

CHAPTER 40—S.F.No. 350

An act relating to insurance; regulating notices of terminations of certain health coverages; regulating the FAIR plan; amending Minnesota Statutes 2002, sections 62A.14; 62A.301; 62C.14, subdivision 5; 65A.29, subdivision 4; 65A.32; 65A.33, subdivisions 4, 6, 9, by adding subdivisions; 65A.34; 65A.35; 65A.36; 65A.37; 65A.375; 65A.38, subdivisions 1, 5; 65A.40; 65A.41; 65A.42; repealing Minnesota Statutes 2002, section 65A.33, subdivision 5.

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

Section 1. Minnesota Statutes 2002, section 62A.14, is amended to read:

62A.14 HANDICAPPED CHILDREN.

Subdivision 1. **INDIVIDUAL FAMILY POLICIES.** An individual hospital or medical expense insurance policy delivered or issued for delivery in this state more than 120 days after May 16, 1969, or an individual health maintenance contract delivered or issued for delivery in this state after August 1, 1984, which provides that coverage of a dependent child shall terminate upon attainment of the limiting age for dependent children specified in the policy or contract shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both (a) incapable of self-sustaining employment by reason of mental retardation, mental illness or disorder, or physical handicap and (b) chiefly dependent upon the policyholder for support and maintenance, provided proof of such incapacity and dependency is furnished to the insurer or health maintenance organization by the policyholder or enrollee within 31 days of the child's attainment of the limiting age and subsequently as may be required by the insurer or organization but not more frequently than annually after the two-year period following the child's attainment of the limiting age. Any notice regarding termination of coverage due to attainment of the limiting age must include all the information in this section.

Subd. 2. **GROUP POLICIES.** A group hospital or medical expense insurance policy delivered or issued for delivery in this state more than 120 days after May 16, 1969, or a group health maintenance contract delivered or issued for delivery in this state after August 1, 1984, which provides that coverage of a dependent child of an employee or other member of the covered group shall terminate upon attainment of the limiting age for dependent children specified in the policy or contract shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both (a) incapable of self-sustaining employment by reason of mental retardation, mental illness or disorder, or physical handicap and (b) chiefly dependent upon the employee or member for support and maintenance, provided proof of such incapacity and dependency is furnished to the insurer or organization by the employee or member within 31 days of the child's attainment of the limiting age and subsequently as may be required by the insurer or organization but not more frequently than annually after the two-year period following the child's attainment of the limiting age. Any notice regarding termination of coverage due to attainment of the limiting age must include information about this provision.

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Sec. 2. Minnesota Statutes 2002, section 62A.301, is amended to read:

62A.301 COVERAGE OF FULL-TIME STUDENTS.

If an insurer provides individual or group accident and health coverage for dependents after what otherwise would be the limiting age based on full-time student status the insurer must include in its definition of full-time student, any student who by reason of illness, injury, or physical or mental disability as documented by a physician is unable to carry what the educational institution considers a full-time course load so long as the student's course load is at least 60 percent of what otherwise is considered by the institution to be a full-time course load. Any notice regarding termination of coverage due to attainment of the limiting age must include information about this provision.

For purposes of this section, "insurer" means an insurer providing accident and health insurance regulated under this chapter, a nonprofit health service plan corporation regulated under chapter 62C, a health maintenance organization regulated under chapter 62D, or a fraternal benefit society regulated under chapter 64B.

Sec. 3. Minnesota Statutes 2002, section 62C.14, subdivision 5, is amended to read:

Subd. 5. **HANDICAPPED DEPENDENTS.** A subscriber's individual contract or any group contract delivered or issued for delivery in this state and providing that coverage of a dependent child of the subscriber or a dependent child of a covered group member shall terminate upon attainment of a specified age shall also provide in substance that attainment of that age shall not terminate coverage while the child is (a) incapable of self-sustaining employment by reason of mental retardation, mental illness or disorder, or physical handicap, and (b) chiefly dependent upon the subscriber or employee for support and maintenance, provided proof of incapacity and dependency is furnished by the subscriber within 31 days of attainment of the age, and subsequently as required by the corporation, but not more frequently than annually after a two year period following attainment of the age. Any notice regarding termination of coverage due to attainment of the limiting age must include information about this provision.

