

CHAPTER 72A

REGULATION OF TRADE PRACTICES

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SCOPE

72A.01 SCOPE.

This chapter includes certain prohibitions and penalties. Other prohibitions and penalties may be found in other articles of Laws 1967, chapter 395, and other state laws.

History: 1967 c 395 art 12 s 1

PROHIBITIONS AND PENALTIES IN GENERAL

72A.02 VIOLATIONS AS TO POLICIES OF INSURANCE.

Every company, and every officer and agent of any company, making, issuing, delivering, or tendering any policy of insurance of any kind, or directing any of the same to be done, in willful violation of any of the provisions of law, for a first offense, shall be guilty of a misdemeanor, and for each subsequent offense, of a gross misdemeanor; and, in addition to all other penalties prescribed by law, every company issuing any such policy shall be disqualified from doing any insurance business in this state until the payment of all fines imposed and for one year thereafter.

History: 1967 c 395 art 12 s 2

72A.03 AGENT OF INSURER; PROCURING PREMIUMS BY FRAUD.

Every insurance agent who acts for another in negotiating a contract of insurance by an insurance company shall be held to be the company's agent for the purpose of collecting or securing the premiums therefor, whatever conditions or stipulations may be contained in the contract or policy. Any such agent who by fraudulent representations procures payment, or an obligation for the payment, of an insurance premium shall be guilty, for the first offense, of a misdemeanor, and for each subsequent offense, of a gross misdemeanor.

History: 1967 c 395 art 12 s 3; 1986 c 444

72A.04 FALSE STATEMENTS IN APPLICATION.

Every solicitor, agent, examining physician, or other person who knowingly or willfully makes a false or fraudulent statement in, or relative to, any application for insurance or membership for any purpose shall be guilty of a gross misdemeanor.

History: 1967 c 395 art 12 s 4

72A.05 FAILURE TO MAKE REPORT OR COMPLY WITH LAW.

Every officer and agent of any insurance company required to make any report or perform any act who shall neglect or refuse to comply with such requirement, and every agent, solicitor, or collector of the corporation in this state who fails or neglects to procure from the commissioner a certificate of authority to do such business, or who fails or refuses to comply with, or violates, any provision of the insurance law, shall be guilty, for the first offense, of a misdemeanor, and for each subsequent offense, of a gross misdemeanor.

History: 1967 c 395 art 12 s 5

72A.06 [Repealed, 1977 c 316 s 3]**72A.061 MANDATORY FILINGS; FAILURE TO COMPLY; PENALTIES.**

Subdivision 1. Annual statements. Any insurance company licensed to do business in this state, including fraternal, reciprocal and township mutuals, which neglects to file its annual statement in the form prescribed and within the time specified by law shall be subject to a penalty of \$25 for each day in default. If, at the end of 90 days, the default has not been corrected, the company shall be given ten days in which to show cause to the commissioner why its license should not be suspended. If the company has not made the requisite showing within the ten-day period, the license and authority of the company may, at the discretion of the commissioner, be suspended during the time the company is in default.

Any insurance company, including fraternal, reciprocal, and township mutuals, willfully making a false annual or other required statement shall pay a penalty to the state not to exceed \$5,000. Either or both of the monetary penalties imposed by this subdivision may be recovered in a civil action brought by and in the name of the state.

Subd. 2. Articles of incorporation; bylaws. Any insurance company licensed to do business in this state, including fraternal and township mutuals, which neglects to file amended bylaws or related amendments within 30 days after date of approval shall be subject to a penalty of \$25 for each day in default.

Any insurance company licensed to do business in this state, including fraternal and township mutuals, which neglects to file amended articles of incorporation or related amendments within 30 days after date of approval shall be subject to a penalty of \$25 for each day in default, provided that foreign insurers shall be allowed 60 days in which to file.

If after 90 days the filings required under this subdivision are still in default, the company shall be given ten days in which to show cause why its license should not be suspended.

Subd. 3. Other filings. Any insurance company licensed to do business in this state, including fraternal, reciprocal, and township mutuals, which neglects to comply with any other mandatory filing in the form prescribed and within the time specified by law or as specified on the document shall be subject to a penalty of \$25 for each day in default. If after 90 days a default has not been corrected, the company shall be given ten days in which to show cause why its license should not be suspended.

Subd. 4. Suspension, discretionary powers. Any company which writes new business in this state, including fraternal, reciprocal and township mutuals, while its license is suspended and after it has been notified by the commissioner by a notice mailed to the home office of the company that its license has been suspended shall pay to the state the sum of \$25 for each contract of insurance entered into by it after being notified of its license suspension. The notification shall be mailed by registered letter and deemed to have been received by the company at its home office in the usual course of the mails.

Subd. 5. Extensions. The commissioner may grant an extension of any filing deadline or requirement specified by this section, on receiving, not less than ten days before the date of default, satisfactory evidence of imminent hardship to the company.

Subd. 6. Penalties; deposit to general fund. All penalties recovered pursuant to this section shall be paid into the general fund.

History: 1977 c 316 s 1; 1984 c 592 s 71; 1986 c 444

72A.062 [Repealed, 1982 c 622 s 5]

72A.07 VIOLATIONS OF LAWS RELATING TO AGENTS, PENALTIES.

Any person, firm, or corporation violating, or failing to comply with, any of the provisions of section 60A.17 and any person who acts in any manner in the negotiation or transaction of unlawful insurance with an insurance company not licensed to do business in the state, or who, as principal or agent, violates any provision of law relating to the negotiation or effecting of contracts of insurance, shall be guilty of a misdemeanor. Upon the filing of a complaint by the commissioner of commerce in a court of competent jurisdiction against any person violating any provisions of this section, the county attorney of the county in which the violation occurred shall prosecute the person. Upon the conviction of any agent of any violation of the provisions of section 60A.17, the commissioner shall suspend the authority of the agent to transact any insurance business within the state for a period of not less than three months. Any insurer employing an agent and failing to procure an appointment, as required by section 60A.17, or allowing the agent to transact business for it within the state before an appointment has been procured, shall pay the commissioner, for the use of the state, a penalty of \$25 for each offense. Each sale of an insurance policy by an agent who is not appointed by an insurance company shall constitute a separate offense, but no insurer shall be required to pay more than \$300 in penalties as a result of the activities of a single unappointed agent. In the event of failure to pay a penalty within ten days after notice from the commissioner, the authority of the insurer to do business in this state shall be revoked by the commissioner until the penalty is paid. No insurer whose authority is revoked shall be readmitted until it shall have complied with all the terms and conditions imposed for admission in the first instance. Any action taken by the commissioner under this section shall be subject to review by the district court of the county in which the office of the commissioner is located.

History: 1967 c 395 art 12 s 7; 1977 c 243 s 4; 1983 c 289 s 114 subd 1; 1984 c 592 s 72; 1984 c 655 art 1 s 92

72A.08 LAWS AGAINST REBATE.

Subdivision 1. Rebate defined and prohibited. No insurance company or association, however constituted or entitled, doing business in this state, nor any officer, agent, subagent, solicitor, employee, intermediary, or representative thereof, shall make or permit any advantage or distinction in favor of any insured individual,

firm, corporation, or association with respect to the amount of premium named in, or to be paid on, any policy of insurance, or shall offer to pay or allow directly or indirectly or by means of any device or artifice, as inducements to insurance, any rebate or premium payable on the policy, or any special favor or advantage in the dividends or other profit to accrue thereon, or any valuable consideration or inducement not specified in the policy contract of insurance, or give, sell, or purchase, offer to give, sell or purchase, as inducement to insure or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, partnership, or individual, or any dividends or profits accrued or to accrue thereon, or anything of value, not specified in the policy.

Subd. 2. Insured prohibited from receiving rebates. No person shall receive or accept from any such company or association, or from any of its officers, agents, subagents, solicitors, employees, intermediaries, or representatives, or any other person any such rebate of premium payable on the policy, or any special favor or advantage in the dividends or other financial profits accrued, or to accrue, thereon, or any valuable consideration or inducement not specified in the policy of insurance. No person shall be excused from testifying, or from producing any books, papers, contracts, agreements, or documents, at the trial of any other person, copartnership, association, or company charged with violation of any provision of this section on the ground that the testimony or evidence may tend to incriminate; but no person shall be prosecuted for any act concerning which the person shall be compelled to so testify or produce evidence, documentary or otherwise, except for perjury committed in so testifying.

Subd. 3. Penalty for rebate. Any company, association, or individual violating any provisions of this section, whether the violation be in the giving or accepting of anything herein prohibited, shall be punished by a fine of not less than \$60 nor more than \$200.

Subd. 4. Exceptions. The provisions of this section shall not apply to any policy procured by officers, agents, subagents, employees, intermediaries, or representatives wholly and solely upon property of which they are, respectively, the owner at the time of procuring the policy, where the officers, agents, subagents, employees, intermediaries, or representatives are, and have been for more than six months prior to the issuing of the policy, regularly employed by, or connected with, the company or association issuing the policy; and any life insurance company doing business in this state may issue industrial policies of life or endowment insurance, with or without annuities, with special rates of premiums less than the usual rates of premiums for these policies, to members of labor organizations, credit unions, lodges, beneficial societies, or similar organizations, or employees of one employer, who, through their secretary or employer, may take out insurance in an aggregate of not less than 50 members and pay their premiums through the secretary or employer.

History: 1967 c 395 art 12 s 8; 1986 c 444

72A.09 VIOLATIONS WHERE OFFENSE IS NOT SPECIFICALLY DESIGNATED.

Whoever violates any provision of the insurance law where the nature of the offense is not specifically designated herein shall be guilty, for the first offense, of a misdemeanor, and for each subsequent offense, of a gross misdemeanor.

History: 1967 c 395 art 12 s 9

72A.10 FAILURE TO APPEAR OR OBSTRUCTING COMMISSIONER.

Whoever without justifiable cause neglects, upon due summons, to appear and testify before the commissioner, or obstructs the commissioner, or deputy or assistant commissioner, in an examination of an insurance company, shall be guilty, for the first offense, of a misdemeanor, and for each subsequent offense, of a gross misdemeanor.

History: 1967 c 395 art 12 s 10; 1986 c 444

72A.11 COMPLAINANT ENTITLED TO ONE-HALF OF FINE IN CERTAIN CASES.

The person, other than the commissioner, or deputy or assistant commissioner, upon whose complaint a conviction is had for violation of the law prohibiting insurance in or by foreign companies not authorized to do business in this state, shall be entitled to one-half the fine recovered upon sentence therefor.

