

Insurance

CHAPTER 60

INSURANCE DIVISION

60.01 DIVISION OF INSURANCE.

HISTORY. 1911 c. 386 s. 1; G.S. 1913 s. 3240; 1921 c. 346 s. 1; 1923 c. 399 s. 1; G.S. 1923 s. 3287; 1925 c. 426 art. 8 s. 2; M.S. 1927 ss. 53-29, 3287.

JURISDICTION OF THE COMMISSIONER. Life insurance companies which issue policies or other forms of contract conditioned upon the continuation or cessation of human life are subject to regulation under the jurisdiction of the insurance commissioner, not the securities commissioner. *Bates v Equit L. Assur. Soc.* 206 M 482, 288 NW 834.

60.02 DEFINITIONS.

HISTORY. 1895 c. 175 ss. 1, 3; 1901 c. 166 s. 1; 1903 c. 276 s. 1; 1903 c. 296; R.L. 1905 ss. 1594, 1596; 1907 c. 321; G.S. 1913 ss. 3255, 3257; 1915 c. 195 s. 1; 1917 c. 308; 1921 c. 380 s. 1; 1921 c. 406 s. 1; G.S. 1923 ss. 3304, 3312, 3314, 3348; M.S. 1927 ss. 3304, 3312, 3314, 3348.

Subd. 3. Insurance is indemnity for loss in respect to a specified object. It is immaterial whether a contract purports to be one of insurance since the court will look behind the terminology to ascertain the intent of the parties. *State v Spalding*, 166 M 167, 207 NW 317.

Issuing a policy of insurance is not a transaction of commerce. *Bothwell v Buckbee, Mears Co.* 166 M 285, 207 NW 724.

The court assumes that fidelity bonds issued for compensation by bonding companies are policies of insurance, in substance, and governed by the laws of insurance, in substance, and governed by the laws of insurance rather than suretyship. *Hayfield Farmers Co. v New Amsterdam Cas. Co.* 203 M 522, 282 NW 265.

This definition does not prohibit the parties from determining, as between themselves, the extent of absolute liability. This is all the rider, which provided for reimbursement of the insurance company by the employer in certain cases of workmen's compensation, accomplished. *Maryland Cas. Co. v Am. Lbr. & Wreck. Co.* 204 M 43, 282 NW 806.

Since the certificates involved were not contracts of indemnity against nor contingent on the duration of human life or the happening of any casualty, they are not contracts of insurance. *State ex rel v Fed. Invest. Co.* 48 M 110, 50 NW 1028.

A contract to furnish legal services in defense of malpractice actions brought against physicians in exchange for an annual sum is a contract of insurance. *Physicians' Defense Co. v O'Brien*, 100 M 490, 111 NW 396.

Subd. 4. This definition includes a mutual company. *State ex rel v Wells*, 167 M 198, 208 NW 659.

A reciprocal or interinsurance exchange is something more than a partnership and something less than an insurance corporation. It falls within the class of unincorporated companies and is therefore subject to adjudication in bankruptcy. *In re Minn. Ins. Underwriters*, 36 F(2d) 371.

It makes no difference that an insurer is a mutual company or unincorporated. It must comply with our laws to have its contracts which are to be performed here enforced in our courts. *Seamans v Christian Bros. Mill Co.* 66 M 205, 68 NW 1065.

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The insurance code applies to foreign, mutual, unincorporated associations as well as those properly incorporated. Neither can do business in this state without a license. *State v Beardsley*, 88 M 20, 92 NW 472.

Subds. 7, 8. Beneficiary associations as a class, including fraternal beneficiary associations, are forbidden to write endowment insurance. *Ntl'l Protective Legion v O'Brien*, 102 M 15, 112 NW 1050; 1906 OAG 190.

Defendant was properly charged with a criminal offense. *State v Bean*, 193 M 113, 258 NW 18.

AUTHORITY OF SUBAGENT. The fact that subagent who procured oral application for fire insurance was not licensed by state insurance department as an agent for defendant and insurer did not relieve insurer from liability for fire loss where insurer's authorized agent clothed subagent with apparent authority and insurer supplied him with necessary application blanks. *Romme v New Brunswick Fire*, 214 M 252, 8 NW(2d) 28.

As to "final rejection of the claim", a change of time within which it is allowable to sue from six years to six months, is unreasonable and void as to a member holding a certificate. *Dawes v Brotherhood*, 216 M 411, 13 NW(2d) 28.

The language of an insurance policy should be given the usual and ordinary meaning that it conveys to the popular mind. "Language" is a social instrument used in the communication of ideas. *Gershcov v Homeland*, 217 M 568, 15 NW(2d) 88.

Distinction drawn between "term insurance" and "industrial insurance". OAG Feb. 21, 1944 (253b-4).

60.03 RIGHTS, POWERS, AND DUTIES.

HISTORY. 1925 c. 426 art. 8 s. 3; M.S. 1927 s. 53-30.

60.04 OFFICIAL STAFF, SALARIES, DUTIES.

HISTORY. 1911 c. 386 s. 4; 1913 c. 564 s. 21; G.S. 1913 ss. 3242, 5149; 1919 c. 102 s. 3; 1919 c. 336 s. 1; 1921 c. 346 s. 2; 1923 c. 399 s. 2; G.S. 1923 ss. 3289, 5952, 5971; M.S. 1927 ss. 3289, 5952, 5971.

60.05 CONTINGENT FUND.

HISTORY. 1911 c. 386 s. 4; G.S. 1913 s. 3243; 1915 c. 208 s. 1; G.S. 1923 s. 3290; M.S. 1927 s. 3290.

60.06 CLERKS AND ASSISTANTS.

HISTORY. 1913 c. 564 s. 22; G.S. 1913 s. 5150; G.S. 1923 s. 5972; M.S. 1927 s. 5972.

