

(6) The highest amount of indebtedness or liability to which the corporation shall at any time be subject.

It may contain any other lawful provision defining and regulating the powers and business of the corporation, its officers, directors, trustees, members, and stockholders provided that corporations subject to provisions of section 48.27 may show their highest amount of indebtedness to be 30 times the amount of its capital and actual surplus.

Sec. 18. REPEALER.

(a) Minnesota Statutes 1980, Section 46.131, Subdivision 6 is repealed.

(b) Minnesota Statutes 1980, Section 47.17 is repealed.

Sec. 19. EFFECTIVE DATES.

Sections 2 and 18, clause (a) are effective July 1, 1981. The remaining sections are effective the day following final enactment.

Approved May 18, 1981

CHAPTER 221 — S.F.No. 732

An act relating to insurance; revising the statutory provisions relating to surplus lines insurance; clarifying its operation and coverage; providing penalties; proposing new law coded in Minnesota Statutes, Chapter 60A; repealing Minnesota Statutes 1980, Section 60A.20.

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

Section 1. [60A.195] CITATION.

Sections 1 to 14 shall be known and may be cited as the Minnesota surplus lines insurance act.

Sec. 2. [60A.196] DEFINITIONS.

Unless the context otherwise requires, the following terms have the meanings given them for the purposes of sections 1 to 14:

(a) "Surplus lines insurance" means insurance placed with an insurer permitted to transact the business of insurance in this state only pursuant to sections 1 to 14.

(b) "Eligible surplus lines insurer" means an insurer recognized as eligible to write insurance business under sections 1 to 14 but not licensed by any other Minnesota law to transact the business of insurance.

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(c) "Ineligible surplus lines insurer" means an insurer not recognized as an eligible surplus lines insurer pursuant to sections 1 to 14 and not licensed by any other Minnesota law to transact the business of insurance.

(d) "Surplus lines licensee" or "licensee" means a person licensed under sections 1 to 14 to place insurance with an eligible or ineligible surplus lines insurer.

(e) "Association" means an association registered under section 13.

(f) "Alien insurer" means any insurer which is incorporated or otherwise organized outside of the United States.

(g) "Insurance laws" means chapters 60 to 79 inclusive.

Sec. 3. [60A.197] RATES AND FORMS.

(a) Rates used by eligible and ineligible surplus lines insurers shall not be subject to the insurance laws except that a rate shall not be unfairly discriminatory.

(b) Forms used by eligible and ineligible surplus lines insurers pursuant to sections 1 to 14 shall not be subject to the insurance laws, except that a policy shall not contain language which misrepresents the true nature of the policy or class of policies.

Sec. 4. [60A.198] TRANSACTION OF SURPLUS LINES INSURANCE.

Subdivision 1. LICENSE REQUIRED. A person shall not act in any other manner as an agent or broker in the transaction of surplus lines insurance unless licensed under sections 1 to 14.

Subd. 2. COMPLIANCE WITH STATUTORY PROVISIONS. A person shall not offer, solicit, make a quotation on, sell, or issue a policy of insurance, binder, or any other evidence of insurance with an eligible or ineligible surplus lines insurer, except in compliance with sections 1 to 14.

Subd. 3. PROCEDURE FOR OBTAINING LICENSE. A person licensed as a resident agent in this state pursuant to other law may obtain a surplus lines license by doing the following:

(a) Filing an application in the form and with the information the commissioner may reasonably require to determine the ability of the applicant to act in accordance with sections 1 to 14;

(b) Maintaining a resident agent license in this state;

(c) Delivering to the commissioner a financial guarantee bond from a surety acceptable to the commissioner for the greater of the following:

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(1) \$5,000; or

(2) The largest semiannual surplus lines premium tax liability incurred by him in the immediately preceding five years; and

(d) Agreeing to file with the commissioner no later than February 15 and August 15 annually, a sworn statement of the charges for insurance procured or placed and the amounts returned on the insurance canceled under the license for the preceding six month period ending December 31 and June 30 respectively, and at the time of the filing of this statement, paying the commissioner a tax on premiums equal to three percent of the total written premiums less cancellations.

Subd. 4. LICENSEE'S POWERS. A surplus lines licensee may do any or all of the following:

(a) Place insurance on risks in this state with eligible surplus lines insurers;

(b) Place insurance on risks in this state with ineligible surplus lines insurers in strict compliance with section 14. If the insurance is provided through the participation of several surplus lines insurers and the licensee has reason to believe that a substantial portion of the insurance would be assumed by eligible surplus lines insurers, then with respect to the ineligible surplus lines insurers, the insured or the insured's representative shall be informed as provided in section 14, subdivision 1, clause (a); or

(c) Engage in any other acts expressly or implicitly authorized by sections 1 to 14 and the other insurance laws.

