

83, Dec 12

# STATE REGISTER

STATE OF MINNESOTA

RECEIVED

DEC 12 1983

LEGISLATIVE REFERENCE LIBRARY

STATE CAPITOL

ST. PAUL, MN. 55155



**VOLUME 8, NUMBER 24**

**December 12, 1983**

**Pages 1369-1412**



---

---

### Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
SCHEDULE FOR VOLUME 8			
25	Monday Dec 5	Monday Dec 12	Monday Dec 19
26	Monday Dec 12	Friday Dec 16	Monday Dec 26
27	Friday Dec 16	Friday Dec 23	Monday Jan 2
28	Friday Dec 23	Friday Dec 30	Monday Jan 9

\*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

\*\*Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

---

The *State Register* is published by the State of Minnesota, State Register and Public Documents Division, 117 University Avenue, St. Paul, Minnesota 55155, pursuant to Minn. Stat. § 14.46. Publication is weekly, on Mondays, with an index issue in September. In accordance with expressed legislative intent that the *State Register* be self-supporting, the subscription rate has been established at \$130.00 per year, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota. Publication Number 326630. (ISSN 0146-7751) No refunds will be made in the event of subscription cancellation. Single issues may be obtained at \$3.25 per copy.

Subscribers who do not receive a copy of an issue should notify the *State Register* Circulation Manager immediately at (612) 296-0931. Copies of back issues may not be available more than two weeks after publication.

The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, and official notices to the public. Judicial notice shall be taken of material published in the *State Register*.

---

Rudy Perpich  
Governor

Marsha Storck  
Editor

Sandra J. Hale  
Commissioner  
Department of Administration

Robin PanLener  
Editorial Staff

Stephen A. Ordahl  
Director  
State Register and  
Public Documents Division

Margaret Connelly  
State Register Index Editor

Debbie Kobold  
Circulation Manager

# CONTENTS

## MCAR AMENDMENTS AND ADDITIONS

Inclusive listing for Issues 14-24..... 1372

## PROPOSED RULES

### Commerce Department

Proposed Adoption of Rules Relating to  
Variable Life Insurance (notice of intent to  
adopt rules without a public hearing) ..... 1374

### Commerce Department

Proposed Temporary Rules Governing Joint  
Self-Insurance Employee Health Plans  
(notice of intent to adopt rules without a  
public hearing) ..... 1387

### Human Rights Department

Proposed Temporary Rules Governing Case  
Processing Policies and Procedures, and  
Restrictions for Apprenticeship Programs  
(notice of intent to adopt rules without a  
public hearing) ..... 1395

### Labor and Industry Department

Proposed Adoption of Rules of the State  
Department of Labor and Industry Governing  
Reimbursement of Supplementary Benefits  
(notice of intent to adopt rules without a public  
hearing) ..... 1399

## ADOPTED RULES

### Minnesota Housing Finance Agency

Adopted Rules Relating to Income Limits for the  
Medium Density Housing Program ..... 1402

### Minnesota Housing Finance Agency

Adopted Rules Relating to the Innovative Housing  
Loan Program ..... 1402

### Minnesota State Retirement System

Adopted Amendments to the Rules Relating to the  
Minnesota Public Employees Deferred  
Compensation Plan ..... 1403

## OFFICIAL NOTICES

### Administration Department

#### Cable Communications Board

Notice of Six Month Delay in Designation of the  
Twin Cities Metropolitan Area Regional Cable  
Channel Entity and Interconnection of Cable  
Systems ..... 1403

### Commerce Department

#### Board of Architecture, Engineering, Land Surveying and Landscape Architecture

Outside Opinion Sought on Rules Governing the  
Examination of Architect and Land Surveyor  
Applicants ..... 1403

### Education Department

#### State Board of Vocational Technical Education

Notice of Public Hearings on Post-Secondary Aid  
Allocations ..... 1404

### Energy and Economic Development Department Energy Division

Outside Opinion Sought Regarding Proposed  
Amendments Governing the Minnesota Energy  
Conservation Service Program ..... 1404

### Energy and Economic Development Department Energy Division

Outside Opinion Sought Regarding Proposed  
Amendments Governing the Home Energy  
Disclosure Program and Mandatory Energy  
Efficiency Standards for Residential Rental  
Units ..... 1405

### Finance Department

#### Financial Management and Capital Budget Debt Management

Notice of Maximum Interest Rate for Municipal  
Obligations, December, 1983 ..... 1405

### Secretary of State Office

Notice of Vacancies in Multi-Member State  
Agencies ..... 1405

## STATE CONTRACTS

### Iron Range Resources and Rehabilitation Board

Request for Proposal for Professional Services —  
Promotional Projects ..... 1406

### Iron Range Resources and Rehabilitation Board

Request for Proposal for a Wood Industrial Park ..... 1407

### Metropolitan Council of the Twin Cities Area

Request for Proposals (RFP) Information  
Systems Upgrade ..... 1407

## SUPREME COURT

### Decisions Filed Monday, November 28, 1983

C9-83-819 Minneapolis Star and Tribune  
Company, Petitioner, v. Honorable Daniel  
Kammeyer, Respondent, Craig Swanson,  
Respondent, State of Minnesota, Respondent ..... 1407

### Decisions Filed Friday, December 2, 1983

CX-83-70 Public Health Nursing Service of  
Dakota County, Relator, v. Roland P. Freeman,  
Respondent ..... 1408  
C3-83-1075 State of Minnesota, Appellant, v.  
Bennie Uranus Stafford, Respondent ..... 1408  
C0-83-854 State of Minnesota, Respondent, v.  
Mary Moore, Appellant ..... 1408  
C6-82-1402 Michael J. Bailey, Appellant, v. State  
of Minnesota, Respondent ..... 1408  
CX-82-1483 Connie Hollerich, individually, and  
as mother and natural guardian of Ryan  
Hollerich, Nicholas Hollerich and Nathan  
Hollerich, minor children, et al., Appellants, v.  
City of Good Thunder, Minnesota, et al.,  
Respondents ..... 1408

## NOTICE

### How to Follow State Agency Rulemaking Action in the *State Register*

State agencies must publish notice of their rulemaking action in the *State Register*. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a **NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION**. Such notices are published in the **OFFICIAL NOTICES** section. Proposed rules and adopted rules are published in separate sections of the magazine.

#### The **PROPOSED RULES** section contains:

- Calendar of Public Hearings on Proposed Rules.
- Proposed new rules (including Notice of Hearing and/or Notice of Intent to Adopt Rules without A Hearing).
- Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
- Proposed temporary rules.

#### The **ADOPTED RULES** section contains:

- Notice of adoption of new rules and rule amendments (those which were adopted without change from the proposed version previously published).
- Adopted amendments to new rules or rule amendments (changes made since the proposed version was published).
- Notice of adoption of temporary rules.
- Adopted amendments to temporary rules (changes made since the proposed version was published).

ALL **ADOPTED RULES** and **ADOPTED AMENDMENTS TO EXISTING RULES** published in the *State Register* and filed with the Secretary of State before September 15, 1982, are published in the *Minnesota Code of Agency Rules 1982 Reprint*. **ADOPTED RULES** and **ADOPTED AMENDMENTS TO EXISTING RULES** filed after September 15, 1982, will be included in a new publication, *Minnesota Rules*, scheduled for publication in spring of 1984. In the **MCAR AMENDMENT AND ADDITIONS** listing below, the rules published in the *MCAR 1982 Reprint* are identified with an asterisk. Proposed and adopted **TEMPORARY RULES** appear in the *State Register* but are not published in the *1982 Reprint* due to the short-term nature of their legal effectiveness.

The *State Register* publishes partial and cumulative listings of rule action in the **MCAR AMENDMENTS AND ADDITIONS** list on the following schedule:

Issues 1-13, inclusive  
Issues 14-25, inclusive  
Issue 26, cumulative for 1-26  
Issue 27-38, inclusive

Issue 39, cumulative for 1-39  
Issues 40-51, inclusive  
Issue 52, cumulative for 1-52

The listings are arranged in the same order as the table of contents of the *MCAR 1982 Reprint*.

# MCAR AMENDMENTS AND ADDITIONS

## TITLE 1 CONSTITUTIONAL OFFICES

### Part 2 Secretary of State

1 MCAR § 2.4001-2.4012, 2.0101-2.1101, 2.2101-2.2115,  
2.3101-2.3907, 2.4101-2.4205 (adopted)..... 1348

## TITLE 2 ADMINISTRATION

### Part 1 Administration

2 MCAR § 1.16007-1.16008 (adopted)..... 1229  
2 MCAR § 1.16001-1.16006 (repealed)..... 1229

### Part 2 Electricity Board

4 MCAR § 11.033-11.038 (adopted)..... 1228

### Part 3 Minnesota State Retirement System

2 MCAR § 3.5001, 3.5002, 3.5004, 3.5005  
[amendments] (adopted)..... 1403

## TITLE 3 AGRICULTURE

### Part 1 Agriculture Department

3 MCAR § 1.0090-1.0100 (proposed)..... 1290  
3 MCAR §§ 1.0129-1.0130, 1.0132-1.0133, 1.0135  
(proposed)..... 670  
3 MCAR § 1.0172 [Temp] (adopted)..... 1078  
3 MCAR § 1.1160 (proposed)..... 1185  
3 MCAR §§ 1.1340 [Temp]-1.1348 [Temp] (proposed)..... 1251  
3 MCAR §§ 1.4060 [Temp]-1.4070 [Temp] (proposed)..... 665

## TITLE 4 COMMERCE

### Part 1 Commerce Department

S Div 2117-2118, 2021, 2034 (adopted)..... 1009  
4 MCAR §§ 1.0001 [Temp]-1.0022 [Temp], 1.00225 [Temp],  
1.0023 [Temp], 1.0031 [Temp] (adopted)..... 1006  
4 MCAR § 1.850-1.866 [Temp] (proposed)..... 1387  
4 MCAR §§ 1.9011-1.9028 (proposed), 1.90281 (proposed) ... 1256  
4 MCAR §§ 1.9081 [Temp]-1.9089 [Temp], 1.90891 [Temp]-  
1.90892 [Temp] (adopted)..... 1006  
4 MCAR §§ 1.9260-1.9269 [Temp] (proposed)..... 1102  
4 MCAR § 1.9401-1.9409 (proposed)..... 1374  
4 MCAR § 1.9500-1.9505 (proposed)..... 1294

### Racing Commission

4 MCAR §§ 15.001-15.050 (proposed)..... 1162

### Part 2 Energy & Economic Development Department

4 MCAR §§ 2.501-2.508 (repealed)..... 1011

### Part 3 Public Utilities Commission

4 MCAR §§ 3.0450-3.0463 [Temp] (adopted)..... 1095

### Part 4 Cable Communications Board

4 MCAR §§ 4.240-4.243 (proposed)..... 1069

### Part 11 Electricity Board

4 MCAR § 11.033-11.038 (adopted)..... 1228

# MCAR AMENDMENTS AND ADDITIONS

## Energy & Economic Development Authority

4 MCAR § 14.051-14.059 [Temp] (adopted).....	1340
4 MCAR § 14.071-14.080 [Temp] (adopted).....	1343

## TITLE 5 EDUCATION

### Part 1 Education Department

5 MCAR §§ 1.0100-1.01101 (proposed), 1.0111-1.0117 (proposed).....	1260
5 MCAR §§ 1.0120-1.0122, 1.01222-1.01224, 1.0125, 1.01226, 1.01228-1.01229, 1.01232-1.01234, 1.0124, 1.0126-1.0127 (adopted).....	596
5 MCAR § 1.0807 [Temp] (adopted).....	692

### Part 2 Higher Education Coordinating Board

5 MCAR § 2.2101-2.2106, 2.2204 (adopted).....	1346
---	------

## TITLE 6 ENVIRONMENT

### Part 1 Natural Resources Department

6 MCAR § 1.0057 (proposed).....	677
6 MCAR §§ 1.5600-1.5603 (proposed).....	995

### Part 2 Energy and Economic Development

2 MCAR § 1.16007-1.16008 (adopted).....	1229
2 MCAR § 1.16001-1.16006 (repealed).....	1229
6 MCAR §§ 2.2300-2.2314 (proposed).....	1106
6 MCAR §§ 2.4045 [Temp], 2.4047 [Temp]-2.4048 [Temp] ...	1262
6 MCAR §§ 2.2500-2.2509 (proposed).....	673
6 MCAR §§ 2.2502, 2.2503 (withdrawn).....	994
10 MCAR §§ 1.500, 1.505-1.506, 1.510, 1.520, 1.525, 1.546, 1.550 (adopted).....	1263

### Part 4 Pollution Control Agency

APC 2 (6 MCAR § 4.002) (proposed).....	682
6 MCAR § 4.0041 (proposed).....	678
6 MCAR § 4.8034 (adopted).....	694
6 MCAR §§ 4.9100-4.9104, 4.9128-4.9137, 4.9200-4.9222, 4.9250-4.9259, 4.9280-4.9322, 4.9380-4.9422, 4.9480-4.9481, 4.9559-4.9560 (proposed).....	732
6 MCAR § 4.9701-4.9706 (proposed).....	1071

### Part 8 Waste Management Board

6 MCAR §§ 8.403-8.404, 8.408 (proposed).....	1004
--	------

## TITLE 7 HEALTH

### Part 1 Health Department

7 MCAR § 1.2395, 1.314 (adopted).....	1346
---------------------------------------	------

## TITLE 8 LABOR

### Part 1 Labor and Industry Department

8 MCAR §§ 1.7200-1.7209 (adopted).....	622
8 MCAR §§ 1.8003-1.8004, 1.8006-1.8007 (proposed).....	742
8 MCAR § 1.9001-1.9010 [Temp] (proposed).....	1399
8 MCAR §§ 1.9001 [Temp]-1.9023 [Temp] (proposed).....	562

## Part 4 Economic Security Department

8 MCAR § 4.0101 [Temp] (adopted).....	1093
8 MCAR § 4.0102 [Temp] (adopted).....	1229

## Occupational Safety & Health Division

8 MCAR § 1.7001 (proposed).....	1338
---------------------------------	------

## Division of Workers' Compensation

8 MCAR § 1.9001-1.9025 (proposed).....	1296
--	------

## TITLE 10 PLANNING

### Part 1 Energy and Economic Development

10 MCAR §§ 1.500, 1.505-1.506, 1.510, 1.520, 1.525, 1.546, 1.550 (adopted).....	1263
---	------

## TITLE 11 PUBLIC SAFETY

### Part 1 Public Safety Department

11 MCAR § 1.2094, 1.2140 (adopted).....	1352
11 MCAR §§ 1.8025, 1.8058, 1.8084 (proposed).....	730

### Part 2 Corrections Department

11 MCAR §§ 2.001-2.012 (adopted).....	601
11 MCAR §§ 2.601-2.622 (proposed).....	981

## Board of Peace Officer Standards & Training

4 MCAR § 13.040 (proposed).....	1337
---------------------------------	------

## TITLE 12 SOCIAL SERVICE

### Part 1 Human Rights Department

12 MCAR § 1.061-1.076 [Temp] (proposed).....	1395
--	------

### Part 2 Public Welfare Department

12 MCAR §§ 2.0300-2.0304 [Temp] (proposed).....	1154
12 MCAR §§ 2.04422 [Temp], 2.05501 [Temp]-2.05509 [Temp] (adopted).....	698
12 MCAR §§ 2.05301-2.05315 [Temp] (proposed).....	1134
12 MCAR §§ 2.05401 [Temp]-2.05501 [Temp] (adopted).....	959
12 MCAR § 2.207 (adopted).....	1079
12 MCAR § 2.264 [Temp] (adopted).....	602
12 MCAR § 2.494, 2.840 (adopted).....	1352

### Part 3 Housing Finance Agency

12 MCAR § 3.002 [extended] 3.133-3.134 (Temp) [extended].....	1346
12 MCAR § 3.037 (adopted).....	1402
12 MCAR § 3.038 (proposed).....	621
12 MCAR § 3.120 (adopted).....	1402
12 MCAR §§ 3.170-3.174 (adopted).....	646
12 MCAR § 3.180 [Temp] (adopted).....	1346

## TITLE 13 TAXATION

### Part 1 Revenue Department

13 MCAR §§ 1.0010-1.0014 (withdrawn).....	596
13 MCAR § 1.6016 (repealed).....	1079

# PROPOSED RULES

Pursuant to Minn. Stat. of 1980, §§ 14.21, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
  2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
  3. of the manner in which persons shall request a hearing on the proposed rules;
- and
4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.13-14.20 which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 14.29, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

## Department of Commerce

### Proposed Adoption of Rules Relating to Variable Life Insurance

#### Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Department of Commerce proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Commerce has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, section 14.21.

