

which mining operations have ceased for a period of six consecutive months or longer. The top and bottom wire shall not be less than 9 gauge and the filler wire shall not be less than 11 gauge. The fencing shall be not less than five feet in height with two strands of barbed wire six inches apart affixed to the top of the fence. The fence posts shall be no more than ten feet apart. In the case of open pit mines in which mining operations cease after the effective date of this act, the fencing shall be erected forthwith. In the case of open pit mines in which mining operations had ceased for a period of six consecutive months or longer before the effective date of this act, and not resumed, the fencing shall be erected within one year after the effective date of this act. Any fencing required by an inspector of mines pursuant to subdivision 3 or other applicable law shall meet the standards of this section as a minimum. This subdivision does not apply to any excavation, open pit, or shaft, or any portion thereof, exempted from its application by the commissioner of natural resources pursuant to laws relating to mineland reclamation or exempted from its application by the county mine inspector pursuant to subdivision 4.

Subd. 3. When any mine is idle or abandoned it shall be the duty of the inspector of mines to notify the person, persons firm, or corporation owning the land on which any such mine is situated; or the agent of such owner or owners; that is or has been engaged in the business of mining to erect and maintain around all the shafts, caves, and open pits of such mines a fence or railing suitable to prevent persons or domestic animals from accidentally falling into these shafts, caves or open pits. If the person, firm or corporation that has been engaged in the business of mining no longer exists, the fee owner shall erect the fencing required by this act. The notice shall be in writing and be served upon such person, firm, corporation or fee owner, owners, or agent, personally; or by leaving a copy at the residence of any such owner or agent if they or any of them reside in the county where such mine is situated; and if such owner, owners or agent are not residents of the county, such notice may be given by publishing the same in one or more newspapers printed and circulated in the county; if there be one; and if no newspaper be published in the county; then in a newspaper published in some adjoining county, for a period of three consecutive weeks by certified mail.

Subd. 4. Upon written application, the county mine inspector may exempt from the requirements of subdivision 2, any abandoned excavation, open pit, or shaft which is fenced in a manner that is reasonably similar to the standards set forth in subdivision 2, or which in his judgment does not constitute a safety hazard.

Sec. 2. **EFFECTIVE DATE.** This act is effective on November 1, 1979.

Approved March 28, 1978.

CHAPTER 597-H.F.No.526

An act relating to insurance; providing for the procurement of insurance from and the regulation of surplus line insurers and agents; providing for the regulation and imposition of penalties on certain insurance agents; amending Minnesota Statutes 1976, Section 60A.20.

Changes or additions indicated by underline deletions by ~~strikeout~~

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

Section 1. Minnesota Statutes 1976, Section 60A.20, is amended to read:

60A.20. **SURPLUS LINE LAW.** Subdivision 1. **PURPOSE CLAUSE.** Insurance transactions with unauthorized insurers are so affected with a public interest as to require regulation, taxation, supervision and control as provided in this section in order to: protect the citizens of this state in transactions involving the purchase of insurance from insurers not authorized to transact business in this state; provide for the public an orderly, reasonable, and regulated access to insurance from unauthorized insurers, where necessary, through qualified licensed and supervised surplus line agents; protect the revenues of this state; protect regulated authorized insurers from unregulated and unfair competition by unauthorized insurers; and regulate and supervise the procurement from unauthorized insurers in accordance with the laws of this state and Public Law 15 known as the McCarran Act.

Subd. 2. **4. CONDITIONS TO PROCUREMENT.** If certain insurance coverages cannot be procured from authorized insurers, such coverages, hereinafter designated surplus line, may be procured from ~~unauthorized~~ surplus line insurers through a licensed surplus line agent, subject to the following conditions:

(1) The full amount of insurance required must not be procurable, after diligent effort has been made to do so from among the insurers who are authorized to transact insurance business and are actually writing the particular kind and class of insurance in this state; ~~and;~~

(2) The amount of insurance ~~eligible for an unauthorized insurer is which may be provided by a surplus line insurer shall be~~ only the excess over the amount procurable from authorized insurers; ~~;~~ and

~~(2)~~ (3) The insurance must not be so procured for the purpose of securing advantages, either as to:

(a) A lower premium rate than would be accepted by an authorized insurer, or

(b) Terms of the insurance contract.

