

CHAPTER 65

FIRE INSURANCE COMPANIES

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65.01 [Repealed, 1955 c 482 s 5]

65.011 MINNESOTA STANDARD FIRE INSURANCE POLICY. Subdivision

1. The printed form of a policy of fire insurance, as set forth in subdivision 2, shall be known and designated as the "Minnesota Standard Fire Insurance Policy" to be used in the state of Minnesota. No policy or contract of fire insurance shall be made, issued or delivered by any insurer including reciprocals or inter-insurance exchanges or any agent or representative thereof, on any property in this state, unless it shall conform as to all provisions, stipulations and conditions, with such form of policy, except as provided in section 65.02.

Subd. 2. There shall be printed on the first or front page at the head of said "Minnesota Standard Fire Insurance Policy" the name of the insurer or insurers issuing the policy, the location of the home office or United States office of the insurer or insurers, a statement whether said insurer or insurers are stock corporations, mutual corporations, reciprocal insurers or Lloyds Underwriters; there may be added thereto such device or devices as the insurer or insurers issuing said policy may desire. Any company organized under special charter provisions may so indicate upon its policy, and may add a statement of the plan under which it operates in this state.

On said policy following such matter, printed in the English language in type of such size or sizes and arranged in such manner, as is approved by the commissioner of insurance, the following provisions and subject matter shall be stated in the following words and in the following sequence, but with the convenient placing, if desired, of such matter as will act as a cover or back for such policy when folded, with the blanks below indicated being left to be filled in at the time of the issuing of the policy, to-wit:

(Space for listing the amounts of insurance, rates and premiums for the basic coverages provided under the standard form of policy and for additional coverages or perils provided under endorsements attached. The description and location of the property covered and the insurable value (s) of any building(s) or structure (s) covered by the policy or its attached endorsements; also in the above space may be stated whether other insurance is limited and if limited the total amount permitted.)

In consideration of the provisions and stipulations herein or added hereto and of the premium above specified this company, for a term of from (At Noon Standard Time to.....(At Noon Standard Time) at location of property involved, to an amount not exceeding the amount(s) above specified does insure and legal representatives.

(In above space may be stated whether other insurance is limited.)
(and if limited the total amount permitted.)

Subject to form No. (s). attached hereto.

This policy is made and accepted subject to the foregoing provisions and stipulations and those hereinafter stated, which are hereby made a part of this policy, together with such provisions, stipulations and agreements as may be added hereto, as provided in this policy.

This policy shall not be valid unless countersigned by the duly authorized agent of this Company.

Countersigned at this day of, 19....., Agent.

The insurance effected above is granted against all loss or damage by fire originating from any cause, except as hereinafter provided, also any damage by lightning and by removal from premises endangered by the perils insured against in this policy, to the property described hereinafter while located or contained as described in this policy, or pro rata for five days at each proper place to which any of the property shall necessarily be removed for preservation from the perils insured against in this policy, but not elsewhere. The amount of said loss or damage, except in case of total loss on buildings, to be estimated according to the actual value of the insured property at the time when such loss or damage happens.

If the insured property shall be exposed to loss or damage from the perils insured against, the insured shall make all reasonable exertions to save and protect same.

This entire policy shall be void if, whether before a loss, the insured has wilfully, or after a loss, the insured has wilfully and with intent to defraud, concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interests of the insured therein.

This policy shall not cover accounts, bills, currency, deeds, evidences of debt, money or securities; nor, unless specifically named hereon in writing, bullion, or manuscripts.

This company shall not be liable for loss by fire or other perils insured against in this policy caused, directly or indirectly by: (a) enemy attack by armed forces, including action taken by military, naval or air forces in resisting an actual or immediately impending enemy attack; (b) invasion; (c) insurrection; (d) rebellion; (e) revolution; (f) civil war; (g) usurped power; (h) order of any civil authority except acts of destruction at the time of and for the purpose of preventing the spread of fire, providing that such fire did not originate from any of the perils excluded by this policy.