Sec. 4. Minnesota Statutes 2002, section 65A.29, subdivision 4, is amended to read:

Subd. 4. **FORM REQUIREMENTS.** Any notice or statement required by subdivisions 1 to 3, or any other notice canceling a homeowner's insurance policy must be written in language which is easily readable and understandable by a person of average intelligence and understanding. The statement of reason must be sufficiently specific to convey, clearly and without further inquiry, the basis for the insurer's refusal to renew or to write the insurance coverage.

The notice or statement must also inform the insured of:

- (1) the possibility of coverage through the Minnesota property insurance placement facility FAIR plan under sections 65A.31 to 65A.42;
- (2) the right to object to the commissioner under subdivision 9; and

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(3) the right to the return of unearned premium in appropriate situations under subdivision 10.

Sec. 5. Minnesota Statutes 2002, section 65A.32, is amended to read:

65A.32 PURPOSES.

The purposes of sections 65A.31 to 65A.42 are:

(1) to encourage stability in the property and liability insurance market for property located in this state;

(2) to encourage maximum use, in obtaining property and liability insurance, as defined in sections 65A.31 to 65A.42, of the normal insurance market provided by the private property and casualty insurance industry;

(3) to encourage the improvement of the condition of properties located in this state and to further orderly community development generally;

(4) to provide for an organization known as the Minnesota property insurance placement facility FAIR plan, which will assure fair access to insurance requirements (~~FAIR plan~~) in order that no property shall be is denied property or liability insurance through the FAIR plan due to the condition of the property, except after a physical inspection of such the property and a fair evaluation of its individual underwriting characteristics;

(5) to publicize the purposes and procedures of the FAIR plan to the end that no one may fail to seek its assistance through lack of knowledge of its existence; and

(6) to provide for the formulation and administration by the Minnesota property insurance placement facility FAIR plan of a reinsurance arrangement whereby property and casualty insurers shall share equitably the responsibility for insuring insurable property for which property and liability insurance cannot be obtained through the normal insurance markets.

Sec. 6. Minnesota Statutes 2002, section 65A.33, subdivision 4, is amended to read:

Subd. 4. "Minnesota property insurance placement facility FAIR plan," hereinafter referred to as the facility, or "plan," means the organization formed by insurers to assist applicants in securing property or liability insurance and to administer the FAIR plan.

Sec. 7. Minnesota Statutes 2002, section 65A.33, is amended by adding a subdivision to read:

Subd. 5a. MEMBER. "Member" means any insurer as defined in subdivision 2.

Sec. 8. Minnesota Statutes 2002, section 65A.33, subdivision 6, is amended to read:

Subd. 6. "Premiums written" means gross direct written premiums charged during the second preceding calendar year with respect to property in this state ~~on all policies~~

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of property or liability insurance and the property or liability insurance premium components of all multiperil policies, as computed by the facility, less return premiums, dividends paid or credited to policyholders, or the unused or unabsorbed portions of premium deposits for fire, allied lines, homeowners, the nonliability component of farm policies, and the nonliability component of commercial multiperil policies, as reported by the members to the NAIC.

Sec. 9. Minnesota Statutes 2002, section 65A.33, subdivision 9, is amended to read:

Subd. 9. **BOARD.** "Board" means the governing board of directors of the Minnesota property insurance placement facility FAIR plan.

Sec. 10. Minnesota Statutes 2002, section 65A.33, is amended by adding a subdivision to read:

Subd. 10. NAIC. "NAIC" means the National Association of Insurance Commissioners.

Sec. 11. Minnesota Statutes 2002, section 65A.34, is amended to read:

65A.34 APPLICATION FOR PLAN COVERAGE.

Subdivision 1. **APPLICATION.** Any person having an insurable interest in real or tangible personal property who has been canceled, nonrenewed, or otherwise rejected for coverage in the private market shall be entitled to may submit an application for coverage to the facility plan. If an inspection of the premises is performed, it must be done at no cost to the applicant.