History: 1967 c 395 art 12 s 11

72A.12 LIFE INSURANCE.

Subdivision 1. Issue of prohibited life policies. Every officer or agent of a life insurance company who shall issue any policy in violation of any order or other prohibition by the commissioner made pursuant to law, shall be guilty, for the first offense, of a misdemeanor, and for each subsequent offense, of a gross misdemeanor.

Subd. 2. Misrepresentation by insurer or agent. No life insurance company doing business in this state, and no officer, director or agent thereof, shall issue or circulate, or cause or permit to be issued or circulated, any estimate, illustration, circular or statement of any sort misrepresenting the terms of any policy issued by it or the benefits or advantages promised thereby, or the dividends or shares of surplus to be received thereon, or shall use any name or title of any policy or class of policies misrepresenting the true nature thereof.

Any person violating the provisions of this subdivision shall be guilty of a misdemeanor, and the license of any company which shall authorize or permit a violation of this subdivision shall be revoked.

Subd. 3. Discrimination in accepting risks. No life insurance company or agent, all other conditions being equal, shall make any discrimination in the acceptance of risks, in rates, premiums, dividends, or benefits of any kind, or by way of rebates, between persons of the same class, or on account of race; and upon request of any person whose application has been rejected, the company shall furnish the rejected applicant, in writing, the reasons therefor, including a certificate of the examining physician that such rejection was not for any racial cause. Every company violating either of the foregoing provisions shall forfeit not less than \$500, nor more than \$1,000, and every officer, agent, or solicitor violating the same shall be guilty of a gross misdemeanor; and the commissioner shall revoke the license of such company and its agents, and grant no new license within one year thereafter.

Subd. 4. Discrimination; rebates. No life insurance company doing business in this state shall make or permit any distinction or discrimination in favor of individuals between insureds of the same class and equal expectation of life in the amount or payment of premiums or rates charged for policies of life or endowment insurance, or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the contracts it makes; nor shall any such company or agent thereof make any contract of insurance or agreement as to such contract other than as plainly expressed in the policy issued thereon; nor shall any such company or any officer, agent, solicitor, or representative thereof pay, allow or give, or offer to pay, allow or give, directly or indirectly, as inducement to insurance, any rebate of premium payable on the policy, or any special favor or advantage in the dividends or other benefits to accrue thereon or any paid employment or contract for services of any kind, or any valuable consideration or inducement whatever not specified in the policy contract of insurance.

Any violation of the provisions of this subdivision shall be a misdemeanor and punishable as such.

Subd. 5. Political contributions prohibited. No insurance company or association, including fraternal beneficiary associations, doing business in this state, shall, directly or indirectly, pay or use, or offer, consent or agree to pay or use, any money or property for or in aid of any political party, committee or organization, or for or in aid of any corporation, joint stock or other association organized or maintained for political purposes, or for or in aid of any candidate for political office, or for nomination for the

office, or for any other political purpose, or for reimbursement or indemnification of any person for money or property used for political purposes. Any officer, director, stockholder, attorney or agent of any corporation or association which violates any of the provisions of this section, who participates in, aids, abets, or advises or consents to any violation, and any person who solicits or knowingly receives any money or property in violation of this section, is guilty of a gross misdemeanor. Any officer aiding or abetting in any contribution made in violation of this section is liable to the company or association for the amount contributed. No person shall be excused from attending and testifying, or producing any books, papers or other documents before any court, upon any investigation, proceeding or trial, for a violation of any of the provisions of this section, upon the ground, or for the reason, that the testimony or evidence, documentary or otherwise, required may tend to incriminate or degrade the person. No person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which the person may testify or produce evidence, documentary or otherwise, and no testimony given or produced shall be used against that person upon any criminal investigation or proceeding.

History: 1967 c 395 art 12 s 12; 1983 c 359 s 1; 1986 c 444

72A.13 ACCIDENT AND HEALTH INSURANCE, VIOLATIONS OF CERTAIN SECTIONS; PENALTIES.

Subdivision 1. Any company, corporation, association, society, or other insurer, or any officer or agent thereof, which or who solicits, issues or delivers to any person in this state any policy in violation of the provisions of sections 60A.06, subdivision 3 or 62A.01 to 62A.10, may be punished by a fine of not more than \$100 for each offense, and the commissioner may revoke the license of any company, corporation, association, society, or other insurer of another state or country, or of the agent thereof, which or who willfully violates any provision of sections 60A.06, subdivision 3 or 62A.01 to 62A.10.

Subd. 2. No insurer, company, corporation, association, society, trust or other person may solicit, deliver or issue to any person in this state mass marketed life or health insurance if the total charges for the insurance to the persons insured are unreasonable in relation to the benefits provided. As to health insurance, the applicable standards are those established pursuant to section 62A.02, subdivision 3. A finding that total charges are unreasonable in relation to the benefits provided shall be made pursuant to the contested case provisions of chapter 14. After the finding is made, the commissioner may institute the penalties provided in subdivision 1 and may issue an order directing the insurer to cease and desist the solicitation, delivery or issuance of the insurance. The order shall be in effect until the total charges for the insurance are found to be reasonable in relation to the benefits. For the purposes of this section:

(a) "Mass marketed life or health insurance" means the insurance under any individual, franchise, group or blanket policy of life or health insurance which is offered by means of direct response solicitation through a sponsoring organization or through the mails or other mass communications media under which the person insured pays all or substantially all of the cost of the insurance.

(b) "Direct response solicitation" means any offer by an insurer to persons in this state, either directly or through a third party, to effect life or health insurance coverage which enables the individual to apply or enroll for the insurance on the basis of the offer. It does not include solicitations for insurance through an employee benefit plan which is defined in Public Law Number 93-406, Statutes at Large, volume 88, page 829, nor does it include such a solicitation through the individual's creditor with respect to credit life or credit health insurance.

Subd. 3. Any insurer extending mass marketed life or health insurance under a group or blanket policy issued outside this state to residents of this state shall:

(a) Comply with respect to such insurance with the requirements of this state relating to advertising and to claims settlement practices; and

(b) Upon request of the commissioner make available, for the purpose of determining compliance with the provisions of this section, copies of any such policy or certificates issued thereunder, and advertising material used within this state in connection with the insurance.

History: 1967 c 395 art 12 s 13; 1980 c 436 s 1; 1982 c 424 s 130; 1986 c 455 s 57

72A.135 FAILURE TO FOLLOW DIVIDEND AND PRICING POLICY; PENALTIES.

An insurer failing to file and adhere to the plan required by section 61A.03, subdivision 2, paragraph (h), is subject to a civil penalty of not more than \$5,000 for each violation.

History: 1983 c 292 s 3

- 72A.14 [Renumbered 65B.13]
- 72A.141 [Renumbered 65B.14]
- 72A.142 [Renumbered 65B.15]
- 72A.143 [Renumbered 65B.16]
- 72A.144 [Renumbered 65B.17]
- 72A.145 [Renumbered 65B.18]
- 72A.146 [Renumbered 65B.19]
- 72A.147 [Renumbered 65B.20]
- 72A.148 [Renumbered 65B.21]
- 72A.149 [Renumbered 65B.22]
- 72A.1491 [Renumbered 65B.23]
- 72A.1492 [Renumbered 65B.24]
- 72A.1493 [Renumbered 65B.25]
- 72A.1494 [Renumbered 65B.26]
- 72A.1495 [Renumbered 65B.27]

72A.15 PENALTY FOR VIOLATION OF LAW PROVIDING FOR INSURANCE IN UNLICENSED COMPANIES.

Every person licensed to procure insurance in an unlicensed foreign company who fails to file the affidavit and statement required in such case or who willfully makes a false affidavit or statement shall forfeit the license and be guilty, for the first offense, of a misdemeanor, and for each subsequent offense, of a gross misdemeanor.

History: 1967 c 395 art 12 s 15; 1986 c 444

72A.16 MUTUAL COMPANIES.

Subdivision 1. Unlawful procurement or use of proxy. Every officer or agent of a domestic mutual insurance company who shall solicit, receive, procure to be obtained, or use, a proxy vote in violation of any provision of law shall be guilty of a gross misdemeanor.

Subd. 2. Guaranty against assessment. Every director, officer, or agent of an insurance company who officially or privately gives a guaranty to a policyholder thereof against an assessment for which the policyholder would otherwise be liable shall be guilty of a misdemeanor.

History: 1967 c 395 art 12 s 16; 1986 c 444

REGULATION OF TRADE PRACTICES

72A.17 PURPOSE OF SECTIONS 72A.17 TO 72A.32.

The purpose of sections 72A.17 to 72A.32 is to regulate trade practices in the

business of insurance in accordance with the intent of Congress as expressed in the Act of Congress of March 9, 1945 (Public Law Number 15, 79th Congress), by defining, or providing for the determination of, all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.

History: 1967 c 395 art 12 s 17

72A.18 DEFINITIONS.

Subdivision 1. **General.** Unless the context clearly indicates otherwise, the following terms, when used in sections 72A.17 to 72A.32, shall have the meanings, respectively ascribed to them in this section.

Subd. 2. **Person.** "Person" means any individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyds insurer, fraternal benefit society, or any other legal entity, engaged in the business of insurance, including an agent, a solicitor, or an adjuster and for the purposes of sections 72A.31 and 72A.32 "person" shall in addition mean any person, firm or corporation even though not engaged in the business of insurance.

History: 1967 c 395 art 12 s 18

72A.19 UNFAIR METHODS AND UNFAIR OR DECEPTIVE ACTS AND PRACTICES PROHIBITED.

Subdivision 1. No person shall engage in this state in any trade practice which is defined in sections 72A.17 to 72A.32 as or determined pursuant to sections 72A.17 to 72A.32 to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

Subd. 2. The commissioner may, in accordance with chapter 14, promulgate reasonable rules as the commissioner deems necessary to enforce and administer the provisions of this chapter.

History: 1967 c 395 art 12 s 19; 1980 c 436 s 2; 1982 c 424 s 130; 1985 c 248 s 70; 1986 c 444

72A.20 METHODS, ACTS AND PRACTICES WHICH ARE DEFINED AS UNFAIR OR DECEPTIVE.

Subdivision 1. **Misrepresentations and false advertising of policy contracts.** Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies, or making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates, or using any name or title of any policy or class of policies misrepresenting the true nature thereof, or making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender insurance, shall constitute an unfair method of competition and an unfair and deceptive act or practice in the business of insurance.

