

CHAPTER 65A

FIRE AND RELATED INSURANCE

Sec.	CONTENTS	Sec.	
65A.01	Minnesota standard fire insurance policy	65A.19	Examination
	PROVISIONS RELATING TO OPERATIONS	65A.20	Items considered in estimating profit
65A.02	Joint policy	65A.21	Investment of guaranty surplus
65A.03	Binders, temporary insurance	65A.22	Investment of special reserve fund
65A.04	Effect on section 65A.08	65A.23	When claims exceed guaranty surplus and capital stock
65A.05	Nuclear reaction, radiation or radioactive contamination; endorsement	65A.24	Stockholders to make up impairment
65A.06	Motor vehicle, ocean and inland marine policies	65A.25	Statement printed on policy
65A.07	Cancellation of fire policy		HAIL INSURANCE
65A.08	Special provisions	65A.26	Hail insurance, policies, loss adjustment
65A.09	Insurance in excess of value		MINNESOTA FAIR PLAN ACT
65A.10	Limitation	65A.31	Citation
65A.11	Payment to mortgagee	65A.32	Purposes
65A.12	Waiver of right to arbitration	65A.33	Definitions
65A.13	Liability of company	65A.34	Fair plan; inspections and reports
65A.14	Person who procures an application agent of issuing company	65A.35	Fair plan business; distribution and placement
65A.15	Violation	65A.36	Procedure after inspection and submission
	OPTIONAL SPECIAL RESERVE FUND	65A.37	Standard policy coverage
65A.16	Guaranty surplus and special reserve fund	65A.38	Cancellation
65A.17	Action of stockholders filed with commissioner	65A.39	Right of appeal
65A.18	Dividends declared out of surplus profits	65A.40	Public education
		65A.41	Agent's cooperation
		65A.42	Privileged communications
		65A.43	State back-up

CONTENTS

65A.01 MINNESOTA STANDARD FIRE INSURANCE POLICY. Subdivision 1. **Designation and scope.** The printed form of a policy of fire insurance, as set forth in subdivision 3, 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 65A.06. Any policy or contract otherwise subject to the provisions of this subdivision and subdivision 3 which includes either on an unspecified basis as to coverage or for a single premium, coverage against the peril of fire and coverage against other perils may be issued without incorporating the exact language of the Minnesota Standard Fire Insurance Policy, provided: Such policy or contract shall, with respect to the peril of fire, afford the insured all the rights and benefits of the Minnesota Standard Fire Insurance Policy and such additional benefits as the policy provides; the provisions in relation to mortgagee interests and obligations in said Minnesota Standard Fire Insurance Policy shall be incorporated therein without change; such policy or contract is complete as to its terms of coverage; and, the commissioner is satisfied that such policy or contract complies with the provisions hereof.

Subd. 2. **Company information.** 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.

Subd. 3. **Policy provisions.** On said policy following such matter as provided in subdivisions 1 and 2, 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 policy or an endorsement, rider or form attached thereto. 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 agree-

ment 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 requirements 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, than 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.

MINNESOTA STATUTES 1969

65A.01 FIRE AND RELATED INSURANCE

884

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)

(Signature)

(Name of office)

(Name of office)

Subd. 4. Additional provisions permitted.

(1) 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.

(2) 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).

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

(4) A company, if incorporated or formed in this state, 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.

(5) 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.

(6) A company 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 commis-

sioner of insurance, but no such clause shall contain any provision calling for the lapse or the suspension of the insurance coverage.

(7) A company 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.

(8) 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.

Subd. 5. **Provision prohibited, total loss; limiting amount to be paid.** 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.

[1967 c 395 art 6 s 1]

PROVISIONS RELATING TO OPERATIONS

65A.02 JOINT POLICY. 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.

[1967 c 395 art 6 s 2]

65A.03 BINDERS, TEMPORARY INSURANCE. 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.

[1967 c 395 art 6 s 3]

65A.04 EFFECT ON SECTION 65A.08. Nothing in the preceding sections of this chapter shall be construed to limit the effect of or in any way modify or repeal section 65A.08.

