CHAPTER 59--H.F.No. 1960

An act relating to commerce; making technical changes to various provisions administered by the Department of Commerce; amending Minnesota Statutes 2018, sections 45A.01, subdivision 7; 58A.03, subdivision 2; 72B.03, subdivision 2; 80A.84; 82B.195, subdivision 2; 115C.11; 332.37; 332A.07, subdivision 1; 332B.04, by adding a subdivision.

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

Section 1. Minnesota Statutes 2018, section 45A.01, subdivision 7, is amended to read:

Subd. 7. **Investment adviser.** "Investment adviser" has the meaning given in section 80A.41(16), except for section 80A.41(16)(E). Investment adviser includes a federal covered investment adviser, as defined under section 80A.41(7).

Sec. 2. Minnesota Statutes 2018, section 58A.03, subdivision 2, is amended to read:

Subd. 2. **Exemptions.** The following are exempt from this chapter:

(1) a registered mortgage loan originator, when acting for an entity described in section 58A.02, subdivision 12, clause (1);

(2) an individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;

(3) an individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence;

(4) a licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of the lender, mortgage broker, or other mortgage loan originator; ~~and~~

(5) an employee of a nonprofit organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, or a local unit of government, that is not otherwise engaged in the mortgage loan business, engaged in the financing of housing for low- and moderate-income households or housing counseling under programs designed specifically for those purposes, to the extent exempted by the commissioner by rule, advisory ruling, or interpretation, after taking into consideration any law, rule, advisory ruling, or interpretation by the United States Department of Housing and Urban Development~~.~~; and

(6) an individual who offers or negotiates the terms of a residential mortgage loan, when acting under the temporary authority granted in United States Code, title 12, section 5117, as amended by section 106 of the Economic Growth, Regulatory Relief, and Consumer Protection Act, Public Law 115-174.

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Sec. 3. Minnesota Statutes 2018, section 72B.03, subdivision 2, is amended to read:

Subd. 2. **Classes of licenses.** (a) Unless denied licensure pursuant to section 72B.08, persons who have met the requirements of section 72B.041 must be issued an adjuster license. There shall be three classes of licenses, as follows:

(1) independent adjuster's license;

(2) public adjuster's license; and

(3) crop hail adjuster's license.

(b) An independent adjuster and a public adjuster may qualify for a license in one or more of the following lines of authority:

(1) property and casualty; or

(2) workers' compensation; or

(3) crop.

(c) Any person holding a license pursuant to this section is not required to hold any other independent adjuster, public adjuster, insurance, or self-insurance administrator license in this state pursuant to section 60A.23, subdivision 8, or any other provision, provided that the person does not act as an adjuster with respect to life, health, or annuity insurance, other than disability insurance.

(d) An adjuster license remains in effect unless probated, suspended, revoked, or refused as long as the fee set forth in section 72B.041, subdivision 9, is paid and all other requirements for license renewal are met by the due date, otherwise, the license expires.

(e) An adjuster whose license expires may, within 12 months of the renewal date, be reissued an adjuster license upon receipt of the renewal request, as prescribed by the commissioner; however, a penalty in the amount of double the unpaid renewal fee is required to reissue the expired license.

(f) An adjuster who is unable to comply with license renewal procedures and requirements due to military service, long-term medical disability, or some other extenuating circumstance may request a waiver of same and a waiver of any examination requirement, fine, or other sanction imposed for failure to comply with renewal procedures.

(g) An adjuster is subject to sections 72A.17 to 72A.32.

(h) The adjuster must inform the commissioner by any means acceptable of any change in resident or business addresses for the home state or in legal name within ~~30~~ ten days of the change.

(i) The license must contain the licensee's name, address, and personal identification number; the dates of issuance and expiration; and any other information the commissioner deems necessary.

(j) In order to assist in the performance of the commissioner's duties, the commissioner may contract with nongovernmental entities, including the National Association of Insurance Commissioners, its affiliates, or its subsidiaries, to perform any ministerial functions related to licensing that the commissioner may deem appropriate, including the collection of fees and data.