Subd. 2. **INSPECTIONS.** Before the plan may deny coverage due to the condition of the property or write coverage with a condition charge, it must first inspect the property for which coverage has been requested. The manner and scope of the inspections of Minnesota FAIR plan business shall must be prescribed by the facility plan with the approval of the commissioner.

Subd. 3. **INITIAL INSPECTION REPORT.** An inspection report shall must be made for each property inspected. The report shall must cover pertinent structural and occupancy features as well as the general condition of the building and surrounding structures. A representative photograph of the property may be taken during the inspection.

Subd. 4. **CONDITION CHARGES.** Either during the inspection or immediately thereafter after the inspection, an employee of the FAIR plan shall inform the applicant as to the features that result in a condition charge if the risk is accepted. No inspector ~~shall have~~ has the authority to advise whether the facility plan will provide the coverage.

Subd. 5. **COMPLETED INSPECTION REPORT.** Within ten business days after the inspection, the FAIR plan shall prepare or have prepared a completed inspection report that includes conditions that are subject to a condition charge under the rating plan approved by the commissioner. A copy of the inspection report must be made available to the applicant or the applicant's agent upon request.

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Subd. 6. Before the facility may deny coverage or write coverage with a condition charge, it must cause an inspection to be made of any risk submitted to it, without cost to the owner.

Sec. 12. Minnesota Statutes 2002, section 65A.35, is amended to read:

65A.35 ADMINISTRATION.

Subdivision 1. **MEMBERSHIP.** Each insurer which is authorized to write and is engaged in writing within this state, on a direct basis, property or liability insurance or any component thereof of this insurance contained in a multiperil policy, including homeowners and commercial multiperil policies, shall participate in the facility, as hereinafter described, plan as a condition of its authority to write such kinds of insurance within this state.

Subd. 2. **PURPOSES.** The purposes of the facility shall be twofold, as more fully set forth in this section Minnesota FAIR plan are:

(1) to formulate and administer, subject to the approval of the commissioner, a plan assuring fair access to insurance requirements in order that no property shall be is denied property or liability insurance through the normal insurance market provided by the private property and casualty insurance industry FAIR plan due to the condition of the property, except after a physical inspection of such the property and a fair evaluation of its individual underwriting characteristics; and

(2) to formulate and administer, subject to the approval of the commissioner, a reinsurance arrangement whereby the members of the facility shall Minnesota FAIR plan share equitably the responsibility for insuring property which is insurable but for which property or liability insurance cannot be obtained through normal insurance markets.

Subd. 3. **PLAN OF OPERATION.** The plan of operation of the facility Minnesota FAIR plan, consistent with the provisions of sections 65A.31 to 65A.42 and the purpose of the facility, which shall plan must provide for the FAIR plan, the reinsurance arrangement, and the economical and efficient administration of the facility Minnesota FAIR plan, including, but not limited to, management of the facility plan, establishment of necessary facilities within this state, assessment of members to defray losses and expenses, commission arrangements, reasonable underwriting standards, acceptance and cession of reinsurance, and procedures for determining amounts of insurance to be provided.

The plan of operation shall be is subject to approval by the commissioner.

Subd. 4. **AMENDMENT OF THE PLAN OF OPERATION.** The facility Minnesota FAIR plan shall, amend the plan of operation on its own initiative, subject to prior approval by the commissioner, or at the direction of the commissioner; amend the Plan of Operation.

Subd. 5. **ADMINISTRATION.** (1) The facility shall be Minnesota FAIR plan is administered by a board of nine directors, five of whom are elected by the members of

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the facility plan and four who represent the public. Public directors may include licensed insurance agents. Public directors are appointed by the commissioner. At least one elected director shall be a domestic stock insurer, and at least one director shall be a domestic nonstock insurer. No less than two elected directors must be representatives of domestic insurers. In the election of directors, each member of the facility shall be Minnesota FAIR plan is allotted votes bearing the same ratio to the total number of votes to be cast as its degree of participation in the facility plan bears to the total participation.

(2) Any vacancy among the elected directors shall must be filled by a vote of the other elected directors.

(3) If at any time the members fail to elect the required number of directors to the board, or a vacancy remains unfilled for more than 15 days, the commissioner may appoint the directors necessary to constitute a full board of directors.

