CHAPTER 60A

GENERAL INSURANCE POWERS

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60A.01 SCOPE.

This chapter includes the provisions relating to administration in general and the provisions applicable to insurance in general.

History: *1967 c 395 art 1 s 1*

60A.02 DEFINITIONS.

Subdivision 1. **Terms.** Unless the language or context clearly indicates that a different meaning is intended, the following terms shall, for the purposes of chapters 60A to 72A, 69, 70A and 299F, have the meanings ascribed to them.

Subd. 1a. **Association or associations.** (a) "Association" or "associations" means an organized body of people who have some interest in common and that has at the onset a minimum of 100 persons; is organized and maintained in good faith for purposes other than that of obtaining insurance; and has a constitution and bylaws which provide that: (1) the association or associations hold regular meetings not less frequently than annually to further purposes of the members; (2) except for credit unions, the association or associations collect dues or solicit contributions from members; (3) the members have voting privileges and representation on the governing board and committees, which provide the members with control of the association including the purchase and administration of insurance products offered to members; and (4) the members are not, within the first 30 days of membership, directly solicited, offered, or sold an insurance policy if the policy is available as an association benefit.

(b) An association may apply to the commissioner for a waiver of the 30–day waiting period to that association. The commissioner may grant the waiver upon a finding of all of the following: (1) the association is in full compliance with this subdivision; (2) sanctions have not been imposed against the association as a result of significant disciplinary action by the commissioner; and (3) at least 80 percent of the association's income comes from dues, contributions, or sources other than income from the sale of insurance.

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Subd. 2. **Commissioner.** "Commissioner" means the commissioner of commerce of the state of Minnesota and, in the commissioner's absence or disability, a deputy or other person duly designated to act in the commissioner's place.

Subd. 2a. **Continued.** An insurance policy that is issued for a term in excess of one year or that has no specified term or that is designated as being continuous is "continued" each year on the anniversary date of the issuance of the policy.

Subd. 3. **Insurance.** (a) "Insurance" is any agreement whereby one party, for a consideration, undertakes to indemnify another to a specified amount against loss or damage from specified causes, or to do some act of value to the assured in case of such loss or damage. A program of self–insurance, self–insurance revolving fund or pool established under section 471.981 is not insurance for purposes of this subdivision.

(b) Notwithstanding paragraph (a), capitation payments to a capitated entity by an employer that maintains a program of self–insurance described in this paragraph, do not constitute insurance with respect to the receipt of the payments. The payments are not premium revenues for the purpose of calculating liability for otherwise applicable state taxes, assessments, or surcharges, with the exception of:

(1) the MinnesotaCare provider tax;

(2) the one percent premium tax imposed in section 60A.15, subdivision 1, paragraph (d); and

(3) effective July 1, 1995, assessments by the Minnesota comprehensive health association.

This paragraph applies only where:

(1) the capitated entity does not bear risk in excess of 110 percent of the self–insurance program's expected costs;

(2) the employer does not carry stop loss, excess loss, or similar coverage with an attachment point lower than 120 percent of the self–insurance program's expected costs;

(3) the capitated entity and the employer comply with the data submission and administrative simplification provisions of chapter 62J;

(4) the capitated entity and the employer comply with the provider tax pass–through provisions of section 295.582;

(5) the capitated entity's required minimum reserves reflect the risk borne by the capitated entity under this paragraph, with an appropriate adjustment for the 110 percent limit on risk borne by the capitated entity;

(6) on or after July 1, 1994, but prior to January 1, 1995, the employer has at least 1,500 current employees, as defined in section 62L.02, or, on or after January 1, 1995, the employer has at least 750 current employees, as defined in section 62L.02;

(7) the employer does not exclude any eligible employees or their dependents, both as defined in section 62L.02, from coverage offered by the employer, under this paragraph or any other health coverage, insured or self–insured, offered by the employer, on the basis of the health status or health history of the person. For purposes of this subdivision, a capitated entity must be licensed as a health maintenance organization, integrated service network, or community integrated service network, or must be a preferred provider organization. For purposes of this section, a preferred provider organization is a health plan company that contracts with providers to provide health care to its enrollees. All other insurance as defined in paragraph (a), even if maintained by an employer that also offers programs of self–insurance, continues to be subject to all applicable state regulations.

This paragraph expires December 31, 1997.

Subd. 4. **Company or insurance company.** "Company" or "insurance company" includes every insurer, corporation, business trust, or association engaged in insurance as principal, but for purposes of this subdivision does not include a political subdivision providing self–insurance or establishing a pool under section 471.981, subdivision 3.

Subd. 4a. **Mutual property and casualty insurance company.** "Mutual property and casualty insurance company" includes a property and casualty insurance company that was converted to a stock company after December 31, 1987, and before January 1, 1994, if the

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company was controlled on the date of conversion by a mutual life insurance company and so long as the company continues to be controlled by a mutual life insurance company.

Subd. 5. **Domestic.** "Domestic" shall designate those companies incorporated or organized in this state.

Subd. 6. **Foreign.** "Foreign," when used without limitations, shall designate those companies incorporated or organized in any other state or country.

Subd. 7. **Insurance agent or insurance agency.** An "insurance agent" or "insurance agency" is a person acting under express authority from, and an appointment pursuant to section 60K.02 by, an insurer and on its behalf to solicit insurance, or to appoint other agents to solicit insurance, or to write and countersign policies of insurance, or to collect premiums therefor within this state, or to exercise any or all these powers when so authorized by the insurer. The term "person" includes a natural person, a partnership, a corporation, or other entity, including an insurance agency.

Subd. 8. [Repealed, 1981 c 307 s 22]

Subd. 9. **Net assets.** "Net assets" means that portion of the excess of the entire assets of an insurance company over its entire liabilities, exclusive of capital, and inclusive of policy liability, available for the payment of its obligations, including capital stock in this state and including as assets deferred premiums on policies written within three months and actually in force; and, in the case of a mutual marine or fire and marine company, its subscription funds and premium notes not more than 30 days past due and uncollected. In the case of a mutual fire insurance company, there shall be included as assets premium notes absolutely payable within six months from date and given for policies actually in force, when such notes are not more than 30 days overdue. Unpaid guaranty fund subscriptions shall not be included as assets, and guaranty fund certificates upon which there is no liability of the company until all of its other obligations and liabilities are paid shall not be included as a liability.

Subd. 10. **Earned premiums.** "Earned premiums" includes gross premiums charged on all policies written, including all determined excess and additional premiums, less return premiums, other than premiums returned to policyholders as dividends, and less reinsurance premiums and premiums on policies canceled, and less unearned premiums on policies in force. Any participating company which has charged in its premiums a loading solely for dividends shall not be required to include such loading in its earned premiums; provided, a statement of the amount of such loading has been filed and approved by the commissioner.

Subd. 11. **Unearned premiums, insurance reserve, net value policies, and premium reserve.** "Unearned premiums," "insurance reserve," "net value policies," and "premium reserve" severally refer to the liability of an insurance company upon its insurance contracts other than accrued claims computed by rules on valuation herein established.

Subd. 12. **Profits.** "Profits" of a mutual insurance company means that portion of its net earnings not required for payment of losses and expenses, nor set apart for any lawful purposes.

Subd. 13. **Loss payments and loss expense payments.** The terms "loss payments" and "loss expense payments" include all payments to claimants, including payments for medical and surgical attendance, legal expense, salaries and expenses of investigators, adjusters, and field representatives, rents, stationery, telegraph and telephone charges, postage, salaries and expenses of office employees, home office expenses, and all other payments made on account of claims, whether such payments shall be allocated to specific claims or unallocated.

Subd. 14. **Compensation.** The term "compensation" relates to all insurance effected by virtue of statutes providing compensation to employees for personal injuries irrespective of fault of the employer.

Subd. 15. **Liability.** The term "liability" relates to all insurance, except compensation insurance, against loss or damage from accident to or injuries suffered by an employee or other person and for which the insured is liable.

Subd. 16. **Department of commerce.** "Department of commerce" of the state of Minnesota also means department of commerce or commissioner of commerce.

Subd. 17. **Leasehold estate.** The term "leasehold estate" means an estate in land which includes the ground lease covering the land and any improvements thereon.

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Subd. 18. **State.** "State" means any state of the United States of America, the District of Columbia, the commonwealth of Puerto Rico and any other possessions of the United States.

Subd. 19. **Alien.** "Alien" means an insurer domiciled outside of the United States, but conducting business within the United States.

Subd. 20. **Assume.** "Assume" means to accept all or part of a ceding company's insurance or reinsurance on a risk or exposure.

Subd. 21. **Cede.** "Cede" means to pass on to another insurer all or part of the insurance written by an insurer for the purpose of reducing the possible liability of the insurer.

Subd. 22. **Cession.** "Cession" means the unit of insurance passed to a reinsurer by an insurer which issued a policy to the insured.

Subd. 23. **Facultative reinsurance.** "Facultative reinsurance" means the reinsurance of part or all of the insurance provided by a single policy, with separate negotiation for each cession.

Subd. 24. **Reinsurer.** "Reinsurer" means an insurer which assumes the liability of another insurer through reinsurance.

Subd. 25. **Retrocession.** "Retrocession" means a transaction in which a reinsurer cedes to another reinsurer all or part of the reinsurance that the reinsurer had previously assumed.

Subd. 26. **United States branch.** "United States branch" means the business unit through which business is transacted within the United States by an alien insurer.

Subd. 27. **Admitted assets.** "Admitted assets" means the assets as shown by the company's annual statement on December 31 valued according to valuation regulations prescribed by the National Association of Insurance Commissioners and procedures adopted by the National Association of Insurance Commissioners' financial condition Ex 4 subcommittee if not addressed in another section, unless the commissioner requires or finds another method of valuation reasonable under the circumstances.

Subd. 28. **Group insurance.** "Group insurance" means that form of insurance coverage sponsored by:

(1) an employer covering not less than two employees and which may include the employees' dependents, consisting of husband, wife, children, and actual dependents residing in the household, written under a master policy issued to any employer, or group of employers who have joined into an arrangement for the purposes of providing the employees insurance for their individual benefit. Employees' dependents, consisting of husband, wife, children, and actual dependents residing in the same household, are not employees for purposes of this definition except for a spouse employed on a regular full–time basis by the same employer. This clause does not apply to chapter 62L;

(2) an association to provide insurance to its members; or

(3) a creditor to provide life insurance to insure its debtors in connection with real estate mortgage loans, in an amount not to exceed the actual or scheduled amount of their indebtedness.

Subd. 29. **Multiple employer trust.** "Multiple employer trust" means a trust organized for the benefit of two or more employers for the purpose of providing health insurance coverage to employees and dependents.

History: *1967 c 395 art 1 s 2; 1969 c 494 s 1,2; 1971 c 24 s 9; 1980 c 529 s 1,2; 1981 c 307 s 1; 1983 c 289 s 114 subd 1; 1983 c 328 s 1; 1984 c 655 art 1 s 92; 1Sp1985 c 10 s 49; 1986 c 444; 1989 c 260 s 1; 1991 c 325 art 1 s 1–9; art 10 s 1; 1992 c 564 art 1 s 13; art 3 s 1; 1994 c 485 s 4; 1994 c 587 art 1 s 1; 1994 c 625 art 8 s 1; 1995 c 234 art 7 s 1*

60A.03 COMMISSIONER OF COMMERCE.

Subdivision 1. **Commissioner; appointment.** The commissioner of commerce shall be appointed by the governor under the provisions of section 15.06. All of the commissioner's time shall be devoted to the duties of the office.

Subd. 2. **Powers of commissioner.** The commissioner shall have and exercise the power to enforce all the laws of this state relating to insurance, and shall enforce all the provisions

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of the laws of this state relating to insurance in the manner provided by the laws defining the powers and duties of the commissioner of commerce, or, in the absence of any law prescribing the procedure, by any reasonable procedure the commissioner prescribes.

Subd. 3. **Commissioner may appoint.** (1) **Official staff.** The commissioner may appoint a deputy or assistant commissioner of commerce to assist in the commissioner's duties, an actuary, a chief examiner, a statistician, and such assistants to these employees and such stenographic and clerical help as may be required for the proper conduct of the department of commerce.

(2) **Duties of departmental officials.** In the absence or disability of the commissioner, the commissioner's duties shall be performed by the deputy or assistant commissioner of commerce. The actuary of the department shall, under the direction of the commissioner, make such valuation of life insurance policies as shall be necessary, from time to time, to the proper supervision of life insurance companies transacting business in this state, and shall perform such other actuarial duties, including the visitation and examination of insurance companies, as the commissioner may prescribe. The chief and assistant examiners shall, under the direction of the commissioner, devote their principal time to necessary or required examinations of insurance companies, and perform such other duties as the commissioner may prescribe. Other salaried employees of the department of commerce shall be under the direction of the commissioner and perform such duties, in connection with the department of commerce, as the commissioner may prescribe.

(3) **Consulting actuary, appointment and compensation.** The commissioner may, when the commissioner shall deem it necessary, appoint any experienced and competent professional insurance actuary to personally make or conduct, or assist in making or conducting, an examination of any insurance company admitted, or applying for admission, to do business in this state, on condition that the commissioner shall have previously filed with the secretary of state a written declaration designating such person, by name and address, as a consulting actuary of the department of commerce. In this case, the commissioner shall fix a reasonable compensation for the actuary on a per diem basis for the actual time employed in making or conducting, or assisting to make or conduct, the examination, which compensation, together with the amount of the necessary expenses actually incurred by the actuary, including expenses of any necessary appraisal or clerical assistance, shall be charged to the company and paid by it to the actuary.

(4) **Appraiser, appointment and compensation.** The commissioner, when deeming it necessary, may appoint any qualified person to make an appraisal of any or all of the assets of any such company. Such person shall be paid such reasonable fees for the appraisal as may be approved by the commissioner and shall also be paid necessary expenses actually incurred in connection with the services. Such compensation and expenses shall be paid by the company.

Subd. 4. [Repealed, 1969 c 7 s 2]

Subd. 5. **Examination fees and expenses.** When any visitation, examination, or appraisal is made by order of the commissioner, the company being examined, visited, or appraised, including, but not limited to, fraternals, township mutuals, reciprocal exchanges, nonprofit service plan corporations, health maintenance organizations, vendors of risk management services licensed under section 60A.23, or self–insurance plans or pools established under section 176.181 or 471.982, shall pay to the department of commerce the necessary expenses of the persons engaged in the examination, visit, appraisal, or desk audits of annual statements and records performed by the department other than on the company premises plus the per diem salary fees of the employees of the department of commerce who are conducting or participating in the examination, visitation, appraisal, or desk audit. The per diem salary fees may be based upon the approved examination fee schedules of the National Association of Insurance Commissioners or otherwise determined by the commissioner. All of these fees and expenses must be paid into the department of commerce revolving fund.

Subd. 6. **Examination revolving fund.** (1) **Revolving fund created.** There is hereby created the department of commerce examination revolving fund for the purpose of carrying on the examination of foreign and domestic insurance companies.

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(2) **Money in revolving fund.** Such fund shall consist of the $7,500 appropriated therefor and the money transferred to it as herein provided, which are reappropriated to the commissioner of commerce for the purpose of this subdivision.

(3) **Fund to be kept in state treasury.** Such fund shall be kept in the state treasury and shall be paid out in the manner prescribed by law for money therein.

(4) **Purposes for which fund may be expended.** Such fund shall be used for the payment of per diem salaries and expenses of special examiners and appraisers, and the expenses of the commissioner of commerce, deputy commissioner of commerce, chief examiner, actuary other than a consulting actuary appointed under subdivision 3, clause (3) hereof, regular salaried examiners and other employees of the department of commerce when participating in examinations. Expenses include meals, lodging, laundry, transportation, and mileage. The salary of regular employees of the division of insurance shall not be paid out of this fund.

(5) **Collections to be deposited in fund.** All money collected by the division of insurance from insurance companies for fees and expenses of examinations, shall be deposited in the insurance division examination revolving fund.

(6) **Payments from such fund.** Upon authorization by the commissioner of commerce, the money due each examiner or employee engaged in an examination shall be paid from the insurance division examination revolving fund in the manner prescribed by law.

(7) **Excess over $25,000 canceled into general fund.** The balance in such fund on June 30 of each year in excess of $25,000 shall be forthwith canceled into the general fund.

Subd. 7. [Repealed, 1969 c 707 s 1; 1969 c 1129 art 4 s 11]

Subd. 8. **Computation of net value; life insurance.** (1) **Domestic insurers.** The commissioner shall compute, yearly, the net value of all outstanding policies in every company authorized to insure lives in this state, calculated upon the basis stated in section 61A.25.

(2) **Foreign insurers.** The commissioner may accept the valuation made by the insurance commissioner of the state under whose authority a life company was organized, when that valuation has been made on sound and recognized principles and on the legal basis provided in section 61A.25, or its equivalent, when furnished with a certificate of that commissioner setting forth that value on the last day of the preceding year. Every such life company which fails to promptly furnish this certificate shall, on demand, furnish the commissioner detailed lists of all its policies and securities, and shall be liable for all charges and expenses resulting therefrom.

Subd. 9. **Confidentiality of information.** The commissioner may not be required to divulge any information obtained in the course of the supervision of insurance companies, or the examination of insurance companies, including examination related correspondence and workpapers, until the examination report is finally accepted and issued by the commissioner, and then only in the form of the final public report of examinations. Nothing contained in this subdivision prevents or shall be construed as prohibiting the commissioner from disclosing the content of this information to the insurance department of another state or the National Association of Insurance Commissioners if the recipient of the information agrees in writing to hold it as nonpublic data as defined in section 13.02, in a manner consistent with this subdivision. This subdivision does not apply to the extent the commissioner is required or permitted by law, or ordered by a court of law to testify or produce evidence in a civil or criminal proceeding. For purposes of this subdivision, a subpoena is not an order of a court of law.

History: *1967 c 395 art 1 s 3; 1969 c 7 s 3; 1969 c 399 s 1; 1969 c 707 s 1; 1969 c 1129 art 4 s 11; 1976 c 2 s 35; 1977 c 305 s 17; 1978 c 470 s 1; 1983 c 289 s 114 subd 1; 1983 c 328 s 2; 1984 c 655 art 1 s 92; 1985 c 248 s 20; 1986 c 444; 1990 c 573 s 19; 1991 c 325 art 10 s 2; 1992 c 540 art 2 s 1; 1992 c 564 art 1 s 14; 1994 c 485 s 5; 1995 c 214 s 2*

60A.031 EXAMINATIONS.

Subdivision 1. **Power to examine.** (1) **Insurers and other licensees.** At any time and for any reason related to the enforcement of the insurance laws, or to ensure that companies are being operated in a safe and sound manner and to protect the public interest, the commissioner may examine the affairs and conditions of any foreign or domestic insurance or reinsurance company, including reciprocals and fraternals, licensee or applicant for a license un-

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der the insurance laws, or any other person or organization of persons doing or in the process of organizing to do any insurance business in this state, and of any licensed advisory organization serving any of the foregoing in this state.

The commissioner shall examine the affairs and conditions of every insurer licensed in this state not less frequently than once every five years.

(2) **Who may be examined.** The commissioner in making any examination of an insurance company as authorized by this section may, if in the commissioner's discretion, there is cause to believe the commissioner is unable to obtain relevant information from such insurance company or that the examination or investigation is, in the discretion of the commissioner, necessary or material to the examination of the company, examine any person, association, or corporation:

(a) transacting, having transacted, or being organized to transact the business of insurance in this state;

(b) engaged in or proposing to be engaged in the organization, promotion, or solicitation of shares or capital contributions to or aiding in the formation of a domestic insurance company;

(c) holding shares of capital stock of an insurance company for the purpose of controlling the management thereof as voting trustee or otherwise;

(d) having a contract, written or oral, pertaining to the management or control of an insurance company as general agent, managing agent, attorney–in–fact, or otherwise;

(e) which has substantial control directly or indirectly over an insurance company whether by ownership of its stock or otherwise, or owning stock in any domestic insurance company, which stock constitutes a substantial proportion of either the stock of the domestic insurance company or of the assets of the owner thereof;

(f) which is a subsidiary or affiliate of an insurance company;

(g) which is a licensed agent or solicitor or has made application for the licenses;

(h) engaged in the business of adjusting losses or financing premiums.

Nothing contained in this clause (2) shall authorize the commissioner to examine any person, association, or corporation which is subject to regular examination by another division of the commerce department of this state. The commissioner shall notify the other division when an examination is deemed advisable.

Subd. 2. [Repealed, 1981 c 211 s 42]

Subd. 2a. **Purpose, scope, and notice of examination.** An examination may, but need not, cover comprehensively all aspects of the examinee's affairs, practices, and conditions. The commissioner shall determine the nature and scope of each examination and in doing so shall take into account all available relevant factors concerning the financial and business affairs, practices and conditions of the examinee. For examinations undertaken pursuant to this section, the commissioner shall issue an order stating the scope of the examination and designating the person responsible for conducting the examination. A copy of the order shall be provided to the examinee.

In conducting the examination, the examiner shall observe the guidelines and procedures in the examiner's handbook adopted by the National Association of Insurance Commissioners. The commissioner may also employ other guidelines or procedures that the commissioner may consider appropriate.

Subd. 3. **Access to examinee.** (a) The commissioner, or the designated person, shall have timely, convenient, and free access at all reasonable hours to all books, records, securities, accounts, documents, and any or all computer or other records and papers relating to the property, assets, business, and affairs of any company, applicant, association, or person which may be examined pursuant to this section for the purpose of ascertaining, appraising, and evaluating the assets, conditions, affairs, operations, ability to fulfill obligations, and compliance with all the provisions of law of the company or person insofar as any of the above pertain to the business of insurance of a person, organization, or corporation transacting, having transacted, or being organized to transact business in this state. Every company or person being examined, its officers, directors, and agents, shall provide to the commissioner or the designated person timely, convenient, and free access at all reasonable hours at

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its office to all its books, records, accounts, papers, securities, documents, any or all computer or other records relating to the property, assets, business, and affairs of the company or person. The officers, directors, and agents of the company or person shall facilitate the examination and aid in the examination so far as it is in their power to do so.

The refusal of a company, by its officers, directors, employees, or agents, to submit to examination or to comply with a reasonable request of the examiners is grounds for suspension or refusal of, or nonrenewal of, a license or authority held by the company to engage in an insurance or other business subject to the commissioner's jurisdiction. The proceedings for suspension, revocation, or refusal of a license or authority must be conducted as provided in section 45.027.

(b) The commissioner or any examiners may issue subpoenas, administer oaths, and examine under oath any person as to any matter pertinent to the examination. If a person fails or refuses to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order is punishable as contempt of court.

(c) When making an examination or audit under this section, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the cost of which must be paid by the company that is the subject of the examination or audit.

(d) This section does not limit the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to an examination are prima facie evidence in a legal or regulatory action.

(e) Nothing contained in this section shall be construed to limit the commissioner's authority to use as evidence a final or preliminary examination report, examiner or company workpapers or other documents, or other information discovered or developed during the course of an examination in the furtherance of a legal or administrative action which the commissioner may, in the commissioner's sole discretion, consider appropriate.

Subd. 4. **Examination report; foreign and domestic companies.** (a) The commissioner shall make a full and true report of every examination conducted pursuant to this chapter, which shall include (1) a statement of findings of fact relating to the financial status and other matters ascertained from the books, papers, records, documents, and other evidence obtained by investigation and examination or ascertained from the testimony of officers, agents, or other persons examined under oath concerning the business, affairs, assets, obligations, ability to fulfill obligations, and compliance with all the provisions of the law of the company, applicant, organization, or person subject to this chapter and (2) a summary of important points noted in the report, conclusions, recommendations and suggestions as may reasonably be warranted from the facts so ascertained in the examinations. The report of examination shall be verified by the oath of the examiner in charge thereof, and shall be prima facie evidence in any action or proceedings in the name of the state against the company, applicant, organization, or person upon the facts stated therein.

(b) No later than 60 days following completion of the examination, the examiner in charge shall file with the department a verified written report of examination under oath. Upon receipt of the verified report, the department shall transmit the report to the company examined, together with a notice which provides the company examined with a reasonable opportunity of not more than 30 days to make a written submission or rebuttal with respect to matters contained in the examination report.

(c) Within 30 days of the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with the written submissions or rebuttals and the relevant portions of the examiner's workpapers and enter an order:

(1) adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, rule, or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure the violation;

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(2) rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation, or information, and refiling the report as required under paragraph (b); or

(3) calling for an investigatory hearing with no less than 20 days' notice to the company for purposes of obtaining additional documentation, data, information, and testimony.

(d)(1) All orders entered under paragraph (c), clause (1), must be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner workpapers, and any written submissions or rebuttals. The order is a final administrative decision and may be appealed as provided under chapter 14. The order must be served upon the company by certified mail, together with a copy of the adopted examination report. Within 30 days of the issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

(2) A hearing conducted under paragraph (c), clause (3), by the commissioner or authorized representative, must be conducted as a nonadversarial confidential investigatory proceeding as necessary for the resolution of inconsistencies, discrepancies, or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the commissioner's review of relevant workpapers or by the written submission or rebuttal of the company. Within 20 days of the conclusion of the hearing, the commissioner shall enter an order as required under paragraph (c), clause (1).

(3) The commissioner shall not appoint an examiner as an authorized representative to conduct the hearing. The hearing must proceed expeditiously. Discovery by the company is limited to the examiner's workpapers which tend to substantiate assertions in a written submission or rebuttal. The commissioner or the commissioner's representative may issue subpoenas for the attendance of witnesses or the production of documents considered relevant to the investigation whether under the control of the department, the company, or other persons. The documents produced must be included in the record. Testimony taken by the commissioner or the commissioner's representative must be under oath and preserved for the record.

This section does not require the department to disclose information or records which would indicate or show the existence or content of an investigation or activity of a criminal justice agency.

(4) The hearing must proceed with the commissioner or the commissioner's representative posing questions to the persons subpoenaed. Thereafter, the company and the department may present testimony relevant to the investigation. Cross–examination may be conducted only by the commissioner or the commissioner's representative. The company and the department shall be permitted to make closing statements and may be represented by counsel of their choice.

(e)(1) Upon the adoption of the examination report under paragraph (c), clause (1), the commissioner shall continue to hold the content of the examination report as private and confidential information for a period of 30 days except as otherwise provided in paragraph (b). Thereafter, the commissioner may open the report for public inspection if a court of competent jurisdiction has not stayed its publication.

(2) Nothing contained in this subdivision prevents or shall be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating to the reports, to the commerce department or the insurance department of another state or country, or to law enforcement officials of this or another state or agency of the federal government at any time, if the agency or office receiving the report or matters relating to the report agrees in writing to hold it confidential and in a manner consistent with this subdivision.

(3) If the commissioner determines that regulatory action is appropriate as a result of an examination, the commissioner may initiate proceedings or actions as provided by law.

(f) All working papers, recorded information, documents and copies thereof produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination made under this subdivision must be given confidential treatment and are not subject to subpoena and may not be made public by the commissioner or any other person, except to the extent provided in paragraph (e). Access may also be granted to the National Asso-

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ciation of Insurance Commissioners. The parties must agree in writing prior to receiving the information to provide to it the same confidential treatment as required by this section, unless the prior written consent of the company to which it pertains has been obtained.

Subd. 5. **Order; foreign and domestic companies.** Within a reasonable time of receipt of an examination report the commissioner may issue an order to the examinee directing compliance within a time specified in the order or by law with one or more of the following:

(a) to restore within the time and extent prescribed by law or the commissioner's order any deficiency, whenever its capital, reserves or surplus have become impaired,

(b) to cease and desist from transaction of any business or from any business practice which if transacted or continued might result in the examinee's condition or further transaction of business being hazardous to its policyholders, its creditors, or the public,

(c) to cease and desist from any other violation of its charter or any law of the state.

Subd. 6. **Penalty.** Notwithstanding section 72A.05, any person who violates or aids and abets any violation of a written order issued pursuant to this section may be fined not more than $10,000 for each day the violation continues for each violation of the order in an action commenced in Ramsey county by the attorney general on behalf of the state of Minnesota and the money so recovered shall be paid into the general fund.

