

MINNESOTA STATUTES 1979 SUPPLEMENT

72B.10 INSURANCE ADJUSTERS

commissioner may order the employing insurer to suspend the staff adjuster from his duties for such period as the commissioner may deem appropriate.

Any final order of the commissioner shall be subject to judicial review. Any hearing or judicial review under this section shall be in accordance with the contested case provisions of chapter 15.

[1979 c 141 s 8]

CHAPTER 79. COMPENSATION INSURANCE

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79.01 Definitions.

[For text of subds 1 to 5, see M.S.1978]

Subd. 6. **Association.** "Association" or "rating association" means the Workers' Compensation Insurers Rating Association of Minnesota.

Subd. 7. **Interested party.** "Interested party" means any person or association acting on behalf of its members who is directly affected by a change in the schedule of rates and includes the staff of the insurance division.

Subd. 8. **Schedule of rates.** "Schedule of rates" means the rate level applicable to the various industry groupings or classes, including the risk classifications thereunder upon which the determination of workers' compensation premiums are based, including but not limited to all systems for merit or experience rating, retrospective rating, and premium discounts.

[Ex1979 c 3 s 1]

79.05 [Repealed, Ex1979 c 3 s 70]

79.06 [Repealed, Ex1979 c 3 s 70]

79.07 [Repealed, Ex1979 c 3 s 70]

79.071 Rates; hearings.

Subdivision 1. The commissioner shall adopt a schedule of workers' compensation insurance rates for use in this state for each classification under which business is written. The schedule of rates shall not be excessive, inadequate, or unfairly discriminatory. In adopting a schedule of rates, the commissioner may act on the written petition of the association or any other interested party requesting that a hearing be held for modification of the schedule of rates. The commissioner may include the expense of a reasonable charge for the services of an agent of record, for the service of rejected risks as set forth in sections 79.24 to 79.27.

Subd. 2. Upon receipt of a petition requesting a hearing for modification of an existing schedule of rates, the commissioner shall determine whether the petition sufficiently sets forth facts that show that the existing schedule of rates is excessive, inadequate, unfairly discriminatory, or otherwise in need of modification so as to indicate the need to hold a hearing. The commissioner may decline to grant a hearing if the association has failed to provide information requested by previous orders modifying the schedule of rates, provided that the request was not unreasonable. The commissioner may accept or reject the petition for a hearing and shall give notice of his determination to the

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petitioning party within 30 days of receipt of the petition. If the commissioner rejects the petition, he shall notify the petitioning party of the reasons for the rejection.

Subd. 3. If the commissioner accepts the petition for hearing, the commissioner shall order a hearing on matters set forth in the petition requesting modification of the schedule of rates. The hearing shall be held pursuant to the contested case procedures set forth in sections 15.0411 to 15.052. The burden of proof shall be on the petitioning party. The hearing examiner may admit documentary and statistical evidence accepted and relied upon by an expert whose field of expertise may have some relevance to workers' compensation rate matters, without the requirement of traditional evidentiary foundation. Within 30 days after the close of the hearing record, the hearing examiner shall transmit to the commissioner the entire record of the hearing, including the transcript, exhibits, and all other material properly accepted into evidence, together with the finding of facts, conclusions, and recommended order made by the hearing examiner. The time for filing the report may be extended by the chief hearing examiner for good cause.

Subd. 4. The commissioner may accept, reject, or modify, in whole or in part, matters raised in the petition for modification of the schedule of rates or matters raised in the findings and recommendations of the hearing examiner. The commissioner's determination shall be based upon substantial evidence.

Subd. 5. The commissioner shall make a final determination with respect to adoption of a schedule of rates within 90 days after receipt of the hearing examiner's report. If the commissioner fails to act within the 90 day period, the findings, conclusions, and recommended order of the hearing examiner become the final order of the commissioner.

Subd. 6. The commissioner may hire a consulting actuary and other experts he deems necessary to assist in the hearing for modification of the schedule of rates. The costs of conducting the hearing provided under subdivision 3, including the costs of hiring a consulting actuary and other experts, shall be assessed against the rating association and its members.

Subd. 7. The office of hearing examiners, upon approval of the chief hearing examiner, may hire consultants necessary to assist the hearing examiner assigned to a given workers' compensation rate proceeding.