Other insurance may be prohibited or the amount of insurance may be limited by so providing in the appropriate space on the face of this policy.

Unless otherwise provided in writing added hereto this company shall not be liable for loss occurring:

(a) while the hazard is increased by any means within the control or knowledge of the insured; or

(b) while the described premises, whether intended for occupancy by owner or tenant, are vacant or unoccupied beyond a period of 60 consecutive days; or

(c) as a result of explosion or riot, unless fire ensue, and in that event for loss by fire only.

Any other peril to be insured against or subject of insurance to be covered in this policy shall be by endorsement in writing hereon or added hereto.

The extent of the application of insurance under this policy and the contributions to be made by this company in case of loss, and any other provision or agreement not inconsistent with the provisions of this policy, may be provided for in writing added hereto, but no provision may be waived except such as by the terms of this policy is subject to change.

No permission affecting this insurance shall exist, or waiver of any provision be valid, unless granted herein or expressed in writing added hereto. No provision, stipulation or forfeiture shall be held to be waived by any requirement or proceeding on the part of this company relating to appraisal or to any examination provided for herein.

This policy shall be cancelled at any time at the request of the insured, in which case this company shall, upon demand and surrender of this policy, refund the excess of paid premium above the customary short rates for the expired time. This policy may be cancelled at any time by this company by giving to the insured a ten days' written notice of cancellation with or without tender of the excess of paid premium above the pro rata premium for the expired time, which excess, if not tendered, shall be refunded on demand. Notice of cancellation shall state that said excess premium (if not tendered) will be refunded on demand.

If loss hereunder is made payable, in whole or in part, to a designated mortgagee not named herein as insured, such interest in this policy may be cancelled by giving to such mortgagee a ten days written notice of cancellation.

Notwithstanding any other provisions of this policy, if this policy shall be made payable to a mortgagee of the covered real estate, no act or default of any person other than such mortgagee or his agent or those claiming under him, whether the same occurs before or during the term of this policy, shall render this policy void as to such mortgagee nor affect such mortgagee's right to recover in case of loss on such real estate; provided, that the mortgagee shall on demand pay according to the established scale of rates for any increase of risks not paid for by the insured; and whenever this company shall be liable to a mortgagee for any sum for loss under this policy for which no liability exists as to the mortgagor, or owner, and this company shall elect by itself, or with others, to pay the mortgagee the full amount secured by such mortgage, then the mortgagee shall assign and transfer to the company his interest, upon such payment, in the said mortgage together with the note and debts thereby secured.

This company shall not be liable for a greater proportion of any loss than the amount hereby insured shall bear to the whole insurance covering the property against the peril involved.

In case of any loss under this policy the insured shall give immediate written notice to this company of any loss, protect the property from further damage, and a statement in writing, signed and sworn to by the insured, shall within 60 days be rendered to the company, setting forth the value of the property insured, except in case of total loss on buildings the value of said buildings need not be stated, the interest of the insured therein, all other insurance thereon, in detail, the purposes for which and the persons by whom the building insured, or containing the property insured, was used, and the time at which and manner in which the fire originated, so far as known to the insured.

The company may also examine the books of account and vouchers of the insured, and make extracts from the same.

In case the insured and this company, except in case of total loss on buildings, shall fail to agree as to the actual cash value or the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand. In case either fails to select an appraiser within the time provided, then a presiding judge of the district court of the county wherein the loss occurs may appoint such appraiser for such party upon application of the other party in writing by giving five days' notice thereof in writing to the party failing to appoint. The appraisers shall first select a competent and disinterested umpire; and failing for 15 days to agree upon such umpire, then a presiding judge of the above mentioned court may appoint such an umpire upon application of party in writing by giving five days' notice thereof in writing to the other party. The appraisers shall then appraise the loss, stating separately actual value and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with this company shall determine the amount of actual value and loss. Each appraiser shall be paid by the party selecting him, or for whom he was selected, and the expense of the appraisal and umpire shall be paid by the parties equally.