(4) Vacancies among directors appointed by the commissioner shall must be filled by appointment by the commissioner. A person so appointed serves until the end of the term of the director the person is replacing.

(5) All public directors serve for a period of two years. The terms of all public directors begin on January July 1 of the year their appointments begin.

(6) The plan of operation must provide for adequate compensation of public directors. A per diem amount and a procedure for reimbursement of expenses incurred in the discharge of their duties must be included in the plan. Private directors ~~whose employers compensate them while serving on the board or who would submit their compensation to their employers~~ are not eligible for compensation under the plan.

Subd. 6. **PARTICIPATION.** All members of the facility Minnesota FAIR plan shall participate in its expenses, losses, and equity distribution in the proportion that the premiums written as herein defined in this subdivision, but excluding that portion, if any, of premiums ~~which is~~ attributable to the reinsurance arrangement maintained by the facility, by each such member during the second preceding calendar year bear to the aggregate premiums written in this state by all members of the facility plan. ~~Such~~ Participation by each member in the facility shall be plan is determined annually by the facility plan on the basis of such premiums written during the second preceding calendar year as disclosed in the annual statements and other reports filed by the member with the ~~commissioner~~ NAIC.

Sec. 13. Minnesota Statutes 2002, section 65A.36, is amended to read:

65A.36 UNDERWRITING.

Subdivision 1. **EVALUATION OF RISK.** Agents are not permitted to bind coverage. The facility Minnesota FAIR plan shall issue a policy if the risk meets preliminary underwriting requirements. The facility plan may request an inspection report to obtain further underwriting information. If the inspection reveals that the applicant is not eligible for the coverage applied for, the facility plan shall inform the applicant within 59 days of the inception of the policy that the policy will be rescinded

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under section 65A.01, subdivision 3, paragraph (b), or canceled under section 65A.38. If the applicant is eligible for other coverage provided by the facility plan, the facility plan will offer to replace the rescinded or canceled policy with a policy providing coverage for which the applicant is eligible.

Before the 60th day after the inception of the policy, the facility FAIR plan shall advise the applicant that:

(a) (1) the risk is acceptable with or without a condition charge or adjustment of policy limits. If a condition charge applies, the facility plan will tell the insured what improvements are necessary in order to remove the charge;

(b) (2) the risk is not acceptable unless improvements noted by the facility plan are made by the applicant and confirmed by the facility plan; or

(c) (3) the risk is not acceptable for the reasons stated by the facility plan.

Subd. 2. **PREMIUM INVOICE.** If the risk is accepted, an invoice will be delivered to the applicant requiring payment remittance of the appropriate premium amount. After receipt of the invoiced premium, the facility shall issue an insurance policy to the applicant within five business days.

Subd. 3. **DECLINING A RISK.** In the event a risk is declined because it fails to meet reasonable underwriting standards, the applicant ~~shall~~ must be so notified. Reasonable underwriting standards ~~shall~~ include, but are not be limited to, the following:

(a) (1) the physical condition of the property, such as its construction, heating, wiring, evidence of previous fires, significant unrepaired damage, or general deterioration;

(b) its (2) the present use or housekeeping of the property such as vacancy, overcrowding, storage of rubbish, or flammable materials; or

(c) (3) other specific characteristics of ownership, condition, occupancy, or maintenance which are violative of public policy and result in increased exposure to loss.

Neighborhood or area location or any environmental hazard beyond the control of the property owner ~~shall~~ are not be deemed to be acceptable criteria for declining a risk.

Subd. 4. **APPEAL OF PLAN DECISION.** In the event that a risk is declined on the basis that it does not meet reasonable underwriting standards, or the coverage will be written on condition that the property be improved, the facility plan shall, within five business days, send copies of the inspection report to the applicant and the commissioner, and shall advise the applicant of the right to and the procedure for an appeal to the governing board and to the commissioner.

Subd. 5. **ACTION ON COMPLETED APPLICATION.** The facility plan must within five business days of the receipt of a completed application advise the applicant that the risk has been declined, the risk has been accepted, or that the risk ~~meets~~

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preliminary underwriting standards and a policy has been issued limit of coverage has been adjusted to reflect the insurable value of the subject property.

