must also be the rate that the insurer has filed with the department of commerce if the insurer is required to file its rates with the department. If the insurer is not required to file its rates with the department, the offered rate must be the rate generally charged by the insurer for similar coverage and risk.

Sec. 17. Minnesota Statutes 1992, section 62I.21, is amended to read:

62I.21 **ACTIVATION OF MARKET ASSISTANCE PLAN AND JOINT UNDERWRITING ASSOCIATION.**

~~At any time the commissioner of commerce deems it necessary to provide assistance with respect to the~~ Upon submission of an application for placement of general liability insurance coverage ~~on Minnesota risks for~~ under section 62I.13 in a class of business for which the market assistance plan and the joint underwriting association are not then activated, where the applicant has been refused coverage within the meaning of section 62I.13, subdivision 2, the commissioner ~~shall~~ may by notice in the State Register activate the market assistance plan and the joint underwriting association on Minnesota risks for the class of business. The plan and association are activated for a period of 180 days from publication of the notice. At the same time the notice is published, the commissioner shall prepare a written petition requesting that a hearing be held to determine whether activation of the market assistance plan and the joint underwriting association is necessary beyond the 180-day period. The hearing must be held in accordance with section 62I.22. The commissioner by order shall deactivate a market assistance program and the joint underwriting association at any time the commissioner finds that the market assistance program and the joint underwriting association are not necessary.

Sec. 18. **REPEALER.**

Minnesota Statutes 1992, section 60D.19, subdivision 5, is repealed.

Presented to the governor April 11, 1994

Signed by the governor April 13, 1994, 1:10 p.m.

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## CHAPTER 426—H.F.No. 1964

*An act relating to insurance; solvency; regulating reinsurance, loss reserve certifications and annual audits, and annual statements; regulating certain guaranty association coverages; modifying the incorporation requirements of domestic mutuals; amending Minnesota Statutes 1992, sections 60A.092, subdivision 7; 60A.206, subdivision 6; 60C.02, subdivision 1; 62E.10, subdivision 2; and 66A.03; Minnesota Statutes 1993 Supplement, sections 60A.129, subdivisions 3, 5, and 7; 60A.13, subdivision 1; and 61B.19, subdivision 3; proposing coding for new law in Minnesota Statutes, chapter 60A; repealing Minnesota Statutes 1992, sections 60A.80; 60A.801; and 60A.802.*

**New language is indicated by underline, deletions by ~~strikeout~~.**

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

Section 1. Minnesota Statutes 1992, section 60A.092, subdivision 7, is amended to read:

Subd. 7. ~~INDIVIDUAL UNINCORPORATED~~ **UNDERWRITERS GROUP; TRUST FUND REQUIREMENTS.** In the case of a group ~~of~~ including incorporated and individual unincorporated underwriters, the trust shall consist of a trusteed account representing the group's liabilities attributable to business written in the United States. The group shall maintain a trusteed surplus of which $100,000,000 shall be held jointly for the benefit of United States ceding insurers of any member of the group. The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and must be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members. The group shall make available to the commissioner an annual certification by the group's domiciliary regulator and its independent public accountants of the solvency of each underwriter.

Sec. 2. **[60A.096] QUALIFYING LETTER OF CREDIT.**

Subdivision 1. **GENERALLY.** An admitted asset or a reduction in liability for reinsurance ceded to an unauthorized assuming insurer providing a letter of credit pursuant to section 60A.093 shall only be allowed when the letter of credit meets the requirements of this section.

Subd. 2. **CONTENT.** The letter of credit must be clean, irrevocable, and unconditional and issued or confirmed by a qualified United States financial institution as defined in section 60A.091. The letter of credit must contain an issue date and date of expiration and must stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit must also state that it is not subject to any condition or qualification outside of the letter of credit. In addition, the letter of credit must not contain reference to any other agreements, documents, or entities, except as provided in subdivision 10, paragraph (a).

As used in this section, "beneficiary" means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver, including conservator, rehabilitator, or liquidator.

Subd. 3. **FORM.** The heading of the letter of credit may include a boxed section which contains the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section must be clearly marked to indicate that the information is for internal identification purposes only.

**New language is indicated by underline, deletions by ~~strikeout~~.**

Subd. 4. **REIMBURSEMENT CONTINGENCY PROHIBITED.** The letter of credit must contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect to it.

Subd. 5. **EXPIRATION.** The term of the letter of credit must be for at least one year and must contain an "evergreen clause" which prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" must provide for a period of no less than 30 days' notice before the expiration date or nonrenewal.

Subd. 6. **GOVERNING LAW.** The letter of credit must state whether it is subject to and governed by the laws of this state or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 400), and that all drafts drawn under it shall be presentable at an office in the United States of a qualified United States financial institution.

Subd. 7. **EXTENSIONS.** If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 400), then the letter of credit must specifically address and make provision for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 19 of Publication 400 occur.

Subd. 8. **ISSUANCE OR CONFIRMATION.** The letter of credit must be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit under section 60A.093.

Subd. 9. **ADDITIONAL REQUIREMENTS.** If the letter of credit is issued by a qualified United States financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in subdivision 8, then the following additional requirements must be met:

(1) the issuing qualified United States financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts; and

(2) the "evergreen clause" must provide for no less than 30 days' notice before the expiration date or nonrenewal.

Subd. 10. **REINSURANCE AGREEMENTS PROVISIONS.** (a) The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions which:

(1) require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover;

(2) stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any

other provisions in the agreement, and must be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons: to reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement on account of cancellations of these policies; to reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer under the terms and provisions of the policies reinsured under the reinsurance agreement; to fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer's liabilities for policies ceded under the agreement, including but not limited to, amounts for policy reserves, claims and losses incurred, and unearned premium reserves; and to pay any other amounts the ceding insurer claims are due under the reinsurance agreement; and

(3) provide that all of the provisions of this paragraph should be applied without diminution because of insolvency of the ceding insurer or assuming insurer.