Subd. 3. **5. AFFIDAVIT BY AGENT; POLICY TO BE LABELED AND BEAR NAME OF AGENT.** At the time each surplus line insurance contract is procured, the surplus line agent shall execute an affidavit in the form prescribed by the commissioner setting forth facts from which it may be determined whether the requirements of subdivision 2 ~~above~~ 4 have been met. ~~Such~~ The affidavit shall be filed with the commissioner within 30 days after each surplus line contract is ~~placed~~ issued.

Subd. 4. Each insurance contract, cover note, or certificate of insurance procured as a surplus line coverage shall have the following statement stamped or imprinted upon it ~~and be initiated by or bear the name of the surplus line agent who procured it; the following:~~

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"This contract is delivered as a surplus line coverage under the Surplus Line Insurance Law and this insurer is not licensed to do business in Minnesota." in not less than 10 point print in red ink:

"This insurance contract is issued by an insurer neither authorized by nor under the jurisdiction of the Minnesota insurance division and is written pursuant to the Minnesota surplus line law. Placed by (name and office address of surplus line agent who procured the insurance)."

This statement shall not be concealed or covered over with a policy label, sticker or any other thing which may prevent the insured from seeing it. Every policy, cover sheet, or other instrument of insurance delivered to the insured and placed with an unlicensed insurer in accordance with this section shall contain a clause or provision appointing the commissioner as the true and lawful attorney of each insurer in and for this state, upon whom all lawful process may be served in any action, suit or proceeding instituted in this state by or on behalf of an insured or beneficiary against the insurer, arising out of the instrument of insurance.

Subd. 5. 6. INSURANCE VALID. Insurance contracts procured as surplus line coverages from ~~unauthorized surplus line~~ insurers in accordance with this section shall be valid and enforceable and the provisions of policies shall be at least as favorable to the insured as any standard policy described by the laws of this state.

Subd. 6. 3. LICENSING OF SURPLUS LINE AGENTS. Any person, while licensed as a resident insurance agent of this state ~~as to~~ for property, casualty, and surety insurances, and who is deemed by the commissioner to be ~~qualified therefor by insurance experience have had sufficient experience in the insurance business to be competent for the purpose~~ and to be trustworthy, may be licensed as a surplus line agent as follows upon :

(1) Making written application to the commissioner for the license ~~shall be made,~~ on forms furnished by the commissioner; ~~and~~

(2) License fee in the amount of \$50 shall be paid to the commissioner. The license shall expire on May 31 of each year. Paying a \$100 license fee to the commissioner for deposit in the general fund.

The license shall expire on June 30 of each year and shall be renewable upon written request to the commissioner on forms furnished by him. The written request shall be accompanied by payment of the license fee, prior to expiration.

Prior to the issuance of a license, the applicant shall file with the commissioner, and maintain thereafter for as long as any ~~such~~ license remains in force, a bond, with an authorized corporate surety approved by the commissioner, in favor of the commissioner, in the penal sum of not less than \$5,000 conditioned upon compliance with this section. The commissioner may, in his discretion, require a bond in a larger amount commensurate with the volume of surplus line business transacted or to be transacted by a particular surplus line agent. The aggregate liability of the surety for any and all claims

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on any such the bond shall, in no event, exceed the penal sum thereof. No such bond shall be terminated unless not less than 30 days prior written notice thereof shall be given to the licensee and filed with the commissioner.

Subd. 7. 2. REQUIREMENT OF INSURERS. No surplus line agent shall procure surplus line insurance contracts from any unauthorized insurer unless the unauthorized insurer meets either of the following requirements:

(1) The unauthorized insurer is an authorized insurer in at least one state of the United States for the kind of insurance involved; and which, if a stock insurer, has capital stock of at least \$500,000; and surplus of at least \$500,000; or, if any other type of insurer, has surplus of at least \$1,000,000; or

(2) The unauthorized insurer, other than one qualified under (1) above, has an established and effective trust fund of at least \$400,000 within the United States; administered by a recognized financial institution and held for the benefit of all its policyholders in the United States or policyholders and creditors in the United States.