Subd. 2. **False information and advertising generally.** Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station, or in any other way, an advertisement, announcement, or statement, containing any assertion, representation, or statement with respect to the business of insurance, or with respect to any person in the conduct of the person's insurance business, which is untrue, deceptive, or misleading, shall constitute an unfair method of competition and an unfair and deceptive act or practice.

Subd. 3. **Defamation.** Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance, shall constitute an unfair method of competition and an unfair and deceptive act or practice.

Subd. 4. **Boycott, coercion and intimidation.** Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion, or intimidation, resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance, shall constitute an unfair method of competition and an unfair and deceptive act or practice.

Subd. 5. **False financial statements.** Filing with any supervisory or other public official, or making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer with intent to deceive, shall constitute an unfair method of competition and an unfair and deceptive act or practice in the insurance business.

Subd. 6. **False entries.** Making any false entry in any book, report, or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom such insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report, or statement of such insurer, shall constitute an unfair method of competition and an unfair and deceptive act or practice.

Subd. 7. **Stock operations and advisory board contracts.** Issuing or delivering, or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance, shall constitute an unfair method of competition and an unfair and deceptive act or practice.

Subd. 8. **Discrimination.** Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract or in making or permitting the rejection of an individual's application for life insurance coverage, as well as the determination of the rate class for such individual, on the basis of a disability, shall constitute an unfair method of competition and an unfair and deceptive act or practice, unless the claims experience and actuarial projections and other data establish significant and substantial differences in class rates because of the disability.

Subd. 9. **Discrimination between individuals of the same class.** Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever, or in making or permitting the rejection of an individual's application for accident or health insurance coverage, as well as the determination of the rate class for such individual, on the basis of a disability, shall constitute an unfair method of competition and an unfair and deceptive act or practice, unless the claims experience and actuarial projections and other data establish significant and substantial differences in class rates because of the disability.

Subd. 10. **Rebates.** Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of life insurance, annuity, or accident and health insurance, or agreement as to such contract, other than as plainly

expressed in the contract issued thereon, or paying or allowing or giving, or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving or selling or purchasing, or offering to give, sell, or purchase, as inducement to such insurance or annuity, or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract, shall constitute an unfair method of competition and an unfair and deceptive act or practice.

Subd. 11. Application to certain sections. Violating any provision of the following sections of this chapter not set forth in subdivisions 1 to 15 shall constitute an unfair method of competition and an unfair and deceptive act or practice: sections 72A.12, subdivisions 2, 3, and 4, 72A.16, subdivision 2, 72A.03 and 72A.04, 72A.08, subdivision 1 as modified by section 72A.08, subdivision 4, and 65B.13.

Subd. 12. Unfair service. Causing or permitting with such frequency to indicate a general business practice any unfair, deceptive, or fraudulent act concerning any claim or complaint of an insured or claimant including, but not limited to, the following practices:

(1) misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;

(2) failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

(3) failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(4) refusing to pay claims without conducting a reasonable investigation based upon all available information;

(5) failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

(6) not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;

(7) compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by the insureds;

(8) attempting to settle a claim for less than the amount to which reasonable persons would have believed they were entitled by reference to written or printed advertising material accompanying or made part of an application;

(9) attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of, the insured;

(10) making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which the payments are being made;

(11) making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

(12) delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

(13) failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage;

(14) failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

Subd. 12a. **Claims settlement.** (a) **Administrative enforcement.** The commissioner may, in accordance with chapter 14, adopt rules to insure the prompt, fair, and honest processing of claims and complaints. The commissioner may, in accordance with sections 72A.22 to 72A.25, seek and impose appropriate administrative remedies, including fines, for (1) a violation of this subdivision or the rules adopted pursuant to this subdivision; or (2) a violation of subdivision 12. The commissioner need not show a general business practice in taking an administrative action for these violations.

No individual violation constitutes an unfair, discriminatory, or unlawful practice in business, commerce, or trade for purposes of section 8.31.

(b) **Construction.** The policy of the department of commerce, in interpreting and enforcing this subdivision, will be to take into consideration all pertinent facts and circumstances in determining the severity and appropriateness of the action to be taken in regard to any violation of this subdivision.

The magnitude of the harm to the claimant or insured, and any actions by the insured, claimant, or insurer that mitigate or exacerbate the impact of the violation may be considered.

Actions of the claimant or insured which impeded the insurer in processing or settling the claim, and actions of the insurer which increased the detriment to the claimant or insured may also be considered in determining the appropriate administrative action to be taken.

(c) **Definitions.** For the purposes of this subdivision, the following terms have the meanings given them.

(1) **Adjuster or adjusters.** "Adjuster" or "adjusters" is as defined in section 72B.02.

(2) **Agent.** "Agent" means insurance agents or insurance agencies licensed pursuant to section 60A.17, and representatives of these agents or agencies.

(3) **Claim.** "Claim" means a request or demand made with an insurer for the payment of funds or the provision of services under the terms of any policy, certificate, contract of insurance, binder, or other contracts of temporary insurance. The term does not include a claim under a health insurance policy made by a participating provider with an insurer in accordance with the participating provider's service agreement with the insurer which has been filed with the commissioner of commerce prior to its use.

(4) **Claim settlement.** "Claim settlement" means all activities of an insurer related directly or indirectly to the determination of the extent of liabilities due or potentially due under coverages afforded by the policy, and which result in claim payment, claim acceptance, compromise, or other disposition.

(5) **Claimant.** "Claimant" means any individual, corporation, association, partnership, or other legal entity asserting a claim against any individual, corporation, association, partnership, or other legal entity which is insured under an insurance policy or insurance contract of an insurer.

(6) **Complaint.** "Complaint" means a communication primarily expressing a grievance.

(7) **Insurance policy.** "Insurance policy" means any evidence of coverage issued by an insurer including all policies, contracts, certificates, riders, binders, and endorsements which provide or describe coverage. The term includes any contract issuing coverage under a self-insurance plan, group self-insurance plan, or joint self-insurance employee health plans.

(8) **Insured.** "Insured" means an individual, corporation, association, partnership, or other legal entity asserting a right to payment under their insurance policy or insurance contract arising out of the occurrence of the contingency or loss covered by the policy or contract. The term does not apply to a person who acquires rights under a mortgage.

(9) **Insurer.** "Insurer" includes any individual, corporation, association, partnership, reciprocal exchange, Lloyds, fraternal benefits society, self-insurer, surplus line insurer, self-insurance administrator, and nonprofit service plans under the jurisdiction of the department of commerce.

(10) Investigation. "Investigation" means a reasonable procedure adopted by an insurer to determine whether to accept or reject a claim.

(11) Notification of claim. "Notification of claim" means any communication to an insurer by a claimant or an insured which reasonably apprises the insurer of a claim brought under an insurance contract or policy issued by the insurer. Notification of claim to an agent of the insurer is notice to the insurer.

(12) Proof of loss. "Proof of loss" means the necessary documentation required from the insured to establish entitlement to payment under a policy.

(13) Self-insurance administrator. "Self-insurance administrator" means any vendor of risk management services or entities administering self-insurance plans, licensed pursuant to section 60A.23, subdivision 8.

(14) Self-insured or self-insurer. "Self-insured" or "self-insurer" means any entity authorized pursuant to section 65B.48, subdivision 3; chapter 62H; section 176.181, subdivision 2; Laws of Minnesota 1983, chapter 290, section 171; section 471.617; or section 471.981 and includes any entity which, for a fee, employs the services of vendors of risk management services in the administration of a self-insurance plan as defined by section 60A.23, subdivision 8, clause (2), subclauses (a) and (d).

(d) **Standards for claim filing and handling.** The following acts by an insurer, an adjuster, a self-insured, or a self-insurance administrator constitute unfair settlement practices:

(1) except for claims made under a health insurance policy, after receiving notification of claim from an insured or a claimant, failing to acknowledge receipt of the notification of the claim within ten business days, and failing to promptly provide all necessary claim forms and instructions to process the claim, unless the claim is settled within ten business days. The acknowledgment must include the telephone number of the company representative who can assist the insured or the claimant in providing information and assistance that is reasonable so that the insured or claimant can comply with the policy conditions and the insurer's reasonable requirements. If an acknowledgment is made by means other than writing, an appropriate notation of the acknowledgment must be made in the claim file of the insurer and dated. An appropriate notation must include at least the following information where the acknowledgment is by telephone or oral contact:

- (i) the telephone number called, if any;
- (ii) the name of the person making the telephone call or oral contact;
- (iii) the name of the person who actually received the telephone call or oral contact;
- (iv) the time of the telephone call or oral contact; and
- (v) the date of the telephone call or oral contact;

(2) failing to reply, within ten business days of receipt, to all other communications about a claim from an insured or a claimant that reasonably indicate a response is requested or needed;

(3) unless provided otherwise by law or in the policy, failing to complete its investigation and inform the insured or claimant of acceptance or denial of a claim within 30 business days after receipt of notification of claim unless the investigation cannot be reasonably completed within that time. In the event that the investigation cannot reasonably be completed within that time, the insurer shall notify the insured or claimant within the time period of the reasons why the investigation is not complete and the expected date the investigation will be complete. For claims made under a health policy the notification of claim must be in writing;

(4) where evidence of suspected fraud is present, the requirement to disclose their reasons for failure to complete the investigation within the time period set forth in clause (3) need not be specific. The insurer must make this evidence available to the department of commerce if requested;

(5) failing to notify an insured who has made a notification of claim of all available

benefits or coverages which the insured may be eligible to receive under the terms of a policy and of the documentation which the insured must supply in order to ascertain eligibility;

(6) unless otherwise provided by law or in the policy, requiring an insured to give written notice of loss or proof of loss within a specified time, and thereafter seeking to relieve the insurer of its obligations if the time limit is not complied with, unless the failure to comply with the time limit prejudices the insurer's rights and then only if the insurer gave prior notice to the insured of the potential prejudice;

(7) advising an insured or a claimant not to obtain the services of an attorney or an adjuster, or representing that payment will be delayed if an attorney or an adjuster is retained by the insured or the claimant;

(8) failing to advise in writing an insured or claimant who has filed a notification of claim known to be unresolved, and who has not retained an attorney, of the expiration of a statute of limitations at least 60 days prior to that expiration. For the purposes of this clause, any claim on which the insurer has received no communication from the insured or claimant for a period of two years preceding the expiration of the applicable statute of limitations shall not be considered to be known to be unresolved and notice need not be sent pursuant to this clause;

(9) demanding information which would not affect the settlement of the claim;

(10) unless expressly permitted by law or the policy, refusing to settle a claim of an insured on the basis that the responsibility should be assumed by others;

(11) failing, within 60 business days after receipt of a properly executed proof of loss, to advise the insured of the acceptance or denial of the claim by the insurer. No insurer shall deny a claim on the grounds of a specific policy provision, condition, or exclusion unless reference to the provision, condition, or exclusion is included in the denial. The denial must be given to the insured in writing with a copy filed in the claim file;

(12) denying or reducing a claim on the basis of an application which was altered or falsified by the agent or insurer without the knowledge of the insured;

(13) failing to notify the insured of the existence of the additional living expense coverage when an insured under a homeowners policy sustains a loss by reason of a covered occurrence and the damage to the dwelling is such that it is not habitable;

(14) failing to inform an insured or a claimant that the insurer will pay for an estimate of repair if the insurer requested the estimate and the insured or claimant had previously submitted two estimates of repair.