(b) Nothing in this subdivision precludes the ceding insurer and assuming insurer from providing for:

(1) an interest payment, at a rate not in excess of the prime rate of interest, on the amounts held under paragraph (a), clause (2); and

(2) the return of any amounts drawn down on the letters of credit in excess of the actual amounts required or, in the case of paragraph (a), clause (2), any amounts that are subsequently determined not to be due.

(c) When a letter of credit is obtained in conjunction with a reinsurance agreement covering risks other than life, annuities, and health, where it is customary practice to provide a letter of credit for a specific purpose, then the reinsurance agreement may, in lieu of paragraph (a), clause (2), require that the parties enter into a "trust agreement" which may be incorporated into the reinsurance agreement or be a separate document.

Subd. 11. **LIMITATION ON USE.** A letter of credit may not be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with the commissioner unless an acceptable letter of credit with the filing ceding insurer as beneficiary has been issued on or before the date of filing of the financial statement. Further, the reduction for the letter of credit may be up to the amount available under the letter of credit but no greater than the specific obligation under the reinsurance agreement which the letter of credit was intended to secure.

Subd. 12. **EXISTING DOCUMENTS.** Notwithstanding the effective date of this section, any letter of credit or underlying reinsurance agreement in existence prior to the effective date of this section will continue to be acceptable until December 31, 1995, at which time the agreements will have to be in full compliance with this section for the letter of credit to be acceptable; provided however that the letter of credit or underlying reinsurance agreement has been in compliance with laws or regulations in existence immediately preceding the effective date of this section.

Sec. 3. **[60A.097] QUALIFYING TRUST AGREEMENTS.**

Subdivision 1. **REQUIREMENTS.** An admitted asset or a reduction in liability for reinsurance ceded to an unauthorized assuming insurer providing a trust fund pursuant to section 60A.093 shall only be allowed if the requirements of this section are met.

Subd. 2. **DEFINITIONS.** As used in this section, the following terms have the meanings given:

(a) "Beneficiary" means the entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, the named beneficiary includes and is limited to the court appointed domiciliary receiver, including a conservator, rehabilitator, or liquidator.

(b) "Grantor" means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer.

(c) "Obligations" as used in subdivision 3, paragraph (k), means: (1) reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer; (2) reserves for reinsured losses reported and outstanding; (3) reserves for reinsured losses incurred but not reported; and (4) reserves for allocated reinsured loss expenses and unearned premiums.

Subd. 3. **REQUIRED CONDITIONS.** (a) The trust agreement must be entered into between the beneficiary, the grantor, and a trustee which must be a qualified United States financial institution as defined in section 60A.091.

(b) The trust agreement must create a trust account into which assets must be deposited.

(c) All assets in the trust account must be held by the trustee at the trustee's office in the United States, except that a bank may apply for the commissioner's permission to use a foreign branch office of the bank as trustee for trust agreements established pursuant to this section. If the commissioner approves the use of the foreign branch office as trustee, then its use must be approved by the beneficiary in writing and the trust agreement must provide that the written notice described in paragraph (d), clause (1), must also be presentable, as a matter of legal right, at the trustee's principal office in the United States.

(d) The trust agreement must provide that:

(1) the beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

(2) no other statement or document is required to be presented in order to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

(3) it is not subject to any conditions or qualifications outside of the trust agreement; and

(4) it shall not contain references to any other agreements or documents except as provided for under paragraph (k).

(e) The trust agreement must be established for the sole benefit of the beneficiary.

(f) The trust agreement must require the trustee to:

(1) receive assets and hold all assets in a safe place;

(2) determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate the assets, without consent or signature from the grantor or any other person or entity;

(3) furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

(4) notify the grantor and the beneficiary within ten days of any deposits to or withdrawals from the trust account;

(5) upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title, and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and

(6) allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw the asset upon condition that the proceeds are paid into the trust account.

(g) The trust agreement must provide that at least 30 days, but not more than 45 days, before termination of the trust account, written notification of termination must be delivered by the trustee to the beneficiary.

(h) The trust agreement must be made subject to and governed by the laws of the state in which the trust is established.

(i) The trust agreement must prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee.

(j) The trust agreement must provide that the trustee is liable for its own negligence, willful misconduct, or lack of good faith.

(k) Notwithstanding other provisions of this section, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may, notwithstanding any other conditions in this section, provide that the ceding insurer must undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer for the following purposes:

(1) to pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

(2) to make payment to the assuming insurer of any amounts held in the trust account that exceed 102 percent of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

(3) where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten days before the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution as defined in section 60A.091 apart from its general assets, in trust for the uses and purposes specified in paragraphs (1) and (2) that remain executory after the withdrawal and for any period after the termination date.

(l) The reinsurance agreement entered into in conjunction with the trust agreement may, but need not, contain the provisions required by subdivision 5, paragraph (a), clause (2), so long as these required conditions are included in the trust agreement.

Subd. 4. **PERMITTED CONDITIONS.** (a) The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than 90 days after receipt by the beneficiary and grantor of the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than 90 days after receipt by the trustee and the beneficiary of the notice. No resignation or removal is effective until a successor trustee has been appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.

(b) The grantor may have the full and unqualified right to vote any shares or stock in the trust account and to receive from time to time payment of any dividends or interest upon any shares of stock or obligations included in the trust account. Interest or dividends must be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.