It shall be optional with this company to take all of the property at the agreed or appraised value, and also to repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention so to do within 30 days after the receipt of the proof of loss herein required.

There can be no abandonment to this company of any property.

The amount of loss for which this company may be liable shall be payable 60 days after proof of loss, as herein provided, is received by this company and ascertainment of the loss is made either by agreement between the insured and this company expressed in writing or by the filing with this company of an award as herein provided. It is moreover understood that there can be no abandonment of the property insured to the company, and that the company will not in any case be liable for more than the sum insured, with interest thereon from the time when the loss shall become payable, as above provided.

No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy have been complied with, and unless commenced within two years after inception of the loss.

This company is subrogated to, and may require from the insured an assignment of all right of recovery against any party for loss to the extent that payment therefor is made by this company; and the insurer may prosecute therefor in the name of the insured retaining such amount as the insurer has paid.

Assignment of this policy shall not be valid except with the written consent of this company.

IN WITNESS WHEREOF, this company has executed and attested these presents.

(Signature)

(Name of Office)

(Signature)

(Name of Office)

Subd. 3. There may be printed in the policy or an endorsement attached to the policy, in case the assured desires liability to attach to several buildings, divisions or locations under one item, a printed form filed with and approved by the insurance commissioner.

Subd. 4. There may be printed in the policy or an endorsement attached to the policy, a printed form in the following words, to-wit:

The insured has relinquished all rights to recover for loss or damage by fire from _____ (here insert name of individual, partnership, association or corporation).

Subd. 5. There may be printed upon a policy issued in compliance herewith the words "Minnesota Standard Fire Insurance Policy."

Subd. 6. No provision shall be attached to or included in such policy limiting the amount to be paid in case of total loss on buildings by fire, lightning or other hazard to less than the amount of insurance on the same.

Subd. 7. If incorporated or formed in this state, it may print in the policy any provisions which it is authorized or required by law to insert therein, if not incorporated in this state, it may, with the approval of the insurance commissioner, print in the policy any provision required by its charter or deed of settlement, or by the laws of its own state or country, not contrary to the laws of this state.

Subd. 8. When two or more authorized companies unite in the issue of a joint policy, the heading thereof may show the severalty of the contract, and the policy shall show the proportion of premiums to be paid to each, and the proportion of liability which each assumes, and shall contain a provision to the effect that service of process, or any notice or proof of loss required by such policy, upon any of the insurers executing such policy, shall be deemed to be service upon all such insurers.

Subd. 9. Binders or other contracts for temporary insurance may be made orally or in writing, and shall be deemed to include all the terms of such standard fire insurance policy and all such applicable endorsements as may be designated in such contract of temporary insurance; except that the cancellation clause of such standard fire insurance policy and the clause specifying the hour of the day at which the insurance shall commence, may be superseded by the express terms of such contract of temporary insurance.

Subd. 10. Appropriate forms of other contracts or endorsements, whereby the property described in such policy shall be insured against one or more of the additional perils which the insurer is empowered to assume, and forms of provisions or endorsements which serve to modify the policy or premium in favor of the insured, may be attached to, used in or in connection with the Minnesota Standard Fire Insurance Policy when approved by the commissioner of insurance. Such forms of other contracts, provisions or endorsements attached to or printed thereon may contain provisions and stipulations inconsistent with the Minnesota Standard Fire Insurance Policy if applicable only to such other perils. There may be placed upon the Minnesota Standard Fire Insurance Policy, in such manner and form as is approved by the commissioner of insurance, such data as may be conveniently included for duplication on the daily reports for the office records of the company writing the policy.

Subd. 11. It may print or use on its policy, printed forms covering the maintenance or supervision of watchman's service, automatic sprinkler service or the maintenance of a clear space in lumber yards, when approved by the commissioner of insurance, but no such clause shall contain any provision calling for the lapse or the suspension of the insurance coverage.

