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State of Minnesota
HOUSE OF REPRESENTATIVES
NINETIETH SESSION

H. F. No. 1732

02/27/2017 Authored by Hoppe, Slocum, Davids, Applebaum and Loonan
The bill was read for the first time and referred to the Committee on Commerce and Regulatory Reform

1.1 A bill for an act
1.2 relating to insurance; examinations by the commissioner of commerce; amending
1.3 Minnesota Statutes 2016, sections 45.027, subdivision 7; 60A.031, subdivisions
1.4 2a, 6; 62C.11, by adding a subdivision; 62D.24; proposing coding for new law in
1.5 Minnesota Statutes, chapter 60A.

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

1.7 Section 1. Minnesota Statutes 2016, section 45.027, subdivision 7, is amended to read:

1.8 Subd. 7. **Actions against licensees.** (a) In addition to any other actions authorized by
1.9 this section, the commissioner may, by order, deny, suspend, or revoke the authority or
1.10 license of a person subject to the duties and responsibilities entrusted to the commissioner,
1.11 as described under section 45.011, subdivision 4, or censure that person if the commissioner
1.12 finds that:

1.13 (1) the order is in the public interest; and

1.14 (2) the person has violated any law, rule, or order related to the duties and responsibilities
1.15 entrusted to the commissioner; or

1.16 (3) the person has provided false, misleading, or incomplete information to the
1.17 commissioner or has refused to allow a reasonable inspection of records or premises; or

1.18 (4) the person has engaged in an act or practice, whether or not the act or practice directly
1.19 involves the business for which the person is licensed or authorized, which demonstrates
1.20 that the applicant or licensee is untrustworthy, financially irresponsible, or otherwise
1.21 incompetent or unqualified to act under the authority or license granted by the commissioner.

1.22 (b)(1) The commissioner shall issue an order requiring a licensee or applicant for a
1.23 license to show cause why the license should not be revoked or suspended, or the licensee

2.1 censured, or the application denied and provide the licensee or applicant an opportunity to
2.2 request a hearing under the contested case provisions of chapter 14. The order must: (i) state
2.3 the reasons that an order is being sought and whether a civil penalty is sought; and (ii)
2.4 inform the licensee or applicant that unless the licensee or applicant requests a hearing on
2.5 the matter within 30 days of receipt of the order, it becomes final by operation of law and
2.6 that a final order will be issued under paragraph (a). If a hearing is requested by the licensee
2.7 or applicant pursuant to item (ii): (A) the commissioner shall, within 15 days of receiving
2.8 the request, set the date and time for the hearing and notify the licensee or applicant of those
2.9 facts; and (B) the commissioner may modify, vacate, or extend the order, until the
2.10 commissioner issues a final order under paragraph (a).

2.11 (2) The commissioner may, by order, summarily suspend a license pending final
2.12 determination of an order to show cause issued under clause (1). If a license is suspended
2.13 pending final determination of an order to show cause and the licensee requests a hearing
2.14 on the matter within 30 days of receipt of the order to show cause, a hearing on the merits
2.15 must be held within 30 days of receipt of the hearing request. The summary suspension or
2.16 summary revocation procedure does not apply to action by the commissioner against the
2.17 certificate of authority of an insurer authorized to do business in Minnesota.

2.18 (c) All hearings must be conducted according to chapter 14. After the hearing, the
2.19 commissioner shall enter a final order disposing of the matter as the facts require. If the
2.20 licensee or applicant fails to appear at a hearing after having been duly notified of it, the
2.21 person is considered in default, and the proceeding may be determined against the licensee
2.22 or applicant.

2.23 (d) If an order becomes final because a person subject to an order does not timely request
2.24 a hearing as provided in paragraph (b) or if the petition for judicial review is not timely
2.25 filed after a hearing and a final order is issued by the commissioner as provided in paragraph
2.26 (a), the commissioner may file a certified copy of the final order with the clerk of a court
2.27 of competent jurisdiction. The final order so filed has the same effect as a judgment of the
2.28 court and may be recorded, enforced, or satisfied in the same manner as a judgment of the
2.29 court.