(c) The trustee may be given authority to invest, and accept substitutions of, any funds in the account. No investment or substitution must be made without prior approval of the beneficiary, unless the trust specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions which the trustee determines are at least equal in market value to the assets withdrawn and that are consistent with the restrictions in subdivision 5, paragraph (a), clause (2).

(d) The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. The transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

(e) The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered to the grantor.

Subd. 5. **ADDITIONAL CONDITIONS APPLICABLE TO REINSURANCE AGREEMENTS.** (a) A reinsurance agreement, which is entered into in conjunction with a trust agreement and the establishment of a trust account, may contain provisions that:

(1) require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specifying what the agreement is to cover;

(2) stipulate that assets deposited in the trust account must be valued according to their current fair market value and must consist only of United States legal tender, certificates of deposit issued by a United States bank and payable in United States legal tender, and investments of the types permitted by state insurance law or any combination of the above, if the investments are issued by an institution that is not the parent, subsidiary or affiliate of either the grantor or the beneficiary. The reinsurance agreement may further specify the types of investments to be deposited. Where a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, then the trust agreement may contain the provisions in this paragraph in lieu of including these provisions in the reinsurance agreement;

(3) require the assuming insurer, before depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or signature from the assuming insurer or any other entity;

(4) require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

(5) stipulate that the assuming insurer and the ceding insurer agree that the

assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and must be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver or conservator of the company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

(i) to reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement because of cancellations of the policies;

(ii) to reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement;

(iii) to fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer liabilities for policies ceded under the agreement. The account must include, but not be limited to, amounts for policy reserves, claims and losses incurred, including losses incurred but not reported, loss adjustment expenses, and unearned premium reserves; and

(iv) to pay any other amounts the ceding insurer claims are due under the reinsurance agreement.

(b) The reinsurance agreement may also contain provisions that:

(1) give the assuming insurer the right to seek approval from the ceding insurer to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, and provide that the ceding insurer shall not unreasonably or arbitrarily withhold its approval, provided:

(i) the assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount; or

(ii) after withdrawal and transfer, the market value of the trust account is no less than 102 percent of the required amount;

(2) provide for:

(i) the return of any amount withdrawn in excess of the actual amounts required for paragraph (a), clause (5), items (i), (ii), and (iii), or in the case of paragraph (a), clause (5), item (iv), any amounts that are subsequently determined not to be due; and

(ii) interest payments, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to paragraph (a), clause (5), item (iii); and

(3) permit the award by any arbitration panel or court of competent jurisdiction of:

(i) interest at a rate different from that provided in clause (2), item (ii);

(ii) court or arbitration costs;

(iii) attorney's fees; and

(iv) any other reasonable expenses.

Subd. 6. **FINANCIAL REPORTING.** A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with the commissioner when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but the reduction must be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

Subd. 7. **EXISTING AGREEMENTS.** Notwithstanding the effective date of this section, any trust agreement or underlying reinsurance agreement in existence prior to the effective date of this section will continue to be acceptable until December 31, 1995, at which time the agreements will have to be in full compliance with this section for the trust agreement to be acceptable; provided however that the trust agreement or underlying reinsurance agreement has been in compliance with laws or regulations in existence immediately preceding the effective date of this section.

Subd. 8. **EFFECT OF FAILURE TO IDENTIFY BENEFICIARY.** The failure of any trust agreement to specifically identify the beneficiary, as defined in subdivision 2, paragraph (a), must not be construed to affect any actions or rights which the commissioner may take or possess pursuant to the laws of this state.

Sec. 4. Minnesota Statutes 1993 Supplement, section 60A.129, subdivision 3, is amended to read:

Subd. 3. **ANNUAL AUDIT.** (a) Every insurance company doing business in this state, including fraternal benefit societies, reciprocal exchanges, service plan corporations licensed pursuant to chapter 62C, and legal service plans licensed pursuant to chapter 62G, unless exempted by the commissioner pursuant to subdivision ~~4~~ 5, paragraph (a), or by subdivision 7, shall have an annual audit of the financial activities of the most recently completed ~~fiscal~~ calendar year performed by an independent certified public accountant ~~as prescribed by the commissioner~~, and shall file the report of this audit with the commissioner on or before June ~~30~~ 1 for the immediately preceding year ending December 31. The commissioner may require an insurer to file an audited financial report earlier than June 1 with 90 days advance notice to the insurer.

New language is indicated by underline, deletions by ~~strikeout~~.

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

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

(b) Foreign and alien insurers filing audited financial reports in another state under the other state's requirements of audited financial reports which have been found by the commissioner to be substantially similar to these requirements are exempt from this subdivision if a copy of the audited financial report, ~~the evaluation of accounting procedures~~ accountant's letter of qualifications, and ~~systems of~~ report on significant deficiencies in internal ~~control report~~ controls, which are filed with the other state, are filed with the commissioner in accordance with the filing dates specified in paragraphs (a) and ~~(i)~~ (l), (Canadian insurers may submit accountants' reports as filed with the Canadian Dominion Department of Insurance); and a copy of any notification of adverse financial condition report filed with the other state is filed with the commissioner within the time specified in paragraph ~~(h)~~ (k). This paragraph does not prohibit or in any way limit the commissioner from ordering, conducting, and performing examinations of insurers under the authority of this chapter.

(c)(i) The annual audited financial report shall report, in conformity with statutory accounting practices required or permitted by the commissioner of insurance of the state of domicile, the financial ~~condition~~ position of the insurer as of the end of the most recent calendar year and the results of its operations, ~~changes in financial position~~ cash flows, and changes in capital and surplus for the year ended. The annual audited financial report shall include a report of an independent certified public accountant; a balance sheet reporting admitted assets, liabilities, capital, and surplus; a statement of ~~gain or loss from~~ operations; a statement of cash flows; a statement of changes in capital and surplus; ~~any~~ and notes to the financial statements~~; and any additional information that the commissioner may from time to time require to be disclosed~~.