(e) **Standards for fair settlement offers and agreements.** The following acts by an insurer, an adjuster, a self-insured, or a self-insurance administrator constitute unfair settlement practices:

(1) making any partial or final payment, settlement, or offer of settlement, which does not include an explanation of what the payment, settlement, or offer of settlement is for;

(2) making an offer to an insured of partial or total settlement of one part of a claim contingent upon agreement to settle another part of the claim;

(3) refusing to pay one or more elements of a claim by an insured for which there is no good faith dispute;

(4) threatening cancellation, rescission, or nonrenewal of a policy as an inducement to settlement of a claim;

(5) failing to issue payment for any amount finally agreed upon in settlement of all or part of any claim within five business days from the receipt of the agreement by the insurer or from the date of the performance by the claimant of any conditions set by such agreement, whichever is later;

(6) failing to inform the insured of the policy provision or provisions under which payment is made;

(7) settling or attempting to settle a claim or part of a claim with an insured under

actual cash value provisions for less than the value of the property immediately preceding the loss, including all applicable taxes and license fees. In no case may an insurer be required to pay an amount greater than the amount of insurance;

(8) except where limited by policy provisions, settling or offering to settle a claim or part of a claim with an insured under replacement value provisions for less than the sum necessary to replace the damaged item with one of like kind and quality, including all applicable taxes, license, and transfer fees;

(9) reducing or attempting to reduce for depreciation any settlement or any offer of settlement for items not adversely affected by age, use, or obsolescence;

(10) reducing or attempting to reduce for betterment any settlement or any offer of settlement unless the resale value of the item has increased over the preloss value by the repair of the damage.

(f) Standards for automobile insurance claims handling, settlement offers, and agreements. In addition to the acts specified in paragraphs (d), (e), (g), (h), and (i), the following acts by an insurer, adjuster, or a self-insured or self-insurance administrator constitute unfair settlement practices:

(1) if an automobile insurance policy provides for the adjustment and settlement of an automobile total loss on the basis of actual cash value or replacement with like kind and quality and the insured is not an automobile dealer, failing to offer one of the following methods of settlement:

(a) comparable and available replacement automobile, with all applicable taxes, license fees, at least pro rata for the unexpired term of the replaced automobile's license, and other fees incident to the transfer or evidence of ownership of the automobile paid, at no cost to the insured other than the deductible amount as provided in the policy;

(b) a cash settlement based upon the actual cost of purchase of a comparable automobile, including all applicable taxes, license fees, at least pro rata for the unexpired term of the replaced automobile's license, and other fees incident to transfer of evidence of ownership, less the deductible amount as provided in the policy. The costs must be determined by:

(i) the cost of a comparable automobile, adjusted for mileage, condition, and options, in the local market area of the insured, if such an automobile is available in that area; or

(ii) one of two or more quotations obtained from two or more qualified sources located within the local market area when a comparable automobile is not available in the local market area. The insured shall be provided the information contained in all quotations prior to settlement; or

(iii) any settlement or offer of settlement which deviates from the procedure above must be documented and justified in detail. The basis for the settlement or offer of settlement must be explained to the insured;

(2) if an automobile insurance policy provides for the adjustment and settlement of an automobile partial loss on the basis of repair or replacement with like kind and quality and the insured is not an automobile dealer, failing to offer one of the following methods of settlement:

(a) to assume all costs, including reasonable towing costs, for the satisfactory repair of the motor vehicle. Satisfactory repair includes repair of both obvious and hidden damage as caused by the claim incident. This assumption of cost may be reduced by applicable policy provision; or

(b) to offer a cash settlement sufficient to pay for satisfactory repair of the vehicle. Satisfactory repair includes repair of obvious and hidden damage caused by the claim incident, and includes reasonable towing costs;

(3) regardless of whether the loss was total or partial, in the event that a damaged vehicle of an insured cannot be safely driven, failing to exercise the right to inspect automobile damage prior to repair within five business days following receipt of notification of claim. In other cases the inspection must be made in 15 days;

(4) regardless of whether the loss was total or partial, requiring unreasonable travel of a claimant or insured to inspect a replacement automobile, to obtain a repair estimate, to allow an insurer to inspect a repair estimate, to allow an insurer to inspect repairs made pursuant to policy requirements, or to have the automobile repaired;

(5) regardless of whether the loss was total or partial, if loss of use coverage exists under the insurance policy, failing to notify an insured at the time of the insurer's acknowledgment of claim, or sooner if inquiry is made, of the fact of the coverage, including the policy terms and conditions affecting the coverage and the manner in which the insured can apply for this coverage;

(6) regardless of whether the loss was total or partial, failing to include the insured's deductible in the insurer's demands under its subrogation rights. Subrogation recovery must be shared at least on a proportionate basis with the insured, unless the deductible amount has been otherwise recovered by the insured. No deduction for expenses may be made from the deductible recovery unless an attorney is retained to collect the recovery, in which case deduction may be made only for a pro rata share of the cost of retaining the attorney;

(7) requiring as a condition of payment of a claim that repairs to any damaged vehicle must be made by a particular contractor or repair shop;

(8) where liability is reasonably clear, failing to inform the claimant in an automobile property damage liability claim that the claimant may have a claim for loss of use of the vehicle;

(9) failing to make a good faith assignment of comparative negligence percentages in ascertaining the issue of liability;

(10) failing to pay any interest required by statute on overdue payment for an automobile personal injury protection claim;

(11) if an automobile insurance policy contains either or both of the time limitation provisions as permitted by section 65B.55, subdivisions 1 and 2, failing to notify the insured in writing of those limitations at least 60 days prior to the expiration of that time limitation;

(12) if an insurer chooses to have an insured examined as permitted by section 65B.56, subdivision 1, failing to notify the insured of all of the insured's rights and obligations under that statute, including the right to request, in writing, and to receive a copy of the report of the examination.

(g) **Standards for releases.** The following acts by an insurer, adjuster, or self-insured or self-insurance administrator constitute unfair settlement practices:

(1) requesting or requiring an insured or a claimant to sign a release that extends beyond the subject matter that gave rise to the claim payment;

(2) issuing a check or draft in payment of a claim that contains any language or provision that implies or states that acceptance of the check or draft constitutes a final settlement or release of any or all future obligations arising out of the loss.

(h) **Standards for claim denial.** The following acts by an insurer, adjuster, or self-insured, or self-insurance administrator constitute unfair settlement practices:

(1) denying a claim or any element of a claim on the grounds of a specific policy provision, condition, or exclusion, without informing the insured of the policy provision, condition, or exclusion on which the denial is based;

(2) denying a claim without having made a reasonable investigation of the claim;

(3) denying a liability claim because the insured has requested that the claim be denied;

(4) denying a liability claim because the insured has failed or refused to report the claim, unless an independent evaluation of available information indicates there is no liability;

(5) denying a claim without including the following information:

(i) the basis for the denial;

(ii) the name, address, and telephone number of the insurer's claim service office or the claim representative of the insurer to whom the insured or claimant may take any questions or complaints about the denial; and

(iii) the claim number and the policy number of the insured;

(6) denying a claim because the insured or claimant failed to exhibit the damaged property unless:

(i) the insurer, within a reasonable time period, made a written demand upon the insured or claimant to exhibit the property; and

(ii) the demand was reasonable under the circumstances in which it was made.

(i) **Standards for communications with the department.** In addition to the acts specified elsewhere in this section, the following acts by an insurer, adjuster, or a self-insured or self-insurance administrator constitute unfair settlement practices:

(1) failure to respond, within 15 working days after receipt of an inquiry from the commissioner, about a claim, to the commissioner;

(2) failure, upon request by the commissioner, to make specific claim files available to the commissioner;

(3) failure to include in the claim file all written communications and transactions emanating from, or received by, the insurer, as well as all notes and work papers relating to the claim. All written communications and notes referring to verbal communications must be dated by the insurer;

(4) failure to submit to the commissioner, when requested, any summary of complaint data reasonably required;

(5) failure to compile and maintain a file on all complaints. If the complaint deals with a loss, the file must contain adequate information so as to permit easy retrieval of the entire file. If the complaint alleges that the company, or agent of the company, or any agent producing business written by the company is engaged in any unfair, false, misleading, dishonest, fraudulent, untrustworthy, coercive, or financially irresponsible practice, or has violated any insurance law or rule, the file must indicate what investigation or action was taken by the company. The complaint file must be maintained for at least four years after the date of the complaint.

(j) **Scope.** This subdivision does not apply to workers' compensation insurance. Nothing in this subdivision abrogates any policy provisions.

Subd. 13. Refusal to renew. Refusing to renew, declining to offer or write, or charging differential rates for an equivalent amount of homeowner's insurance coverage, as defined by section 65A.27, for property located in a town or statutory or home rule charter city, in which the insurer offers to sell or writes homeowner's insurance, solely because:

(a) of the geographic area in which the property is located;

(b) of the age of the primary structure sought to be insured;

(c) the insured or prospective insured was denied coverage of the property by another insurer, whether by cancellation, nonrenewal or declination to offer coverage, for a reason other than those specified in section 65A.01, subdivision 3a, clauses (a) to (e); or

(d) the property of the insured or prospective insured has been insured under the Minnesota FAIR plan act, shall constitute an unfair method of competition and an unfair and deceptive act or practice.