Subd. 12. It may print or use in its policy printed forms for insurance against loss of rents and rental value, leasehold values, use and occupancy, and indirect or consequential loss or damage caused by change of temperature resulting from the destruction of refrigeration or cooling apparatus, or any of its connections. It may also use a form specifically excluding the last mentioned hazard.

All contracts of insurance against loss of rents or rental values, use and occupancy, shall contain the following provisions:

The period of indemnity under this contract shall be limited to such length of time (commencing with the date of the fire or lightning and not limited by the date of the expiration of the policy) as would be required through the exercise of due diligence and dispatch to rebuild, repair or replace such part of the property described in said policy as may be destroyed or damaged.

Subd. 13. Nothing in this section shall be construed to limit the effect of or in any way modify or repeal section 65.05.

Subd. 14. There may be printed in the policy in a convenient place approved by the insurance commissioner, or on an endorsement attached to the policy, a printed form providing that in the case of loss, such loss shall be payable to the mortgagee, or other persons, as his, her, its or their interest may appear, to-wit:

Subject to the stipulations, provisions and conditions contained in this policy, the loss, if any, is payable to ———, mortgagee, as his, her, its or their interest may appear.

[R L s 1640; 1909 c 331 s 1; 1913 c 405 s 1; 1913 c 421 s 1; 1923 c 410 s 1; 1948 c 86 s 1; 1949 c 463 s 1; 1955 c 482 s 1; 1957 c 193 s 1] (3512)

65.02 MOTOR VEHICLE FIRE INSURANCE POLICIES. Insurance on automobiles, motorcycles, other motor vehicles, or on property insured by ocean marine, and inland marine policies as defined by Minnesota Statutes, Section 70.61, Subdivision 4, against loss or damage by fire, when combined in one policy with insurance against one or more of the other hazards mentioned in section 60.29, subdivision 1, need not be in accordance with section 65.011, but in no event shall this section be applicable to insurance on buildings or structures.

[1921 c 342 s 1; 1955 c 482 s 2; 1957 c 473 s 1] (3513)

65.03 CANCELANON OF FIRE POLICY. Any fire insurance company which has not collected the premium on its policy at the time of the delivery thereof may print or endorse, or attach by rider, on its policy the following clause:

"If the insured hereunder shall not have actually paid the premium hereon, or any part thereof, within 60 days from the date of this policy, then this policy may be canceled by the insurer by giving five days written notice to the insured and to the mortgagee, or other person to whom the policy is made payable, if any, without tendering any part or portion of such premium, anything to the contrary in the policy contract notwithstanding."

[1923 c. 390 s. 1] (3514)

65.04 VIOLATION. Every company and every agent who shall wilfully make, issue, or deliver a policy in violation of section 65.011 shall be guilty of a gross misdemeanor; but every stipulation of the policy in favor of the insured shall, nevertheless, be binding upon the company issuing the same.

[R L s 1641; 1957 c 193 s 2] (3515)

65.05 AMOUNT COLLECTIBLE. Every company insuring any building or other structure against loss or damage by fire, lightning, or other hazard, by the issue of a policy or renewal of one theretofore issued, or otherwise shall cause the structure to be previously examined, a full description thereof to be made, and its insurable value to be fixed all by the insurer or his agent, and the amount thereof to be stated in the policy. In the absence of any change increasing the risk, without the consent of the insurer, of which the burden of proof shall be upon it, and in the absence of intentional fraud on the part of the insured, the insurer shall pay the whole amount mentioned in the policy or renewal upon which it receives a premium, in case of total loss, and in case of partial loss, the full amount thereof.