Persons interested in these rules shall have 30 days to submit comments. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change.

No public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, section 14.14, subd. 1.

Persons who wish to submit comments or a written request for a public hearing should submit them to Sam Crecelius, Deputy Commissioner, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101.

Authority for the adoption of these rules is contained in Minnesota Statutes, section 61A.20. Additionally, a Statement of Need and Reasonableness describing the need for and reasonableness of each provision and identifying the data and information relied upon to support the proposed rules has been prepared and is available upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Debbi Lindlief, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101.

A copy of the proposed rules is attached to this Notice.

Copies of this Notice and the proposed rules are available and may be obtained by contacting Debbi Lindlief at the above address.

Michael A. Hatch  
Commissioner of Commerce

#### Rules as Proposed

~~4 MCAR § 1.9401-~~ Authority and scope.

The following ~~regulations are applicable~~ rules apply to all variable life insurance policies issued in this state, and are ~~promulgated~~ adopted under the authority of Minnesota Statutes, section 61A.20.

**4 MCAR § 1.9402- Definitions.**

As used in this regulation:

A. Terms. For the purposes of 4 MCAR §§ 1.9401-1.9411, the terms defined in this rule have the meanings given them.

B. Affiliate. "Affiliate" of an insurer means any person, directly or indirectly, controlling, controlled by, or under common control with the insurer; any person who regularly furnishes investment advice to the insurer with respect to its separate accounts for which a specific fee or commission is charged; or any director, officer, partner, or employee of an insurer, controlling or controlled person, or person providing investment advice or any member of the immediate family of this person.

~~A. C. Assumed investment rate.~~ "Assumed investment rate" means the rate of investment return which would be required to be credited to a variable life insurance policy, after deduction of charges for taxes, investment expenses, and mortality and expense guarantees to maintain the variable death benefit equal at all times to the amount of death benefit, other than incidental insurance benefits, which would be payable under the plan of insurance if the death benefit did not vary according to the investment experience of the separate account.

~~B. D. Benefit base. "Benefit base" means the amount, not less than the amount specified under 4 MCAR Section 1.9406 B-2, specified by the terms of the variable life insurance policy to which the difference between the net investment return and the assumed investment rate is applied in determining the variable benefits of the policy.~~

E. Control. "Control," including the terms "controlling," "controlled by," and "under common control with," means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing more than ten percent of the voting securities of any other person. This presumption may be rebutted by a showing made to the satisfaction of the commissioner that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

F. Flexible premium policy. "Flexible premium policy" means any variable life insurance policy other than a scheduled premium policy as specified in L.

G. General account. "General account" means all assets of the insurer other than assets in separate accounts established pursuant to Minnesota Statutes, section 61A.14, or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer, whether or not for variable life insurance.

~~D. H. Incidental insurance benefit. "Incidental insurance benefit" means all insurance benefits in a variable life insurance policy, other than the variable death benefit and the minimum death benefit, including accidental death and dismemberment benefits, disability income benefits, guaranteed insurability options, family income, or fixed benefit term riders.~~

~~E. I. Minimum death benefit. "Minimum death benefit" means the amount of the guaranteed death benefit, other than incidental insurance benefits, payable under a variable life insurance policy regardless of the investment performance of the separate account.~~

~~F. J. Net investment return. "Net investment return" means the rate of investment return in a separate account to be applied to the benefit base after deduction of charges for taxes, investment expenses and mortality and expense guarantees in accordance with the terms of the policy.~~

K. Policy processing day. "Policy processing day" means the day on which charges authorized in the policy are deducted from the policy's cash value.

L. Scheduled premium policy. "Scheduled premium policy" means any variable life insurance policy under which both the amount and timing of premium payments are fixed by the insurer.

~~G. M. Separate account. "Separate account" means a separate account established for variable life insurance pursuant to~~

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

## PROPOSED RULES

Minnesota Statutes, section 61A.14, or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer.

~~H.~~ N. Variable death benefit. "Variable death benefit" means the amount of the death benefit, other than incidental insurance benefits, payable under a variable life insurance policy dependent on the investment performance of the separate account, which the insurer would have to pay in the absence of ~~the~~ any minimum death benefit.

~~I.~~ O. Variable life insurance policy. "Variable life insurance policy" means any individual policy which provides for life insurance the amount or duration of which varies according to the investment experience of any separate account or accounts established and maintained by the insurer as to ~~such~~ this policy, pursuant to Minnesota Statutes, section 61A.14, or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer.

~~J.~~ P. Securities Act of 1933. "Securities Act of 1933" means the Federal Securities Act of 1933, 15 U.S.C., Section 77a et. seq.

~~K.~~ Q. Securities Exchange Act of 1934. "Securities Exchange Act of 1934" means the Federal Securities Exchange Act of 1934, 15 U.S.C., Section 78a et. seq.

~~L.~~ R. Investment Company Act of 1940. "Investment Company Act of 1940" means the Federal Investment Company Act of 1940, 15 U.S.C., Section 80a-1 et. seq.

~~M.~~ S. Employee Retirement Income Security Act of 1974. "Employee Retirement Income Security Act of 1974" means the Federal Employee Retirement Income Security Act of 1974, 29 U.S.C., Section 1001 et. seq.

### 4 MCAR § 1.9403: Qualification of insurer to issue variable life insurance.

A. Compliance with laws and grant of authority. An insurer shall not deliver or issue for delivery in this state any variable life insurance policy unless it has complied with Minnesota Statutes, sections 61A.13 to 61A.21 and 4 MCAR §§ 1.9401-1.9411, and the commissioner has granted the insurer the authority to issue variable life insurance policies in the state of Minnesota pursuant to Minnesota Statutes, section 61A.20.

B. Required filing. Before any insurer ~~shall deliver~~ delivers or ~~issue~~ issues for delivery any variable life insurance policy in this state, it must file with the commissioner the ~~following~~ information contained in 1.-4. for the consideration of the commissioner in making the determination required by Minnesota Statutes, section 61A.19.

1. Copies of and a general description of the variable life insurance policies it intends to issue;

2. A general description of the methods of operation of the variable life insurance business of the insurer; including methods of distribution of policies and the names of those persons or firms proposed to supply consulting, investment, administrative, custodial, or distribution services to the insurer.

3. With respect to any separate account maintained by an insurer for any variable life insurance policy, a statement of the investment policy the insurer intends to follow for the investment of the assets held in such separate account, and a statement of the procedures for changing such investment policy. The statement of investment policy shall include a description of the investment objective ~~and orientation~~ intended for the separate account.

4. A statement of the insurer's actuary describing the mortality and expense risks which the insurer will bear under the policy.

C. Applicability. The requirements of this rule apply to all insurers either seeking authority to issue variable life insurance in this state or having authority to issue variable life insurance in this state.

### 4 MCAR § 1.9404: Insurance policy requirements.

A. Generally. The commissioner shall not accept the filing of any variable life insurance policy form unless it conforms to the requirements of 4 MCAR § 1.9404 and Minnesota Statutes, chapter 61A.

B. Mandatory policy benefit and design requirements. Variable life insurance policies delivered or issued for delivery in this state shall comply with the ~~following~~ minimum requirements: contained in 1.-7.

1. Coverage shall be provided for the lifetime of the insured with the Mortality and expense risk shall be borne by the insurer. The mortality and expense charges shall be subject to the maximums stated in the contract.

2. Gross premiums for death benefits shall be a level amount for the duration of the premium payment period; but this subdivision shall not be construed to prohibit temporary or permanent additional premiums for incidental insurance benefits or substandard risks. This subdivision shall not be deemed to prohibit the use of fixed benefit preliminary term insurance for a period not to exceed 120 days from the date of the application for a variable life insurance policy. The premium rate for such preliminary term insurance shall be stated separately in the application or receipt.



3- For scheduled premium policies, a minimum death benefit shall be provided in an amount at least equal to the initial face amount of the policy so long as premiums are duly paid ~~and~~ subject to the provisions of 4 MCAR § 1.9404 ED.2.

4- 3. The policy shall ~~provide that the variable death benefit shall~~ reflect the investment experience of the variable life insurance one or more separate ~~account~~ accounts established and maintained by the insurer ~~and that the excess, positive or negative, of the net investment return over the assumed investment rate, as applied to the benefit base of each variable life insurance policy, shall be used to provide either:~~

a. ~~fully paid up variable life insurance providing coverage for the same period as the basic insurance under the policy or fully paid up term insurance amounts for a term of annual periods of not less than one year nor more than five years, positive or negative, as the case may be, or a combination thereof; or~~

b. ~~variable life insurance amounts, positive or negative, as the case may be, so that the reserve maintains the same percentage relationships to the variable death benefit as it would have on a corresponding fixed benefit policy. The insurer must demonstrate that the reflection of investment experience in the variable life insurance policy is actuarially sound.~~

5- 4. Each variable life insurance policy shall be credited with the full amount of the net investment return applied to the benefit base.

6- 5. Any changes in variable death benefits of each variable life insurance policy shall be determined at least annually.

7- 6. The cash value of each variable life insurance policy shall be determined at least monthly. The method of computation of cash values and other non-forfeiture benefits, as described either in the policy or in a statement filed with the commissioner or person fulfilling the equivalent function of the state in which the policy is delivered, or issued for delivery, shall be in accordance with actuarial procedures that recognize the variable nature of the policy. The method of computation must be such that, if the net investment return credited to the policy at all times from the date of issue should be equal to the assumed investment rate with premiums and benefits determined accordingly under the terms of the policy, then the resulting cash values and other non-forfeiture benefits must be at least equal to the minimum values required by Minnesota Statutes, section 61A.24 ~~(, the Standard Non-Forfeiture Law)~~, for a ~~fixed benefit~~ general account policy with ~~such~~ these premiums and benefits. The assumed investment rate shall not exceed the maximum interest rate permitted under ~~the Standard Non-Forfeiture Law of this state~~ Minnesota Statutes, section 61A.24. If the policy does not contain an assumed investment rate, this demonstration must be based on the maximum interest rate permitted under Minnesota Statutes, section 61A.24. The method of computation may disregard incidental minimum guarantees as to the dollar amounts payable. Incidental minimum guarantees include, for example, but are not to be limited to, a guarantee that the amount payable at death or maturity shall be at least equal to the amount that otherwise would have been payable if the net investment return credited to the policy at all times from the date of issue had been equal to the assumed investment rate.

8- 7. The computation of values required for each variable life insurance policy may be based upon reasonable and necessary approximations.

9- In determining the net investment return to be applied to the benefit base the insurer may deduct only the charges described in 4 MCAR Section 1.9406 G-1-a., b., d., and e.

C. Mandatory policy provisions. Every variable life insurance policy filed for approval in this state shall contain at least the following:

1. the cover page or pages corresponding to the cover page of each ~~such~~ policy shall contain:

a. a prominent statement in either contrasting color or in boldface type at least four points larger than the type size of the largest type used in the text of any provision on that page, that the amount or duration of death benefit may be variable or fixed under specified conditions;

b. a prominent statement in either contrasting color or in boldface type at least four points larger than the type size of the largest type used in the text of any provision on that page that cash values may increase or decrease in accordance with the experience of the separate account subject to any specified minimum guarantees;

c. a statement ~~that the~~ describing any minimum death benefit ~~will be at least equal~~ required pursuant to the initial

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. **Strike outs** indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. **Strike outs** indicate deletions from proposed rule language.

## PROPOSED RULES

face amount at the date of issue if premiums are duly paid and if there are no outstanding policy loans, partial withdrawals, or partial surrenders 4 MCAR § 1.9404 B.3.;

d. the ~~rule~~ method, or a reference to the policy provision, which describes the method for determining the variable amount of insurance payable at death;

e. a captioned provision ~~or endorsement to the policy which provides~~ that the policyholder may ~~cancel~~ return the variable life insurance policy ~~by delivering or mailing a written notice or sending a telegram to the insurer and by returning within ten days of receipt of the policy before midnight of the tenth day after the date the policyholder receives the policy, or before midnight of the forty-fifth day after the date of the execution of the application, whichever is later. Notice given by mail and return of the policy are effective on being postmarked properly addressed and postage prepaid. The insurer must return all payments made for the policy within ten days after it receives notice of cancellation and the returned policy by the policyholder, and receive a refund as required by state law.~~

f. such other items as are currently required by Minnesota Statutes, chapter 61A.;

2. a. For scheduled premium policies, a provision for a grace period of not less than ~~thirty-one~~ 31 days from the premium due date which shall provide that where the premium is paid within the grace period, policy values will be the same, except for the deduction of any overdue premium, as if the premium were paid on or before the due date;

b. For flexible premium policies, a provision for a grace period beginning on the policy processing day when the total charges authorized by the policy that are necessary to keep the policy in force until the next policy processing day exceed the amounts available under the policy to pay these charges in accordance with the terms of the policy. The grace period shall end on a date not less than 61 days after the mailing date of the Report to Policyholders required by 4 MCAR § 1.9409 C.

The death benefit payable during the grace period will equal the death benefit in effect immediately prior to the period less any overdue charges. If the policy processing days occur monthly, the insurer may require the payment of not more than three times the charges which were due on the policy processing day on which the amounts available under the policy that are necessary to keep the policy in force until the next policy processing day;

3. For scheduled premium policies, a provision that the policy will be reinstated at any time within three years from the date of default upon the written application of the insured and evidence of insurability, including good health, satisfactory to the insurer, unless the cash surrender value has been paid or the period of extended insurance has expired, upon the payment of any outstanding indebtedness arising subsequent to the end of the grace period following the date of default together with accrued interest thereon to the date of reinstatement and payment of an amount not exceeding the greater of:

a. all overdue premiums with interest at a rate not exceeding eight ~~(8%)~~ percent per annum compounded annually and any indebtedness in effect at the end of the grace period following the date of default with interest at a rate not exceeding eight ~~(8%)~~ percent per annum compounded annually; or

b. 110% percent of the increase in cash ~~surrender~~ value resulting from reinstatement plus all overdue premiums for incidental insurance benefits with interest at a rate not exceeding eight ~~(8%)~~ percent per annum compounded annually-;

4. a full description of the benefit base and of the method of calculation and application of any factors used to adjust variable benefits under the policy;

5. a provision designating the separate account to be used and stating that:

a. ~~such separate account shall be used to fund only variable life insurance benefits;~~

~~b.~~ the assets of ~~such~~ the separate account shall be available to cover the liabilities of the general account of the insurer only to the extent that the assets of the separate account exceed the liabilities of the separate account arising under the variable life insurance policies supported by the separate account; and

~~c.~~ b. the assets of ~~such~~ the separate account shall be valued at least as often as any policy benefits vary but at least monthly.

6. a provision stating that the approval process for a change in the investment policy of the separate account is on file with the commissioner;

7. a provision that the policy shall be incontestable by the insurer after it has been in force for two years during the lifetime of the insured, provided, however, that any increase in the amount of the policy's death benefit subsequent to the policy issue date, which increase occurred upon a new application or request of the owner and was subject to satisfactory proof of the insured's insurability, shall be incontestable after an increase has been in force, during the lifetime of the insured, for two years from the date of issue of the increase;

~~8.~~ a provision that payment of variable death benefits in excess of ~~the~~ any minimum death benefits, cash values, policy loans, or partial withdrawals (except when used to pay premiums) or partial surrenders may be deferred:

a. for up to six months from the date of request, if such payments are based on policy values which do not depend on the investment performance of the separate account; or

b. otherwise, for any period during which the New York Stock Exchange is closed for trading (except for normal holiday closing) or when the Securities and Exchange Commission has determined that a state of emergency exists which may make such payment impractical;

~~8.~~ 9. if settlement options ~~which~~ are provided, at least one option shall be provided on a fixed basis only;

~~9.~~ 10. a description of the basis for computing the cash value and the surrender value under the policy shall be included. Such surrender value may be expressed as either:

a. a schedule of cash value amounts per one thousand dollars of variable face amount at each attained age or policy year for at least 20 years from issue, or for the premium paying period, if less than 20 years; or

b. one cash value schedule as described in paragraph ~~1.~~ for the death benefit, or for each one thousand dollars of death benefit, which would be in effect if the net investment return is always equal to the assumed investment rate and a second schedule applicable to any adjustments to the death benefit (disregarding the minimum death benefit guarantee and term insurance amounts) if the net investment return does not equal the assumed investment rate at each age for at least 20 years from issue, or for the premium paying period if it is less than 20 years;

~~10.~~ 11. premiums or changes for incidental insurance benefits shall be stated separately;

~~D.~~ Non forfeiture, partial withdrawal, policy loan, and partial surrender provisions. Every variable life insurance policy delivered or issued for delivery in this state shall contain provisions which are not less favorable to the policyholder than the following:

~~1.~~ 12. a provision for non-feiture insurance benefits so that at least one such benefit is offered on a fixed basis from the due date of the premium in default.

a. Variable extended term insurance may not be offered.

b. A given non-forfeiture option need not be offered on both a fixed and a variable basis.

c. The insurer may establish a reasonable minimum cash surrender value below which any such non-forfeiture insurance options will not be available.

