

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

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

ARTICLE 1
APPROPRIATIONS

Section 1. SUMMARY OF APPROPRIATIONS.

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

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

2.1	<u>Petroleum Tank Cleanup</u>	<u>1,084,000</u>	<u>1,084,000</u>	<u>2,168,000</u>
2.2	<u>Workers' Compensation</u>	<u>751,000</u>	<u>751,000</u>	<u>1,502,000</u>
2.3	<u>Special Revenue</u>	<u>300,000</u>	<u>300,000</u>	<u>600,000</u>
2.4	<u>Total</u>	<u>\$ 30,176,000</u>	<u>\$ 29,176,000</u>	<u>\$ 59,352,000</u>

2.5 Sec. 2. **ENERGY FINANCE APPROPRIATIONS.**

2.6 The sums shown in the columns marked "Appropriations" are appropriated to the
2.7 agencies and for the purposes specified in this article. The appropriations are from the
2.8 general fund, or another named fund, and are available for the fiscal years indicated
2.9 for each purpose. The figures "2010" and "2011" used in this article mean that the
2.10 appropriations listed under them are available for the fiscal year ending June 30, 2010, or
2.11 June 30, 2011, respectively. "The first year" is fiscal year 2010. "The second year" is fiscal
2.12 year 2011. "The biennium" is fiscal years 2010 and 2011. Appropriations for the fiscal
2.13 year ending June 30, 2009, are effective the day following final enactment.

2.14	<u>APPROPRIATIONS</u>
2.15	<u>Available for the Year</u>
2.16	<u>Ending June 30</u>
2.17	<u>2010</u> <u>2011</u>

2.18 Sec. 3. **DEPARTMENT OF COMMERCE**

2.19 Subdivision 1. **Total Appropriation** **\$ 24,743,000** **\$ 23,743,000**

2.20	<u>Appropriations by Fund</u>		
2.21		<u>2010</u>	<u>2011</u>
2.22	<u>General</u>	<u>22,608,000</u>	<u>21,608,000</u>
2.23	<u>Petroleum Cleanup</u>	<u>1,084,000</u>	<u>1,084,000</u>
2.24	<u>Workers'</u>		
2.25	<u>Compensation</u>	<u>751,000</u>	<u>751,000</u>
2.26	<u>Special Revenue</u>	<u>300,000</u>	<u>300,000</u>

2.27 The amounts that may be spent for each
2.28 purpose are specified in the following
2.29 subdivisions.

2.30 Subd. 2. **Financial Institutions** **6,638,000** **6,638,000**

2.31 \$1,000 each year is for consumer small loan
2.32 regulation modifications in article 7. This
2.33 appropriation is added to the department's
2.34 base.

3.1	<u>Subd. 3. Petroleum Tank Release Cleanup</u>		
3.2	<u>Board</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. Administrative Services</u>	<u>4,300,000</u>	<u>4,300,000</u>
3.7	<u>Subd. 5. Telecommunications</u>	<u>1,010,000</u>	<u>1,010,000</u>
3.8	<u>Subd. 6. Market Assurance</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. Office of Energy Security</u>	<u>3,990,000</u>	<u>2,990,000</u>
3.14	<u>Subd. 8. Telecommunications Access</u>		
3.15	<u>Minnesota</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. PUBLIC UTILITIES COMMISSION</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:

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

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

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

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

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

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

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

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

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

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

(a) by township mutual fire insurance companies;

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

- 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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 2

DEFINITIONS; GOALS; LEGISLATIVE REVIEW

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

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

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

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

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

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

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

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

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

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

- (1) job retention and creation;
- (2) improved energy efficiency and increased renewable energy production capacity;
- (3) coordination with and leveraging of other resources to increase the total benefits derived from stimulus funding;
- (4) timely implementation of funded activities;
- (5) long-term sustainability of benefits derived from stimulus funds;
- (6) geographic distribution across the state; and
- (7) compliance with the disadvantaged business enterprise outreach requirements in Minnesota Statutes, section 16C.16, subdivision 4.

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

Sec. 2. **LEGISLATIVE REVIEW.**

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

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

ARTICLE 3

ENERGY EFFICIENCY

Section 1. **WEATHERIZATION.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The plan must include procedures to:

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

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

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

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

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

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

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

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

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

(4) the remaining balances in each stimulus fund;

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

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

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

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

ARTICLE 4

RENEWABLE ENERGY

Section 1. RENEWABLE ENERGY GRANT PROGRAM.

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

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

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

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

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

(5) the project meets any other conditions established under the American Recovery 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

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

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

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

(f) For the purposes of this section:

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

(2) "solar energy" means:

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

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

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

ARTICLE 5

MISCELLANEOUS PROGRAMS

Section 1. ENERGY PROGRAMS IN COMMERCIAL AND INDUSTRIAL BUILDINGS.

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

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

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

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

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

(i) solar;

(ii) wind;

(iii) hydroelectric;

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

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

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

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

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

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

Sec. 3. ENERGY EFFICIENCY GRANTS TO LOCAL GOVERNMENTS.

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

ARTICLE 6

APPROPRIATIONS

Section 1. WEATHERIZATION ASSISTANCE PROGRAM APPROPRIATION.

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

Sec. 2. ENERGY EFFICIENCY AND CONSERVATION BLOCK PROGRAM APPROPRIATION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 1

DEPARTMENT OF COMMERCE; OTHER REGULATORY PROVISIONS

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

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

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

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

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

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

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

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

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

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

(2) The total disbursements made by the lender to date pursuant to the loan 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

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

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

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

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

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

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

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

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

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

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

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

48.21 REAL ESTATE; RESTRICTIONS ON HOLDING.

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

(1) as provided for in section 47.10;

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

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

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

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

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

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

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

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

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

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

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

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

Subd. 2. **Application contents.** (a) The application must contain the name and complete business address or addresses of the license applicant. The license applicant must be a partnership, limited liability partnership, association, limited liability company, corporation, or other form of business organization, and the application must contain the 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

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

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

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

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

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

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

(5) internal audit outsourcing services;

(6) management functions or human resources;

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

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

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

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

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

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

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

(c) All auditing services and nonaudit services provided to an insurer by the qualified independent certified public accountant of the insurer must be preapproved by the audit 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.