[1967 c 395 art 6 s 4]

65A.05 NUCLEAR REACTION, RADIATION OR RADIOACTIVE CONTAMINATION; ENDORSEMENT. Loss or damage caused by nuclear reaction, nuclear radiation or radioactive contamination, all whether directly or indirectly resulting from an insured peril under the standard policy issued pursuant to sections 65A.01, 65A.02, 65A.03, and 65A.04, may be insured under said policy only by a written endorsement providing such insurance, with such endorsement affixed to said standard policy.

[1967 c 395 art 6 s 5]

65A.06 MOTOR VEHICLE, OCEAN AND INLAND MARINE POLICIES. Insurance on automobiles, motorcycles, other motor vehicles, or on property insured by ocean marine, and inland marine policies as defined by 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 60A.06, subdivision 1, clause (1), need not be in accordance with section 65A.01, but in no event shall this section be applicable to insurance on buildings or structures.

[1967 c 395 art 6 s 6]

65A.07 CANCELLATION 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."

[1967 c 395 art 6 s 7]

65A.08 SPECIAL PROVISIONS. Subdivision 1. **Examination and appraisal required.** 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.

Subd. 2. **Amount collectible.** 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.

Subd. 3. **Agreement as to amount of loss.** Policies on farm buildings or other structures may, in consideration of a reduction in the premium by the company, include a provision determining the amount of loss in connection with repair or replacement of the insured property.

Subd. 4. **Prorating provided.** 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.

Subd. 5. **Coinsurance provision.** 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.

Subd. 6. **Term of policies.** No company shall knowingly issue any policy upon property in this state for a longer term than five years.

[1967 c 395 art 6 s 8]

65A.09 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. 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.

[1967 c 395 art 6 s 9]

65A.10 LIMITATION. Nothing contained in sections 65A.08 and 65A.09 shall be construed to preclude insurance against the cost, in excess of actual cash value at the time any loss or damage occurs, of actually repairing, rebuilding or replacing the insured property.

[1967 c 395 art 6 s 10]

65A.11 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.

[1967 c 395 art 6 s 11]

65A.12 WAIVER OF RIGHT TO ARBITRATION. Subdivision 1. **Right to arbitration.** 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.

Subd. 2. **Appraiser.** No person shall be a qualified appraiser who is not a resident of the state, disinterested, and willing to act.

[1967 c 395 art 6 s 12]

65A.13 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.

[1967 c 395 art 6 s 13]

65A.14 PERSON WHO PROCURES AN APPLICATION AGENT OF ISSUING COMPANY. 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.

[1967 c 395 art 6 s 14]

65A.15 VIOLATION. Every company and every agent who shall wilfully make, issue, or deliver a policy in violation of sections 65A.01, 65A.02, and 65A.03 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.

[1967 c 395 art 6 s 15]

OPTIONAL SPECIAL RESERVE FUND

65A.16 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 65A.16 to 65A.25, upon complying with the requirements thereof.

[1967 c 395 art 6 s 16]

65A.17 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 65A.16 to 65A.25; 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 65A.16 to 65A.25, 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.

[1967 c 395 art 6 s 17]

65A.18 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 percent per annum thereupon and six percent 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 65A.16 to 65A.25, 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 do-

ing business under sections 65A.16 to 65A.25, which shall declare or pay any dividend contrary to the provisions herein contained, shall be liable to be proceeded against under chapter 60B for its dissolution.

[1967 c 395 art 6 s 18; 1969 c 708 s 63]

65A.19 EXAMINATION. When the company shall notify the commissioner that it has fulfilled the requirements already expressed in sections 65A.16 to 65A.25, 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.

[1967 c 395 art 6 s 19]

65A.20 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 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.

[1967 c 395 art 6 s 20]

65A.21 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.

[1967 c 395 art 6 s 21]

65A.22 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 65A.16 to 65A.25.