~~2.~~ A provision for policy loans after three full years' premiums have been paid (which may at the option of the insurer be entitled and referred to as a partial withdrawal provision) D. Policy loan provisions. Every variable life insurance policy, other than term insurance policies and pure endowment policies, delivered or issued for delivery in this state must contain provisions for policy loans after the policy has been in force for three full years which are not less favorable to the policyholder than the following:

a. Up to 1. at least 75% but if the loan is made from the general account not more than 90% percent of the policy's cash surrender value may be borrowed;

b. The amount borrowed, or any repayment thereof, shall not affect the amount of the premium payable under the policy;

c. 2. the amount borrowed shall bear interest at a rate not to exceed 8% per year compounded annually that permitted by Minnesota Statutes, section 61A.03;

~~d.~~ 3. any indebtedness shall be deducted from the proceeds payable on death;

e. 4. any indebtedness shall be deducted from the cash surrender value upon surrender or in determining any non-forfeiture benefit;

f. 5. for scheduled premium policies, whenever the indebtedness exceeds the cash surrender value, the insurer shall give notice of any intent to cancel the policy if the excess indebtedness is not repaid within ~~thirty-one~~ 31 days after the date of mailing of such the notice. For flexible premium policies, whenever the total charges authorized by the policy that are necessary

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. Strike outs indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. Strike outs indicate deletions from proposed rule language.

## PROPOSED RULES

to keep the policy in force until the next following policy processing day exceed the amounts available under the policy to pay these charges, a report must be sent to the policyholder containing the information specified by 4 MCAR § 1.9409 C.;

~~g.~~ 6. the policy may provide that if, at any time, so long as premiums are duly paid, the variable death benefit is less than it would have been if no loan or withdrawal had ever been made, the policyholder may increase such variable death benefit up to what it would have been if there had been no loan or withdrawal by paying an amount not exceeding 110% percent of the corresponding increase in cash value and by furnishing such evidence of insurability as the insurer may request;

~~h.~~ In addition to the foregoing, the policy may contain a partial surrender provision; however, any such provision shall provide that the policyholder may request part of the cash value and both the variable and minimum death benefits will be reduced in proportion to the percentage of the cash value received by the policyholder and the premium for the remaining amount of insurance will also be reduced to the appropriate rates for the reduced amount of insurance. The policy may provide that a partial surrender provision shall not require the insurer to reduce the amount of the minimum death benefit to less than the lowest amount of minimum death benefit which would have been issued to the insured under the insurance plans of the insurer at the time the policy was issued. The policy must clearly provide that the policyholder has the option of electing to exercise the cash value privileges of the policy loan or partial withdrawal provision rather than the partial surrender provision;

~~i.~~ All 7. the policy loan, ~~partial withdrawal, or partial surrender~~ provisions shall be constructed so that variable life insurance policyholders who have not exercised ~~such~~ this provision are not disadvantaged by the exercise ~~thereof~~ of it;

~~j.~~ ~~Monies~~ 8. amounts paid to the policyholders upon the exercise of any policy loan, ~~partial withdrawal, or partial surrender~~ provision shall be withdrawn from the separate account and shall be returned to the separate account upon repayment except that a stock insurer may provide the ~~monies~~ amounts for policy loans from the general account.

### E. Other policy provisions.

1. Incidental insurance benefits, if offered, ~~shall~~ may be offered on a fixed or variable basis ~~only~~;

2. Policies issued on a participating basis shall offer to pay dividend amounts in cash. In addition, ~~such~~ the policies may offer the following dividend options:

a. the amount of the dividend may be credited against premium payments;

b. the amount of the dividend may be applied to provide ~~paid up~~ paid up amounts of additional fixed or variable benefit ~~whole life insurance~~;

~~c.~~ ~~the amount of the dividend may be applied to provide paid up amounts of additional variable life insurance~~;

~~d.~~ c. the amount of the dividend may be deposited in the general account at a specified minimum rate of interest;

~~e.~~ d. the amount of the dividend may be applied to provide paid-up amounts of fixed benefit one-year term insurance;

e. the amount of the dividend may be deposited as a variable deposit in a separate account.

3. A provision allowing the policyholder to elect in writing in the application for the policy or thereafter an automatic premium loan on a basis not less favorable than that required of policy loans ~~or partial withdrawals~~ under 4 MCAR § 1.9404 D., except that a restriction that no more than two consecutive premiums can be paid under this provision may be imposed.

4. An exclusion for suicide within two years of the issue date of the policy. However, to the extent of the increased death benefits only, the policy may provide an exclusion for suicide within two years of any increase in death benefits which results from an application of the owner subsequent to the policy issue date.

5. A provision allowing the policyholder to make partial withdrawals.

6. Any other policy provision not inconsistent with 4 MCAR §§ 1.9401-1.9411 or Minnesota law.

### 4 MCAR § 1.9405- Reserve liabilities for variable life insurance.

A. Establishment. Reserve liabilities for variable life insurance policies shall be established under the Standard Valuation Law, Minnesota Statutes, section 61A.25, in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

B. Scheduled premium policies. For scheduled premium policies, reserve liabilities for the guaranteed minimum death benefit shall be the reserve needed to provide for the contingency of death occurring when the guaranteed minimum death benefit exceeds the death benefit that would be paid in the absence of the guarantee, and shall be maintained in the general account of the insurer and shall be not less than the greater of the following minimum reserves:

1. The aggregate total of the term costs, if any, covering a period of one full year from the valuation date, of the guarantee on each variable life insurance contract, assuming an immediate one-third depreciation in the current value of the assets of the separate account followed by a net investment return equal to the assumed investment rate; or

2. The aggregate total of the "attained age level" reserves on each variable life insurance contract. The "attained age level" reserve on each variable life insurance contract shall not be less than zero and shall equal the "residue," as described in paragraph a. below, of the prior year's "attained age level" reserve on the contract, with any such "residue," increased or decreased by a payment computed on an attained age basis as described in paragraph b. below.

a. the "residue" of the prior year's "attained age level" reserve on each variable life insurance contract shall not be less than zero and shall be determined by adding interest at the valuation interest rate to such prior year's reserve, deducting the tabular claims based on the "excess," if any, of the guaranteed minimum death benefit over the death benefit that would be payable in the absence of such guarantee, and dividing the net result by the tabular probability of survival. The "excess" referred to in the preceding sentence shall be based on the actual level of death benefits that would have been in effect during the preceding year in the absence of the guarantee, taking appropriate account of the reserve assumptions regarding the distribution of death claim payments over the year.

b. the payment referred to in 4 MCAR § 1.9405 B.2. shall be computed so that the present value of a level payment of that amount each year over the future premium paying period of the contract is equal to (A) minus (B) minus (C), where (A) is the present value of the future guaranteed minimum death benefits, (B) is the present value of the future death benefits that would be payable in the absence of such guarantee, and (C) is any "residue," as described in paragraph a. above, of the prior year's "attained age level" reserve on such variable life insurance contract. If the contract is paid-up, the payment shall equal (A) minus (B) minus (C). The amounts of future death benefits referred to in (B) shall be computed assuming a net investment return of the separate account which may differ from the assumed investment rate and/or the valuation interest rate but in no event may exceed the maximum interest rate permitted for the valuation of life contracts.

3. The valuation interest rate and mortality table used in computing the two minimum reserves described in paragraphs 1. and 2. above shall conform to permissible standards for the valuation of life insurance contracts. In determining such minimum reserve, the company may employ suitable approximations and estimates, including but not limited to groupings and averages.

C. Flexible premium policies. For flexible premium policies, reserve liabilities for any guaranteed minimum death benefit shall be maintained in the general account of the insurer and shall be not less than the aggregate total of the term costs, if any, covering the period provided for in the guarantee not otherwise provided for by the reserves held in the separate account assuming an immediate one-third depreciation in the current value of the assets of the separate account followed by a net investment return equal to the valuation interest rate.

The valuation interest rate and mortality table used in computing this additional reserve, if any, shall conform to permissible standards for the valuation of life insurance contracts. In determining the minimum reserve, the company may employ suitable approximations and estimates, including but not limited to groupings and averages.

D. Reserve liabilities for all fixed incidental insurance benefits and any guarantees associated with variable incidental insurance benefits shall be maintained in the general account and reserve liabilities for all variable aspects of the variable incidental insurance benefits must be maintained in a separate account in amounts determined in accordance with the actuarial procedures appropriate to such benefit.

#### **4 MCAR § 1.9406: Separate accounts.**

The following requirements apply to the establishment and administration of variable life insurance separate accounts by any domestic insurer:

A. Establishment and administration of separate accounts. ~~An~~ Any domestic insurer issuing variable life insurance ~~in this state~~ shall establish and administer one or more separate accounts pursuant to Minnesota Statutes, section 61A.14.

1. All persons with access to the cash, securities, or other assets of the separate account shall be under bond in an amount not less than \$3,000,000.

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

## PROPOSED RULES

2. If an insurer establishes more than one separate account for variable life insurance, justification for the establishment of each additional separate account shall also be filed with the commissioner. The creation of additional separate accounts to avoid lower maximum charges against the separate account is prohibited.

3. The assets of ~~such~~ these separate accounts established for variable life insurance policies shall be valued at least as often as variable benefits are determined but in any event at least monthly.

4. A separate account exempt pursuant to Section 3(c)(11) of the Investment Company Act of 1940 because of the tax qualified status of the policies funded thereby shall not be used to fund other variable life insurance policies.

5. Except for separate accounts exempt pursuant to Section 3(c)(11) of the Investment Company Act of 1940, variable life insurance separate accounts shall not be used for variable annuities or for the investment of funds corresponding to dividend accumulations or other policyholder liabilities not involving life contingencies.

### B. Amounts in the separate account.

1. The insurer shall maintain in each variable life insurance separate account assets with a fair market value at least equal to the greater of the valuation reserves for the variable portion of the variable life insurance policies or the benefit base for such policies.

2. The benefit base of any variable life insurance policy as of the beginning of any valuation period shall not be less than the sum of the following factors after deducting amounts of any indebtedness pursuant to 4 MCAR Section 1.9404 D-2:

- a. the valuation net premium for such period, for the variable portion of the policy, minus the discounted cost of term insurance for such period, based on the tabular mortality and interest rates used in determining valuation reserves; and
- b. the valuation terminal reserve, for the variable portion of the policy, at the end of the immediately preceding valuation period adjusted for the net investment return of such preceding period.

3. In lieu of the minimum benefit base requirement specified above, an insurer may otherwise qualify under 4 MCAR Section 1.9406 B, if the policy benefits obtained over a 20 year period from the date of issue by the use of the insurer's benefit base are at least substantially equivalent in value to the benefits obtained by the use of the minimum benefit base specified above.

4. Notwithstanding the actual reserve basis used for policies that do not meet standard underwriting requirements, the benefit base for such policies may be the same as for corresponding policies which do meet standard underwriting requirements.

### C. Investments by the separate account. The separate account shall have sufficient net investment income and readily marketable assets to meet anticipated withdrawals under policies funded by the account and be registered under the Investment Company Act of 1940.

1. Assets allocated to a variable life insurance separate account shall be held in cash or investments having a reasonably ascertainable market price. For purposes of this subdivision, only the following shall be considered "investments having a reasonably ascertainable market price:"

- a. liens in favor of the insurer against separate account policy reserves resulting from use by policyholders of cash values;
- b. securities listed and traded on the New York Stock Exchange, the American Stock Exchange, or regional stock exchanges or successors to such exchanges having the same or similar qualifications;
- c. securities listed on the National Association of Securities Dealers Automated Quotations System (hereinafter referred to as the "NASDAQ System");
- d. shares of an investment company registered pursuant to the Investment Company Act of 1940. Where such an investment company issues book shares in lieu of share certificates, such book shares shall be deemed to be adequate evidence of ownership;
- e. obligations of or guaranteed by the United States Government, the Canadian Government, any state, or municipality or governmental subdivision of a state;
- f. commercial paper issued by business corporations when the total of such paper issued by the corporation does not exceed in value a guaranteed short line of credit by a bank;
- g. certificates of deposit issued by financial institutions, the deposits of which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation; and
- h. new bond or debt issues which may reasonably be expected to be listed on an exchange regulated by the Securities Exchange Act of 1934.

2. Assets allocated to a variable life insurance separate account shall not be invested in:

- a. commodities or commodity contracts;
- b. put and call options or combinations of such options;
- c. short sales;
- d. purchases on margins;
- e. letter or restricted stock;
- f. units or other evidences of ownership of a separate account of another insurer, except those registered under the Investment Company Act of 1940; or
- g. real estate other than shares of a real estate investment trust listed as described in 4 MCAR Section 1.9406 C.1.b.

D. Limitations on ownership.

1. A variable life insurance separate account shall not purchase or otherwise acquire the securities of any issuer, other than securities issued or guaranteed as to principal and interest by the United States, if immediately after ~~such~~ the purchase or acquisition the value of ~~such~~ the investment, together with prior investments of ~~such~~ the account in ~~such~~ the security valued as required by this ~~regulation~~ rule, would exceed ~~10%~~ ten percent of the value of the assets of the separate account. The commissioner shall waive this limitation in writing if he believes ~~such~~ the waiver will not render the operation of the separate account hazardous to the public or the policyholders in this state.

2. No separate account shall purchase or otherwise acquire the voting securities of any issuer if as a result of ~~such~~ the acquisition the insurer and its separate accounts, in the aggregate, will own more than ~~10%~~ ten percent of the total issued and outstanding voting securities of ~~such~~ the issuer. The commissioner shall waive this limitation in writing if he believes ~~such~~ the waiver will not render the operation of the separate account hazardous to the public or the policyholders in this state or jeopardize the independent operation of the issuer of ~~such~~ the securities.

3. The percentage limitation specified in 4 MCAR Section 1.9406 D.1. shall not be construed to preclude the investment of the assets of separate accounts in shares of investment companies registered pursuant to the Investment Company Act of 1940 or other pools of investment assets if the investments and investment policies of ~~such~~ the investment companies or asset pools comply substantially with the provisions of 4 MCAR Section 1.9406 C. and other applicable portions of this ~~regulation~~ rule.

E. Valuation of assets of a variable life insurance separate account.

~~1.~~ Investments of the separate account shall be valued at their market value on the date of valuation, or at amortized cost if it approximates market value.

a. ~~Market value for investments traded on the recognized exchanges means the last reported sale price on the date of valuation. If there has been no sale on that date, the market value means the last reported bid quotation on the date of valuation.~~

b. ~~Market value for investments listed on the NASDAQ System means the last representative bid quotation on the valuation date. If an investment ceases to be listed but continues to be traded over the counter, it shall be valued at the lowest bid quotation as it appears on the National Quotation Bureau sheets.~~

c. ~~If the valuation date referred to in paragraphs a. and b. above is a day when the exchange or the NASDAQ System is not open for business, the valuation date shall be the last date when the exchange or the NASDAQ System was open for business.~~

2. ~~If an investment ceases to be traded, it shall be valued at fair value as determined in good faith by or at the direction of the Board of Directors of the insurer but not in excess of the last reported bid quotation.~~

3. ~~Notification of cessation of trading of any investment shall be reported by the insurer to the Commissioner within thirty days thereof.~~

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

## PROPOSED RULES

F. Separate account investment policy. The investment policy of a separate account operated by a domestic insurer filed under 4 MCAR § 1.9403 B.3. shall not be changed without first filing the change with the commissioner.

