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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 3607

02/21/2022

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The bill was read for the first time and referred to the Committee on Commerce Finance and Policy

1.1 A bill for an act

1.2 relating to commerce; modifying department enforcement powers; regulating

1.3 market conduct examinations; requiring a report; amending Minnesota Statutes

1.4 2020, sections 45.027, subdivisions 1a, 6, by adding a subdivision; 60A.031,

1.5 subdivision 3, by adding a subdivision; 60A.033, subdivision 9, by adding

1.6 subdivisions; 70A.06, by adding a subdivision; 72A.19, subdivision 1; repealing

1.7 Minnesota Statutes 2020, section 60A.033, subdivision 3.

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

1.9 Section 1. Minnesota Statutes 2020, section 45.027, subdivision 1a, is amended to read:

1.10 Subd. 1a. **Response to department requests.** An applicant, registrant, certificate holder,

1.11 licensee, or other person subject to the jurisdiction of the commissioner shall comply with

1.12 requests for information, documents, or other requests from the department within the time

1.13 specified in the request, or, if no time is specified, within 30 days of the mailing of the

1.14 request by the department. Applicants, registrants, certificate holders, licensees, or other

1.15 persons subject to the jurisdiction of the commissioner shall appear before the commissioner

1.16 or the commissioner's representative when requested to do so and shall bring all documents

1.17 or materials that the commissioner or the commissioner's representative has requested. All

1.18 data and information produced pursuant to this subdivision by a licensee subject to section

1.19 60A.031 is classified as confidential under section 60A.031, subdivision 4, paragraph (f),

1.20 and is subject to section 60A.031, subdivision 4, paragraph (g), clause (2).

1.21 Sec. 2. Minnesota Statutes 2020, section 45.027, subdivision 6, is amended to read:

1.22 Subd. 6. **Violations and penalties.** (a) The commissioner may impose a civil penalty

1.23 not to exceed \$10,000 per violation upon a person who violates any law, rule, or order

1.24 related to the duties and responsibilities entrusted to the commissioner unless a different

2.1 penalty is specified, except that the maximum total amount of civil penalties imposed upon  
 2.2 a person by the commissioner under this section for all violations of an identical or  
 2.3 substantially similar law, rule, or order related to conduct prohibited by chapters 60A to 79  
 2.4 during a calendar year must not exceed \$25,000.

2.5 (b) If a civil penalty is imposed on a health carrier as defined in section 62A.011, the  
 2.6 commissioner must divide 50 percent of the amount among any policyholders or certificate  
 2.7 holders affected by the violation, unless the commissioner certifies in writing that the division  
 2.8 and distribution to enrollees would be too administratively complex or that the number of  
 2.9 enrollees affected by the penalty would result in a distribution of less than \$50 per enrollee.

2.10 Sec. 3. Minnesota Statutes 2020, section 45.027, is amended by adding a subdivision to  
 2.11 read:

2.12 Subd. 13. **Limitation of enforcement actions or administrative proceedings.** An  
 2.13 enforcement action or administrative proceeding brought by the commissioner against a  
 2.14 licensee who violates any law, rule, or order related to the duties and responsibilities entrusted  
 2.15 to the commissioner in chapters 60A to 79, including without limitation the issuance of an  
 2.16 order pursuant to chapters 60A to 79, must be commenced within six years of the date the  
 2.17 violation occurs.

2.18 Sec. 4. Minnesota Statutes 2020, section 60A.031, subdivision 3, is amended to read:

2.19 Subd. 3. **Access to examinee.** (a) The commissioner, or the designated person, shall  
 2.20 have timely, convenient, and free access at all reasonable hours to all books, records,  
 2.21 securities, accounts, documents, and any or all computer or other records and papers relating  
 2.22 to the property, assets, business, and affairs of any company, applicant, association, or  
 2.23 person which may be examined pursuant to this section for the purpose of ascertaining,  
 2.24 appraising, and evaluating the assets, conditions, affairs, operations, ability to fulfill  
 2.25 obligations, and compliance with all the provisions of law of the company or person insofar  
 2.26 as any of the above pertain to the business of insurance of a person, organization, or  
 2.27 corporation transacting, having transacted, or being organized to transact business in this  
 2.28 state. Every company or person being examined, its officers, directors, and agents, shall  
 2.29 provide to the commissioner or the designated person timely, convenient, and free access  
 2.30 at all reasonable hours at its office to all its books, records, accounts, papers, securities,  
 2.31 documents, any or all computer or other records relating to the property, assets, business,  
 2.32 and affairs of the company or person. The officers, directors, and agents of the company or

3.1 person shall facilitate the examination and aid in the examination so far as it is in their power  
3.2 to do so.