Sec. 14. Minnesota Statutes 2002, section 65A.37, is amended to read:

65A.37 POLICY FORMS.

All policies shall must be on standard policy forms at less costs published by Insurance Services Office, issued for a term of one year, and approved by the commissioner. All homeowners, cooperative housing insurance, and condominium unit owners insurance policies must be on forms published by Insurance Services Office and approved by the commissioner.

Sec. 15. Minnesota Statutes 2002, section 65A.375, is amended to read:

65A.375 RATES FOR COOPERATIVE HOUSING AND NEIGHBORHOOD REAL ESTATE TRUSTS.

The commissioner shall set the insurance rates for cooperative housing, organized under chapter 308A, and for neighborhood real estate trusts, characterized as nonprofit ownership of real estate with resident control. The rates must be actuarially sound. All other rates used by the Minnesota FAIR plan must be approved by the commissioner prior to use.

Sec. 16. Minnesota Statutes 2002, section 65A.38, subdivision 1, is amended to read:

Subdivision 1. The facility Minnesota FAIR plan shall not cancel a policy issued under sections 65A.31 to 65A.42 except for:

(a) (1) for cause which would have been grounds for nonacceptance of the risk under the program had the cause been known to the facility plan at the time of acceptance;

(b) (2) for nonpayment of premium; or

(c) (3) with the approval of the governing board.

Sec. 17. Minnesota Statutes 2002, section 65A.38, subdivision 5, is amended to read:

Subd. 5. Cancellation of a commercial property insurance policy issued by the facility Minnesota FAIR plan must comply with sections 60A.35 to 60A.38.

Sec. 18. Minnesota Statutes 2002, section 65A.40, is amended to read:

65A.40 EDUCATION PROGRAMS.

The facility plan will undertake a continuing public education program, in cooperation with producers and others, to assure that the Minnesota FAIR Plan Act receives adequate public attention.

Sec. 19. Minnesota Statutes 2002, section 65A.41, is amended to read:

65A.41 AGENTS.

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Subdivision 1. **GENERALLY.** A person licensed under chapter 60K may submit an application for coverage to the facility Minnesota FAIR plan and receive a commission from the facility plan for submitting the application premiums paid for coverage. However, the licensee is not an agent of the facility Minnesota FAIR plan for purposes of state law. All checks or similar instruments submitted in payment of facility plan premiums must be made payable to the facility Minnesota FAIR plan and not the agent.

Subd. 2. **DUTY TO SUBMIT APPLICATION.** An agent or broker shall not refuse to submit an application for basic property insurance coverage to the facility Minnesota FAIR plan if licensed to write and actively engaged in writing such insurance.

Sec. 20. Minnesota Statutes 2002, section 65A.42, is amended to read:

65A.42 IMMUNITY FROM LIABILITY.

There ~~shall be~~ is no civil or criminal liability on the part of, and no cause of action of any nature ~~shall arise~~ arises against insurers, the facility Minnesota FAIR plan, the governing board, or employees of the facility plan or the commissioner or the commissioner's authorized representatives, for any acts or omissions by them if the acts or omissions were in good faith and within the scope of their responsibilities under sections 65A.31 to 65A.42. The inspection reports and communications of the inspection vendors and the facility Minnesota FAIR plan are not public documents.

Sec. 21. **REPEALER.**

Minnesota Statutes 2002, section 65A.33, subdivision 5, is repealed.

Sec. 22. **EFFECTIVE DATE; APPLICATION.**

Sections 1 to 3 are effective August 1, 2003, and apply to all notices regarding termination of coverage due to attainment of the limiting age sent on or after that date.

Presented to the governor May 9, 2003

Signed by the governor May 13, 2003, 1:20 p.m.

CHAPTER 41—H.F.No. 433

An act relating to zoning; modifying deadlines for agency actions; amending Minnesota Statutes 2002, section 15.99.

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

Section 1. Minnesota Statutes 2002, section 15.99, is amended to read:

15.99 TIME DEADLINE FOR AGENCY ACTION.

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