If there are two or more policies upon the property, each shall contribute to the payment of the whole or partial loss in proportion to the amount specified. Any policy may contain a coinsurance clause, if the insured requests the same, in writing, of which fact such writing shall be the only evidence, and if, in consideration thereof, a reduction in the rate of premium is made by the company. When so demanded and attached to the policy, this agreement shall be binding upon both the insured and the company, and, in case of loss, the actual cash value of the property so insured at the time of the loss, including the buildings, shall be the basis for determining the proper amount of the coinsurance, and the amount of loss, notwithstanding any previous valuation of the building. Every person who solicits insurance and procures an application therefor shall be held to be the agent of the party afterward issuing insurance thereon or a renewal thereof.

[R L s 1642; 1907 c 446 s 1; 1913 c 79 s 1; 1955 c 482 s 3; 1957 c 193 s 4] (3516)

65.06 INSURANCE IN EXCESS OF VALUE. No company shall knowingly issue any policy upon property in this state for an amount which, together with any existing insurance thereon, exceeds the fair value of the property, nor for a longer term than five years. Any company wilfully insuring property for more than its real value shall forfeit to the state, for the benefit of the school fund, double the premium collected on the policy.

[R. L. s. 1643] (3517)

65.07 PAYMENT TO MORTGAGEE. When the whole, or any part, of the loss is payable, in terms or otherwise, to or for one or more mortgagees, upon proof before payment of the rights of the parties, the company shall pay the same in the order of priority to the extent of its liability, and every such payment to such extent shall be payment and satisfaction of its liability under the policy.

[R. L. s. 1644] (3518)

65.08 ADJUSTMENT, RIGHT TO REFERENCE. Any person who shall not, within 20 days after written request, appoint a qualified appraiser, as provided in the policy, shall at the election of the other party be deemed to have waived the right to appraisal, and, if it be the insurer, shall be liable to suit. No person shall be a qualified appraiser who is not a resident of the state, disinterested, and willing to act.

[R L s 1645; 1955 c 482 s 4] (3519)

65.09 LIABILITY OF COMPANY. Notwithstanding any penalty prescribed for the making, issuing, or delivery of any policy in violation of any provision of law, every such policy shall be binding upon the company issuing the same.

[R. L. s. 1646] (3520)

65.10 SALVAGE CORPS AND FIRE PATROLS. Every authorized board of fire underwriters in any municipality containing 50,000, or more, inhabitants may provide a salvage corps, a fire patrol, with competent superintendent, for the purpose of discovering and preventing fires, suitable rooms for their accommodation, and necessary apparatus to save and preserve property and life at and after a fire. Such superintendent and patrol, subject to the control of the fire chief of the fire department of the municipality, may enter any building on fire or in danger of taking fire and endeavor to protect, save, or remove the contents, or any part thereof, during or after the fire; provided, that the employees of the fire patrol salvage corps shall be divided into two platoons or shifts, to be known as the day and the night shift. The working hours to be as follows: The time of the night shift shall be 14 hours, and that of the day shift shall be ten hours, each day, except days for changing from the day shift to the night shift, as hereinafter provided; the shift which shall be assigned to day duty shall, for the first day thereof, remain on duty for the full 24 hours of that day. A change of shift from day duty to night duty shall be made every week, on Sunday.

Each employee shall be entitled to a vacation of not less than 15 days, each year, with pay. No employees shall be subject to call or perform any duties in the department out of his regular hours, as defined in this section; provided, that their superintendent may establish such rules as may be necessary to insure attendance of employees in case of a great conflagration, and in such case the superintendent may require each and every employee in the protection of life or property, notwithstanding the employee has been relieved from duty under the provisions of this section.

[R. L. s. 1656; 1919 c. 515 s. 1] (3521)

65.11 GUARANTY SURPLUS AND SPECIAL RESERVE FUND. Any insurance company organized under the laws of this state authorized to transact a fire insurance business may create the funds herein provided for, to be known and designated as the guaranty surplus fund and the special reserve fund, and may avail itself of the provisions of sections 65.11 to 65.20, upon complying with the requirements thereof.