Subd. 7. **Alternatives to examinations.** In lieu of an examination under this section of a foreign or an alien insurer licensed in this state, the commissioner may accept an examination report on the company as prepared by the insurance department for the company's state of domicile or port of entry state until January 1, 1994. After January 1, 1994, the reports may only be accepted if:

(1) the insurance department is accredited under the National Association of Insurance Commissioners Financial Regulation Standards and Accreditation Program at the time of the examination; or

(2) the examination is performed under the supervision of an accredited insurance department or with the participation of one or more examiners who are employed by an accredited state insurance department and who, after a review of the examination workpapers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.

Subd. 7a. **Conflict of interest.** The department shall establish reasonable procedures so that no examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in a person subject to examination under this chapter. This section shall not be construed to automatically preclude an examiner from being:

(1) a policyholder or claimant under an insurance policy;

(2) a grantor of a mortgage or similar instrument on the examiner's residence to a regulated entity if done under customary terms and in the ordinary course of business;

(3) an investment owner in shares of regulated diversified investment companies; or

(4) a settlor or beneficiary of a "blind trust" into which any otherwise impermissible holdings have been placed.

Notwithstanding the requirements of this section, the commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though the persons may from time to time be similarly employed or retained by persons subject to examination under this chapter.

Subd. 8. **Power to make rules.** The commissioner may promulgate any rules which may be necessary to the administration of subdivisions 1 to 9.

Subd. 9. **Immunity from liability.** (a) No cause of action shall arise nor shall liability be imposed against the commissioner, the commissioner's authorized representatives, or an examiner appointed by the commissioner for statements made or conduct performed in good faith while carrying out the provisions of this section.

(b) No cause of action shall arise, nor shall liability be imposed against a person for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative or examiner pursuant to an examination made under this

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section, if the act of communication or delivery is performed in good faith and without fraudulent intent or the intent to deceive.

(c) This section does not abrogate or modify a common law or statutory privilege or immunity enjoyed by a person identified in paragraph (a).

(d) A person identified in paragraph (a) may be awarded attorney fees and costs if the person is the prevailing party in a civil cause of action for libel, slander, or other relevant tort arising out of activities in carrying out the provisions of this section, and the party bringing the action was not substantially justified in doing so. For purposes of this section, a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

History: *1967 c 591 s 1; 1969 c 234 s 1,2; 1969 c 399 s 1; 1981 c 211 s 1–7; 1984 c 628 art 3 s 11; 1986 c 444; 1991 c 325 art 10 s 3; 1992 c 540 art 2 s 2*

60A.032 COMMISSIONER'S ORDERS, REPORT.

When, upon receipt of an examination report, the commissioner forwards to the company an order based on the report, the commissioner shall immediately report the fact to the governor and the attorney general. Within 20 days after submission of the report the commissioner shall submit to the governor and attorney general a supplementary report if the company has not complied with the order.

History: *1969 c 7 s 1; 1986 c 444*

60A.04 [Repealed, 1969 c 708 s 62]

60A.05 [Repealed, 1992 c 564 art 3 s 30]

60A.051 [Repealed, 1992 c 564 art 3 s 30]

60A.052 DENIAL, REVOCATION, SUSPENSION OF CERTIFICATE OF AUTHORITY.

Subdivision 1. **Grounds.** The commissioner may by order take any or all of the following actions: (a) deny, suspend, or revoke a certificate of authority; (b) censure the insurance company; or (c) impose a civil penalty as provided for in section 45.027, subdivision 6. In order to take this action the commissioner must find that the order is in the public interest, and the insurance company:

(1) has a board of directors or principal management that is incompetent, untrustworthy, or so lacking in insurance company managerial experience as to make its operation hazardous to policyholders, its stockholders, or to the insurance buying public;

(2) is controlled directly or indirectly through ownership, management, reinsurance transactions, or other business relations by any person or persons whose business operations are or have been marked by manipulation of any assets, reinsurance, or accounts as to create a hazard to the company's policyholders, stockholders, or the insurance buying public;

(3) is in an unsound or unsafe condition;

(4) has the actual liabilities that exceed the actual funds of the company;

(5) has filed an application for a license which is incomplete in any material respect or contains any statement which, in light of the circumstances under which it was made, contained any misrepresentation or was false, misleading, or fraudulent;

(6) has pled guilty, with or without explicitly admitting guilt, pled nolo contendere, or been convicted of a felony, gross misdemeanor, or misdemeanor involving moral turpitude, or similar conduct;

(7) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the insurance business;

(8) has violated or failed to comply with any order of the insurance regulator of any other state or jurisdiction;

(9) has had a certificate of authority denied, suspended, or revoked, has been censured or reprimanded, has been the subject of any other discipline imposed by, or has paid or has been required to pay a monetary penalty or fine to, another state;

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(10) agents, officers, or directors refuse to submit to examination or perform any related legal obligation; or

(11) has violated or failed to comply with, any of the provisions of the insurance laws including chapter 45 or chapters 60A to 72A or any rule or order under those chapters.

Subd. 2. **Suspension or revocation of authority or censure.** If the commissioner determines that one of the conditions listed in subdivision 1 exists, the commissioner may issue an order requiring the insurance company to show cause why any or all of the following should not occur: (1) revocation or suspension of any or all certificates of authority granted to the foreign or domestic insurance company or its agent; (2) censuring of the insurance company; or (3) the imposition of a civil penalty. The order shall be calculated to give reasonable notice of the time and place for hearing thereon, and shall state the reasons for the entry of the order. All hearings shall be conducted in accordance with chapter 14. The insurer may waive its right to the hearing. If the insurer is under the supervision or control of the insurance department of the insurer's state of domicile, that insurance department, acting on behalf of the insurer, may waive the insurer's right to the hearing. After the hearing, the commissioner shall enter an order disposing of the matter as the facts require. If the insurance company fails to appear at a hearing after having been duly notified of it, the company shall be considered in default, and the proceeding may be determined against the company upon consideration of the order to show cause, the allegations of which may be considered to be true.

Subd. 3. **Applicants.** Whenever it appears to the commissioner that an application for a certificate of authority should be denied pursuant to subdivision 1, the commissioner shall promptly give a written notice to the applicant of the denial. The notice must state the grounds for the denial and give reasonable notice of the rights of the applicant to request a hearing. A hearing must be held not later than 30 days after the request for hearing is received by the commissioner unless the applicant and the department of commerce agree that the hearing may be held at a later date. If no hearing is requested within 30 days of service of the notice, the denial will become final. All hearings shall be conducted in accordance with chapter 14. After the hearing, the commissioner shall enter an order disposing of the matter as the facts require. If the applicant fails to appear at a hearing after having been duly notified of it, the applicant shall be considered in default, and the proceeding may be determined against the applicant upon consideration of the notice denying the application, the allegations of which may be considered to be true.

Subd. 4. **Actions against lapsed certificate of authority.** If a certificate of authority lapses, is surrendered, withdrawn, terminated, or otherwise becomes ineffective, the commissioner may institute a proceeding under this subdivision within two years after the certificate of authority was last effective and enter a revocation or suspension order as of the last date on which the certificate of authority was in effect, or impose a civil penalty as provided for in section 45.027, subdivision 6.

History: *1992 c 564 art 3 s 2; 1994 c 425 s 1; 1994 c 485 s 6*

60A.06 KINDS OF INSURANCE PERMITTED.

Subdivision 1. **Statutory lines.** Insurance corporations may be authorized to transact in any state or territory in the United States, in the Dominion of Canada, and in foreign countries, when specified in their charters or certificates of incorporation, either as originally granted or as thereafter amended, any of the following kinds of business, upon the stock plan, or upon the mutual plan when the formation of such mutual companies is otherwise authorized by law; and business trusts as authorized by law of this state shall only be authorized to transact in this state the following kind of business hereinafter specified in clause (7) hereof when specified in their "declaration of trust":

(1) To insure against loss or damage to property on land and against loss of rents and rental values, leaseholds of buildings, use and occupancy and direct or consequential loss or damage caused by fire, smoke or smudge, water or other fluid or substance, lightning, windstorm, tornado, cyclone, earthquake, collapse and slippage, rain, hail, frost, snow, freeze, change of temperature, weather or climatic conditions, excess or deficiency of moisture, floods, the rising of waters, oceans, lakes, rivers or their tributaries, bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped power, electrical power inter-

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ruption or electrical breakdown from any cause, railroad equipment, motor vehicles or aircraft, accidental injury to sprinklers, pumps, conduits or containers or other apparatus erected for extinguishing fires, explosion, whether fire ensues or not, except explosions on risks specified in clause (3); provided, however, that there may be insured hereunder the following: (a) explosion of any kind originating outside the insured building or outside of the building containing the property insured, (b) explosion of pressure vessels which do not contain steam or which are not operated with steam coils or steam jackets; and (c) risks under home owners multiple peril policies;

(2)(a) To insure vessels, freight, goods, wares, merchandise, specie, bullion, jewels, profits, commissions, bank notes, bills of exchange, and other evidences of debt, bottomry and respondentia interest, and every insurance appertaining to or connected with risks of transportation and navigation on and under water, on land or in the air;

(b) To insure all personal property floater risks;

(3) To insure against any loss from either direct or indirect damage to any property or interest of the assured or of another, resulting from the explosion of or injury to (a) any boiler, heater or other fired pressure vessel; (b) any unfired pressure vessel; (c) pipes or containers connected with any of said boilers or vessels; (d) any engine, turbine, compressor, pump or wheel; (e) any apparatus generating, transmitting or using electricity; (f) any other machinery or apparatus connected with or operated by any of the previously named boilers, vessels or machines; and including the incidental power to make inspections of and to issue certificates of inspection upon, any such boilers, apparatus, and machinery, whether insured or otherwise;

(4) To make contracts of life and endowment insurance, to grant, purchase, or dispose of annuities or endowments of any kind; and, in such contracts, or in contracts supplemental thereto to provide for additional benefits in event of death of the insured by accidental means, total permanent disability of the insured, or specific dismemberment or disablement suffered by the insured, or acceleration of life or endowment or annuity benefits in advance of the time they would otherwise be payable;

(5)(a) To insure against loss or damage by the sickness, bodily injury or death by accident of the assured or dependents;

(b) To insure against the legal liability, whether imposed by common law or by statute or assumed by contract, of employers for the death or disablement of, or injury to, employees;

(6) To guarantee the fidelity of persons in fiduciary positions, public or private, or to act as surety on official and other bonds, and for the performance of official or other obligations;

(7) To insure owners and others interested in real estate against loss or damage, by reason of defective titles, encumbrances, or otherwise;

(8) To insure against loss or damage by breakage of glass, located or in transit;

(9)(a) To insure against loss by burglary, theft, or forgery;

(b) To insure against loss of or damage to moneys, coins, bullion, securities, notes, drafts, acceptance or any other valuable paper or document, resulting from any cause, except while in the custody or possession of and being transported by any carrier for hire or in the mail;

(c) To insure individuals by means of an all risk type of policy commonly known as the "personal property floater" against any kind and all kinds of loss of or damage to, or loss of use of, any personal property other than merchandise;

(d) To insure against loss or damage by water or other fluid or substance;

(10) To insure against loss from death of domestic animals and to furnish veterinary service;

(11) To guarantee merchants and those engaged in business, and giving credit, from loss by reason of giving credit to those dealing with them; this shall be known as credit insurance;

(12) To insure against loss or damage to automobiles or other vehicles or aircraft and their contents, by collision, fire, burglary, or theft, and other perils of operation, and against liability for damage to persons, or property of others, by collision with such vehicles or aircraft, and to insure against any loss or hazard incident to the ownership, operation, or use of motor or other vehicles or aircraft;

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(13) To insure against liability for loss or damage to the property or person of another caused by the insured or by those for whom the insured is responsible, including insurance of medical, hospital, surgical, funeral or other related expense of the insured or other person injured, irrespective of legal liability of the insured, when issued with or supplemental to policies of liability insurance;

(14) To insure against loss of or damage to any property of the insured, resulting from the ownership, maintenance or use of elevators, except loss or damage by fire;

(15) To insure against attorneys fees, court costs, witness fees and incidental expenses incurred in connection with the use of the professional services of attorneys at law.

Subd. 2. **Other lines.** Any insurance corporation or association heretofore or hereafter licensed to transact within the state any of the kinds or classes of insurance specifically authorized under the laws of this state may, when authorized by its charter, transact within and without the state any lines of insurance germane to its charter powers and not specifically provided for under the laws of this state when these lines, or combinations of lines, of insurance are not in violation of the constitution or the laws of the state and, in the opinion of the commissioner, not contrary to public policy, provided the company or association shall first obtain authority of the commissioner and meet such requirements as to capital or surplus, or both, as the commissioner shall prescribe. These additional hazards may be insured against by attachment to, or in extension of, any policy which the company may be authorized to issue under the laws of this state. This subdivision shall apply to companies operating upon the stock or mutual plan, reciprocal or interinsurance exchanges.

Subd. 3. **Limitation on combination policies.** (a) Unless specifically authorized by subdivision 1, clause (4), it is unlawful to combine in one policy coverage permitted by subdivision 1, clauses (4) and (5)(a). This subdivision does not prohibit the simultaneous sale of these products, but the sale must involve two separate and distinct policies.

(b) This subdivision does not apply to group policies.

(c) This subdivision does not apply to policies permitted by subdivision 1, clause (4), that contain benefits providing acceleration of life, endowment, or annuity benefits in advance of the time they would otherwise be payable, or to long–term care policies as defined in section 62A.46, subdivision 2.

History: *1967 c 395 art 1 s 6; 1969 c 7 s 5; 1973 c 634 s 1; 1986 c 444; 1986 c 455 s 4; 1989 c 125 s 1,2; 1995 c 258 s 1*

60A.07 AUTHORIZATION AND REQUIREMENTS.

Subdivision 1. **Incorporation.** Except when the manner of organization is specifically otherwise provided in sections dealing with these insurers, domestic insurance corporations shall be organized under and governed by chapter 300. The articles or certificate of incorporation must meet the requirements of section 300.025, other than:

(1) the requirement that a majority of board members shall always be residents of this state; and

(2) the requirements of section 300.025, clause (7).

Subd. 2. **Powers of insurers.** Corporations may be formed for carrying on any one branch of the business of insurance authorized by law, or any two or more branches thereof, which are permitted by law to be transacted by one company; and business trusts as authorized by law of this state may be formed for carrying on the kind of business of insurance specified in section 60A.06, subdivision 1, clause (7).

Subd. 3. **Acceptance of laws.** Every company, domestic or foreign, shall file with the commissioner its acceptance of the provisions of the insurance laws of the state of Minnesota, and its charter and any amendments thereto, and each such company shall be governed thereby and by those laws relative to corporations in general, so far as applicable and not otherwise specifically provided. No foreign company shall be denied a license in this state because its corporate powers exceed those which it is permitted to exercise under the laws of this state, but no foreign company, which does outside of this state any kind or combination of kinds of insurance not permitted to be done in this state by similar domestic companies, now or hereafter organized, shall be or continue to be authorized to do an insurance business

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in this state if the commissioner of commerce finds, after ten days notice sent by certified mail to the home office of the company involved, and an opportunity to be heard, that the doing of such kind or combination of kinds of insurance business impairs the financial solvency of the company or its financial ability to meet its obligations incurred in this state, or finds that the doing of such kinds or combination of kinds of insurance business is prejudicial to the interests of policyholders, creditors or the people of this state.

Subd. 4. **License required.** No insurance company or association, or fraternal benefit society, not specifically exempted therefrom by law, shall transact the business of insurance in this state unless it shall hold a license therefor from the commissioner.

Subd. 5. [Repealed, 1969 c 7 s 6]

Subd. 5a. **Financial requirements; stock companies.** No insurance company operating upon the stock plan shall be initially authorized to transact any one of the kinds of business enumerated in section 60A.06, subdivision 1, clauses (1) to (15), unless it shall have paid–up capital stock and surplus of not less than the amounts specified below. Except as otherwise provided by this subdivision, after initial authorization has been granted, surplus shall be constantly maintained in an amount not less than one–half of the surplus originally required for that kind of business. If the kind of business being transacted is of the type authorized by section 60A.06, subdivision 1, clause (4), surplus shall be constantly maintained after initial authorization in an amount not less than 25 percent of the amount of surplus originally required.

	Paid Up Capital Stock	Surplus
Clause (1),	$350,000	$350,000
Clause (2),	$350,000	$350,000
Clause (3),	$200,000	$200,000
Clause (4),	$1,000,000	$2,000,000
Clause (5a),	$500,000	$1,000,000
Clause (5b),	$500,000	$1,000,000
Clause (6),	$500,000	$500,000
Clause (7),	$500,000	$500,000
Clause (8),	$200,000	$200,000
Clause (9),	$200,000	$200,000
Clause (10),	$200,000	$200,000
Clause (11),	$350,000	$700,000
Clause (12),	$500,000	$1,000,000
Clause (13),	$500,000	$1,000,000
Clause (14),	$200,000	$200,000
Clause (15),	$350,000	$350,000

Subd. 5b. **Financial requirements; mutual companies.** No insurance company operating upon the mutual plan as provided in chapter 66A, shall be authorized to transact any one of the kinds of business enumerated in section 60A.06, subdivision 1, clauses (1) to (3) and (5) to (15), unless in addition to the requirements specified in chapter 66A it shall have met the following requirements as to surplus: As to a mutual company operating on a nonassessable basis, an initial surplus of not less than the amount of surplus enumerated in subdivision 5a for a stock company authorized to transact that kind of business, provided that after initial authorization has been granted, the surplus shall thereafter be constantly maintained in an amount equal to not less than one–half of such initial surplus; as to a mutual company operating on an assessable basis, an initial surplus of not less than one–half of the amount of surplus enumerated in subdivision 5a for a stock company authorized to transact that kind of business, provided that after initial authorization has been granted, the surplus shall thereafter be constantly maintained in an amount equal to not less than one–half of such initial surplus.

No insurance company operating upon the mutual plan shall be authorized to transact the kind of business enumerated in section 60A.06, subdivision 1, clause (4), unless it shall have surplus of not less than $3,000,000; provided that after initial authorization has been granted, the surplus shall thereafter be constantly maintained in an amount of not less than $1,500,000.

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No insurance company operating upon the mutual plan, other than as provided in chapter 66A, shall be authorized to transact the kind of business enumerated in section 60A.06, subdivision 1, clause (5) (a), unless it shall have a surplus of not less than $1,500,000; provided that after initial authorization has been granted, the surplus thereafter shall be constantly maintained in the amount of not less than $1,000,000.

Subd. 5c. **Authorization to transact more than one kind of business.** Any insurance corporation authorized to transact the kinds of business specified in section 60A.06, subdivision 1, clause (4) may also transact the kinds of business specified in section 60A.06, subdivision 1, clause (5) (a), upon meeting the following financial requirements: As to companies operating upon the stock plan, paid–up capital stock of not less than $1,000,000 and an initial surplus of not less than $2,000,000 which surplus shall thereafter be constantly maintained in the amount of not less than $500,000; as to companies operating on the mutual plan, an initial surplus of not less than $3,000,000 which shall thereafter be constantly maintained in the amount of not less than $1,500,000.

Any insurance corporation which prior to January 1, 1949 was authorized to transact personal injury liability insurance and also the kinds of business specified in section 60A.06, subdivision 1, clauses (4) and (5) shall continue to be authorized to transact personal injury liability insurance, providing the corporation continues to meet the revised financial requirements of this subdivision.

Any stock company may, when authorized by its articles of incorporation, transact any two or more of the kinds of business specified in section 60A.06, subdivision 1, clauses (1) to (3) and (5) to (15), upon meeting the following financial requirements: paid–up capital stock of not less than $1,000,000 and an initial surplus of not less than $1,000,000 which surplus shall thereafter be constantly maintained in the amount of not less than $500,000; provided, however, that if the sum of the capital stock and surplus requirements specified in subdivision 5a for the kinds of business to be transacted is less than the amount of the capital stock and surplus requirements stated in the foregoing clauses of this sentence, then the company may transact those kinds of business upon meeting the capital stock and surplus requirements specified in subdivision 5a for those kinds of business. Any insurance company operating upon the mutual plan as provided in chapter 66A, may, when authorized by its articles of incorporation, transact any two or more of the kinds of business specified in section 60A.06, subdivision 1, clauses (1) to (3) and (5) to (15), upon meeting the following requirements as to surplus which shall be in addition to the requirements specified in chapter 66A: as to mutual companies operating on a nonassessable basis, an initial surplus of not less than $1,000,000, which surplus shall thereafter be constantly maintained in the amount of not less than $500,000; as to mutual companies operating on an assessable basis, an initial surplus of not less than $750,000, which surplus shall thereafter be constantly maintained in the amount of not less than $375,000; provided, however, that if the sum of the surplus requirements specified in subdivisions 5a and 5b for the kinds of business to be transacted is less than the amount of the surplus requirements stated in the foregoing clauses of this sentence, then the company may transact those kinds of business upon meeting the surplus requirements specified in subdivisions 5a and 5b for those kinds of business.

Subd. 5d. [Repealed, 1993 c 299 s 33]

Subd. 5e. **Minimum requirements; deficiency.** Whenever the commissioner finds that the capital or surplus of a stock company, or the surplus of a mutual company, is less than the minimum requirements prescribed by this section, the commissioner shall determine the amount of the deficiency and issue an order in writing requiring the insurance company to restore the deficiency within such reasonable period as the commissioner shall designate. The commissioner may, by order served upon the insurance company, prohibit the insurance company from issuing any new policies while the deficiency exists. If at the expiration of the designated period the insurance company has not restored the deficiency and filed proof satisfactory to the commissioner, the commissioner shall proceed against the insurance company as provided in chapter 60B; provided, however, that if the surplus of a mutual company operating on the nonassessable basis declines below the minimum requirement prescribed by this section for such a company, and if its surplus is equal to or greater than the minimum requirement for a mutual company operating on the assessable basis, it may continue to write on the assessable basis by issuing only assessable policies.

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Subd. 5f. **Capital and surplus requirements.** (a) Capital and surplus requirements apply to all types of insurance transacted by the insurer, whether or not only a portion of the types of insurance are transacted in this state. The commissioner may for the protection of the public require an insurer to maintain funds in excess of the amounts required under this section, due to the amount, kind, or combination of types of insurance transacted by the insurer. Failure of an insurer to maintain funds as ordered by the commissioner is grounds for suspension or revocation of the insurer's certificate of authority.

(b) After June 30, 1991, an insurer may not renew and continue its certificate of authority unless the insurer possesses at least the basic capital and surplus, and additional surplus required by the commissioner under this section.

Subd. 6. **Reduction of capital stock.** When the capital of any domestic stock company is impaired, it may, upon a vote of the majority of the stock, reduce the same to not less than the legal minimum. In this case no part of its assets shall be distributed to the stockholders. Any such company whose capital is not impaired may, by a two–thirds vote of its stock and with the consent of the commissioner, reduce the same to not less than the legal minimum capital and surplus required for such a company. In either case, within ten days after the meeting at which the reduction was made, the company shall submit to the commissioner a certified statement of the proceedings thereof, including the amount of the reduction and its assets and liabilities, verified by its president, secretary, and a majority of its directors. The commissioner shall examine the facts and, if they conform to law and the commissioner is of opinion that injury to the public will not result, the commissioner shall endorse approval upon the statement. Upon filing the same with the secretary of state and paying a filing fee of $5, and duly amending its certificate of incorporation in conformity therewith, it may transact business upon the reduced capital as though the same were its original capital, and the commissioner shall issue a license to that effect. The company may thereafter, by a majority vote of its directors, require the return of every original stock certificate in exchange for a new certificate for such number of shares as each stockholder is entitled to, in the proportion that the reduced capital bears to the original.

Subd. 7. **New certificate of authority.** Upon application, the commissioner shall examine the proceedings of any domestic company to increase or reduce its capital stock and, when found conformable to law, shall revoke the old and issue a new certificate of authority to the company to transact business upon the increased or reduced capital.

Subd. 8. **Special provisions as to mutual companies.** (1) **Amendment of articles or certificate of incorporation.** The certificate of incorporation or articles of association of any domestic insurance company without capital stock, now or hereafter organized and existing under the laws of this state, may be amended in respect to any matter which an original certificate of incorporation or articles of association of a corporation of the same kind might lawfully have contained by the adoption of a resolution specifying the proposed amendment, at a regular meeting of the members thereof or at a special meeting called for that expressly stated purpose, by the affirmative vote of a majority of the members present, in person or by proxy, at the meeting, and by causing the resolution to be embraced in a certificate duly executed by its president and secretary or other presiding and recording officers, under its corporate seal, and approved, filed, recorded, and published in the manner prescribed by law for the execution, approval, filing, recording, and publishing of a like original certificate of incorporation or articles of association.

(2) **Renewal of corporate existence.** Any domestic insurance company or corporation having no capital stock, heretofore or hereafter organized and existing under the laws of this state, whose period of duration has expired or is about to expire, may, on or before the date of the expiration, or within six months after the date of expiration, renew its corporate existence from the date of such expiration for any period permitted by the laws of this state, by the adoption of a resolution to that effect by the affirmative vote of three–fourths of the members present, in person or by proxy, at a regular meeting of the members, or at any special meeting called for that expressly stated purpose, and by causing the resolution to be embraced in a certificate duly executed by its president and secretary or other presiding and recording officers, under its corporate seal, and approved, filed, recorded, and published in the manner prescribed by law for the execution, approval, filing, recording, and publishing of an original certificate of incorporation or articles of association.

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(3) **Bylaws.** The bylaws of any domestic insurance corporation without capital stock, in cases where the bylaws must be adopted or approved by the members thereof, may be adopted, altered, or amended at a regular meeting of the members thereof, or at a special meeting called for that expressly stated purpose, by the affirmative vote of a majority of the members present, in person or by proxy, at the meeting.

Subd. 9. **Retaliatory provision.** When the laws of any other state, territory, or country prohibit the organization of or do not provide for the organization of or the licensing in that state, territory, or country of a class or kind of insurance companies or associations organized under the laws of this state and authorized to transact the business of insurance in this state, then companies or associations of the same kind or class of the other state, territory, or country shall not be licensed to do business in this state.

This provision shall not apply to companies or associations, organized under the laws of another state, now licensed to do business in this state.

Subd. 10. **Special provisions as to life companies.** (1) **Prerequisites of life companies.** No mutual life company shall be qualified to issue any policy until applications for at least $200,000 of insurance, upon lives of at least 200 separate residents, have been actually and in good faith made, accepted, and entered upon its books and at least one full annual premium thereunder, based upon the authorized table of mortality, received in cash or in absolutely payable and collectible notes. A duplicate receipt for each premium, conditioned for the return thereof unless the policy be issued within one year thereafter, shall be issued, and one copy delivered to the applicant and the other filed with the commissioner, together with the certificate of a solvent authorized bank in the state, of the deposit therein of such cash and notes, aggregating the amount aforesaid, specifying the maker, payee, date, maturity, and amount of each. Such cash and notes shall be held by it not longer than one year, and at or before the expiration thereof to be by it paid or delivered, upon the written order of the commissioner, to such company or applicants, respectively.

(2) **Temporary capital stock of mutual life companies.** A new mutual life insurance company which has complied with the provisions of clause (1) or an existing mutual life insurance company may establish, a temporary capital of, such amount not less than $100,000, as may be approved by the commissioner. Such temporary capital shall be invested by the company in the same manner as is provided for the investment of its other funds. Out of the net surplus of the company the holders of the temporary capital stock may receive a dividend which may be cumulative. This capital stock shall not be a liability of the company but shall be retired within a reasonable time and according to terms approved by the commissioner. At the time for the retirement of this capital stock, the holders shall be entitled to receive from the company the par value thereof and any dividends thereon due and unpaid, and thereupon the stock shall be surrendered and canceled. In the event of the liquidation of the company, the holders of temporary capital stock shall have the same preference in the assets of the company as shareholders have in a stock insurance company. Dividends on this stock are subject to section 60D.20, subdivision 2.

Temporary capital stock may be issued with or without voting rights. If issued with voting rights, the holders shall, at all meetings, be entitled to one vote for each $10 of temporary capital stock held.

Subd. 11. **Officers and employees bonded.** Every company shall provide a fidelity bond for its officers and employees. The bond shall be in the amount deemed necessary by the commissioner to adequately protect the public.