Subd. 5. DISCLOSURES. Before placement of insurance with an eligible surplus lines insurer, a surplus lines licensee shall inform an insured or the insured's representative that coverage may be placed in conformance with sections 1 to 14 with an insurer not licensed in this state and that payment of loss is not guaranteed in the event of insolvency of the eligible surplus lines insurer.

Sec. 5. [60A.199] EXAMINATIONS.

If the commissioner considers it necessary, he may examine the books and records of a surplus lines licensee to determine whether the licensee is conducting business in accordance with sections 1 to 14. For the purposes of facilitating examinations, the licensee shall allow the commissioner free access at reasonable times to all of the licensee's books and records relating to the transactions to which sections 1 to 14 apply. If an examination is conducted, the cost of the examination shall be paid by the insurer.

Sec. 6. [60A.201] PLACEMENT OF INSURANCE BY LICENSEE.

Subdivision 1. RESTRICTIONS. Insurance shall not be placed by the surplus lines licensee with an eligible or ineligible surplus lines insurer when coverage is available from a licensed insurer.

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Subd. 2. AVAILABILITY OF OTHER COVERAGE; PRESUMPTION. There shall be a rebuttable presumption that the following coverages are available from a licensed insurer:

(a) All mandatory automobile insurance coverages required by chapter 65B;

(b) Private passenger automobile physical damage coverage;

(c) Homeowners and property insurance on owner occupied dwellings whose value is less than \$500,000. This figure shall be changed annually by the commissioner by the same percentage as the consumer price index for the Minneapolis-St. Paul metropolitan area is changed;

(d) Any coverage readily available from three or more licensed insurers unless the licensed insurers quote a premium and terms not competitive with a premium and terms quoted by an eligible surplus lines insurer; and

(e) Workers' compensation insurance, except excess workers' compensation insurance which is not available from the workers' compensation reinsurance association.

Subd. 3. UNAVAILABILITY OF OTHER COVERAGE; PRESUMPTION. There shall be a rebuttable presumption that the following coverages are unavailable from a licensed insurer:

(a) Coverages on a list of unavailable coverages maintained by the commissioner pursuant to subdivision 4;

(b) Coverages where one portion of the risk is acceptable to licensed insurers but another portion of the same risk is not acceptable. The entire coverage may be placed with eligible surplus lines insurers if it can be shown that the eligible surplus lines insurer will accept the entire coverage but not the rejected portion alone; and

(c) Any coverage that the licensee is unable to procure after diligent search among licensed insurers.

Subd. 4. LISTS OF UNAVAILABLE LINES OF INSURANCE; MAINTENANCE. The commissioner shall maintain on a current basis a list of those lines of insurance for which coverages are believed by the commissioner to be generally unavailable from licensed insurers. The commissioner shall republish a list and make available to all licensees the list every six months. Any person may request in writing that the commissioner add or remove coverage from the current list at the next publication of the list. The commissioner's determinations of coverages to be added to or removed from the list shall not be subject to the administrative procedure act but prior to

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making determinations the commissioner shall provide opportunity for comment from interested parties.

Sec. 7. [60A.202] PLACEMENT OF INSURANCE BY LICENSEE.

Subdivision 1. RESTRICTION. Only a surplus lines licensee shall issue evidence of placement of insurance with an eligible or ineligible surplus lines insurer.

Subd. 2. WRITTEN COMMUNICATION OF COVERAGE TO BE DELIVERED. A licensee shall, within seven working days after the date on which the risk was bound or the insured or applicant was advised that coverage has been or will be obtained, deliver to the insured or the insured's representative a policy, a written binder, a certificate or other written evidence of insurance placed with an eligible or ineligible surplus lines insurer.

Subd. 3. CONTENTS OF WRITTEN COMMUNICATION. The written communication showing that insurance has been obtained shall identify all known surplus lines insurers directly assuming any risk of loss. If there is more than one surplus lines insurer, any document issued or certified by the licensee pursuant to subdivision 2 shall specify, to the extent known by the licensee, whether the obligation is joint or several, and if the obligation is several, the proportion of the obligation assumed by each insurer.

Sec. 8. [60A.203] LICENSEES TO FILE EVIDENCE OF TRANSACTIONS.

Each surplus lines licensee shall keep a separate account of each transaction entered into pursuant to sections 1 to 14. Evidence of these transactions shall be filed with the commissioner in the form, manner, and time designated by the commissioner or if designated by the commissioner, with an association.