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Sec. 4. Minnesota Statutes 2018, section 80A.84, is amended to read:

80A.84 SECTION 607; PUBLIC RECORDS; CONFIDENTIALITY.

(a) **Presumption of public records.** Except as otherwise provided in subsection (b), records obtained by the administrator or filed under this chapter, including a record contained in or filed with a registration statement, application, notice filing, or report, are public records and are available for public examination.

(b) **Nonpublic records.** The following records are not public records and are not available for public examination under subsection (a):

(1) a record obtained by the administrator in connection with an audit or inspection under section ~~80A.66(d)~~ 80A.66(e) or an investigation under section 80A.79;

(2) a part of a record filed in connection with a registration statement under sections 80A.49 and 80A.51 through 80A.53 or a record under section 80A.66(d) that contains trade secrets or confidential information if the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law;

(3) a record that is not required to be provided to the administrator or filed under this chapter and is provided to the administrator only on the condition that the record will not be subject to public examination or disclosure;

(4) a nonpublic record received from a person specified in section 80A.85(a);

(5) any social security number, residential address unless used as a business address, and residential telephone number contained in a record that is filed;

(6) a record obtained by the administrator through a designee of the administrator that a rule or order under this chapter determines has been:

(A) expunged from the administrator's records by the designee; or

(B) determined to be nonpublic or nondisclosable by that designee if the administrator finds the determination to be in the public interest and for the protection of investors; and

(7) a record furnished to the administrator by a portal operator under section 80A.461, subdivision 7, paragraph (e).

(c) **Administrator discretion to disclose.** If disclosure is for the purpose of a civil, administrative, or criminal investigation, action, or proceeding or to a person specified in section 80A.85(a), the administrator may disclose a record obtained in connection with an audit or inspection under section ~~80A.66(d)~~ 80A.66(e) or a record obtained in connection with an investigation under section 80A.79.

Sec. 5. Minnesota Statutes 2018, section 82B.195, subdivision 2, is amended to read:

Subd. 2. **Disclosure requirements.** In addition to the requirements of the standards of professional appraisal practice as defined by section 82B.021, subdivision ~~31~~ 26, an appraiser must, prior to performing any appraisal service which requires licensing pursuant to this chapter, disclose in writing to the person contracting for the appraisal service the information identified in clause (4). In addition, an appraiser must prepare a written disclosure providing the information identified in clauses (1) to (13). The written disclosure must be included as part of the final written appraisal report. As specified in this subdivision, an appraiser must:

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(1) disclose who has employed the appraiser;

(2) disclose who the appraisal is rendered for, if not the person who employed the appraiser;

(3) disclose the purpose of the appraisal, including an explanation of the difference between the appraisal being given and an appraisal of fee simple market valuation;

(4) disclose any conflict of interest or situation which might reasonably be perceived to be a conflict of interest which must include, but not be limited to, the following situations:

(i) whether the appraiser has any ownership interest in the subject property or contiguous properties;

(ii) whether there is an ownership interest by a spouse, parent, or child of the appraiser in the property or contiguous properties; and

(iii) whether the appraiser has a continuing business relationship with one of the parties, for example, any part-time or full-time employment of the appraiser, spouse, children living at home, or dependent children.

Failure to promptly give notification of a conflict must be considered a violation of the standards of professional appraisal practice;

(5) disclose that the appraisal is a reevaluation and identify the areas of difference between the two appraisals and the justification for the changes;

(6) disclose any facts concerning the valuation needed for loan purposes or similar information that was provided to the appraiser before or during the appraisal;

(7) disclose that the appraiser has not performed appraisals of the type requested or for the type of property to be appraised as a regular part of the appraiser's business in the preceding five-year period, provided that if the appraiser asserts qualification by training or related experience to perform the appraisal, the appraiser must set forth the training or experience and how it is applicable to the appraisal;

(8) disclose the license classification of the appraiser and the types of appraisals that the appraiser is authorized to conduct under the licensure;

(9) disclose any lack of experience or training that would affect the ability of the appraiser to perform the appraisal or could cause rejection of the appraisal by the party requiring the appraisal;

(10) disclose any appraisal on the same property made by the appraiser in the last three years;

(11) disclose all pertinent assumptions upon which a valuation based upon income from the property is derived such as expected occupancy rates, rental rates, construction of future improvements, roads, or highways;

(12) prior to performing the appraisal, disclose whether the appraiser has previously been to the property; and

(13) disclose any other fact or circumstance that could bring the reliability of the appraisal or the impartiality of the appraiser into question.