History: *1967 c 395 art 1 s 7; 1969 c 7 s 7–13; 1969 c 598 s 1; 1969 c 708 s 63; 1973 c 634 s 2–4; 1976 c 213 s 1–4; 1978 c 465 s 1,2; 1978 c 674 s 60; 1980 c 516 s 2; 1983 c 216 art 1 s 15; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 313 s 2; 1986 c 444; 1991 c 325 art 10 s 4; art 14 s 1; 1992 c 564 art 1 s 15,16,54; 1995 c 214 s 3; 1996 c 446 art 2 s 1,2*

60A.075 MUTUAL COMPANY CONVERSION TO STOCK COMPANY.

Subdivision 1. **Definitions.** For the purposes of this section, the terms in this subdivision have the meanings given them.

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(a) "Eligible member" means a policyholder whose policy is in force as of the record date, which is the date that the mutual company's board of directors adopts a plan of conversion or some other date specified as the record date in the plan of conversion and approved by the commissioner. Unless otherwise provided in the plan, a person insured under a group policy is not an eligible member, unless on the record date:

(1) the person is insured or covered under a group life policy or group annuity contract under which funds are accumulated and allocated to the respective covered persons;

(2) the person has the right to direct the application of the funds so allocated;

(3) the group policyholder makes no contribution to the premiums or deposits for the policy or contract; and

(4) the converting mutual company has the names and addresses of the persons covered under the group life policy or group annuity contract.

(b) "Reorganized company" means a Minnesota domestic stock insurance company that has converted from a Minnesota domestic mutual insurance company according to this section.

(c) "Plan of conversion" or "plan" means a plan adopted by a Minnesota domestic mutual insurance company's board of directors under this section to convert the mutual company into a Minnesota domestic stock insurance company.

(d) "Policy" means a policy or contract of insurance issued by a converting mutual company, including an annuity contract.

(e) "Commissioner" means the commissioner of commerce.

(f) "Converting mutual company" means a Minnesota domestic mutual insurance company seeking to convert to a Minnesota domestic stock insurance company according to this section.

(g) "Effective date of a conversion" means the date determined according to subdivision 6.

(h) "Membership interests" means all policyholders' rights as members of the converting mutual company, including but not limited to, rights to vote and to participate in any distributions of surplus, whether or not incident to the company's liquidation.

(i) "Equitable surplus" means the converting mutual company's surplus as regards policyholders as of the effective date of the conversion determined in a manner that is not unfair or inequitable to policyholders.

(j) "Permitted issuer" means: (1) a corporation organized and owned by the converting mutual company or by any other insurance company or insurance holding company for the purpose of purchasing and holding all of the stock of the reorganized company; (2) a stock insurance company owned by the converting mutual company or by any other insurance company or insurance holding company into which the converting mutual company will be merged; or (3) any other corporation approved by the commissioner.

Subd. 2. **Authorization.** A mutual insurance company may become a stock insurance company according to a plan of conversion established and approved in the manner provided by this section.

Subd. 3. **Adoption of a plan of conversion by the board of directors.** (a) A converting mutual company shall, by the affirmative vote of a majority of its board of directors, adopt a plan of conversion consistent with the requirements of this section.

(b) At any time before approval of a plan by the commissioner, the converting mutual company, by the affirmative vote of a majority of its board of directors, may amend or withdraw the plan.

Subd. 4. **Approval of the plan of conversion by the commissioner.** (a) **Documents to be filed.** After adoption of the plan by the converting mutual company's board of directors, but before the members' approval of the plan, the converting mutual company shall file the following documents with the commissioner for review and approval:

(1) the plan of conversion, including an independent evaluation of the pro forma market value and of the equitable surplus of the company and of the estimated value of any shares to be issued and an independent actuarial opinion, if required;

(2) the form of notice of meeting for eligible members to vote on the plan;

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(3) the form of any proxies to be solicited from eligible members;

(4) the proposed articles of incorporation and bylaws of the converted stock company;

(5) information required under chapter 60D if the plan results in a change of control of the converting mutual company; and

(6) other information or documentation requested by the commissioner or required by rule.

(b) **Required findings.** The commissioner shall approve or conditionally approve the plan upon finding that:

(1) the provisions of this section have been fully met; and

(2) the plan will not be unfair or inequitable to policyholders.

(c) **Time.** The plan of conversion shall, by order, be approved, conditionally approved, or disapproved by the commissioner within the later of 30 days from the commissioner's receipt of all required information from the converting mutual company or 30 days after the conclusion of a public hearing held according to paragraph (e). An approval or conditional approval of a plan expires if the reorganization is not completed within 180 days after the approval or conditional approval unless this time period is extended by the commissioner for good cause shown.

(d) **Consultants.** The commissioner may retain, at the converting mutual company's expense, qualified experts not otherwise a part of the commissioner's staff to assist in reviewing the plan and supplemental materials and valuations.

(e) **Hearing.** The commissioner may, but need not, conduct a public hearing regarding the proposed plan of conversion. The hearing must begin no later than 30 days after submission to the commissioner of a plan of conversion and all required information. The commissioner shall give the converting mutual company at least 20 days' notice of the hearing. At the hearing, the converting mutual company, its policyholders, and any other person whose interest may be affected by the proposed conversion may present evidence, examine and cross-examine witnesses, and offer oral and written arguments or comments according to the procedure for contested cases under chapter 14. The persons participating may conduct discovery proceedings in the same manner as prescribed for the district courts of this state. All discovery proceedings must be concluded no later than three days before the scheduled commencement date of the public hearing.

Subd. 5. **Approval of the plan by the eligible members.** (a) **Notice.** Following approval or conditional approval of the plan by the commissioner, all eligible members shall be given notice of a regular or special meeting of the policyholders called for the purpose of considering the plan and any corporate actions that are a part of, or are reasonably attendant to, the accomplishment of the plan.

(b) **Notice required.** A copy of the plan or a summary of the plan must accompany the notice. The notice must be mailed to each eligible member's last known address, as shown on the converting mutual company's records, within 45 days of the commissioner's approval of the plan, unless the commissioner directs an earlier date for mailing. The meeting to vote upon the plan must be set for a date no less than 45 days after the date when the notice of the meeting is mailed by the converting mutual company unless the commissioner directs an earlier date for the meeting. If the meeting to vote upon the plan is held coincident with the converting mutual company's annual meeting of policyholders, only one combined notice of meeting is required.

(c) **Failure to give notice.** If the converting mutual company complies substantially and in good faith with the notice requirements of this section, the converting mutual company's failure to give any member or members any required notice does not impair the validity of any action taken under this section.

(d) **Voting.** (1) The plan must be adopted upon receiving the affirmative vote of a majority of the votes cast by eligible members.

(2) Eligible members may vote in person or by proxy. The form of any proxy must be filed with and approved by the commissioner.

(3) The number of votes each eligible member may cast shall be determined by the converting mutual company's bylaws. If the bylaws are silent, or if the commissioner determines

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that the voting requirements under the bylaws would be unfair or would prejudice the rights of the eligible members, each eligible member may cast one vote.

Subd. 6. **Conversion.** (a) **Filing.** Following approval by the members, the converting mutual company shall file a copy of the company's amended or restated articles of incorporation with the commissioner, together with a certified copy of the minutes of the meeting at which the plan was adopted and a certified copy of the plan. The commissioner shall review and, if appropriate, approve the amended or restated articles. After approval by the commissioner, the converting mutual company shall file the articles with the secretary of state as provided by chapter 300.

(b) **Effective date.** Effective on the date of filing an amendment or restatement of the articles of incorporation with the secretary of state as provided by chapter 300, or on a later date if the plan so specifies, the converting mutual corporation shall become a stock corporation and shall no longer be a mutual corporation.

Subd. 7. **Plan not unfair or inequitable.** A plan of conversion shall not be unfair or inequitable to policyholders. A plan of conversion is not unfair or inequitable if it satisfies the conditions of subdivision 8, 9, or 10. The commissioner may determine that any other plan proposed by a converting mutual company is not unfair or inequitable to policyholders.

Subd. 8. **Share conversion.** A plan of conversion under this subdivision shall provide for exchange of policyholders' membership interests in return for shares in the reorganized company, according to paragraphs (a) to (c).

(a) The policyholders' membership interests shall be exchanged, in a manner that takes into account the estimated proportionate contribution of equitable surplus of each class of participating policies and contracts, for all of the common shares of the reorganized company or its parent company or a permitted issuer, or for a combination of the common shares of the reorganized company or its parent company or a permitted issuer.

(b) Unless the anticipated issuance within a shorter period is disclosed in the plan of conversion, the issuer of common shares shall not, within two years after the effective date of reorganization, issue either of the following:

(1) any of its common shares or any securities convertible with or without consideration into the common shares or carrying any warrant to subscribe to or purchase common shares; and

(2) any warrant, right, or option to subscribe to or purchase the common shares or other securities described in paragraph (a), except for the issue of common shares to or for the benefit of policyholders according to the plan of conversion and the issue of options for the purchase of common shares being granted to officers, directors, or employees of the reorganized company or its parent company, if any, according to this section.

(c) Unless the common shares have a public market when issued, the issuer shall use its best efforts to encourage and assist in the establishment of a public market for the common shares within two years of the effective date of the conversion or a longer period as disclosed in the plan of conversion. Within one year after any offering of stock other than the initial distribution, but no later than six years after the effective date of the conversion, the reorganized company shall offer to make available to policyholders who received and retained shares of common stock or securities described in paragraph (b), clause (1), a procedure to dispose of those shares of stock at market value without brokerage commissions or similar fees.

Subd. 9. **Surplus distribution.** A plan of conversion under this subdivision shall provide for the exchange of the policyholders' membership interests in return for the operation of the converting mutual company's participating policies as a closed block of business and for the distribution of the company's equitable surplus to policyholders, and shall provide for the issuance of new shares of the reorganized company or its parent corporation, each according to paragraphs (a) to (i).

(a) The converting mutual company's participating business, comprised of its participating policies and contracts in force on the effective date of the conversion or other reasonable date as provided in the plan, shall be operated by the reorganized company as a closed block of participating business. However, at the option of the converting mutual company, group policies and group contracts may be omitted from the closed block.

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(b) Assets of the converting mutual company must be allocated to the closed block of participating business in an amount equal to the reserves and liabilities for the converting mutual life insurer's participating policies and contracts in force on the effective date of the conversion. The plan must be accompanied by an opinion of an independent qualified actuary who meets the standards set forth in the insurance laws or regulations for the submission of actuarial opinions as to the adequacy of reserves or assets. The opinion must relate to the adequacy of the assets allocated to support the closed block of business. The actuarial opinion must be based on methods of analysis considered appropriate for those purposes by the Actuarial Standards Board.

(c) The reorganized company shall keep a separate accounting for the closed block and shall make and include in the annual statement to be filed with the commissioner each year a separate statement showing the gains, losses, and expenses properly attributable to the closed block.

(d) Notwithstanding the establishment of a closed block, the entire assets of the reorganized company shall be available for the payment of benefits to policyholders. Payment must first be made from the assets supporting the closed block until exhausted, and then from the general assets of the reorganized company.

(e) The converting mutual company's equitable surplus shall be distributed to eligible participating policyholders in a form or forms selected by the converting mutual company. The form of distribution may consist of cash, securities of the reorganized company, securities of another institution, a certificate of contribution, additional life insurance, annuity benefits, increased dividends, reduced premiums, or other equitable consideration or any combination of forms of consideration. The consideration, if any, given to a class or category of policyholders may differ from the consideration given to another class or category of policyholders. A certificate of contribution must be repayable in ten years, be equal to 100 percent of the value of the policyholders' membership interest, and bear interest at the highest rate charged by the reorganized company for policy loans on the effective date of the conversion.

(f) The consideration must be allocated among the policyholders in a manner that is fair and equitable to the policyholders.

(g) The reorganized company or its parent corporation shall issue and sell shares of one or more classes having a total price equal to the estimated value in the market of the shares on the initial offering date. The estimated value must take into account all of the following:

(1) the pro forma market value of the reorganized company;

(2) the consideration to be given to policyholders according to paragraph (e);

(3) the proceeds of the sale of the shares; and

(4) any additional value attributable to the shares as a result of a purchaser or a group of purchasers who acted in concert to obtain shares in the initial offering, attaining, through such purchase, control of the reorganized company or its parent corporation.

(h) If a purchaser or a group of purchasers acting in concert is to attain control in the initial offering, the mutual company shall not, directly or indirectly, pay for any of the costs or expenses of conversion of the mutual company, whether or not the conversion is effected.

(i) Periodically, with the commissioner's approval, the reorganized company may share in the profits of the closed block of participating business for the benefit of stockholders if the assets allocated to the closed block are in excess of those necessary to support the closed block.

Subd. 10. **Subscription rights.** A plan of conversion under this subdivision shall provide for exchange of the policyholders' membership interests in return for the operation of the converting mutual company's participating policies as a closed block of business, for the creation of a liquidation account to protect the interests of policyholders, and for the issuance of subscription rights to eligible policyholders, and shall provide for the issuance of shares by the reorganized company, each according to paragraphs (a) to (j).

(a) The converting mutual company's participating business, comprised of its participating policies and contracts in force on the effective date of the conversion, or such other reasonable date specified in the plan, and excluding at the converting mutual company's op-

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tion any group policies or group contracts, shall be operated by the reorganized company as a closed block of participating business according to subdivision 9, paragraphs (a) to (d).

(b) The reorganized company or its parent corporation or a permitted issuer shall issue and sell shares of one or more classes having a total price equal to the estimated value of the shares in the market on the initial offering date taking into account the proceeds of the sale of shares and the consideration given to policyholders.

(c) The policyholders shall receive nontransferable preemptive subscription rights to purchase all of the common shares of the issuer according to paragraph (b).

(d) The preemptive subscription rights to purchase the common shares must be allocated among the participating policyholders in whole shares in a manner provided in the plan that takes into account the estimated contribution of each class of participating policies and contracts to the total amount of the policyholders' consideration. The plan must provide a fair and equitable means for the allocation of shares in the event of an oversubscription. The plan must further provide that any shares of capital stock not subscribed by eligible members must be sold in a public offering through an underwriter, unless the number of shares unsubscribed is so small in number so as not to warrant the expense of a public offering, in which case the plan may provide for the purchase of the unsubscribed shares by private placement or through any fair and equitable alternative means approved by the commissioner.

(e) The number of the common shares that a person, together with any affiliates or group of persons acting in concert, may subscribe or purchase in the reorganization, must be limited to not more than five percent of the common shares. For this purpose, neither the members of the board of directors of the reorganized company nor its parent corporation, if any, is considered to be affiliates or a group of persons acting in concert solely by reason of their board membership.

(f) Unless the common shares have a public market when issued, officers and directors of the issuer and their affiliates shall not, for at least three years after the date of conversion, purchase common shares of the issuer, except with the approval of the commissioner.

(g) Unless the common shares have a public market when issued, the issuer shall use its best efforts to encourage and assist in the establishment of a public market for the common shares.

(h) The issuer shall not, for at least three years following the conversion, repurchase any of its common shares except according to a pro rata tender offer to all shareholders, or with the approval of the commissioner.

(i) A liquidation account must be established for the benefit of policyholders in the event of a complete liquidation of the reorganized company. The liquidation account must be equal to the equitable surplus of the converting mutual company as of the effective date of the conversion. The function of the liquidation account is solely to establish a priority on liquidation and its existence does not restrict the use or application of the surplus of the reorganized company except as specified in paragraph (j). The liquidation account must be allocated equitably as of the effective date of conversion among the then participating policyholders. The amount allocated to a policy or contract must not increase and must be reduced to zero when the policy or contract terminates. In the event of a complete liquidation of the reorganized company, the policyholders among which the liquidation account is allocated are entitled to receive a liquidation distribution in the amount of the liquidation account before any liquidation distribution is made with respect to shares.

(j) Until the liquidation account has been reduced to zero, the issuer shall not declare or pay a cash dividend on, or repurchase any of, its common shares in an amount in excess of its cumulative earned surplus generated after the conversion determined according to statutory accounting principles, if the effect would be to cause the amount of the statutory surplus of the reorganized company to be reduced below the then amount of the liquidation account.

Subd. 11. **Optional provisions.** A plan under subdivision 8, 9, or 10 may include, with the approval of the commissioner, any of the provisions in paragraphs (a) and (b).

(a) A plan may provide that any shares of the stock of the reorganized company or its parent corporation or a permitted issuer included in the policyholders' consideration must be placed on the effective date of the conversion in a trust or other entity existing for the exclusive benefit of the participating policyholders and established solely for the purposes of ef-

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fecting the reorganization. Under this option, the shares placed in trust must be sold over a period of not more than ten years and the proceeds of the shares must be distributed using the distribution priorities prescribed in the plan.

(b) A plan may provide that the directors and officers of the converting mutual company shall receive, without payment, nontransferable subscription rights to purchase capital stock of the reorganized company, its parent, or a permitted issuer. Those subscription rights must be allocated among the directors and officers by a fair and equitable formula.

(1) The total number of shares that may be purchased under this clause, may not exceed 35 percent of the total number of shares to be issued in the case of a converting mutual company with total assets of less than $50,000,000 or 25 percent of the total shares to be issued in the case of a converting mutual company with total assets of more than $500,000,000. For converting mutual companies with total assets between $50,000,000 and $500,000,000, the total number of shares that may be purchased may not exceed an interpolated percentage between 25 and 35 percent.

(2) Stock purchased by a director or officer under clause (1) may not be sold within one year following the effective date of the conversion.

(3) The plan may also provide that a director or officer, or person acting in concert with a director or officer of the converting mutual company, may not acquire any capital stock of the reorganized company for three years after the effective date of the conversion, except through a licensed securities broker or dealer, without the permission of the commissioner. That provision may not apply to prohibit the directors and officers from purchasing stock through subscription rights received in the plan under clause (1).

(c) A plan may allocate to a tax–qualified employee benefit plan nontransferable subscription rights to purchase up to ten percent of the capital stock of the reorganized company, its parent, or a permitted issuer. The employee benefit plan must be entitled to exercise its subscription rights regardless of the amount of shares purchased by other persons.

Subd. 12. **Alternative plan of conversion.** In lieu of selecting a plan of conversion provided for in this section, the converting mutual company may convert according to a plan approved by the commissioner if the commissioner finds that the plan does not prejudice the interests of the members, is fair and equitable, and is based upon an independent appraisal of the market value of the mutual company by a qualified person, and is a fair and equitable allocation of any consideration to be given eligible members. The commissioner may retain, at the converting mutual company's expense, any qualified expert not otherwise a part of the commissioner's staff to assist in reviewing whether the alternative plan may be approved and the valuation of the company.

Subd. 13. **Effect of conversion.** (a) Upon the conversion of a converting mutual company to a reorganized company according to this section, the corporate existence of the converting mutual company must be continued in the reorganized company. All the rights, franchises, and interests of the converting mutual company in and to all property and things in action belonging to this property, is considered transferred to and vested in the reorganized company without any deed or transfer. Simultaneously, the reorganized company is considered to have assumed all the obligations and liabilities of the converting mutual company.

(b) The directors and officers of the converting mutual company, unless otherwise specified in the plan of conversion, shall serve as directors and officers of the reorganized company until new directors and officers of the reorganized company are duly elected according to the articles of incorporation and bylaws of the reorganized company.

(c) All policies in force on the effective date of the conversion continue to remain in force under the terms of those policies, except that any voting rights of the policyholders provided for under the policies are extinguished on the effective date of the conversion.

Subd. 14. **Conflict of interest.** No director, officer, agent, employee of the converting mutual company, or any other person shall receive a fee, commission, or other valuable consideration, other than the person's usual regular salary and compensation, for in any manner aiding, promoting, or assisting in the conversion except as set forth in the plan approved by the commissioner. This provision does not prohibit the payment of reasonable fees and compensation to attorneys, accountants, investment bankers, and actuaries for services performed in the independent practice of their professions.

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Subd. 15. **Costs and expenses.** All the costs and expenses connected with a plan of conversion must be paid for or reimbursed by the converting mutual company or the reorganized company except where the plan provides otherwise.

Subd. 16. **Limitation of actions.** (a) An action challenging the validity of or arising out of acts taken or proposed to be taken according to this section must be commenced within 180 days after the effective date of the conversion.

(b) The converting mutual company, the reorganized company, or any defendant in an action described in paragraph (a), may petition the court in the action to order a party to give security for the reasonable attorney fees that may be incurred by a party to the action. The amount of security may be increased or decreased in the discretion of the court having jurisdiction if a showing is made that the security provided is or may become inadequate or excessive.

Subd. 17. **Supervisory conversions.** The commissioner may waive or alter any of the requirements of this section to protect the interests of policyholders if the converting mutual company is subject to the commissioner's administrative supervision under chapter 60G or rehabilitation under chapter 60B.

History: *1996 c 446 art 2 s 3*

60A.076 [Repealed, 1991 c 325 art 4 s 10]

60A.077 MUTUAL INSURANCE HOLDING COMPANIES.

Subdivision 1. **Formation.** (a) A domestic mutual insurance company, upon approval of the commissioner, may reorganize by forming an insurance holding company based upon a mutual plan and continuing the corporate existence of the reorganizing insurance company as a stock insurance company. The commissioner, if satisfied that the interests of the policyholders are properly protected and that the plan of reorganization is fair and equitable to the policyholders, may approve the proposed plan of reorganization and may require as a condition of approval the modifications of the proposed plan of reorganization as the commissioner finds necessary for the protection of the policyholders' interests. The commissioner shall retain jurisdiction over the mutual insurance holding company according to this section and chapter 60D to assure that policyholder interests are protected.

(b) All of the initial shares of the capital stock of the reorganized insurance company must be issued to the mutual insurance holding company or to an intermediate stock holding company that is wholly owned by the mutual insurance holding company. The membership interests of the policyholders of the reorganized insurance company become membership interests in the mutual insurance holding company. "Membership interests" means those interests described in section 60A.075, subdivision 1, paragraph (h). Policyholders of the reorganized insurance company shall be members of the mutual insurance holding company in accordance with the articles of incorporation and bylaws of the mutual insurance holding company. The mutual insurance holding company shall, at all times, directly or through an intermediate stock holding company, control a majority of the voting shares of the capital stock of the reorganized insurance company.

Subd. 2. **Merger.** (a) A domestic mutual insurance company, upon the approval of the commissioner, may reorganize by merging its policyholders' membership interests into a mutual insurance holding company formed according to subdivision 1 and continuing the corporate existence of the reorganizing insurance company as a stock insurance company subsidiary of the mutual insurance holding company. "Membership interests" means those interests described in section 60A.075, subdivision 1, paragraph (h). The commissioner, if satisfied that the interests of the policyholder are properly protected and that the merger is fair and equitable to the policyholders, may approve the proposed merger and may require as a condition of approval the modifications of the proposed merger as the commissioner finds necessary for the protection of the policyholders' interests. The commissioner shall retain jurisdiction over the mutual insurance holding company organized according to this section to assure that policyholder interests are protected.

(b) All of the initial shares of the capital stock of the reorganized insurance company must be issued to the mutual insurance holding company, or to an intermediate stock holding company that is wholly owned by the mutual insurance holding company. The membership

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interests of the policyholders of the reorganized insurance company become membership interests in the mutual insurance holding company. Policyholders of the reorganized insurance company shall be members of the mutual insurance holding company according to the articles of incorporation and bylaws of the mutual insurance holding company.

Subd. 3. **Plan of reorganization; approval by commissioner.** (a) The reorganizing or merging insurer shall file a plan of reorganization, approved by the affirmative vote of a majority of its board of directors, for review and approval by the commissioner. The plan must provide for the following:

(1) establishing a mutual insurance holding company with at least one stock insurance company subsidiary, the majority of shares of which must be owned, either directly or through an intermediate stock holding company, by the mutual insurance holding company;

(2) analyzing the benefits and risks attendant to the proposed reorganization, including the rationale for the reorganization and analysis of the comparative benefits and risks of a demutualization under section 60A.075;

(3) protecting the immediate and long–term interests of existing policyholders;

(4) ensuring immediate membership in the mutual insurance holding company of all existing policyholders of the reorganizing domestic insurance company;

(5) describing a plan providing for membership interests of future policyholders;

(6) describing the number of members of the board of directors of the mutual insurance holding company required to be policyholders;

(7) ensuring that, in the event of proceedings under chapter 60B involving a stock insurance company subsidiary of the mutual insurance holding company that resulted from the reorganization of a domestic mutual insurance company, the assets of the mutual insurance holding company will be available to satisfy the policyholder obligations of the stock insurance company;

(8) for periodic distribution of accumulated holding company earnings to members;

(9) describing the nature and content of the annual report and financial statement to be sent to each member;

(10) a copy of the proposed mutual insurance holding company's articles of incorporation and bylaws specifying all membership rights;

(11) the names, addresses, and occupational information of all corporate officers and members of the proposed mutual insurance holding company board of directors;

(12) information sufficient to demonstrate that the financial condition of the reorganizing or merging company will not be diminished upon reorganization;

(13) a copy of the articles of incorporation and bylaws for any proposed insurance company subsidiary or intermediate holding company subsidiary;

(14) describing any plans for the initial sale of stock for the reorganized insurance company; and

(15) any other information requested by the commissioner or required by rule.

(b) The commissioner may approve the plan upon finding that the requirements of this section have been fully met and the plan will protect the immediate and long–term interests of policyholders.

(c) The commissioner may retain, at the reorganizing or merging mutual company's expense, any qualified experts not otherwise a part of the commissioner's staff to assist in reviewing the plan.

(d) The commissioner may, but need not, conduct a public hearing regarding the proposed plan. The hearing must be held within 30 days after submission of a completed plan of reorganization to the commissioner. The commissioner shall give the reorganizing mutual company at least 20 days' notice of the hearing. At the hearing, the reorganizing mutual company, its policyholders, and any other person whose interest may be affected by the proposed reorganization, may present evidence, examine and cross–examine witnesses, and offer oral and written arguments or comments according to the procedure for contested cases under chapter 14. The persons participating may conduct discovery proceedings in the same manner as prescribed for the district courts of this state. All discovery proceedings must be concluded no later than three days before the scheduled commencement of the public hearing.

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Subd. 4. **Approval by commissioner.** The plan by order shall be approved, conditionally approved, or disapproved within the later of 30 days from the date of the commissioner's receipt of all required information or 30 days after the conclusion of the public hearing. An approval or conditional approval of a plan of reorganization expires if the reorganization is not completed within 180 days after the approval or conditional approval unless the time period is extended by the commissioner upon a showing of good cause.

Subd. 5. **Approval by members.** The plan shall be approved by the members as provided in section 60A.075, subdivision 5.

Subd. 6. **Incorporation.** A mutual insurance holding company resulting from the reorganization of a domestic mutual insurance company organized under chapter 300 shall be incorporated pursuant to chapter 300. The articles of incorporation and any amendments to the articles of the mutual insurance holding company are subject to approval of the commissioner in the same manner as those of an insurance company.

Subd. 7. **Applicability of certain provisions.** (a) A mutual insurance holding company is considered to be an insurer subject to chapter 60B and shall automatically be a party to any proceeding under chapter 60B involving an insurance company that, as a result of a reorganization according to subdivision 1 or 2, is a subsidiary of the mutual insurance holding company. In any proceeding under chapter 60B involving the reorganized insurance company, the assets of the mutual insurance holding company are considered to be assets of the estate of the reorganized insurance company for purposes of satisfying the claims of the reorganized insurance company's policyholders. A mutual insurance holding company shall not dissolve or liquidate without the approval of the commissioner or as ordered by the district court according to chapter 60B.

(b) A mutual insurance holding company is subject to chapter 60D to the extent consistent with this section.

(c) As a condition to approval of the plan, the commissioner may require the mutual insurance holding company to comply with any provision of the insurance laws necessary to protect the interests of the policyholders as if the mutual insurance holding company were a domestic mutual insurance company.

Subd. 8. **Applicability of demutualization provisions.** (a) Except as otherwise provided, section 60A.075 is not applicable to a reorganization or merger according to this section, except for section 60A.075, subdivisions 14 to 16.

(b) Section 60A.075 is applicable to demutualization of a mutual insurance holding company that resulted from the reorganization of a domestic mutual insurance company organized under chapter 300 as if it were a mutual insurance company.

Subd. 9. **Membership interests.** A membership interest in a domestic mutual insurance holding company does not constitute a security as defined in section 80A.14, subdivision 18.