[1909 c. 437 s. 1] (3522)

65.12 ACTION OF STOCKHOLDERS FILED WITH COMMISSIONER. Any such insurance company, desiring to create such funds, may do so if such action is authorized by its stockholders, upon the adoption of a resolution to that effect by its board of directors at a regular meeting of the board, or at any special meeting called for that purpose, and filing with the commissioner a copy thereof, declaring the intention of the company to create these funds and to do business under the provisions of sections 65.11 to 65.20; and, as soon after the filing of a copy of the resolution as convenient, the commissioner shall make, or cause to be made, an examination of the company, and he shall make a certificate of the result thereof, which shall particularly set forth the amount of surplus funds held by the company at the date of the examination, the whole or any part of which, under the provisions of sections 65.11 to 65.20, may be equally divided between and set apart to constitute guaranty surplus and special reserve funds, which certificate shall be recorded in the department of insurance.

[1909 c. 437 s. 2] (3523)

65.13 DIVIDENDS DECLARED OUT OF SURPLUS PROFITS. After the date of filing any such resolution with the commissioner, the company shall not make or declare or pay in any form any dividend upon its capital stock, exceeding eight per cent per annum thereupon and six per cent per annum upon the surplus funds to be formed hereunder, until after its guaranty surplus fund and its special reserve fund shall have together accumulated to an amount equal to its capital stock or to the sum of \$2,000,000; and any part of the surplus profits of the company above this annual dividend may be equally divided between and set apart to constitute the guaranty surplus fund and the special reserve fund, which funds shall be held and used as hereinafter provided, and not otherwise. Any company doing business under sections 65.11 to 65.20, whose guaranty surplus fund and special reserve fund shall have together accumulated to an amount equal to its capital stock or to the sum of \$2,000,000, may, from time to time, declare dividends out of its surplus profits in such amounts as its board of directors may prescribe, subject only to the limitation that the payment of these dividends shall not deplete its capital, nor reduce the aggregate amount of the guaranty surplus and special reserve funds to an amount less than the amount of its capital stock, or if its capital stock exceeds \$2,000,000, to an amount less than \$2,000,000; and, subject to the further limitation that no dividends exceeding ten percent upon the capital stock shall be declared in any year if the payment thereof would reduce the aggregate amount of all surplus funds, including guaranty surplus and special reserve funds, below an amount equal to 30 percent of its unearned premiums. Any company doing business under sections 65.11 to 65.20, which shall declare or pay any dividend contrary to the provisions herein contained, shall forfeit its charter and be liable to be proceeded against by the attorney general for its dissolution.

[1909 c. 437 s. 3; 1911 c. 263 s. 1; 1923 c. 130 s. 1] (3524)

65.14 EXAMINATION. When the company shall notify the commissioner that it has fulfilled the requirements already expressed in sections 65.11 to 65.20, and that its guaranty surplus fund and its special reserve fund, taken together, equal its capital stock or amount to the sum of \$2,000,000, the commissioner shall make an examination of the company and make a certificate of the result thereof, and file the same in his office and, if the commissioner shall find that the combined funds shall equal the capital stock of the company or amount to the sum of \$2,000,000, thereafter the company may continue, out of any subsequent profits of its business, to add to these funds; provided, that when any addition is made to the special reserve fund, an equal sum shall be carried to the guaranty surplus fund.