60.07 DEPUTY.

HISTORY. 1911 c. 386 s. 5; G.S. 1913 s. 3244; G.S. 1923 s. 3291; M.S. 1927 s. 3291.

60.08 EXAMINATIONS.

HISTORY. 1911 c. 386 s. 6; G.S. 1913 s. 3245; 1915 c. 208 s. 2; G.S. 1923 s. 3292; 1925 c. 27 s. 1; M.S. 1927 s. 3292.

60.09 FEES FOR EXAMINATION.

HISTORY. 1911 c. 386 s. 7; G.S. 1913 s. 3246; 1915 c. 208 s. 3; G.S. 1923 s. 3293; M.S. 1927 s. 3293.

60.10 EXAMINER, APPOINTMENT.

HISTORY. 1911 c. 386 s. 8; G.S. 1913 s. 3247; 1915 c. 208 s. 4; G.S. 1923 s. 3294; M.S. 1927 s. 3294.

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60.103 INSURANCE POLICIES ON WHICH PREMIUMS ARE DETERMINED BY AUDITS.

HISTORY. 1943 c. 393 s. 1.

60.105 CERTAIN INSURANCE COMPANIES EXAMINED.

HISTORY. 1943 c. 409.

60.11 FEES.

HISTORY. 1911 c. 386 s. 9; G.S. 1913 s. 3248; G.S. 1923 s. 3295; M.S. 1927 s. 3295.

60.12 SUSPENSION OF AUTHORITY; AGENT.

HISTORY. 1895 c. 175 s. 7; R.L. 1905 s. 1599; G.S. 1913 s. 3260; G.S. 1923 s. 3297; M.S. 1927 s. 3297.

60.13 CAPITAL IMPAIRED.

HISTORY. 1895 c. 175 s. 8; R.L. 1905 s. 1600; G.S. 1913 s. 3261; G.S. 1923 s. 3298; M.S. 1927 s. 3298.

60.14 NOTICE TO CEASE BUSINESS.

HISTORY. 1895 c. 175 s. 9; R.L. 1905 s. 1601; G.S. 1913 s. 3262; G.S. 1923 s. 3299; M.S. 1927 s. 3299.

60.15 VIOLATIONS REPORTED.

HISTORY. 1895 c. 175 s. 10; R.L. 1905 s. 1602; G.S. 1913 s. 3263; G.S. 1923 s. 3300; M.S. 1927 s. 3300.

60.16 UNSATISFIED JUDGMENT.

HISTORY. 1895 c. 175 s. 95; R.L. 1905 s. 1603; G.S. 1913 s. 3264; G.S. 1923 s. 3301; M.S. 1927 s. 3301.

60.17 COMPUTATION OF NET VALUE.

HISTORY. 1895 c. 175 s. 11; 1901 c. 143; R.L. 1905 s. 1604; G.S. 1913 s. 3265; G.S. 1923 s. 3302; M.S. 1927 s. 3302.

60.18 VALUATION IN OTHER STATES.

HISTORY. 1895 c. 175 s. 11; 1901 c. 143; R.L. 1905 s. 1605; G.S. 1913 s. 3266; G.S. 1923 s. 3303; M.S. 1927 s. 3303.

60.19 RESERVES.

HISTORY. 1921 c. 406 s. 1; G.S. 1923 s. 3304; M.S. 1927 s. 3304.

60.20 WHAT ASSETS ADMISSIBLE.

HISTORY. 1895 c. 175 s. 11; 1901 c. 143; R.L. 1905 s. 1608; G.S. 1913 s. 3269; G.S. 1923 s. 3305; M.S. 1927 s. 3305.

60.21 VALUATION OF EVIDENCES OF INDEBTEDNESS.

HISTORY. 1919 c. 54; G.S. 1923 s. 3306; M.S. 1927 s. 3306; 1941 c. 141.

60.22 INCREASE OR DECREASE OF CAPITAL.

HISTORY. 1895 c. 175 s. 12; R.L. 1905 s. 1609; G.S. 1913 s. 3270; G.S. 1923 s. 3307; M.S. 1927 s. 3307.

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60.23 ACCOUNTS OF ASSIGNEES AND RECEIVERS.

HISTORY. 1895 c. 175 s. 13; R.L. 1905 s. 1610; G.S. 1913 s. 3271; G.S. 1923 s. 3308; M.S. 1927 s. 3308.

60.24 ANNUAL REPORT.

HISTORY. 1895 c. 175 s. 16; R.L. 1905 s. 1612; G.S. 1913 s. 3273; 1915 c. 81; G.S. 1923 s. 3309; M.S. 1927 s. 3309.

60.25 DEPOSITS OF SECURITIES.

HISTORY. 1895 c. 175 s. 92; R.L. 1905 s. 1613; G.S. 1913 s. 3274; G.S. 1923 s. 3310; M.S. 1927 s. 3310.

60.26 SECURITIES KEPT IN STATE TREASURER'S VAULT.

HISTORY. 1921 c. 466; G.S. 1923 s. 3311; M.S. 1927 s. 3311.

60.27 ACCEPTANCE OF LAWS.

HISTORY. 1883 c. 16 s. 2; G.S. 1878 Vol. 2 (1888 Supp.) c. 34 s. 315a; G.S. 1894 s. 3193; 1895 c. 175 ss. 2, 21, 22; 1901 cc. 81, 143; R.L. 1905 s. 1595; G.S. 1913 s. 3256; G.S. 1923 s. 3313; M.S. 1927 s. 3313; 1943 c. 574 s. 1.

Defendant was properly charged with an offense prohibited by section 72.10. State v Bean, 199 M 17, 270 NW 918.