[Ex1979 c 3 s 2]

79.072 Petition for rehearing.

Subdivision 1. Any interested party may petition the commissioner for rehearing and reconsideration of a determination made pursuant to section 79.071. The petition for rehearing and reconsideration shall be served upon the commissioner and all parties to the rate hearing within 30 days after service of the commissioner's final order. The petition shall set forth factual grounds the petitioning party deems to exist in support of its petition. An interested party adversely affected by a petition for review and reconsideration shall be afforded 15 days to respond to factual matters so alleged in the petition.

Subd. 2. At his discretion, the commissioner may grant a rehearing upon the filing of a petition under subdivision 1. Upon rehearing, the commissioner may limit the scope of factual matters that are subject to rehearing and reconsideration. The rehearing is subject to the provisions of section 79.071.

Subd. 3. Following rehearing, the commissioner may modify the terms of the initial order adopting a change in the schedule of rates upon a determination that adequate factual grounds exist to support modification. Adequate factual grounds shall include, but need not be limited to, erroneous testimony by any witness or party to the hearing, material change in Minnesota loss or expense data occurring after a petition for modification of the schedule of rates has been filed, or any other mistake of fact that has a substantial effect upon the schedule of rates adopted in the initial order of the commissioner.

[Ex1979 c 3 s 3]

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79.073 Judicial review.

Final orders of the commissioner pursuant to sections 79.071 and 79.072 are subject to judicial review by writ of certiorari brought in the district court in Ramsey County by an interested party of record adversely affected thereby. The operation of the commissioner's order is not suspended during judicial review; provided that in the event of a judicial determination against the validity of the commissioner's order, the order under review and any subsequent order shall be modified so as to give effect to the court's ruling. For purposes of further judicial review, the commissioner is an aggrieved party to the extent that his orders are modified or set aside by the district court.

[Ex1979 c 3 s 4]

79.074 Discrimination.

Subdivision 1. **Rates.** One rate is unfairly discriminatory in relation to another if it clearly fails to reflect equitably the differences in expected losses, expenses, and the degree of risk. Rates are not unfairly discriminatory because different premiums result for policyholders with like loss exposures but different expense factors, or like expense factors but different loss exposures, so long as the rates reflect the differences with reasonable accuracy.

Subd. 2. **Dividends.** Dividend plans are not unfairly discriminatory where different premiums result for different policyholders with similar loss exposures but different expense factors, or where different premiums result for different policyholders with similar expense factors but different loss exposures, so long as the respective premiums reflect the differences with reasonable accuracy. Every insurer referred to in section 79.20 who issues participating policies shall file with the commissioner a true copy or summary as the commissioner shall direct of its participating dividend rates as to policyholders. The commissioner may study the participating dividend rates and make recommendations to the legislature concerning possible bases for unfair discrimination.

[Ex1979 c 3 s 5]

79.075 Automatic adjustment of rates.

The commissioner shall, by rule, establish a formula by which a schedule of rates may be automatically adjusted to reflect benefit changes that have been mandated by operation of law subsequent to the most recent change in the statewide schedule of rates. This adjustment shall also reflect the annual change in the maximum weekly compensation made pursuant to section 176.101, an adjustment in the assessment rate for the financing of the special fund, and the annual adjustment made pursuant to section 176.645. Any automatic adjustment made pursuant to this subdivision is effective on October 1 or as soon thereafter as possible and is not otherwise subject to sections 15.0411 to 15.052.

At each rate hearing held pursuant to section 79.071 or rehearing pursuant to section 79.072, following an automatic adjustment, the commissioner shall review the rate adjustment to assure that the schedule of rates adopted subsequent to the adjustment are not excessive, inadequate, or unfairly discriminatory. If the commissioner finds that the schedule of rates adopted subsequent to the adjustment are excessive, inadequate, or unfairly discriminatory, the commissioner shall order appropriate remedial action.

[Ex1979 c 3 s 6]

79.076 Rate revision order; effect.

Subdivision 1. Following adoption of a revised schedule of rates pursuant to section 79.071 or 79.072, the revised rates apply to new and renewal policies issued after the effective date of the commissioner's final order.

