtor at least monthly and, in addition, upon any  
78.2 cancellation or termination of the contract;

78.3 (2) include in the statement furnished to debtors a list of all activities conducted  
78.4 pursuant to the contract, including the number and description of communications with  
78.5 each creditor during the reporting period; and

78.6 (3) prepare and retain in the file of each debtor a written analysis of the debtor's  
78.7 income and expenses to substantiate that the plan of payment is feasible and practicable.

78.8 (b) Each debtor must have reasonable access, without cost, by electronic or other  
78.9 means, to information in the registrant's files applicable to the debtor. These statements,  
78.10 records, and accounts must otherwise remain confidential, except for duly authorized  
78.11 state and government officials, the commissioner, the attorney general, the debtor, and  
78.12 the debtor's representative and designees.

78.13 Sec. 24. **[332B.09] FEES, PAYMENTS, AND CONSENT OF CREDITORS.**

78.14 Subdivision 1. **Origination fee.** A debt settlement services provider may charge a  
78.15 nonrefundable origination fee of not more than \$50.

78.16 Subd. 2. **Service fee.** In addition to the origination fee under subdivision 1, a debt  
78.17 settlement services provider may charge a service fee equal to five percent of the savings  
78.18 actually negotiated by the debt settlement services provider. No other fees may be charged.  
78.19 The savings shall be calculated as the difference between the aggregate debt that is stated  
78.20 in the debt settlement services agreement at the time of its execution and total amount  
78.21 that the debtor actually pays to settle all the debts stated in the debt settlement services  
78.22 agreement, provided that only savings resulting from concessions actually negotiated by  
78.23 the debt settlement services provider may be counted.

78.24 Subd. 3. **Collection of fees.** No debt settlement services provider may claim,  
78.25 demand, charge, collect, or receive any compensation until after the debt settlement  
78.26 service provider has fully performed each and every service the provider has contracted to  
78.27 perform or represented would be performed or as otherwise provided in this section.

78.28 Subd. 4. **Consent of creditors.** Before providing any services, a debt settlement  
78.29 services provider must obtain the written consent of all creditors that agree to participate in  
78.30 the debt settlement services plan set forth in the debt management services agreement. The  
78.31 debt settlement services provider must notify the debtor within ten days after any failure to  
78.32 obtain the required consent of any creditor and of the debtor's right to cancel the agreement  
78.33 without penalty. If not all creditors listed in the debt settlement services agreement have  
78.34 consented to participate in the debt settlement services plan, the debt settlement services

79.1 provider must obtain the written authorization from the debtor to proceed with the debt  
79.2 settlement services agreement without the participation of all listed creditors.

79.3 Subd. 5. **Withdrawal of creditor.** Whenever a creditor withdraws from a debt  
79.4 settlement services plan, the debt settlement services provider must promptly notify the  
79.5 debtor of the withdrawal, identify the creditor, and inform the debtor of the right to cancel  
79.6 the debt settlement services agreement. In no case may this notice be provided more  
79.7 than 15 days after the debt settlement services provider learns of the creditor's decision  
79.8 to withdraw from a plan.

79.9 Subd. 6. **Timely notification of settlement.** A debt settlement services provider  
79.10 must notify the debtor within 24 hours of settlement of a debt with a creditor.

79.11 Sec. 25. **[332B.10] PROHIBITIONS.**

79.12 No debt settlement services provider shall:

79.13 (1) engage in any activity, act, or omission prohibited under section 332A.14;

79.14 (2) promise, guarantee, or directly or indirectly imply, infer, or in any manner  
79.15 represent that any debt will be settled prior to the presentation to the debtor of an offer by  
79.16 the creditors participating in the debt settlement plan to settle;

79.17 (3) misrepresent the timing of negotiations with creditors;

79.18 (4) imply, infer, or in any manner represent that:

79.19 (i) fees, interest, and other charges will not continue to accrue prior to the time  
79.20 debts are settled;

79.21 (ii) wages or bank accounts are not subject to garnishment;

79.22 (iii) creditors will not continue to contact the debtor;

79.23 (iv) the debtor is not subject to legal action; and

79.24 (v) the debtor will not be subject to tax consequences for the portion of any debts  
79.25 forgiven;

79.26 (5) execute a power of attorney or any other agreement, oral or written, express  
79.27 or implied, that extinguishes or limits the debtor's right at any time to contract or  
79.28 communicate with any creditor or the creditor's right at any time to communicate with  
79.29 the debtor;

79.30 (6) exercise or attempt to exercise a power of attorney after an individual has  
79.31 terminated an agreement;

79.32 (7) state, imply, infer, or, in any other manner, indicate that entering into a debt  
79.33 settlement services agreement or settling debts will either have no effect on, or improve,  
79.34 the debtor's credit, credit rating, and credit score;