60.273 COMPLIANCE WITH LAWS OF OTHER STATES.

HISTORY. 1945 c. 343 s. 1.

60.274 CONTRIBUTIONS AUTHORIZED.

HISTORY. 1945 c. 349 s. 1.

60.28 SOLICITATION OF CERTAIN CONTRACTS FORBIDDEN.

HISTORY. 1895 c. 175 s. 3; R.L. 1905 s. 1596; G.S. 1913 s. 3257; 1917 c. 308; G.S. 1923 s. 3314; M.S. 1927 s. 3314.

ENFORCEMENT OF CONTRACTS. The legislative policy indicated by this section prevents a foreign insurance company which has not complied with the insurance laws of this state, or its receiver, from maintaining an action here to collect an assessment against the insured. Bothwell v Buckbee, Mears Co. 166 M 285, 207 NW 724, affirmed in 275 U. S. 274, 72 L. Ed. 279, 48 Sup. Ct. 124.

A contract of insurance, although made with a corporation having its office in a state other than that in which the insured resides and in which the interest insured is located, is not interstate commerce. Therefore the state has the power to prohibit the doing of business within it without compliance with prescribed conditions and can refuse the aid of its courts in enforcing a contract which involved violation of its laws. Bothwell v Buckbee, Mears Co. 275 U. S. 274, 72 L. Ed. 279, 48 Sup. Ct. 124.

See 25 MLR 372 for a discussion of the right of a state to regulate contracts of insurance made outside of it but insuring risks within the state.

60.29 CAPITAL STOCK REQUIRED; BUSINESS WHICH MAY BE TRANSACTED.

HISTORY. 1915 c. 138 s. 1; 1917 c. 29 s. 1; 1919 c. 413 s. 1; 1923 c. 51; G.S. 1923 s. 3315; 1927 c. 240; M.S. 1927 s. 3315; 1933 c. 73.

Subd. 1(4) Where disability insurance is written as a supplemental contract to a life insurance policy, the provisions of the health and accident code apply to the disability feature. Joyce v N. Y. Life Ins. Co. 190 M 66, 250 NW 674, 252 NW 427.

Subd. 1(6) There is a fundamental incompatibility in a mutual company's writing of surety bonds for public officials. The necessary elements of identity and mutuality which must exist in the business of a mutual company are lacking. *State ex rel v Wells*, 167 M 198, 208 NW 659.

A foreign corporation, authorized by its articles of incorporation to conduct both fire and fidelity insurance business, cannot be licensed in this state to conduct a fidelity insurance business. If what a foreign corporation does outside the state constitutes a hazard to the people of this state, the legislature may deny it admission. *State ex rel v Brown*, 189 M 497, 250 NW 2.

Subd. 1(12) An automobile trailer is a motor vehicle within the meaning of section 65.02 declaring that insurance on automobiles, including loss or damage by fire, when combined in one policy with insurance against one or more of the hazards mentioned in this section, is excepted from the requirement of the standard fire policy law. *Gendreau v State Farm Fire Ins. Co.* 206 M 237, 288 NW 225.

The commuted or gross earning's tax paid by the defendant exempts it from an ad valorem tax or money and credits' tax. *State v Title Insurance Co.* 197 M 432, 267 NW 427.

An annuity contract, authorized by statute to be issued, and issued by a life insurance company, is not a "security" of the sort dealt with by the blue sky law. *Bates v Equitable*, 206 M 482, 288 NW 834.

An "unloading" clause in an automobile liability policy covers removal of goods from an automobile, but not subsequent handling. *St. Paul Mercury v Standard*, 216 M 103, 11 NW(2d) 794.

The part of the policy above the signature and the printed part expressly referred to and made a part thereof, constitute the contract of insurance. *Brown v State Ass'n*, 216 M 330, 12 NW(2d) 712.

An employee is entitled to workmen's compensation for injuries sustained while riding home in employer's automobile only where employer regularly furnishes such transportation as an incident to the employment. *Hardware Mutual v Ozmun*, 217 M 280, 14 NW(2d) 356.

Construed by the usual and ordinary meaning of the words of the policy, the trial court correctly concluded that plaintiff's property was covered by "salesmen's sample floater policy" issued by defendant. *Gershcow v Homeland Insurance*, 217 M 568, 15 NW(2d) 88.

The law forbidding burial insurance companies from affiliating with funeral parlors is constitutional. 1934 OAG 538, May 24, 1933 (249b-14).

Mutual companies may amend articles and engage in public liability insurance. 1934 OAG 544, Oct. 1, 1934 (487a-1).

Factory mutuals may not attach a rider to the standard policy so as to include coverage against loss caused by sprinkler leakage, wind and hail, explosion, riot and civil commotion, and aircraft damage. 1936 OAG 270, Jan. 6, 1936 (252j).

Under sections 66.29, 66.31 a policy may cover "full medical and surgical aid to domestic employees under the public liability coverage". 1942 OAG 86, March 28, 1941 (253a-7).

60.30 INSURANCE CORPORATIONS.

HISTORY. 1895 c. 175 s. 27; 1901 c. 143; R.L. 1905 s. 2848; G.S. 1913 s. 6146; G.S. 1923 s. 7442; M.S. 1927 s. 7442.

A foreign insurance company whose articles authorize it to write fire and tornado insurance, and also fidelity insurance, may not be licensed to do a fidelity insurance business in the state, although it does not propose to do a fire or tornado business here. *State ex rel v Brown*, 189 M 497, 250 NW 2.

60.31 INSURANCE NOT SPECIFICALLY AUTHORIZED BY LAW TRANSACTED UPON AUTHORIZATION BY COMMISSIONER.

HISTORY. 1923 c. 389 ss. 1, 2; G.S. 1923 s. 3316; 1927 c. 265; M.S. 1927 s. 3316; 1941 c. 134.