Subd. 2. The revised schedule of rates apply to all insureds and prospective insureds pursuant to the provisions of the workers' compensation rating manual adopted by the association and approved by the commissioner, provided that the manual:

(1) Is deemed to have met the applicable requirements of sections 15.0411 to 15.052 as of June 8, 1979.

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(2) Shall not be amended except by a contested case proceeding held pursuant to sections 79.071 and 79.072.

[*Ex1979 c 3 s 7*]

79.095 Appointment of actuary.

The commissioner shall employ the services of a casualty actuary experienced in worker's compensation whose duties shall include but not be limited to investigation of complaints by insured parties relative to rates, rate classifications, or discriminatory practices of an insurer. The salary of the actuary employed pursuant to this section is not subject to the provisions of section 43.067.

[*Ex1979 c 3 s 8*]

79.10 Review of acts of insurers.

The insurance division staff may investigate on the request of any person or on its own initiative the acts of the rating association, an insurer, or an agent that are subject to provisions of sections 79.01 to 79.23 and may make findings and recommendations that the commissioner issue an order requiring compliance with the provisions thereof. The proposed findings and recommended order shall be served on all affected parties at the same time that the staff transmits its findings and recommendations to the commissioner. Any party adversely affected by the proposed findings and recommended order may request that a hearing be held concerning the issues raised therein within 15 days after service of the findings and recommended order. This hearing shall be conducted as a contested case pursuant to sections 15.0411 to 15.052. If a hearing is not requested within the time specified in this section, the proposed findings and recommended order may be adopted by the commissioner as a final order.

[*Ex1979 c 3 s 9*]

79.171 Information.

In addition to other information that the commissioner requests pursuant to section 79.071, the rating association shall: (a) separate the incurred but not reported losses of its members; (b) separate paid and outstanding losses of its members; (c) provide information indicating cases in which its members have established a reserve in excess of \$50,000; and (d) provide information on the income on invested reserves of its members.

The commissioner shall consider this information in an appropriate manner in adopting a schedule of rates and shall decline to grant a hearing pursuant to section 79.071 if the association fails to provide the information.

[*Ex1979 c 3 s 10*]

79.21 Rates to be uniform; exceptions.

No insurer shall write insurance at a rate that exceeds that made and put into force by the bureau and approved as reasonable by the commissioner. The bureau may reduce or increase a rate by the application to individual risks of the system of merit or experience rating which has been approved by the commissioner. This reduction or increase shall be set forth in the policy or by indorsement thereon. Upon written request an insurer shall furnish a written explanation to the insured of how and why the individual rate was adjusted by application of a system of merit or experience rating. This explanation shall be mailed to the insured within 30 days of the request. An insurer may write insurance at rates that are lower than the rates approved by the commissioner provided the rates are not unfairly discriminatory.

[*1979 c 271 s 2; Ex1979 c 3 s 11*]

79.211 Certain premium determination practices.

Subdivision 1. **Certain wages excluded for rate making.** The rating association or an insurer shall not include wages paid for a vacation, holiday, or sick leave in the determination of a workers' compensation insurance premium.

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Subd. 2. **Division of payroll.** The rating association or an insurer shall permit an employer to divide his payroll among relevant rating classifications for purposes of premium calculation when the employer's records provide adequate support for a division.

[Ex1979 c 3 s 12]

79.22 Duties of commissioner.

Subdivision 1. The commissioner of insurance shall require these insurers, or their agents, to file with him on such blanks as he may prescribe, such reports as in the judgment of the commissioner, may be necessary for the purposes of sections 79.01 to 79.23; and this information when so filed shall be available for the use of the commissioner. No information regarding the writings of any insurer shall be made public by the commissioner or the bureau, or any of its employees, except as required by law.

Subd. 2. The commissioner shall annually examine the reopened case fund established in section 176.134 to determine whether the fund has sufficient assets to cover claims charged against the fund including the maintenance of reasonable reserves. If upon this examination the commissioner deems it necessary for the maintenance of the required assets he shall determine the amount to be assessed against insurers and self-insured employers and shall notify the commissioner of labor and industry of the determination.

[Ex1979 c 3 s 13]

79.221 Independent contractors; payroll determination.

Pursuant to the contested case procedures in sections 15.0411 to 15.052, the commissioner may establish a formula to be used to determine the remuneration of independent contractors whose actual payroll cannot be determined.