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Sec. 6. Minnesota Statutes 2018, section 115C.11, is amended to read:

115C.11 CONSULTANTS AND CONTRACTORS; SANCTIONS.

Subdivision 1. **Registration.** (a) All consultants and contractors who perform corrective action services must register with the board. In order to register, consultants must meet and demonstrate compliance with the following criteria:

(1) provide a signed statement to the board verifying agreement to abide by this chapter and the rules adopted under it and to include a signed statement with each claim that all costs claimed by the consultant are a true and accurate account of services performed;

(2) provide a signed statement that the consultant shall make available for inspection any records requested by the board for field or financial audits under the scope of this chapter;

(3) certify knowledge of the requirements of this chapter and the rules adopted under it;

(4) obtain and maintain professional liability coverage, including pollution impairment liability; and

(5) agree to submit to the board a certificate or certificates verifying the existence of the required insurance coverage.

(b) The board must maintain a list of all registered consultants and a list of all registered contractors.

(c) All corrective action services must be performed by registered consultants and contractors.

(d) Reimbursement for corrective action services performed by an unregistered consultant or contractor is subject to reduction under section 115C.09, subdivision 3, paragraph (i).

(e) Corrective action services performed by a consultant or contractor prior to being removed from the registration list may be reimbursed without reduction by the board.

(f) If the information in an application for registration becomes inaccurate or incomplete in any material respect, the registered consultant or contractor must promptly file a corrected application with the board.

(g) Registration is effective 30 days after a complete application is received by the board. The board may reimburse without reduction the cost of work performed by an unregistered contractor if the contractor performed the work within 60 days of the effective date of registration.

(h) Registration for consultants under this section remains in force until the expiration date of the professional liability coverage, including pollution impairment liability, required under paragraph (a), clause (4), or until voluntarily terminated by the registrant, or until suspended or revoked by the commissioner of commerce. Registration for contractors under this section expires ~~each year~~ every two years on the anniversary of the effective date of the contractor's most recent registration and must be renewed on or before expiration. Prior to ~~its annual~~ expiration, a registration remains in force until voluntarily terminated by the registrant, or until suspended or revoked by the commissioner of commerce. All registrants must comply with registration criteria under this section.

(i) The board may deny a consultant or contractor registration or request for renewal under this section if the consultant or contractor:

(1) does not intend to or is not in good faith carrying on the business of an environmental consultant or contractor;

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(2) has filed an application for registration that is incomplete in any material respect or contains any statement which, in light of the circumstances under which it is made, contains any misrepresentation, or is false, misleading, or fraudulent;

(3) has engaged in any fraudulent, coercive, deceptive, or dishonest act or practice whether or not the act or practice involves the business of environmental consulting or contracting;

(4) has forged another's name to any document whether or not the document relates to a document approved by the board;

(5) has been convicted, whether by pleading guilty, with or without admitting guilt, or pleading nolo contendere, of any of the following offenses: any felony; any gross misdemeanor; or a misdemeanor involving: (i) assault; (ii) harassment; (iii) moral turpitude; or (iv) conduct similar to items (i) to (iii);

(6) has been subject to disciplinary action in another state or jurisdiction; or

(7) has not paid subcontractors hired by the consultant or contractor after they have been paid in full by the applicant.