There may be "full medical and surgical aid to domestic employees under public liability coverage". 1942 OAG 86, March 28, 1941 (253a-7).

60.33 RETALIATORY PROVISION.

HISTORY. 1915 c. 138 s. 2; G.S. 1923 s. 3318; M.S. 1927 s. 3318.

60.34 DEPOSITS WITH COMMISSIONER.

HISTORY. 1905 c. 181; R.L. 1905 s. 1632; G.S. 1913 s. 3309; G.S. 1923 s. 3319; M.S. 1927 s. 3319.

OWNERSHIP. The deposits made must belong to the company. The statute does not permit any strings to be attached so that a concealed owner may deprive the policyholders of the security and benefit of the deposit. *Fredsall v Minn. State L. Ins. Co.*, 207 M 18, 289 NW 780.

POLICYHOLDERS' INTEREST. They are the beneficiaries of the trust. The fact that the securities deposited exceed the statutory minimum is immaterial; the excess is as fully bound by the trust as the balance. *Hayne v Met. T. Co.*, 67 M 245, 69 NW 916.

By virtue of their policies, the policyholders have a specific lien, attaching as policies were issued, but actually relating back, in case of distribution, to the date of deposit. The general creditors have no interest in it except as to a surplus which might ultimately reach them. *Smith v Nat. Credit Ins. Co.*, 78 M 214, 80 NW 966.

REINSURANCE. The commissioner may surrender to a reinsurer the securities deposited with him by the reinsured companies if the reinsurer has deposited with him securities in compliance with the statute. 1908 OAG 119.

If the risk has been reinsured by a foreign company which has filed with him a certificate from the commissioner of another state, then the deposit made by the domestic company must be retained so long as policies written by it are outstanding. 1934 OAG 543.

60.35 BONDS OF SECRETARIES AND TREASURERS; INVESTMENTS; LOANS TO OFFICERS; SIGNATURES TO POLICIES; PRINCIPAL PLACE OF BUSINESS.

HISTORY. 1895 c. 175 s. 24; 1901 c. 143 s. 1; R.L. 1905 s. 1633; G.S. 1913 s. 3310; G.S. 1923 s. 3320; 1927 c. 354; M.S. 1927 s. 3320.

BONDS. When a principal takes an agent it impliedly represents to the surety that as far as it knows, the agent is honest. If it knows otherwise, it perpetrates a fraud in failing to disclose to the surety. *Capital Fire Ins. Co. v Watson*, 76 M 387, 79 NW 601.

The law that if, in a continuing suretyship, the master discovers the servant's dishonesty and continues him in his service without notice to an assent by the surety, the latter is not liable for subsequent loss through the servant's dishonesty, does not apply to mere breaches of duty or contract not involving the servant's fraud or the master's concealment. *Lancashire Ins. Co. v Callahan*, 68 M 277, 71 NW 261.

The master's cardinal rule of duty to the surety is entire good faith. Mere negligence in failing to discover the defaults of his agent will not release the surety, but gross negligence may amount to bad faith. *Manchester Fire Assur. Co. v Redfield*, 69 M 10, 71 NW 709.

"Home office" relating to a company incorporated under Minnesota laws to engage in the business of insurance, is synonymous with the term "principal place of business." 1938 OAG 285, July 16, 1937 (92b-7).

60.36

HISTORY. 1895 c. 175 s. 86; R.L. 1905 s. 1634; 1913 c. 113; G.S. 1913 s. 3311; G.S. 1923 s. 3321; M.S. 1927 s. 3321.

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60.37 CAPITAL STOCK TO BE PAID IN FULL; INVESTMENT OF FUNDS.

HISTORY. 1895 c. 175 s. 32; 1901 c. 143; R.L. 1905 s. 1635; G.S. 1913 s. 3313; 1915 c. 82 s. 1; G.S. 1923 s. 3322; 1925 c. 245 s. 1; M.S. 1927 s. 3322; 1929 c. 100; 1929 c. 148; 1937 c. 86 ss. 1, 2; 1941 c. 143; 1943 c. 279 s. 1; 1945 c. 497 s. 1.

STOCK PAYMENT. The statutory provision concerning payment of capital stock within six months is not a condition precedent to the legal organization of the company, but is merely directory provision which might be taken advantage of by the state. If the company thereafter meets the requirements before the state takes action to forfeit its charter, the commissioner may license it. 1910 OAG 508.

60.38 DEBENTURES LAWFUL INVESTMENTS.

HISTORY. 1905 c. 93 s. 14; G.S. 1913 s. 6467; G.S. 1923 s. 3323; M.S. 1927 s. 3323.

60.39 FUNDS INVESTED IN BONDS OF FOREIGN COUNTRIES.

HISTORY. 1909 c. 345; G.S. 1913 s. 3312; G.S. 1923 s. 3324; M.S. 1927 s. 3324.

60.40 INVESTMENTS.

HISTORY. 1919 c. 28 s. 1; 1921 c. 231 s. 1; G.S. 1923 s. 3325; M.S. 1927 s. 3325.

60.41 INVESTMENT IN HOME OWNERS' LOAN CORPORATION BONDS.

HISTORY. Ex. 1934 c. 71 s. 1; M. Supp. s. 3325-1.

60.42 DEPOSIT WITH COMMISSIONER.

HISTORY. 1919 c. 28 s. 2; 1921 c. 231 s. 2; G.S. 1923 s. 3326; M.S. 1927 s. 3326.

60.43 REDUCTION, HOW MADE.

HISTORY. 1895 c. 175 s. 34; 1899 c. 334; R.L. 1905 s. 1636; G.S. 1913 s. 3314; G.S. 1923 s. 3327; M.S. 1927 s. 3327.