Subd. 10. **Financial statement requirements.** (a) In addition to any items required under chapter 60D, each mutual insurance holding company shall file with the commissioner, by April 1 of each year, an annual statement consisting of the following:

(1) an income statement, balance sheet, and cashflow statement prepared in accordance with generally accepted accounting principles;

(2) complete information on the status of any closed block formed as part of a plan of reorganization;

(3) an investment plan covering all assets; and

(4) a statement disclosing any intention to pledge, borrow against, alienate, hypothecate, or in any way encumber the assets of the mutual insurance holding company. Action taken according to the statement is subject to the commissioner's prior written approval.

(b) The aggregate pledges and encumbrances of a mutual holding company's assets shall not affect more than 49 percent of the company's stock in any subsidiary insurance holding company or subsidiary insurance company that resulted from a reorganization or merger.

(c) At least 50 percent of the generally accepted accounting principles (GAAP) net worth of a mutual insurance holding company must be invested in insurance company subsidiaries.

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Subd. 11. **Sale of stock and payment of dividends.** No solicitation for the sale of the stock of the reorganized insurance company, or of an intermediate stock holding company of the mutual insurance holding company, may be made without the commissioner's prior written approval. Dividends and other distributions to the shareholders of the reorganized stock insurance company or of an intermediate stock holding company shall not be made except in compliance with section 60D.20.

History: *1996 c 446 art 2 s 4*

60A.08 CONTRACTS OF INSURANCE.

Subdivision 1. **Policy to contain entire contract.** A statement in full of the conditions of insurance shall be incorporated in or attached to every policy, and neither the application of the insured nor the bylaws of the company shall be considered as a warranty or a part of the contract, except in so far as they are so incorporated or attached.

Subd. 2. **Corporate name; origin and financial statements.** Every company, domestic or foreign, shall conduct its business, display all signs and advertisements, and issue all policies, circulars, and other documents and publications in this state, in its own corporate name, and every foreign company shall state conspicuously upon a sign at each agency the state or country of its organization. When a company publishes its assets, it shall in the same connection, and with equal conspicuousness, publish its liabilities, computed on the basis allowed for its annual statements; and any publication purporting to show its capital shall state only the amount thereof which has been actually paid in cash.

Subd. 3. **Renewal; new policy.** Any insurance policy terminating by its provisions at a specified expiration date or limited as to term by any statute and not otherwise renewable may be renewed or extended at the option of the insurer, at the premium rate then required therefor, for a specific additional period or periods by a certificate, and without requiring the issuance of a new policy more than once in any five-year period.

Subd. 4. **Contracts; application of Minnesota law; prohibitions.** All contracts of insurance on property, lives, or interests in this state, shall be deemed to be made in this state.

It shall be unlawful for any person, firm, or corporation to solicit or make, or aid in soliciting or making, any contract of insurance not authorized by the laws of this state.

Subd. 5. **Signatures required.** All insurance policies shall be signed by the secretary or an assistant secretary, and by the president or vice-president, or in their absence, by two directors of the insurer. The signatures may be facsimile signatures.

Subd. 6. **Bankruptcy or insolvency clause.** Every bond or policy of insurance issued in this state insuring against either actual loss suffered by the insured, and imposed by law for damages on account of personal injury, death, or injury to property caused by accident, or legal liability imposed upon the insured by reason of such injuries or death, shall, notwithstanding anything in the policy to the contrary, be deemed to contain the following condition:

The bankruptcy or insolvency of the insured shall not relieve the insurer of any of its obligations under this policy, and in case an execution against the insured on a final judgment is returned unsatisfied, then such judgment creditor shall have a right of action on this policy against the company to the same extent that the insured would have, had the insured paid the final judgment.

Subd. 7. **Unsatisfied judgment.** When a judgment has been rendered by any court in this state against any company holding the commissioner's certificate, and an execution issued thereon has been returned unsatisfied, in whole or in part, and a certified transcript of the docket entry and the court administrator's certificate of those facts is filed with the commissioner, the commissioner shall forthwith revoke its certificate and give one week's published notice thereof. No new certificate shall issue until such judgment has been fully satisfied and proof thereof filed with the commissioner, and the expenses and fees incurred are paid. During this revocation neither the company, nor any of its officers or agents, shall issue any new policy, take any risk, or transact any business, except such as is absolutely necessary in closing up its affairs in this state.

Subd. 8. **Policies on which premiums are determined by audits.** Any insurance company licensed to do business in this state which issues policies of insurance in this state upon which the premium is determined by means of an audit shall within 60 days from the date of

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the expiration of any insurance policy so issued request from the insured a statement of the facts and figures necessary to determine the premium thereon. The insured shall furnish such statement of facts and figures within 60 days of the date of the request. Upon failure of the insured to comply within the time specified, then the provisions of this subdivision shall not apply as to such insured. Within 12 months from the date of the expiration of the policy, or within such longer time as the commissioner of commerce may for cause shown direct, the insurer unless it elects to accept the insured's statement shall make a final audit. Failure to make such final audit within the time herein provided shall constitute a waiver of the insurer's right to make such audit and an election to accept the statement furnished by the insured as a basis for determining the premium on such policy. In the event an audit discloses that the insured submitted to the insurer a fraudulent statement of facts and figures, then the insured shall be liable for three times the normal premium. This subdivision shall not apply to policies issued covering workers' compensation.

Subd. 9. **Misrepresentation by applicant.** No oral or written misrepresentation made by the assured, or in the assured's behalf, in the negotiation of insurance, shall be deemed material, or defeat or avoid the policy, or prevent its attaching, unless made with intent to deceive and defraud, or unless the matter misrepresented increases the risk of loss.

This subdivision shall not apply to life insurance or accident and health insurance.

Subd. 10. **Legal expense insurance.** No contract of insurance written pursuant to the authority to transact the kind of business enumerated in section 60A.06, subdivision 1, clause (15) shall include any provision interfering with the attorney–client relationship.

Subd. 11. **Directors' and officers' liability policies.** No misrepresentation or omission made in an application or negotiation for any policy providing directors and officers liability coverage for directors or officers of a corporation shall defeat or avoid coverage or prevent the policy from attaching for a director or officer unless the director or officer has signed the application and has actual knowledge of the facts misrepresented or omitted. The application shall be attached to and incorporated into the contract. This subdivision applies with respect to all policies governed by this chapter or issued or renewed in this state.

Subd. 12. **Rented vehicles.** All commercial automobile liability policies must provide coverage for rented vehicles as required in chapter 65B.

This coverage can be excess over any and all specific motor vehicle coverage that is applicable.

Subd. 13. **Reduction of limits by costs of defense prohibited.** (a) No insurer shall issue or renew a policy of liability insurance in this state that reduces the limits of liability stated in the policy by the costs of legal defense.

(b) This subdivision does not apply to:

(1) professional liability insurance with limits of liability greater than $100,000, including directors' and officers' and errors and omissions liability insurance;

(2) environmental impairment liability insurance;

(3) insurance policies issued to large commercial risks; or

(4) coverages that the commissioner determines to be appropriate which will be published in the manner prescribed for surplus lines insurance in section 60A.201, subdivision 4.

(c) For purposes of this subdivision, "large commercial risks" means an insured whose gross annual revenues in the fiscal year preceding issuance of the policy were at least $10,000,000.

Subd. 14. **Agreement to rescind policy or release bad faith claim.** (a) If the insurer has knowledge of any claims against the insured that would remain unsatisfied due to the financial condition of the insured, the insurer and the insured may not agree to:

(1) rescind the policy; or

(2) directly or indirectly transfer to, or release to, the insurer the insured's claim or potential claim against the insurer based upon the insurer's refusal to settle a claim against the insured.

(b) Before entering into an agreement described in paragraph (a), an insurer must make a good faith effort to ascertain: (1) the existence and identity of all claims against the policy; and (2) the financial condition of the insured.

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(c) The insured must provide reasonable financial information upon request of the insurer.

(d) An agreement made in violation of this section is void and unenforceable.

History: *1967 c 395 art 1 s 8; 1973 c 634 s 5; 1975 c 359 s 23; 1977 c 195 s 1; 1979 c 115 s 1; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1985 c 251 s 1; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1988 c 611 s 1; 1989 c 260 s 2,3; 1991 c 131 s 1; 1996 c 446 art 1 s 1*

60A.081 AIRCRAFT INSURANCE.

Subdivision 1. No policy of insurance issued or delivered in this state covering any loss, damage, expense, or liability arising out of the ownership, maintenance, or use of an aircraft, shall exclude or deny coverage because the aircraft is operated in violation of federal or civil air regulations, state law or rules, or local ordinances. This section does not prohibit the use of specific exclusions or conditions in the policy which relate to:

(1) Certification of an aircraft in a stated category by the federal aviation administration.

(2) Certification of a pilot in a stated category by the federal aviation administration.

(3) Establishing requirements for pilot experience.

(4) Establishing limitations on the use of the aircraft.

Subd. 2. Except as provided in subdivision 1, no policy of insurance issued or delivered in this state covering an aircraft equipped with passenger seats and covering liability hazards shall be issued excluding coverage for injury to or death of passengers or nonpassengers except as to a policy of insurance exclusively covering "commercial operations" as defined by section 360.013, subdivision 11, where the pilot of the aircraft has in force a separate policy of insurance providing for coverage on the aircraft as required by section 360.59, subdivision 10.

Subd. 3. The provisions of this section shall not apply as to any policy issued covering aircraft being used in air commerce as defined by section 360.511, subdivision 4.

History: *1969 c 629 s 1; 1976 c 241 s 1; 1985 c 248 s 70*

60A.082 GROUP INSURANCE; BENEFITS CONTINUED IF INSURER CHANGED.

A person covered under group life, group accidental death and dismemberment, group disability income or group medical expense insurance, shall not be denied benefits to which the person is otherwise entitled solely because of a change in the insurance company writing the coverage or in the group contract applicable to the person. In the case of one or more carriers replacing or remaining in place after one or more plans have been discontinued, each carrier shall accept any person who was covered under the discontinued plan or plans without denial of benefits to which other persons in the group covered by that carrier are entitled. "Insurance company" shall include a service plan corporation under chapter 62C or 62D.

For purposes of satisfying any preexisting condition limitation, the insurance company shall credit the period of time the person was covered by the prior plan, if the person has maintained continuous coverage.

The commissioner shall promulgate rules to carry out this section. Nothing in this section shall preclude an employer, union or association from reducing the level of benefits under any group insurance policy or plan.

History: *1980 c 459 s 1; 1984 c 464 s 1; 1986 c 444; 1994 c 485 s 7*

60A.084 NOTIFICATION ON GROUP POLICIES.

An employer providing life or health benefits may not change benefits, limit coverage, or otherwise restrict participation until the certificate holder or enrollee has been notified of any changes, limitations, or restrictions. Notice in a format which meets the requirements of the Employee Retirement Income Security Act, United States Code Annotated, title 29, sections 1001 to 1461, is satisfactory for compliance with this section.

History: *1987 c 337 s 3*

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60A.085 CANCELLATION OF GROUP COVERAGE; NOTIFICATION TO COVERED PERSONS.

(a) No cancellation of any group life, group accidental death and dismemberment, group disability income, or group medical expense policy, plan, or contract regulated under chapter 62A or 62C is effective unless the insurer has made a good faith effort to notify all covered persons of the cancellation at least 30 days before the effective cancellation date. For purposes of this section, an insurer has made a good faith effort to notify all covered persons if the insurer has notified all the persons included on the list required by paragraph (b) at the home address given and only if the list has been updated within the last 12 months.

(b) At the time of the application for coverage subject to paragraph (a), the insurer shall obtain an accurate list of the names and home addresses of all persons to be covered.

(c) Paragraph (a) does not apply if the group policy, plan, or contract is replaced, or if the insurer has reasonable evidence to indicate that it will be replaced, by a substantially similar policy, plan, or contract.

(d) In no event shall this section extend coverage under a group policy, plan, or contract more than 120 days beyond the date coverage would otherwise cancel based on the terms of the group policy, plan, or contract.

(e) If coverage under the group policy, plan, or contract is extended by this section, then the time period during which affected members may exercise any conversion privilege provided for in the group policy, plan, or contract is extended for the same length of time, plus 30 days.

History: *1992 c 564 art 4 s 3; 1994 c 485 s 8; 1995 c 258 s 2*

60A.086 RETROACTIVE TERMINATION OF COVERAGE UNDER GROUP POLICIES PROHIBITED.

Subdivision 1. **Applicability.** This section applies to:

(1) health plans as defined in section 62A.011, issued to groups;

(2) group accident and health insurance;

(3) group life insurance;

(4) group accidental death and dismemberment insurance; and

(5) group disability income insurance.

Subd. 2. **Requirement.** No plan of coverage described in subdivision 1 shall permit the issuer to retroactively cancel, retroactively rescind, or otherwise retroactively terminate the coverage of an employee, dependent, or other covered person under the group coverage, without the written consent of that employee, dependent, or other covered person. For purposes of this subdivision, "covered person" includes a person on continuation coverage or eligible for continuation coverage.

Subd. 3. **Nonapplicability.** (a) This section does not apply where the group policy or contract is lawfully terminated retroactively and not replaced with substantially similar coverage.

(b) This section does not apply where the employee, dependent, or other covered person committed fraud or misrepresentation with respect to eligibility under the terms of the group policy or contract or with respect to any other material fact, but retroactive termination without written consent must not be based upon the failure of the employee, dependent, or other covered person to meet the group sponsor's eligibility requirements, if the group sponsor requested the issuer of the coverage to include the person as a covered person.

(c) This section does not apply where the issuer of coverage described in subdivision 1 retroactively terminates coverage of an employee, dependent, or other covered person solely because the group sponsor did not notify the issuer of the coverage in advance of the employee's voluntary or involuntary termination from employment, provided that the retroactive termination of coverage is effective no earlier than the end of the day of termination from employment. This paragraph does not affect continuation rights under federal or state law and does not limit the effect of section 62Q.16.

History: *1996 c 304 s 1*

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60A.09 LIMITS OF RISK; REINSURANCE.

Subdivision 1. **Maximum risk.** No company other than a company authorized to transact the kind of business specified in section 60A.06, subdivision 1, clause (7), shall insure or reinsure in a single risk a larger sum than one-tenth of its net assets, and no company authorized to transact the kind of business specified in section 60A.06, subdivision 1, clause (7), shall insure or reinsure in a single risk a larger sum than two-thirds of its net assets; provided, that in the case of a company with net assets of more than $50,000, any portion of the risk which has been reinsured, as authorized by the laws of this state, shall be deducted before determining the limitation of risk prescribed by this subdivision; and, provided, that a mutual insurance company organized under clause (2)(a) of section 66A.08, subdivision 2, may insure in a single risk, consisting of a creamery or a cheese factory, a sum equal to one percent of its insurance in force.

Subd. 2. **Reinsurance to be reported by companies other than life.** If any company, other than life, shall, directly or indirectly, effect the reinsurance of any risk taken by it, or any part thereof, it shall make a sworn report thereof to the commissioner, at the time of filing its annual statement, or at such other time as the commissioner may request.

Subd. 3. **Penalty for violation.** Every company effecting any reinsurance in violation of the foregoing provisions, and every agent effecting or negotiating the same, shall severally be guilty of a misdemeanor.

Subd. 4. [Repealed, 1991 c 325 art 1 s 16]

Subd. 4a. **Assumption transactions regulated.** No company, whether domestic, foreign, or alien, shall perform an assumption transaction, including an assumption reinsurance agreement, with respect to a policy issued to a Minnesota resident, unless:

(1) the assumption agreement has been filed with the commissioner;

(2) the assumption agreement specifically provides that the original insurer remains liable to the insured in the event the assuming insurer is unable to fulfill its obligations or the original insurer acknowledges in writing to the commissioner that it remains liable to the insured in the event the assuming insurer is unable to fulfill its obligations;

(3) the proposed certificate of assumption to be provided to the policyholder has been filed with the commissioner for review and approval as provided in section 61A.02; and

(4) the proposed certificate of assumption contains, in bold face type, the following language:

"Policyholder: Please be advised that you retain all rights with respect to your policy against your original insurer in the event the assuming insurer is unable to fulfill its obligations. In such event, your original insurer remains liable to you notwithstanding the terms of its assumption agreement."

With respect to residents of Minnesota, the notice to policyholders shall also include a statement as to the effect on guaranty fund coverage, if any, that will result from the transfer.

Clauses (2) and (4) above do not apply if the policyholder consents in a signed writing to a release of the original insurer from liability and to a waiver of the protections provided in clauses (2) and (4) after being informed in writing by the insurer of the circumstances relating to and the effect of the assumption, provided that the consent form signed by the policyholder has been filed with and approved by the commissioner.

If a company is deemed by the commissioner to be in a hazardous condition or is under a court ordered supervision, rehabilitation, liquidation, conservation or receivership, and the transfer of policies is in the best interest of the policyholders, as determined by the commissioner, a transfer may be effected notwithstanding the provisions in this subdivision by using a different form of consent by policyholders. This may include a form of implied consent and adequate notification to the policyholder of the circumstances requiring the transfer as approved by the commissioner. This paragraph does not apply when a policy is transferred to the Minnesota life and health guaranty association or to the Minnesota insurance guaranty association.

Subd. 5. **Reinsurance.** (1) **Definitions.** For the purposes of this subdivision, the word "insurer" shall be deemed to include the word "reinsurer," and the words "issue policies of insurance" shall be deemed to include the words "make contracts of reinsurance."

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(2) **Reinsurance of more than 50 percent of insurance liabilities.** Any contract of reinsurance whereby an insurer cedes more than 50 percent of the total of its outstanding insurance liabilities shall, if such insurer is incorporated by or, if an insurer of a foreign country, has its principal office in this state, be subject to the approval, in writing, by the commissioner.

(3) **Actual unearned premium reserve to be carried as liability.** Nothing in this subdivision shall be deemed to permit the ceding insurer to receive, through the cession of the whole of any risk or risks, any advantage in respect to its unearned premium reserve that would reduce the same below the actual amount thereof.

(4) **Aircraft risks.** An insurer authorized to transact the business specified in section 60A.06, subdivision 1, clauses (4) and (5)(a), may through reinsurance assume any risk arising from, related to, or incident to the manufacture, ownership, or operation of aircraft and may retrocede any portion thereof; provided, however, that no insurer may undertake any such reinsurance business without the prior approval of the commissioner and such reinsurance business shall be subject to any regulations which may be promulgated by the commissioner. Any such reinsurance business may be provided through pooling arrangements with other insurers for purposes of spreading the insurance risk.

Subd. 6. **Bulk reinsurance, regulation.** (1) No bulk reinsurance agreement entered into by an insurance company, other than life insurance companies, having a capital and surplus or surplus of $5,000,000 or less, shall be used to reduce the liabilities or expense of the reinsured company until and unless the agreement has been filed with and approved by the commissioner. The commissioner will be deemed to have approved any agreement filed unless the commissioner notifies the insurance company of disapproval within 30 days or requests a reasonable extension of time within such 30 days.

(2) No filing shall be made pursuant to the foregoing clause (1) unless the reinsurance agreement be certified under oath by responsible officers of the reinsurer and the reinsured to contain the entire agreement between the parties to the reinsurance agreement.

Misrepresentations contained in the reinsurance agreement or in any information supplied to the commissioner relative thereto shall be subject to the penalties for perjury.

(3) It shall be unlawful for any reinsurance agreement to contain any provisions which have the effect of nullifying the liability which the reinsurer purports to assume.

(4) For the purposes of this subdivision, "bulk reinsurance" shall mean any quota share, surplus aid or portfolio reinsurance agreement which, of itself or in combination with other similar agreements, assumes 20 percent or more of the liability of the reinsured company.

(5) Every company effecting any bulk reinsurance in violation of the foregoing provisions, and every person effecting or negotiating the same, shall severally be guilty of a misdemeanor.

(6) Reinsurance agreements filed hereunder shall not be matters of public record, but this shall not be construed to limit the disclosure of reinsurance agreements in examination reports.

Subd. 7. **Title insurance risks.** For a company authorized to transact a kind of business specified in section 60A.06, subdivision 1, clause (7), the term "single risk" as used in this section shall mean the insured amount of any policy or contract unless two or more policies or contracts are simultaneously issued on different estates in identical real property, in which event, it means the sum of the insured amounts of all such policies or contracts; provided, any policy or contract that insures a mortgage interest that is excepted in a fee or leasehold policy or contract, and which does not exceed the insured amount of the fee or leasehold policy or contract, shall be excluded in computing the amount of a single risk.

History: *1967 c 395 art 1 s 9; Ex1967 c 10 s 1–6; 1973 c 391 s 1; 1978 c 465 s 3; 1980 c 505 s 1,2; 1985 c 248 s 70; 1986 c 444; 1989 c 260 s 4; 1991 c 325 art 1 s 10; art 20 s 1; 1996 c 446 art 1 s 2*

60A.091 QUALIFIED UNITED STATES FINANCIAL INSTITUTION.

For purposes of sections 60A.092 and 60A.093, "qualified United States financial institution" means an institution that:

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(1) is organized or, in the case of a United States office of a foreign banking organization, licensed, under the laws of the United States or any state;

(2) is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies; and

(3) is a member of the Federal Deposit Insurance Corporation, or the National Credit Union Administration.

History: *1991 c 325 art 1 s 11*

60A.092 REINSURANCE CREDIT ALLOWED A DOMESTIC CEDING INSURER.

Subdivision 1. **Credit allowed.** Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurance is ceded to an assuming insurer which meets the requirements specified under this section.

Subd. 2. **Licensed assuming insurer.** Reinsurance is ceded to an assuming insurer if the assuming insurer is licensed to transact insurance or reinsurance in this state.

Subd. 3. **Accredited assuming insurer.** (a) Reinsurance is ceded to an assuming insurer if the assuming insurer is accredited as a reinsurer in this state. An accredited reinsurer is one which:

(1) files with the commissioner evidence of its submission to this state's jurisdiction;

(2) submits to this state's authority to examine its books and records;

(3) is licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer is entered through and licensed to transact insurance or reinsurance in at least one state;

(4) files annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile, a copy of its most recent audited financial statement, and a filing fee of $225; and

(5)(i) maintains a surplus as regards policyholders in an amount not less than $20,000,000 and whose accreditation has not been denied by the commissioner within 90 days of its submission, or maintains a surplus as regards policyholders in an amount less than $20,000,000 and whose accreditation has been approved by the commissioner; or

(ii) maintains a surplus as regards policyholders in an amount not less than $50,000,000 for long–tail casualty reinsurers. For purposes of this section, "long–tail casualty reinsurance" means insurance for medical or legal malpractice, pollution liability, directors and officers liability, and products liability. The commissioner may determine that an assuming insurer that maintains a surplus as regards policyholders in an amount not less than $20,000,000 is accredited as a reinsurer if there is no detriment to policyholders and the interest of the public, and to not allow accrediting would be a hardship or detriment to the reinsurer. The commissioner shall report to the legislature on any determination to allow accrediting to a long–term casualty reinsurer maintaining a surplus in an amount less than $50,000,000.

Clause (5) does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

(b) No credit shall be allowed or continue to be allowed a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the commissioner after receipt of a cease and desist order pursuant to section 45.027, subdivision 5.

Subd. 4. **Similar state standards.** Reinsurance is ceded to an assuming insurer if the assuming insurer is domiciled and licensed in, or in the case of a United States branch of an alien assuming insurer is entered through, a state which employs standards regarding credit for reinsurance substantially similar to those applicable under this chapter and the assuming insurer or United States branch of an alien assuming insurer (1) maintains a surplus as regards policyholders in an amount not less than $20,000,000 or maintains a surplus as regards policyholders in an amount not less than $50,000,000 for long–tail casualty reinsurers as provided under subdivision 3, paragraph (a), clause (5), and (2) submits to the authority of this state to examine its books and records.

Clause (1) does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

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Subd. 5. **Trust fund maintained.** The reinsurance is ceded to an assuming insurer if the assuming insurer maintains a trust fund in a qualified United States financial institution for the payment of the valid claims, as determined by the commissioner for the purpose of determining the sufficiency of the trust fund, of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the National Association of Insurance Commissioners annual statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust fund.

Subd. 6. **Single assuming insurer; trust fund requirements.** In the case of a single assuming insurer, the trust shall consist of a trusteed account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than $20,000,000 or maintain a surplus as regards policyholders in an amount not less than $50,000,000 for long–tail casualty reinsurers as provided under subdivision 3, paragraph (a), clause (5).

Subd. 7. **Underwriters group; trust fund requirements.** In the case of a group including incorporated and individual unincorporated underwriters, the trust shall consist of a trusteed account representing the group's liabilities attributable to business written in the United States. The group shall maintain a trusteed surplus of which $100,000,000 shall be held jointly for the benefit of United States ceding insurers of any member of the group. The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and must be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members. The group shall make available to the commissioner an annual certification by the group's domiciliary regulator and its independent public accountants of the solvency of each underwriter.

Subd. 8. **Incorporated insurers group; trust fund requirements.** A group of incorporated insurers under common administration must:

(1) comply with the filing requirements specified in subdivision 7;

(2) be under the supervision of the Department of Trade and Industry of the United Kingdom;

(3) submit to this state's authority to examine its books and records;

(4) bear the expense of the examination;

(5) maintain an aggregate policyholders' surplus of $10,000,000,000;

(6) maintain the trust in an amount equal to the group's several liabilities attributable to business written in the United States; and

(7) maintain a joint trusteed surplus of which $100,000,000 must be held jointly for the benefit of United States ceding insurers of any member of the group.

Each member of the group shall make available to the commissioner an annual certification by the member's domiciliary regulator and its independent accountant of the member's solvency.

Subd. 9. **Trust fund general requirements.** (a) The trust must be established in a form approved by the commissioner of commerce. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the commissioner. The trust must remain in effect for as long as the assuming insurer shall have outstanding obligations due under the reinsurance agreements subject to the trust.

(b) No later than February 28 of each year the trustees of the trust shall report to the commissioner in writing setting forth the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31.

Subd. 10. **Other jurisdictions.** The reinsurance is ceded to an assuming insurer not meeting the requirements of subdivision 2, 3, 4, or 5, but only with respect to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.

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Subd. 11. **Reinsurance agreement requirements.** (a) If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this state, the credit authorized under subdivisions 4 and 5 shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(1) that in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, comply with all requirements necessary to give the court jurisdiction, and abide by the final decision of the court or of any appellate court in the event of an appeal; and

(2) to designate the commissioner or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company.

(b) Paragraph (a) is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if an obligation to do so is created in the agreement.

History: *1991 c 325 art 1 s 12; 1992 c 540 art 2 s 3; 1994 c 426 s 1*

60A.093 REDUCTION FROM LIABILITY FOR REINSURANCE CEDED BY A DOMESTIC INSURER TO AN ASSUMING INSURER.

Subdivision 1. **Reduction allowed.** A reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of section 60A.092 shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer. Such reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, as security for the payment of obligations under the reinsurance contract with the assuming insurer. Such security must be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case of a trust, held in a qualified United States financial institution. The funds held as security may be in any form of security acceptable to the commissioner or in the form of:

(1) cash;

(2) securities listed by the securities valuation office of the National Association of Insurance Commissioners and qualifying as admitted assets and, with the exception of United States treasury notes, readily marketable over a national exchange or NASDAQ with maturity dates within one year; or

(3) clean, irrevocable, unconditional letters of credit issued or confirmed by a qualified United States financial institution no later than December 31 in respect of the year for which filing is being made, and in the possession of the ceding company on or before the filing date of its annual statement. The financial institution must meet the standards of financial condition and standing considered necessary and appropriate to regulate the quality of financial institutions as determined by either the commissioner or the securities valuation office of the National Association of Insurance Commissioners, and the financial institution's letters of credit must be acceptable to the commissioner.

Subd. 2. **Letters of credit continued acceptance.** Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation must continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever comes first.

The letter of credit of an institution failing the standards of subdivision 1, clause (3) continues to be acceptable for no more than 30 days.

History: *1991 c 325 art 1 s 13; 1995 c 214 s 4*

60A.094 RULES.

The commissioner may adopt rules implementing the provisions of sections 60A.091 to 60A.093.

History: *1991 c 325 art 1 s 14*

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60A.095 REINSURANCE AGREEMENTS AFFECTED.

Sections 60A.091 to 60A.093 apply to all cessions after July 1, 1991, under reinsurance agreements that have had an inception, anniversary, or renewal date not less than six months after July 1, 1991.

History: *1991 c 325 art 1 s 15*

60A.096 QUALIFYING LETTER OF CREDIT.