Sec. 9. [60A.204] ADDITIONAL CHARGES AND FEES.

Subdivision 1. PLACEMENT FEES. A surplus lines licensee may charge, in addition to the premium charged by an eligible or ineligible surplus lines insurer, a fee to cover the cost incurred in the placement of the policy which exceeds \$25, but only to the extent that the actual additional cost incurred for services performed by persons or entities unrelated to the licensee exceeds that amount.

Subd. 2. REGULATION OF FEES. A fee charged pursuant to subdivision 1 shall not be excessive or discriminatory. The licensee shall maintain complete documentation of all fees charged. Those fees shall not be included as part of the premium for purposes of the computation of the premium taxes.

Subd. 3. COMMISSION CHARGES. Notwithstanding the provisions of subdivision 1, a licensee may add a commission charge if the insurer

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quotes a rate net of commission and the commission is not excessive or discriminatory.

Sec. 10. [60A.205] COMPENSATION.

Subdivision 1. AUTHORIZATION. A surplus lines licensee may be compensated by an eligible surplus lines insurer and the licensee may compensate a licensed resident agent in this state for obtaining surplus lines insurance business. A licensed resident agent authorized by the licensee may collect a premium on behalf of the licensee, and as between the insured and the licensee, the licensee shall be considered to have received the premium if the premium payment has been made to the agent.

Subd. 2. CONSEQUENCES OF RECEIPT. If an eligible surplus lines insurer has assumed a risk, and if the premium for that risk has been received by the licensee who placed the insurance, then as between the insurer and the insured, the insurer shall be considered to have received the premium due to it for the coverage and shall be liable to the insured for any loss covered by the insurance and for the unearned premium upon cancellation of the insurance, regardless of whether the licensee is indebted to the insurer.

Sec. 11. [60A.206] QUALIFICATION AS ELIGIBLE SURPLUS LINES INSURER.

Subdivision 1. INSURERS TO BE RECOGNIZED BY THE COMMISSIONER. A surplus lines licensee shall place surplus lines insurance only with insurers which are in a stable and unimpaired financial condition. An insurer recognized by the commissioner as an eligible surplus lines insurer pursuant to subdivision 2 shall be considered to meet the requirements of this subdivision. Recognition as an eligible surplus lines insurer shall be conditioned upon the insurers continued compliance with sections 1 to 14.

Subd. 2. APPLICATION FOR RECOGNITION. An insurer not otherwise licensed to engage in the business of insurance in Minnesota may apply for recognition as an eligible surplus lines insurer by filing an application in the form and with the information as reasonably required by the commissioner regarding the insurer's financial stability, reputation, integrity and operating plans. The commissioner may delegate to an association the power to process and make recommendations on applications for recognition as an eligible surplus lines insurer. Notwithstanding delegation by the commissioner, an applicant may file an application directly with the commissioner.

Subd. 3. STANDARDS TO BE MET BY INSURERS. (a) The commissioner shall recognize the insurer as an eligible surplus lines insurer when satisfied that the insurer is in a stable, unimpaired financial condition and that the insurer is qualified to provide coverage in compliance with sections 1 to 14. If filed with full supporting documentation before July 1 of any year, applications submitted under subdivision 2 shall be acted upon by the commissioner before December 31 of the year of submission.

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(b) The commissioner shall not authorize an insurer as an eligible surplus lines insurer unless the insurer continuously maintains capital and surplus of at least \$3,000,000 and transaction of business by the insurer is not hazardous, financially or otherwise, to its policyholders, its creditors, or the public. Each alien surplus lines insurer shall have current financial data filed with the National Association of Insurance Commissioners Non-admitted Insurers Information Office.

Subd. 4. REMOVAL OF INSURERS. When the commissioner considers it necessary, he may request information about or examine the affairs of any eligible surplus lines insurer at the expense of the insurer, to determine whether the insurer should continue to remain on the list of eligible surplus lines insurers. If the commissioner determines that it is in the public interest to remove an insurer from the list because the insurer no longer meets the requirements of sections 1 to 14, or is no longer qualified to provide coverage under sections 1 to 14, the commissioner shall do so. If an insurer removed from the list desires a hearing pursuant to the administrative procedure act, the hearing shall be scheduled within 30 days following request for the hearing.

Subd. 5. TRUST FUND TO BE MAINTAINED. Before recognition as an eligible surplus lines insurer in this state, an alien insurer shall maintain a trust fund in the United States in cash, marketable securities, or other substantially equivalent instruments of at least \$1,500,000 with a United States bank which is a member of the Federal Reserve System or which is on deposit with regulatory authorities in this or another state for the benefit of all United States policyholders and beneficiaries. A trust fund required under this subdivision shall not have an expiration date which is at any time less than five years in the future, on a continuing basis.