2.30 (e) If a person does not comply with a final order under this section, the commissioner
2.31 may petition a court of competent jurisdiction to enforce the order. The court may not require
2.32 the commissioner to post a bond in an action or proceeding under this section. If the court
2.33 finds, after service and opportunity for hearing, that the person was not in compliance with
2.34 the order, the court may adjudge the person in civil contempt of the order. The court may
2.35 impose a further civil penalty against the person for contempt in an amount up to \$10,000

3.1 for each violation and may grant any other relief the court determines is just and proper in
3.2 the circumstances.

3.3 (f) Except for information classified as confidential under sections 60A.03, subdivision
3.4 9; 60A.031; 60A.93; and 60D.22, the commissioner may make any data otherwise classified
3.5 as private or confidential pursuant to this section accessible to an appropriate person or
3.6 agency if the commissioner determines that the access will aid the law enforcement process,
3.7 promote public health or safety, or dispel widespread rumor or unrest. If the commissioner
3.8 determines that private or confidential information should be disclosed, the commissioner
3.9 shall notify the attorney general as to the information to be disclosed, the purpose of the
3.10 disclosure, and the need for the disclosure. The attorney general shall review the
3.11 commissioner's determination. If the attorney general believes that the commissioner's
3.12 determination does not satisfy the purpose and intent of this paragraph, the attorney general
3.13 shall advise the commissioner in writing that the information may not be disclosed. If the
3.14 attorney general believes the commissioner's determination satisfies the purpose and intent
3.15 of this provision, the attorney general shall advise the commissioner in writing, accordingly.

3.16 After disclosing information pursuant to this provision, the commissioner shall advise
3.17 the chairs of the senate and house of representatives judiciary committees of the disclosure
3.18 and the basis for it.

3.19 (g) Information in the possession or control of, or obtained or disclosed to, the
3.20 commissioner by an insurance company, as defined in section 60A.02, subdivision 4, or
3.21 derived from information provided by an insurance company, is:

3.22 (1) private data on individuals, as defined in section 13.02, subdivision 12, or nonpublic
3.23 data, as defined in section 13.02, subdivision 9; and

3.24 (2) not subject to subpoena or other discovery nor admissible in evidence in a private
3.25 civil action. Neither the commissioner nor any person who has received such information,
3.26 while acting under the authority of the commissioner, is permitted or required to testify in
3.27 a private civil action concerning that information. Nothing in this paragraph limits the ability
3.28 of the commissioner to use that information in the furtherance of an action brought by the
3.29 commissioner.

3.30 Sec. 2. Minnesota Statutes 2016, section 60A.031, subdivision 2a, is amended to read:

3.31 Subd. 2a. **Purpose, scope, and notice of examination.** (a) An examination may, but
3.32 need not, cover comprehensively all aspects of the examinee's affairs, practices, and
3.33 conditions. The commissioner shall determine the nature and scope of each examination

4.1 and in doing so shall take into account all available relevant factors concerning the financial
 4.2 and business affairs, practices and conditions of the examinee. For examinations undertaken
 4.3 pursuant to this section, the commissioner shall issue an order stating the scope of the
 4.4 examination and designating the person responsible for conducting the examination. A copy
 4.5 of the order shall be provided to the examinee.

4.6 (b) In conducting the examination, the examiner shall observe the guidelines and
 4.7 procedures in the examiner's handbook adopted by the National Association of Insurance
 4.8 Commissioners. The commissioner may also employ other guidelines or procedures that
 4.9 the commissioner may consider appropriate.

4.10 (c) Requests for information issued by the commissioner to an examinee must be issued
 4.11 under the commissioner's authority as provided in this section.

4.12 (d) Notwithstanding paragraph (c), the commissioner may request information from an
 4.13 examinee pursuant to the commissioner's authority under section 45.027, subdivision 1a or
 4.14 2 if:

4.15 (1) the request for information is in connection with an unresolved consumer complaint;
 4.16 or

4.17 (2) there is an imminent risk of significant harm to a consumer.

4.18 Sec. 3. Minnesota Statutes 2016, section 60A.031, subdivision 6, is amended to read:

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

4.24 Sec. 4. **[60A.033] SCHEDULING CONFERENCE AND ORDER.**

4.25 Subdivision 1. Scheduling conference required. Within 30 days of issuing an
 4.26 examination order under section 60A.031, the commissioner must hold a scheduling
 4.27 conference with the insurance company.