Subdivision 1. **Generally.** An admitted asset or a reduction in liability for reinsurance ceded to an unauthorized assuming insurer providing a letter of credit pursuant to section 60A.093 shall only be allowed when the letter of credit meets the requirements of this section.

Subd. 2. **Content.** The letter of credit must be clean, irrevocable, and unconditional and issued or confirmed by a qualified United States financial institution as defined in section 60A.091. The letter of credit must contain an issue date and date of expiration and must stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit must also state that it is not subject to any condition or qualification outside of the letter of credit. In addition, the letter of credit must not contain reference to any other agreements, documents, or entities, except as provided in subdivision 10, paragraph (a).

As used in this section, "beneficiary" means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver, including conservator, rehabilitator, or liquidator.

Subd. 3. **Form.** The heading of the letter of credit may include a boxed section which contains the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section must be clearly marked to indicate that the information is for internal identification purposes only.

Subd. 4. **Reimbursement contingency prohibited.** The letter of credit must contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect to it.

Subd. 5. **Expiration.** The term of the letter of credit must be for at least one year and must contain an "evergreen clause" which prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" must provide for a period of no less than 30 days' notice before the expiration date or nonrenewal.

Subd. 6. **Governing law.** The letter of credit must state whether it is subject to and governed by the laws of this state or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 400), and that all drafts drawn under it shall be presentable at an office in the United States of a qualified United States financial institution.

Subd. 7. **Extensions.** If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 400), then the letter of credit must specifically address and make provision for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 19 of Publication 400 occur.

Subd. 8. **Issuance or confirmation.** The letter of credit must be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit under section 60A.093.

Subd. 9. **Additional requirements.** If the letter of credit is issued by a qualified United States financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in subdivision 8, then the following additional requirements must be met:

(1) the issuing qualified United States financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts; and

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(2) the "evergreen clause" must provide for no less than 30 days' notice before the expiration date or nonrenewal.

Subd. 10. **Reinsurance agreements provisions.** (a) The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions which:

(1) require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover;

(2) stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and must be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons: to reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement on account of cancellations of these policies; to reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer under the terms and provisions of the policies reinsured under the reinsurance agreement; to fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer's liabilities for policies ceded under the agreement, including but not limited to, amounts for policy reserves, claims and losses incurred, and unearned premium reserves; and to pay any other amounts the ceding insurer claims are due under the reinsurance agreement; and

(3) provide that all of the provisions of this paragraph should be applied without diminution because of insolvency of the ceding insurer or assuming insurer.

(b) Nothing in this subdivision precludes the ceding insurer and assuming insurer from providing for:

(1) an interest payment, at a rate not in excess of the prime rate of interest, on the amounts held under paragraph (a), clause (2); and

(2) the return of any amounts drawn down on the letters of credit in excess of the actual amounts required or, in the case of paragraph (a), clause (2), any amounts that are subsequently determined not to be due.

(c) When a letter of credit is obtained in conjunction with a reinsurance agreement covering risks other than life, annuities, and health, where it is customary practice to provide a letter of credit for a specific purpose, then the reinsurance agreement may, in lieu of paragraph (a), clause (2), require that the parties enter into a "trust agreement" which may be incorporated into the reinsurance agreement or be a separate document.

Subd. 11. **Limitation on use.** A letter of credit may not be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with the commissioner unless an acceptable letter of credit with the filing ceding insurer as beneficiary has been issued on or before the date of filing of the financial statement. Further, the reduction for the letter of credit may be up to the amount available under the letter of credit but no greater than the specific obligation under the reinsurance agreement which the letter of credit was intended to secure.

Subd. 12. **Existing documents.** Notwithstanding the effective date of this section (August 1, 1994), any letter of credit or underlying reinsurance agreement in existence prior to August 1, 1994, will continue to be acceptable until December 31, 1995, at which time the agreements will have to be in full compliance with this section for the letter of credit to be acceptable; provided however that the letter of credit or underlying reinsurance agreement has been in compliance with laws or regulations in existence immediately preceding August 1, 1994.

History: *1994 c 426 s 2*

60A.097 QUALIFYING TRUST AGREEMENTS.

Subdivision 1. **Requirements.** An admitted asset or a reduction in liability for reinsurance ceded to an unauthorized assuming insurer providing a trust fund pursuant to section 60A.093 shall only be allowed if the requirements of this section are met.

Subd. 2. **Definitions.** As used in this section, the following terms have the meanings given:

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(a) "Beneficiary" means the entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, the named beneficiary includes and is limited to the court appointed domiciliary receiver, including a conservator, rehabilitator, or liquidator.

(b) "Grantor" means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer.

(c) "Obligations" as used in subdivision 3, paragraph (k), means:

(1) reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;

(2) reserves for reinsured losses reported and outstanding;

(3) reserves for reinsured losses incurred but not reported; and

(4) reserves for allocated reinsured loss expenses and unearned premiums.

Subd. 3. **Required conditions.** (a) The trust agreement must be entered into between the beneficiary, the grantor, and a trustee which must be a qualified United States financial institution as defined in section 60A.091.

(b) The trust agreement must create a trust account into which assets must be deposited.

(c) All assets in the trust account must be held by the trustee at the trustee's office in the United States, except that a bank may apply for the commissioner's permission to use a foreign branch office of the bank as trustee for trust agreements established pursuant to this section. If the commissioner approves the use of the foreign branch office as trustee, then its use must be approved by the beneficiary in writing and the trust agreement must provide that the written notice described in paragraph (d), clause (1), must also be presentable, as a matter of legal right, at the trustee's principal office in the United States.

(d) The trust agreement must provide that:

(1) the beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

(2) no other statement or document is required to be presented in order to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

(3) it is not subject to any conditions or qualifications outside of the trust agreement; and

(4) it shall not contain references to any other agreements or documents except as provided for under paragraph (k).

(e) The trust agreement must be established for the sole benefit of the beneficiary.

(f) The trust agreement must require the trustee to:

(1) receive assets and hold all assets in a safe place;

(2) determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate the assets, without consent or signature from the grantor or any other person or entity;

(3) furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

(4) notify the grantor and the beneficiary within ten days of any deposits to or withdrawals from the trust account;

(5) upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title, and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and

(6) allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw the asset upon condition that the proceeds are paid into the trust account.

(g) The trust agreement must provide that at least 30 days, but not more than 45 days, before termination of the trust account, written notification of termination must be delivered by the trustee to the beneficiary.

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(h) The trust agreement must be made subject to and governed by the laws of the state in which the trust is established.

(i) The trust agreement must prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee.

(j) The trust agreement must provide that the trustee is liable for its own negligence, willful misconduct, or lack of good faith.

(k) Notwithstanding other provisions of this section, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may, notwithstanding any other conditions in this section, provide that the ceding insurer must undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer for the following purposes:

(1) to pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

(2) to make payment to the assuming insurer of any amounts held in the trust account that exceed 102 percent of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

(3) where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten days before the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution as defined in section 60A.091 apart from its general assets, in trust for the uses and purposes specified in paragraphs (1) and (2) that remain executory after the withdrawal and for any period after the termination date.

(l) The reinsurance agreement entered into in conjunction with the trust agreement may, but need not, contain the provisions required by subdivision 5, paragraph (a), clause (2), so long as these required conditions are included in the trust agreement.

Subd. 4. **Permitted conditions.** (a) The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than 90 days after receipt by the beneficiary and grantor of the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than 90 days after receipt by the trustee and the beneficiary of the notice. No resignation or removal is effective until a successor trustee has been appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.

(b) The grantor may have the full and unqualified right to vote any shares or stock in the trust account and to receive from time to time payment of any dividends or interest upon any shares of stock or obligations included in the trust account. Interest or dividends must be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.

(c) The trustee may be given authority to invest, and accept substitutions of, any funds in the account. No investment or substitution must be made without prior approval of the beneficiary, unless the trust specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions which the trustee determines are at least equal in market value to the assets withdrawn and that are consistent with the restrictions in subdivision 5, paragraph (a), clause (2).

(d) The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. The transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

(e) The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered to the grantor.

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Subd. 5. **Additional conditions applicable to reinsurance agreements.** (a) A reinsurance agreement, which is entered into in conjunction with a trust agreement and the establishment of a trust account, may contain provisions that:

(1) require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specifying what the agreement is to cover;

(2) stipulate that assets deposited in the trust account must be valued according to their current fair market value and must consist only of United States legal tender, certificates of deposit issued by a United States bank and payable in United States legal tender, and investments of the types permitted by state insurance law or any combination of the above, if the investments are issued by an institution that is not the parent, subsidiary or affiliate of either the grantor or the beneficiary. The reinsurance agreement may further specify the types of investments to be deposited. Where a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, then the trust agreement may contain the provisions in this paragraph in lieu of including these provisions in the reinsurance agreement;

(3) require the assuming insurer, before depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or signature from the assuming insurer or any other entity;

(4) require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

(5) stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and must be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver or conservator of the company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

(i) to reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement because of cancellations of the policies;

(ii) to reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement;

(iii) to fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer liabilities for policies ceded under the agreement. The account must include, but not be limited to, amounts for policy reserves, claims and losses incurred, including losses incurred but not reported, loss adjustment expenses, and unearned premium reserves; and

(iv) to pay any other amounts the ceding insurer claims are due under the reinsurance agreement.

(b) The reinsurance agreement may also contain provisions that:

(1) give the assuming insurer the right to seek approval from the ceding insurer to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, and provide that the ceding insurer shall not unreasonably or arbitrarily withhold its approval, provided:

(i) the assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount; or

(ii) after withdrawal and transfer, the market value of the trust account is no less than 102 percent of the required amount;

(2) provide for:

(i) the return of any amount withdrawn in excess of the actual amounts required for paragraph (a), clause (5), items (i), (ii), and (iii), or in the case of paragraph (a), clause (5), item (iv), any amounts that are subsequently determined not to be due; and

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(ii) interest payments, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to paragraph (a), clause (5), item (iii); and

(3) permit the award by any arbitration panel or court of competent jurisdiction of:

(i) interest at a rate different from that provided in clause (2), item (ii);

(ii) court or arbitration costs;

(iii) attorney's fees; and

(iv) any other reasonable expenses.

Subd. 6. **Financial reporting.** A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with the commissioner when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but the reduction must be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

Subd. 7. **Existing agreements.** Notwithstanding the effective date of this section (August 1, 1994), any trust agreement or underlying reinsurance agreement in existence prior to August 1, 1994, will continue to be acceptable until December 31, 1995, at which time the agreements will have to be in full compliance with this section for the trust agreement to be acceptable; provided however that the trust agreement or underlying reinsurance agreement has been in compliance with laws or regulations in existence immediately preceding August 1, 1994.

Subd. 8. **Effect of failure to identify beneficiary.** The failure of any trust agreement to specifically identify the beneficiary, as defined in subdivision 2, paragraph (a), must not be construed to affect any actions or rights which the commissioner may take or possess pursuant to the laws of this state.

History: *1994 c 426 s 3*

60A.10 DEPOSITS.

Subdivision 1. **Domestic companies.** (1) **Deposit as security for all policyholders required.** No company in this state, other than farmers' mutual, or real estate title insurance companies, shall do business in this state unless it has on deposit with the commissioner, for the protection of both its resident and nonresident policyholders, securities to an amount, the actual market value of which, exclusive of interest, shall never be less than $200,000 until July 1, 1986, $300,000 until July 1, 1987, $400,000 until July 1, 1988, and $500,000 on and after July 1, 1988 or one-half the applicable financial requirement set forth in section 60A.07, whichever is less. The securities shall be retained under the control of the commissioner as long as any policies of the depositing company remain in force.

(2) **Securities defined.** For the purpose of this subdivision, the word "securities" means bonds or other obligations of, or bonds or other obligations insured or guaranteed by, the United States, any state of the United States, any municipality of this state, or any agency or instrumentality of the foregoing.

(3) **Protection of deposit from levy.** No judgment creditor or other claimant may levy upon any securities held on deposit with, or for the account of, the commissioner. Upon the entry of an order by a court of competent jurisdiction for the rehabilitation, liquidation or conservation of any depositing company as provided in chapter 60B, that company's deposit together with any accrued income thereon shall be transferred to the commissioner as rehabilitator, liquidator, or conservator.

Subd. 2. **Like requirement for foreign companies.** Any insurance company of any other state of the United States may file with the commissioner a certificate of the insurance commissioner of the other state that, as such officer, there is held in trust by the certifying commissioner and on deposit for the benefit of all the policyholders of the company a deposit of an amount not less than that required by subdivision 1 in par value of such securities as are required or permitted to be deposited by the laws of that state, these securities to be of the character in which insurance companies are authorized to invest under the laws of that state,

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stating the items of the securities so held, and that the commissioner is satisfied that these securities are worth the value so certified. No deposit shall be required in this state while the deposit, so certified, remains.

Subd. 2a. **Special deposits.** The commissioner may require a special deposit of an individual foreign insurer for the protection of its Minnesota policyholders or claimants. In the event of the filing of a delinquency petition against the insurer in Minnesota, the deposit is subject to chapters 60B, 60C, 61A, and 61B.

Subd. 3. **Deposits in compliance with other laws or of foreign companies.** The commissioner shall receive and hold in official trust deposits made by any domestic company in compliance with the laws of any other state, to enable it to do business in that state, and in like manner hold deposits made by a foreign company under any law of this state. The company making the deposit shall be entitled to the income thereof and, from time to time, with the commissioner's consent, when not inconsistent with the law under which it was made, may exchange, in whole or in part, the securities composing the deposit for other approved securities of equal value. Upon application by a domestic company, the commissioner may return the whole or any portion of the securities so deposited by it, if satisfied that they are subject to no liability. Upon like application, the commissioner may return to a foreign company any deposit made by it when it appears that the company has ceased to do business in this state or the United States, and the commissioner is satisfied that it is not subject to any liability in this state, or upon the order of any court of competent jurisdiction. A foreign company which has made a deposit, its trustees, receiver, resident manager, or any creditor or policyholder thereof, may, at any time, institute in the district court of Ramsey county an action against the state and other proper parties to enforce and terminate the trust created by the deposit. The commissioner shall immediately notify the governor of the action, and furnish the necessary information to answer in behalf of the state, and shall carry out such order and decree as the court shall make therein.

Subd. 4. **Safekeeping of securities on deposit.** No later than July 1, 1975, all securities held on deposit with the commissioner pursuant to the laws of this state, or in accordance with an order of the commissioner, shall be deposited for the account of the commissioner in such state or national bank in this state as the depositing insurer may designate and the commissioner may approve. Said deposits shall be made and maintained in accordance with a custodial agreement between the bank and the depositing insurer in a form approved by the commissioner which shall provide as a minimum that (1) the fees of the custodian are to be the obligation of the depositing insurer, and (2) there shall be no exchange, release or transfer of any deposited security unless the commissioner has assented thereto in writing. Securities evidenced by the Federal Reserve book entry system or held in a clearing corporation, as that term is defined in section 60A.11, subdivision 10, must be deposited through an approved custodian or the commissioner of commerce for the account of the commissioner of commerce for the benefit of all policyholders of the depositor.

Subd. 5. [Repealed, 1969 c 494 s 4]

Subd. 6. **Rules.** The commissioner of commerce shall have the power to make such rules as may be necessary for the execution of the functions vested in the commissioner by this section.

History: *1967 c 395 art 1 s 10; 1969 c 494 s 3; 1974 c 425 s 1–3; 1978 c 465 s 4; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1Sp1985 c 10 s 50; 1986 c 444; 1986 c 455 s 5; 1991 c 325 art 10 s 5; 1992 c 540 art 2 s 4*

60A.101 [Repealed, 1988 c 674 s 22]

60A.11 INVESTMENTS FOR DOMESTIC COMPANIES.

Subdivision 1. **Requirement for payment of capital stock.** The capital of every stock company shall be paid in full, in cash, within six months from the date of its certificate of incorporation, and thereupon a majority of the directors shall certify, under oath, to the commissioner that such payment, in cash, has been made by the stockholders for their respective shares, and is held as the capital of the company, and until then no policy shall be issued.

Subd. 2. [Repealed, 1981 c 211 s 42]

Subd. 3. [Repealed, 1981 c 211 s 42]

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Subd. 4. [Repealed, 1981 c 211 s 42]

Subd. 5. [Repealed, 1981 c 211 s 42]

Subd. 5a. [Repealed, 1982 c 424 s 9]

Subd. 5b. [Repealed, 1982 c 424 s 9]

Subd. 6. [Repealed, 1981 c 211 s 42]

Subd. 7. **Investments in name of company or nominee and prohibitions.** No officer, director, or member of any committee passing on investments shall borrow any of such funds, or become, directly or indirectly, liable as a surety or endorser for or on account of loans thereof to others, or receive for personal use any fee, brokerage, commission, gift, or other consideration for, or on account of, any loan made by or on behalf of the company.

Subd. 8. [Repealed, 1981 c 211 s 42]

Subd. 9. **General considerations.** The following considerations apply in the interpretation of this section:

(a) This section applies to the investments of insurance companies other than life insurance companies;

(b) The purpose of this section is to protect and further the interests of policyholders, claimants, creditors and the public by providing standards for the development and administration of programs for the investment of the assets of domestic companies. These standards and the investment programs developed by companies must take into account the safety of company's principal, investment yield and growth, stability in the value of the investment, the liquidity necessary to meet the company's expected business needs, and investment diversification;

(c) All financial terms relating to insurance companies have the meanings assigned to them under statutory accounting methods. All financial terms relating to noninsurance companies have the meanings assigned to them under generally accepted accounting principles;

(d) Investments must be valued in accordance with the valuation procedures established by the National Association of Insurance Commissioners, unless the commissioner requires or finds another method of valuation reasonable under the circumstances. Another method of valuation permitted by the commissioner must be at least as conservative as those prescribed in the association's manual. Other invested assets must be valued according to the procedures promulgated by the National Association of Insurance Commissioners, if not addressed in another section, unless the commissioner requires or finds another method of valuation reasonable under the circumstances;

(e) A company may elect to hold an investment which qualifies under more than one subdivision, under the subdivision of its choice. Nothing herein prevents a company from electing to hold an investment under a subdivision different from the one in which it previously held the investment; and

(f) An investment which qualifies under any provision of the law governing investments of insurance companies when acquired will continue to be a qualified investment for as long as it is held by the insurance company.

Subd. 10. **Definitions.** The following terms have the meaning assigned in this subdivision for purposes of this section and section 60A.111:

(a) "Adequate evidence" means a written confirmation, advice, or other verification issued by a depository, issuer, or custodian bank which shows that the investment is held for the company;

(b) "Adequate security" means a letter of credit qualifying under subdivision 11, paragraph (f), cash, or the pledge of an investment authorized by any subdivision of this section;

(c) "Admitted assets," for purposes of computing percentage limitations on particular types of investments, means the assets as shown by the company's annual statement, required by section 60A.13, as of the December 31 immediately preceding the date the company acquires the investment;

(d) "Clearing corporation" means The Depository Trust Company or any other clearing agency registered with the securities and exchange commission pursuant to the Securities Exchange Act of 1934, section 17A, Euro–clear Clearance System Limited and CEDEL

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S.A., and, with the approval of the commissioner, any other clearing corporation as defined in section 336.8–102;

(e) "Control" has the meaning assigned to that term in, and must be determined in accordance with, section 60D.15, subdivision 4;

(f) "Custodian bank" means a bank or trust company or a branch of a bank or trust company that is acting as custodian and is supervised and examined by state or federal authority having supervision over the bank or trust company or with respect to a company's foreign investments only by the regulatory authority having supervision over banks or trust companies in the jurisdiction in which the bank, trust company, or branch is located, and any banking institutions qualifying as an "Eligible Foreign Custodian" under the Code of Federal Regulations, section 270.17f–5, adopted under section 17(f) of the Investment Company Act of 1940, and specifically including Euro–clear Clearance System Limited and CEDEL S.A., acting as custodians;

(g) "Evergreen clause" means a provision that automatically renews a letter of credit for a time certain if the issuer of the letter of credit fails to affirmatively signify its intention to nonrenew upon expiration;

(h) "Government obligations" means direct obligations for the payment of money, or obligations for the payment of money to the extent guaranteed as to the payment of principal and interest by any governmental issuer where the obligations are payable from ad valorem taxes or guaranteed by the full faith, credit, and taxing power of the issuer and are not secured solely by special assessments for local improvements;

(i) "Noninvestment grade obligations" means obligations which, at the time of acquisition, were rated below Baa/BBB or the equivalent by a securities rating agency or which, at the time of acquisition, were not in one of the two highest categories established by the securities valuation office of the National Association of Insurance Commissioners;

(j) "Issuer" means the corporation, business trust, governmental unit, partnership, association, individual, or other entity which issues or on behalf of which is issued any form of obligation;

(k) "Licensed real estate appraiser" means a person who develops and communicates real estate appraisals and who holds a current, valid license under chapter 82B or a substantially similar licensing requirement in another jurisdiction;

(l) "Member bank" means a national bank, state bank or trust company which is a member of the Federal Reserve System;

(m) "National securities exchange" means an exchange registered under section 6 of the Securities Exchange Act of 1934 or an exchange regulated under the laws of the Dominion of Canada;

(n) "NASDAQ" means the reporting system for securities meeting the definition of National Market System security as provided under Part I to Schedule D of the National Association of Securities Dealers Incorporated bylaws;

(o) "Obligations" include bonds, notes, debentures, transportation equipment certificates, repurchase agreements, bank certificates of deposit, time deposits, bankers' acceptances, and other obligations for the payment of money not in default as to payments of principal and interest on the date of investment, whether constituting general obligations of the issuer or payable only out of certain revenues or certain funds pledged or otherwise dedicated for payment. Leases are considered obligations if the lease is assigned for the benefit of the company and is nonterminable by the lessee or lessees thereunder upon foreclosure of any lien upon the leased property, and rental payments are sufficient to amortize the investment over the primary lease term;

(p) "Qualified assets" means the sum of (1) all investments qualified in accordance with this section other than investments in affiliates and subsidiaries, (2) investments in obligations of affiliates as defined in section 60D.15, subdivision 2, secured by real or personal property sufficient to qualify the investment under subdivision 19 or 23, (3) qualified investments in subsidiaries, as defined in section 60D.15, subdivision 9, on a consolidated basis with the insurance company without allowance for goodwill or other intangible value, and (4) cash on hand and on deposit, agent's balances or uncollected premiums not due more than 90 days, assets held pursuant to section 60A.12, subdivision 2, investment income due and

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accrued, funds due or on deposit or recoverable on loss payments under contracts of reinsurance entered into pursuant to section 60A.09, premium bills and notes receivable, federal income taxes recoverable, and equities and deposits in pools and associations;

(q) "Qualified net earnings" means that the net earnings of the issuer after elimination of extraordinary nonrecurring items of income and expense and before income taxes and fixed charges over the five immediately preceding completed fiscal years, or its period of existence if less than five years, has averaged not less than 1-1/4 times its average annual fixed charges applicable to the period;

(r) "Required liabilities" means the sum of (1) total liabilities as required to be reported in the company's most recent annual report to the commissioner of commerce of this state, (2) for companies operating under the stock plan, the minimum paid-up capital and surplus required to be maintained pursuant to section 60A.07, subdivision 5a, (3) for companies operating under the mutual or reciprocal plan, the minimum amount of surplus required to be maintained pursuant to section 60A.07, subdivision 5b, and (4) the amount, if any, by which the company's loss and loss adjustment expense reserves exceed 350 percent of its surplus as it pertains to policyholders as of the same date. The commissioner may waive the requirement in clause (4) unless the company's written premiums exceed 300 percent of its surplus as it pertains to policyholders as of the same date. In addition to the required amounts pursuant to clauses (1) to (4), the commissioner may require that the amount of any apparent reserve deficiency that may be revealed by one to five year loss and loss adjustment expense development analysis for the five years reported in the company's most recent annual statement to the commissioner be added to required liabilities;

(s) "Revenue obligations" means obligations for the payment of money by a governmental issuer where the obligations are payable from revenues, earnings, or special assessments on properties benefited by local improvements of the issuer which are specifically pledged therefor;

(t) "Security" has the meaning given in section 5 of the Security Act of 1933 and specifically includes, but is not limited to, stocks, stock equivalents, warrants, rights, options, obligations, American Depository Receipts (ADR's), repurchase agreements, and reverse repurchase agreements; and

(u) "Unrestricted surplus" means the amount by which qualified assets exceed 110 percent of required liabilities.

Subd. 11. **Investments in name of company or nominee and prohibitions.** A company's investments shall be held in its own name or the name of its nominee, except that:

(a) Investments may be held in the name of a clearing corporation or of a custodian bank or in the name of the nominee of either on the following conditions:

(1) The clearing corporation, custodian bank, or nominee must be legally authorized to hold the particular investment for the account of others;

(2) Where the investment is evidenced by a certificate and held in the name of a custodian bank or the nominee by a custodian bank, a written agreement shall provide that certificates so deposited shall at all times be kept separate and apart from other deposits with the depository, so that at all times they may be identified as belonging solely to the company making the deposit;

(3) Where a clearing corporation is to act as depository, the investment may be merged or held in bulk in the clearing corporation's or its nominee name with other investments deposited with the clearing corporation by any other person, if a written agreement provides that adequate evidence of the deposit is to be obtained and retained by the company or a custodian bank; and

(4) The company shall monitor current publicly available financial information and other pertinent data with respect to the custodian banks.

(b) A company may loan securities held by it under this chapter to a broker-dealer registered under the Securities and Exchange Act of 1934 or a member bank. The loan must be evidenced by a written agreement which provides:

(1) That the loan will be fully collateralized by cash or obligations issued or guaranteed by the United States or an agency or an instrumentality thereof, and that the collateral will be

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adjusted each business day during the term of the loan to maintain the required collateralization in the event of market value changes in the loaned securities or collateral;

(2) That the loan may be terminated by the company at any time, and that the borrower will return the loaned securities or their equivalent within five business days after termination;

(3) That the company has the right to retain the collateral or use the collateral to purchase investments equivalent to the loaned securities if the borrower defaults under the terms of the agreement and that the borrower remains liable for any losses and expenses incurred by the company due to default that are not covered by the collateral.

(c) A company may participate through a member bank in the Federal Reserve book–entry system, and the records of the member bank shall at all times show that the investments are held for the company or for specific accounts of the company.

(d) An investment may consist of an individual interest in a pool of obligations or a fractional interest in a single obligation if the certificate of participation or interest or the confirmation of participation or interest in the investment shall be issued in the name of the company or the name of the custodian bank or the nominee of either and if the certificate or confirmation must, if held by a custodian bank, be kept separate and apart from the investments of others so that at all times the participation may be identified as belonging solely to the company making the investment.

(e) Except as provided in paragraph (c), where an investment is not evidenced by a certificate, adequate evidence of the company's investment shall be obtained from the issuer or its transfer or recording agent and retained by the company, a custodian bank, or clearing corporation. Transfers of ownership of investments held as described in paragraphs (a), clause (3), (c) and (d) may be evidenced by bookkeeping entry on the books of the issuer of the investment or its transfer or recording agent or the clearing corporation without physical delivery of certificates, if any, evidencing the company's investment.

(f) A letter of credit may be accepted as a guaranty of other investments, as collateral to secure loans, or in lieu of cash to secure loans of securities, if it is issued by a member bank or any of the 100 largest banks in the world ranked by deposits in dollars or converted into dollar equivalents, as compiled annually by the American Bankers Association or listed in the annual publication of Moody's Bank & Finance Manual and meets the following requirements:

(1) has a long–term deposit rating or a long–term debt rating of at least Aa2 as found in the current monthly publication of Moody's Credit Opinions or its equivalent; and

(2) qualifies under the guidelines of the National Association of Insurance Commissioners as a clean, irrevocable letter of credit containing an evergreen clause or having a maturity date subsequent to the maturity date of the underlying investment or loan. The company shall monitor current publicly available financial information and other pertinent data with respect to the banks issuing the letters of credit.

Subd. 11a. **Additional limitations.** Under the standards and procedures in sections 60G.20 to 60G.22 for individual insurers, the commissioner may impose additional limitations on all insurers on the types and percentages of investments as the commissioner determines necessary to protect and ensure the safety of the general public.

Subd. 12. **Investments.** (a) A company must comply with section 60A.112.