3.3 The refusal of a company, by its officers, directors, employees, or agents, to submit to  
3.4 examination or to comply with a reasonable request of the examiners is grounds for  
3.5 suspension or refusal of, or nonrenewal of, a license or authority held by the company to  
3.6 engage in an insurance or other business subject to the commissioner's jurisdiction. The  
3.7 proceedings for suspension, revocation, or refusal of a license or authority must be conducted  
3.8 as provided in section 45.027.

3.9 (b) The commissioner or any examiners may issue subpoenas, administer oaths, and  
3.10 examine under oath any person as to any matter pertinent to the examination. If a person  
3.11 fails or refuses to obey a subpoena, the commissioner may petition a court of competent  
3.12 jurisdiction, and upon proper showing, the court may enter an order compelling the witness  
3.13 to appear and testify or produce documentary evidence. Failure to obey the court order is  
3.14 punishable as contempt of court.

3.15 (c) When making an examination or audit under this section, the commissioner may  
3.16 retain attorneys, appraisers, independent actuaries, independent certified public accountants,  
3.17 or other professionals and specialists as examiners, the cost of which must be paid by the  
3.18 company that is the subject of the examination or audit. An action to collect costs incurred  
3.19 pursuant to section 45.027, subdivision 1, or this section must be commenced pursuant to  
3.20 an action under section 45.027 and not chapter 16D.

3.21 (d) This section does not limit the commissioner's authority to terminate or suspend any  
3.22 examination in order to pursue other legal or regulatory action pursuant to the insurance  
3.23 laws of this state. Findings of fact and conclusions made pursuant to an examination are  
3.24 prima facie evidence in a legal or regulatory action.

3.25 (e) Nothing contained in this section shall be construed to limit the commissioner's  
3.26 authority to use as evidence a final or preliminary examination report, examiner or company  
3.27 work papers or other documents, or other information discovered or developed during the  
3.28 course of an examination in the furtherance of a legal or administrative action which the  
3.29 commissioner may, in the commissioner's sole discretion, consider appropriate.

3.30 Sec. 5. Minnesota Statutes 2020, section 60A.031, is amended by adding a subdivision to  
3.31 read:

3.32 Subd. 10. **Multistate examinations.** If the commissioner elects to participate in an  
3.33 examination of a licensee that involves multiple states, the commissioner is prohibited from

4.1 commencing, undertaking, or continuing an examination under this section or an investigation  
 4.2 under section 45.027 against the subject examinee related to the same alleged conduct,  
 4.3 including without limitation incurring or charging any examination costs, unless and until  
 4.4 the multistate examination is complete or Minnesota has formally withdrawn from that  
 4.5 examination. With respect to any completed multistate examination that Minnesota elected  
 4.6 to participate in, the commissioner is prohibited from taking action against a licensee that  
 4.7 was subject to the multistate examination unless the commissioner follows the procedures  
 4.8 set forth in this section and sections 60A.031 and 60A.033, as applicable.