1. The commissioner shall have sixty days after the date the change is filed with him to notify the insurer of his determination that the proposed change is a material change in the insurer's investment policy.

2. If the change is deemed material by the commissioner he shall hold a public hearing to determine whether the change is detrimental to the interests of the policyholders of the insurer.

3. At least thirty days prior to any public hearing under paragraph 2. above, the insurer shall mail a notice to each policyholder and to the Insurance Commissioner of each state in which the affected variable life insurance policies are being sold. Such notice shall describe the proposed change in investment policy, list the reasons therefor, designate the date and place of the public hearing, inform the policyholder of the procedures to be followed in commenting on the change, and describe the conduct of the meeting.

4. Within sixty days after such public hearing, the Commissioner shall notify the insurer of his determination, and if it is that the change is detrimental to the interests of the policyholders of the insurer, the insurer shall not be allowed to make such change.

5. Should any policyholder object to the proposed change and the change is allowed by the Commissioner the objecting policyholder shall be given the option within sixty days of notification to the policyholder of the allowance by the Commissioner of such change, or converting, without evidence of insurability, under one of the following options, to a fixed benefit life insurance policy issued by the insurer or an affiliate:

a. If the policy is in force on a premium paying basis, either:

(1) conversion as of the original issue age to a substantially comparable permanent form of fixed benefit life insurance, based on the insurer's premium rates for fixed benefit life insurance at the original issue age, for an amount of insurance not exceeding the death benefit of the variable life insurance policy on the date of conversion.

(2) conversion as of the attained age to a substantially comparable permanent form of fixed benefit life insurance for an amount of insurance not exceeding the excess of the death benefit of the variable life insurance policy on the date of conversion over:

(a) its cash value on the date of conversion if the policyholder elects to surrender the variable life policy for its cash value, or

(b) the death benefit payable under any paid up insurance option if the policyholder elects such nonforfeiture option under the variable life policy.

b. If the policy is in force as paid up variable life insurance, then conversion will be to a substantially comparable paid up fixed benefit life insurance policy for an amount of insurance not exceeding the death benefit of the variable life insurance policy on the date of conversion.

If conversion is made pursuant to paragraphs a.(1) or b. above, then (1) if the cash value of the variable life insurance policy exceeds the cash value of the fixed benefit life insurance policy, the difference shall be paid to the policyholder; (2) if the cash value of the fixed benefit life insurance policy exceeds the cash value of the variable life insurance policy, the difference shall be paid by the policyholder; and (3) any indebtedness under the variable life insurance policy shall become indebtedness under the fixed benefit policy; provided that any excess of such indebtedness over the cash value of the fixed benefit policy on the date the conversion shall be deducted from any amount otherwise payable to the policyholder.

G. Charges against a variable life insurance separate account.

1. The insurer may deduct only the following from the separate account must disclose in writing, prior to or contemporaneously with delivery of the policy, all charges that may be made against the separate account, including, but not limited to the following:

a. 1. taxes or reserves for taxes attributable to investment gains and income of the separate accounts;

b. 2. actual cost of reasonable brokerage fees and similar direct acquisition and sales costs incurred in the purchase or sale of separate account assets;

c. 3. actuarially determined costs of insurance (tabular costs) and the release of reserves and benefit base consistent with the release of separate account liabilities;

d. 4. charges for administrative expenses and investment management expenses, including internal costs attributable to the investment management of assets of the separate account, not exceeding the following percentages, on an annual basis, of the average net value of the separate account as of the dates of valuation under 4 MCAR Section 1.9406 A.3.:



- (1) ~~.75%~~ of that portion of separate account assets valued at or under \$75,000,000; and
- (2) ~~.50%~~ of that portion of separate account assets valued in excess of \$75,000,000 but less than \$150,000,000;
- and
- (3) ~~.40%~~ of that portion of separate account assets valued in excess of \$150,000,000 but less than \$400,000,000;
- and
- (4) ~~.35%~~ of that portion of separate account assets valued in excess of \$400,000,000 but less than \$800,000,000;
- and
- (5) ~~.30%~~ of that portion of separate account assets valued in excess of \$800,000,000;

~~e. 5. a charge, at a rate specified in the policy, not to exceed .50% per year of the average net asset value of the separate account as of the dates of valuation under 4 MCAR Section 1.9406 A.3., for mortality and expense guarantees;~~

~~f. 6. any amounts in excess of those required to be held in the separate account;~~

7. charges for incidental insurance benefits.

~~2. Any charges against the separate account made by either an affiliate of the insurer or an unaffiliated fund shall be considered part of the charges limited by 4 MCAR Section 1.9406 G.1.d. and e. Any charge against the separate account, excluding taxes, shall not vary in accordance with the difference between the investment performance of the separate account and any index of securities prices or other measure of investment performance.~~

**4 MCAR § 1.9407. Information furnished to applicants.**

The requirements of 4 MCAR § 1.9407 shall be deemed to have been satisfied to the extent that a disclosure containing information required by 4 MCAR § 1.9407 is delivered, either in the form of (1) a prospectus included in a registration statement relating to the policies which satisfies the requirements of the Securities Act of 1933 and which was declared effective by the Securities and Exchange Commission; or (2) all information and reports required by the Employee Retirement Income Security Act of 1974 if the policies are exempted from the registration requirements of the Securities Act of 1933 pursuant to Section 3(a)(2) thereof. An insurer delivering or issuing for delivery in this state any variable life insurance policies shall deliver to the applicant for the policy, and obtain a written acknowledgement of receipt from such the applicant coincident with or prior to the execution of the application, the following information:

A. a summary explanation, in non-technical terms, of the principal features of the policy, including a description of the manner in which the variable benefits will reflect the investment experience of the separate account and the factors which affect such the variation. Such The explanation must include notices of the provision required by 4 MCAR § 1.9404 C.1.e. and Minnesota Statutes, section 61A.03, clause (3).

B. a statement of the investment policy of the separate account, including:

1. a description of the investment objective ~~and orientation~~ intended for the separate account and the principal types of investments intended to be made; and

2. any restriction or limitations on the manner in which the operations of the separate account are intended to be conducted.

C. a statement of the net investment return of the separate account for each of the last ten years ~~for which~~ or a lesser period the separate account was in existence;

D. a statement describing, as an approximate percentage of an annual gross premium for each year and for the life of the policy ~~all commission or equivalent payments to be paid to all agents or other persons as a result of the proposed sale for each year of the policy for which such payments are to be made. As used in this Section, "commissions" means all monies and other valuable consideration, including but not limited to prizes, bonuses paid directly or indirectly to, for, or on behalf of the selling agent as compensation for services in the sale of variable life insurance;~~

~~E. a statement of the annual taxes, brokerage fees, and similar costs, and the charges, expressed as an annual percentage, levied against the separate account during the previous year;~~

~~F. E. a summary of the method to be used in valuing assets held by the separate account;~~

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. **Strike outs** indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. **Strike outs** indicate deletions from proposed rule language.

## PROPOSED RULES

~~G. F.~~ a summary of the federal income tax ~~liabilities~~ aspects of the policy applicable to the insured, the ~~policy owner~~ policyholder, and the beneficiary;

~~H. if the applicant is furnished G.~~ illustrations of benefits payable under ~~any~~ the variable life insurance contract; ~~such.~~ The illustrations ~~shall~~ must be prepared by the insurer and ~~shall~~ must not include projections of past investment experience into the future or attempted predictions of future investment experience, provided that nothing contained herein prohibits use of hypothetical assumed rates of return to illustrate possible levels of benefits if it is made clear that ~~such~~ the assumed rates are hypothetical only;

~~I.~~ a prominent statement either in contrasting color or in boldface type at least four points larger than the type size of the largest type used in the text of any provision on the page, providing in substance the following information:

~~1. The purpose of this variable life insurance policy is to provide insurance protection for the beneficiary named therein.~~

~~2. No claim is made that this variable life insurance policy is in any way similar or comparable to a systematic investment plan of a mutual fund.~~

### 4 MCAR § 1.9409: Reports to policyholders.

Any insurer delivering or issuing for delivery in this state any variable life insurance policies shall mail to each variable life insurance policyholder at his or her last known address the following reports:

A. Within ~~thirty~~ 30 days after each anniversary of the policy, a statement or statements of the cash surrender value, death benefit, any partial withdrawal or policy loan, any interest charge, and any optional payments allowed pursuant to 4 MCAR § 1.9404 C. under the policy computed as of the policy anniversary date. Provided, however, that such statement may be furnished within ~~thirty~~ 30 days after a specified date in each policy year so long as the information contained therein is computed as of a date not more than ~~forty-five~~ 60 days prior to the mailing of ~~such~~ the notice. This statement shall state ~~in contrasting color or distinctive type~~ that, in accordance with the investment experience of the separate account, the cash values and the variable death benefit may increase or decrease, and shall prominently identify any value described therein which may be recomputed prior to the next statement required by 4 MCAR § 1.9409. If the policy guarantees that the variable death benefit on the next policy anniversary date will not be less than the variable death benefit specified in ~~such~~ the statement, the statement shall be modified to so indicate. For flexible premium policies, the report must contain a reconciliation of the change since the previous report in cash value and cash surrender value, if different, because of payments made, less deductions for expense charges, withdrawals, investment experience, insurance charges, and any other charges made against the cash value. In addition, the report must show the projected cash value and cash surrender value, if different, as of one year from the end of the period covered by the report assuming that: planned periodic premiums, if any, are paid as scheduled; guaranteed costs of insurance are deducted; and the net investment return is equal to the guaranteed rate or, in the absence of a guaranteed rate, is not greater than zero. If the projected value is less than zero, a warning message must be included that states that the policy may be in danger of terminating without value in the next 12 months unless additional premium is paid.

B. Annually, a statement or statements including:

1. a summary of the financial statement of the separate account based on the annual statement last filed with the commissioner;

2. the net investment return of the separate account for the last year and, for each year after the first, a comparison of the investment rate of the separate account during the last year with the investment rate during prior years, up to a total of not less than five years when available;

3. a list of investments held by the separate account as of a date not earlier than the end of the last year for which an annual statement was filed with the commissioner;

4. any charges, ~~taxes, and brokerage fees determined on an accrual basis payable by the separate account during the previous year, each expressed as a dollar amount and a percentage and the total expressed as a dollar amount and as a percentage of the assets of the separate account~~ levied against the separate account during the previous year;

5. a statement of any change, since the last report, in the investment objective and orientation of the separate account, in any investment restriction or material quantitative or qualitative investment requirement applicable to the separate account or in the investment adviser of the separate account;

6. the names and principal occupations of each principal executive officer and each director of the insurer; and

7. the names of all parents of the insurer and the basis of control of the insurer, and the name of any person who is known to own, of record or beneficially, 10% or more of the outstanding voting securities of the company.

C. For flexible premium policies, a report must be sent to the policyholder if the amounts available under the policy on any policy processing day to pay the charges authorized by the policy are less than the amount necessary to keep the policy in force until the next following policy processing day. The report must indicate the minimum payment required under the terms of the policy to keep it in force and the length of the grace period for payment of the amount.

## Department of Commerce

### Proposed Temporary Rules Governing Joint Self-Insurance Employee Health Plans

Notice is hereby given that the Department of Commerce proposed to adopt the above-entitled temporary rules. These temporary rules are promulgated pursuant to Minnesota Statutes, section 62H.06.

All interested persons may submit comments on the proposed temporary rules for 20 days immediately following publication of this material in the *State Register* by writing to John Klein, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101. The temporary rules may be revised on the basis of comments received. Any written material received shall become part of the record in the final adoption of the temporary rules. Pursuant to Minnesota Statutes, section 14.35 these temporary rules shall be in effect for a period of 180 days following adoption and approval by the Attorney General.

A copy of the proposed temporary rules is attached to this Notice.

Michael A. Hatch  
Commissioner of Commerce

#### Temporary Rules as Proposed (all new material)

##### 4 MCAR § 1.850 [Temporary] Statutory authority.

Rules 4 MCAR §§ 1.850-1.866 [Temporary] are adopted under the authority of Laws of Minnesota 1983, chapter 241, section 6.

##### 4 MCAR § 1.851 [Temporary] Purpose.

Rules 4 MCAR §§ 1.850-1.866 [Temporary] govern the formation, operation, and dissolution of groups of employers which jointly self-insure employee health, dental, or short-term disability benefits. These rules are intended to ensure that a group's financial integrity is maintained, and that groups are administered competently and equitably.

##### 4 MCAR § 1.852 [Temporary] Scope.

The following are subject to the requirements of 4 MCAR §§ 1.850-1.866 [Temporary]:

- A. employers authorized to transact business in Minnesota that seek to jointly self-insure employee health, dental, or short-term disability benefits;
- B. self-insurance plan administration companies licensed under Minnesota Statutes, section 60A.23, subdivision 8, clause (3), that provide services to a plan; and
- C. insurance companies licensed under Minnesota Statutes, section 60A.07, subdivision 4, that provide required stop-loss coverage to a plan.

##### 4 MCAR § 1.853 [Temporary] Definitions.

For the purposes of 4 MCAR §§ 1.850-1.866 [Temporary], the terms in A.-W. have the meanings given them unless the context clearly indicates a different meaning.

- A. Annual premium. "Annual premium" means the total premium paid or to be paid by all members during a single fiscal year of a plan.
- B. Board. "Board" means a plan's board of trustees.
- C. Bylaws. "Bylaws" means the adopted statement which prescribes the scope, government, and administration of a plan, as required by 4 MCAR § 1.854 [Temporary].

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

## PROPOSED RULES

---

D. Commissioner. "Commissioner" means the commissioner of the Department of Commerce.

E. Coverage. "Coverage" means the right of a covered employee or other beneficiary to indemnification by a plan by virtue of the coverage document.

F. Coverage document. "Coverage document" means the document that specifies the characteristics and duration of coverage provided through a plan.

G. Covered employee. "Covered employee means an employee of a plan member covered through the plan, and a former employee receiving continued coverage under Minnesota Statutes, section 62A.17. "Covered employee" does not include dependents or other persons included under the coverage extended to a current or former employee, or persons covered under individual insurance policies according to Minnesota Statutes, sections 62A.17, subdivision 6, or 62E.16.

H. Days. "Days" means calendar days.

I. Financial administrator. "Financial administrator" means the bank or investment company under contract with the board for investment of the plan's assets and other financial services.

J. Fund year. "Fund year" means the fiscal year of a plan, which is the calendar year.

K. Insurer. "Insurer" means an insurance company licensed under Minnesota Statutes, section 60A.07, subdivision 4, and authorized by Minnesota Statutes, section 60A.06 to write the kind of insurance offered.

L. Member. "Member" means an employer who participates in a plan. Reference to actions of a member includes actions on behalf of the member's employees and other covered persons.

M. Plan. "Plan" means an employee benefit joint self-insurance plan approved under 4 MCAR §§ 1.850-1.866 [Temporary]. Reference to actions of a plan includes actions by the plan's agents if the plan has delegated authority to these agents.

N. Plan director. "Plan director" means the person vested with authority for the plan's operation between meetings of the board. The plan director shall be a member of the board.

O. Premium. "Premium" means the amount paid or to be paid for coverage by members to a plan under 4 MCAR § 1.861 [Temporary] A. This term does not include assessments or penalties.

P. Reinsurance. "Reinsurance" means a stop-loss coverage agreement.

Q. Reinsurer. "Reinsurer" means an insurance company providing stop-loss coverage, notwithstanding that primary coverage provided through a self-insurance plan is not insurance.

R. Reserve. "Reserve" means a liability corresponding to an estimate of the amount necessary to pay future losses or expenses under 4 MCAR § 1.862 [Temporary].

S. Runoff plan. "Runoff plan" means a plan that no longer has authority to self-insure, but that continues to exist for the purpose of paying claims, preparing reports, and administering transactions associated with the period when the plan provided coverage.

T. Self-insure. "Self-insure" means to assume primary liability or responsibility for certain risks or benefits, rather than transferring liability or responsibility to some other entity.