4.28 Subd. 2. Exception. A scheduling conference and order is not required under this section
 4.29 if the insurance company waives their right to a scheduling conference and order.

4.30 Subd. 3. Scheduling conference. At the scheduling conference, the commissioner must
 4.31 provide the insurance company with the following:

5.1 (1) the justification for the examination and the specific regulatory issues the examination
5.2 will address;

5.3 (2) the information that must be produced by the insurance company and the timing for
5.4 its production in accordance with the requirements of subdivision 6;

5.5 (3) the estimated length of the examination, subject to the requirements of subdivision
5.6 9;

5.7 (4) whether contract examiners will be used;

5.8 (5) a budget for the exam including:

5.9 (i) the daily or hourly rates for the examiners that will be involved in the examination
5.10 and the estimated number of hours for the examination;

5.11 (ii) the estimated travel, lodging, meal, and other expenses of the examiners; and

5.12 (iii) the estimated administrative and supply costs directly associated with the
5.13 examination;

5.14 (6) an explanation of the invoicing process and the process for resolving billing disputes;
5.15 and

5.16 (7) the direct consumer harm caused by the alleged conduct of the insurance company.

5.17 Subd. 4. **Scheduling order.** Within ten business days following the scheduling
5.18 conference, the commissioner must issue a scheduling order that includes the information
5.19 required by subdivision 3, based on the discussion at the scheduling conference. The
5.20 commissioner and insurance company must follow the terms of the scheduling order. To
5.21 amend a scheduling order there must be a supplemental scheduling conference that complies
5.22 with subdivision 3 and a supplemental scheduling order that complies with this subdivision,
5.23 unless otherwise agreed upon by the commissioner and the insurance company.

5.24 Subd. 5. **Administrative review of scheduling order.** (a) The scheduling order
5.25 constitutes a final administrative decision, and the order and the commissioner's conduct
5.26 under this section may be appealed as provided under chapter 14. While an administrative
5.27 law judge is conducting an administrative review, the scheduling order and examination
5.28 are in force and compliance cannot be delayed by the insurance company. If after a hearing
5.29 the administrative law judge finds that the order or the commissioner's conduct violates this
5.30 section, the administrative law judge shall report findings and conclusions and order the
5.31 commissioner to revise the scheduling order accordingly and to comply with its terms and
5.32 this section. The order of the administrative law judge shall constitute the final decision in

6.1 the case and, absent a stipulation of the parties, may not be rejected or modified by the
6.2 commissioner. The order may be appealed to the Court of Appeals under sections 14.63 to
6.3 14.68, pursuant to the standard of review in section 14.69.

6.4 (b) Upon the request of the insurance company, the administrative law judge shall have
6.5 continuing jurisdiction to review the conduct and reasonableness of the actions of the
6.6 commissioner in undertaking the balance of the examination. An insurance company may
6.7 request an administrative hearing at any time during the examination if the commissioner
6.8 departs from the terms of the scheduling order or otherwise violates any of the requirements
6.9 of this section.

6.10 Subd. 6. **Production of information.** (a) Any information requested from an insurance
6.11 company by the commissioner must:

6.12 (1) be limited to matters relevant to the regulatory issue the examination will address;

6.13 (2) provide the insurance company with a reasonable period of time to respond to the
6.14 request, but not less than 30 business days from the receipt of the request; and

6.15 (3) be reasonable in relation to the burden or expense of gathering the requested
6.16 information and the needs of the examination.

6.17 (b) The commissioner may not request information that is cumulative or duplicative,
6.18 including information that may have been provided by the insurance company as part of
6.19 any other examination, such as information produced to other states. The commissioner
6.20 may not request information if it is obtainable from some other source that is more
6.21 convenient, less burdensome, or less expensive, for the commissioner.

6.22 (c) An insurance company can extend the time period by which a response to an
6.23 information request from the commissioner is due by 30 business days upon giving notice
6.24 of the extension to the commissioner. An insurance company can further extend the time
6.25 period by which a response to an information request from the commissioner is due by a
6.26 showing of good cause for the delay to the commissioner. The commissioner may extend
6.27 any time period by which information is due relating to an examination.