An unauthorized insurer assuming any surplus line risk pursuant to this surplus line law shall within 30 days thereafter file with the commissioner a duly executed and sworn affidavit showing facts in support of its qualification under either (1) or (2) above, except that requirement (2) may otherwise be sufficiently evidenced by an affidavit of the trustee institution filed with the commissioner showing the requisite facts and renewed from time to time as the commissioner may reasonably require to reflect the current condition of the trust fund; and any such trustee's affidavit properly filed and maintained shall be sufficient as to all risks placed with that unauthorized insurer pursuant to this surplus line law.

Provided that the foregoing limitations may be waived upon filing with the commissioner a signed statement of the insured requesting insurance in an unauthorized insurer which has an established and effective trust fund of at least \$400,000 within the United States; administered by a recognized financial institution and held for the benefit of all its policyholders in the United States or policyholders and creditors in the United States; provided further that the amount of insurance placed with such unauthorized insurer shall not exceed ten percent of the total risk to be insured.

If at any time the commissioner shall determine, in his judgment, that an unauthorized insurer is not in a safe or solvent financial condition; has refused to pay just claims; or that any further transaction of business by it in this state will be hazardous to residents of this state regardless of whether they are policyholders of the unauthorized insurer, he shall direct that no such insurance shall be placed or renewed with such insurer; and upon his written notice to that effect mailed to licensees under this section; thereafter no insurance shall be placed or renewed with such insurer.

Notwithstanding any provision of this subdivision, the placement by a surplus line agent of insurance with an unauthorized insurer, pursuant to the general authority and provisions of this section, shall not imply approval by the commissioner of such insurer's financial condition or mode of operation.

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No surplus line agent shall procure surplus line insurance contracts from any unauthorized surplus line insurer unless the insurer applies in writing to the commissioner, meets the following conditions, and is declared an eligible surplus line insurer by the commissioner.

(1) The insurer must currently be a licensed insurer in the state or country of its domicile as to the kind or kinds of insurance which it proposes to provide and shall have been so currently licensed for a period of time sufficient for the commissioner to ascertain that the other prerequisites of this section have been met, including operational procedures and claims practices.

(2) The insurer, before being declared eligible, shall furnish the commissioner with two certified copies of its most current annual financial statement, one in the language and currency of the country of its domicile, and the other in the English language and United States currency at the current exchange rate.

(3) If the insurer is licensed in at least one state of the United States it must have and maintain capital and surplus in at least the amounts required of a like insurer pursuant to section 60A.07. If the insurer is an alien insurer and is not licensed in any state of the United States, it must have and maintain in a bank or trust company which is a member of the United States federal reserve system a trust fund established under terms reasonably adequate for the protection of all its policyholders in the United States in an amount not less than \$1,000,000.

Unincorporated individual alien insurers shall, in lieu of the foregoing trust fund requirement, maintain in a bank that is a member of the Federal Reserve System assets held in trust for all their policyholders and beneficiaries in the United States of not less than \$50,000,000 in aggregate.

(4) The insurer must have a good reputation with regard to the providing of service to its policyholders and the payment of losses and claims.

(5) The insurer shall not be declared eligible if its management is considered by the commissioner to be incompetent or untrustworthy, or lacking in sufficient insurer managerial experience, or if the commissioner has good reason to believe the insurer is affiliated directly or indirectly through ownership, control, reinsurance transactions, or other insurance or business relationships with any entity whose business operations may be or have been detrimental to the interests of policyholders, stockholders, investors, creditors, or the public.

(6) The insurer shall designate in writing to the commissioner the name and address of the proper individual in its employ who is directly and actively in charge of and responsible for handling any and all insurance claims and to whom all correspondence regarding such claims may be directed.

An eligible surplus line insurer must report at least annually to the commissioner the person currently responsible for and in charge of handling the claims.