This subdivision shall not prohibit the insurer from applying underwriting or rating standards which the insurer applies generally in all other locations in the state and which are not specifically prohibited by clauses (a) to (d). Such underwriting or rating standards shall specifically include but not be limited to standards based upon the proximity of the insured property to an extraordinary hazard or based upon the quality or availability of fire protection services or based upon the density or concentration of the insurer's risks. Clause (b) shall not prohibit the use of rating standards based upon the age of the insured structure's plumbing, electrical, heating or cooling system

or other part of the structure, the age of which affects the risk of loss. Any insurer's failure to comply with section 65A.29, subdivisions 2 to 4, either (1) by failing to give an insured or applicant the required notice or statement or (2) by failing to state specifically a bona fide underwriting or other reason for the refusal to write shall create a presumption that the insurer has violated this subdivision.

Subd. 14. Application form refusal. An insurance agent refusing to supply a requested application form for homeowner's insurance with any insurer whom the agent represents or refusing to transmit forthwith any completed application form to the insurer, shall constitute an unfair method of competition and an unfair and deceptive act or practice.

Subd. 15. Practices not held to be discrimination or rebates. Nothing in subdivisions 8, 9, or 10, or in section 72A.12, subdivisions 3 and 4, shall be construed as including within the definition of discrimination or rebates any of the following practices:

(1) In the case of any contract of life insurance or annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the company and its policyholders;

(2) In the case of life insurance policies issued on the industrial debit plan, making allowance, to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer, in an amount which fairly represents the saving in collection expense;

(3) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experienced thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year;

(4) In the case of a group health insurance policy, the payment of differing amounts of reimbursement to insureds who elect to receive health care goods or services from providers designated by the insurer, provided that each insurer shall on or before August 1 of each year file with the commissioner summary data regarding the financial reimbursement offered to providers so designated.

Any insurer which proposes to offer an arrangement authorized under this clause shall disclose prior to its initial offering and on or before August 1 of each year thereafter as a supplement to its annual statement submitted to the commissioner pursuant to section 60A.13, subdivision 1, the following information:

(a) the name which the arrangement intends to use and its business address;

(b) the name, address and nature of any separate organization which administers the arrangement on the behalf of the insurers; and

(c) the names and addresses of all providers designated by the insurer under this clause and the terms of the agreements with designated health care providers.

The commissioner shall maintain a record of arrangements proposed under this clause, including a record of any complaints submitted relative to the arrangements.

Subd. 16. Discrimination based on sex or marital status. Refusing to insure, refusing to continue to insure, refusing to offer or submit an application for coverage, or limiting the amount of coverage available to an individual because of the sex or marital status of the individual; however, nothing in this subsection prohibits an insurer from taking marital status into account for the purpose of defining persons eligible for dependents' benefits.

Subd. 17. Return of premiums upon death of insured. Refusing, upon surrender of an individual policy, to refund to the estate of the insured all unearned premiums paid on the policy covering the insured as of the time of the insured's death if the unearned premium is for a period of more than one month.

The insurer may deduct from the premium any previously accrued claim for loss or damage under the policy.

For the purposes of this section, a premium is unearned during the period of time the insurer has not been exposed to any risk of loss.

History: 1967 c 395 art 12 s 20; 1973 c 474 s 1; 1975 c 139 s 1; 1979 c 207 s 6; 1Sp1981 c 4 art 2 s 7; 1983 c 285 s 1; 1984 c 555 s 1-3; 1984 c 592 s 73; 1Sp1985 c 10 s 71; 1986 c 444

72A.21 POWER OF COMMISSIONER.

The commissioner shall have power to examine and investigate into the affairs of every person engaged in the business of insurance in this state in order to determine whether that person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by section 72A.19.

History: 1967 c 395 art 12 s 21

72A.22 HEARING; WITNESSES; PRODUCTION OF BOOKS.

Subdivision 1. Statement of charges and notice of hearing. Whenever the commissioner has reason to believe that any person has been engaged or is engaging in this state in any unfair method of competition or any unfair or deceptive act or practice, defined in section 72A.20, and that a proceeding in respect thereto would be to the interest of the public, the commissioner shall issue and serve upon that person a statement of the charges in that respect and a notice of a hearing thereon to be held at a time and place fixed in the notice, which shall not be less than 20 days after the date of the service thereof.

Subd. 2. Appearance; intervention. At the time and place fixed for such hearing said person shall have an opportunity to be heard and to show cause why an order should not be made by the commissioner requiring the person to cease and desist from the acts, methods, or practices so complained of. Upon good cause shown, the commissioner shall permit any person to intervene, appear and be heard at such hearing by counsel or in person.

Subd. 3. Formal rules of pleading or evidence not required. Nothing contained in sections 72A.17 to 72A.32 shall require the observance at any such hearing of formal rules of pleading or evidence.

Subd. 4. Hearing. The commissioner, upon such a hearing, may administer oaths, examine and cross-examine witnesses, receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance, and require the production of books, papers, records, correspondence, or other documents which the commissioner deems relevant to the inquiry. The commissioner, upon such a hearing, may, and upon the request of any party shall, cause to be made a stenographic record of all the evidence and all the proceedings had at the hearing. If no stenographic record is made and if a judicial review is sought, the commissioner shall prepare a statement of the evidence and proceeding for use on review. In case of a refusal of any person to comply with any subpoena issued hereunder or to testify with respect to any matter concerning which the person may be lawfully interrogated, the district court of Ramsey county or of the county where the hearing is being held, on application of the commissioner, may issue an order requiring that person to comply with the subpoena and to testify; and any failure to obey any such order of the court may be punished by the court as a contempt thereof.

Subd. 5. Service. Statements of charges, notices, orders, and other processes of the commissioner under sections 72A.17 to 72A.32 may be served by anyone duly authorized by the commissioner, either in the manner provided by law for service of process in civil actions or by registering and mailing a copy thereof to the person affected by the statement, notice, order, or other process at the person's residence or principal office or place of business. A verified return by the person serving the statement, notice, order, or other process, setting forth the manner of such service, or the return postcard receipt for a copy of the statement, notice, order, or other process, registered and mailed as aforesaid, shall be proof of the service of the same.

History: 1967 c 395 art 12 s 22; 1986 c 444

72A.23 DECISION AND ORDER THEREON.

Subdivision 1. Determination by commissioner; findings. Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule or order under this chapter:

(a) The commissioner may issue and cause to be served upon the person an order requiring the person to cease and desist from violations of section 72A.19 or 72A.20. The order must be calculated to give reasonable notice of the rights of the person to request a hearing thereon and must state the reasons for the entry of the order. A hearing must be held not later than seven days after the request for the hearing is received by the commissioner after which and within 20 days of the date of the hearing the commissioner shall issue a further order vacating the cease and desist order or making it permanent as the facts require. If no hearing is requested within 30 days of service of the order, the order will become final and will remain in effect until it is modified or vacated by the commissioner. All hearings must be conducted in accordance with the provisions of chapter 14. If the person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, the person shall be deemed in default, and the proceeding may be determined against the defaulter upon consideration of the cease and desist order, the allegations of which may be deemed to be true. The commissioner may adopt rules of procedure concerning all proceedings conducted pursuant to this subdivision; and

(b) If, after a hearing, as provided in section 72A.22, the commissioner shall determine that the method of competition or the act or practice in question is defined in section 72A.20 or any rules adopted pursuant to section 72A.19 or 72A.20, and that the person complained of has engaged in that method of competition, act, or practice, in violation of sections 72A.17 to 72A.32 the commissioner shall make written findings and shall issue and cause to be served upon the person charged with the violation an order requiring the person to cease and desist from engaging in that method of competition, act or practice, and may impose a civil penalty of not more than \$2,000 for each offense. If the commissioner determines that an insurer has engaged in an act or practice defined in section 72A.20, subdivision 13, the cease and desist order may also require the insurer to write or renew the homeowner's insurance coverage sought by the insured or prospective insured for a specified period of up to three years without cancellation or nonrenewal by the insurer for a reason not specified in section 65A.01; after the specified period expires, cancellation or nonrenewal of the coverage may be made only as permitted by law.

Subd. 2. Modification of order. Until the expiration of the time allowed under section 72A.24, subdivision 1, for filing a petition for review, if no such petition has been duly filed within that time, or, if a petition for review has been filed within that time, then until the transcript of the record in the proceeding has been filed in the district court, as hereinafter provided, the commissioner may at any time, upon such notice and in such manner as the commissioner shall deem proper, modify or set aside in whole or in part any order issued under this section.

Subd. 3. Commissioner may reopen, modify, or set aside. After the expiration of the time allowed for filing such a petition for review, if no such petition has been duly filed within that time, the commissioner may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any order issued under this section, whenever in the commissioner's opinion conditions of fact or of law have so changed as to require such action, or if the public interest shall so require.

History: 1967 c 395 art 12 s 23; 1979 c 207 s 7; 1984 c 555 s 4; 1984 c 592 s 74; 1986 c 444

72A.24 ENFORCEMENT OF SECTIONS 72A.17 TO 72A.32.

Subdivision 1. Court proceedings; review. Any person required by an order of the commissioner under section 72A.23 to cease and desist from engaging in any unfair method of competition or any unfair or deceptive act or practice defined in section 72A.20 may appeal in accordance with chapter 14.

Subd. 2. [Repealed, 1983 c 247 s 219]

Subd. 3. **Rehearing.** If, before the entry of the decree of the court, either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that said additional evidence is material and that there were reasonable grounds for the failure to adduce it in the proceeding before the commissioner, the court may order said additional evidence to be taken before the commissioner and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commissioner may modify the findings of fact, or make new findings, by reason of the additional evidence so taken and shall file those modified or new findings and the commissioner's recommendation, if any, for the modification or setting aside of the original order, with the return of the additional evidence. Any such additional evidence, modified or new findings, and recommendation shall be considered by the court in making and entering its final decree, together with the matters submitted in the original transcript.

Subd. 4. **Final cease and desist order.** A cease and desist order issued by the commissioner under section 72A.23 shall become final:

(1) Upon the expiration of the time allowed for filing a petition for review if no such petition has been duly filed within such time; except that the commissioner may thereafter modify or set aside the order to the extent provided in section 72A.23, subdivision 3; or

(2) Upon the final decision of the court if the court directs that the order of the commissioner be affirmed or the petition for review dismissed.

History: 1967 c 395 art 12 s 24; 1983 c 247 s 36; 1986 c 444

72A.25 UNFAIR COMPETITION.