[1967 c 395 art 6 s 22]

65A.23 WHEN CLAIMS EXCEED GUARANTY SURPLUS AND CAPITAL STOCK. (1) When the claims upon the company shall exceed the amount of its capital stock and of guaranty surplus fund, provided for by sections 65A.16 to 65A.25, 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 de-

partment 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 company for unearned premiums, as so certified by such insurance 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.

(2) 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.

(3) 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.

(4) 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 65A.16 to 65A.25 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.

(5) 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.

(6) If any amount greater than a sum equal to one-half of its capital stock shall, by the company under the provisions of sections 65A.16 to 65A.25, 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.

65A.24 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 65A.16 to 65A.25 shall insure any 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 65A.16 to 65A.25.

[1967 c 395 art 6 s 24]

65A.25 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 65A.16 to 65A.25, 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.

[1967 c 395 art 6 s 25]

HAIL INSURANCE

65A.26 HAIL INSURANCE, POLICIES, LOSS ADJUSTMENT. Every policy of insurance against damage by hail issued by any company, however organized, shall provide as follows: "In case of loss under this policy, and failure of the parties to agree as to the amount of such loss, it is mutually agreed that such amount shall be referred to three disinterested men, the company and the insured each choosing one out of three persons named by the other, the third being selected by such two. The written award of a majority of such referees shall be final and conclusive upon the parties as to amount of loss, and such reference, unless waived by the parties, shall be a condition precedent to any right of action to recover for such loss, and no suit for the recovery of any claim by virtue of this policy shall be sustained unless commenced within six months after the loss occurred," and shall provide the form, manner, and length of notice to be given to the company by the insured of any loss sustained.

[1967 c 395 art 6 s 26]

MINNESOTA FAIR PLAN ACT

65A.31 CITATION. Sections 65A.31 to 65A.43 shall be known and may be cited as "The Minnesota FAIR Plan Act".

[1969 c 483 s 1]

65A.32 PURPOSES. The purposes of sections 65A.31 to 65A.43 are:

- (1) To encourage stability in the property insurance market for property located in urban areas of this state;
- (2) To encourage maximum use, in obtaining basic property insurance, as defined in sections 65A.31 to 65A.43, of the normal insurance market provided by the private property insurance industry;
- (3) To encourage the improvement of the condition of properties located in urban areas of this state and to further orderly community development generally;
- (4) To provide for the formulation and administration by an industry placement facility of a plan assuring fair access to insurance requirements (FAIR Plan) in order that no property shall be denied basic property insurance through the normal insurance market provided by the private property insurance in-

dustry except after a physical inspection of such property and a fair evaluation of its individual underwriting characteristics;

- (5) To publicize the purposes and procedures of the FAIR Plan to the end that no one may fail to seek its assistance through ignorance thereof;
- (6) To provide for the formulation and administration by the industry placement facility of a reinsurance arrangement whereby property insurers shall share equitably the responsibility for insuring insurable property for which basic property insurance cannot be obtained through the normal insurance markets; and
- (7) To provide a framework for participation by the state in a sharing of insured losses resulting from riots and other civil disorders occurring in this state as required by section 1223 of the Housing and Urban Development Act of 1968 (Public Law 90-448, Ninetieth Congress, August 1, 1968).

[1969 c 483 s 2]

65A.33 DEFINITIONS. Subdivision 1. As used in sections 65A.31 to 65A.43, unless the context otherwise requires, the terms defined in this section have the following meaning given to them.

Subd. 2. "Insurer" means any insurance company or other organization licensed to write and engaged in writing property insurance business, including the property insurance components of multi-peril policies, on a direct basis, in this state, except where such insurer is specifically exempted by statute from participation in this program.

Subd. 3. "Basic property insurance" means the coverage against direct loss to real or tangible personal property at a fixed location that is provided in the standard fire policy, extended coverage endorsement, builders risk and such vandalism and malicious mischief insurance and such other classes of insurance as may be added to the program with respect to said property by amendment as hereinafter provided. Basic property insurance does not include automobile, farm or such manufacturing risks as may be excluded by the commissioner.

Subd. 4. "Industry placement facility", hereinafter referred to as the facility, means the organization formed by insurers to assist applicants in urban areas in securing basic property insurance and to administer the FAIR Plan and the joint reinsurance association.