79.35 (8) challenge a debt without the written consent of the debtor;

80.1 (9) make any false or misleading claim regarding a creditor's right to collect a debt;

80.2 (10) represent that the debt settlement services provider can negotiate better  
80.3 settlement terms with a creditor than the debtor alone can negotiate;

80.4 (11) provide or offer to provide legal advice or legal services unless the person  
80.5 providing or offering to provide legal advice is licensed to practice law in the state;

80.6 (12) misrepresent that it is authorized or competent to furnish legal advice or  
80.7 perform legal services; and

80.8 (13) settle a debt or lead an individual to believe that a payment to a creditor is in  
80.9 settlement of a debt to the creditor unless, at the time of settlement, the individual receives  
80.10 a certification from the creditor that the payment is in full settlement of the debt.

80.11 Sec. 26. **[332B.11] ADVERTISEMENT OF DEBT SETTLEMENT SERVICES**  
80.12 **PLAN.**

80.13 No debt settlement services provider may engage in any activity proscribed by  
80.14 section 332A.16, or represent, claim, imply, or infer that secured debts may be settled.

80.15 Sec. 27. **[332B.12] DEBT SETTLEMENT SERVICES AGREEMENT**  
80.16 **RESCISSION.**

80.17 Any debtor has the right to rescind any debt settlement services agreement with a  
80.18 debt settlement services provider that commits a material violation of this chapter. On  
80.19 rescission, all fees paid to the debt settlement services provider or any other person other  
80.20 than creditors of the debtor must be returned to the debtor entering into the debt settlement  
80.21 services agreement within ten days of rescission of the debt settlement services agreement.

80.22 Sec. 28. **[332B.13] ENFORCEMENT; REMEDIES.**

80.23 Subdivision 1. **Violation as deceptive practice.** A violation of any of the provisions  
80.24 of this chapter is considered an unfair or deceptive trade practice under section 8.31,  
80.25 subdivision 1. A private right of action under section 8.31 by an aggrieved debtor is in  
80.26 the public interest.

80.27 Subd. 2. **Private right of action.** (a) A debt settlement provider who fails to comply  
80.28 with any of the provisions of this chapter is liable under this section in an individual  
80.29 action for the sum of:

80.30 (1) actual, incidental, and consequential damages sustained by the debtor as a result  
80.31 of the failure; and

80.32 (2) statutory damages of up to \$5,000.

81.1 (b) A debt settlement provider who fails to comply with any of the provisions of this  
81.2 chapter is liable to the named plaintiffs under this section in a class action for the amount  
81.3 that each named plaintiff could recover under paragraph (a), clause (1), and to the other  
81.4 class members for such amount as the court may allow.

81.5 (c) In determining the amount of statutory damages, the court shall consider, among  
81.6 other relevant factors:

81.7 (1) the frequency, nature, and persistence of noncompliance;

81.8 (2) the extent to which the noncompliance was intentional; and

81.9 (3) in the case of a class action, the number of debtors adversely affected.

81.10 (d) A plaintiff or class successful in a legal or equitable action under this section is  
81.11 entitled to the costs of the action, plus reasonable attorney fees.

81.12 Subd. 3. **Injunctive relief.** A debtor may sue a debt settlement services provider  
81.13 for temporary or permanent injunctive or other appropriate equitable relief to prevent  
81.14 violations of any provision of this chapter. A court must grant injunctive relief on a  
81.15 showing that the debt settlement services provider has violated any provision of this  
81.16 chapter, or in the case of a temporary injunction, on a showing that the debtor is likely to  
81.17 prevail on allegations that the debt settlement services provider violated any provision  
81.18 of this chapter.

81.19 Subd. 4. **Remedies cumulative.** The remedies provided in this section are  
81.20 cumulative and do not restrict any remedy that is otherwise available. The provisions  
81.21 of this chapter are not exclusive and are in addition to any other requirements, rights,  
81.22 remedies, and penalties provided by law.

81.23 Subd. 5. **Public enforcement.** The attorney general shall enforce this chapter  
81.24 under section 8.31.

81.25 Sec. 29. **[332B.14] INVESTIGATIONS.**

81.26 At any reasonable time, the commissioner may examine the books and records of  
81.27 every registrant and of any person engaged in the business of providing debt settlement  
81.28 services. The commissioner, once during any calendar year, may require the submission  
81.29 of an audit prepared by a certified public accountant of the books and records of each  
81.30 registrant. If the registrant has, within one year previous to the commissioner's demand,  
81.31 had an audit prepared for some other purpose, this audit may be submitted to satisfy the  
81.32 requirement of this section. The commissioner may investigate any complaint concerning  
81.33 violations of this chapter and may require the attendance and sworn testimony of witnesses  
81.34 and the production of documents.