Subdivision 1. **Statement of charges; service; hearing.** Whenever the commissioner has reason to believe that any person engaged in the business of insurance is engaged in this state in any method of competition or in any act or practice in the conduct of that business which is not defined in section 72A.20, that said method of competition is unfair or that said act or practice is unfair or deceptive and that a proceeding in respect thereto would be to the interest of the public, the commissioner may issue and serve upon that person a statement of the charges in that respect and a notice of a hearing thereon to be held at a time and place fixed in the notice, which shall not be less than 20 days after the date of the service thereof. Each such hearing shall be conducted in the same manner as the hearings provided for in section 72A.22, and the provisions of that section as to service are made applicable to proceedings under this section. Upon good cause shown, the commissioner shall permit any person to intervene, appear and be heard at such hearing by counsel or in person. The commissioner shall, after the hearing, make a written report which shall include findings as to the facts and shall serve a copy thereof upon the person served with the statement of charges.

Subd. 2. **Application for injunction.** If the report charges a violation of sections 72A.17 to 72A.32 and if the method of competition, act, or practice charged has not been discontinued, the commissioner may, through the attorney general, at any time after 20 days after the service of the report, cause a petition to be filed in the district court of Ramsey County, to enjoin and restrain that person from engaging in the method, act, or practice charged. A transcript of the proceedings before the commissioner, including all evidence taken and the report and findings, shall be filed with the petition. Upon the filing of the petition and transcript the court shall have jurisdiction of the proceedings and shall have power to make and enter appropriate orders in connection therewith and to issue such writs as are ancillary to its jurisdiction or necessary in its judgment to prevent injury to the public pendente lite.

Subd. 3. **Order enjoining and restraining.** If the court finds that the method of competition complained of is unfair or that the act or practice complained of is unfair and deceptive, and that the proceeding by the commissioner with respect thereto is to

the interests of the public, it shall issue its order enjoining and restraining the continuance of that method of competition, act, or practice. The findings of the commissioner shall be given the same effect as those of a referee appointed pursuant to rule 53 of the rules of civil procedure.

Subd. 4. Rehearing. If either party shall apply to the court before the entry of its order for leave to adduce additional evidence, and shall show to the satisfaction of the court that said additional evidence is material and that there were reasonable grounds for the failure to adduce it in the proceeding before the commissioner, the court may order said additional evidence to be taken before the commissioner and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commissioner may modify the findings of fact, or make new findings, by reason of the additional evidence so taken, and shall file those modified or new findings with the return of the additional evidence. Any such additional evidence and modified or new findings shall be considered by the court in making and entering its final order, together with the matters submitted in the original transcript.

History: 1967 c 395 art 12 s 25; 1976 c 239 s 18; 1984 c 555 s 5; 1986 c 444

72A.26 INTERVENTION.

If the report of the commissioner does not charge a violation of sections 72A.17 to 72A.32, any intervenor in the proceedings may, within 20 days after the service of the report, cause a petition to be filed in the district court of Ramsey county for a review of that report. Notice of the filing of the intervenor's petition shall be given to the commissioner and to the person upon whom the statement of charges was originally served. The commissioner shall, within 20 days after the service of the notice of filing the petition, file a transcript of the proceedings, including all evidence taken and the report and findings, and the person upon whom the statement of charges was originally served shall have 20 days after the service of notice of filing the petition in which to file an answer. The proceedings before the court shall conform to those provided for by section 72A.25. Upon such a review the court shall have authority to issue appropriate orders and writs in connection therewith, including, if the court finds it is to the interest of the public, orders enjoining and restraining the continuance of any method of competition, act, or practice which it finds, notwithstanding the report of the commissioner, constitutes a violation of sections 72A.17 to 72A.32.

History: 1967 c 395 art 12 s 26; 1986 c 444

72A.27 APPEAL.

Any decree or order of a district court made and entered under section 72A.24 or 72A.25 is subject to review by appeal as in other civil cases. The appeal must be taken within the time prescribed by law for taking appeals from orders of the district courts.

History: 1967 c 395 art 12 s 27; 1983 c 247 s 37

72A.28 VIOLATIONS AND PENALTIES.

Subdivision 1. Any person who violates a cease and desist order of the commissioner under section 72A.23, after it has become final and while such order is in effect, shall forfeit and pay to the state of Minnesota a sum not to exceed \$10,000 for each violation, which may be recovered in a civil action. In determining the amount of the penalty the question of whether the violation was willful shall be taken into consideration. In addition to recovering a penalty, the commissioner of commerce may revoke or suspend, in accordance with section 60A.05, any or all certificates of authority granted to any insurance company which violates a cease and desist order of the commissioner under section 72A.23, after it has become final and while such order is in effect. Nothing herein shall be construed as limiting a court in enforcing its own orders.

Subd. 2. After a cease and desist order issued by the commissioner becomes final

under section 72A.24, subdivision 4, any person found to have violated section 72A.19 may be required by the commissioner to pay a penalty, for the use of the state, of not less than \$500 and not more than \$5,000 for each offense. Any insurer which fails to pay the penalty within ten days after notice from the commissioner shall be subject to having any or all of its certificates of authority suspended by the commissioner in accordance with section 60A.05 until the penalty is paid.

History: 1967 c 395 art 12 s 28; 1973 c 474 s 2; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92

72A.29 CONCURRENT REMEDIES.

Subdivision 1. **Liability under other laws.** No order of the commissioner, or order or decree of any district court, under sections 72A.17 to 72A.32 shall in any way relieve or absolve any person affected by such order or decree from any liability under any other laws of this state.

Subd. 2. **Concurrent powers.** The powers vested in the commissioner by sections 72A.17 to 72A.32 shall be additional to any other powers to enforce any penalties, fines, or forfeitures authorized by law with respect to the methods, acts, and practices hereby declared to be unfair or deceptive.

History: 1967 c 395 art 12 s 29

72A.30 EVIDENTIAL PRIVILEGE DENIED; IMMUNITY; WAIVER.

A person who asks to be excused from attending and testifying or from producing any books, papers, records, correspondence, or other documents at any hearing on the ground that the testimony or evidence required may tend to incriminate or subject the person to a penalty or forfeiture, who is nevertheless directed to give the testimony or produce the evidence, shall comply with the direction. However, the person shall not subsequently be prosecuted or subjected to any penalty or forfeiture because of any transaction, matter, or thing about which the person testified or produced evidence, and no testimony given or evidence produced shall be received against that person upon any criminal action, investigation, or proceeding. No person testifying is exempt from prosecution or punishment for perjury committed while testifying, and the testimony or evidence given or produced shall be admissible against that person upon any criminal action, investigation, or proceeding concerning the perjury. The person is not exempt from the refusal, revocation, or suspension of any license, permission, or authority conferred, or to be conferred, pursuant to the insurance law of this state.

An individual may execute, acknowledge, and file in the office of the commissioner a statement expressly waiving immunity or privilege in respect to any transaction, matter, or thing specified in the statement, and the testimony of that person or any evidence in relation to it may be received or produced before any judge, court, tribunal, grand jury, or otherwise. When it is received or produced, that individual is not entitled to any immunity or privilege on account of any testimony given or evidence produced by that individual.

History: 1967 c 395 art 12 s 30; 1983 c 359 s 2; 1986 c 444

72A.31 CERTAIN ACTS DEEMED UNFAIR METHOD OF COMPETITION.

Subdivision 1. No person, firm or corporation engaged in the business of financing the purchase of real or personal property or of lending money on the security of real or personal property or who acts as agent or broker for one who purchases real property and borrows money on the security thereof, and no trustee, director, officer, agent or other employee of any such person, firm, or corporation shall directly or indirectly require, as a condition precedent to such purchase or financing the purchase of such property or to loaning money upon the security of a mortgage thereon, or as a condition prerequisite for the renewal or extension of any such loan or mortgage or for the performance of any other act in connection therewith, that the person, firm or corporation making such purchase or for whom such purchase is to be financed or to whom

the money is to be loaned or for whom such extension, renewal or other act is to be granted or performed negotiate any policy of insurance or renewal thereof covering such property through a particular agent, or insurer, or refuse to accept any policy of insurance covering such property because it was not negotiated through or with any particular agent, or insurer. This section shall not prevent the disapproval of the insurer or a policy of insurance by any such person, firm, corporation, trustee, director, officer, agent or employee where there are reasonable grounds for believing that such insurance is unsatisfactory as to placement with an unauthorized insurer, the financial solvency of the insurer, adequacy of the coverage, adequacy of the insurer to assume the risk to be insured, the assessment features to which the policy is subject, or other grounds which are not arbitrary, unreasonable or discriminatory, nor shall this section forbid the securing of insurance or a renewal thereof at the request of the borrower or because of the borrower's failure to furnish the necessary insurance or renewal thereof.

Upon notice of any such disapproval of an insurer or a policy of insurance, the commissioner may order the approval of the insurer or the acceptance of the tendered policy of insurance, or both, if the commissioner determines such disapproval is not in accordance with the foregoing requirements. Failure to comply with such an order of the commissioner of commerce shall be deemed a violation of this section.

Subd. 2. It shall be unlawful in connection with any contract or subcontract calling for any construction work for a public agency to require, directly or indirectly, that any insurance or bond be purchased or renewed through a particular agent or insurer.

History: 1967 c 395 art 12 s 31; 1969 c 229 s 1; 1969 c 433 s 1; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444

72A.32 VIOLATIONS, PROCEDURE.

Any violation of section 72A.31 shall constitute an unfair method of competition and the person, firm or corporation practicing the same shall be proceeded against under the provisions of sections 72A.21 to 72A.25, inclusive.

History: 1967 c 395 art 12 s 32

72A.321 [Repealed, 1981 c 129 s 2]

72A.325 INSURANCE FOR FUNERAL OR BURIAL EXPENSE; FREEDOM OF CHOICE.

No insurance company doing business in this state providing benefits for the payment of any funeral or burial expense, shall designate any mortician, funeral director, funeral establishment, cemetery, or any other party offering funeral or burial services or supplies, as the beneficiary or recipient of the benefits, so as to deprive the family, next of kin, or other representative of the deceased policyholder of the right to select the funeral or burial services and supplies of their choice. No owner, director, or employee of a funeral establishment shall receive any agent's fee, commission or other reimbursement on any insurance sale facilitated through the funeral establishment.

No owner, director or employee of a funeral establishment, nor trade association of funeral establishments shall receive any fee for endorsing insurance policies, plans or services. A trade association may not receive payment other than reimbursement for reasonable expenses of administering such a policy or services.