[1909 c. 437 s. 4; 1923 c. 130 s. 2] (3525)

65.15 ITEMS CONSIDERED IN ESTIMATING PROFIT. In estimating the profit of any such company for the purpose of making a division thereof between

the guaranty surplus fund and the special reserve fund, until these funds shall together amount to a sum equal to the capital stock of the company or amount to the sum of \$2,000,000, there shall be deducted from the gross assets of the company, including for this purpose the amount of the special reserve fund, the sum of the following items:

- (1) The amount of all outstanding claims;
- (2) An amount sufficient to meet the liability of the company for the unearned premiums upon its unexpired policies, which amount shall at least equal one-half the premiums received on policies having one year or less to run from the date of policy, and a pro rata proportion of the premiums received on the policies having more than one year to run from the date of policy, and shall be known as the reinsurance liability;
- (3) The amount of its guaranty surplus fund and of its special reserve fund;
- (4) The amount of the capital of the company; and
- (5) Interest at the rate of eight percent per annum upon the amount of the capital, and six percent per annum upon the amount of the said funds for whatever time shall have elapsed since the last preceding cash dividend. The balance shall constitute the net surplus of the company, any portion of which is subject to an equal division between these funds, as herein provided.

[1909 c. 437 s. 5; 1923 c. 130 s. 3] (3526)

65.16 INVESTMENT OF GUARANTY SURPLUS. The guaranty surplus shall be held and be invested by the company in the same manner as its capital stock and surplus accumulation may be held and be invested, and shall be liable and applicable in the same manner as the capital stock to the payment generally of the losses of the company.

[1909 c. 437 s. 6] (3527)

65.17 INVESTMENT OF SPECIAL RESERVE FUND. The special reserve fund shall be invested according to existing laws relating to investments of capital by fire insurance companies and shall be deposited, from time to time, as the same shall accumulate and be invested, with the commissioner, who shall permit the company depositing the same to change these deposits by substituting for those withdrawn others of equal amount and value, and to collect and receive the interest or dividends upon these securities as the same may accrue; and this fund shall not be regarded as any part of the assets in possession of the company, so as to be or render the same liable for any claim for loss by fire, or otherwise, except as provided in sections 65.11 to 65.20.

[1909 c. 437 s. 7] (3528)

65.18 WHEN CLAIMS EXCEED GUARANTY SURPLUS AND CAPITAL STOCK. When the claims upon the company shall exceed the amount of its capital stock and of guaranty surplus fund, provided for by sections 65.11 to 65.20, and of its surplus funds, other than the special reserve fund, the company shall notify the commissioner of the fact, who shall then make, or cause to be made, an examination of the company, and issue his certificate of the result, showing the amounts of capital, of guaranty surplus fund, of special reserve fund, of reinsurance liability, and of other assets, and upon his issuing this certificate, in duplicate, one copy to be given to the company and one to be recorded in the department of insurance, the special reserve fund shall be immediately held to protect all policyholders of the company, other than such as are claimants upon it at the date of the certificate, and the special reserve fund, together with other assets, certified by the commissioner as equal in value to the amount of the unearned premiums of the company, to be ascertained, as hereinbefore provided, shall constitute the capital and assets of the company for the protection of policyholders, other than these claimants, and for the further conduct of its business, and any official certificate of the commissioner, herein provided for, shall be binding and conclusive upon all parties interested in the company, whether as stockholders, creditors, or policyholders, and upon the payment to claimants who are such at the date of the certificate, of the full amount of the capital of the company and of its guaranty surplus fund and of its assets at that date, excepting only the special reserve fund and an amount of its assets equal to the liability of the commissioner, the company shall be forever discharged from any and all further liability to these claimants, and to each of them, and the commissioner shall, after issuing his certificate, upon the demand of the company,