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(7) An eligible surplus line insurer shall furnish at least annually to the commissioner the information required by clause (2). If at any time the commissioner has reason to believe that any insurer then on the list of eligible surplus line insurers is impaired financially or no longer meets the requirements for eligibility as set forth in this subdivision, he may cause to be issued a cease and desist order pursuant to section 60A.171, requiring the insurer to cease writing surplus line insurance.

If the commissioner determines, after a hearing, that an insurer currently eligible as a surplus line insurer has violated the laws of this state, or has failed to make reasonably prompt settlement of just claims for losses and/or return premiums he may declare the insurer no longer an eligible surplus line insurer. The commissioner shall promptly mail notice of all such declarations to each surplus line agent.

(8) The insurer, both before and after it has been declared an eligible surplus line insurer, shall furnish any additional information relative to the management and operation of the insurer as the commissioner may reasonably require.

The commissioner shall from time to time publish a list of all currently eligible surplus line insurers and shall mail a copy thereof to each licensed surplus line agent.

Nothing in this section shall be deemed to impose on the commissioner any duty or responsibility to determine the actual financial condition or claims practices of any unauthorized insurer; and the status of being an eligible surplus line insurer, if granted by the commissioner, shall be construed to mean only that the insurer appears to be sound financially and to have satisfactory claims practices, and that the commissioner has no credible evidence to the contrary.

Subd. 8. 7. EVIDENCE OF INSURANCE. (1) Upon placing a surplus line coverage, the surplus line agent shall promptly issue and deliver to the insured evidence of the insurance, consisting either of the policy as issued by the insurer, or, if ~~such~~ the policy is not then available, a certificate of insurance or cover note signed or countersigned by the agent. ~~Such~~ A certificate or cover note shall show the subject, coverage, conditions, and term of the insurance, the premium charged and taxes collected from the insured, and the name and address of the insurer. If the direct risk is assumed by more than one insurer, the certificate or cover note shall state the name and address and proportion of the entire direct risk assumed by each ~~such~~ insurer.

(2) If, after the issuance and delivery of any ~~such~~ certificate or cover note, there is any change as to the identity of the insurers, or the proportion of the direct risk assumed by the insurer as stated in the original certificate or cover note, or in any other material respect as to the insurance coverage evidenced by the certificate or cover note, the agent shall promptly issue and deliver to the insured a substitute certificate or cover note accurately showing the current status of the coverage and the insurers responsible thereunder.

(3) If a policy issued by the insurer is not available upon placement of the insurance and the agent has issued and delivered a certificate or cover note as ~~hereinabove~~ provided in this subdivision, upon request therefor by the insured, the agent

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shall, as soon as reasonably possible, procure from the insurer its policy evidencing ~~such~~ the insurance and deliver ~~such~~ the policy to the insured in replacement of the certificate or cover note theretofore issued.

(4) Any surplus line agent who knowingly or negligently issues or delivers a false certificate or cover note of insurance, or fails promptly to notify the insured of any material change with respect to ~~such~~ the insurance by delivery to the insured of a substitute certificate or cover note as provided in clause (2) ~~hereof~~, shall be guilty of a violation of this ~~code section~~, and, upon conviction, shall be subject to the penalties provided by this section, or to any greater applicable penalty otherwise provided by law.

Subd. 9. **8. LIABILITY OF INSURER AS TO LOSSES AND UNEARNED PREMIUMS.** As to a surplus line risk which has been assumed by ~~an unauthorized~~ a surplus line insurer pursuant to this ~~surplus line insurance law~~ section, and if the premium thereon has been received by the surplus line agent who placed ~~such~~ the insurance, in all questions thereafter arising under the coverage as between the insurer and the insured, the insurer shall be deemed to have received the premium due to it for ~~such~~ the coverage; and the insurer shall be liable to the insured as to losses covered by ~~such~~ the insurance, and for unearned premiums which may become payable to the insured upon cancellation of ~~such~~ the insurance, whether or not, in fact, the agent is indebted to the insurer with respect to ~~such~~ the insurance or for any other cause. This ~~provision~~ subdivision shall not affect rights as between the insurer and the surplus line agent.