U. Separate employer. "Separate employer," for the purposes of meeting the minimum three-employer requirement, means an employer that is not the parent, subsidiary, or affiliate with a common parent of any other employer in the plan.

V. Service company. "Service company" means an entity licensed under Minnesota Statutes, section 60A.23, subdivision 8 and rules adopted thereunder as a self-insurance plan administrator.

W. Short-term disability benefit. "Short-term disability benefit" means income replacement payments of not more than one year's duration.

### 4 MCAR § 1.854 [Temporary] Bylaws.

A. Content. A plan's bylaws may contain provisions that do not conflict with 4 MCAR §§ 1.850-1.866 [Temporary]. A plan's bylaws must, at a minimum, contain the following provisions:

1. the plan's name, purpose, and initial date of existence;
2. definitions of key terms;

3. a statement of the powers, duties, and responsibilities assigned to the plan director, the plan's board of trustees, the service company, and the financial administrator, and reserved to the plan's membership;

4. the number, term of office, method of selection, and method of replacement of the members of the plan's board of trustees;

5. the procedure for calling special meetings of the board;
6. the method of periodic selection and review of the service company and financial administrator;
7. the procedure for amending the bylaws;
8. the procedure for resolving disputes among members, which shall not include submitting the disputes to the commissioner;
9. the criteria for membership in the plan, including standards of financial integrity and loss experience;
10. the procedure for adding new members to the plan;
11. the criteria for expulsion from the plan, including nonpayment of premium;
12. the procedure for withdrawal and expulsion of members from the plan;
13. a statement of the coverages which the plan intends to provide;
14. the procedure for adding and dropping members' participation in a particular coverage;
15. a schedule for premium payments by members and, if applicable, their employees;
16. the procedure for changing premium rates;
17. the procedure for levying and collecting an assessment;
18. the procedure for distribution of dividends, and the eligibility of past members and past covered employees for dividends; and
19. the procedure for distribution of assets remaining upon the plan's dissolution.

B. Adoption and changes. The bylaws of a plan must be adopted in writing by all initial members, and filed with the commissioner at the time of application. Changes in the bylaws must be made according to the procedures specified in the bylaws, which shall provide either approval by a specific percentage of the plan's members, or approval by a specific percentage of the board members. Changes do not become effective until 21 days after the vote of the plan's or board's membership has been tallied, unless a later date is specified. The proposed bylaw change must be filed with the commissioner not less than 14 days before it is to be effective. The commissioner shall disallow the change before its effective date if it is inconsistent with a Minnesota statute or rule, or any lawful order of the commissioner.

#### **4 MCAR § 1.855 [Temporary] Board.**

A. Structure. A plan must have a board of trustees consisting of officials or employees of the plan's members. No plan member may have more than one representative on the board. No board member may be an employee, agent, or representative of a service company, financial administrator, insurance company, or any person or entity under contract with the plan. Board members shall be elected by majority vote of the plan's members. The terms of board members must be staggered to provide continuity. The board shall meet no less than four times annually.

B. Duties. The board is responsible for operation of the plan, and shall delegate some or all of its responsibilities to the plan director between board meetings. All responsibilities of the plan not expressly delegated by the board or 4 MCAR §§ 1.850-1.866 [Temporary] are the responsibility of the board. The board shall have at a minimum the following responsibilities:

1. fiduciary responsibility for the plan's operation and financial condition;
2. selection, supervision, and evaluation of the service company, financial administrator, accountant, reinsurer, and any other contractors;
3. monitoring the overall financial condition of the plan; making recommendations for changes in premium, reserve, or investment practices; and declaring assessments or dividends as appropriate to the plan's financial condition;
4. approving all reports concerning the plan's operations and status to the commissioner and the plan's members;
5. monitoring delinquent premiums, loss experience, and the financial condition of individual members; and as required by the bylaws, initiating or recommending to the membership disciplinary action or expulsion;

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

## PROPOSED RULES

6. as required by the bylaws, acting upon applications for membership in the plan or recommending acceptance or rejection to the membership;
7. as permitted by the bylaws, making changes to the bylaws for the improvement of the operation and financial integrity of the plan, or recommending these changes to the members; and
8. monitoring the compliance of the plan with all statutes and rules governing its operation.

### 4 MCAR § 1.856 [Temporary] Application.

A. Form. Three or more employers may apply to the commissioner for authority to form a self-insurance plan, using forms available from the commissioner. Applications must be submitted not later than 60 days prior to the requested date for authority to self-insure. All reinsurance contracts must be submitted not later than 30 days prior to the requested date. Applications submitted without responses to certain questions, or with responses which in the commissioner's judgment are inadequate, must be returned to the applicant for resubmission. Applications not returned to the applicant for resubmission within 14 days of receipt must be approved or disapproved within 60 days of receipt.

B. Exemptions. Joint self-insurance plans which offer a program of coverage qualified under the Employees Retirement Income Security Act (ERISA), United States Code, title 29, sections 1001 et seq., are exempted from 4 MCAR §§ 1.850-1.866 [Temporary] upon filing with the commissioner notice of this qualification from the United States Department of Labor.

C. Merger. Two or more existing plans may apply to merge, provided the new plan assumes all obligations of the former plan. Applications are subject to the same requirements as prospective new plans.

D. Approval and disapproval. Upon approval of an application, the commissioner shall issue an order authorizing the proposed joint self-insurance plan. Approval of applications for authority to self-insure must be granted if the proposed plan conforms with all requirements of 4 MCAR §§ 1.850-1.866 [Temporary]; with all applicable requirements of Minnesota Statutes, chapters 62A, 62D, 62E, and 72A as described in 4 MCAR § 1.860 [Temporary] A.; with Minnesota Statutes, sections 72A.19 to 72A.32; and with other applicable Minnesota statutes and rules.

### 4 MCAR § 1.857 [Temporary] Termination, revocation, runoff, and dissolution.

A. Voluntary termination. A plan may voluntarily terminate its authority to self-insure by action of the membership. The plan shall notify the commissioner of this action. Termination is not effective until 45 days after the action of the membership or 30 days after written notification to the commissioner, whichever is later, or a later date if specified by the membership. Voluntary termination of self-insurance authority does not constitute plan dissolution under D.

B. Revocation of authority. The authority of a plan to self-insure may be revoked by order of the commissioner upon ten days written notice for any of the following reasons:

1. failure of the plan to comply with 4 MCAR §§ 1.850-1.866 [Temporary]; with all applicable requirements of Minnesota Statutes, chapters 62A, 62D, and 62E as described in 4 MCAR § 1.860 [Temporary] A.; or with other applicable Minnesota statutes or rules;

2. failure of the plan to comply with any lawful order of the commissioner;

3. commission by the plan of an unfair or deceptive practice as defined in Minnesota Statutes, sections 72A.17 to 72A.32, or in rules adopted under Minnesota Statutes, section 72A.19, subdivision 2; or

4. a deterioration of the plan's financial integrity to the extent that its present or future ability to meet obligations promptly and in full is in doubt.

C. Runoff plans. A plan shall continue to exist after its authority to self-insure has been terminated, for the purpose of paying claims, preparing reports, and administering transactions associated with the period when the plan provided coverage. Notwithstanding termination of authority to self-insure, a plan shall continue to comply with all applicable provisions of 4 MCAR §§ 1.850-1.866 [Temporary], and with all other applicable Minnesota statutes and rules.

D. Dissolution. A plan that desires to cease existence shall apply to the commissioner for authorization to dissolve. Applications must be approved or disapproved within 60 days of receipt. Dissolution without authorization is prohibited and void, and does not absolve a plan from fulfilling its continuing obligations, and does not absolve its members from assessment under 4 MCAR § 1.865 [Temporary]. The plan's assets at the time of dissolution must be distributed to the members and covered employees as provided in the bylaws. Authorization to dissolve must be granted if either of the following conditions are met:

1. the plan demonstrates that it has no outstanding liabilities, including incurred but not reported liabilities; or

2. the plan has obtained an irrevocable commitment from a licensed insurance company which provides for payment of all outstanding liabilities, and for providing all related services, including payment of claims, preparation of reports, and administration of transactions associated with the period when the plan provided coverage.

**4 MCAR § 1.858 [Temporary] Administration.**

A. Service company. A plan shall contract with a licensed service company for services necessary to the day-to-day operations of the plan, except services and responsibilities reserved to the members, the board, the plan director, the financial administrator, or other contractors. Subject to the oversight of the board and the plan director, the service company shall provide all services directly related to the administration of coverage, including but not limited to accounting and recordkeeping; billing and collection of premiums and assessments; claims investigation, settlement, and reserving; claims payment, including claims wholly or partially subject to reinsurance or member deductibles; general administration; loss control, safety programs, or both; and underwriting. The services may be provided directly by the service company or by subcontractors to the service company.

B. Financial administrator. A plan shall contract with a financial administrator for investment of the plan's assets and for other financial or accounting services. No staff members of the financial administrator may be an owner, officer, employee, or agent of the service company, or of a subcontractor of the service company.

C. Recordkeeping. A plan shall maintain within the state of Minnesota all records as are necessary to verify the accuracy and completeness of all reports submitted to the commissioner under 4 MCAR § 1.866 [Temporary]. The commissioner shall have access to the plan's records in order to ascertain the plan's compliance with 4 MCAR §§ 1.850-1.866 [Temporary]. All records concerning claims, reserves, financial transactions, and other matters necessary to the plan's operations are the plan's property. The plan is responsible for reasonable costs associated with the transfer of such records from a service company, financial administrator, or other contractor.

**4 MCAR § 1.859 [Temporary] Membership.**

A. Availability. Plan membership is available only to employers domiciled and authorized to transact business in Minnesota. No employer may be a member of more than one plan authorized under 4 MCAR §§ 1.850-1.866 [Temporary]. A plan may establish other nondiscriminatory criteria for membership. Nothing in these rules requires a plan to offer membership to an employer which does not meet the plan's underwriting standards.

B. Joining. Admission of new members must comply with the standards and procedures specified in the bylaws. Membership is not effective until the applicant has signed a membership agreement affirming its commitment to comply with the bylaws and 4 MCAR §§ 1.850-1.866 [Temporary].

C. Voluntary withdrawal. A member shall notify the plan of its desire to withdraw not less than 30 days before the date upon which it desires to withdraw. If the board determines that the withdrawal would cause the plan to be in violation of the minimum number of covered employees requirement of Minnesota Statutes, section 62H.01, or any other requirement of 4 MCAR §§ 1.850-1.866 [Temporary], the plan shall notify the commissioner under E. Withdrawal from a plan is prohibited and void unless:

1. the member has belonged to the plan continuously until the end of the current fund year, or until the end of the succeeding fund year for new members which join in the last three months of the fund year, or a longer period if required by the bylaws, provided that members may be expelled from a plan at any time; and

2. all outstanding premiums and assessments owed by the member have been paid.

D. Expulsion. At least annually the plan shall review the status and experience of each member by comparison with the criteria for expulsion in the bylaws. Expulsion of a member is subject to the procedures and requirements for voluntary withdrawal of a member.

E. Minimum covered employees and employers. At least monthly a plan shall monitor the number of employees it covers. If the number of covered employees is less than 300, the plan shall notify the commissioner at least monthly of the number of covered employees. If the number of covered employees becomes less than 250, or the number of members becomes less than three, the plan shall notify the commissioner of its intent to terminate its self-insurance authority or its proposal for restoring compliance with Laws of Minnesota 1983, chapter 241, section 1. If the proposal is unlikely, in the commissioner's judgment, to restore compliance within 120 days, or if after 90 days the plan continues to have less than 250 covered employees or less than three members, the commissioner shall revoke the plan's authority.

F. Runoff plan membership. After revocation of a plan's authority to self-insure, or after written notification to the commissioner of intent to terminate self-insurance authority voluntarily, no member may join, leave, or be expelled from the plan.

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

## PROPOSED RULES

### 4 MCAR § 1.860 [Temporary] Coverage.

A. Mandated coverages and related requirements. If required under Minnesota Statutes, section 62E.17, a member shall provide health maintenance organization-type coverage which may be made available through the plan. A plan shall provide a qualified Medicare supplement coverage, as defined in Minnesota Statutes, section 62E.07, to eligible employees and shall make a conversion coverage option available. A plan shall conform to the requirements of Minnesota Statutes, chapters 62A, 62D, and 62E, and related rules, as applicable to group insurance coverage as defined in Minnesota Statutes, section 62A.10; Medicare supplement coverage as described in Minnesota Statutes, section 62A.31; and plans of health coverage as defined in Minnesota Statutes, section 62E.02. These requirements include but are not limited to filing and obtaining approval for coverage documents and rates; coverage document language requirements; mandated benefits; employee notice requirements; requirements to offer continuation of coverage to employees and other covered persons; and requirements to offer conversion coverage to employees and other covered persons, for which purpose carriers licensed under Minnesota Statutes, section 60A.06, subdivision 1, clause (5) (a), chapter 62C or 62D are eligible. Any changes in the coverage offered by a plan must comply with Minnesota Statutes, chapters 62A, 62D, and 62E. All insurance type coverage documents must be filed and approved or disapproved under Minnesota Statutes, section 62A.02.

B. Scope of coverage. All coverages offered by a plan must be available according to the same underwriting standards to all employees of all members.

C. Term of coverage. A plan shall not commit itself to providing coverage for any period which extends beyond the term of any reinsurance contracts required under 4 MCAR § 1.863 [Temporary].

D. Continuing responsibility. Notwithstanding cancellation or termination of coverage to a particular employee or other covered persons, ceasing to offer a coverage, or termination or revocation of authority to self-insure, a plan retains indefinitely all responsibilities to covered employees associated with the period while coverage was in force, unless the plan dissolves under 4 MCAR § 1.857 [Temporary] D.

### 4 MCAR § 1.861 [Temporary] Premiums and dividends.

A. Premium payments. At the time coverage documents and rates are filed with the commissioner for approval, a plan shall specify for each coverage the portion of premium to be paid by members and the portion to be paid by covered employees. The fund year is the basis for calculating premiums, subject to mid-year adjustments. Any delinquencies in payments by employees must be paid on their behalf by the employer, with the employer having the right to seek reimbursement from the employee, or from the plan if payment is later made directly to the plan. A plan shall promptly take appropriate action to collect any members' premiums or assessments which are past due. A plan may permit payments to be made in installments, provided payment is always to be received in advance of the date when premium is to be earned.

B. Dividends. A plan may declare a dividend or distribution provided its surplus account is fully funded, under 4 MCAR § 1.862 [Temporary] C.1.; or provided the policy year-end settle-up calculation and payments have been made concerning any funds advanced from the reinsurer under 4 MCAR § 1.862 [Temporary] C.2. The apportionment of dividends must be based on the relative amounts of premium paid, and must provide for payments to members and to covered employees.

### 4 MCAR § 1.862 [Temporary] Reserves.

A. Loss and premium reserves. A plan shall establish loss reserves for all incurred losses, both reported and unreported, and for unearned premiums. To the extent that the amount of a loss is uncertain, reserves must be set conservatively. As the degree of uncertainty concerning a loss is changed by new events or information, the amount of the reserve must be changed appropriately. Accounting for reserves must be as provided on the forms required under 4 MCAR § 1.866 [Temporary] A.

B. Full funding requirement. A plan shall provide for the full funding of its unpaid losses by establishing a loss ratio reserve for each fund year, in the amount of the premium collected for coverage during that fund year; multiplied by the loss ratio percentage fixed in the aggregate excess stop-loss reinsurance contract under 4 MCAR § 1.863 [Temporary] C.; less the amount of losses paid, loss reserves, and unearned premium reserves attributable to that fund year. For the purpose of establishing the loss ratio reserve amount, the amount of premiums paid for individual excess stop-loss reinsurance coverage during that fund year must be deducted from "premium collected," and the amount of loss payments received for that fund year pursuant to said reinsurance must be deducted from "losses paid." Loss ratio reserves remaining one year after the fund year's conclusion may be eliminated.

C. Surplus requirement. A plan shall protect itself from cash flow difficulties by either:

1. Establishing a surplus account equal to the greater of:
  - a. three times the average paid monthly premium during the plan's most recent fund year;
  - b. for plans which do not yet have one fund year's experience, three times estimated monthly premium; or
  - c. \$100,000.