History: 1981 c 129 s 1

**UNAUTHORIZED INSURERS FALSE
ADVERTISING PROCESS ACT**

72A.33 PURPOSE OF ACT, CONSTRUCTION.

The purpose of sections 72A.33 to 72A.39 is to subject to the jurisdiction of the commissioner of commerce of this state and to the jurisdiction of the courts of this state insurers not authorized to transact business in this state which place in or send into this state any false advertising designed to induce residents of this state to purchase insurance from insurers not authorized to transact business in this state. The legislature declares it is in the interest of the citizens of this state who purchase insurance from insurers which solicit insurance business in this state in the manner set forth in the preceding sentence that such insurers be subject to the provisions of sections 72A.33 to 72A.39. In furtherance of such state interest, the legislature herein provides a method of substituted service of process upon such insurers and declares that in so doing, it exercises its power to protect its residents and also exercises powers and privileges available to the state by virtue of Public Law Number 15, 79th Congress of the United States, chapter 20, 1st Session, section 340, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states; the authority provided herein to be in addition to any existing powers of this state. The provisions of sections 72A.33 to 72A.39 shall be liberally construed.

History: 1967 c 395 art 12 s 33; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92

72A.34 DEFINITIONS.

Subdivision 1. **Scope.** When used in sections 72A.33 to 72A.39 the terms defined in this section shall have the meanings given them in this section.

Subd. 2. **Unfair trade practice act.** Unfair trade practice act shall mean the act relating to regulation of trade practices as defined in sections 72A.17 to 72A.32.

Subd. 3. **Residents.** Residents shall mean and include persons, partnerships or corporations, domestic, alien, or foreign.

History: 1967 c 395 art 12 s 34

72A.35 NOTICE TO DOMICILIARY SUPERVISORY OFFICIAL.

No unauthorized foreign or alien insurer of the kind described in section 72A.33 shall make, issue, circulate or cause to be made, issued or circulated, to residents of this state any estimate, illustration, circular, pamphlet, or letter, or cause to be made in any newspaper, magazine or other publication or over any radio or television station, any announcement or statement to such residents misrepresenting its financial condition or the terms of any contracts issued or to be issued or the benefits or advantages promised thereby, or the dividends or share of the surplus to be received thereon in violation of the unfair trade practice act, and whenever the commissioner shall have reason to believe that any such insurer is engaging in such unlawful advertising, it shall be the commissioner's duty to give notice of such fact by certified mail to such insurer and to the insurance supervisory official of the domiciliary state of such insurer. For the purpose of this section, the domiciliary state of an alien insurer shall be deemed to be the state of entry or the state of the principal office in the United States.

History: 1967 c 395 art 12 s 35; 1978 c 674 s 60; 1986 c 444

72A.36 ACTION BY COMMISSIONER.

If after 30 days following the giving of the notice mentioned in section 72A.35 such insurer has failed to cease making, issuing, or circulating such false representations or causing the same to be made, issued or circulated in this state, and if the commissioner has reason to believe that a proceeding in respect to such matters would be to the interest of the public, and that such insurer is issuing or delivering contracts of insurance to residents of this state or collecting premiums on such contracts or doing

any of the acts enumerated in section 72A.37, the commissioner shall take action against such insurer under the unfair trade practice act.

History: 1967 c 395 art 12 s 36; 1986 c 444

72A.37 SERVICE UPON UNAUTHORIZED INSURER.

Subdivision 1. Acts constituting appointment of commissioner as attorney. Any of the following acts in this state, effected by mail or otherwise, by any such unauthorized foreign or alien insurer: (1) The issuance or delivery of contracts of insurance to residents of this state; (2) the solicitation of applications for such contracts; (3) the collection of premiums, membership fees, assessments or other considerations for such contracts; or (4) any other transaction of insurance business; is equivalent to and shall constitute an appointment by such insurer of the commissioner of commerce and a successor or successors in office, to be its true and lawful attorney, upon whom may be served all statements of charges, notices and lawful process in any proceeding instituted in respect to the misrepresentations set forth in section 72A.35 under the provisions of the unfair trade practice act, or in any action, suit or proceeding for the recovery of any penalty therein provided, and any such act shall be signification of its agreement that such service of statement of charges, notices or process is of the same legal force and validity as personal service of such statement of charges, notices or process in this state, upon such insurer.

Subd. 2. Method of service. Service of a statement of charges and notices under said unfair trade practice act shall be made by any deputy or employee of the department of commerce delivering to and leaving with the commissioner or some person in apparent charge of the office, two copies thereof. Service of process issued by any court in any action, suit or proceeding to collect any penalty under said act provided, shall be made by delivering and leaving with the commissioner, or some person in apparent charge of the office, two copies thereof. The commissioner shall forthwith cause to be mailed by certified mail one of the copies of such statement of charges, notices or process to the defendant at its last known principal place of business, and shall keep a record of all statements of charges, notices and process so served. Such service of statement of charges, notices or process shall be sufficient provided they shall have been so mailed and the defendant's receipt or receipt issued by the post office with which the letter is certified, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the person mailing such letter showing a compliance herewith are filed with the commissioner in the case of any statement of charges or notices, or with the court administrator of the court in which such action is pending in the case of any process, on or before the date the defendant is required to appear or within such further time as may be allowed.

Subd. 3. Service on agents and certain others. Service of statement of charges, notices and process in any such proceeding, action or suit shall in addition to the manner provided in subdivision 2 be valid if served upon any person within this state who on behalf of such insurer is

- (1) soliciting insurance, or
- (2) making, issuing or delivering any contract of insurance, or
- (3) collecting or receiving in this state any premium for insurance;

and a copy of such statement of charges, notices or process is sent within ten days thereafter by certified mail by or on behalf of the commissioner to the defendant at the last known principal place of business of the defendant, and the defendant's receipt, or the receipt issued by the post office with which the letter is certified, showing the name of the sender of the letter, the name and address of the person to whom the letter is addressed, and the affidavit of the person mailing the same showing a compliance herewith, are filed with the commissioner in the case of any statement of charges or notices, or with the court administrator of the court in which such action is pending in the case of any process, on or before the date the defendant is required to appear or within such further time as the court may allow.

Subd. 4. Cease or desist order. No cease or desist order under this section shall be entered until the expiration of 30 days from the date of the filing of the affidavit of compliance.

Subd. 5. Other methods of service. Service of process and notice under the provisions of sections 72A.33 to 72A.39 shall be in addition to all other methods of service provided by law, and nothing in sections 72A.33 to 72A.39 shall limit or prohibit the right to serve any statement of charges, notices or process upon any insurer in any other manner now or hereafter permitted by law.

History: 1967 c 395 art 12 s 37; 1978 c 674 s 60; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444; 1Sp1986 c 3 art 1 s 82

72A.38 CONSTITUTIONALITY.

If any provision of sections 72A.33 to 72A.39 or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of sections 72A.33 to 72A.39 which can be given effect without the invalid provision or application, and to this end the provisions of sections 72A.33 to 72A.39 are declared to be severable.

History: 1967 c 395 art 12 s 38

72A.39 CITATION.

Sections 72A.33 to 72A.39 may be cited as the unauthorized insurers false advertising process act.

History: 1967 c 395 art 12 s 39

72A.40 PURPOSE.

The legislature declares that it is a subject of concern that many residents of this state hold policies of insurance issued or delivered in this state by insurers not authorized to do insurance business in this state. The legislature further declares that it desires to protect residents of this state against acts by insurers not authorized to do an insurance business in this state, to maintain fair and honest insurance markets, to protect the premium tax revenues of this state, to protect authorized insurers who are subject to strict regulation from unfair competition by unauthorized insurers, and to protect against the evasion of the insurance regulatory laws of this state. In furtherance of the state interest, the legislature herein provides a method for substituted service of process upon unauthorized insurers. The legislature declares that in so doing it exercises its power to protect residents of this state and to define what constitutes doing an insurance business in this state, and also exercises powers and privileges available to this state by virtue of Public Law Number 79-15, Statutes at Large, volume 59, page 33, as amended, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states.

History: 1967 c 590 s 1

72A.41 TRANSACTING BUSINESS WITHOUT CERTIFICATE OF AUTHORITY PROHIBITED.

Subdivision 1. It is unlawful for any company to enter into a contract of insurance as an insurer or to transact insurance business in this state, as set forth in subdivision 2, without a certificate of authority from the commissioner; provided that this subdivision does not apply to: (a) contracts of insurance procured by agents under the authority of section 60A.20; (b) contracts of reinsurance and contracts of ocean or wet marine and transportation insurance; (c) transactions in this state involving a policy lawfully solicited, written and delivered outside of this state covering only subjects of insurance not resident, located or expressly to be performed in this state at the time of issuance and which transactions are subsequent to the issuance of the policy; (d) transactions in this state involving group or blanket insurance and group annuities where the master policy of such groups was lawfully issued and delivered in a state in

which the company was authorized to do an insurance business where, except for group annuities, the insurer complies with section 72A.13. The commissioner may require the insurer which has issued such master policy to submit any information as the commissioner reasonably requires in order to determine if probable cause exists to convene a hearing to determine whether the total charges for the insurance to the persons insured are unreasonable in relation to the benefits provided under the policy; (e) transactions in this state involving a policy of insurance or annuity issued prior to July 1, 1967; or (f) contract of insurance procured under the authority of section 60A.19, subdivision 8; or (g) transactions in this state involving contracts of insurance covering property or risks not located in this state.

Subd. 2. Any of the following acts in this state, effected by mail or otherwise by an unauthorized insurer, shall be included among those deemed to constitute transacting insurance business in this state: (a) the issuance or delivery of a contract of insurance or annuity to a resident of this state; (b) the solicitation of an application for such a contract; (c) the collection of a premium, membership fee, assessment or other consideration for such a contract; or (d) the transaction of any matter subsequent to the execution of such a contract and arising out of it.

Subd. 3. The failure of a company to obtain a certificate of authority shall not impair the validity of any act or contract of such company and shall not prevent such company from defending any action in any court of this state, but no company transacting insurance business in this state without a certificate of authority shall be permitted to maintain an action in any court of this state to enforce any right, claim or demand arising out of the transaction of such business until such company shall have obtained a certificate of authority. Nor shall an action be maintained in any court of this state by any successor or assignee of such company on any such right, claim or demand originally held by such company until a certificate of authority shall have been obtained by such company or by a company which has acquired all or substantially all of its assets.

History: 1967 c 590 s 2; 1969 c 6 s 17; 1980 c 436 s 3

72A.42 COMMISSIONER MAY ENJOIN UNAUTHORIZED COMPANY.