[Ex1979 c 3 s 14]

79.25 Bureau to fix premium rates.

Subdivision 1. When any rejected risk is called to its attention and it appears that the risk is in good faith entitled to coverage the bureau shall fix the initial premium therefor and may fix an additional charge to compensate the agent of record for his services and, upon its payment, the bureau shall designate a member, whose duty it shall be to issue a policy containing the usual and customary provisions found in such policies therefor, but for which undertaking all members of the bureau shall be reinsurers as among themselves in the amount which the compensation insurance written in this state during the preceding calendar year by that member bears to the total compensation insurance written in this state during the preceding year by all the members of the bureau.

Subd. 2. An insurer that issues a policy pursuant to this section shall not receive an expense allowance that exceeds the expense allowance approved by the commissioner for other insurers.

[Ex1979 c 3 s 15]

79.33 Additional duties of the commissioner.

In addition to other duties prescribed to the commissioner, he may: (a) study the feasibility of extending the experience rating system to employers who are not covered by it; and (b) require insurers when establishing reserves to use life expectancy tables, when available, that are appropriate for persons with equivalent disabilities. If these life expectancy tables are not available, the commissioner shall require insurers to develop them unless their development is not feasible.

[Ex1979 c 3 s 16]

79.34 Creation of reinsurance association.

Subdivision 1. An unincorporated, nonprofit association known as the workers' compensation reinsurance association is created. Each insurer as defined by section 79.01, subdivision 2, shall as a condition of its authority to transact workers' compensation

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insurance in this state, be a member of the reinsurance association and shall be bound by the plan of operation of the reinsurance association. Each self-insurer approved pursuant to section 176.181 shall also be a member of the reinsurance association and shall be bound by its plan of operation. The reinsurance association shall not be deemed a state agency. Actions of the reinsurance association and its board of directors and actions of the commissioner of insurance with respect to the reinsurance association shall not be subject to chapter 15.

Subd. 2. (1) The reinsurance association shall provide and each member shall accept indemnification for 100 percent of the amount of ultimate loss sustained in each loss occurrence under chapter 176 in excess of \$300,000 or \$100,000 at the option of the member, provided that \$300,000 and \$100,000 shall be increased, to the nearest \$10,000, on October 1, 1980 and on each October 1 thereafter by the percentage increase in the statewide average weekly wage for the previous calendar year as determined pursuant to clause (2). Ultimate loss as used in this section means the actual loss amount which a member is obligated to pay and which is paid or payable by the member and shall not include claim expenses. An ultimate loss is incurred by the reinsurance association on the date on which the accident or other compensable event giving rise to the loss occurs.

A member that chooses the higher retention limit shall retain the liability for all losses below the higher retention limit itself and shall not transfer the liability to any other entity.

(2) For the purposes of this section statewide average weekly wage means that wage determined by the commissioner in the following manner: On or before the July 1 preceding the October 1 on which the increase is to be applicable, the total wages reported to the department of economic security for the preceding 12 months ending on December 31 shall be divided by the total employment reported to that department for the same period to arrive at an average annual wage, which shall be divided by 52 to determine the statewide average weekly wage.

Subd. 3. An insurer may withdraw from the reinsurance association only upon ceasing to write workers' compensation insurance in this state.

An insurer whose membership in the reinsurance association is terminated shall continue to be bound by the plan of operation. Upon withdrawal, all unpaid premiums which have been charged to the withdrawing member shall be payable as of the effective date of the withdrawal.

Subd. 4. An unsatisfied net liability to the reinsurance association of an insolvent member shall be assumed by and apportioned among the remaining members of the reinsurance association as provided in the plan of operation. The reinsurance association shall have all rights allowed by law on behalf of the remaining members against the estate or funds of the insolvent member for sums due the reinsurance association.

Subd. 5. When a member has been merged or consolidated into another insurer, or another insurer, which provides insurance required by chapter 176, has reinsured a member's entire business, the member and successors in interest of the member shall remain liable for the member's obligations.

Subd. 6. No insurer or self-insurer may establish a reserve in a financial statement filed with the commissioner of insurance in excess of its maximum liability under this section for a single claim or occurrence.