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

Subd. 14. **Availability and maintenance of independent certified public accountants' work papers.** Work papers are the records kept by the independent certified public accountant of the procedures followed, tests performed, information obtained, and conclusions reached pertinent to the independent certified public accountant's audit of the financial statements of an insurer. Work papers may include audit planning documents, work programs, analyses, memoranda, letters of confirmation and representation, management letters, abstracts of company documents, and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of the audit of the financial statements of an insurer and that support the accountant's opinion. Every insurer required to file an audited financial report shall require the accountant, through the insurer, to make available for review by the examiners the work papers prepared in the conduct of the audit and any communications related to the audit between the accountant and the insurer. The work papers must be made available at the offices of the insurer, at the offices of the commissioner, or at any other reasonable place designated by the commissioner. The insurer shall require that the accountant retain the audit work 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.

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

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

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

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

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

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

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

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

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

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

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

Subd. 16. **Conduct of insurer in connection with the preparation of required**

reports and documents. (a) No director or officer of an insurer shall, directly or indirectly:

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

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

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

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

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

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

(3) not to withdraw an issued report; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONTRACTUAL OBLIGATIONS OF:			
		\$50,000	
	Estate		Guaranty Association
0% recovery from estate	\$ 0		\$ 50,000
25% recovery from estate	\$ 12,500		\$ 37,500
50% recovery from estate	\$ 25,000		\$ 25,000
75% recovery from estate	\$ 37,500		\$ 12,500
		\$100,000	
	Estate		Guaranty Association
0% recovery from estate	\$ 0		\$ 100,000
25% recovery from estate	\$ 25,000		\$ 75,000
50% recovery from estate	\$ 50,000		\$ 50,000
75% recovery from estate	\$ 75,000		\$ 25,000
		\$200,000	
	Estate		Guaranty Association
0% recovery from estate	\$ 0		\$ 100,000

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,

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

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

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

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

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

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

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

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

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

<u>Number of</u> <u>Counties</u>	<u>Surplus</u> <u>Requirement</u>
<u>10</u>	<u>\$500,000</u>
<u>11</u>	<u>600,000</u>
<u>12</u>	<u>700,000</u>
<u>13</u>	<u>800,000</u>
<u>14</u>	<u>900,000</u>
<u>15</u>	<u>1,000,000</u>
<u>16</u>	<u>1,100,000</u>
<u>17</u>	<u>1,200,000</u>
<u>18</u>	<u>1,300,000</u>
<u>19</u>	<u>1,400,000</u>
<u>20</u>	<u>1,500,000</u>

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

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

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

(e) If a township mutual fire insurance company provides evidence to the commissioner that the company had insurance in force on December 31, 2007, in a city 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.

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

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

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

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

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

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

Sec. 25. **REPEALER.**

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

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

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

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

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

ARTICLE 8

DEBT MANAGEMENT AND DEBT SETTLEMENT SERVICE

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

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

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

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

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

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

46.05 SUPERVISION OVER FINANCIAL INSTITUTIONS.

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

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

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

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

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

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

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

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

332A.14 PROHIBITIONS.

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

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

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

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

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

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

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

(5) disclosure of:

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

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

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

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

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

(7) proof of accreditation; and

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

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

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

Subd. 3. Fees; bond. An applicant for registration as a debt settlement services 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.

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

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

(b) A debt settlement services agreement must:

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

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

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

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

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

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

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

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

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

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

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

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

WARNING

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

You SHOULD NOT stop paying your creditors.

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

Even if you sign up for this service:

• YOUR WAGES OR BANK ACCOUNT MAY STILL BE GARNISHED.

• YOU MAY STILL BE CONTACTED BY CREDITORS.

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

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

Your credit rating may be adversely affected.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) the extent to which the noncompliance was intentional; and

(3) in the case of a class action, the number of debtors adversely affected.

(d) A plaintiff or class successful in a legal or equitable action under this section is entitled to the costs of the action, plus reasonable attorney fees.

Subd. 3. **Injunctive relief.** A debtor may sue a debt settlement services provider for temporary or permanent injunctive or other appropriate equitable relief to prevent violations of any provision of this chapter. A court must grant injunctive relief on a showing that the debt settlement services provider has violated any provision of this chapter, or in the case of a temporary injunction, on a showing that the debtor is likely to prevail on allegations that the debt settlement services provider violated any provision of this chapter.

Subd. 4. **Remedies cumulative.** The remedies provided in this section are cumulative and do not restrict any remedy that is otherwise available. The provisions of this chapter are not exclusive and are in addition to any other requirements, rights, remedies, and penalties provided by law.

Subd. 5. **Public enforcement.** The attorney general shall enforce this chapter under section 8.31.

Sec. 29. **[332B.14] INVESTIGATIONS.**

At any reasonable time, the commissioner may examine the books and records of every registrant and of any person engaged in the business of providing debt settlement services. The commissioner, once during any calendar year, may require the submission of an audit prepared by a certified public accountant of the books and records of each registrant. If the registrant has, within one year previous to the commissioner's demand, had an audit prepared for some other purpose, this audit may be submitted to satisfy the requirement of this section. The commissioner may investigate any complaint concerning violations of this chapter and may require the attendance and sworn testimony of witnesses and the production of documents.