(ii) The notes required under item (i)~~,~~ shall be those required by the appropriate National Association of Insurance Commissioners annual statement instructions and any other notes required by generally accepted accounting principles and shall include reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed under section 60A.13, subdivision 1, with a written description of the nature of these differences; and ~~a narrative explanation of all significant intercompany transactions and balances~~ shall also include a summary of ownership and relationships of the insurer and all affiliated companies.

(iii) The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the commissioner. The financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. In the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted. The amounts may be rounded to the nearest $1,000, and all insignificant amounts may be combined.

(d) Each insurer required by this section to file an annual audited financial report must notify the commissioner in writing of the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit within 60 days after becoming subject to the annual audit requirement. The insurer shall obtain from the accountant a letter which states that the accountant is aware of the provisions that relate to accounting and financial matters in the insurance laws and the rules of the insurance regulatory authority of the state of domicile. The letter shall affirm that the ~~opinions~~ accountant will express an opinion on the financial statements ~~will be expressed~~ in terms of their conformity to the statutory accounting practices prescribed or ~~other~~ otherwise permitted by that insurance regulatory authority, ~~unless exceptions to these practices are appropriate. The letter shall specify all~~ specifying the exceptions believed to be appropriate. A copy of ~~this~~ the accountant's letter shall be filed with the commissioner.

(e) If an accountant who was ~~not~~ the accountant for the immediately preceding filed audited financial report is ~~engaged to audit the insurer's financial statements~~ dismissed or resigns, the insurer shall notify the commissioner of this event within ~~30~~ five business days ~~of the date the accountant is engaged~~. Within ten business days of this notification, the insurer shall also furnish the commissioner with a separate letter stating whether in the 24 months preceding ~~this engagement~~ this event there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which, if not resolved to the satisfaction of the former accountant, would have caused that person to make reference to the subject matter of the disagreement in connection with the opinion. The disagreements required to be reported in response to this paragraph include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this section are those disagreements between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report. The insurer shall also in writing request the former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for any disagreement. The insurer shall furnish this responsive letter from the former accountant to the commissioner together with its own.

(f) The commissioner shall not recognize any person or firm as ~~an~~ a qualified independent certified public accountant that is not in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant is licensed to practice, or for a Canadian or British company, that is not a chartered accountant. Except as otherwise provided, ~~a~~ an independent certified public accountant shall be recognized as ~~independent~~ qualified as long as the person conforms to the standards of the person's profession, as contained in the code of professional ethics of the American Institute of Certified Public Accountants and the rules of professional conduct of the Minnesota board of public accountancy or similar code. ~~The commissioner, after notice and hearing under chapter 14, may find that the accountant is not independent 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 independent.~~

(g) No partner or other person responsible for rendering a report for calendar year 1997 and thereafter may act in that capacity for more than seven consecutive years. Following any period of service, the person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of two years. An insurer may make application to the commissioner for relief from the above rotation requirement on the basis of unusual circumstances. The commissioner may consider the number of partners, the expertise of the partners or the number of insurance clients in the currently registered firm, the premium volume of the insurer, or the number of jurisdictions in which the insurer transacts business in determining if the relief should be granted.

(h) 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.

(i) 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.

~~(g)~~ (j) Financial statements furnished under paragraph (a), shall be examined by an independent certified public accountant. The examination of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards and consideration should be given to other procedures illustrated in the Financial Condition Examiners Handbook, issued by the National Association of Insurance Commissioners, as the independent certified public accountant considers necessary.

**New language is indicated by underline, deletions by ~~strikeout~~.**

~~(h)~~ (k) The insurer required to furnish the annual audited financial report shall require the independent certified public accountant to ~~immediately notify in writing~~ provide written notice ~~an executive officer and all~~ within five business days to the board of directors of the insurer or its audit committee of ~~the final~~ any determination by that independent certified public accountant that the insurer has materially misstated its financial condition as reported to the commissioner as of the balance sheet date currently under examination or that the insurer does not meet the minimum capital and surplus requirement of section 60A.07 as of that date. An ~~executive officer or director of an~~ insurer required to file an annual audited financial report who received a notification of adverse financial condition from the accountant shall ~~make a written report to the commissioner of the existence of the materially misstated financial condition or the failure to meet the minimum capital and surplus requirements of~~ file a copy of the notification with the commissioner within ~~three~~ five business days of the receipt of the notification. The insurer shall provide the independent certified public accountant making the notification with evidence of the report being furnished to the commissioner. If the independent certified public accountant fails to receive the evidence within the required five-day period, the independent certified public accountant shall furnish to the commissioner a copy of the notification to the board of directors or its audit committee within the next five business days. No independent certified public accountant shall be liable in any manner to any person for any statement made in connection with this paragraph if the statement is made in good faith in compliance with this paragraph. If the accountant becomes aware of facts which might have affected ~~this~~ the audited financial report after the date ~~of the audited financial report~~ it was filed under this section, the accountant shall take the action prescribed by Professional Standards issued by the American Institute of Certified Public Accountants.