6.28 Subd. 7. **Conduct of an examination.** (a) Unless required to preserve evidence, the
6.29 commissioner, department, and examiners:

6.30 (1) may not appear at an insurance company's place of business unannounced to conduct
6.31 the examination; or

6.32 (2) may not be present at an insurance company's place of business outside of normal
6.33 hours without the insurance company's written consent.

7.1 (b) If a statement is taken by the commissioner from a person under oath, the person
7.2 must first be informed of the following:

7.3 (1) the scope of the proposed statement;

7.4 (2) whether the person is the subject of an examination; and

7.5 (3) that the person may be represented by legal counsel during the taking of the statement.

7.6 (c) If a statement is taken by the commissioner from a person under oath and the statement
7.7 is recorded, the person must be provided with a transcript or recording of the statement
7.8 within ten business days of requesting it from the commissioner.

7.9 Subd. 8. **Costs.** All bills for examination costs being charged to an insurance company
7.10 pursuant to section 60A.031, subdivision 3, paragraph (c), or subdivision 5, must:

7.11 (1) be provided to the insurance company on a monthly basis;

7.12 (2) be itemized and, with respect to examiner billings, contain activity detail on a quarterly
7.13 hourly basis by an individual examiner and disclose the applicable hourly billing rates,
7.14 together with per-charge detail for related travel or other expenses; and

7.15 (3) provide a due date no less than 30 business days from receipt of the bill.

7.16 Subd. 9. **Completion of examination.** An examination under section 60A.031 must not
7.17 exceed 12 months from the issuance of a scheduling order if:

7.18 (1) there has not been a material lack of cooperation by the insurance company; or

7.19 (2) the commissioner can show that additional time is necessary to complete the
7.20 examination.

7.21 Subd. 10. **Administrative review.** An administrative law judge conducting a hearing
7.22 with respect to any allegations of the commissioner arising from an order issued pursuant
7.23 to section 60A.031, subdivision 4, paragraph (d), clause (1), or other examination process
7.24 is authorized to make findings of fact, conclusions of law, and impose discipline pursuant
7.25 to section 45.027, subdivisions 6 and 7, or other civil penalty statute if applicable, by taking
7.26 into account the factors set forth in section 14.045, subdivision 3. The report or order of the
7.27 administrative law judge shall constitute the final decision in the case and, absent a stipulation
7.28 of the parties, may not be rejected or modified by the commissioner. Such findings of fact,
7.29 conclusions of law, and discipline may be appealed to the Court of Appeals under sections
7.30 14.63 to 14.68, pursuant to the standard of review set forth in section 14.69.

7.31 Subd. 11. **Confidentiality.** Information in the possession or control of, or obtained or
7.32 disclosed to, the commissioner by an insurance company, or derived from information

8.1 provided by an insurance company pursuant to section 60A.031 and this section are not
8.2 subject to subpoena or other discovery nor admissible in evidence in a private civil action.
8.3 Neither the commissioner nor any person who has received such information, while acting
8.4 under the authority of the commissioner, is permitted or required to testify in a private civil
8.5 action concerning that information. Nothing in this subdivision limits the ability of the
8.6 commissioner to use that information in the furtherance of an action brought by the
8.7 commissioner.

8.8 Sec. 5. Minnesota Statutes 2016, section 62C.11, is amended by adding a subdivision to
8.9 read:

8.10 Subd. 4a. **Scheduling conference and order.** A service plan corporation and the
8.11 commissioner are subject to section 60A.033.

8.12 Sec. 6. Minnesota Statutes 2016, section 62D.24, is amended to read:

8.13 **62D.24 COMMISSIONER OF HEALTH'S AUTHORITY TO CONTRACT.**

8.14 (a) The commissioner of health, in carrying out the obligations under sections 62D.01
8.15 to 62D.30, may contract with the commissioner of commerce or other qualified persons to
8.16 make recommendations concerning the determinations required to be made. Such
8.17 recommendations may be accepted in full or in part by the commissioner of health.

8.18 (b) If the commissioner of health contracts with the commissioner of commerce for an
8.19 examination under section 60A.031, then the health maintenance organization and the
8.20 commissioner of commerce are subject to section 60A.033.

8.21 Sec. 7. **EFFECTIVE DATE.**

8.22 Sections 1 to 6 are effective August 1, 2017, and apply to examinations and investigations
8.23 initiated on or after that date.