Subd. 10. **9. AGENT TO KEEP RECORDS AND MAKE REPORTS.** (1) Each surplus line agent shall keep a separate record and account of all business transacted under his surplus line license, including a copy of each daily report, if any, and of each binder or cover note delivered by him. The records shall be available for examination by the commissioner at any reasonable time within the policy period, and shall be retained for at least three years following the termination of the coverage to which the records relate.

(2) Within 60 days following December 31 and June 30 of each year, the surplus line agent shall file with the commissioner a semi-annual statement ~~which reports the following:~~

(a) Name and address of each insured for whom surplus line insurance was procured;

(b) Name and home office of each insurer providing such insurance;

(c) Amount of each coverage, the premium rate and gross premiums charged;

(d) Date and term of policy;

(e) Amount of premium returned on each policy cancelled or not taken; and

(f) Such additional information as the commissioner may reasonably require on forms prescribed by the commissioner.

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Subd. ~~44~~ 10. **COLLECTION OF PREMIUM TAX.** The premiums charged for surplus line insurance are subject to a premium receipts tax of ~~two~~ three percent on all gross premiums; ~~less any return premiums charged for such the insurance, less any return premiums and dividends.~~ Gross premiums shall include all premiums, fees, assessments, dues and any other consideration paid by an insured or applicant for any type of insurance. The surplus line agent shall charge the insured the amount of the tax at the time of delivery of the policy or other initial confirmation of insurance, in addition to the full amount of the gross premium charged by the insurer for the insurance; provided, however, that the tax on any unearned portion of the premium shall be returned to the policyholder by the surplus line agent. The surplus line agent is ~~prohibited from absorbing such~~ may not absorb the tax, or as an inducement for insurance, or for any other reason, ~~rebating rebate~~ all or any part of ~~such the~~ tax or all or any part of his commission.

In the event that a given transaction is handled by a licensed surplus line agent for another licensed surplus line agent, the surplus line agent dealing directly with the insurer shall be held responsible to the state for reporting the transaction and paying the tax.

Within 60 days following December 31 and June 30 of each year, the surplus line agent shall pay to the commissioner the amount of premium receipts taxes due upon business done during the semi-annual period ending December 31 and June 30 of each year.

If the surplus line policy covers risks or exposures only partially in this state, the tax payable shall be computed on the portion of the premium which is properly allocated to the risks or exposures located in this state.

Subd. ~~42~~ 11. **PENALTY FOR FAILURE TO FILE STATEMENT OR PAY TAX.** Every surplus line agent who fails to make and file the semi-annual statement as required ~~under subdivision 40~~; or to pay the taxes as required under this section, shall be liable to a penalty of \$25 for each ~~seven days~~ month of delinquency ~~and ten percent of the tax due,~~ together with interest at the rate of ~~six~~ one percent ~~per 30 day month or fraction thereof~~ on any unpaid premium tax which is delinquent from the date of ~~such~~ delinquency. The tax and penalty may be recovered in an action instituted by the commissioner in the name of the state in any court of competent jurisdiction, the attorney general representing him. The surplus line agent's license shall also be subject to revocation as provided in subdivision ~~43~~ 12.

Subd. ~~43~~ 12. **REVOCATION OR SUSPENSION OF AGENT'S LICENSE.** ~~(+) The commissioner may revoke or suspend all licenses held by a surplus line agent. The commissioner may suspend, revoke, or refuse to renew the license of a surplus line agent or impose a fine of not more than \$1,000 for each violation of this section, after notice and hearing upon any one or more of the following grounds:~~

(a) If the agent fails to file his semi-annual statement or to remit the tax, as required by law this section;

(b) If the agent fails to keep the records or to allow the commissioner to examine his records, as required by law this section;

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(c) If the agent fails to file or falsifies the affidavit required by subdivision 3; ~~or 5;~~

(d) If the agent places surplus line insurance with insurers who fail to meet the eligibility requirements of this section;

(e) If the agent fails to maintain the bond as required by this section; or

(f) For any of the causes for which an insurance agent's license may be revoked or suspended.