Subd. 6. ALTERNATIVE MEANS OF COMPLIANCE. Subdivisions 3 and 5 shall not apply to 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.

Subd. 7. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS. Each eligible surplus lines insurer shall appoint the commissioner as its resident agent, for purposes of service of process.

Sec. 12. [60A.207] POLICIES TO INCLUDE NOTICE.

Each policy, cover note, or instrument evidencing surplus lines insurance from an eligible surplus lines insurer which is delivered to an insured or a representative of an insured shall have printed, typed, or stamped in red ink upon its face in not less than 10 point type, the following notice: "THIS INSURANCE IS ISSUED PURSUANT TO THE MINNESOTA SURPLUS LINES INSURANCE ACT. THE INSURER IS AN ELIGIBLE SURPLUS

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LINES INSURER BUT IS NOT OTHERWISE LICENSED BY THE STATE OF MINNESOTA. IN CASE OF INSOLVENCY, PAYMENT OF CLAIMS IS NOT GUARANTEED. This notice shall not be covered or concealed in any manner.

Sec. 13. ~~[60A.208]~~ LICENSEE ASSOCIATION.

Subdivision 1. LICENSEE'S RIGHT TO ASSOCIATE. Surplus lines licensees may associate and the commissioner may register the association for one or more of the following purposes:

(a) Advising the commissioner as to the availability of surplus lines coverage and market practices and standards for surplus lines insurers and licensees;

(b) Collecting and furnishing records and statistics; or

(c) Submitting recommendations regarding administration of sections 1 to 14.

Subd. 2. FILING REQUIREMENTS. (a) Each association shall file with the commissioner for approval all of the following:

(1) A copy of the association's constitution and articles of agreement or association, or the association's certificate of incorporation and bylaws and any rules governing the association's activities; and

(2) An agreement that, as a condition of continued registration under subdivision 1, the commissioner may examine the association.

(b) Each association shall file with the commissioner and keep current all of the following:

(1) A list of members; and

(2) The name and address of a resident of this state upon whom notices or orders of the commissioner or process issued by the commissioner may be served.

Subd. 3. COMMISSIONER'S POWERS; SUSPENSION OF REGISTRATION. The commissioner may refuse to register, or may suspend or revoke the registration of an association for any of the following reasons:

(a) It reasonably appears that the association will not be able to carry out the purposes of sections 1 to 14;

(b) The association fails to maintain and enforce rules which will assure that members of the association and persons associated with those members comply with sections 1 to 14, other applicable chapters of the insurance laws and rules promulgated under either;

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(c) The rules of the association do not assure a fair representation of its members in the selection of directors and in the administration of its affairs;

(d) The rules of the association do not provide for an equitable allocation of reasonable dues, fees, and other charges among members;

(e) The rules of the association impose a burden on competition; or

(f) The association fails to meet other applicable requirements prescribed in sections 1 to 14.

Subd. 4. MEMBERSHIP LIMITED TO LICENSEES. An association shall deny membership to any person who is not a licensee.

Subd. 5. ASSOCIATION IS VOLUNTARY. No licensee may be compelled to join an association as a condition of receiving a license or continuing to be licensed under sections 1 to 14.

Subd. 6. FINANCIAL STATEMENT TO BE FILED. Each association shall annually file a certified audited financial statement.

Subd. 7. REPORTS AND RECOMMENDATIONS BY THE ASSOCIATION. An association may submit reports and make recommendations to the commissioner regarding the financial condition of any eligible surplus lines insurer. These reports and recommendations shall not be considered to be public information. There shall not be liability on the part of, or a cause of action of any nature shall not arise against, eligible surplus lines insurers, the association or its agents or employees, the directors, or the commissioner or authorized representatives of the commissioner, for statements made by them in any reports or recommendations made under this subdivision.

Subd. 8. OPERATING ASSESSMENT. (a) Upon request from the association, the commissioner may approve the levy of an assessment of not more than one-half of one percent of premiums charged pursuant to sections 1 to 14 for operation of the association to the extent that the operation relieves the commissioner of duties otherwise required of the commissioner pursuant to sections 1 to 14. Any assessment so approved may be subtracted from the premium tax owed by the licensee.

(b) The association may revoke the membership and the commissioner may revoke the license in this state, of any licensee who fails to pay an assessment when due, if the assessment has been approved by the commissioner.

Sec. 14. [60A.209] INSURANCE PROCURED FROM INELIGIBLE INSURERS.