The surplus account must not be drawn upon unless other assets are inadequate or unavailable to pay current expenses. Surplus account assets must not be offset against loss or premium reserve liabilities established under A., or any other plan liabilities. The plan shall notify the commissioner not later than seven days after the amount in the surplus account decreases below the required amount, and of the plan's intentions to restore the required amount. The plan must restore the required amount not later than 60 days after the deficiency originated. Repeated failure to maintain the required surplus amount is grounds for revocation of self-insurance authority.

2. Obtaining a provision in the aggregate excess stop-loss reinsurance contract required under 4 MCAR § 1.863 [Temporary], which requires the reinsurer to advance funds to the plan at any time at the plan's request. Any funds so advanced must be included in the settle-up calculation at the conclusion of the fund year. No limit may be set on the amount of funds which the plan may require to be so advanced.

#### **4 MCAR § 1.863 [Temporary] Reinsurance.**

A. Purchase and alteration. The plan shall inform the commissioner at least 90 days prior to expiration of its reinsurance contract if it intends not to renew a reinsurance contract, or if the reinsurance contracts will not be renewed by the reinsurer. Alteration of a reinsurance contract mid-term with the effect of reducing coverage is prohibited. Under Laws of Minnesota 1983, chapter 241, section 2, reinsurance contracts are noncancellable for a minimum of two years, for any cause including nonpayment of reinsurance premium. If more than one reinsurance contract is obtained in fulfillment of this section's requirements, their expiration dates must be the same.

B. Individual excess. A plan's individual excess stop-loss reinsurance must provide for the reinsurer to assume all liability in excess of \$25,000 per person per year. A plan may apply to the commissioner for increasing the individual excess stop-loss reinsurance limit up to \$50,000. The commissioner shall approve this application coverage, if the increased limit would not be detrimental to the solvency and stability of the plan, considering the plan's experience, size, surplus, and other factors that affect financial integrity.

C. Aggregate excess. A plan's aggregate excess stop-loss reinsurance must provide for the reinsurer to assume all liability in excess of a specified loss ratio for a particular fund year, based on actual premium collected and paid losses attributable to that fund year. For this purpose, "loss ratio" means the percentage which paid losses constitute of premium collected, excluding losses assumed by individual excess stop-loss reinsurance and premiums paid for said reinsurance.

D. Delinquencies and insolvencies. One of a plan's reinsurance contracts shall provide for the reinsurer:

1. at the plan's or the commissioner's request, to pay premium to the plan on behalf of a member that fails to pay due to insolvency, unauthorized withdrawal from the plan, or any other reason; and

2. at the commissioner's request, to assume direct responsibility for a plan's coverage and other responsibilities under these rules and related statutes if the plan becomes insolvent, ceases operations without authorization, or otherwise fails to fulfill its responsibilities under these rules and related statutes.

This reinsurance contract may provide for the reinsurer to have a cause of action to collect from the plan or a member on whose behalf the reinsurer is called upon to pay premium, pay claims, or incur other extraordinary expenses; provided that the reinsurer is obligated to fulfill its responsibilities under this paragraph while this action is pending. The reinsurance contract must provide that the reinsurer's responsibilities extend to matters arising during or attributable to the contract period, and that these responsibilities do not terminate with the end of the contract period.

E. Return of liability. No liability or other responsibilities transferred to a reinsurer pursuant to this rule may, directly or indirectly, be returned to a plan, a member, or a member's parent, subsidiary, or affiliate.

#### **4 MCAR § 1.864 [Temporary] Financial integrity.**

A. Fidelity bond. All contractors and individuals who handle plan funds or who will have authority to gain access to plan funds, including board members, shall be covered by a fidelity bond purchased by the plan. The bond must cover losses from dishonesty, robbery, forgery or alteration, misplacement, or mysterious and unexplainable disappearance. The coverage must be not less than the amount indicated by the following table. "Exposure Index" means the total of plan assets multiplied by five percent, and plan annual income multiplied by ten percent, to be refigured at the end of each fund year.

<p><b>KEY: PROPOSED RULES SECTION</b> — <u>Underlining</u> indicates additions to existing rule language. <del>Strike outs</del> indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." <b>ADOPTED RULES SECTION</b> — <u>Underlining</u> indicates additions to proposed rule language. <del>Strike outs</del> indicate deletions from proposed rule language.</p>
--

## PROPOSED RULES

Exposure Index	Minimum Bond Amount
\$ 500,000 or less	\$100,000
500,001- 750,000	125,000
750,001-1,000,000	150,000
1,000,001-1,375,000	175,000
1,375,001-1,850,000	200,000
1,750,001-2,125,000	225,000
2,125,001-2,500,000	250,000
2,500,001-3,325,000	300,000
3,325,001-4,175,000	350,000
4,175,001-5,000,000	400,000
5,000,001-6,075,000	450,000
6,075,001 or more	500,000

B. Integrity of funds. The assets of a plan must not be commingled with the assets of any member. The assets of a plan must not be loaned to anyone for any purpose, or used as security for a loan. The assets of a plan must be employed solely for the purposes stated in the plan's bylaws, and in compliance with the requirements of 4 MCAR §§ 1.850-1.866 [Temporary] and applicable Minnesota insurance statutes. No member, covered employee, or other covered person has a right to an asset of a plan except:

1. for benefits under the coverage documents;
2. for dividends declared under 4 MCAR § 1.861 [Temporary] B.; and
3. for a portion of the assets remaining upon the dissolution of a plan under 4 MCAR § 1.857 [Temporary] D.

C. Sources and uses of funds. A plan may expend funds for payment of losses and expenses, and for other costs customarily borne by commercial insurers under conventional insurance policies. A plan shall not borrow money or issue debt instruments. A plan may bring legal suits to collect delinquent debts. A plan shall receive funds only from:

1. its members as premiums, assessments, or penalties;
2. its reinsurers or indemnitors pursuant to reinsurance or indemnification agreements;
3. dividends, interest, or the proceeds of sale of investments;
4. refunds of excess payments; or
5. collection by lawsuit, subrogation, or otherwise of money owed to the plan.

D. Separate accounts. A plan may establish separate accounts for the payment of claims or certain types of expenses. These accounts must be used only by the plan's service company, its authorized subcontractors, or the plan's financial administrator, as appropriate to the account's purpose. The amount in such special accounts must not exceed an amount which is reasonably sufficient to pay the claims or expenses for which it is established. All monetary and investment assets not in these accounts must be under the control of the plan's financial administrator.

E. Investments. Under Laws of Minnesota 1983, chapter 241, section 5, a plan's assets must be invested according to the requirements of Minnesota Statutes, section 475.66, as regards both permitted types of investments and permitted maturities. In addition, a plan shall not invest in securities or debt of a member, or a member's parent, subsidiary, or affiliate; or any company or reinsurer under contract with the plan.

### 4 MCAR § 1.865 [Temporary] Financial condition.

The board and the plan director shall monitor the plan's revenues, expenses, and loss development, and evaluate its current and expected financial condition. For this purpose the board or the plan director shall, at least quarterly, cause unaudited financial statements to be prepared for the current and most recent fund years. These statements must be filed with the commissioner not later than 30 days after the end of the quarter or other statement period. As necessary to maintain the plan's sound financial condition or to forestall a rapid decrease in members likely to require the plan's termination, the commissioner shall increase the premium rates, order that an assessment be levied against the members, or order termination of the plan's self-insurance authority. Members shall not require covered employees to pay a portion of an assessment, nor shall covered employees be required to pay any amount for premium increases on coverage in force. The amount of an assessment must not be more than the amount of a member's most recent annual premium, including the portion paid by covered employees.

### 4 MCAR § 1.866 [Temporary] Reporting.

A. Financial statements. The financial statements required of the plan by Laws of Minnesota 1983, chapter 241, section 5 must contain at a minimum a balance sheet, statement of revenues and expenses, statement of loss development, and schedule

of investments. The statements must be prepared on forms available from the commissioner, or equivalent forms. The financial statements must be filed no later than 30 days after the fund year's conclusion. The financial statements must be audited by an independent certified public accountant, and an audit report must be filed with the commissioner not later than 60 days after the fund year's conclusion.

B. Extraordinary audits. Upon sufficient cause, the commissioner may require a plan to investigate the accuracy of one or more entries on its financial statements, and to report its findings. As a condition of these investigations, the commissioner may require a plan to contract with a qualified actuary, claims specialist, auditor, or other specialists as appropriate to the type of entry being investigated. On the basis of the investigation's findings, the commissioner may require changes in the plan's reserving, accounting, or recordkeeping practices. These extraordinary audits are in addition to the commissioner's rights to examine self-insurance plans under Minnesota Statutes, sections 60A.03 and 60A.031. Sufficient cause includes:

1. losses which appear significantly different than losses experienced by other self-insurance plans or insurance companies for similar coverage;
2. unusual changes in the amount of entries from period to period which are not sufficiently explained by the financial statements or footnotes; or
3. other indications that a plan's financial statements may not accurately reflect the plan's status and transactions.

C. Annual status report. Not later than 30 days after the fund year's conclusion, a plan shall file with the commissioner a statement describing any changes which have occurred in the information filed with its initial application for authority to self-insure, or with the plan's most recent status report. The status report must be filed on a form available from the commissioner.

D. Narrative report. Not later than 30 days after the fund year's conclusion, the board shall file with the commissioner a narrative report concerning the performance of the plan and its agents during the most recent fund year, and the status of the plan as of the last day of the most recent fund year. The report shall address the performance of the service company, financial administrator, and their major subcontractors; the adequacy of premiums, reserves, reinsurance, and current member resources as regards the plan's financial integrity; and any other issues which the board wishes to bring to the commissioner's attention.

E. Penalty. The financial statements, status reports, and narrative report required under A., C., and D. are considered together to be a plan's annual statement. This filing and other filings required by these rules are subject to Minnesota Statutes, section 72A.061.

F. Revenue fee. No later than 60 days after each fund year's conclusion, a plan shall file a report with the commissioner of revenue disclosing the total amount of claims paid during the fund year, with no deduction for claims wholly or partially reimbursed through reinsurance. The report must be filed on a form available from the commissioner of revenue. At the time of filing the report, the plan shall pay the fee required by Laws of Minnesota 1983, chapter 241, section 7 to the commissioner of revenue in the amount of two percent of the total amount of claims paid during the fund year, with no deduction for claims wholly or partially reimbursed through reinsurance.

## Department of Human Rights

### Proposed Temporary Rules Governing Case Processing Policies and Procedures, and Restrictions for Apprenticeship Programs

#### Request for Public Comment

Notice is hereby given that the Department of Human Rights has proposed the following temporary rules for the purpose of implementing the provisions of Laws of 1981, Ch. 330, Sec. 4 and Laws of 1983, Ch. 301, Secs. 198-200.

All interested persons are hereby afforded the opportunity to submit their comments on the proposed rules for 20 days immediately following publication of this material in the *State Register*. All submissions must be in writing and addressed to:

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

## PROPOSED RULES

Mary A. Hartle, Information Officer  
Department of Human Rights  
5th Floor Bremer Tower  
7th Place & Minnesota Street  
St. Paul, Minnesota 55101

The temporary rules may be revised on the basis of data and views received. Any written material received will become part of the record and will be submitted to the Attorney General.

November 28, 1983

Irene Gomez-Bethke  
Commissioner of Human Rights

### Temporary Rules as Proposed (all new material)

#### 12 MCAR § 1.061 [Temporary] Definitions.

- A. Scope. In 12 MCAR §§ 1.061-1.076 [Temporary], the following phrases have the meanings given them here.
- B. Affinity group. "Affinity group" means a group of persons whose members share a unique interest or characteristic.
- C. Answer. "Answer," as used in section 363.06, subdivision 8, means information from a respondent, deemed relevant by the commissioner, in reply to a charge.
- D. EEOC. "EEOC" means the United States Equal Employment Opportunity Commission.
- E. HUD. "HUD" means the United States Department of Housing and Urban Development.
- F. Predominantly involves heavy physical labor. "Predominantly involves heavy physical labor" when used in the context in which it is used in Minnesota Statutes, section 363.02, subdivision 1, clause (4) refers to all or most jobs in a trade that require (1) some lifting of objects weighing 100 pounds or more, or (2) a frequent need to carry, push, pull, or lift objects weighing 50 pounds or more.
- G. Predominantly involves work on high structures. "Predominantly involves work on high structures" when used in the context in which it is used in Minnesota Statutes, section 363.02, subdivision 1, clause (4) refers to all or most jobs in a trade that require that essential work be regularly performed when the lowest part of the worker's body is more than ten feet above the closer of (1) the ground, or (2) a floor.

#### 12 MCAR § 1.062 [Temporary] Filing, who and when.

- A. Who may file. Any person who claims to be aggrieved by an unfair discriminatory practice may file a charge with the department. The charge of an allegedly aggrieved minor or ward must be filed by a parent or guardian.
- B. Time of filing. A charge must be filed within six months of an alleged unfair discriminatory practice. Filing is accomplished by delivery of the charge to the department's office on or before the deadline. Time is to be computed in accordance with Minnesota Statutes, sections 645.14, 645.15, and 645.151.

#### 12 MCAR § 1.063 [Temporary] Cross filing with other agencies.

- A. State charges cross filed with certain federal agencies. A charge filed with the department which alleges violation of certain EEOC and HUD administered anti-discrimination laws will automatically be filed by the department with that agency.
- B. Federal charges deferred to department. A charge filed with EEOC or HUD may be deferred to department. The charge is deemed filed on the date the department receives from the federal agency sufficient material for a charge to be deemed filed under Hum Rts 102 (a) and (b).
- C. Minneapolis and St. Paul charges. A charge alleging a violation occurring in Minneapolis or St. Paul may be referred by the commissioner to the Minneapolis Department of Civil Rights or the St. Paul Human Rights Department respectively, for investigation and recommended determination. The recommendation is subject to review by the commissioner.

#### 12 MCAR § 1.064 [Temporary] Priority charges.

- A. List. The department shall give priority to the following kinds of charges:
  - 1. a commissioner's charge;
  - 2. a charge alleging ongoing actual or threatened physical violence;
  - 3. a charge which the commissioner determines might require the department to seek an injunction or temporary restraining order;
  - 4. a charge involving a disservice to a party due to an error by the department;
  - 5. a charge requiring immediate action to prevent irreparable harm to the charging party; or

6. a charge having social or legal significance.

B. Social significance. A charge has social significance if the commissioner determines it affects in a substantial way:

1. many people;
2. a protected class;
3. a company or industry;
4. an entire affinity group; or
5. a current significant social issue.

C. Legal significance. A charge has legal significance if the commissioner believes it raises an issue that may provide a legal precedent that will further the purposes of the act.

**12 MCAR § 1.065 [Temporary] Fact finding conference.**

A. Call. The department may call a conference to obtain information needed to investigate an allegation in a charge. At the conference, the parties may attempt to resolve the proceedings before a formal finding is made.

B. Attendance; subpoenas; tape recording. The commissioner may require the attendance of a person at the conference by subpoena. The commissioner may restrict the attendance of others. The department shall, and a party may, make an audio tape recording of the conference. On request of a party, while a charge is pending the department shall duplicate its audio recording. The department shall charge a fee to cover the cost of duplication.

**12 MCAR § 1.066 [Temporary] Conciliation; agreement.**

A. Conciliation. After a finding of probable cause, the commissioner may invite the respondent to conciliate the matter. The invitation shall describe the conciliation process and may propose a remedy to resolve the proceedings. After permitting the respondent 15 days to respond to the invitation, the commissioner may issue a complaint according to Minnesota Statutes, section 363.06, subdivision 4, clause (3).

B. Agreement. If, at any time, the department and the parties agree on a resolution of the proceedings, the terms of the resolution shall be made a part of a settlement agreement.

After the respondent and the charging party have signed, the commissioner shall sign the agreement for the department. Execution of the agreement terminates the formal proceedings, subject to monitoring of the agreement by the department.

**12 MCAR § 1.067 [Temporary] Alternative forms of dispute resolution.**

In any proceeding the commissioner may use any alternative form of dispute resolution on any terms agreed to by all the parties.

**12 MCAR § 1.068 [Temporary] Notice of no probable cause.**

The commissioner shall serve notice of a no probable cause determination on the charging party by certified mail and by first class mail. The respondent shall be notified by first class mail.

**12 MCAR § 1.069 [Temporary] Appeal from no probable cause determination.**

A charging party's appeal from a no probable cause determination must be delivered to the department within ten days of receipt of notice.