4.9 Sec. 6. Minnesota Statutes 2020, section 60A.033, subdivision 9, is amended to read:

4.10 Subd. 9. **Completion of examination.** (a) An examination under section 60A.031 must  
 4.11 not exceed 18 months from the date the commissioner receives the insurance company's  
 4.12 first submission pursuant to a scheduling order, unless:

4.13 (1) the commissioner determines that there has been a material lack of cooperation by  
 4.14 the insurance company and advises the company in writing of the specific instances  
 4.15 demonstrating a lack of cooperation; or

4.16 (2) the examination is a multistate examination; ~~or~~

4.17 ~~(3) the commissioner determines that additional time is necessary to complete the~~  
 4.18 ~~examination and the commissioner notifies the insurance company in writing of the reasons~~  
 4.19 ~~why the examination requires additional time.~~

4.20 (b) A company's inability to promptly produce information involving a significant amount  
 4.21 of documentation is not considered a lack of cooperation if the commissioner has not worked  
 4.22 in good faith to narrow and tailor information requests to the commissioner's reasonable  
 4.23 needs.

4.24 Sec. 7. Minnesota Statutes 2020, section 60A.033, is amended by adding a subdivision to  
 4.25 read:

4.26 Subd. 11. **Informal disposition.** (a) The commissioner must make a good faith attempt  
 4.27 to informally resolve any alleged violations of law identified during the examination or  
 4.28 investigation. An attempt to informally resolve a violation may consist of a consent order  
 4.29 or other informal resolution or disposition.

4.30 (b) The terms of a consent order or other informal disposition that prescribes compliance  
 4.31 requirements must not be inconsistent with or supersede the requirements of Minnesota  
 4.32 law, nor may the terms be identical or substantially similar to the compliance requirements

5.1 in a consent order entered into by another licensee. A consent order containing identical or  
5.2 substantially similar requirements is unlawful rulemaking in violation of section 14.381,  
5.3 and a licensee has the remedies available for a violation under section 14.381.

5.4 (c) If requested by a licensee, the commissioner must enter into an informal, agreed  
5.5 upon consent order contemporaneously with the consent order's delivery to the department.

5.6 Sec. 8. Minnesota Statutes 2020, section 60A.033, is amended by adding a subdivision to  
5.7 read:

5.8 Subd. 12. **Report to the legislature.** Each year by February 1 the commissioner must  
5.9 report the following information to the chairs and ranking minority members of the house  
5.10 of representatives and senate committees having jurisdiction over commerce: a listing of  
5.11 the number of pending market conduct exams and the year the exams were commenced;  
5.12 the number of exams closed during the prior year and the current total of costs charged to  
5.13 the companies for each exam; whether the exam is being conducted, in whole or in part, by  
5.14 third-party examiners; and other information that the chairs or ranking minority members  
5.15 may reasonably request, subject to the limitations of section 60A.031, subdivision 4,  
5.16 paragraph (f).

5.17 Sec. 9. Minnesota Statutes 2020, section 70A.06, is amended by adding a subdivision to  
5.18 read:

5.19 Subd. 4. **Enforcement.** With respect to any rate or form filed under this section that is  
5.20 not disapproved under subdivision 1a or 2 or section 70A.11, upon a determination that the  
5.21 rate or form violates Minnesota law the commissioner may only order a filer to prospectively  
5.22 discontinue use of the rate or the form. The commissioner is prohibited from subjecting the  
5.23 filer to a civil penalty or other sanction for any filed rate or form.

5.24 Sec. 10. Minnesota Statutes 2020, section 72A.19, subdivision 1, is amended to read:

5.25 Subdivision 1. **Prohibition.** No person shall engage in this state in any trade practice  
5.26 which is defined in sections 72A.17 to 72A.32 as or determined pursuant to sections 72A.17  
5.27 to 72A.32 to be an unfair method of competition or an unfair or deceptive act or practice  
5.28 in the business of insurance if the practice (1) is committed flagrantly and in conscious  
5.29 disregard of the prohibitions, or (2) has been committed with sufficient frequency to indicate  
5.30 a general business practice of engaging in unfair methods of competition or unfair or  
5.31 deceptive acts or practices.

6.1 Sec. 11. **REPEALER.**

6.2 Minnesota Statutes 2020, section 60A.033, subdivision 3, is repealed.

6.3 Sec. 12. **EFFECTIVE DATE.**

6.4 This act is effective July 1, 2022.

**60A.033 SCHEDULING CONFERENCE AND ORDER.**

Subd. 3. **Exception.** A scheduling conference and order is not required under this section if the insurance company waives its right to a scheduling conference and order.