~~(i)~~ (l) In addition to the annual audited financial ~~report~~ statements, each insurer shall furnish the commissioner with a written report ~~of the evaluation performed~~ prepared by the accountant~~, in connection with the examination, of the accounting procedures of~~ describing significant deficiencies in the ~~insurer and its system of~~ insurer's internal control structure noted by the accountant during the audit. ~~A report of the evaluation~~ The accountant shall follow the professional standards issued by the American Institute of Certified Public Accountants, which require an accountant to communicate significant deficiencies, known as reportable conditions, noted during a financial statement audit, to the appropriate parties within an entity. No report shall be issued if the accountant does not identify significant deficiencies. Any such report by the accountant ~~of the accounting procedures of the insurer and its system of~~ describing significant deficiencies in the insurer's internal control~~, including any remedial action taken or proposed~~ structure, shall be filed annually by the insurer with the ~~division~~ commissioner within 60 days after the filing of the annual audited financial ~~report~~ statements. This report on internal control shall be in the form prescribed by generally accepted auditing standards. The insurer shall provide the commissioner with a description of remedial actions taken or proposed to correct significant deficiencies, if those actions are not described in the accountant's report.

**New language is indicated by underline, deletions by ~~strikeout~~.**

(m) 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 ethics of the American Institute of Certified Public Accountants and the rules 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 thereon 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 paragraph (n) and that the accountant consents and agrees to make available for review by the commissioner, or the commissioner's designee or appointed agent, the workpapers, as defined in paragraph (n); a representation that the accountant is properly licensed by the appropriate state licensing authority and is a member in good standing in the American Institute of Certified Public Accountants; and, a representation that the accountant complies with paragraph (f). Nothing in this section shall be construed as prohibiting the accountant from utilizing staff the accountant deems appropriate where use is consistent with the standards prescribed by generally accepted auditing standards.

~~(j)~~ (n) Workpapers 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 examination of the financial statements of an insurer. Workpapers 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 examination 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 workpapers prepared in the conduct of the examination and any communications related to the audit between the accountant and the insurer. The workpapers shall 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 workpapers and communications until the commissioner has filed a report on examination covering the period of the audit but ~~for a period of not~~ no ~~less~~ longer than ~~five~~ seven years after the period reported upon. In the conduct of the periodic review by the examiners, it shall be agreed that photocopies of pertinent audit workpapers may be made and retained by the ~~department of commerce~~ commissioner. These copies shall be part of the commissioner's workpapers and shall be given the same confidentiality as other examination workpapers generated by the commissioner.

**New language is indicated by underline, deletions by ~~strikeout~~.**

~~(k) With the commissioner's approval, an insurer may comply with this section by filing the requisite reports that have been prepared in accordance with generally accepted accounting principles if the notes to the financial statements include a reconciliation of differences between net income and capital and surplus on the annual statement filed pursuant to section 60A.13, subdivision 1, and comparable totals on the audited financial statements, and a written description of the nature of these differences.~~

~~(l)~~ (o)(i) 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.

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

~~(m)~~ (p) The audit report of the independent certified public accountant that performs the audit of an insurer's annual statement as required under paragraph (a), shall 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.

Sec. 5. Minnesota Statutes 1993 Supplement, section 60A.129, subdivision 5, is amended to read:

Subd. 5. **CONSOLIDATED FILING.** (a) The commissioner may allow ~~an exception to the stand alone~~ an insurer to file a consolidated loss reserve certification required by subdivision 2, in lieu of separate loss certifications and may allow an insurer to file consolidated or combined audited financial statements required by subdivision 3, paragraph (a), in lieu of separate annual audited financial statements, where it can be demonstrated that ~~a company in a group~~ an insurer is part of a group of insurance companies that has a pooling or 100 percent reinsurance agreement ~~used in a group~~ which substantially affects the solvency and integrity of the reserves of the ~~company or where it is only the parent company of a group which is licensed to do business in Minnesota~~ insurer and the insurer cedes all of its direct and assumed business to the pool. If these circumstances exist, then the company may file a written application to file a consolidated loss reserve certification ~~and a report of an annual audit~~ and/or consolidated or combined audited financial statements. This application shall be for a specified period.

(b) A consolidated annual audit filing shall include ~~an organizational chart of the companies together with~~ a columnar consolidated or combining worksheet. Amounts shown on the audited consolidated or combined financial statement shall be shown on the worksheet. Amounts for each insurer shall be stated separately. Noninsurance operations may be shown on the worksheet on a combined or individual basis. Explanations of consolidating or eliminating entries shall be shown on the worksheet. A reconciliation of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statement of the insurers shall be included on the worksheet.

Sec. 6. Minnesota Statutes 1993 Supplement, section 60A.129, subdivision 7, is amended to read:

Subd. 7. **EXEMPTIONS.** (a) Upon written application of any ~~company~~ insurer, the commissioner may grant an exemption from compliance with the provisions of this section. In order to receive an exemption, ~~a~~ ~~company~~ an insurer must demonstrate to the satisfaction of the commissioner that compliance would constitute a financial or organizational hardship upon the ~~company~~ 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 shall 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. No exemption shall 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 shall 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 3, paragraph (a), 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 ~~in~~ ~~this~~ ~~state~~ or certificate holders of directly written policies nationwide at the end of ~~any~~ 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.