(2) No agent whose licenses have been so revoked or suspended shall again be so licensed until all penalties and delinquent taxes owing by him have been paid.

Subd. 14. No surplus line agent shall procure contracts from any unauthorized insurer unless: Such unauthorized insurer shall, prior to the time any risk is assumed, file with the commissioner a duly executed instrument whereby the unauthorized insurer shall appoint and constitute the commissioner the true and lawful attorney of such unauthorized insurer upon whom all lawful process in any action or legal proceeding against it may be served; and shall agree that any such lawful process against it, which may be served upon its said attorney as provided in this section, shall be of the same force and validity as if served upon the unauthorized insurer and that authority thereof shall continue in force irrevocably so long as any liability of the unauthorized insurer in this state shall remain outstanding. Such instrument shall designate therein, irrevocably but with full power of substitution; so long as any liability of the unauthorized insurer in this state shall remain outstanding, a resident of the state to whom a copy of such process shall be forwarded by the commissioner by fully prepaid registered or certified mail. Upon the mailing of such copy and receipt thereof, the service of such process shall be complete. The provisions of the unauthorized insurers process act, section 60A.21, shall, to the extent not inconsistent herewith, be applicable in connection with such service of process.

Subd. 15. **RULES.** The commissioner shall make or may approve and adopt reasonable rules and regulations for the effectuation of this section.

Subd. 16. **13. AUTHORIZED INSURANCE.** Any authorized insurer, upon submission of an affidavit to the commissioner setting forth facts which show that it is competing for a specific risk with a named ~~unauthorized surplus line~~ insurer, may issue a policy without regard to rate and form requirements otherwise applicable; provided that the provisions of ~~policies~~ the policy shall be at least as favorable to the insured as any standard policy described by the laws of this state. Insurance issued by authorized insurers under the provisions of this subdivision shall be considered for the purposes of regulation and taxation as authorized insurance rather than surplus line insurance.

Subd. 17. **14. RESTRICTIONS.** The provisions of this section; controlling the placing of insurance with unauthorized insurers; shall not apply to The following types of insurance shall not be placed under the provisions of this section:

(1) Life insurance;

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(2) Accident and health insurance;

(3) Annuities; or

(4) Reinsurance; nor to the following insurance when so placed by a licensed agent of this state; or

(+) (5) Insurance on subjects located, resident, or to be performed wholly outside of this state.

(2) Insurance on the property or operations of aircraft or railroads engaged in transportation in interstate and foreign commerce.

(3) Insurance of vessels, crafts or hulls, cargoes, marine builders' risks, marine protection and indemnity, or other risks including strikes and war risks commonly insured under ocean or wet marine forms of policies.

Sec. 2. INSTRUCTION TO REVISOR. In the next edition of Minnesota Statutes, the revisor of statutes shall publish the subdivisions of section 60A.20 in their proper sequence as renumbered by this act.

Approved March 28, 1978.

CHAPTER 598-H.F.No.774

[Coded in Part]

An act relating to landlords and tenants; providing remedies for tenants whose landlords have breached provisions of statutory covenants or rental agreements; prohibiting the automatic renewal of certain leases; amending Minnesota Statutes 1976, Sections 504.21; 566.18, Subdivisions 6 and 8; 566.19, Subdivisions 2 and 3, and by adding a subdivision; 566.20, Subdivision 4; and 566.23.

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

Section 1. Minnesota Statutes 1976, Section 504.21, is amended to read:

504.21 RESTRICTION ON AUTOMATIC RENEWALS OF LEASES. Notwithstanding the provisions of any lease of real property used for residential purposes, no person shall have the right to enforce any automatic renewal clause of a lease of an original term of two months or more which states, in effect, that the term thereof shall be deemed renewed for a specified additional period of time of two months or more unless the lessee or tenant gives notice to the lessor of his intention to quit the premises at the expiration of the term due to expire, unless the lessor or his agent, within 15 days prior to the time that the lessee or tenant is required to furnish notice of his intention to quit, but not more than 30 days prior thereto, shall give to the tenant written notice, served personally or by registered or certified mail, directing the lessee's or tenant's attention to

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