60.44 TEMPORARY CAPITAL STOCK OF MUTUAL LIFE COMPANIES.

HISTORY. 1907 c. 162 s. 1; G.S. 1913 s. 3499; G.S. 1923 s. 3328; M.S. 1927 s. 3328.

60.45 LIABILITY OF DIRECTORS AND OFFICERS.

HISTORY. 1895 c. 175 s. 31; R.L. 1905 s. 1637; G.S. 1913 s. 3315; G.S. 1923 s. 3329; M.S. 1927 s. 3329.

60.46 ASSESSMENTS TO RESTORE CAPITAL.

HISTORY. 1895 c. 175 s. 33; R.L. 1905 s. 1638; G.S. 1913 s. 3316; G.S. 1923 s. 3330; M.S. 1927 s. 3330.

60.47 DIVIDENDS.

HISTORY. 1895 c. 175 s. 35; R.L. 1905 s. 1639; G.S. 1913 s. 3317; G.S. 1923 s. 3331; M.S. 1927 s. 3331.

60.48 CORPORATE NAME; ADVERTISEMENTS.

HISTORY. 1895 c. 175 s. 17; R.L. 1905 s. 1614; G.S. 1913 s. 3290; G.S. 1923 s. 3332; M.S. 1927 s. 3332.

60.49 REAL ESTATE.

HISTORY. 1895 c. 175 s. 75; R.L. 1905 s. 1615; G.S. 1913 s. 3291; G.S. 1923 s. 3333; M.S. 1927 s. 3333.

60.50 POLICY TO EMBRACE CONDITIONS.

HISTORY. 1895 c. 175 s. 52; R.L. 1905 s. 1616; G.S. 1913 s. 3292; G.S. 1923 s. 3334; M.S. 1927 s. 3334.

SCOPE. This section applies as well to matters of description of the property insured, or the location of it, as to warranties and other conditions found in the application but not incorporated in the policy. *Coleman v Retail L. Ins. Ass'n*, 77 M 31, 79 NW 588.

It applies to a fidelity bond also. *Pearson v U.S. F. & G. Co.*, 138 M 240, 160 NW 919, discussed in 2 MLR 231.

It does not apply to fraternal beneficiary associations, *Louden v Mod. Brotherhood of Am.*, 107 M 12, 119 NW 425; nor to insurance of risks under the workmen's compensation act. *Skuey v Bjerkan*, 173 M 354, 217 NW 358.

STANDARD FORM. This section cannot be used to restrict the express requirements of the statute providing for the use of the standard form fire insurance policy. *Wild Rice Lbr. Co. v Royal Ins. Co.*, 99 M 190, 108 NW 871.

Contract of insurance; truth of statements in the application. 17 MLR 588.

60.51 INSURER NOT RELIEVED OF OBLIGATIONS BY BANKRUPTCY OR INSOLVENCY OF INSURED.

HISTORY. 1937 c. 183 s. 1; M. Supp. s. 3334-1.

Insurer not relieved of obligations by bankruptcy or insolvency of insured.

This provision is discussed in 24 MLR 696.

60.52 REINSURANCE; MAXIMUM BY FIRE COMPANIES; REPORTS.

HISTORY. 1895 c. 175 ss. 19, 105; R.L. 1905 s. 1617; G.S. 1913 s. 3293; G.S. 1923 s. 3335; M.S. 1927 s. 3335.

60.53 CONSOLIDATION OR REINSURANCE.

HISTORY. 1905 c. 303 s. 1; G.S. 1913 s. 3516; G.S. 1923 s. 3336; M.S. 1927 s. 3336.

DEFINITION. Reinsurance is a mere contract of indemnity in which an insurer reinsures risks in another company. The policyholders have no concern in such a contract, are not the parties for whose benefit it is made, and cannot sue thereon. *Barnes v Heckla Fire Ins. Co.*, 56 M 38, 57 NW 314.

60.54 CONDITIONS FOR REINSURANCE.

HISTORY. 1919 c. 141 s. 1; G.S. 1923 s. 3337; M.S. 1927 s. 3337.

60.55 PETITION FOR CONSOLIDATION OR REINSURANCE.

HISTORY. 1905 c. 303 s. 2; G.S. 1913 s. 3517; G.S. 1923 s. 3338; M.S. 1927 s. 3338.

60.56 MERGERS AND CONSOLIDATIONS; NOTICE OF HEARING.

HISTORY. 1905 c. 303 s. 3; G.S. 1913 s. 3518; 1915 c. 333 s. 1; G.S. 1923 s. 3339; M.S. 1927 s. 3339; 1929 c. 62 §. 1.

60.57 COMMISSION TO HEAR PETITION; HEARING; DISPOSING OF SURPLUS ASSETS.

HISTORY. 1905 c. 303 s. 4; G.S. 1913 s. 3519; G.S. 1923 s. 3340; M.S. 1927 s. 3340.

60.58 EXPENSES, HOW PAID.

HISTORY. 1905 c. 303 s. 5; G.S. 1913 s. 3520; 1915 c. 332 s. 2; G.S. 1923 s. 3341; M.S. 1927 s. 3341.

60.59 ANNUAL STATEMENTS.

HISTORY. 1875 c. 83 s. 12; G.S. 1878 c. 34 s. 349; 1885 c. 45; 1891 c. 13 s. 1; 1893 c. 127 s. 1; G.S. 1894 ss. 3245, 3274; R.L. 1905 s. 1618; 1907 c. 11 s. 1; G.S. 1913 s. 3294; G.S. 1923 s. 3343; 1925 c. 31 s. 1; 1927 c. 186; M.S. 1927 s. 3343.