Subd. 5. "Inspection bureau" means the fire insurance rating organization designated by the facility with the approval of the commissioner to make inspections as required under this program and to perform such other duties as may be authorized by the facility.

Subd. 6. "Urban area" includes any municipality or other political subdivision, subject to population or other limitations defined in rules and regulations of the secretary and such additional areas as may be designated by the commissioner.

Subd. 7. "Premiums written" means gross direct premiums, excluding that portion of premium on risks ceded to the joint reinsurance association, charged during the second preceding calendar year with respect to property in this state on all policies of basic property insurance and the basic property insurance premium components of all multi-peril policies, as computed by the facility, less return premiums, dividends paid or credited to policyholders, or the unused or unabsorbed portions of premium deposits.

Subd. 8. "Commissioner" means the commissioner of insurance of the state of Minnesota.

Subd. 9. "Secretary" means the secretary of the United States department of housing and urban development.

Subd. 10. "Servicing Insurer" means an insurer designated by the governing committee to issue policies on behalf of the industry placement facility.

[1969 c 483 s 3]

65A.34 FAIR PLAN; INSPECTIONS AND REPORTS. Subdivision 1. Any person having an insurable interest in real or tangible personal property at a fixed location in an urban area shall be entitled upon oral or written application therefor to the facility to a prompt inspection of the property by the inspection bureau without cost.

Subd. 2. The manner and scope of the inspections of FAIR Plan business shall be prescribed by the facility with the approval of the commissioner.

Subd. 3. An inspection report shall be made for each property inspected. The report shall cover pertinent structural and occupancy features as well as the general

condition of the building and surrounding structures. A representative photograph of the property may be taken during the inspection.

Subd. 4. During the inspection, the inspector shall point out features of structure and occupancy to the applicant or his representative and shall indicate those features which may result in condition charges if the risk is accepted. The inspector shall have no authority to advise whether any insurer will provide the coverage.

Subd. 5. Within five business days after the inspection, a copy of the completed inspection report, and any photograph, indicating the pertinent features of building, construction, maintenance, occupancy and surrounding property shall be sent to the facility. Included with the report shall be a rate make-up statement, including any condition charges or aftercharges which the inspection reveals to be necessary under any substandard rating plan approved by the commissioner. A copy of the inspection report shall be made available to the applicant or his agent upon request. The person requesting the inspection report may designate the insurer or agency to which the inspection report is to be referred.

Subd. 6. Before any insurer may deny coverage or write coverage only at an aftercharged rate, it must cause an inspection to be made of any risk submitted to it, without cost to the owner.

[1969 c 483 s 4]

65A.35 FAIR PLAN BUSINESS; DISTRIBUTION AND PLACEMENT. Subdivision 1. **Membership.** Each insurer which is authorized to write and is engaged in writing within this state, on a direct basis, basic property insurance or any component thereof contained in a multi-peril policy, including homeowners and commercial multi-peril policies, shall participate in the industry placement facility, as herein after described, as a condition of its authority to write such kinds of insurance within this state.

Subd. 2. **Purposes.** The purposes of the facility shall be twofold, as more fully set forth in this section:

(1) To formulate and administer, subject to the approval of the commissioner, a plan assuring fair access to insurance requirements in order that no property in urban areas shall be denied basic property insurance through the normal insurance market provided by the private property insurance industry, except after a physical inspection of such property and a fair evaluation of its individual underwriting characteristics; and

(2) To formulate and administer, subject to the approval of the commissioner, a reinsurance arrangement whereby the members of the facility shall share equitably the responsibility for insuring property in urban areas which is insurable but for which basic property insurance cannot be obtained through normal insurance markets.