(b) A company's investments must be so diversified that the securities of a single issuer, other than the United States of America or any agency or instrumentality of the United States of America backed by the full faith and credit of the issuer, shall comprise no more than five percent of the company's admitted assets, except where otherwise specified under this chapter. In the case of insurance companies which are subsidiaries of a company, this diversification test must be applied to the assets of the insurance company subsidiary in determining the company's compliance.

(c) The investments authorized under subdivisions 12 to 26 shall constitute admitted assets for a company.

Subd. 13. **United States government obligations.** (a) Obligations issued or guaranteed by the United States of America or any agency or instrumentality of the United States of America backed by the full faith and credit of the issuer. Pursuant to section 106 of title I of

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the Secondary Mortgage Market Enhancement Act of 1984, United States Code, title 15, section 77r–1, included under this paragraph are obligations issued or guaranteed by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association.

(b) Obligations issued or guaranteed by an agency or instrumentality of the United States of America other than those backed by the full faith and credit thereof, including rights to purchase or sell these obligations if those rights are traded upon a contract market designated and regulated by a federal agency. The securities of a single issuer under this paragraph shall comprise no more than 20 percent of the company's admitted assets.

Subd. 14. **Certain bank obligations.** (a) Certificates of deposits, time deposits, and bankers' acceptances issued by and other obligations guaranteed by: (i) any bank organized under the laws of the United States or any state, commonwealth, or territory thereof, including the District of Columbia, or of the Dominion of Canada or any province thereof or (ii) any of the 100 largest banks, not a subsidiary or a holding company thereof, in the world ranked by deposits in dollars or converted into dollar equivalents, as compiled annually by the American Bankers Association or listed in the annual publication of Moody's Bank & Finance Manual, which also has a long–term deposit rating or a long–term debt rating of at least Aa2 as found in the current monthly publication of Moody's Credit Opinions or its equivalent. A company may not invest more than five percent of its admitted assets in the obligations of any one bank and may not hold at any time more than ten percent of the outstanding obligations of any one bank.

(b) Obligations issued or guaranteed by the International Bank for Reconstruction and Development, the Asian Development Bank, the Inter–American Development Bank, the African Development Bank, the Export–Import Bank, the World Bank or any United States government sponsored organization of which the United States is a member, if the principal and interest is payable in United States dollars. A company may not invest more than five percent of its total admitted assets in the obligations of any one of these banks or organizations, and may not invest more than a total of 15 percent of its total admitted assets in the obligations of all these banks and organizations.

Subd. 15. **State obligations.** (a) Government obligations issued or guaranteed by any state, commonwealth, or territory of the United States of America or by any political subdivision thereof, including the District of Columbia, or by any instrumentality of any state, commonwealth, territory, or political subdivision thereof. The diversification requirement of subdivision 12, paragraph (b), does not apply to government obligations under this paragraph.

(b) Revenue obligations issued by any state, commonwealth, or territory of the United States of America or by any political subdivision thereof, including the District of Columbia, or by any instrumentality of any state, commonwealth, territory, or political subdivision thereof. The diversification requirement of subdivision 12, paragraph (b), is applicable to revenue obligations under this paragraph.

Subd. 16. **Canadian government obligations.** (a) Obligations issued or guaranteed by the Dominion of Canada or by any agency or instrumentality of the Dominion of Canada backed by the full faith and credit of the issuer. The diversification requirement of subdivision 12, paragraph (b), does not apply to government obligations under this paragraph.

(b) Obligations issued or guaranteed by an agency or instrumentality of the Dominion of Canada other than those backed by the full faith and credit of the issuer. The securities of a single issuer under this paragraph shall comprise no more than 20 percent of the company's admitted assets.

(c) Government obligations issued or guaranteed by a province or territory of the Dominion of Canada or by a political subdivision thereof, or by an instrumentality of a province, territory, or political subdivision thereof. The diversification requirement of subdivision 12, paragraph (b), does not apply to government obligations under this paragraph.

(d) Revenue obligations issued by a province or territory of the Dominion of Canada or by a political subdivision thereof, or by an instrumentality of a province, territory, or political subdivision thereof. The diversification requirement of subdivision 12, paragraph (b), is applicable to revenue obligations under this paragraph.

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Subd. 17. **Corporate and business trust obligations.** Obligations issued, assumed or guaranteed by a corporation or business trust organized under the laws of the United States of America or any state, commonwealth, or territory of the United States, including the District of Columbia, or the laws of the Dominion of Canada or any province or territory of the Dominion of Canada, or obligations traded on a national securities exchange on the following conditions:

(a) A company may invest in any obligations traded on a national securities exchange;

(b) A company may also invest in any obligations which are secured by adequate security located in the United States or Canada;

(c) A company may also invest in previously outstanding or newly issued obligations not qualifying for investment under paragraph (a) or (b) if the corporation or business trust has qualified net earnings. If the obligations are not newly issued, neither principal nor interest payments on the obligations shall have been in arrears (1) for an aggregate of 90 days during the three–year period preceding the date of investment, or (2) where the obligations have been outstanding for less than 90 days, during the period the obligations have been outstanding;

(d) A company may invest no more than 15 percent of its total admitted assets in noninvestment grade obligations;

(e) A company may invest in federal farm loan bonds and may invest up to 20 percent of its total admitted assets in the obligations of farm mortgage debenture companies; and

(f) A company may not invest more than five percent of its admitted assets in the obligations of any one corporation or business trust; provided, however, that a company may invest in the obligations of a corporation without regard to this paragraph or the subdivision 12, paragraph (b), diversification requirement if: (1) the company is wholly owned by the issuer and affiliates of the issuer of the obligations; (2) the company insures solely the issuer of the obligations and its affiliates; (3) the issuer has a net worth, determined on a consolidated basis, which equals or exceeds $100,000,000; and (4) the issuer and its affiliates forego any and all claims they may have against the Minnesota insurance guaranty association pursuant to chapter 60C in the event of the insolvency of the company. This does not affect the rights of any unaffiliated third party claimant under section 60C.09, subdivision 1.

Subd. 18. **Stocks and limited partnerships.** (a) Stocks issued or guaranteed by any corporation incorporated under the laws of the United States of America or any state, commonwealth, or territory of the United States, including the District of Columbia, or the laws of the Dominion of Canada or any province or territory of Canada, or stocks or stock equivalents, including American Depository Receipts or unit investment trusts, listed or regularly traded on a national securities exchange on the following conditions:

(1) A company may not invest more than a total of 25 percent of its total admitted assets in stocks, stock equivalents, and convertible issues. Not more than ten percent of a company's total admitted assets may be invested in stocks, stock equivalents, and convertible issues not traded or listed on a national securities exchange or designated or approved for designation upon notice of issuance on the NASDAQ/National Market System. This limitation does not apply to investments under clause (4);

(2) A company may not invest in more than two percent of its total admitted assets in preferred stocks of any corporation which are traded on a national securities exchange and may alsó invest in other preferred stocks if the issuer has qualified net earnings and if current or cumulative dividends are not then in arrears;

(3) A company may not invest in more than two percent of its total admitted assets in common stocks, common stock equivalents, or securities convertible into common stock or common stock equivalents of any corporation or business trust which are traded on a national securities exchange or designated or approved for designation upon notice of issuance on the NASDAQ/National Market System, and may also invest in other common stocks, stock equivalents, and convertible issues subject to the limitations specified in clause (1);

(4) A company may organize or acquire and hold voting control of a corporation or business trust through its ownership of common stock, common stock equivalents, or other securities, provided the corporation or business trust is: (a) a corporation providing investment advisory, banking, management or sale services to an investment company or to an insurance

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company, (b) a data processing or computer service company, (c) a mortgage loan corporation engaged in the business of making, originating, purchasing or otherwise acquiring or investing in, and servicing or selling or otherwise disposing of loans secured by mortgages on real property, (d) a corporation if its business is owning and managing or leasing personal property, (e) a corporation providing securities underwriting services or acting as a securities broker or dealer, (f) a real property holding, developing, managing, brokerage or leasing corporation, (g) any domestic or foreign insurance company, (h) any alien insurance company, if the organization or acquisition and the holding of the company is subject to the prior approval of the commissioner of commerce, which approval must be given upon good cause shown and is deemed to have been given if the commissioner does not disapprove of the organization or acquisition within 30 days after notification by the company, (i) an investment subsidiary to acquire and hold investments which the company could acquire and hold directly, if the investments of the subsidiary are considered direct investments for purposes of this chapter and are subject to the same percentage limitations, requirements and restrictions as are contained herein, or (j) any corporation whose business has been approved by the commissioner as complementary or supplementary to the business of the company. A company may invest up to an aggregate of ten percent of its total admitted assets under subclauses (a) to (e) of this clause. The diversification requirement of subdivision 12, paragraph (b), does not apply to this clause;

(5) A company may invest in warrants and rights granted by an issuer to purchase securities of the issuer if that security of the issuer, at the time of the acquisition of the warrant or right to purchase, would qualify as an investment under paragraph (a), clause (2) or (3), whichever is applicable, provided that security meets the standards prescribed in the clause at the time of acquisition of the securities; and

(6)(i) A company may invest in the securities of any face amount certificate company, unit investment trust, or management type investment company, registered or in the process of registration under the Investment Company Act of 1940 as from time to time amended, provided that the aggregate of all these investments other than in securities of money market mutual funds or mutual funds investing primarily in United States government securities, determined at cost, shall not exceed five percent of its total admitted assets; investments may be made under this clause without regard to the percentage limitations applicable to investments in voting securities.

(ii) A company may invest in any proportion of the shares or investment units of an investment company or investment trust, whether or not registered under the Investment Company Act of 1940, which is managed by an insurance company, member bank, trust company regulated by state or federal authority or an investment manager or adviser registered under the Investment Advisers Act of 1940 or qualified to manage the investments of an investment company registered under the Investment Company Act of 1940, provided that the investments of the investment company or investment trust are qualified investments made under this section and that the articles of incorporation, bylaws, trust agreement, investment management agreement, or some other governing instrument limits its investments to investments qualified under this section.

(b) A company may invest in or otherwise acquire and hold a limited partnership interest in any limited partnership formed under the laws of any state, commonwealth, or territory of the United States or under the laws of the United States of America. A company may invest in or otherwise acquire and hold a member interest in any limited liability company formed under the laws of any state, commonwealth, or territory of the United States or under the laws of the United States. No limited partnership or limited liability company member interest shall be acquired if the investment, valued at cost, exceeds two percent of the admitted assets of the company or if the investment, plus the book value on the date of the investment of all limited partnership and limited liability company interests then held by the company and held under the authority of this subdivision, exceeds ten percent of the company's admitted assets. Limited partnership and limited liability company interests traded on a national securities exchange must be classified as stock equivalents and are not subject to the percentage limitations contained in this paragraph.

Subd. 19. **Mortgages on real estate.** Up to 25 percent of a company's total admitted assets may be invested in loans or obligations secured by a mortgage or a trust deed on real

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estate located in any state, commonwealth, or territory of the United States, including the District of Columbia, or in any province or territory of the Dominion of Canada, on the following conditions:

(a) A leasehold estate constitutes real estate under this section if its unexpired term on the date of investment is at least five years longer than the term of the obligation secured by it. The obligation must be repayable within the leasehold term in annual or more frequent installments, except that obligations for commercial purposes may begin up to five years after the date of the obligations. The mortgage must entitle the company upon default to be subrogated to all rights of the lessor under the leasehold;

(b) The real estate to which the mortgage applies must be (1) improved with permanent buildings, or (2) used for agriculture or pasture, or (3) income–producing, including but not limited to parking lots and leases, royalty or other mineral interests in properties producing oil, gas or other minerals and interests in properties for the harvesting of forest products, or (4) subject to a definite plan for the commencement of development within five years;

(c) The real estate to which the mortgage applies must be otherwise unencumbered when the mortgage loan is funded except as provided in paragraph (d) and except for encumbrances which do not unreasonably interfere with the intended use of the real estate as security;

(d) The real estate to which the mortgage applies may be subject to a prior mortgage or trust deed if (1) the amount of the obligation is equal to the sum of the company's loan and the other outstanding indebtedness and (2) the company has control over the payments under the prior mortgage or trust deed;

(e) The amount of the obligation may not exceed 80 percent of the real estate. If the amount of the obligation exceeds 66–2/3 percent of the market value of the real estate, principal payments must commence within five years after the date of the mortgage loan and principal and interest on the loan shall be fully amortized by regular installments payable during the term of the loan without irregular or balloon payments, unless the schedule of irregular or balloon payments is more favorable to the insurer than regular installments of equal amount would be. The market value shall be established by the written certification of a licensed real estate appraiser qualified to appraise the particular type of real estate involved. The appraisal must be required at the time the loan is made;

(f) The maximum term of any obligation shall be 40 years, except as provided in paragraph (g) and except for obligations secured by a mortgage or trust deed which are or are to be insured by a private mortgage insurance company approved by the commissioner;

(g) The 25 percent of total admitted asset limitation in the preamble of this subdivision and the maximum amount and term limitations in paragraphs (e) and (f) shall not apply to obligations secured by mortgage or trust deed which are insured or guaranteed by the United States of America or any agency or instrumentality of the United States;

(h) A company may invest in collateralized mortgage obligations, mortgage participation certificates and pools issued or administered by a bank or banks and secured by first mortgages or trust deeds on improved real estate located in the United States provided the private placement memorandum, prospectus or other offering circular, or a written agreement with the issuer of the collateralized mortgage obligations, certificate or other pool interest provides that each loan meets the requirements of this subdivision;

(i) Notwithstanding the restrictions in paragraph (e), if a company disposes of real estate acquired by it under subdivision 20, it may take back a purchase money mortgage from its purchaser in an amount up to 90 percent of the appraised value; and

(j) The vendor's equity in a contract for deed shall be treated as a mortgage for purposes of this subdivision.

Subd. 20. **Real estate.** (a) Except as provided in paragraphs (b) to (d), a company may only acquire, hold, and convey real estate which:

(1) has been mortgaged to it in good faith by way of security for loans previously contracted, or for money due;

(2) has been conveyed to it in satisfaction of debts previously contracted in the course of its dealings;

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(3) has been purchased at sales on judgments, decrees or mortgages obtained or made for the debts; and

(4) is subject to a contract for deed under which the company holds the vendor's interest to secure the payments the vendee is required to make thereunder.

All the real estate specified in clauses (1) to (3) must be sold and disposed of within five years after the company has acquired title to it, or within five years after it has ceased to be necessary for the accommodation of the company's business, and the company must not hold this property for a longer period unless the company elects to hold the real estate under another section, or unless it procures a certificate from the commissioner of commerce that its interest will suffer materially by the forced sale thereof, in which event the time for the sale may be extended to the time the commissioner directs in the certificate. The market value of real estate specified in clauses (1) to (3) must be established by the written certification of a licensed real estate appraiser. The appraisal is required at the time the company elects to hold the real estate under clauses (1) to (3).

(b) A company may acquire and hold real estate for the convenient accommodation of its business.

(c) A company may acquire real estate or any interest in real estate, including oil and gas and other mineral interests, as an investment for the production of income, and may hold, improve or otherwise develop, subdivide, lease, sell and convey real estate so acquired directly or as a joint venture or through a limited, limited liability, or general partnership in which the company is a partner or through a limited liability company in which the company is a member.

(d) A company may also hold real estate (1) if the purpose of the acquisition is to enhance the sale value of real estate previously acquired and held by the company under this section, and (2) if the company expects the real estate so acquired to qualify under paragraph (b) or (c) above within five years after acquisition.

(e) A company may, after securing the approval of the commissioner, acquire and hold real estate for the purpose of providing necessary living quarters for its employees. The company must dispose of the real estate within five years after it has ceased to be necessary for that purpose unless the commissioner agrees to extend the holding period upon application by the company.

(f) A company may not invest more than 25 percent of its total admitted assets in real estate. The cost of any parcel of real estate held for both the accommodation of business and for the production of income must be allocated between the two uses annually. No more than ten percent of a company's total admitted assets may be invested in real estate held under paragraph (b). No more than 15 percent of a company's total admitted assets may be invested in real estate held under paragraph (c). No more than three percent of its total admitted assets may be invested in real estate held under paragraph (e). Upon application by a company, the commissioner of commerce may increase any of these limits up to an additional five percent.

Subd. 21. **Foreign investments.** Obligations of and investments in foreign countries, on the following conditions:

(a) a company may acquire and hold any foreign investments which are required as a condition of doing business in the foreign country or necessary for the convenient accommodation of its foreign business. An investment is considered necessary for the convenient accommodation of the insurance company's foreign business only if it is demonstrably and directly related in size and purpose to the company's foreign insurance operations; and

(b) a company may also invest not more than five percent of its total admitted assets in any combination of:

(1) the obligations of foreign governments, corporations, or business trusts;

(2) obligations of federal, provincial, or other political subdivisions backed by the full faith and credit of the foreign governmental unit;

(3) or in the stocks or stock equivalents or obligations of foreign corporations or business trusts not qualifying for investment under subdivision 12, if the obligations, stocks or stock equivalents are listed or regularly traded on the London, Paris, Zurich, or Tokyo stock exchange or any similar regular securities exchange not disapproved by the commissioner

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within 30 days following notice from the company of its intention to invest in these securities.

Subd. 22. **Personal property under lease.** Personal property for intended lease or rental in the United States or Canada. A company may not invest more than five percent of its total admitted assets under this subdivision.

Subd. 23. **Collateral loans.** Obligations having adequate security if:

(a) The collateral is legally assigned or delivered to the company;

(b) The company has the right to declare the obligation immediately due and payable if the security thereafter depreciates to the point where the investment would not qualify under paragraph (c); provided, that additional qualifying security may be pledged to allow the investment to remain qualified at its face value;

(c) The collateral must at the time of delivery or assignment have a market value of at least, in the case of cash, or a letter of credit meeting the requirements of subdivision 11, paragraph (f), equal to and, in all other cases, 1–1/4 times the amount of the unpaid balance of the obligations.

A collateral loan made by a company to its parent corporation or an affiliated party must be secured by collateral: (i) with a market value equal to the amount of the unpaid balance of the obligations, and (ii) which is issued or guaranteed by the United States of America or an agency or an instrumentality thereof, or any state or territory thereof, and is secured by the full faith and credit of the United States of America or any state or territory thereof. A company may not invest more than five percent of its total admitted assets under this subdivision.

Subd. 24. **Options.** (a) A company may sell exchange–traded call options against stocks or other securities owned by the company and may purchase exchange–traded call options in a closing transaction against a call option previously written by the company.

(b) A company may purchase or sell other exchange–traded call options and may sell or purchase exchange–traded put options only if, to the extent and on terms and conditions the commissioner determines to be consistent with the purposes of this section.

Subd. 24a. **Data processing systems.** Electronic computer or data processing machines or systems purchased for use in connection with the business of the company, provided that the machines or system must have an original cost of not less than $100,000 nor more than three percent of the admitted assets of the company and the cost must be amortized in full over a period not to exceed ten full calendar years.

Subd. 25. **Unrestricted surplus.** A company may invest its unrestricted surplus, in securities or property of any kind, without restriction or limitation except as may be imposed on business corporations in general.

Subd. 26. **Rules.** (a) The commissioner may adopt appropriate rules to carry out the purpose and provisions of this section.

(b) A company may make qualified investments in any other type of investment or exceeding any limitations of quality, quantity, or percentage of admitted assets contained in this section with the written order of the commissioner. This approval is at the discretion of the commissioner, provided that the additional investments allowed by the commissioner's written order may not exceed five percent of the company's admitted assets.

(c) Nothing authorized in this subdivision negates or reduces the investment authority granted in subdivisions 1 to 25.

History: *1967 c 395 art 1 s 11; 1969 c 7 s 14–16; 1969 c 494 s 5–11; 1974 c 64 s 4,5; 1978 c 465 s 5; 1981 c 211 s 9–26,42; 1Sp1981 c 4 art 4 s 6,7; 1982 c 424 s 10,11; 1982 c 622 s 1; 1983 c 289 s 114 subd 1; 1983 c 340 s 1–8; 1984 c 382 s 3; 1984 c 655 art 1 s 92; 1Sp1985 c 16 art 2 s 17; 1986 c 444; 1987 c 189 s 1,2; 1991 c 325 art 8 s 1–17; art 10 s 6; 1992 c 540 art 2 s 5,6; 1993 c 13 art 2 s 1; 1993 c 299 s 1; 1994 c 425 s 2; 1995 c 214 s 5,6; 1996 c 446 art 2 s 5*

60A.111 QUALIFIED ASSETS TO REQUIRED LIABILITIES; RATIO.

Subdivision 1. **Report.** Annually, or more frequently if determined by the commissioner to be necessary for the protection of policyholders, each foreign, alien and domestic insurance company other than a life insurance company shall report to the commissioner the ratio of its qualified assets to its required liabilities.

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Subd. 2. **Plan.** If the commissioner determines that the required liabilities of any company are greater than its qualified assets and that the combined financial resources of the insurance company members of any insurance holding company system of which the company is a member are not adequate to counterbalance that fact, the commissioner may require the company to submit to the commissioner for approval a plan by which the company undertakes to bring the ratio of its qualified assets to its required liabilities, expressed as a percentage, up to at least 110 percent within a reasonable period, usually not exceeding five years.

Subd. 3. **Power of commissioner.** If, following a hearing on notice to the company, the commissioner determines that a company's plan is inadequate or the insurer is not making satisfactory progress toward increasing the ratio of its qualified assets to its required liabilities and that no satisfactory alternatives are available, the commissioner may institute rehabilitation proceedings against a domestic company under chapter 60B. Where the company is not a domestic insurance company, the commissioner may impose restrictions on the company as a condition to the company obtaining a new or renewal certificate of authority to transact business in this state, and may where circumstances so justify revoke or rescind any certificate previously issued.

Subd. 4. [Repealed, 1983 c 340 s 18]

Subd. 4a. **Prohibition.** If the commissioner determines that the company does not have unrestricted surplus, the commissioner may prohibit that company from purchasing any asset which is not a qualified asset as defined in section 60A.11, unless a request is made of the commissioner and the request is not denied within 15 days. The commissioner may exempt any insurer from the requirements of this subdivision.

Subd. 5. **Denial of certificate.** No insurer other than a life insurer which does not have unrestricted surplus as of December 31 of the immediately preceding year shall be issued a certificate of authority.

Subd. 6. **Factors considered.** The commissioner, in exercising discretion under this section, may take into consideration the size, the lines of business, and the dispersion of risks of the company, and the consolidated assets and surplus as regards policyholders of the other insurers of the insurance holding company system of which the company is a member and any other factors deemed relevant by the commissioner.

History: *1981 c 211 s 27; 1983 c 340 s 9–11; 1986 c 444; 1994 c 425 s 3; 1995 c 258 s 3*

60A.112 INVESTMENT POLICY REQUIRED.

Each domestic company must have a written investment policy, designed to provide guidance for investment decisions by management. The policy must be approved by its board of directors. The policy must be reviewed by the company's board of directors and reapproved no less often than once every 12 months. The investment policy must address asset type diversification, diversification within asset types, concentration risks, interest rate risk, liquidity, foreign investments, loans secured by real estate, and investment real estate. The policy must set forth, in detail, company practices relating to internal controls regarding the delegation of investment authority within the company.

The board of directors must also determine at least annually the extent to which the company has complied with its investment policy within the preceding 12 months and shall adopt a written determination.

The company must file, as an attachment to its annual statement, a certification that:

(1) the company has a written investment policy meeting the requirements of this section;

(2) the company's board of directors has reviewed and approved or reapproved the policy within the period covered by the annual statement; and

(3) the company's board of directors performed the compliance review and made the written determination required by this section for the period covered by the annual statement.

A company's failure to meet the requirements of this section does not affect its ability to enforce its legal or equitable rights with respect to its investments.

History: *1991 c 325 art 18 s 1; 1992 c 540 art 2 s 7*

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60A.12 ASSETS AND LIABILITIES.

Subdivision 1. **Valuation and admissibility of life company assets.** In valuing the assets which compose the legal reserve of a life company, its real estate, stocks, and bonds shall be so rated that the average annual income thereof shall not be less than three percent, and if any asset produces less it shall be rated at its value upon a three percent basis. Loans and credits shall not be allowed for more than their face value, nor shall any asset be appraised for more than its market value. Only such assets shall be allowed as are available for payment of losses in this state, including an electronic computer or data processing machine or system heretofore or hereafter purchased for use in connection with the business of a life company, provided such machine or system shall have an original cost of not less than one hundred thousand dollars nor more than three percent of the admitted assets of the company and such cost shall be amortized in full over a period not to exceed ten full calendar years. Any deposit or fund set apart as security for a particular liability may be set off to an amount not exceeding such liability. The amount of any interest bearing lien against any policy or loan thereon, not exceeding the net value or premium reserve of such policy, computed under the provisions of this chapter, may likewise be allowed against liability thereunder. Stockholders' obligations of any description shall not be rated as part of the assets of any company, unless secured by sufficient approved collateral.

Subd. 2. [Repealed, 1991 c 325 art 8 s 18]

Subd. 3. **Valuation of evidences of indebtedness.** All bonds or other evidences of debt, having a fixed term and rate, held by an insurance company or fraternal benefit society authorized to do business in this state may, if amply secured and not in default as to principal and interest, be valued as follows: If purchased at par, at the par value; if purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield, in the meantime, the effective rate of interest at which the purchase was made; provided, that the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase. If the notes or bonds secured by mortgage or trust deed in the nature thereof which the federal housing administrator has insured, or made a commitment to insure, are purchased above par, they may, if not in default as to principal and interest, be valued during the first five years after purchase on the basis of the purchase price adjusted in equal annual installments to bring the value to par at the end of five years.

Subd. 4. **Unearned premiums reserve.** (1) **For companies other than life or title.** To determine the policy liability of any company other than life or title insurance, and the amount the company shall hold as reserve, the commissioner shall take 50 percent of the aggregate premiums, on policies running one year or less from date of policy, and a pro rata rate amount on policies running more than one year from date of policy, except upon inland and marine risks, which the commissioner shall compute by charging 50 percent of the amount of premium written in its policies upon yearly risks and upon risks covering more than one passage not terminated, and the full amount of premiums written in policies upon all other inland and marine risks not terminated. In case of any fire and marine company with less than $200,000 capital admitted to transact in this state fire business only, the full amount of premiums written in its marine and inland navigation and transportation policies shall be charged as liability.

(2) **Special provisions for mutual fire companies with a contingent liability.** In case of a mutual fire insurance company with a policyholders' contingent liability fixed by its bylaws and in its policies as provided by law, to determine the amount of this reinsurance reserve, the commissioner shall take 25 percent of the aggregate premiums running one year or less from date of policy, and 50 percent of the pro rata amount on policies running more than one year from date of policy.

(3) **Casualty companies writing liability or workers' compensation.** In case of a casualty insurance company writing insurance against loss or damage resulting from accident to or injuries suffered by an employee or other person and for which the insured is liable, and under insurance against loss from liability on account of the death of or injury to an employee not caused by the negligence of an employer, the commissioner shall charge as a liability, in addition to the capital stock and all other outstanding indebtedness of the corporation:

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Notwithstanding any other provision of this subdivision, an unearned premium reserve shall be required based only on the timing and the amount of the recorded written premium.

(4) **Provision for annual payment term policies.** A policy for a term of years on which the premium is payable annually shall be considered a policy for one year.

Subd. 5. **Loss reserves.** (1) **For other than liability and workers' compensation.** The reserve for outstanding losses under policies other than workers' compensation and liability policies shall be at least equal to the aggregate estimated amounts due or to become due on account of all the losses and claims of which the corporation has received notice. The loss reserve shall also include the estimated liability on any notices received by the corporation of the occurrence of any event which may result in a loss, and the estimated liability for all losses which have occurred but on which no notice has been received. For the purpose of these reserves, the corporation shall keep a complete and itemized record showing all losses and claims on which it has received notice, including all notices received by it of the occurrence of any event which may result in a loss.

When, in the judgment of the commissioner, the loss reserves, calculated in accordance with the foregoing provisions, are inadequate, the commissioner may require the corporation to maintain additional reserves.

(2) **For liability losses.** The reserve for outstanding losses and loss expenses incurred under liability policies during each of the three years immediately preceding the date of the statement shall be not less than 60 percent of the earned liability premium for each of the three corresponding years immediately preceding the date of the statement, less all loss and loss expense payments made under claims incurred during each of those years.