PUBLICATION. R. L. 1905, Section 2714, which fixes the rate per folio for publications, applies to the annual statements of insurance companies required by this section to be published. 1906 OAG 227.

Publication must be in a newspaper published in the English language. 1906 OAG 228.

Publication may be made in a foreign language paper provided the statement is in English. 1912 OAG 410.

60.60 PUBLICATION, PLACE AND MANNER OF.

HISTORY. 1903 c. 327; R.L. 1905 s. 1619; 1907 c. 61 s. 1; G.S. 1913 s. 3295; 1923 c. 190 s. 1; G.S. 1923 s. 3344; M.S. 1927 s. 3344.

60.61 STATEMENTS OF INSURANCE COMPANIES, PUBLICATION OF.

HISTORY. 1919 c. 204 s. 1; G.S. 1923 s. 3345; M.S. 1927 s. 3345.

Effect of defendant's insurance on plaintiff's right to recover. 24 MLR 698.

60.62 INSURANCE TRADE JOURNAL, PUBLICATION OF STATEMENTS IN.

HISTORY. 1919 c. 204 s. 2; G.S. 1923 s. 3346; M.S. 1927 s. 3346.

60.63 TAXATION OF INSURANCE COMPANIES.

HISTORY. 1895 c. 175 ss. 84, 96; R.L. 1905 s. 1625; 1907 c. 321 s. 1; G.S. 1913 s. 3302; 1915 c. 184 s. 1; 1919 c. 515 s. 2; 1921 c. 341 s. 1; G.S. 1923 s. 3347; 1927 c. 421; M.S. 1927 s. 3347; 1929 c. 148 s. 1; 1935 c. 328; 1943 c. 73 s. 1.

EXEMPTION FROM OTHER TAXES. The legislative intent was to eliminate from taxation ad valorem the personal property of domestic companies when invested in conformity with statutory requirements. The gross earnings tax on insurance income was to take its place. Therefore a money and credits tax levied on an insurance company's abstract and title plant should be annulled. State v Title Ins. Co. 197 M 432, 267 NW 427.

Money due the agent of a fire insurance company on direct business written in this state is not taxable as a credit. The tax imposed under this section entitles the company to exemption from other taxes on these premiums. 1912 OAG 573.

MORTGAGE REGISTRATION TAX. Payment of the tax imposed by this section does not exempt the company from the payment of mortgage registration taxes. Mut. Ben. L. Ins. Co. v County of Martin, 104 M 179, 116 NW 572; 1908 OAG 162.

REINSURANCE. When an insurance company has reinsured its risks and receives no premiums upon which it is taxed but owns mortgages, those may be taken as personal property. 1910 OAG 707.

FOREIGN COMPANIES. The tax imposed by this section on premiums received by foreign insurance companies is not a tax on their property but is a privilege tax and therefore does not limit or affect the power of the state to tax its stock as money and credits. 1934 OAG 811.

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A foreign insurance corporation which owns no real estate or personal property within the state does not possess the interest necessary to entitle it to question the constitutionality of a tax on premiums which is in lieu of all taxes except those on real and personal property of foreign and the real property of domestic companies. *State v Casualty Mut.*, 213 M 220, 6 NW(2d) 800.

The tax imposed by section 60.63 on the premiums of insurance companies received "during the preceding calendar year" is not a license tax to continue in business during the following year, but a tax on premiums for the year during which they were received. *State v Casualty Mut.* 213 M 220, 6 NW(2d) 800.

Assessment benefit associations organized under Laws 1933, Chapter 241, are not subject to the two per cent premium tax. 1934 OAG 535, March 31, 1934 (249a-18).

Larger privilege tax on insurance companies doing business in cities of the first class than on companies doing business in smaller cities and villages throughout the state. 1934 OAG 810, Dec. 7, 1933 (86a-30).

Rules relating to township mutual insurance companies. 1938 OAG 286, March 10, 1937 (249b-13).

Two per cent tax payable to various municipalities. 1940 OAG 279, Sept. 2, 1939 (640a).

60.64 INSURANCE AGENT OR SOLICITOR, LICENSE FOR.

HISTORY. 1915 c. 195 s. 1; 1921 c. 380 s. 1; G.S. 1923 s. 3348; M.S. 1927 s. 3348.

TO WHOM ISSUED. An agent's license cannot be issued to a partnership or corporation since this license is a condition precedent to the occupation, not to the carrying on of a business in which case a license to the owner of the business would protect his agents. 1908 OAG 127.

Under the provisions of section 65.05, a person, otherwise a mere broker, who procures the application for fire insurance and the issue of a policy thereon by an insurer, becomes so far the latter's agent that his mistake of fact as to the property to be covered is chargeable to the insurer. *Dose v Insurance Co.* 206 M 114, 287 NW 866.

The general rule is that an insurance company which has appointed an agent with general authority to act in its behalf throughout a considerable territory is charged with the knowledge of the reasonable needs of such agent to appoint assistants or subagents, and where such assistant or subagent acts within the scope of his appointment, his acts bind the company to the same extent as if his appointment came directly from the company. *Rommel v New Brunswick Co.* 214 M 251, 8 NW(2d) 28.

The parties arrested were selling a so-called "service contract," which had sufficient resemblance to an insurance contract so the so-called agents were liable to punishment as insurance agents selling without a license. 1934 OAG 533, Sept. 16, 1933 (249a-1); 1934 OAG 534, Dec. 27, 1933 (616d-7).

60.65 LICENSES.

HISTORY. 1915 c. 195 s. 2; 1921 c. 380 s. 2; G.S. 1923 s. 3349; M.S. 1927 s. 3349.