**12 MCAR § 1.070 [Temporary] Monitoring.**

The department shall monitor all settlement agreements. If the commissioner believes a respondent may not have complied with an agreement, the department shall notify the respondent in writing. The notice shall specify the part of the agreement the respondent is believed to have violated. After permitting the respondent 15 days to respond, the commissioner may begin proceedings to enforce the settlement agreement.

**12 MCAR § 1.071 [Temporary] Reopening certain cases.**

A. Request. A charging party may request that proceedings terminated according to Hum Rts 102 (f) or dismissed according to 12 MCAR § 1.076 be reopened. The request must be in writing and must state a reason for reopening.

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

## PROPOSED RULES

---

B. Respondent; notice to; information from. The commissioner shall promptly notify the respondent in writing of the request. The respondent has ten days to provide the department with pertinent information in writing on reopening the proceedings.

C. Considerations. In deciding whether to reopen proceedings, the commissioner shall consider whether:

1. the department clearly erred in closing the proceedings;
2. the department was less than reasonably diligent in trying to find the charging party;
3. the charging party was unavoidably prevented from providing the department with information needed to avoid terminating the proceedings;
4. reopening the proceedings would place an unreasonable burden on the respondent; and
5. the passage of time precludes reopening the proceedings.

D. Reopening without request. After determining the department clearly erred in closing a proceeding, the commissioner may reopen the proceedings without a request.

E. Notice of decision. The commissioner shall promptly notify the parties in writing of the decision.

### 12 MCAR § 1.072 [Temporary] Exemptions for age restrictions in bona fide apprentice programs.

A. Application; coverage; duration. An operator of a bona fide apprenticeship program may apply to the department for an exemption from Minnesota Statutes, section 363.03 for the program. The commissioner shall provide the application form. An exemption shall be issued only for trades in the program which predominantly involve: (a) heavy physical labor; or (b) work on high structures. The exemption shall apply solely to permit age restrictions on applicants in programs involving those trades. An exemption shall be valid for five years unless revoked sooner. An operator of a program may not impose age restrictions unless an exemption is in effect.

B. Revocation. The department may revoke an exemption. To do so, the commissioner must decide that the exempted trade no longer predominantly involves: (a) heavy physical labor; or (b) work on high structures. An operator of an exempted program must immediately stop imposing age restrictions on applicants to its program upon expiration of, or notice of revocation of, an exemption.

### 12 MCAR § 1.073 [Temporary] Preservation of records.

A. While charge pending. A respondent notified of a charge shall retain all documents related to the charge under its control. The documents must be retained until the department notifies the respondent that the charge has been resolved.

B. During monitoring period. The commissioner may require as a part of a settlement agreement that the respondent retain documents related to a charge for a period of time.

C. Retention of records. An employer, employment agency, labor organization, or an operator of an apprenticeship or other training program subject to the act must retain all applicant and employment records for six months after the record is made.

### 12 MCAR § 1.074 [Temporary] Charges not to be processed.

The commissioner may choose not to process: (a) a moot charge; or (b) a charge without priority which the commissioner believes does not warrant further use of department resources.

### 12 MCAR § 1.075 [Temporary] Dismissal of frivolous charges.

The department may dismiss a charge the commissioner believes:

- A. illogical, fantastic, or incoherent;
- B. is negated by common knowledge which the commissioner takes official notice of;
- C. is brought by a charging party acting in bad faith;
- D. is substantially the same, and involves the same parties, as a previous charge in which no probable cause was found.

### 12 MCAR § 1.076 [Temporary] Dismissal for failure to provide information.

A. When. The commissioner may dismiss a charge or a would be charge for failure to provide required information:

1. when the would be charge does not conform to Hum Rts 1 and 102 (a); or
2. when the information about a charge that the department has is insufficient to make a determination, and the charging party fails to provide:
  - a. information which the charging party claims to have or knows how to obtain which may substantiate an allegation;

- b. a signed withdrawal of the charge after indicating a lack of interest in pursuing the charge; or
- c. information essential to a charge that requires amending.

B. Procedure. If informal means of obtaining the information fail, the commissioner shall notify the charging party by certified and first class mail of the need for the required information and the possibility of dismissal of the charge for failure to provide required information. If the information is not delivered within 30 days of the date of notice and no other information is available for the commissioner to make a determination on the merits, the commissioner may dismiss the charge.

**12 MCAR § 1.077 [Temporary] Rules temporarily superseded.**

During the period that 12 MCAR §§ 1.061-1.076 [Temporary] are effective, the following rules are superseded: Hum Rts 9, 52, 53, 54, 55, 56, 57, 58, 59, 102(c), 105(c)-(h), 111, 112, 113, 114, 115, 116, 117, and 118.

## **Department of Labor and Industry Workers' Compensation Division**

### **Proposed Adoption of Rules of the State Department of Labor and Industry Governing Reimbursement of Supplementary Benefits**

#### **Notice of Intent to Adopt Rules without a Public Hearing**

Notice is hereby given that the State Department of Labor and Industry, Workers' Compensation Division proposes to adopt the above-entitled rules without a public hearing. The Commissioner has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes 14.21-14.28 (1982).

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes 14.13-14.20 (1982).

Persons who wish to submit comments or a written request for a public hearing should submit such comments or requests to:

Steve Keefe, Commissioner  
Department of Labor and Industry  
444 Lafayette Road  
St. Paul, Minnesota 55101

Authority for the adoption of these rules is contained in Minnesota Statutes 176.132, Subd. 4; 175.12 (2); and 176.83 (f). Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from the office of the Commissioner upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Steve Keefe, Commissioner, Department of Labor and Industry, 444 Lafayette Road, St. Paul, Minnesota 55101.

A copy of the proposed rule immediately follows this notice in the *State Register*.

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

## PROPOSED RULES

---

Copies of this Notice and the proposed rules are available and may be obtained by contacting the Office of the Commissioner at (612) 296-2342.

Steve Keefe  
Commissioner of Labor and Industry

### Rules as Proposed (all new material)

#### Rules for Reimbursement of Supplementary Benefits

##### 8 MCAR § 1.9001 Definitions.

- A. Generally. As used in 8 MCAR §§ 1.9001-1.9010, the following terms have the meanings given them.
- B. Commissioner. "Commissioner" means commissioner of the Department of Labor and Industry.
- C. Effective date. "Effective date" as used in 8 MCAR § 1.9004 means the date on which the employer began or will begin to apply the offset provision of Minnesota Statutes, section 176.101, subdivision 4.
- D. Government disability benefits. "Government disability benefits" means disability benefits paid by any government disability program within the meaning of Minnesota Statutes, section 176.101. It includes social security disability benefits, old age and survivor benefits, and police relief association benefits.
- E. Party. "Party" means the employee, employer, insurer, or commissioner.
- F. Rehabilitation plan. "Rehabilitation plan" means the plan established for the employee pursuant to Minnesota Statutes, section 176.102.
- G. Supplementary benefits. "Supplementary benefits" means benefits paid pursuant to Minnesota Statutes, section 176.132.
- H. Total disability benefits. "Total disability benefits" means all benefits paid or payable by the week pursuant to Minnesota Statutes, section 176.101. Included in these benefits are economic recovery and impairment compensation because the method of payment of economic recovery or impairment compensation is determined at the time the payments commence to the employee. Where impairment compensation is paid or payable instead of economic recovery compensation under Laws of Minnesota 1983, chapter 290, section 48, it is deemed to be paid or payable weekly.

##### 8 MCAR § 1.9002 Authority and purpose.

8 MCAR §§ 1.9001-1.9010 are promulgated pursuant to the authority granted to the commissioner by Minnesota Statutes, section 176.132, subdivision 4, and 175.17, clause (2); and by Laws of Minnesota 1983, chapter 290, section 165. The purpose of these rules is to specify the procedure by which employers may apply for an administrative finding of permanent total disability in order to obtain reimbursement for supplementary benefits pursuant to Minnesota Statutes, section 176.132. After an administrative finding is made, all past and future total disability benefits are deemed to be payments for permanent total disability pursuant to Minnesota Statutes, section 176.101, subdivision 4.

##### 8 MCAR § 1.9003 Application.

Rules 8 MCAR §§ 1.9001-1.9010 apply only if all of the following prerequisites are met:

- A. The employee is and has been receiving total disability benefits under Minnesota Statutes, section 176.101, subdivision 1 or 4 without interruption for the injury which gave rise to total disability. Benefits are deemed to be without interruption if the total length of all interruptions does not exceed 60 days during the three years prior to filing an application or, if less than three years, since the time of the injury which gave rise to the permanent total disability.
- B. The employee is receiving government disability benefits.
- C. The employee is receiving supplementary benefits pursuant to Minnesota Statutes, section 176.132, subdivision 1, or would be eligible for supplementary benefits after a finding of permanent total disability is made.
- D. The employee has not been determined to be permanently and totally disabled by application of Minnesota Statutes, section 176.101, subdivision 5, or by an order on stipulation, or by an order after a hearing.
- E. The issue of whether the employee's total disability is permanent or temporary is not being and has never been raised in any judicial or quasi-judicial administrative proceeding, including administrative conferences under Minnesota Statutes, sections 176.242 and 176.243.
- F. The total amount of weekly benefits to be received by the employee after a finding of permanent total disability has been made is equal to or greater than the amount of benefits that would be received by the employee in the absence of a finding of permanent total disability. The total amount of weekly benefits includes total disability benefits, government disability benefits, and supplementary benefits.



G. The employer or insurer has applied the offset provision of Minnesota Statutes, section 176.101, subdivision 4, from the time that \$25,000 of total disability benefits was paid or from the time that the employee began to receive government disability benefits, whichever is later.

H. The employer or insurer concludes that the employee's total disability is permanent within the meaning of Minnesota Statutes, section 176.101, subdivision 5 and applicable case law.

**8 MCAR § 1.9004 Procedure.**

A. Generally. The employer or insurer must comply with the procedures set forth in this rule in submitting an application to the commissioner for a finding of permanent total disability.

B. Contents of application. The application must state:

1. the name of the employee;
2. the social security number of the employee;
3. the name of the employer;
4. the insurer of the employer, or, if self-insured, that the employer is self-insured;
5. the date of the employee's injury that gave rise to permanent total disability;
6. the date on which the requested finding of permanent total disability is to be effective;
7. the date on which the employee became eligible for government disability benefits;
8. the name of the medical provider submitting the medical report showing that the employee is permanently totally disabled at the time of application, and the date of the medical report; and
9. the status of the rehabilitation plan as active, inactive, or nonexistent.

C. Time of application. The application may not be filed more than 45 days prior to the effective date of the finding.

D. Filing of medical reports. Any medical reports which are identified pursuant to B.8., but have not been previously filed with the commissioner, must be attached to the application.

E. Filing of rehabilitation reports. Any reports of qualified rehabilitation consultants which have not been previously filed with the commissioner must be attached to the application.

F. Benefit amounts. The application must state the amount of weekly benefits currently received by the employee for government disability, total disability, and supplementary benefits. The application must also state the amount of each of these benefits which will be received by the employee if a finding of permanent total disability is made.

G. Signing of application. The application must be signed by an authorized representative of the employer or of the employer's insurer. It must also state the telephone number of the person signing the application.

H. Notice to employee. The employer or insurer must mail a copy of the application to the employee and to the employee's attorney by first class mail at the same time that the application is filed with the commissioner, and must so affirm on the application.

**8 MCAR § 1.9005 Notice of decision.**

Unless grounds for disapproval exist pursuant to 8 MCAR § 1.9006, the commissioner must approve an application for a finding of permanent total disability. An application is deemed approved unless notice of disapproval and the grounds for disapproval are mailed by first class mail within 30 calendar days of the commissioner's receipt of the application.

**8 MCAR § 1.9006 Disapproval by commissioner.**

An application for a finding of permanent total disability shall be disapproved if any of the following grounds are present:

A. The application is incomplete, is inaccurate, or is not in conformity with any part of 8 MCAR §§ 1.9001-1.9010. For example, the submission of medical reports which fail to show that the employee is permanently totally disabled at the time of application renders an application incomplete and inaccurate and not in conformity with the rules. Applications which are disapproved on any of these grounds may be resubmitted under the procedure authorized in 8 MCAR § 1.9004;

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

---

## PROPOSED RULES

---

B. The employer or insurer has not complied with the provisions of Minnesota Statutes, section 176.102 regarding the provision of rehabilitation services to the employee. This shall apply only if the injury giving rise to total disability occurred on or after October 1, 1979;

C. The commissioner concludes that the employee's total disability is not permanent within the meaning of Minnesota Statutes, section 176.101, subdivision 5 and applicable case law.

### 8 MCAR § 1.9007 Effect of finding.

Approval or disapproval of an application by the commissioner is without prejudice to a party's right to petition a workers' compensation settlement judge or other workers' compensation judge for a finding or for a revision of a finding of permanent total disability.

### 8 MCAR § 1.9008 Revision of finding.

A finding of permanent total disability pursuant to 8 MCAR §§ 1.9001-1.9010 is subject to revision based on judicial order pursuant to rules of the office of administrative hearings or on future changes in the employee's employability, medical conditions, or other conditions which relate to permanent total disability under Minnesota Statutes, section 176.101 and applicable case law. A party seeking to revise a finding of permanent total disability may seek a judicial finding in the manner described in 8 MCAR § 1.9007.

### 8 MCAR § 1.9009 Severability.

If any provision of 8 MCAR §§ 1.9001-1.9008 is held to conflict with a governing statute, applicable provisions of the Minnesota Administrative Procedure Act, or other relevant law; to exceed the statutory authority conferred; to lack a reasonable relationship to statutory purposes or to be unconstitutional, arbitrary, or unreasonable; or to be invalid or unenforceable for any other reason; the validity and enforceability of the remaining provisions of the rule shall in no manner be affected.

### 8 MCAR § 1.9010 Effective date.

These rules shall apply to requests for reimbursement of supplementary benefits filed on or after the effective date of 8 MCAR §§ 1.9001-1.9009.

---

## ADOPTED RULES

---

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.13-14.28 have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under § 14.18.

---

## Minnesota Housing Finance Agency

### Adopted Rules Relating to Income Limits for the Medium Density Housing Program

The rule proposed and published at *State Register*, Volume 8, Number 11, pages 434-435, September 12, 1983 (8 S.R. 434) is adopted as proposed.

## Minnesota Housing Finance Agency

### Adopted Rules Relating to the Innovative Housing Loan Program

The rule proposed and published at *State Register*, Volume 8, Number 11, pages 432-434, September 12, 1983 (8 S.R. 432) is adopted as proposed.

## **Minnesota State Retirement System**

### **Adopted Amendments to the Rules Relating to the Minnesota Public Employees Deferred Compensation Plan**

The rules proposed and published at *State Register*, Volume 8, Number 13, pages 524-530, September 26, 1983 (8 S.R. 524) are adopted as proposed.

---

---

## **OFFICIAL NOTICES**

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

---

## **Department of Administration Cable Communications Board**

### **Notice of Six Month Delay in Designation of the Twin Cities Metropolitan Area Regional Cable Channel Entity and Interconnection of Cable Systems**

The Minnesota Cable Communications Board (MCCB) on November 18, 1983 extended to July 2, 1984, the deadline for submission of applications for designation as the entity to operate the uniform regional channel on all cable systems in the 7-county Twin Cities Metropolitan Area. The date for activating the channel was also extended for six months to January 1, 1985. The Board's action also adds a six month delay, to July 2, 1984, for Metropolitan Area cable companies to submit to the Board their plan for interconnecting systems in the 7-county area for simultaneous distribution of the regional channel.

The Board also approved a response to the Metropolitan Council's request for clarification of certain items in the Board's Request for Applications for regional channel entity designation.

## **Department of Commerce Board of Architecture, Engineering, Land Surveying and Landscape Architecture**

### **Outside Opinion Sought on Rules Governing the Examination of Architect and Land Surveyor Applicants**

Notice is hereby given that the Board of Architecture, Engineering, Land Surveying and Landscape Architecture is seeking information or opinions, from sources outside the agency, in preparing to promulgate changes to rules governing the examination of architect applicants and the examination of land surveyor applicants. Authority for rulemaking is contained in Minnesota Statutes, Section 326.06 (1982).