Sec. 7. Minnesota Statutes 1993 Supplement, section 60A.13, subdivision 1, is amended to read:

Subdivision 1. **ANNUAL STATEMENTS REQUIRED.** Every insurance company, including fraternal benefit societies, and reciprocal exchanges, doing business in this state, shall transmit to the commissioner, annually, on or before March 1, the appropriate verified National Association of Insurance Commissioners' annual statement blank, prepared in accordance with the association's instructions handbook and following those accounting procedures and practices prescribed by the association's accounting practices and procedures manual, unless the commissioner requires or finds another method of valuation reasonable under the circumstances. Another method of valuation permitted by the commissioner must be at least as conservative as those prescribed in the association's manual. All companies required to file an annual statement under this subdivision must also file with the commissioner a copy of their annual statement on computer diskette. All Minnesota domestic insurers required to file annual statements under this subdivision must also file quarterly statements with the commissioner for the first, second, and third calendar quarter on or before 45 days after the end of the applicable quarter, prepared in accordance with the association's instruction handbook. All companies required to file quarterly statements under this subdivision must also file a copy of their quarterly statement on computer diskette. In addition, the commissioner may require the filing of any other information determined to be reasonably necessary for the continual enforcement of these laws. The statement may be limited to the insurer's business and condition in the United States unless the commissioner finds that the business conducted outside the United States may detrimentally affect the interests of policyholders in this state. The statements shall also contain a verified schedule showing all details required by law for assessment and taxation. The statement or schedules shall be in the form and shall contain all matters the commissioner may prescribe, and it may be varied as to different types of insurers so as to elicit a true exhibit of the condition of each insurer.

Sec. 8. Minnesota Statutes 1992, section 60A.206, subdivision 6, is amended to read:

Subd. 6. **ALTERNATIVE MEANS OF COMPLIANCE.** Subdivisions 3 and 5 shall not apply to a group including incorporated and unincorporated, individual alien insurers which, in place of the requirements prescribed in subdivisions 3 and 5, maintain assets as provided in subdivision 3 and hold in trust for all policyholders and beneficiaries in the United States not less than $50,000,000 in the aggregate. The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and must be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members.

Sec. 9. **[60A.803] LIFE AND HEALTH REINSURANCE AGREEMENTS.**

Subdivision 1. **SCOPE.** This section applies to: (1) all domestic life and accident and sickness insurers; (2) all other licensed life and accident and sickness insurers which are not subject to a substantially similar regulation in their domiciliary state; and (3) licensed insurers with respect to their accident and sickness business. This section does not apply to assumption reinsurance, yearly renewable term reinsurance, or certain nonproportional reinsurance such as stop loss or catastrophe reinsurance.

Subd. 2. **ACCOUNTING REQUIREMENTS.** No insurer subject to this section shall, for reinsurance ceded, reduce any liability or establish any asset in any financial statement filed with the commissioner if, by the terms of the reinsurance agreement, in substance or effect, any of the conditions in paragraphs (a) to (k) exist:

(a) The renewal expense allowances provided or to be provided to the ceding insurer by the reinsurer in any accounting period, are not sufficient to cover anticipated allocable renewal expenses of the ceding insurer on the portion of the business reinsured, unless a liability is established for the present value of the shortfall, using assumptions equal to the applicable statutory reserve basis on the business reinsured. Those expenses include commissions, premium taxes, and direct expenses including, but not limited to, billing, valuation, claims, and maintenance expected by the company at the time the business is reinsured.

(b) The ceding insurer can be deprived of surplus or assets at the reinsurer's option or automatically upon the occurrence of some event, such as the insolvency of the ceding insurer, except that termination of the reinsurance agreement by the reinsurer for nonpayment of reinsurance premiums or other amounts due, such as modified coinsurance reserve adjustments, interest and adjustments on funds withheld, and tax reimbursements, shall not be considered to be a deprivation of surplus or assets.

(c) The ceding insurer is required to reimburse the reinsurer for negative experience under the reinsurance agreement, except that neither offsetting experience refunds against current and prior years' losses under the agreement nor payment by the ceding insurer of an amount equal to the current and prior years' losses under the agreement upon voluntary termination of in force reinsurance by the ceding insurer is considered such a reimbursement to the reinsurer for negative experience. Voluntary termination does not include situations where termination occurs because of unreasonable provisions which allow the reinsurer to reduce its risk under the agreement. An example of such a provision is the right of the reinsurer to increase reinsurance premiums or risk and expense charges to excessive levels forcing the ceding company to prematurely terminate the reinsurance treaty.

(d) The ceding insurer must, at specific points in time scheduled in the agreement, terminate or automatically recapture all or part of the reinsurance ceded.

(e) The reinsurance agreement involves the possible payment by the ceding insurer to the reinsurer of amounts other than from income realized from the reinsured policies. It is improper for a ceding company to pay reinsurance premiums, or other fees or charges to a reinsurer, which are greater than the direct premiums collected by the ceding company.

(f) The reinsurance agreement does not transfer all of the significant risk inherent in the business being reinsured. The following table identifies, for a representative sampling of products or type of business, the risks that are considered to be significant. For products not specifically included, the risks determined to be significant must be consistent with this table.

Risk categories:

(1) morbidity;

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(2) mortality;

(3) lapse, which is the risk that a policy will voluntarily terminate prior to the recoupment of a statutory surplus strain experienced at issue of the policy;

(4) credit quality (C1), which is the risk that invested assets supporting the reinsured business will decrease in value. The main hazards are that assets will default or that there will be a decrease in earning power. It excludes market value declines due to changes in interest rate;

(5) reinvestment (C3), which is the risk that interest rates will fall and funds reinvested (coupon payments or money received upon asset maturity or call) will therefore earn less than expected. If asset durations are less than liability durations, the mismatch will increase; and

(6) disintermediation (C3), which is the risk that interest rates rise and policy loans and surrenders increase or maturing contracts do not renew at anticipated rates of renewal. If asset durations are greater than the liability durations, the mismatch will increase. Policyholders will move their funds into new products offering higher rates. The company may have to sell assets at a loss to provide for these withdrawals.