60.66 AGENTS TO BE LICENSED.

HISTORY. 1915 c. 195 s. 3; 1921 c. 380 s. 3; G.S. 1923 s. 3350; M.S. 1927 s. 3350. 25 MLR 372 discusses the right of a state to regulate contracts of insurance made outside it but insuring risks within the state.

60.67 AGENT MAY EMPLOY SOLICITORS.

HISTORY. 1915 c. 195 s. 4; 1921 c. 380 s. 4; G.S. 1923 s. 3351; M.S. 1927 s. 3351.

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60.68 SOLICITORS, QUALIFICATIONS, APPLICATIONS, REVOCATION OF LICENSE.

HISTORY. 1915 c. 195 s. 5; 1921 c. 380 s. 5; G.S. 1923 s. 3352; M.S. 1927 s. 3352; 1945 c. 244 s. 1.

The commissioner under the act creating the department is authorized to make rules and regulations having the force and effect of law. This applies to rules as to agents. The rules must be fair and reasonable and within the powers granted by statute or the creating act. OAG April 4, 1944 (256).

60.69 REVOCATION OF LICENSE, MANNER OF.

HISTORY. 1915 c. 195 s. 6; 1921 c. 380 s. 6; G.S. 1923 s. 3353; M.S. 1927 s. 3353.

60.70 APPLICATION BY COMPANY FOR REVOCATION.

HISTORY. 1915 c. 195 s. 7; 1921 c. 380 s. 7; G.S. 1923 s. 3354; M.S. 1927 s. 3354. Innocent misrepresentation as to the health of the applicant. 28 MLR 141.

60.71 NOTICE OF REVOCATION.

HISTORY. 1915 c. 195 s. 8; 1921 c. 380 s. 8; G.S. 1923 s. 3355; M.S. 1927 s. 3355.

60.72 COMPLAINT; REINSTATEMENT; HEARING.

HISTORY. 1915 c. 195 s. 9; 1921 c. 380 s. 9; G.S. 1923 s. 3356; M.S. 1927 s. 3356.

60.73 UNFITNESS, DETERMINED BY COMMISSIONER.

HISTORY. 1915 c. 195 s. 10; 1921 c. 380 s. 10; G.S. 1923 s. 3357; M.S. 1927 s. 3357.

60.74 RECORD OF SUSPENSIONS.

HISTORY. 1915 c. 195 s. 11; 1921 c. 380 s. 11; G.S. 1923 s. 3358; M.S. 1927 s. 3358.

60.75 UNFIT OR DISQUALIFIED PERSON NOT TO BE EMPLOYED BY INSURER.

HISTORY. 1915 c. 195 s. 12; 1921 c. 380 s. 12; G.S. 1923 s. 3359; M.S. 1927 s. 3359.

60.76 REDRESS OF PERSON AGGRIEVED; POWERS OF COMMISSIONER.

HISTORY. 1915 c. 195 s. 13; 1921 c. 380 s. 13; G.S. 1923 s. 3360; M.S. 1927 s. 3360.

60.77 WITNESSES, ATTENDANCE COMPELLED BY COMMISSIONER.

HISTORY. 1915 c. 195 s. 14; 1921 c. 380 s. 14; G.S. 1923 s. 3361; M.S. 1927 s. 3361.

60.78 OATHS ADMINISTERED.

HISTORY. 1915 c. 195 s. 15; 1921 c. 380 s. 15; G.S. 1923 s. 3362; M.S. 1927 s. 3362.

60.79 CONTEMPT.

HISTORY. 1915 c. 195 s. 16; 1921 c. 380 s. 16; G.S. 1923 s. 3363; M.S. 1927 s. 3363.

60.80 PUNISHMENT FOR CONTEMPT.

HISTORY. 1915 c. 195 s. 17; 1921 c. 380 s. 17; G.S. 1923 s. 3364; M.S. 1927 s. 3364.

60.81 LICENSE MANDATORY.

HISTORY. 1915 c. 195 s. 18; 1921 c. 380 s. 18; G.S. 1923 s. 3365; M.S. 1927 s. 3365.

60.82 REFUSAL OF WITNESS TO APPEAR OR TESTIFY.

HISTORY. 1915 c. 195 s. 20; 1921 c. 380 s. 20; G.S. 1923 s. 3367; M.S. 1927 s. 3367.

60.83 LIABILITY OF OFFICERS.

HISTORY. 1895 c. 175 s. 45; R.L. 1905 s. 1621; G.S. 1913 s. 3298; G.S. 1923 s. 3368; M.S. 1927 s. 3368.

60.84 COMPENSATION.

HISTORY. 1899 c. 198; R.L. 1905 s. 1622; G.S. 1913 s. 3299; G.S. 1923 s. 3369; M.S. 1927 s. 3369.

60.85 MISREPRESENTATION BY APPLICANT.

HISTORY. 1895 c. 175 s. 20; R.L. 1905 s. 1623; G.S. 1913 s. 3300; G.S. 1923 s. 3370; M.S. 1927 s. 3370.

SCOPE. This provision applies to health and accident policies, *McAlpine v Fid. & Cas. Co.*, 134 M 192, 158 NW 967; to fire insurance contracts, *Romain v Twin City Fire Ins. Co.* 193 M 1, 258 NW 289, discussed in 19 MLR 810; and to an application for reinstatement of a lapsed life insurance policy even though no medical examination is required for the reinstatement. *Robbins v N.Y. Life Ins. Co.* 195 M 205, 262 NW 210, 872.