[Ex1979 c 3 s 17]

79.35 Duties; responsibilities; powers.

The reinsurance association shall do the following on behalf of its members:

(a) Assume 100 percent of the liability as provided in section 79.34;

(b) Establish procedures by which members shall promptly report to the reinsurance association each claim which, on the basis of the injury sustained, may reasonably be anticipated to involve liability to the reinsurance association if the member is held liable under chapter 176. Solely for the purpose of reporting claims, the member shall in all instances consider itself legally liable for the injury. The member shall advise the reinsurance association of subsequent developments likely to materially affect the interest of the reinsurance association in the claim;

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(c) Maintain relevant loss and expense data relative to all liabilities of the reinsurance association and require each member to furnish statistics in connection with liabilities of the reinsurance association at the times and in the form and detail as may be required by the plan of operation;

(d) Calculate and charge to members a total premium sufficient to cover the expected liability which the reinsurance association will incur in excess of the higher retention limit but less than \$500,000, together with operating expenses, administrative expenses and actual claim payments for claims in excess of \$500,000 for the period to which this premium is applicable. The premium shall include an amount to cover any excess or deficient premiums from previous periods. Each member shall be charged an amount equal to a percentage, equal to that charged other members, of that member's total gross written premiums, less returned premiums, written during the period preceding that to which the reinsurance association premium will apply. An equitable basis for premium charges to self insurers shall be established by the board. Members exercising the lower retention option shall be charged a premium established by the board as sufficient to cover incurred claims for the liability the association is likely to incur for the period to which the premium applies. The premium shall not be unfairly discriminatory as defined in section 79.074. The premium may reflect excessive or deficient premiums from previous periods;

(e) Require and accept the payment of premiums from members of the reinsurance association;

(f) Receive and distribute all sums required by the operation of the reinsurance association;

(g) Establish procedures for reviewing claims procedures and practices of members of the reinsurance association. If the claims procedures or practices of a member are considered inadequate to properly service the liabilities of the reinsurance association, the reinsurance association may undertake, or may contract with another person, including another member, to adjust or assist in the adjustment of claims which create a potential liability to the association and may charge the cost of the adjustment to the member; and

(h) Provide each member of the reinsurance association with an annual report of the operations of the reinsurance association in a form the board of directors may specify.

[Ex1979 c 3 s 18]

79.36 Additional powers.

In addition to the powers granted in section 79.35, the reinsurance association may do the following:

(a) Sue and be sued. A judgment against the reinsurance association shall not create any direct liability against the individual members of the reinsurance association. The reinsurance association may provide for the indemnification of the members, members of the board of directors of the reinsurance association, and officers, employees and other persons lawfully acting on behalf of the reinsurance association;

(b) Reinsure all or any portion of its potential liability with reinsurers licensed to transact insurance in this state;

(c) Provide for appropriate housing, equipment, and personnel as may be necessary to assure the efficient operation of the reinsurance association;

(d) Contract for goods and services, including independent claims management, actuarial, investment, and legal services from others within or without this state to assure the efficient operation of the reinsurance association;

(e) Adopt rules, consistent with the plan of operation, for the administration of the reinsurance association, enforce those rules, and delegate authority as necessary to assure the proper administration and operation of the reinsurance association;

(f) Intervene at any time, in any proceeding under this chapter or chapter 176 in which liability of the reinsurance association may, in the opinion of the board of directors of the reinsurance association or its designee, be established, or the reinsurance association affected in any other way;

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(g) Hear and determine complaints of a company or other interested party concerning the operation of the reinsurance association; and

(h) Perform other acts not specifically enumerated in this section which are necessary or proper to accomplish the purposes of the reinsurance association and which are not inconsistent with sections 79.34 to 79.42 or the plan of operation.

[Ex1979 c 3 s 19]

79.37 Board of directors.

A board of directors of the reinsurance association is created and shall be responsible for the operation of the reinsurance association consistent with the plan of operation and sections 79.34 to 79.42. The board shall consist of nine directors and the commissioner of insurance who shall be an ex officio member. Four members of the board shall represent insurers, three members of the board shall represent employers, and two members of the board shall represent employees. Each board member shall be entitled to one vote. Terms of the directors shall be staggered so that the terms of all the directors do not expire at the same time and so that a director does not serve a term of more than four years. The board shall select a chairman and other officers it deems appropriate.

A majority of the board shall constitute a quorum, notwithstanding any vacancies. Action may be taken by a majority vote of the directors present.