Subdivision 1. AUTHORIZATION; REGULATION. A resident of this state may obtain insurance from an ineligible surplus lines insurer in this state through a surplus lines licensee. The licensee shall first attempt to place

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the insurance with a licensed insurer, or if that is not possible, with an eligible surplus lines insurer. If coverage is not obtainable from a licensed insurer or an eligible surplus lines insurer, the licensee shall certify to the commissioner, on a form prescribed by the commissioner, that these attempts were made. Upon obtaining coverage from an ineligible surplus lines insurer, the licensee shall:

(a) Have printed, typed, or stamped in red ink upon the face of the policy in not less than 10 point type the following notice: "THIS INSURANCE IS ISSUED PURSUANT TO THE MINNESOTA SURPLUS LINES INSURANCE ACT. THIS INSURANCE IS PLACED WITH AN INSURER THAT IS NOT LICENSED BY THE STATE NOR RECOGNIZED BY THE INSURANCE COMMISSIONER AS AN ELIGIBLE SURPLUS LINES INSURER. IN CASE OF ANY DISPUTE RELATIVE TO THE TERMS OR CONDITIONS OF THE POLICY OR THE PRACTICES OF THE INSURER, THE INSURANCE COMMISSIONER WILL NOT BE ABLE TO ASSIST IN THE DISPUTE. IN CASE OF INSOLVENCY, PAYMENT OF CLAIMS IS NOT GUARANTEED." The notice may not be covered or concealed in any manner; and

(b) Collect from the insured appropriate premium taxes and report the transaction to the commissioner on a form prescribed by the commissioner. If the insured fails to pay the taxes when due, the insured shall be subject to a civil fine of not more than \$1,000, plus accrued interest from the inception of the insurance.

Subd. 2. PENALTY. Except as provided in this section, a person who assists or in any manner aids directly or indirectly in the procurement of insurance from an ineligible surplus lines insurer in this state is guilty of a misdemeanor, punishable by imprisonment for not more than one year, or by a fine of not more than \$1,000, or both.

Subd. 3. DUTY TO REPORT. Each insured in this state who procures, causes to be procured, or continues or renews insurance with an ineligible surplus lines insurer or any self-insurer in this state who procures or continues excess of loss, catastrophe, or other insurance upon a subject of insurance resident, located, or to be performed within this state, other than insurance procured pursuant to section 6 or subdivision 1 of this section shall file a written report regarding the insurance with the commissioner on forms prescribed by the commissioner and furnished to the insured upon request. The report shall be filed within 30 days after the date the insurance was procured, continued, or renewed and shall be accompanied by the tax on the premiums of two percent. The report shall show all of the following:

- (a) The name and address of the insured;
- (b) The name and address of the insurer;

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(c) The subject of the insurance;

(d) A general description of the coverage;

(e) The amount of premium currently charged for the insurance; and

(f) Any additional pertinent information reasonably requested by the commissioner.

Subd. 4. ALLOCATION OF PREMIUMS ACCORDING TO LOCATION OF SUBJECT MATTER. If the insurance described in subdivision 1 also covers a subject of insurance residing, located, or to be performed outside this state, for the purposes of this section, a proper pro rata portion of the entire premium payable for all of that insurance shall be allocated according to the subjects of insurance residing, located, or to be performed in this state.

Subd. 5. ACTS CONSTITUTING PROCUREMENT OF INSURANCE IN THE STATE. Any insurance placed with an ineligible surplus lines insurer procured through negotiations or an application in whole or in part occurring or made within or from without this state, or for which premiums in whole or in part are remitted directly or indirectly from within this state, shall be considered to be insurance procured, continued, or renewed in this state under subdivision 3.

Subd. 6. INELIGIBLE SURPLUS LINES INSURERS; LIABILITY ON POLICIES OR CONTRACTS. Except with respect to placement pursuant to section 4, subdivision 4, if an ineligible insurer offering benefits under a written contract which constitutes the transaction of insurance or which offers benefits substantially similar to benefits under policies of insurance, whether or not the benefits are identified or described as insurance, fails to pay a claim or loss within the provision of the contract, any person who assisted or aided, directly or indirectly, in the procurement of the contract shall be liable to the person to whom the obligations are owed for the full amount of the claim or loss, in the manner provided by the contract.

Sec. 15. REPEALER.

Minnesota Statutes 1980, Section 60A.20, is repealed.

Approved May 18, 1981

CHAPTER 222 — S.F.No. 763

An act relating to the cities of Minneapolis and St. Paul; authorizing the implementation of energy conservation programs; authorizing the financing of residential energy conservation programs; authorizing the issuance of qualified mortgage bonds; requiring a report to the legislature.

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