

CHAPTER 65A

FIRE AND RELATED INSURANCE

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65A.31 MINNESOTA FAIR PLAN ACT.

Sections 65A.31 to 65A.42 shall be known and may be cited as “the Minnesota FAIR plan act.”

History: 1993 c 248 s 2

65A.32 PURPOSES.

The purposes of sections 65A.31 to 65A.42 are:

(1) to encourage stability in the property and liability insurance market for property located in this state;

(2) to encourage maximum use, in obtaining property and liability insurance, as defined in sections 65A.31 to 65A.42, of the normal insurance market provided by the private property and casualty insurance industry;

(3) to encourage the improvement of the condition of properties located in this state and to further orderly community development generally;

(4) to provide for an organization known as the Minnesota property insurance placement facility, which will assure fair access to insurance requirements (FAIR plan) in order that no property shall be denied property or liability insurance through the normal insurance market provided by the private property and casualty insurance industry except after a physical inspection of such property and a fair evaluation of its individual underwriting characteristics;

(5) to publicize the purposes and procedures of the FAIR plan to the end that no one may fail to seek its assistance through lack of knowledge of its existence; and

(6) to provide for the formulation and administration by the Minnesota property insurance placement facility of a reinsurance arrangement whereby property and casualty insurers shall share equitably the responsibility for insuring insurable property for which property and liability insurance cannot be obtained through the normal insurance markets.

History: 1993 c 248 s 3

65A.33 DEFINITIONS.

[For text of subds 1 to 3, see M.S.1992]

Subd. 4. “Minnesota property insurance placement facility,” hereinafter referred to as the facility, means the organization formed by insurers to assist applicants in securing property or liability insurance and to administer the FAIR plan.

Subd. 5. “Inspection bureau” means the rating organization designated by the facility, with the approval of the commissioner, to make inspections as required under sections 65A.31 to 65A.42 and to perform such other duties as may be authorized by the facility.

Subd. 6. “Premiums written” means gross direct premiums charged during the second preceding calendar year with respect to property in this state on all policies of

property or liability insurance and the property or liability insurance premium components of all multiperil policies, as computed by the facility, less return premiums, dividends paid or credited to policyholders, or the unused or unabsorbed portions of premium deposits.

[For text of subd 7, see M.S.1992]

Subd. 8. [Repealed, 1993 c 248 s 17]

History: 1993 c 248 s 4-6

65A.34 APPLICATION FOR COVERAGE.

Subdivision 1. Any person having an insurable interest in real or tangible personal property shall be entitled upon written application therefor to the facility to a prompt inspection of the property by the inspection bureau without cost.

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

Subd. 3. An inspection report shall be made for each property inspected. The report shall cover pertinent structural and occupancy features as well as the general condition of the building and surrounding structures. A representative photograph of the property may be taken during the inspection.

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

Subd. 5. Within five business days after the inspection, a copy of the completed inspection report, and any photograph, indicating the pertinent features of building, construction, maintenance, occupancy, and surrounding property shall be sent to the facility. Included with the report shall be a rate make-up statement, including any conditions which are subject to a condition charge under the rating plan approved by the commissioner. A copy of the inspection report shall be made available to the applicant or the applicant's agent upon request.

Subd. 6. Before the facility may deny coverage or write coverage with a condition charge, it must cause an inspection to be made of any risk submitted to it, without cost to the owner.

History: 1993 c 248 s 7

65A.35 ADMINISTRATION.

Subdivision 1. **Membership.** Each insurer which is authorized to write and is engaged in writing within this state, on a direct basis, property or liability insurance or any component thereof contained in a multiperil policy, including homeowners and commercial multiperil policies, shall participate in the facility, as hereinafter described, as a condition of its authority to write such kinds of insurance within this state.

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

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

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

Subd. 3. **Plan of operation.** The plan of operation of the facility, consistent with

the provisions of sections 65A.31 to 65A.42 and the purpose of the facility, which shall provide for the FAIR plan, the reinsurance arrangement, and the economical and efficient administration of the facility, including, but not limited to, management of the facility, establishment of necessary facilities within this state, assessment of members to defray losses and expenses, commission arrangements, reasonable underwriting standards, acceptance and cession of reinsurance, and procedures for determining amounts of insurance to be provided.

The plan of operation shall be subject to approval by the commissioner.

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

Subd. 5. Administration. (1) The facility shall be administered by a board of nine directors, five of whom are elected by the members of the facility and four who represent the public. Public directors may include licensed insurance agents. Public directors are appointed by the commissioner. At least one elected director shall be a domestic stock insurer, and at least one director shall be a domestic nonstock insurer. In the election of directors, each member of the facility shall be allotted votes bearing the same ratio to the total number of votes to be cast as its degree of participation in the facility bears to the total participation.

(2) Any vacancy among the elected directors shall be filled by a vote of the other elected directors.

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

(4) Vacancies among directors appointed by the commissioner shall be filled by appointment by the commissioner. A person so appointed serves until the end of the term of the director the person is replacing.

(5) All directors serve for a period of two years. The terms of all directors begin on January 1 of the year their appointments begin.