Sec. 7. Minnesota Statutes 2018, section 332.37, is amended to read:

332.37 PROHIBITED PRACTICES.

No collection agency or collector shall:

(1) in collection letters or publications, or in any communication, oral or written threaten wage garnishment or legal suit by a particular lawyer, unless it has actually retained the lawyer;

(2) use or employ sheriffs or any other officer authorized to serve legal papers in connection with the collection of a claim, except when performing their legally authorized duties;

(3) use or threaten to use methods of collection which violate Minnesota law;

(4) furnish legal advice or otherwise engage in the practice of law or represent that it is competent to do so;

(5) communicate with debtors in a misleading or deceptive manner by using the stationery of a lawyer, forms or instruments which only lawyers are authorized to prepare, or instruments which simulate the form and appearance of judicial process;

(6) exercise authority on behalf of a creditor to employ the services of lawyers unless the creditor has specifically authorized the agency in writing to do so and the agency's course of conduct is at all times consistent with a true relationship of attorney and client between the lawyer and the creditor;

(7) publish or cause to be published any list of debtors except for credit reporting purposes, use shame cards or shame automobiles, advertise or threaten to advertise for sale any claim as a means of forcing payment thereof, or use similar devices or methods of intimidation;

(8) refuse to return any claim or claims and all valuable papers deposited with a claim or claims upon written request of the creditor, claimant or forwarder after tender of the amounts due and owing to the agency within 30 days after the request; refuse or intentionally fail to account to its clients for all money collected within 30 days from the last day of the month in which the same is collected; or, refuse or fail to furnish at

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intervals of not less than 90 days upon written request of the claimant or forwarder, a written report upon claims received from the claimant or forwarder;

(9) operate under a name or in a manner which implies that the agency is a branch of or associated with any department of federal, state, county or local government or an agency thereof;

(10) commingle money collected for a customer with the agency's operating funds or use any part of a customer's money in the conduct of the agency's business;

(11) transact business or hold itself out as a debt prorater, debt adjuster, or any person who settles, adjusts, prorates, pools, liquidates or pays the indebtedness of a debtor, unless there is no charge to the debtor, or the pooling or liquidation is done pursuant to court order or under the supervision of a creditor's committee;

(12) violate any of the provisions of the Fair Debt Collection Practices Act of 1977, Public Law 95-109, while attempting to collect on any account, bill or other indebtedness;

(13) communicate with a debtor by use of a recorded message utilizing an automatic dialing announcing device unless the recorded message is immediately preceded by a live operator who discloses prior to the message the name of the collection agency and the fact the message intends to solicit payment and the operator obtains the consent of the debtor to hearing the message;

(14) in collection letters or publications, or in any communication, oral or written, imply or suggest that health care services will be withheld in an emergency situation;

(15) when a debtor has a listed telephone number, enlist the aid of a neighbor or third party to request that the debtor contact the licensee or collector, except a person who resides with the debtor or a third party with whom the debtor has authorized the licensee or collector to place the request. This clause does not apply to a call back message left at the debtor's place of employment which is limited to the licensee's or collector's telephone number and name;

(16) when attempting to collect a debt, fail to provide the debtor with the full name of the collection agency as it appears on its license;

(17) collect any money from a debtor that is not reported to a creditor or fail to return any amount of overpayment from a debtor to the debtor or to the state of Minnesota pursuant to the requirements of chapter 345;

(18) accept currency or coin as payment for a debt without issuing an original receipt to the debtor and maintaining a duplicate receipt in the debtor's payment records;

(19) attempt to collect any amount of money from a debtor or charge a fee to a creditor that is not authorized by agreement with the client;

(20) falsify any collection agency documents with the intent to deceive a debtor, creditor, or governmental agency; ~~or~~

(21) when initially contacting a Minnesota debtor by mail, fail to include a disclosure on the contact notice, in a type size or font which is equal to or larger than the largest other type of type size or font used in the text of the notice. The disclosure must state: "This collection agency is licensed by the Minnesota Department of Commerce~~.~~;" or

(22) commence legal action to collect a debt outside the limitations period set forth in section 541.053.

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Sec. 8. Minnesota Statutes 2018, section 332A.07, subdivision 1, is amended to read:

Subdivision 1. **Requirement to update information.** A registrant must update any information required by this chapter provided in its original or renewal application not later than ~~90~~ ten days after the date the events precipitating the update occurred.

Sec. 9. Minnesota Statutes 2018, section 332B.04, is amended by adding a subdivision to read:

Subd. 7. **Information updates required.** A registrant must update any information required by this chapter the registrant provided in the original or renewal application not later than ten days after the date the events precipitating the update occurred.

Presented to the governor May 22, 2019

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