Subdivision 1. Whenever the commissioner believes, from evidence satisfactory to the commissioner, that any company is violating or about to violate the provisions of section 72A.41, the commissioner may, through the attorney general of this state, cause a complaint to be filed in the district court of Ramsey county to enjoin and restrain such company from continuing such violation or engaging therein or doing any act in furtherance thereof. The court shall have jurisdiction of the proceeding and shall have the power to make and enter an order or judgment awarding such preliminary or final injunctive relief as in its judgment is proper.

Subd. 2. The attorney general may proceed in the courts of this state or any reciprocal state to enforce an order or decision in any court proceeding or in any administrative proceeding before the commissioner of commerce.

(a) Definition—In this section:

(1) "Reciprocal state" means any state or territory of the United States the laws of which contain procedures substantially similar to those specified in this section for the enforcement of foreign decrees issued by courts located in other states or territories of the United States, against any insurer incorporated or authorized to do business in said state or territory.

(2) "Foreign decree" means any decree or order in equity or in law, including without being limited thereto, final money judgments for penalties and fines of a court located in a "reciprocal state," including a court of the United States located therein, against any insurer incorporated or authorized to do business in this state.

(3) "Qualified party" means a state regulatory agency acting in its capacity to enforce the insurance laws of its state.

(b) List of reciprocal states: The commissioner of commerce of this state shall

determine which states and territories qualify as reciprocal states and shall maintain at all times an up-to-date list of such states.

(c) Filing and status of foreign decrees: a copy of any foreign decree authenticated in accordance with the statutes of this state may be filed in the office of the court administrator of district court of Ramsey county of this state. The court administrator, upon verifying with the commissioner of commerce that the decree or order qualifies as a "foreign decree" shall treat the foreign decree in the same manner as a decree of district court of Ramsey county of this state. A foreign decree so filed has the same effect and shall be deemed as a decree of district court of Ramsey county of this state, and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a decree of district court of Ramsey county of this state and may be enforced or satisfied in like manner.

(d) Notice of filing:

(1) At the time of the filing of the foreign decree, the attorney general shall make and file with the court administrator an affidavit setting forth the name and last known post office address of the defendant.

(2) Promptly upon the filing of the foreign decree and the affidavit, the court administrator shall mail notice of the filing of the foreign decree to the defendant at the address given and to the commissioner of commerce of this state and shall make a note of the mailing in the docket. In addition, the attorney general may mail a notice of the filing of the foreign decree to the defendant and to the commissioner of commerce of this state and may file proof of mailing with the court administrator. Lack of mailing notice of filing by the court administrator shall not affect the enforcement proceedings if proof of mailing by the attorney general has been filed.

(3) No execution or other process for enforcement of a foreign decree filed hereunder shall issue until 30 days after the date the decree is filed.

(e) Stay:

(1) If the defendant shows the district court of Ramsey county that an appeal from the foreign decree is pending or will be taken, or that a stay of execution has been granted, the court may stay enforcement of the foreign decree until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the defendant has furnished the security for the satisfaction of the decree required by the state in which it was rendered.

(2) If the defendant shows the district court of Ramsey county any ground upon which enforcement of a decree of district court of Ramsey county of this state would be stayed, the court may stay enforcement of the foreign decree for an appropriate period, upon requiring the same security for satisfaction of the decree which is required in this state.

(f) Fees: Any person filing a foreign decree shall pay to the court administrator as a fee for docketing, transcription or other enforcement proceedings, the amount provided for decrees of the district court of Ramsey county.

History: 1967 c 590 s 3; 1969 c 459 s 1; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444; 1Sp1986 c 3 art 1 s 82

72A.43 SERVICE OF PROCESS UPON UNAUTHORIZED COMPANY BY COMMISSIONER.

Subdivision 1. Any act of entering into a contract of insurance or annuity as an insurer or transacting insurance business in this state as set forth in subdivision 2 of section 72A.41, by an unauthorized company is equivalent to and shall constitute an appointment by such company of the commissioner of commerce and a successor or successors in office to be its true and lawful attorney upon whom may be served all lawful process in any action or proceeding against it, arising out of a violation of section 72A.41, and any of such acts shall be a signification of its agreement that any such process against it which is so served shall be of the same legal force and validity as personal service of process in this state upon such company.

Subd. 2. Service of such process shall be made by delivering and leaving with the commissioner two copies thereof and the payment to the commissioner of a \$15 filing fee. The commissioner shall forthwith mail by certified mail one of the copies of such process to such company at its last known registered office, and shall keep a record of all process so served. The company's receipt, or receipt issued by the post office with which the letter is certified, and an affidavit of compliance herewith by or on behalf of the commissioner, shall be filed with the court administrator of the court in which such action or proceeding is pending on or before the return date of such process or within such further time as the court may allow.

Subd. 3. The court in any action or proceeding in which service is made in the manner provided in subdivision 2 may, in its discretion, order such postponement as may be necessary to afford such company reasonable opportunity to defend such action or proceeding.

Nothing in this section is to be construed to prevent an unauthorized company from filing a motion to quash a writ or to set aside service thereof made in the manner provided in subdivision 2 on the ground that such unauthorized company has not done any of the acts referred to in subdivision 1.

Subd. 4. No judgment by default shall be entered in any such action or proceeding until the expiration of 30 days from the date of the filing of the affidavit of compliance.

Subd. 5. Nothing contained in this section shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon any company in any other manner now or hereafter permitted by law.

History: 1967 c 590 s 4; 1978 c 674 s 60; 1984 c 618 s 3,4; 1986 c 444; 1Sp1986 c 3 art 1 s 82

72A.44 PENALTY.

Any company that violates subdivision 1 of section 72A.41, shall be required to pay a penalty of not less than \$100 nor more than \$1,000 for each offense, to be recovered on behalf of the state.

History: 1967 c 590 s 5

72A.45 NONAPPLICATION.

Sections 72A.40 to 72A.45 shall not apply to any life insurance company organized and operated, without profit to any private shareholder or individual, exclusively for the purpose of aiding educational or scientific institutions organized and operated without profit to any private shareholder or individual by issuing insurance and annuity contracts direct from the home office of the company and without agents or representatives in this state only to or for the benefit of the institutions and to individuals engaged in the services of the institutions; provided such company agrees to appoint the commissioner, and successors in office, as its attorney to receive service of legal process issued against it in Minnesota, such appointment to be irrevocable and to bind the company and any successors in interest and to remain in effect as long as there is in force in this state any contract made by that company or any obligation arising therefor; nor shall sections 72A.40 to 72A.45 apply to any insurance or annuity contracts issued by such a life insurance company.

History: 1967 c 590 s 6; 1986 c 444

CANCELLATION OF POLICIES

72A.51 RIGHT TO CANCEL.

Subdivision 1. For the purposes of this section and section 72A.52 "date of purchase" means the date on which the purchaser receives a copy of the policy or contract.

Subd. 2. Any individual person may cancel an individual policy of insurance

against loss or damage by reason of the sickness of the assured or the assured's dependents, a nonprofit health service plan contract providing benefits for hospital, surgical and medical care, a health maintenance organization subscriber contract, or a policy of insurance authorized by section 60A.06, subdivision 1, clause (4), by returning the policy or contract and by giving written notice of cancellation any time before midnight of the tenth day following the date of purchase. Notice of cancellation may be given personally, by mail, or by telegram. The policy or contract may be returned personally or by mail. If by mail, the notice or return of the policy or contract is effective upon being postmarked, properly addressed and postage prepaid.

Subd. 3. With the exception of a variable annuity contract issued pursuant to sections 61A.13 to 61A.21, a person's cancellation of an insurance policy or contract under this section and section 72A.52 is without liability and the person is entitled to a refund of the entire consideration paid for the policy or contract within ten days after notice of cancellation and the returned policy or contract are received by the insurer or its agent. Cancellation under this section and section 72A.52 of a variable annuity contract issued pursuant to sections 61A.13 to 61A.21 shall entitle a person to an amount equal to the sum of (a) the difference between the premiums paid including any contract fees or other charges and the amounts allocated to any separate accounts under the contract and (b) the cash value of the contract, or, if the contract does not have a cash value, the reserve for the contract, on the date the returned contract is received by the insurer or its agent. Cancellation of an insurance policy or contract under this section or section 72A.52 makes the policy or contract void from its inception.

Subd. 4. A person may not waive or surrender a right to cancel an insurance policy or contract under this section and section 72A.52.

History: 1977 c 178 s 1; 1980 c 354 s 1; 1986 c 444

72A.52 NOTICE REQUIREMENTS.

Subdivision 1. In addition to all other legal requirements a policy or contract of insurance described in section 72A.51 shall show the name and address of the insurer and the seller of the policy or contract and shall state, clearly and conspicuously in bold face type of a minimum size of ten points, a notice in the following form or its equivalent: "RIGHT TO CANCEL. You may cancel this policy by delivering or mailing a written notice or sending a telegram to (insert name and mailing address of the insurer or the seller of the policy or contract) and by returning the policy or contract before midnight of the tenth day after the date you receive the policy. Notice given by mail and return of the policy or contract by mail are effective on being postmarked, properly addressed and postage prepaid. The insurer must return all payments made for this policy within ten days after it receives notice of cancellation and the returned policy." For variable annuity contracts issued pursuant to sections 61A.13 to 61A.21, this notice shall be suitably modified so as to notify the purchaser that the purchaser is entitled to a refund of the amount calculated in accordance with the provisions of section 72A.51, subdivision 3.

Subd. 2. If a policy or contract of insurance covered by this section is sold without compliance with subdivision 1, the policy or contract may be canceled by the purchaser at any time within one year after the date of purchase by returning the policy or contract and by giving written notice of cancellation to the insurer or its agent. If a purchaser cancels a policy or contract under this subdivision, the insurer must return the entire consideration paid for the policy or contract within ten days after receiving notice of cancellation and the returned policy or contract, except that if the contract is a variable annuity contract issued pursuant to sections 61A.13 to 61A.21, the insurer shall refund to the purchaser an amount calculated in accordance with the provisions of section 72A.51, subdivision 3.

History: 1977 c 178 s 2; 1980 c 354 s 2; 1986 c 444

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72A.53 REGULATION OF TRADE PRACTICES

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72A.53 VENDING MACHINE SALES.

Sections 72A.51 and 72A.52 shall not apply to insurance sold pursuant to section 60A.18.

History: 1977 c 178 s 3