(3) **For compensation claims.** The reserve for outstanding losses and loss expenses incurred under workers' compensation policies shall be at least equal to the following amounts:

(a) For all compensation claims under policies written more than three years prior to the date of the statement, the present values, at four percent interest, of the determined and the estimated future payments;

(b) For all compensation claims under policies written in the three years immediately preceding the date of the statement, the reserve shall be not less than 65 percent of the earned compensation premiums for each of the three years, less all loss and loss expense payments made in connection with the claims under policies written in each of the corresponding years. For the first year of the three–year period, the reserve shall be not less than the present value, at four percent interest, of the determined and the estimated unpaid compensation claims under policies written during that year.

Subd. 6. [Repealed, 1978 c 465 s 15]

Subd. 7. **Liability and workers' compensation reserves subject to increase.** When, in the judgment of the commissioner, the liability or compensation loss reserves of any supervised insurer, calculated in accordance with the foregoing provisions, are inadequate, the commissioner may require such insurer to maintain additional reserves based upon estimated individual claims or otherwise.

Subd. 8. **Liability and workers' compensation experience to be included in annual statement.** Each insurer that writes liability or compensation policies shall include in the annual statement required by law a schedule of its experience thereunder in such form as the commissioner may prescribe.

Subd. 9. **Exemption.** This section shall not apply to farmers' mutual insurance companies.

Subd. 10. [Repealed, 1993 c 299 s 33]

History: *1967 c 395 art 1 s 12; 1975 c 359 s 23; 1978 c 465 s 6; 1986 c 444; 1991 c 325 art 16 s 1; 1992 c 540 art 2 s 8; 1992 c 564 art 1 s 17,54; 1993 c 299 s 2*

60A.121 DEFINITIONS.

Subdivision 1. **Application.** The definitions in this section apply to sections 60A.121 to 60A.127.

Subd. 2. **Commercial mortgage loan.** "Commercial mortgage loan" means a loan by an insurer secured by a mortgage on commercial real estate. "Commercial mortgage loan"

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does not include loans secured by residential real estate containing four or fewer dwelling units or agricultural real estate.

Subd. 3. **Delinquent mortgage loan.** "Delinquent mortgage loan" means a loan 90 days delinquent on a required payment of principal or interest.

Subd. 4. **Distressed mortgage loan.** "Distressed mortgage loan" means a loan, other than a delinquent loan, that is determined by the management of the insurer, in the exercise of its prudent investment judgment, to involve circumstances that create a reasonable probability that the loan may become a delinquent mortgage loan or a mortgage loan in foreclosure.

Subd. 5. **Independent appraiser.** "Independent appraiser" means a person not employed by the insurer, by an affiliate of the insurer, or by an investment advisor to the insurer who develops and communicates real estate appraisals and holds a current, valid license issued under section 82B.02, or a similar law enacted by another state.

Subd. 6. **Internal appraisal.** "Internal appraisal" means an appraisal to determine current market value made by an internal appraiser and based upon an evaluation of:

(1) the property based upon a physical inspection of the premises;

(2) the current and expected stabilized cash flow generated by the property;

(3) the current and expected stabilized market rents in the geographic market where the property is located; and

(4) the current and stabilized occupancy rates for the geographic market where the property is located.

Subd. 7. **Internal appraiser.** "Internal appraiser" means an individual:

(1) employed by an insurer, by an affiliate of the insurer, or by an investment advisor to an insurer;

(2) who has training and experience qualifying the individual to appraise the value of commercial real estate;

(3) whose direct or indirect compensation is not dependent upon the outcome of the appraisals performed under sections 60A.121 to 60A.126; and

(4) who has direct reporting access to the chief investment officer of the insurer.

Subd. 8. **Insurer.** "Insurer" means a domestic insurance company.

Subd. 9. **Mortgage loan in foreclosure.** "Mortgage loan in foreclosure" means (1) a loan in the process of foreclosure including the time required for expiration of any equitable or statutory redemption rights; (2) a loan to a mortgagor who is the subject of a bankruptcy petition and who is not making regular monthly payments; or (3) a loan secured by a mortgage on real estate that is subject to a senior mortgage or other lien that is being foreclosed.

Subd. 10. **Performing mortgage loan.** "Performing mortgage loan" means a mortgage loan current in payment and not in distress.

Subd. 11. **Real estate owned.** "Real estate owned" means real property owned and acquired by an insurer through or in lieu of foreclosure and as to which all equitable or statutory rights of redemption have expired.

Subd. 12. **Restructured mortgage loan.** "Restructured mortgage loan" means a loan where:

(1) material delinquent payments or accrued interest are capitalized and added to the balance of an outstanding loan; or

(2) the insurer has abated or reduced interest payments below market rates existing at the date of restructuring.

History: *1991 c 325 art 19 s 1*

60A.122 REQUIRED WRITTEN PROCEDURES.

An insurer shall establish written procedures, approved by the company's board of directors, for the valuation of commercial mortgage loans and real estate owned. The procedures must be made available to the commissioner upon request. The commissioner shall review the insurer's compliance with the procedures in any examination of the insurer under section 60A.031.

History: *1991 c 325 art 19 s 2*

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60A.123 VALUATION PROCEDURE.

Subdivision 1. **Requirement.** An insurer shall value its commercial mortgage loans and real estate acquired through foreclosure of commercial mortgage loans as provided in this section for the purpose of establishing reserves or carrying values of the investments and for statutory accounting purposes.

Subd. 2. **Performing mortgage loan.** A performing mortgage loan must be carried at its amortized acquisition cost.

Subd. 3. **Distressed mortgage loan.** (a) The insurer shall make an evaluation of the appropriate carrying value of its commercial mortgage loans which it classifies as distressed mortgage loans. The carrying value must be based upon one or more of the following procedures:

(1) an internal appraisal;

(2) an appraisal made by an independent appraiser;

(3) the value of guarantees or other credit enhancements related to the loan.

(b) The insurer may determine the carrying value of its distressed mortgage loans through either an evaluation of each specific distressed mortgage loan or by a sampling methodology. Insurers using a sampling methodology shall identify a sampling of its distressed mortgage loans that represents a cross section of all of its distressed mortgage loans. The insurer shall make an evaluation of the appropriate carrying value for each sample loan. The carrying value of all of the insurer's distressed mortgage loans must be the same percentage of their amortized acquisition cost as the sample loans. The carrying value must be based upon an internal appraisal or an appraisal conducted by an independent appraiser.

(c) The insurer shall either take a charge against its surplus or establish a reserve for the difference between the carrying value and the amortized acquisition cost of its distressed mortgage loans.

Subd. 4. **Delinquent mortgage loan.** (a) The insurer shall make an evaluation of the appropriate carrying value of each delinquent mortgage loan. The carrying value must be based upon one or more of the following procedures:

(1) an internal appraisal;

(2) an appraisal by an independent appraiser;

(3) the value of guarantees or other credit enhancements related to the loan.

(b) The insurer shall either take a charge against its surplus or establish a reserve for the difference between the carrying value and the amortized acquisition cost of its delinquent mortgage loans.

Subd. 5. **Restructured mortgage loan.** (a) The insurer shall make an evaluation of the appropriate carrying value of each restructured mortgage loan. The carrying value must be based upon one or more of the following procedures:

(1) an internal appraisal;

(2) an appraisal by an independent appraiser;

(3) the value of guarantees or other credit enhancements related to the loan.

(b) The insurer shall either take a charge against its surplus or establish a reserve for the difference between the carrying value and the amortized acquisition cost of its restructured mortgage loans.

Subd. 6. **Mortgage loan in foreclosure.** (a) The insurer shall make an evaluation of the appropriate carrying value of each mortgage loan in foreclosure. The carrying value must be based upon an appraisal made by an independent appraiser.

(b) The insurer shall take a charge against its surplus for the difference between the carrying value and the amortized acquisition cost of its mortgage loans in the process of foreclosure.

Subd. 7. **Real estate owned.** (a) The insurer shall make an evaluation of the appropriate carrying value of real estate owned. The carrying value must be based upon an appraisal made by an independent appraiser.

(b) The insurer shall take a charge against its surplus for the difference between the carrying value and the amortized acquisition cost of real estate owned.

History: *1991 c 325 art 19 s 3*

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60A.124 INDEPENDENT AUDIT.

The audit report of the independent certified public accountant that performs the audit of an insurer's annual statement as required under section 60A.129, subdivision 3, paragraph (a), should contain a statement as to whether anything, in connection with their audit, came to their attention that caused them to believe that the insurer failed to adopt and consistently apply the valuation procedure as required by sections 60A.122 and 60A.123.

History: *1991 c 325 art 19 s 4; 1992 c 540 art 2 s 9; 1995 c 258 s 4*

60A.125 APPRAISAL BY INDEPENDENT APPRAISER.

Subdivision 1. **Mortgage loans in the process of foreclosure.** An insurer may rely upon an appraisal by an independent appraiser to determine the carrying value of mortgage loans in the process of foreclosure only if the date of the appraisal is within six months of the date the foreclosure procedure is begun. If no appraisal exists, the insurer shall acquire an appraisal within six months after the foreclosure proceeding has begun.

Subd. 2. **Real estate owned.** An insurer may rely upon an appraisal by an independent appraiser to determine the carrying value of real estate owned only if the date of the appraisal is within six months of the date when title to the property was acquired. If no appraisal exists, the insurer shall acquire an appraisal within six months after title to the property is acquired.

Subd. 3. **Charge taken.** An insurer shall take a charge against the surplus for mortgage loans in the process of foreclosure and real estate owned in the first calendar year in which it holds a current appraisal made by an independent appraiser as provided in this section.

History: *1991 c 325 art 19 s 5*

60A.126 BOARD REPORT.

The management of the insurer shall make periodic reports, at least annually, to its board of directors, or an appropriate committee of the board, as to the application of the insurer's valuation procedures adopted under sections 60A.121 to 60A.127.

History: *1991 c 325 art 19 s 6*

60A.127 INDEPENDENT APPRAISALS OF CERTAIN PROPERTIES.

Subdivision 1. **Random sample appraisal requirement.** Each domestic insurer that does not obtain independent appraisals of all distressed, delinquent, and restructured mortgage loans and use such appraisals to determine the carrying values for its annual statement shall obtain independent appraisals of a random sample of those loans for which it did not obtain and use such appraisals. The independent appraisals must be obtained by the insurer no later than 60 days after the filing of the insurer's annual statement. The loans to be sampled do not include loans for which the insurer determined the carrying value on the basis of guarantees or other credit enhancements.

Subd. 2. **Sampling procedure; rules.** The commissioner may adopt rules specifying the percentage of distressed, delinquent, and restructured loans for which the insurer must obtain an independent appraisal. The percentage may vary between insurers or types of loans and may apply to the number of loans, the dollar value of loans, or both. The rules may also specify a procedure for determining how to identify the specific loans for which an appraisal is required. The commissioner may adopt under this subdivision only rules that would require sampling no less extensive than that required by subdivision 3.

Subd. 3. **Statutory sampling procedure.** (a) Unless and until rules authorized by subdivision 2 are adopted, each domestic insurer must:

(1) obtain an independent appraisal of five percent of its distressed, delinquent, or restructured loans required to be sampled under subdivision 1; and

(2) establish a uniform system of assigning sequential numbers to its distressed, delinquent, or restructured loans based upon the date on which a loan first enters one of those categories, and then obtain an independent appraisal of every 20th loan required to be sampled under subdivision 1, beginning with the tenth loan or with the loan having another number that the commissioner may announce on or within five business days after the due date for filing of the annual statement.

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(b) A domestic insurer may use a sampling procedure different from that described in paragraph (a) with the prior approval of the commissioner. The commissioner may grant such approval only if the different procedure would result in a sampling that is at least as accurate and as extensive under the circumstances as the method required by paragraph (a).

Subd. 4. **Record keeping; reporting.** The independent appraisals must be kept in the insurer's records and must be available to the commissioner upon request. Each insurer must file with the commissioner an annual report listing each mortgage loan for which the insurer obtained an independent appraisal under this section and showing for each of those loans the appraisal value, the carrying value determined by the insurer, and other information required by the commissioner. The report must be filed with the commissioner no later than 120 days after the filing of the annual report.

Subd. 5. **Additional requirements.** If the commissioner determines, on the basis of the report of independent appraisals required by subdivision 4, that the carrying values shown on the annual statement, determined by methods other than an independent appraisal, overstate the market value of the loans required to be sampled, the commissioner may require any of the following procedures:

(1) independent appraisals of additional loans from the loans required to be sampled;

(2) filing of a supplement to, or a revision of, the annual statement, showing revised carrying values for all or any appropriate portion of the loans required to be sampled; and

(3) a second independent appraisal for any loan for which an independent appraisal was obtained under this section.

Subd. 6. **Selection of independent appraiser.** The insurer shall not obtain more than one–third of the independent appraisals required under this section from any one appraiser or from any one firm.

Subd. 7. **Powers in this section not limiting.** This section does not limit any powers otherwise available to the commissioner.

History: *1991 c 325 art 19 s 7*

60A.128 RESERVE ACCOUNT.

In computing reserves required to be held by an insurer under the provisions of section 60A.123, subdivisions 3, 4, and 5, the commissioner may allow an insurer to take credit for any reserves held by the insurer attributable to the assets as an "asset valuation reserve" pursuant to the accounting and reserving requirements of the National Association of Insurance Commissioners. Any charges against surplus taken under section 60A.123, subdivision 3, 4, 5, 6, or 7, may be taken against the asset valuation reserve to the extent the asset valuation reserve is sufficient and the charge is permitted by the NAIC. To the extent the asset valuation reserve is not sufficient, or if the charge is not permitted by the NAIC, the insurer shall take a charge against its surplus.

History: *1991 c 325 art 19 s 8*

60A.129 LOSS RESERVE CERTIFICATION AND ANNUAL AUDIT.

Subdivision 1. **Definitions.** The definitions in this subdivision apply to this section.

(a) "Qualified actuary," except as it relates to subdivision 2, paragraph (c), for companies authorized to provide life insurance coverage under section 60A.06, subdivision 1, clause (4), is a person who is either:

(1) a member in good standing of the Casualty Actuarial Society; or

(2) a member in good standing of the American Academy of Actuaries who has been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries; or

(3) a person who otherwise has competency in loss reserve evaluation as demonstrated to the satisfaction of the insurance regulatory official of the domiciliary state. In such case, at least 90 days prior to the filing of its annual statement, the insurer must request approval that the person be deemed qualified and that request must be approved or denied. The request must include the National Association of Insurance Commissioners biographical form and a list of all loss reserve opinions issued in the last three years by this person.

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(b) For purposes of subdivision 2, paragraph (c), a qualified actuary for companies authorized to write life insurance coverage under section 60A.06, subdivision 1, clause (4), shall be:

(1) a member in good standing of the American Academy of Actuaries;

(2) qualified to sign statements of actuarial opinion for life and health insurance company annual statements in accordance with the American Academy of Actuaries qualification standards for actuaries signing these statements;

(3) familiar with the valuation requirements applicable to life and health insurance companies.

(c) A qualified actuary as defined by this subdivision is an individual who:

(1) has not been found by the commissioner, or if so found has subsequently been reinstated as a qualified actuary, following appropriate notice and hearing to have:

(i) violated any provision of, or any obligation imposed by, the state insurance law or other law in the course of the actuary's dealings as a qualified actuary;

(ii) been found guilty of fraudulent or dishonest practices;

(iii) demonstrated incompetency, lack of cooperation, or untrustworthiness to act as a qualified actuary; or

(iv) submitted to the commissioner during the past five years, pursuant to this chapter, an actuarial opinion that the commissioner rejected because it did not meet the provisions of this chapter including standards set by the actuarial standards board;

(2) has resigned or been removed as an actuary within the past five years as a result of acts or omissions indicated in any adverse report on examination or as a result of failure to adhere to generally acceptable actuarial standards of the American Academy of Actuaries; and

(3) has not failed to notify the commissioner of any action taken by any commissioner of any other state similar to that under clause (1).

(d) "Accountant" and "independent public accountant" mean an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant or firm is licensed to practice. For Canadian and British companies, the term means a Canadian–chartered or British–chartered accountant.

Subd. 2. **Loss reserve certification.** (a) Each domestic company engaged in providing the types of coverage described in section 60A.06, subdivision 1, clause (1), (2), (3), (5)(b), (6), (8), (9), (10), (11), (12), (13), or (14), must have its loss reserves certified by a qualified actuary. The company must file the certification with the commissioner within 30 days of completion of the certification, but not later than June 1. The actuary providing the certification must not be an employee of the company. This subdivision does not apply to township mutual companies, or to other domestic insurers having less than $1,000,000 of premiums written in any year and fewer than 1,000 policyholders. The commissioner may allow an exception to the stand alone certification where it can be demonstrated that a company in a group has a pooling or 100 percent reinsurance agreement used in a group which substantially affects the solvency and integrity of the reserves of the company, or where it is only the parent company of a group which is licensed to do business in Minnesota. If these circumstances exist, the company may file a written request with the commissioner for an exception. Companies writing reinsurance alone are not exempt from this requirement. The certification must contain the following statement: "The loss reserves and loss expense reserves have been examined and found to be calculated in accordance with generally accepted actuarial principles and practices and are fairly stated."

(b) Each foreign company engaged in providing the types of coverage described in section 60A.06, subdivision 1, clause (1), (2), (3), (5)(b), (6), (8), (9), (10), (11), (12), (13), or (14), required by this section to file an annual audited financial report, whose total net earned premium for Schedule P, Part 1A to Part 1H plus Part 1R, (Schedule P, Part 1A to Part 1H plus Part 1R, Column 4, current year premiums earned, from the company's most currently filed annual statement) is equal to one–third or more of the company's total net earned premium (Underwriting and Investment Exhibit, Part 2, Column 4, total line, of the annual statement)

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must have a reserve certification by a qualified actuary at least every three years. In the year that the certification is due, the company must file the certification with the commissioner within 30 days of completion of the certification, but not later than June 1. The actuary providing the certification must not be an employee of the company. Companies writing reinsurance alone are not exempt from this requirement. The certification must contain the following statement: "The loss reserves and loss expense reserves have been examined and found to be calculated in accordance with generally accepted actuarial principles and practices and are fairly stated."

(c) Each company providing life and/or health insurance coverages described in section 60A.06, subdivision 1, clause (4) or (5)(a), required by this section to file an audited annual financial report, whose premiums and annuity considerations (net of reinsurance) from accident and health equal one-third or more of the company's total premiums and annuity considerations (net of reinsurance), as reported in the summary of operations, must have its aggregate reserve for accident and health policies and liability for policy and contract claims for accident and health certified by a qualified actuary at least once every three years. The actuary providing the certification must not be an employee of the company. Companies writing reinsurance alone are not exempt from this requirement. The certification must contain the following statement: "The policy and contract claims reserves for accident and health have been examined and found to be calculated in accordance with generally accepted actuarial principles and practices and are fairly stated."

Subd. 3. **Annual audit.** (a) Every insurance company doing business in this state, including fraternal benefit societies, reciprocal exchanges, service plan corporations licensed pursuant to chapter 62C, and legal service plans licensed pursuant to chapter 62G, unless exempted by the commissioner pursuant to subdivision 5, paragraph (a), or by subdivision 7, shall have an annual audit of the financial activities of the most recently completed calendar year performed by an independent certified public accountant, and shall file the report of this audit with the commissioner on or before June 1 for the immediately preceding year ending December 31. The commissioner may require an insurer to file an audited financial report earlier than June 1 with 90 days advance notice to the insurer.

Extensions of the June 1 filing date may be granted by the commissioner for 30-day periods upon a showing by the insurer and its independent certified public accountant of the reasons for requesting the extension and a determination by the commissioner of good cause for the extension.

The request for extension must be submitted in writing not less than ten days before the due date in sufficient detail to permit the commissioner to make an informed decision with respect to the requested extension.

(b) Foreign and alien insurers filing audited financial reports in another state under the other state's requirements of audited financial reports which have been found by the commissioner to be substantially similar to these requirements are exempt from this subdivision if a copy of the audited financial report, accountant's letter of qualifications, and report on significant deficiencies in internal controls, which are filed with the other state, are filed with the commissioner in accordance with the filing dates specified in paragraphs (a) and (l), (Canadian insurers may submit accountants' reports as filed with the Canadian Dominion Department of Insurance); and a copy of any notification of adverse financial condition report filed with the other state is filed with the commissioner within the time specified in paragraph (k). This paragraph does not prohibit or in any way limit the commissioner from ordering, conducting, and performing examinations of insurers under the authority of this chapter.

(c)(i) The annual audited financial report shall report, in conformity with statutory accounting practices required or permitted by the commissioner of insurance of the state of domicile, the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows, and changes in capital and surplus for the year ended. The annual audited financial report shall include a report of an independent certified public accountant; a balance sheet reporting admitted assets, liabilities, capital, and surplus; a statement of operations; a statement of cash flows; a statement of changes in capital and surplus; and notes to the financial statements.

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(ii) The notes required under item (i) shall be those required by the appropriate National Association of Insurance Commissioners annual statement instructions and any other notes required by generally accepted accounting principles and shall include reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed under section 60A.13, subdivision 1, with a written description of the nature of these differences; and shall also include a summary of ownership and relationships of the insurer and all affiliated companies.

(iii) The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the commissioner. The financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. In the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted. The amounts may be rounded to the nearest $1,000, and all insignificant amounts may be combined.

(d) Each insurer required by this section to file an annual audited financial report must notify the commissioner in writing of the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit within 60 days after becoming subject to the annual audit requirement. The insurer shall obtain from the accountant a letter which states that the accountant is aware of the provisions that relate to accounting and financial matters in the insurance laws and the rules of the insurance regulatory authority of the state of domicile. The letter shall affirm that the accountant will express an opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by that insurance regulatory authority, specifying the exceptions believed to be appropriate. A copy of the accountant's letter shall be filed with the commissioner.

(e) If an accountant who was the accountant for the immediately preceding filed audited financial report is dismissed or resigns, the insurer shall notify the commissioner of this event within five business days. Within ten business days of this notification, the insurer shall also furnish the commissioner with a separate letter stating whether in the 24 months preceding this event there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which, if not resolved to the satisfaction of the former accountant, would have caused that person to make reference to the subject matter of the disagreement in connection with the opinion. The disagreements required to be reported in response to this paragraph include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this section are those disagreements between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report. The insurer shall also in writing request the former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for any disagreement. The insurer shall furnish this responsive letter from the former accountant to the commissioner together with its own.

(f) The commissioner shall not recognize any person or firm as a qualified independent certified public accountant that is not in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant is licensed to practice, or for a Canadian or British company, that is not a chartered accountant. Except as otherwise provided, an independent certified public accountant shall be recognized as qualified as long as the person conforms to the standards of the person's profession, as contained in the code of professional ethics of the American Institute of Certified Public Accountants and the rules of professional conduct of the Minnesota board of public accountancy or similar code.

(g) No partner or other person responsible for rendering a report for calendar year 1997 and thereafter may act in that capacity for more than seven consecutive years. Following any period of service, the person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of two years. An insurer may make application to the commissioner for relief from the above rotation requirement on the basis of unusual circumstances. The commissioner may consider the number of

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partners, the expertise of the partners or the number of insurance clients in the currently registered firm, the premium volume of the insurer, or the number of jurisdictions in which the insurer transacts business in determining if the relief should be granted.

(h) The commissioner shall not recognize as a qualified independent certified public accountant, nor accept any audited financial report, prepared in whole or in part by any natural person who has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, United States Code, title 18, sections 1961 to 1968, or any dishonest conduct or practices under federal or state law, has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this section, or has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this section.

(i) The commissioner, after notice and hearing under chapter 14, may find that the accountant is not qualified for purposes of expressing an opinion on the financial statements in the annual audited financial report. The commissioner may require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of this section.

(j) Financial statements furnished under paragraph (a), shall be examined by an independent certified public accountant. The examination of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards and consideration should be given to other procedures illustrated in the Financial Condition Examiners Handbook, issued by the National Association of Insurance Commissioners, as the independent certified public accountant considers necessary.

(k) The insurer required to furnish the annual audited financial report shall require the independent certified public accountant to provide written notice within five business days to the board of directors of the insurer or its audit committee of any determination by that independent certified public accountant that the insurer has materially misstated its financial condition as reported to the commissioner as of the balance sheet date currently under examination or that the insurer does not meet the minimum capital and surplus requirement of section 60A.07 as of that date. An insurer required to file an annual audited financial report who received a notification of adverse financial condition from the accountant shall file a copy of the notification with the commissioner within five business days of the receipt of the notification. The insurer shall provide the independent certified public accountant making the notification with evidence of the report being furnished to the commissioner. If the independent certified public accountant fails to receive the evidence within the required five-day period, the independent certified public accountant shall furnish to the commissioner a copy of the notification to the board of directors or its audit committee within the next five business days. No independent certified public accountant shall be liable in any manner to any person for any statement made in connection with this paragraph if the statement is made in good faith in compliance with this paragraph. If the accountant becomes aware of facts which might have affected the audited financial report after the date it was filed under this section, the accountant shall take the action prescribed by Professional Standards issued by the American Institute of Certified Public Accountants.

(l) In addition to the annual audited financial statements, each insurer shall furnish the commissioner with a written report prepared by the accountant describing significant deficiencies in the insurer's internal control structure noted by the accountant during the audit. The accountant shall follow the professional standards issued by the American Institute of Certified Public Accountants, which require an accountant to communicate significant deficiencies, known as reportable conditions, noted during a financial statement audit, to the appropriate parties within an entity. No report shall be issued if the accountant does not identify significant deficiencies. Any such report by the accountant describing significant deficiencies in the insurer's internal control structure, shall be filed annually by the insurer with the commissioner within 60 days after the filing of the annual audited financial statements. This report on internal control shall be in the form prescribed by generally accepted auditing standards. The insurer shall provide the commissioner with a description of remedial actions taken or proposed to correct significant deficiencies, if those actions are not described in the accountant's report.

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(m) The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating that the accountant is independent with respect to the insurer and conforms to the standards of the accountant's profession as contained in the code of professional ethics of the American Institute of Certified Public Accountants and the rules of professional conduct of the Minnesota board of accountancy or similar code; the background and experience in general, and the experience in audits of insurers of the staff assigned to the engagement and whether each is an independent certified public accountant; that the accountant understands that the annual audited financial report and the opinion thereon will be filed in compliance with this statute and that the commissioner will be relying on this information in the monitoring and regulation of the financial position of insurers; that the accountant consents to the requirements of paragraph (n) and that the accountant consents and agrees to make available for review by the commissioner, or the commissioner's designee or appointed agent, the workpapers, as defined in paragraph (n); a representation that the accountant is properly licensed by the appropriate state licensing authority and is a member in good standing in the American Institute of Certified Public Accountants; and, a representation that the accountant complies with paragraph (f). Nothing in this section shall be construed as prohibiting the accountant from utilizing staff the accountant deems appropriate where use is consistent with the standards prescribed by generally accepted auditing standards.

(n) Workpapers are the records kept by the independent certified public accountant of the procedures followed, tests performed, information obtained, and conclusions reached pertinent to the independent certified public accountant's examination of the financial statements of an insurer. Workpapers may include audit planning documents, work programs, analyses, memoranda, letters of confirmation and representation, management letters, abstracts of company documents, and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of the examination of the financial statements of an insurer and that support the accountant's opinion. Every insurer required to file an audited financial report shall require the accountant, through the insurer, to make available for review by the examiners the workpapers prepared in the conduct of the examination and any communications related to the audit between the accountant and the insurer. The workpapers shall be made available at the offices of the insurer, at the offices of the commissioner, or at any other reasonable place designated by the commissioner. The insurer shall require that the accountant retain the audit workpapers and communications until the commissioner has filed a report on examination covering the period of the audit but no longer than seven years after the period reported upon. In the conduct of the periodic review by the examiners, it shall be agreed that photocopies of pertinent audit workpapers may be made and retained by the commissioner. These copies shall be part of the commissioner's workpapers and shall be given the same confidentiality as other examination workpapers generated by the commissioner.

(o)(i) In the case of Canadian and British insurers, the annual audited financial report means the annual statement of total business on the form filed by these companies with their domiciliary supervision authority and duly audited by an independent chartered accountant.

(ii) For these insurers, the letter required in paragraph (d), shall state that the accountant is aware of the requirements relating to the annual audited statement filed with the commissioner under paragraph (a), and shall affirm that the opinion expressed is in conformity with those requirements.