RISK CATEGORY

+ = Significant

0 = Insignificant

| | 1 | 2 | 3 | 4 | 5 | 6 |
|---|---|---|---|---|---|---|
| Health Insurance - other than LTC/LTD* | + | 0 | + | 0 | 0 | 0 |
| Health Insurance - LTC/LTD* | + | 0 | + | + | + | 0 |
| Immediate Annuities | 0 | + | 0 | + | + | 0 |
| Single Premium Deferred Annuities | 0 | 0 | + | + | + | + |
| Flexible Premium Deferred Annuities | 0 | 0 | + | + | + | + |
| Guaranteed Interest Contracts | 0 | 0 | 0 | + | + | + |
| Other Annuity Deposit Business | 0 | 0 | + | + | + | + |
| Single Premium Whole Life | 0 | + | + | + | + | + |
| Traditional Non-Par Permanent | 0 | + | + | + | + | + |
| Traditional Non-Par Term | 0 | + | + | 0 | 0 | 0 |
| Traditional Par Permanent | 0 | + | + | + | + | + |
| Traditional Par Term | 0 | + | + | 0 | 0 | 0 |
| Adjustable Premium Permanent | 0 | + | + | + | + | + |
| Indeterminate Premium Permanent | 0 | + | + | + | + | + |
| Universal Life Flexible Premium | 0 | + | + | + | + | + |
| Universal Life Fixed Premium | 0 | + | + | + | + | + |
| Universal Life Fixed Premium (dump-in premiums allowed) | 0 | + | + | + | + | + |

*LTC = Long Term Care Insurance

LTD = Long Term Disability Insurance

(g)(1) The credit quality, reinvestment, or disintermediation risk is significant for the business reinsured and the ceding company does not, other than for the classes of business excepted in clause (2), either transfer the underlying assets to the reinsurer or legally segregate such assets in a trust or escrow account or otherwise establish a mechanism satisfactory to the commissioner that legally segregates, by contract or contract provision, the underlying assets.

(2) Notwithstanding the requirements of clause (1), the assets supporting the reserves for the following classes of business and any classes of business that do not have a significant credit quality, reinvestment or disintermediation risk, may be held by the ceding company without segregation of the assets:

(i) Health Insurance - LTC/LTD;

(ii) Traditional Non-Par Permanent;

(iii) Traditional Par Permanent;

(iv) Adjustable Premium Permanent;

(v) Indeterminate Premium Permanent; and/or

(vi) Universal Life Fixed Premium (no dump-in premiums allowed).

The associated formula for determining the reserve interest rate adjustment must reflect the ceding company's investment earnings and incorporate all realized and unrealized gains and losses reflected in the statutory statement. The following is an acceptable formula:

$$Rate = 2(I+CG) / (X + Y - I - CG)$$

Where: I is the net investment income
CG is capital gains less capital losses
X is the current year cash and invested assets plus investment income due and accrued less borrowed money
Y is the same as X but for the prior year

(h) Settlements are made less frequently than quarterly or payments due from the reinsurer are not made in cash within 90 days of the settlement date.

(i) The ceding insurer is required to make representations or warranties not reasonably related to the business being reinsured.

(j) The ceding insurer is required to make representations or warranties about future performance of the business being reinsured.

(k) The reinsurance agreement is entered into for the principal purpose of producing significant surplus aid for the ceding insurer, typically on a temporary basis, while not transferring all of the significant risks inherent in the business

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reinsured and, in substance or effect, the expected potential liability to the ceding insurer remains basically unchanged.

Subd. 3. **COMMISSIONER APPROVAL.** Notwithstanding subdivision 2, an insurer subject to this section may, with the prior approval of the commissioner, take such reserve credit or establish such asset as the commissioner deems consistent with state insurance law or rules.

Subd. 4. **FILING.** (a) Agreements entered into after the effective date of this section that involve the reinsurance of business issued prior to the effective date of the agreements, along with any subsequent amendments thereto, shall be filed by the ceding company with the commissioner within 30 days from their date of execution. Each filing shall include data detailing the financial impact of the transaction. The ceding insurer's actuary who signs the financial statement actuarial opinion with respect to valuation of reserves shall consider this section and any applicable actuarial standards of practice when determining the proper credit in financial statements filed with the commissioner. The actuary shall maintain adequate documentation and be prepared upon request to describe the actuarial work performed for inclusion in the financial statements and to demonstrate that the work conforms to this section.

(b) Any increase in surplus net of federal income tax resulting from arrangements described in paragraph (a) must be identified separately on the insurer's statutory financial statement as a surplus item (aggregate write-ins for gains and losses in surplus in the capital and surplus account of the annual statement) and recognition of the surplus increase as income must be reflected on a net of tax basis in the "Reinsurance ceded" line of the annual statement as earnings emerge from the business reinsured.

Subd. 5. **WRITTEN AGREEMENTS.** No reinsurance agreement or amendment to any agreement may be used to reduce any liability or to establish any asset in any financial statement filed with the commissioner, unless the agreement, amendment, or a binding letter or intent has been duly executed by both parties no later than the "as of date" of the financial statement. In the case of a letter of intent, a reinsurance agreement or an amendment to a reinsurance agreement must be executed within a reasonable period of time, not exceeding 90 days from the execution date of the letter of intent, in order for credit to be granted for the reinsurance ceded. The reinsurance agreement must provide that:

(1) the agreement constitutes the entire agreement between the parties with respect to the business being reinsured under it and that there are no understandings between the parties other than as expressed in the agreement; and

(2) any change or modification to the agreement is null and void unless made by amendment to the agreement and signed by both parties.

Subd. 6. **RESERVE CREDITS.** Insurers subject to this section shall reduce to zero by December 31, 1995, any reserve credits or assets established with respect to reinsurance agreements entered into prior to the effective date of this section that under the provisions of this section would not be entitled to recognition of the reserve credits or assets; provided, however, that the reinsurance agreements have been in compliance with laws or regulations in existence immediately preceding the effective date of this section.