[Ex1979 c 3 s 20]

79.38 Plan of operation.

The plan of operation shall provide for all of the following:

(a) The establishment of necessary facilities;

(b) The management and operation of the reinsurance association;

(c) A preliminary premium, payable by each member in proportion to its total premium in the year preceding the inauguration of the reinsurance association, for initial expenses necessary to commence operation of the reinsurance association;

(d) Procedures to be utilized in charging premiums, including adjustments from excess or deficient premiums from prior periods;

(e) Procedures governing the actual payment of premiums to the reinsurance association;

(f) Reimbursement of each member of the board by the reinsurance association for actual and necessary expenses incurred on reinsurance association business;

(g) The composition, terms, compensation and other necessary rules consistent with section 79.37 for boards of directors of the reinsurance association to succeed the initial board provided in section 79.41;

(h) The investment policy of the reinsurance association; and

(i) Any other matters required by or necessary to effectively implement sections 79.34 to 79.42.

[Ex1979 c 3 s 21]

79.39 Applicability of chapter 79.

The reinsurance association is subject to all the provisions of this chapter. The commissioner or an authorized representative of the commissioner may visit the reinsurance association at any time and examine the reinsurance association's operations, records and practices.

[Ex1979 c 3 s 22]

79.40 Premium inclusion in ratemaking.

Premiums charged members by the reinsurance association shall be recognized in the ratemaking procedures for insurance rates in the same manner as assessments for the special compensation fund.

[Ex1979 c 3 s 23]

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79.41 Organizational meeting.

Not more than 30 days after June 8, 1979, the commissioner shall convene an organizational meeting of the board. The board shall be initially composed of nine members appointed by the commissioner as follows: four representatives of insurers, three representatives of employers, and two representatives of employees. The commissioner or his designee shall serve as an ex officio member. The initial directors shall serve until their replacements are elected and installed. The commissioner may appoint replacement directors as necessary until a full board is elected and installed.

[Ex1979 c 3 s 24]

79.42 Submission of plan.

Subdivision 1. Not more than 60 days after the initial organizational meeting of the board, the board shall submit to the commissioner for approval a proposed plan of operation consistent with the objectives and provisions of sections 79.34 to 79.42 which shall provide for the economical, fair, and nondiscriminatory administration of the reinsurance association and for the prompt and efficient payment of losses. If a plan is not submitted within this 60 day period, the commissioner shall formulate and place into effect a plan consistent with this chapter.

Subd. 2. The plan of operation, unless approved sooner in writing, shall be considered to meet the requirements of sections 79.34 to 79.42 if it is not disapproved by written order of the commissioner within 30 days after the date of its submission. Before disapproval of all or any part of the proposed plan of operation, the commissioner shall notify the board in what respect the plan of operation fails to meet the requirements and objectives of sections 79.34 to 79.42. If the board fails to submit a revised plan of operation which meets the requirements and objectives of sections 79.34 to 79.42 within 30 days of the commissioner's notice of the inadequacy of the first plan, the commissioner shall immediately formulate and place into effect a plan consistent with the requirements and objectives of sections 79.34 to 79.42.

Subd. 3. The proposed plan of operation or amendments to the plan of operation shall be subject to approval by the board, with voting rights being apportioned according to the premiums charged, and shall be subject to approval by the commissioner.

Subd. 4. Upon approval by the commissioner and ratification by the members of the submitted plan, or upon the promulgation of a plan by the commissioner, each insurer authorized to write workers' compensation insurance shall be bound by and shall formally subscribe to and participate in the approved plan as a condition of maintaining its authority to transact insurance in this state.

[Ex1979 c 3 s 25]

CHAPTER 80A. REGULATION OF SECURITIES

Sec.
80A.15 Exemptions.

80A.15 Exemptions.

Subdivision 1. The following securities are exempted from sections 80A.08 and 80A.16:

(a) Any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state or any corporate or other instrumentality of one or more of the foregoing; but this exemption shall not include any industrial revenue bond.

(b) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing, if the security is recognized as a valid obligation by the issuer or guarantor; but this exemption shall not include any revenue obligation payable solely from payments to be made in respect of property or money used under a lease, sale or loan arrangement by or for a nongovernmental industrial or commercial enterprise.