Subd. 3. **Organization.** Within 45 days following August 1, 1968, the industry placement facility shall submit to the commissioner for his review a proposed plan of operation of the facility, consistent with the provisions of sections 65A.31 to 65A.43 and the purpose of the facility, which shall provide for the FAIR Plan, the reinsurance arrangement, and the economical and efficient administration of the facility, including, but not limited to, management of the facility, preliminary assessment of all members for initial expenses necessary to commence operations, establishment of necessary facilities within this state, assessment of members to defray losses and expenses, commission arrangements, reasonable underwriting standards, acceptance and cession of reinsurance, and procedures for determining amounts of insurance to be provided.

The plan of operation shall be subject to approval by the commissioner and shall take effect ten days after having been approved by him. If the commissioner disapproves the proposed plan of operation, the facility shall within 15 days submit for review an appropriately revised plan of operation and, if the facility fails to do so, or if the revised plan so filed is unacceptable, the commissioner shall promulgate a plan of operation.

Subd. 4. **Amendment of plan or operation of facility.** The facility shall, on its own initiative, subject to prior approval by the commissioner, or at the direction of the commissioner, amend the plan of operation.

Subd. 5. **Administration.** (1) The facility shall be administered by a governing committee of five members, elected annually by the members of the facility. At

least one member of the governing committee shall be a domestic stock insurer, and at least one member of the governing committee shall be a domestic non-stock insurer. Each member of the facility shall be allotted votes bearing the same ratio to the total number of votes to be cast as its degree of participation in the facility bears to the total participation. Pending the determination of the degree of participation of the members in the facility, each member of the facility shall be allotted votes bearing the same ratio to the total number of votes to be cast as each member's written premium on basic property insurance during calendar year 1968 bears to the state-wide total written premium for basic property insurance during such year. The first governing committee shall be elected at a meeting of the members or their authorized representatives.

(2) Any vacancy on the governing committee shall be filled by a vote of the other members of the governing committee.

(3) If at any time the members fail to elect the required number of members to the governing committee, or a vacancy remains unfilled for more than 15 days, the commissioner may appoint the members necessary to constitute a full governing committee.

Subd. 6. Participation. All members of the facility shall participate in its expenses and in its profits and losses in the proportion that the premiums written as herein defined, but excluding that portion, if any, of premiums which is attributable to the reinsurance arrangement maintained by the facility, by each such member during the second preceding calendar year bear to the aggregate premiums written in this state by all members of the facility. Such participation by each member in the facility shall be determined annually by the facility on the basis of such premiums written during the second preceding calendar year as disclosed in the annual statements and other reports filed by the member with the commissioner.

[1969 c 483 s 5]

65A.36 PROCEDURE AFTER INSPECTION AND SUBMISSION. Subdivision

1. The facility shall, within three business days after receipt of an inspection report and application, complete an action report, advising that:

- (a) The risk is acceptable and if aftercharged, the improvements that will be necessary for the removal of each aftercharge, or
- (b) The risk will be acceptable if the improvements noted in the action report are made by the applicant and confirmed by reinspection, or
- (c) The risk is not acceptable for the reasons stated in the action report.

Subd. 2. If the risk is accepted, the policy or binder shall be delivered to the applicant within five business days of such acceptance, conditioned upon payment of the premium therefor.

Subd. 3. In the event a risk is declined because it fails to meet reasonable underwriting standards, the applicant shall be so notified. Reasonable underwriting standards shall include, but not be limited to, the following:

- (a) Physical condition of the property, such as its construction, heating, wiring, evidence of previous fires or general deterioration;
- (b) Its present use or housekeeping such as vacancy, overcrowding, storage of rubbish or flammable materials;
- (c) Other specific characteristics of ownership, condition, occupancy or maintenance which are violative of public policy and result in increased exposure to loss.

Neighborhood or area location or any environmental hazard beyond the control of the property owner shall not be deemed to be acceptable criteria for declining a risk.

Subd. 4. In the event that a risk is declined on the basis that it does not meet reasonable underwriting standards, or the coverage will be written on condition that the property be improved, the insurer or facility shall, within five business days, send copies of the inspection and action reports to the property owner and the commissioner, and shall advise the property owner of his right to and the procedure for an appeal to the governing committee and to the commissioner.