transfer to it all such securities as shall have been deposited with him by the company as a special reserve fund and, if the amount of this special reserve fund be less than 50 percent of the full amount of the capital of the company, if the capital be \$2,000,000, or less, or if the amount of the special reserve fund be less than \$1,000,000, if the capital be over \$2,000,000, a requisition shall be issued by the commissioner upon the stockholders, to make up the capital to that proportion of its full amount, not exceeding \$1,000,000; provided, that any capital so impaired shall be made up at least to the sum of \$100,000, and in case the company, after this requisition, shall fail to make up its capital at least to the sum of \$100,000, as therein directed, the special reserve fund shall still be held as security and liable for any and all losses occurring upon policies of the company. If, after this application of the special reserve fund and requisition on the stockholders, the par value of outstanding shares of stock shall exceed the new amount of capital so established, outstanding shares, to the amount of the excess, shall be surrendered by the stockholders pro rata. The company shall, in its annual statement to the commissioner, set forth the amount of the special reserve fund and of its guaranty surplus fund. If, in consequence of the payment of losses by fires, or of the expenses of the business, or of the interest or dividends payable under the provisions of sections 65.11 to 65.20 to stockholders, or from any cause, the guaranty surplus fund shall be reduced in amount below the amount of the special reserve fund, the directors of the corporation shall make no additions to the special reserve fund until the guaranty surplus fund is equal to the special reserve fund. The policy registers, insurance maps, books of record, and other books in use by the company in its business, and its policy and other blanks, office furniture, fixtures, and supplies are not to be considered as assets, but shall be held by the company for its use in the protection of its policyholders. If any amount greater than a sum equal to one-half of its capital stock shall, by the company under the provisions of sections 65.11 to 65.20, have been deposited with the commissioner, he shall retain of these securities an amount equal to one-half of what amount he shall so hold thereof in excess of a sum equal to such one-half of such capital stock if the capital be \$2,000,000, or less, or in excess of \$3,000,000 if the capital be over \$2,000,000, and he shall transfer the balance thereof to the company, as herein provided, and the amount so transferred to the company shall, from the time of the transfer, provided the amount thereof shall not be less than \$100,000, constitute the capital stock of the company for the further conduct of its business, as hereinbefore provided, and the securities so retained shall be regarded as the special reserve fund of the company, to which additions may be made, as herein provided, and shall be held in the same manner, and for the same purpose, and under the same conditions, as the original special reserve fund of the company was held. The provisions of this section, providing for discharge of the company from further liability to existing claimants upon application to the payment of such claims of its capital, surplus, and assets, excepting the special reserve fund, and an amount equal to the liability for unearned premiums, shall not be construed to relieve the stockholders of the corporation from any liability imposed by the constitution of this state.

[1909 c. 437 s. 8; 1923 c. 130 s. 4] (3529)

65.19 STOCKHOLDERS TO MAKE UP IMPAIRMENT. If, at any time after the special reserve fund shall have been accumulated by any company, the directors of the company shall present evidence satisfactory to the commissioner that the capital of the company has become impaired, he shall order the directors to call upon the stockholders to make up this impairment, and the board of directors may thereupon require the necessary payment by the stockholders to make good the whole of the impairment, or they may apply for that purpose the whole or any part of the special reserve fund and require of the stockholders payment of such amount as may be necessary to make up the balance of the impairment not made up out of the special reserve fund. The stock of every stockholder shall be pledged and liable for the amount assessed upon him to make up the impairment, either in whole or in part, and in case any stockholder refuses to pay the assessment, the stock standing in his name may be sold at public auction, after 30 days notice, in such manner as the directors may provide. If the board of directors elect to make good the impairment, or any part thereof, out of the special reserve fund, the commissioner shall, upon request of the board, transfer to the company so much of the special reserve fund as is necessary for the purpose. No company doing business under sections 65.11 to 65.20 shall insure any

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larger amount upon any single risk than is permitted by law to a company possessing the same amount of capital, irrespective of the fund provided for in sections 65.11 to 65.20.

[1909 c. 437 s. 9] (3530)

65.20 STATEMENT PRINTED ON POLICY. Every policy issued by a company which has constituted and set apart a guaranty surplus and special reserve fund, under sections 65.11 to 65.20, or any prior law of this state, shall have printed thereon by the company a statement that the same is issued under and in pursuance of the laws of the state relating to guaranty surplus and special reserve funds, and every policy shall be deemed to have been issued and received subject to the provisions thereof.

[1909 c. 437 s. 10] (3531)

65.21 [Duplicate of 219.76]