Sec. 10. Minnesota Statutes 1992, section 60C.02, subdivision 1, is amended to read:

Subdivision 1. **SCOPE.** This chapter applies to all kinds of direct insurance, except life, title, accident and sickness ~~written by life insurance companies~~, credit, mortgage guaranty, financial guaranty or other forms of insurance offering protection against investment risks, and ocean marine.

Sec. 11. Minnesota Statutes 1993 Supplement, section 61B.19, subdivision 3, is amended to read:

Subd. 3. **LIMITATION OF COVERAGE.** Sections 61B.18 to 61B.32 do not provide coverage for:

(1) a portion of a policy or contract under which the investment risk is borne by the policy or contract holder;

(2) a policy or contract of reinsurance, unless assumption certificates have been issued and the insured has consented to the assumption as provided under section 60A.09, subdivision 4a;

(3) a policy or contract issued by an assessment benefit association operating under section 61A.39, or a fraternal benefit society operating under chapter 64B;

(4) ~~a health insurance policy issued by a person other than a person authorized to write life insurance in this state or other than a person whose corporate charter would permit the writing of life insurance but who is authorized to write only health insurance in this state;~~

~~(5)~~ any obligation to nonresident participants of a covered retirement plan or to the plan sponsor, employer, trustee, or other party who owns the contract; in these cases, the association is obligated under this chapter only to participants in a covered plan who are residents of the state of Minnesota on the date of impairment or insolvency;

~~(6)~~ (5) an annuity contract issued in connection with and for the purpose of funding a structured settlement of a liability claim, where the liability insurer remains liable;

~~(7)~~ (6) a portion of an unallocated annuity contract which is not issued to or in connection with a specific employee, union, or association of natural persons benefit plan or a governmental lottery, including but not limited to, a contract issued to, or purchased at the direction of, any governmental bonding authority, such as a municipal guaranteed investment contract;

**New language is indicated by underline, deletions by ~~strikeout~~.**

~~(8)~~ (7) a plan or program of an employer, association, or similar entity to provide life, health, or annuity benefits to its employees or members to the extent that the plan or program is self-funded or uninsured, including benefits payable by an employer, association, or similar entity under:

(i) a multiple employer welfare arrangement as defined in the Employee Retirement Income Security Act of 1974, United States Code, title 29, section 1002(40)(A), as amended;

(ii) a minimum premium group insurance plan;

(iii) a stop-loss group insurance plan; or

(iv) an administrative services only contract;

~~(9)~~ (8) any policy or contract issued by an insurer at a time when it was not licensed or did not have a certificate of authority to issue the policy or contract in this state;

~~(10)~~ (9) an unallocated annuity contract issued to an employee benefit plan protected under the federal Pension Benefit Guaranty Corporation; and

~~(11)~~ (10) a portion of a policy or contract to the extent that it provides dividends or experience rating credits except to the extent the dividends or experience rating credits have actually become due and payable or have been credited to the policy or contract before the date of impairment or insolvency, or provides that a fee or allowance be paid to a person, including the policy or contract holder, in connection with the service to, or administration of, the policy or contract.

Sec. 12. Minnesota Statutes 1992, section 62E.10, subdivision 2, is amended to read:

Subd. 2. **BOARD OF DIRECTORS; ORGANIZATION.** The board of directors of the association shall be made up of nine members as follows: five ~~insurer~~ directors selected by ~~participating~~ contributing members, subject to approval by the commissioner; four public directors selected by the commissioner, at least two of whom must be plan enrollees. Public members may include licensed insurance agents. In determining voting rights at members' meetings, each member shall be entitled to vote in person or proxy. The vote shall be a weighted vote based upon the member's cost of self-insurance, accident and health insurance premium, subscriber contract charges, or health maintenance contract payment derived from or on behalf of Minnesota residents in the previous calendar year, as determined by the commissioner. In approving directors of the board, the commissioner shall consider, among other things, whether all types of members are fairly represented. ~~Insurer~~ Directors selected by contributing members may be reimbursed from the money of the association for expenses incurred by them as directors, but shall not otherwise be compensated by the association for their services. The costs of conducting meetings of the association and its board of directors shall be borne by members of the association.

Sec. 13. Minnesota Statutes 1992, section 66A.03, is amended to read:

66A.03 **INCORPORATION.**

Domestic mutual insurance companies are incorporated under the provisions of chapter 300. Except as otherwise provided in this chapter, the certificate or articles of incorporation shall comply with section 300.025, other than:

(1) the requirement that a majority of board members must always be residents of this state; and

(2) the requirements of section 300.025, paragraph (a), clause (7).

Sec. 14. **REPEALER.**

Minnesota Statutes 1992, sections 60A.80; 60A.801; and 60A.802, are repealed.

Presented to the governor April 11, 1994

Signed by the governor April 13, 1994, 1:12 p.m.

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## CHAPTER 427—H.F.No. 2487

*An act relating to local government; authorizing towns in Olmsted county to adopt and enforce the state building code.*

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

Section 1. **CERTAIN TOWNS; STATE BUILDING CODE.**

The towns of Cascade, Dover, Elmira, Eyota, Farmington, Haverhill, High Forest, Kalmar, Marion, New Haven, Orion, Oronoco, Pleasant Grove, Quincy, Rochester, Rock Dell, Salem, and Viola may adopt and enforce the state building code under Minnesota Statutes, sections 16B.59 to 16B.73.

Presented to the governor April 11, 1994

Signed by the governor April 13, 1994, 1:13 p.m.