(6) The plan of operation must provide for adequate compensation of directors. A per diem amount and a procedure for reimbursement of expenses incurred in the discharge of their duties must be included in the plan. Directors whose employers compensate them while serving on the board or who would submit their compensation to their employers are not eligible for compensation under the plan.

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

History: 1993 c 248 s 8

65A.36 UNDERWRITING.

Subdivision 1. The facility may bind coverage following receipt of the completed application if the risk meets the preliminary underwriting requirements of the facility and if the appropriate binder fee accompanies the application. Agents are not permitted to bind coverage.

Before the expiration of the binder, the facility may request an inspection report to obtain further underwriting information. At least 15 days before the expiration of the binder, the facility shall advise the applicant that:

(a) The risk is acceptable with or without a condition charge. If a condition charge

applies, the facility will tell the insured what improvements are necessary in order to remove the charge;

(b) The risk is not acceptable unless improvements noted by the facility are made by the applicant and confirmed by the facility; or

(c) The risk is not acceptable for the reasons stated by the facility.

Subd. 2. If the risk is accepted, an invoice will be delivered to the applicant requiring payment of the premium amount. After receipt of the invoiced premium, the facility shall issue an insurance policy to the applicant within five business days.

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

(a) Physical condition of the property, such as its construction, heating, wiring, evidence of previous fires, or general deterioration;

(b) Its present use or housekeeping such as vacancy, overcrowding, storage of rubbish, or flammable materials;

(c) Other specific characteristics of ownership, condition, occupancy, or maintenance which are violative of public policy and result in increased exposure to loss.

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

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

Subd. 5. The facility must within five business days of the receipt of a completed application advise the applicant that the risk has been declined, the risk has been accepted, or that the risk meets preliminary underwriting standards and a binder has been issued.

History: 1993 c 248 s 9

65A.37 POLICY FORMS.

All policies, except homeowners policies, shall be on standard policy forms at rates published by Insurance Services Office and shall be issued for a term of one year. All homeowners, cooperative housing insurance, and condominium insurance policies must be on forms published by Insurance Services Office and approved by the commissioner.

History: 1993 c 248 s 10

65A.375 RATES FOR COOPERATIVE HOUSING AND NEIGHBORHOOD REAL ESTATE TRUSTS.

The commissioner shall set the insurance rates for cooperative housing, organized under chapter 308A, and for neighborhood real estate trusts, characterized as nonprofit ownership of real estate with resident control. The rates must be actuarially sound.

History: 1993 c 248 s 11

65A.38 POLICY CANCELLATION.

Subdivision 1. The facility shall not cancel a policy or binder issued under sections 65A.31 to 65A.42 except for:

(a) cause which would have been grounds for nonacceptance of the risk under the program had the cause been known to the facility at the time of acceptance;

(b) nonpayment of premium; or

(c) with the approval of the governing committee.

Subd. 2. Except as otherwise required under subdivision 4 or 5, at least 15 days notice of cancellation together with a statement of the reason therefor shall be sent to the insured with a copy sent to the commissioner.

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

Subd. 4. Cancellation of homeowner's insurance as defined in sections 65A.27 to 65A.29, is subject to the provisions of those sections.

Subd. 5. Cancellation of a commercial property insurance policy issued by the facility must comply with sections 60A.30 to 60A.31 and 60A.35 to 60A.38.

History: 1993 c 248 s 12

65A.39 APPEALS.

(a) Any applicant or participating insurer shall have the right of appeal to the board of directors, which shall promptly determine the appeal. A decision of the board may be appealed to the commissioner within 30 days from notice of the action or decision. The commissioner shall promptly determine the appeal. Each denial of insurance shall be accompanied by a statement that the applicant has the right of appeal to the board and the commissioner and setting forth the procedures to be followed for the appeal. A final action of the commissioner is subject to judicial review as provided in chapter 14.

(b) In lieu of the appeal to the commissioner under paragraph (a), an applicant or insurer may seek judicial review of the board's action.

History: 1993 c 248 s 13

65A.40 EDUCATION PROGRAMS.

The facility will undertake a continuing public education program, in cooperation with producers and others, to assure that the Minnesota FAIR plan act receives adequate public attention.

History: 1993 c 248 s 14

65A.41 AGENTS.

Subdivision 1. A person licensed under chapter 60K may submit an application for coverage to the facility and receive a commission from the facility for submitting the application. However, the licensee is not an agent of the facility for purposes of state law. All checks or similar instruments submitted in payment of facility premiums must be made payable to the facility and not the agent.

Subd. 2. An agent or broker shall not refuse to submit an application for basic property insurance coverage to the facility if licensed to write and actively engaged in writing such insurance.

History: 1993 c 248 s 15

65A.42 IMMUNITY FROM LIABILITY.

There shall be no liability on the part of, and no cause of action of any nature shall arise against insurers, the inspection bureau, the facility, or their agents or employees or the commissioner or the commissioner's authorized representatives, for any statements made in good faith by them in any reports or communications concerning the property to be insured, or at the time of any hearings conducted in connection therewith, or in the findings required by the provisions of sections 65A.31 to 65A.42. The inspection reports and communications of the inspection bureau and the facility are not public documents.

History: 1993 c 248 s 16

65A.43 [Repealed, 1993 c 248 s 17]