This section does not apply to fraternal association. *Bratley v Brotherhood of Am. Yeomen*, 159 M 14, 198 NW 128; nor to standard life insurance policies issued without medical examination to which section 61.24 applies, *Hafner v Prudential Ins. Co.* 188 M 481, 247 NW 576; *Elness v Prudential Ins. Co.* 190 M 169, 251 NW 183; *Schmidt v Prudential Ins. Co.* 190 M 239, 251 NW 683; even though the application is oral rather than written. *Kueppers v Met. Life Ins. Co.* 199 M 248, 271 NW 453.

CONSTRUCTION. A material misrepresentation made with intent to deceive and defraud avoids the policy. A material misrepresentation not made with intent to deceive or defraud does not avoid the policy unless by the misrepresentation the risk of loss is increased, in which case the intent is immaterial. An immaterial representation, although made with intent to deceive and defraud, does not avoid the policy. *Johnson v Nat. L. Ins. Co.* 123 M 453, 144 NW 218; *Shaughnessy v N. Y. Life Ins. Co.* 163 M 134, 203 NW 600; *First Nat. Bank of Duluth v Nat. Lib. Ins. Co.* 156 M 1, 194 NW 6; *Mack v Pac. Mut. Life Ins. Co.* 167 M 53, 208 NW 410.

A misrepresentation made with intent to deceive or defraud avoids the policy. *Iblings v Phoenix Mut. Life Ins. Co.*, 172 M 341; 215 NW 429.

An incomplete answer may be a false answer if by it a deception is accomplished. *Harnischfeger Sales Corp. v Nat. Life Ins. Co.* 195 M 31, 261 NW 580.

This statute has placed warranties upon the basis of representations so that a breach of warranty now has no more effect than a misrepresentation. *McLevis v St. P. F. & M Ins. Co.* 165 M 468, 206 NW 940.

DISCLOSURE REQUIRED. Truthful answers to questions relative to medical consultation and treatment are material to the risk and, if false, the policy may be avoided. This does not require the disclosure of medical consultation or treatment for slight or temporary ailments. *Shaughnessy v N. Y. L. Ins. Co.* 163 M

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134, 203 NW 600; Iblings v Phoenix Mut. L. Ins. Co. 172 M 341, 215 NW 429; Laury v Northwestern Mut. L. Ins. Co. 180 M 205, 230 NW 648, 231 NW 824; Elness v Prud. Ins. Co. 195 M 205, 262 NW 210, 872; Schaedler v N. Y. L. Ins. Co. 201 M 327, 276 NW 235.

EQUITABLE JURISDICTION. Where the insured has died the insurer's legal defense of fraud is adequate and therefore equity will not take jurisdiction. *Dunn v Prud. Ins. Co.* 8 F Supp. 799.

For discussions on warranties and representations see Prosser, Making of a Contract of Insurance in Minnesota, 17 MLR 567; 1 MLR 372.

Where evidence showed that the insured died from the same affliction for which there had been previous medical consultation and treatment, false representation by insured upon application that there had been no such consultation or treatment was material and did increase the risk of loss to the insurer, entitling it to avoid the policy. *Lawien v Metropolitan Life*, 211 M 211; 300 NW 823.

Improper diagnosis of an ailment by a doctor previously consulted or an underestimation by the patient of the danger of the affliction does not in fact or law operate to transform serious diseases into trivial ailments for the purpose of excusing failure of applicant for life insurance to disclose such prior consultation and treatment. *Lawien v Metropolitan Life*, 211 M 211; 300 NW 823.

In an action on a life policy, with defense of misrepresentation in the application, the burden of proof rests upon the insurer. *Sanne v Metropolitan*, 218 M 181, 15 NW(2d) 524.

In an action on a surety bond, evidence failed to establish defense that plaintiff concealed from or misrepresented to defendant surety company anything which plaintiff was obligated to tell. *Northwestern Jobbers v National Surety*, 54 F. Supp. 716.

Concealment of a moral hazard. 19 MLR 811.

Delivery-in-good-health clause, effect thereon of statute limiting the effect of the warranties. 20 MLR 685.

Misrepresentations by applicant. 28 MLR 143.

60.86 RECEIVERS, ACCOUNTS, DEPOSIT OF RECORDS.

HISTORY. 1895 c. 175 s. 93; R.L. 1905 s. 1624; G.S. 1913 s. 3301; G.S. 1923 s. 3371; M.S. 1927 s. 3371.

60.87 COMMISSIONER AS RECEIVER.

HISTORY. 1925 c. 235; M.S. 1927 s. 3371-1.

60.875 DELINQUENT INSURERS.

HISTORY. 1943 c. 571.

60.88 AMENDMENT OF CERTIFICATE OF INCORPORATION OR ARTICLES OF ASSOCIATION OF DOMESTIC INSURANCE COMPANIES WITHOUT CAPITAL STOCK.

HISTORY. 1927 c. 202 s. 1; M.S. 1927 s. 3443-1.

60.89 BY-LAWS, ADOPTION, ALTERATION, AMENDMENT.

HISTORY. 1927 c. 202 s. 2; M.S. 1927 s. 3443-2.

60.90 RENEWAL OF CORPORATE EXISTENCE.

HISTORY. 1927 c. 202 s. 3; M.S. 1927 s. 3443-3.

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60.91 ENFORCEMENT.

HISTORY. 1911 c. 386 s. 2; 1913 c. 564 s. 2; G.S. 1913 ss. 3241, 5130; G.S. 1923 ss. 3288, 5950; M.S. 1927 ss. 3288, 5950.

60.92 VIOLATIONS; PENALTIES.

HISTORY. 1905 c. 303 s. 6; G.S. 1913 s. 3521; 1915 c. 195 s. 19; 1921 c. 380 s. 19; G.S. 1923 ss. 3342, 3366; M.S. 1927 ss. 3342, 3366.

Defendant was properly convicted for an offense against the provisions of section 72.10. State v Bean, 199 M 16, 270 NW 918.