Proposed changes to 4 MCAR Section 7.009, Examination of Architect Applicants includes new language clarifying education and experience requirements for admission to the licensing examinations, removes the provision allowing candidates to take a portion of the examination prior to completing one's experience requirements, and replaces the current Qualifying Test and Sections A and B of the Professional Examination with the nine-division Uniform Architect Registration Examination. The replaced examination sections are no longer available.

Proposed changes to 4 MCAR Section 7.011, Examination of Land Surveyor Applicants includes the modification of the 1985 requirement for a Bachelor of Science degree in Surveying; specific course requirements in surveying, mathematics, basic science and the humanities; specific requirements for supervised experience in twelve areas of land surveying activity: Survey computations, survey drafting, subdivision design, preliminary plats, section subdivision, public land survey-corner

## **OFFICIAL NOTICES**

---

restoration, State Plane Coordinate, boundary surveys, land title surveys, right of way surveys, easement surveys and condominium surveys.

The Board of Architecture, Engineering, Land Surveying and Landscape Architecture requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment either orally or in writing. Statements previously submitted are on file in the Board office. Written statements should be addressed to:

Lowell E. Torseth, Executive Secretary  
Board of Architecture, Engineering, Land  
Surveying and Landscape Architecture  
162 Metro Square  
St. Paul, Minnesota 55101

Oral statements will be received by telephone during normal business hours at (612) 296-2388 and in person at the above address. All statements of information and comment shall be accepted until January 27, 1984. Any written material received by the Board of Architecture, Engineering, Land Surveying and Landscape Architecture shall become part of the record upon promulgation of the proposed changes to the rules.

## **Department of Education State Board of Vocational Technical Education**

### **Notice of Public Hearing on Post-Secondary Aid Allocations**

A public hearing pursuant to MS 124.561 subd. 3A will be held for the purpose of post-secondary aid allocations on January 16, 1984 Room 118, State Capitol, St. Paul, Minnesota, 9:30 a.m.

## **Minnesota Department of Energy and Economic Development Energy Division**

### **Outside Opinion Sought Regarding Proposed Amendments Governing the Minnesota Energy Conservation Service Program**

Notice is hereby given that the State of Minnesota is seeking information or opinion from sources outside the Department in preparing to amend these rules governing the federal Residential Conservation Service Program whereby regulated utilities offer energy audits and related services to their residential customers. The promulgation of these rules is authorized by Minn. Stat. 116J.10.

The Department requests information and comments concerning the subject matter of these rules. Interested or affected parties may submit comments or statements of information orally or in writing. Comments should be directed to:

Mark Polich  
MECS Program Manager  
Energy Division  
Department of Energy and Economic Development  
150 East Kellogg Blvd.  
St. Paul, MN 55101  
(612) 297-3293

All statements of information and comments shall be accepted during this rule making procedure. Any written material received by the Department shall become part of the record in the event the rules are promulgated.

Mark B. Dayton, Commissioner  
Department of Energy and Economic Development

## **Department of Energy and Economic Development Energy Division**

### **Outside Opinion Sought Regarding Proposed Amendments to Rules Governing the Home Energy Disclosure Program and Mandatory Energy Efficiency Standards for Residential Rental Units**

Notice is hereby given that the State of Minnesota is seeking information or opinion from sources outside the Department in preparing to amend rules governing energy standards for rental property and the Home Energy Disclosure Program. The promulgation of these rules is authorized by Minn. Stat. 116J.10.

The Department requests information and comments concerning the subject matter of these rules. Interested or affected parties may submit comments or statements of information orally or in writing. Comments should be directed to:

Greg Hubinger  
Manager of Residential Programs  
Energy Division  
Department of Energy and Economic Development  
150 East Kellogg Blvd.  
St. Paul, MN 55101  
(612) 297-2117

All statements of information and comments shall be accepted during this rule making procedure. Any written material received by the Department shall become part of the record in the event that the rules are promulgated.

Mark B. Dayton, Commissioner  
Department of Energy and Economic Development

## **Department of Finance Financial Management and Capital Budget Debt Management**

### **Notice of Maximum Interest Rate for Municipal Obligations, December, 1983**

Pursuant to Laws of Minnesota 1982, Chapter 523, Commissioner of Finance, Gordon M. Donhowe, announced that the maximum interest rate for municipal obligations in the month of December will be eleven (11) percent per annum. Obligations which are payable wholly or in part from the proceeds of special assessments or which are not secured by general obligations of the municipality may bear an interest rate of up to twelve (12) percent per annum.

For further information, contact:

Peter Sausen, Director  
Debt Management  
Department of Finance  
State of Minnesota  
309 Administration bldg.  
50 Sherburne Ave.  
St. Paul, MN 55155  
(612) 296-8372

## **Office of the Secretary of State**

### **Notice of Vacancies in Multi-Member State Agencies**

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155-1299; (612) 296-2805. Application deadline is January 3, 1984.

---

## OFFICIAL NOTICES

---

BOARD ON JUDICIAL STANDARDS has 1 vacancy open for a municipal court judge. The board investigates allegations of misconduct by Minnesota judges and recommends judicial discipline to the Supreme Court, including censure, suspension, retirement or removal of judges. Members are appointed by the Governor and confirmed by the Senate, except that Senate confirmation is not required for judicial members. Monthly meetings; members receive \$35 per diem. For specific information contact the Board on Judicial Standards, 202 Minnesota State Bank, 200 S. Robert, St. Paul, 55107; (612) 296-3999.

LOCAL PROJECT REVIEW COMMITTEES OF THE WASTE MANAGEMENT BOARD has 1 vacancy open for a member from Marshall county. The committee will develop specific recommendations for the Waste Management Board, on the topics including the certification of need for hazardous waste facilities; the types and extent of mitigation and compensation for the siting of hazardous waste facilities; standards for hazardous waste processing, including determination of which specific types of wastes would be acceptable, and the level of processing required; and the state's overall hazardous waste management plan. Members are appointed by the Governor. Weekly meetings. For specific information contact the Governor's Office, 130 State Capitol, St. Paul 55155; (612) 296-0057.

METROPOLITAN AIRPORTS COMMISSION has 1 vacancy open immediately. Must be a resident of the appropriate commissioner precinct. The commission promotes air transportation, international, national, state and local by developing the Twin Cities as an aviation center, coordinates with other aviation facilities in the state to provide economical and effective use of aeronautic facilities and services; may build new airports or acquire existing airports in the metropolitan area; adopts and enforces regulations to manage all metropolitan airports; controls airport land use and provides for airport noise control. Members are appointed by the Governor; members must file with EPB. Monthly meetings; members receive \$50 per diem. For specific information contact the Metropolitan Airports Commission, 6040 28th Ave. So., Minneapolis 55450; (612) 726-1892.

SOUTHERN MINNESOTA RIVERS BASIN COUNCIL has 5 vacancies open for 2 public members and 3 county commissioner members. The council advises the Environmental Quality Board about the development of a conservation plan for the Southern Minnesota Rivers Basin. Members must be residents of Minnesota River Basin or Southeast Mississippi Tributaries. Members are appointed by the Governor. Monthly meetings; members receive expenses. For specific information contact the Southern Minnesota Rivers Basin Council, 101 Capitol Square Bldg., 550 Cedar St., St. Paul 55101; (612) 296-0676.

---

## STATE CONTRACTS

---

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over \$2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over \$10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

---

### Iron Range Resources and Rehabilitation Board

#### Request for Proposal for Professional Services — Promotional Projects

The Iron Range Resources and Rehabilitation Board is issuing a Request for Proposal from firms interested in providing consultation, art direction, and production coordination for various promotional projects authorized by the Iron Range Resources and Rehabilitation Board (IRRRB).

Project will run through June 30, 1984, and will not exceed \$15,000.00 for professional services.

Respondents should send proposals to:

Richard A. Nordvold  
Iron Range Interpretative Center  
P.O. Box 392  
Chisholm, MN 55719

and should be received no later than 4:30 P.M., December 21, 1983. An interview may or may not be required.

## **Iron Range Resources and Rehabilitation Board**

### **Request for a Proposal for a Wood Industrial Park**

The Commissioner of Iron Range Resources and Rehabilitation Board (IRRRB) is seeking proposals to examine the feasibility of a Wood Industrial Park to utilize the wood resources of the Iron Range area. Estimated cost of the study should not exceed \$60,000.00. For formal Request for Proposal documents, interested parties should contact:

Tom Rukavina  
Iron Range Resources and Rehabilitation Board  
P.O. Box 441  
Eveleth, Minnesota 55734

Proposals must be submitted no later than 3:00 P.M., December 26, 1983.

## **Metropolitan Council of the Twin Cities Area**

### **Request for Proposals (RFP) Information Systems Upgrade**

The Metropolitan Council solicits a proposal for entering into a contract for the evaluation of system alternatives and recommendations on upgrading existing information systems capabilities.

Six copies of the proposal should be submitted to the Metropolitan Council, Suite 300, Metro Square Building, St. Paul, Minnesota 55101, attention: Mr. Roy Larson, Contract Manager.

The Council by this RFP does not promise to accept the lowest, or any other proposal and specifically reserves the right to reject any or all proposals, to waive any formal requirements, to investigate the qualifications and experience of any proposer, to reject any provision in any proposal, to obtain new proposals, or to proceed to do the work otherwise.

All proposals received on or before 4 p.m., December 27, 1983, will be considered by the Council. In the event that a proposal is accepted, the Council will notify the successful proposer in writing within 10 days following its consideration of the proposal.

The Metropolitan Council hereby notifies all bidders that businesses owned and controlled by minorities or women will be afforded maximum feasible opportunity to submit bids and/or proposals and will not be subjected to discrimination on the basis of race, color, sex, age, religion, ancestry, handicap, public assistance status, marital status, national origin or political affiliation.

Copies of the RFP can be obtained by contacting Roy Larson at (612) 291-6480.

---

---

## **SUPREME COURT**

### **Decisions Filed Monday, November 28, 1983**

#### **Compiled by Wayne O. Tschimperle, Clerk**

C9-83-819 Minneapolis Star and Tribune Company, Petitioner, v. Honorable Daniel Kammeyer, Respondent, Craig Swanson, Respondent, State of Minnesota, Respondent.

This is an action on a petition for a writ of mandamus. The District Court of Sherburne County closed a pretrial hearing in a criminal case because of possible prejudice to defendant. The Minneapolis Star and Tribune Company filed a petition for a writ of mandamus which would require the district court to make public a transcript of the closed hearing and an order relating to the hearing. This court held that: (1) The public is entitled to a minimal hearing prior to closure of pretrial hearings in criminal matters. (2) Minn. R. Crim. P. 25.01 governs orders restricting access to transcripts and orders developed in closed pretrial hearing. (3) Minn. R. Crim. P. 25.01 requires that orders closing pretrial hearings to the public must be supported by findings of fact and a review of alternatives to closure. (4) The different standards in Minn. R. Crim. P. 25.01 and 25.03 are proper in light of the different issues those rules address.

Yetka, J.

**Decisions Filed Friday, December 2, 1983**

**Compiled by Wayne O. Tschimperle, Clerk**

**CX-83-70 Public Health Nursing Service of Dakota County, Relator, v. Roland P. Freeman, Respondent.**

Relator's account was properly charged for unemployment benefits paid to respondent where relator did not provide respondent with weekly part-time employment, meaning employment each and every week during the base period and current benefit period under Minn. Stat. § 268.06, subd. 5 (1982).

Affirmed. Per Curiam.

**C3-83-1075 State of Minnesota, Appellant, v. Bennie Uranus Stafford, Respondent.**

Trial court erred in granting motion by defendant charged with assault in the third degree to plead guilty to misdemeanor assault, where the prosecutor's offer of proof demonstrated that there was a reasonable likelihood that the state could withstand a motion to dismiss the charge at the close of the state's case in chief.

Reversed and remanded for trial. Amdahl, C.J.

**C0-83-854 State of Minnesota, Respondent, v. Mary Moore, Appellant.**

In computing criminal history score of defendant, who committed multiple thefts from a single victim, trial court was free to use the so-called *Hernandez* method, but use of that method operated to bar court from imposing consecutive probationary terms.

Defendant may refuse probation but that will not affect her obligation to make restitution, which is a term of her plea agreement.

Affirmed as modified. Amdahl, C.J.; Dissent, Wahl, J.

**C6-82-1402 Michael J. Bailey, Appellant, v. State of Minnesota, Respondent.**

Postconviction court was justified in determining that petitioner's guilty plea was voluntary and uncoerced.

Affirmed. Wahl, J.

**CX-82-1483 Connie Hollerich, individually, and as mother and natural guardian of Ryan Hollerich, Nicholas Hollerich and Nathan Hollerich, minor children, et al., Appellants, v. City of Good Thunder, Minnesota, et al., Respondents.**

A liquor vendor who sells intoxicating liquor after hours is, for purposes of the Civil Damages Act, "illegally selling liquor."

Reversed. Simonett, J.



STATE OF MINNESOTA  
State Register and Public Documents Division  
117 University Avenue  
• St. Paul, Minnesota 55155  
297-3000

## ORDER FORM

**State Register.** Minnesota's official weekly publication for agency rules and notices, executive orders of the Governor, state contracts, Supreme Court and Tax Court decisions.

- \_\_\_\_\_ Annual subscription \$130.00
- \_\_\_\_\_ Trial subscription (13 weeks) \$40.00
- \_\_\_\_\_ Single copies \$3.25 each

**Minnesota Guidebook to State Agency Services 1982-83** A 750-page reference guide to services provided by Minnesota agencies.

- \_\_\_\_\_ Single copy now \$4.50 + \$.27 sales tax = \$4.77\* each

**Minnesota Statutes Supplement—1983.** Pocket inserts for Minnesota Statutes 1982 10-volume set. \$23.00 + \$1.38 sales tax = \$24.38. No handling charge.

**Session Laws of Minnesota—1983.** Two volumes. Laws enacted during the 1982 legislative session. Inquire about back volumes. \$34 + \$2.04 (sales tax) = \$36.04.\*  
No handling charge.

\*To avoid Minnesota sales tax, please include your Certificate of Exempt Status issued by the Minnesota Department of Revenue. Please enclose full amount for items ordered. Make check or money order payable to "State of Minnesota." *All orders must be paid in advance*, either in person, by mail, or by phone. To order by phone, call 297-3000. Phone orders are taken only with a Mastercard or Visa charge number.

**EACH ORDER MUST INCLUDE ADDITIONAL \$1.50 FOR POSTAGE AND HANDLING.**

Name \_\_\_\_\_  
Attention of: \_\_\_\_\_  
Street \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Telephone \_\_\_\_\_

**State Register Binder.** Durable 3½ inch, forest green binders imprinted with the *State Register* logo.

- \_\_\_\_\_ **State Register Binder** \$6.50 + \$.39 (sales tax) = \$6.89\* each

**State Register Index.** Contains cumulative findings aids to Volume 7 of the *State Register*, including MCAR Amendments and Additions, Executive Orders List, Executive Orders Index, Agency Index, Subject Matter Index.

- \_\_\_\_\_ Single copy \$5.00

**Worker's Compensation Decisions.** Volume 36. Selected landmark decisions of the Worker's Compensation Court of Appeals. Available by annual subscription, with quarterly update service.

- \_\_\_\_\_ Annual subscription \$80.00

**Minnesota Outdoors Catalog—1983.** Complete listing of material on the Minnesota outdoor activities. Bikeways, canoeing, county, lake and other maps. Books, charts, rules, laws, posters and more.

- \_\_\_\_\_ **FREE COPY**

## FOR LEGISLATIVE NEWS

Publications containing news and information from the Minnesota Senate and House of Representatives are available free to concerned citizens and the news media. To be placed on the mailing list, write or call the offices listed below:

**Briefly/Preview**—Senate news and committee calendar; published weekly during legislative sessions. Contact Senate Public Information Office, Room B29 State Capitol, St. Paul MN 55155, (612) 296-0504.

**Perspectives**—Publication about the Senate. Contact Senate Information Office.

**Weekly Wrap-Up**—House committees, committee assignments of individual representatives, news on committee meetings and action, House action and bill introductions. Contact House Information Office, Room 8 State Capitol, St. Paul, MN, (612) 296-2146.

**This Week**—weekly interim bulletin of the House. Contact House Information Office.

Legislative Reference Library  
Room 111 Capitol

Interoffice