Subd. 5. If the inspection of the property reveals that there are one or more substandard conditions, aftercharges may be imposed in conformity with the substandard rating plan approved by the commissioner.

[1969 c 483 s 6]

65A.37 STANDARD POLICY COVERAGE. All policies issued shall be for basic property insurance on standard policy forms at rates published by the inspection bureau and shall be issued for a term of one year.

[1969 c 483 s 7]

65A.38 CANCELLATION. Subdivision 1. No insurer shall cancel a policy or binder issued under this program except for:

- (a) Cause which would have been grounds for nonacceptance of the risk under the program had such cause been known to the insurer at the time of acceptance; or
- (b) For non-payment of premium; or
- (c) With the approval of the governing committee.

Subd. 2. At least 15 days notice of cancellation together with a statement of the reason therefor, shall be sent to the insured with a copy sent to the facility.

Subd. 3. Any cancellation notice or notice of refusal to renew to the insured shall be accompanied by a statement that the insured has a right of appeal as hereinafter provided.

[1969 c 483 s 8]

65A.39 RIGHT OF APPEAL. Any applicant or participating insurer shall have the right of appeal to the governing committee, which shall promptly determine said appeal. A decision of the committee may be appealed to the commissioner within 30 days from the action or decision of the committee, and the commissioner shall promptly determine said appeal. Each denial of insurance shall be accompanied by a statement that the applicant has the right of appeal to the governing committee and the commissioner and setting forth the procedures to be followed for such appeal.

[1969 c 483 s 9]

65A.40 PUBLIC EDUCATION. All insurers agree to undertake a continuing public education program, in cooperation with producers and others, to assure that the basic property insurance inspection and placement program receives adequate public attention.

[1969 c 483 s 10]

65A.41 AGENT'S COOPERATION. No agent or broker shall be permitted to refuse an application for basic property insurance within an urban area if he is licensed to write and is actively engaged in writing such insurance.

[1969 c 483 s 11]

65A.42 PRIVILEGED COMMUNICATIONS. There shall be no liability on the part of, and no cause of action of any nature shall arise against insurers, the inspection bureau, the industry placement facility, or their agents or employees or the commissioner or his authorized representatives, for any statements made in good faith by them in any reports or communications concerning the property to be insured, or at the time of any hearings conducted in connection therewith, or in the findings required by the provisions of this article. The inspection reports and communications of the inspection bureau and the industry placement facility shall not be considered public documents.

[1969 c 483 s 12]

65A.43 STATE BACK-UP. (a) In order to carry out the purposes of sections 65A.31 to 65A.43 and make available to insurers who participate hereunder the reinsurance afforded under part B of Title XII of the National Housing Act against losses to property resulting from riots or civil disorders, the commissioner is authorized to assess each insurance company authorized to do business in the state of Minnesota an amount, in the proportion that the premiums earned by each such company in the state of Minnesota, on lines for which reinsurance is available in the state of Minnesota from the Secretary of Housing and Urban Development, during the preceding calendar year bear to the aggregate premiums earned on those lines in the state of Minnesota by all insurance companies, sufficient to provide a fund to reimburse the Secretary of Housing and Urban Development in the manner set forth in Section 1223(a) (1) of such part B. This assessment shall be made after the Secretary of Housing and Urban Development has assessed the state of Minnesota in accordance with the provisions of the National Housing Act.

(b) Insurers shall add to the premium rate an amount, to be approved by the commissioner, sufficient to recover, within not more than three years, any amounts assessed under subsection (a) of this section during the preceding calendar year.

MINNESOTA STATUTES 1969

895

FIRE AND RELATED INSURANCE 65A.43

Such amount shall be a separate charge on all property insurance policies issued in the state of Minnesota in addition to the premium to be paid and shall be reflected as such on all policies of insurance. No commission shall be paid thereon to any agent, or broker producing or selling the policy of insurance wherein such amount is added.

[1969 c 483 s 13]

NOTE: Laws 1969, Chapter 483, Section 14, reads as follows:

"Sec. 14. **Effective date.** Sections 65A.31 to 65A.43 shall be effective retroactive to August 1, 1968."