(p) The audit report of the independent certified public accountant that performs the audit of an insurer's annual statement as required under paragraph (a), shall contain a statement as to whether anything. in connection with the audit, came to the accountant's attention that caused the accountant to believe that the insurer failed to adopt and consistently apply the valuation procedures as required by sections 60A.122 and 60A.123.

Subd. 4. **Examinations.** (a) The commissioner or a designated representative shall determine the nature, scope, and frequency of examinations under this section conducted by examiners under section 60A.031. These examinations may cover all aspects of the insurer's assets, condition, affairs, and operations and may include and be supplemented by audit procedures performed by independent certified public accountants. Scheduling of examinations will take into account all relevant matters with respect to the insurer's condition, including

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results of the National Association of Insurance Commissioners, Insurance Regulatory Information Systems, changes in management, results of market conduct examinations, and audited financial reports. The type of examinations performed by examiners under this section shall be compliance examinations, targeted examinations, and comprehensive examinations.

(b) Compliance examinations will consist of a review of the accountant's workpapers defined under this section and a general review of the insurer's corporate affairs and insurance operations to determine compliance with the Minnesota insurance laws and the rules of the department of commerce. The examiners may perform alternative or additional examination procedures to supplement those performed by the accountant when the examiners determine that the procedures are necessary to verify the financial condition of the insurer.

(c) Targeted examinations may cover limited areas of the insurer's operations as the commissioner may deem appropriate.

(d) Comprehensive examinations will be performed when the report of the accountant as provided for in subdivision 3, paragraph (g), the notification required by subdivision 3, paragraph (h), the results of compliance or targeted examinations, or other circumstances indicate in the judgment of the commissioner or a designated representative that a complete examination of the condition and affairs of the insurer is necessary.

(e) Upon completion of each targeted, compliance, or comprehensive examination, the examiner appointed by the commissioner shall make a full and true report on the results of the examination. Each report shall include a general description of the audit procedures performed by the examiners and the procedures of the accountant that the examiners may have utilized to supplement their examination procedures and the procedures that were performed by the registered independent certified public accountant if included as a supplement to the examination.

Subd. 5. **Consolidated filing.** (a) The commissioner may allow an insurer to file a consolidated loss reserve certification required by subdivision 2, in lieu of separate loss certifications and may allow an insurer to file consolidated or combined audited financial statements required by subdivision 3, paragraph (a), in lieu of separate annual audited financial statements, where it can be demonstrated that an insurer is part of a group of insurance companies that has a pooling or 100 percent reinsurance agreement which substantially affects the solvency and integrity of the reserves of the insurer and the insurer cedes all of its direct and assumed business to the pool. If these circumstances exist, then the company may file a written application to file a consolidated loss reserve certification and/or consolidated or combined audited financial statements. This application shall be for a specified period.

(b) A consolidated annual audit filing shall include a columnar consolidated or combining worksheet. Amounts shown on the audited consolidated or combined financial statement shall be shown on the worksheet. Amounts for each insurer shall be stated separately. Noninsurance operations may be shown on the worksheet on a combined or individual basis. Explanations of consolidating or eliminating entries shall be shown on the worksheet. A reconciliation of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statement of the insurers shall be included on the worksheet.

Subd. 6. **Penalties.** No annual statement, report, or document related to the business of insurance shall be filed with the commissioner or issued to the public if it is signed by anyone who is represented in the instrument as an "actuary" or "accountant," unless the person is qualified as defined by this section. A violation of this subdivision is a violation of section 72A.19 and punishable in accordance with section 72A.25.

Subd. 7. **Exemptions.** (a) Upon written application of any insurer, the commissioner may grant an exemption from compliance with the provisions of this section. In order to receive an exemption, an insurer must demonstrate to the satisfaction of the commissioner that compliance would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for specified periods. Within ten days from the denial of an insurer's written request for an exemption, the insurer may request in writing a hearing on its application for an exemption. This hearing shall be held in accordance with chapter 14. Upon written application of any insurer, the commissioner may per-

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mit an insurer to file annual audited financial reports on some basis other than a calendar year basis for a specified period. No exemption shall be granted until the insurer presents an alternative method satisfying the purposes of this section. Within ten days from a denial of a written request for an exemption, the insurer may request in writing a hearing on its application. The hearing shall be held in accordance with chapter 14.

(b) This section applies to all insurers, unless otherwise indicated, required to file an annual audit by subdivision 3, paragraph (a), except insurers having less than $1,000,000 of direct written premiums in this state in any calendar year and fewer than 1,000 policyholders or certificate holders of directly written policies nationwide at the end of the calendar year, are exempt from this section for that year, unless the commissioner makes a specific finding that compliance is necessary for the commissioner to carry out statutory responsibilities, except that insurers having assumed premiums from reinsurance contracts or treaties of $1,000,000 or more are not exempt.

History: *1993 c 299 s 3; 1994 c 426 s 4–6*

60A.13 ANNUAL STATEMENT, INQUIRIES, ABSTRACTS, PUBLICATION.

Subdivision 1. **Annual statements required.** Every insurance company, including fraternal benefit societies, and reciprocal exchanges, doing business in this state, shall transmit to the commissioner, annually, on or before March 1, the appropriate verified National Association of Insurance Commissioners' annual statement blank, prepared in accordance with the association's instructions handbook and following those accounting procedures and practices prescribed by the association's accounting practices and procedures manual, unless the commissioner requires or finds another method of valuation reasonable under the circumstances. Another method of valuation permitted by the commissioner must be at least as conservative as those prescribed in the association's manual. All companies required to file an annual statement under this subdivision must also file with the commissioner a copy of their annual statement on computer diskette. All Minnesota domestic insurers required to file annual statements under this subdivision must also file quarterly statements with the commissioner for the first, second, and third calendar quarter on or before 45 days after the end of the applicable quarter, prepared in accordance with the association's instruction handbook. All companies required to file quarterly statements under this subdivision must also file a copy of their quarterly statement on computer diskette. In addition, the commissioner may require the filing of any other information determined to be reasonably necessary for the continual enforcement of these laws. The statement may be limited to the insurer's business and condition in the United States unless the commissioner finds that the business conducted outside the United States may detrimentally affect the interests of policyholders in this state. The statements shall also contain a verified schedule showing all details required by law for assessment and taxation. The statement or schedules shall be in the form and shall contain all matters the commissioner may prescribe, and it may be varied as to different types of insurers so as to elicit a true exhibit of the condition of each insurer.

Subd. 1a. [Repealed, 1993 c 375 art 2 s 36]

Subd. 2. **Commissioner may inquire and require reply under oath.** The commissioner may also address to any insurer, including fraternal benefit societies, township mutuals and interinsurance exchanges, or its officers, any inquiry in relation to its transactions or conditions, or any matter connected therewith. Every insurer, or person so addressed, shall reply in writing to such inquiry promptly and truthfully, and such reply shall be verified, if required by the commissioner, by such individual or by such officer or officers of an insurer as the commissioner shall designate.

Subd. 3. [Repealed, 1978 c 793 s 98]

Subd. 3a. [Repealed, 1993 c 299 s 33]

Subd. 4. [Repealed, 1978 c 793 s 98]

Subd. 4a. **Rules.** The commissioner shall promulgate any rules which may be necessary to administer subdivision 3a.

Subd. 5. **Renewal license based on approved statement.** Upon the approval of the statement the commissioner shall issue a renewal license for the succeeding year beginning

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June first. Any license to a company or its agent, issued after the approval of the statement, shall expire May thirty–first of the year following.

Subd. 6. **Company or agent cannot continue business unless statement is filed.** No company shall transact any new business in this state after May 31 in any year unless it shall have previously transmitted its annual statement to the commissioner and filed a copy of its statement with the National Association of Insurance Commissioners. The commissioner may by order annually require that each insurer pay the required fee to the National Association of Insurance Commissioners for the filing of annual statements, but the fee shall not be more than 50 percent greater than the fee set by the National Association of Insurance Commissioners. Failure to file the annual statement with the commissioner or the National Association of Insurance Commissioners is a violation of section 72A.061, subdivision 1. The fee shall be based on the relative premium volume of each insurer. The commissioner's order shall not be subject to chapter 14.

Subd. 7. **Exceptions.** To file statement. No fraternal benefit society, nor any social corporation paying only sick benefits not exceeding $250 in any one year, or funeral benefits, or aiding those dependent on a member not more than $350, nor any subordinate lodge or council which is, or whose members are, assessed for benefits which are payable by a grand body, shall be required to make such statements.

Subd. 8. [Repealed, 1996 c 446 art 2 s 11]

History: *1967 c 395 art 1 s 13; 1978 c 793 s 58; 1981 c 211 s 28–31; 1984 c 592 s 7,8; 1985 c 210 art 1 s 1; 1986 c 444; 1986 c 455 s 6; 1991 c 199 art 1 s 9; 1991 c 325 art 10 s 7; 1992 c 564 art 1 s 18,54; 1993 c 299 s 4,5; 1994 c 425 s 4; 1994 c 426 s 7*

60A.131 OTHER BUSINESS AND INSURANCE INTERESTS, DISCLOSURE.

Subdivision 1. If requested by the commissioner, an insurance company authorized to do business in this state shall disclose to the commissioner any changes in the principal management and directors of the company from that listed on page one of the annual statement within ten days of such change.

Subd. 2. Every insurance company authorized to do business in this state shall notify the commissioner within ten days after receipt of notice of any acquisition by any person, association or corporation of stock or other equity security in said insurer where such transaction, directly or indirectly, either involves five percent or more of any class of any equity security of said insurer, or such acquisition results in ownership of five percent or more of any equity security of said insurer.

Subd. 3. All principal management and directors of the company as listed on page one of its annual statement, and any person, association or corporation or any person or persons managing such company under a management contract, who are directly or indirectly the beneficial owners of more than five percent of any class of any equity security of a stock insurer or guaranty fund of a mutual insurer, shall disclose all other interests in excess of five percent which they may have in insurance agencies, other insurance companies, premium finance companies and any other companies whose principal business relates directly to the writing of insurance or the handling of claims, within 30 days following May 21, 1967. Any such interests acquired after May 21, 1967, shall be reported to the commissioner within 30 days after acquisition thereof.

Subd. 4. Every company applying for an initial certificate of authority to do business in this state shall file with the application a statement giving the information required in subdivision 3 as to its principal management, directors and affected holders of its equity securities.

History: *1967 c 609 s 1–4; 1Sp1985 c 10 s 51*

60A.135 REPORT.

Subdivision 1. **Requirement.** Every insurer domiciled in this state shall file a report with the commissioner disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements unless the acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements have been submitted to the commissioner for review, approval, or information purposes pursuant to other provisions of law, rule, or other requirements.

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Subd. 2. **Date due.** The report required in subdivision 1 is due within 15 days after the end of the calendar month in which the transactions occur.

Subd. 3. **Filing.** One complete copy of the report, including exhibits or other attachments filed as part of it, must be filed with the National Association of Insurance Commissioners.

Subd. 4. **Confidentiality.** Reports filed with the commissioner pursuant to sections 60A.135 to 60A.137 must be held as nonpublic data as defined in section 13.02, are not subject to subpoena, and may not be made public by the commissioner, the National Association of Insurance Commissioners, or other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains. However, the commissioner may publish all or part of a report in the manner the commissioner considers appropriate if, after giving the affected insurer notice and an opportunity to be heard, the commissioner determines that the interest of policyholders, shareholders, or the public will be served by the publication.

History: *1995 c 214 s 7*

60A.136 ACQUISITIONS AND DISPOSITIONS OF ASSETS.

Subdivision 1. **Materiality.** No acquisitions or dispositions of assets need be reported pursuant to section 60A.135 if the acquisitions or dispositions are not material. For purposes of sections 60A.135 to 60A.137, a material acquisition (or the aggregate of any series of related acquisitions during any 30–day period) or disposition (or the aggregate of any series of related dispositions during any 30–day period) is one that is nonrecurring and not in the ordinary course of business and involves more than five percent of the reporting insurer's total admitted assets as reported in its most recent statutory statement filed with the commissioner of commerce.

Subd. 2. **Scope.** (a) Asset acquisitions subject to sections 60A.135 to 60A.137 include every purchase, lease, exchange, merger, consolidation, succession, or other acquisition other than the construction or development of real property by or for the reporting insurer or the acquisition of materials for this purpose.

(b) Asset dispositions subject to sections 60A.135 to 60A.137 include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, assignment (whether for the benefit of creditors or otherwise), abandonment, destruction, or other disposition.

Subd. 3. **Information to be reported.** (a) The following information is required to be disclosed in a report of a material acquisition or disposition of assets:

(1) date of the transaction;

(2) manner of acquisition or disposition;

(3) description of the assets involved;

(4) nature and amount of the consideration given or received;

(5) purpose of, or reason for, the transaction;

(6) manner by which the amount of consideration was determined;

(7) gain or loss recognized or realized by the insurer as a result of the transaction; and

(8) name of each person from whom the assets were acquired or to whom they were disposed.

(b) Insurers are required to report material acquisitions and dispositions on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers that uses a pooling arrangement or 100 percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer is considered to have ceded substantially all of its direct and assumed business to a pool if the insurer has less than $1,000,000 total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent of the insurer's capital and surplus.

History: *1995 c 214 s 8*

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60A.137 NONRENEWALS, CANCELLATIONS, OR REVISIONS OF CEDED REINSURANCE AGREEMENTS.

Subdivision 1. **Materiality.** (a) No nonrenewals, cancellations, or revisions of ceded reinsurance agreements need be reported pursuant to section 60A.135 if the nonrenewals, cancellations, or revisions are not material. For purposes of sections 60A.135 to 60A.137, a material nonrenewal, cancellation, or revision for:

(1) property and casualty business, including accident and health business when written by a property and casualty insurer is one that affects:

(i) more than 50 percent of an insurer's ceded written premium; or

(ii) more than 50 percent of the insurer's total ceded indemnity and loss adjustment reserves; and

(2) life, annuity, and accident and health business, is one that affects more than 50 percent of the total reserve credit taken for business ceded, on an annualized basis as indicated in the insurer's most recently filed statutory statement.

(b) With respect to either property and casualty or life, annuity, and accident and health business, either of the following events constitute a material revision that must be reported under section 60A.135:

(1) an authorized reinsurer representing more than ten percent of a total cession is replaced by one or more unauthorized reinsurers; or

(2) previously established collateral requirements have been reduced or waived for one or more unauthorized reinsurers representing collectively more than ten percent of a total cession.

(c) Notwithstanding paragraphs (a) and (b), no filing is required:

(1) for property and casualty business, including accident and health business written by a property and casualty insurer if the insurer's total ceded written premium represents, on an annualized basis, less than ten percent of its total written premium for direct and assumed business; or

(2) for life, annuity, and accident and health business if the total reserve credit taken for business ceded represents, on an annualized basis, less than ten percent of the statutory reserve requirement before any cession.

Subd. 2. **Information to be reported.** (a) The following information is required to be disclosed in a report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements:

(1) effective date of the nonrenewal, cancellation, or revision;

(2) the description of the transaction with an identification of the initiating entity;

(3) purpose of, or reason for, the transaction; and

(4) if applicable, the identity of the replacement reinsurers.

(b) Insurers are required to report all material nonrenewals, cancellations, or revisions of ceded reinsurance agreements on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers that utilizes a pooling arrangement or 100 percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer is considered to have ceded substantially all of its direct and assumed business to a pool if the insurer has less than $1,000,000 total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent of the insurer's capital and surplus.

History: *1995 c 214 s 9*

60A.14 FEES.

Subdivision 1. **Fees other than examination fees.** In addition to the fees and charges provided for examinations, the following fees must be paid to the commissioner for deposit in the general fund:

(a) by township mutual fire insurance companies:

(1) for filing certificate of incorporation $25 and amendments thereto, $10;

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(2) for filing annual statements, $15;

(3) for each annual certificate of authority, $15;

(4) for filing bylaws $25 and amendments thereto, $10.

(b) by other domestic and foreign companies including fraternals and reciprocal exchanges:

(1) for filing certified copy of certificate of articles of incorporation, $100;

(2) for filing annual statement, $225;

(3) for filing certified copy of amendment to certificate or articles of incorporation, $100;

(4) for filing bylaws, $75 or amendments thereto, $75;

(5) for each company's certificate of authority, $575, annually.

(c) the following general fees apply:

(1) for each certificate, including certified copy of certificate of authority, renewal, valuation of life policies, corporate condition or qualification, $25;

(2) for each copy of paper on file in the commissioner's office 50 cents per page, and $2.50 for certifying the same;

(3) for license to procure insurance in unadmitted foreign companies, $575;

(4) for valuing the policies of life insurance companies, one cent per $1,000 of insurance so valued, provided that the fee shall not exceed $13,000 per year for any company. The commissioner may, in lieu of a valuation of the policies of any foreign life insurance company admitted, or applying for admission, to do business in this state, accept a certificate of valuation from the company's own actuary or from the commissioner of insurance of the state or territory in which the company is domiciled;

(5) for receiving and filing certificates of policies by the company's actuary, or by the commissioner of insurance of any other state or territory, $50;

(6) for each appointment of an agent filed with the commissioner, a domestic insurer shall remit $5 and all other insurers shall remit $3;

(7) for filing forms and rates, $50 per filing;

(8) for annual renewal of surplus lines insurer license, $300.

The commissioner shall adopt rules to define filings that are subject to a fee.

Subd. 2. **Retaliatory provisions.** When, by the laws of any other state or nation, any fines, penalties, licenses, or fees additional to, or in excess of, those imposed by this section upon foreign insurance companies and their agents, are imposed upon insurance companies of this state or their agents doing business in such state, the same fines, penalties, licenses, and fees shall be imposed upon all insurance companies of that state and their agents doing business in this state, so long as such laws of such other state remain in force.

History: *1967 c 395 art 1 s 14; 1969 c 7 s 17; 1969 c 291 s 4; 1974 c 5 s 1; 1978 c 470 s 2; 1978 c 793 s 59; 1981 c 307 s 2; 1983 c 289 s 114 subd 1; 1983 c 328 s 3; 1984 c 592 s 9; 1984 c 655 art 1 s 92; 1987 c 358 s 94; 1Sp1989 c 1 art 10 s 2; 1991 c 233 s 42; 1991 c 325 art 10 s 8; 1992 c 513 art 3 s 24; 1994 c 485 s 9; 1994 c 632 art 4 s 23*

60A.15 TAXATION OF INSURANCE COMPANIES.

Subdivision 1. **Domestic and foreign companies.** (a) On or before April 1, June 1, and December 1 of each year, every domestic and foreign company, including town and farmers' mutual insurance companies, domestic mutual insurance companies, marine insurance companies, health maintenance organizations, integrated service networks, community integrated service networks, and nonprofit health service plan corporations, shall pay to the commissioner of revenue installments equal to one-third of the insurer's total estimated tax for the current year. Except as provided in paragraphs (d) and (e), installments must be based on a sum equal to two percent of the premiums described in paragraph (b).

(b) Installments under paragraph (a), (d), or (e) are percentages of gross premiums less return premiums on all direct business received by the insurer in this state, or by its agents for it, in cash or otherwise, during such year.

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(c) Failure of a company to make payments of at least one-third of either (1) the total tax paid during the previous calendar year or (2) 80 percent of the actual tax for the current calendar year shall subject the company to the penalty and interest provided in this section, unless the total tax for the current tax year is $500 or less.

(d) For health maintenance organizations, nonprofit health services plan corporations, integrated service networks, and community integrated service networks, the installments must be based on an amount equal to one percent of premiums described in paragraph (b) that are paid after December 31, 1995.

(e) For purposes of computing installments for town and farmers' mutual insurance companies and for mutual property casualty companies with total assets on December 31, 1989, of $1,600,000,000 or less, the following rates apply:

(1) for all life insurance, two percent;

(2) for town and farmers' mutual insurance companies and for mutual property and casualty companies with total assets of $5,000,000 or less, on all other coverages, one percent; and

(3) for mutual property and casualty companies with total assets on December 31, 1989, of $1,600,000,000 or less, on all other coverages, 1.26 percent.

(f) Premiums under medical assistance, general assistance medical care, the MinnesotaCare program, and the Minnesota comprehensive health insurance plan are not subject to tax under this section.

Subd. 1a. **Addition to the tax.** In case of any underpayment of installments by an insurer, there shall be added to the tax for the taxable year an amount determined at the rate specified in section 270.75 upon the amount of underpayment.

Subd. 1b. **Amount of underpayment.** For purposes of subdivision 1a, the amount of the underpayment shall be the excess of: (1) the amount of the installment; over (2) the amount, if any, of the installment paid on or before the last date prescribed for payment.

Subd. 1c. **Period of underpayment.** The period of the underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier:

(1) on March 1 following the close of the taxable year;

(2) with respect to any portion of the underpayment, the date on which that portion is paid. For purposes of this clause, a payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent the payment exceeds the amount of the installment determined under subdivision 1c, clause (1) for the installment date.

Subd. 1d. **Definition of tax.** The term "tax" means the tax imposed by this chapter.

Subd. 1e. **Failure to file an estimate.** In the case of an insurer which fails to file an estimated tax for a taxable year when one is required, the period of the underpayment shall run from the installment dates as set forth in subdivision 1 or 2 to whichever of the periods set forth in subdivision 1c is the earlier.

Subd. 2. [Repealed, 1987 c 268 art 2 s 38]

Subd. 2a. **Procedure for filing and adjustment of statements and taxes.** (a) Every insurer required to pay a premium tax in this state shall make and file a statement of estimated premium taxes for the period covered by the installment tax payment. Such statement shall be in the form prescribed by the commissioner of revenue.

(b) On or before March 1, annually every insurer subject to taxation under this section shall make an annual return for the preceding calendar year setting forth such information as the commissioner of revenue may reasonably require on forms prescribed by the commissioner.

(c) On March 1, the insurer shall pay any additional amount due for the preceding calendar year; if there has been an overpayment, such overpayment may be credited without interest on the estimated tax due April 15.

(d) If unpaid by this date, penalties as provided in section 289A.60, subdivision 1, as it relates to withholding and sales or use taxes, shall be imposed.

Subd. 3. [Repealed, 1969 c 1001 s 11]

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Subd. 4. **Return premiums defined.** "Return premiums," as used in this section, means any dividend or any unused or unabsorbed portion of premium deposit or assessment that shall be applied toward the payment of any premium, premium deposit, or assessment due from the policyholder or member upon a continuance or renewal of the insurance on account of which such dividend was earned or premium deposit or assessment paid and any portion of premium returned by the company upon cancellation or termination of a policy or membership, except surrender values paid upon the cancellation and surrender of policies or certificates of life insurance.

Subd. 5. **Municipality defined.** As used in this section "municipality" means a city of any class, a town, or a township.

Subd. 6. [Repealed, 1992 c 511 art 6 s 20]

Subd. 7. [Repealed, 1995 c 264 art 17 s 10]

Subd. 8. **Examination of returns; assessments; refunds.** The commissioner of revenue shall, as soon as practicable after a return required by this section is filed, examine the same and make any investigation or examination of the company's records and accounts that the commissioner may deem necessary for determining the correctness of the return. The tax computed by the commissioner on the basis of such examination and investigation shall be the tax to be paid by such company. If the tax found due shall be greater than the amount reported as due on the company's return, the commissioner shall assess a tax in the amount of such excess and the whole amount of such excess shall be paid to the commissioner of revenue within 60 days after notice of the amount and demand for its payment shall have been mailed to the company by the commissioner. If the understatement of the tax on the return was false and fraudulent with intent to evade the tax, the installments of the tax shown by the company on its return which have not yet been paid shall be paid to the state treasurer within 30 days after notice of the amount thereof and demand for payment shall have been mailed to the company by the commissioner. If the amount of the tax found due by the commissioner shall be less than that reported as due on the company's return, the excess shall be refunded to the company in the manner provided by subdivision 12, (except that no demand therefor shall be necessary), if they have already paid the whole of such tax, or credited against any unpaid installment thereof; provided, that no refundment shall be made except as provided in subdivision 12, after the expiration of 3–1/2 years after the filing of the return.

If the commissioner examines returns of a company for more than one year, the commissioner may issue one order covering the several years under consideration reflecting the aggregate refund or additional tax due.

The notices and demands provided for by subdivisions 8 to 10, shall be in such form as the commissioner may determine (including a statement) and shall contain a brief explanation of the computation of the tax and shall be sent by mail to the company at the address given in its return, if any, and if no such address is given, then to the last known address.

Subd. 9. **Failure to file return, false or fraudulent return filed.** If any company required by this section to file any return shall fail to do so within the time prescribed or shall make, willfully or otherwise, an incorrect, false, or fraudulent return, it shall, on the written demand of the commissioner of revenue, file such return, or corrected return, within 60 days after the mailing of such written demand and at the same time pay the whole tax, or additional tax, due on the basis thereof. If such company shall fail within that time to file such return, or corrected return, the commissioner shall make for it a return, or corrected return, from personal knowledge and from such information as the commissioner can obtain through testimony, or otherwise, and assess a tax on the basis thereof, which tax (less any payments theretofore made on account of the tax for the taxable year covered by such return) shall be paid within 60 days after the commissioner has mailed to such company a written notice of the amount thereof and demand for its payment. Any such return or assessment made by the commissioner on account of the failure of the company to make a return, or a corrected return, shall be prima facie correct and valid, and the company shall have the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto.

Subd. 9a. **Failure to file; penalties and interest.** In case of any failure to make and file a return as required by this chapter within the time prescribed by law or prescribed by the com-

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missioner of revenue in pursuance of law there shall be added to the tax penalties as provided in section 289A.60, subdivision 2, as it relates to withholding and sales or use taxes.

Subd. 9b. **Intent to evade tax; penalty.** If any company, with intent to evade the tax imposed by this chapter, fails to file any return required by this chapter or with such intent files a false or fraudulent return there shall also be imposed on it a penalty as provided in section 289A.60, subdivision 6.

Subd. 9c. **Negligence or intentional disregard; penalty.** If any part of any additional assessment is due to negligence or intentional disregard of the statute or a rule (but without intent to defraud), there shall be added to the tax a penalty as provided in section 289A.60, subdivision 5.

Subd. 9d. **Criminal provisions.** In addition to the penalties hereinbefore prescribed, the provisions of section 289A.63, subdivisions 1 and 3, shall apply to persons required by chapter 60A to make a return.

Subd. 9e. **Penalty for repeated failures to file returns or pay taxes.** If there is a pattern by a person of repeated failures to timely file returns or timely pay taxes, and written notice is given that a penalty will be imposed if such failures continue, a penalty of 25 percent of the amount of tax not timely paid as a result of each such subsequent failure is added to the tax. The penalty can be abated under the abatement authority in section 270.07, subdivisions 1, paragraph (e), and 6.

Subd. 10. **Collection of tax.** The tax required to be paid by this section may be collected in an ordinary action at law by the commissioner of revenue against the company. In any action commenced pursuant to this section, upon the filing of an affidavit of default, the court administrator of the district court wherein the action was commenced shall enter judgment for the state for the amount demanded in the complaint together with costs and disbursements.

Subd. 11. **Appeals.** Either party to an action or a judgment for the recovery of any taxes, interest, or penalties under subdivision 10, may appeal as in other civil cases.

Subd. 12. **Overpayments, claims for refund.** (1) **Procedure, time limit, appropriation.** A company who has paid, voluntarily or otherwise, or from whom there has been collected an amount of tax for any year in excess of the amount legally due for that year, may file with the commissioner of revenue a claim for a refund of the excess. Except as provided in subdivision 11, no claim or refund shall be allowed or made after the period prescribed in section 289A.40, subdivision 1. For this purpose, a return or amended return claiming an overpayment constitutes a claim for refund.

Upon the filing of a claim, the commissioner shall examine it, shall make and file written findings denying or allowing the claim in whole or in part, and shall mail a notice thereof to the company at the address stated upon the return. If the claim is allowed in whole or in part, the commissioner shall issue a certificate for the refundment of the excess paid by the company, with interest at the rate specified in section 270.76 computed from the date of the payment of the tax until the date the refund is paid or the credit is made to the company. The commissioner of finance shall pay the refund out of the proceeds of the taxes imposed by this section, as other state moneys are expended. As much of the proceeds of the taxes as necessary are appropriated for that purpose.

(2) **Denial of claim, court proceedings.** If the claim is denied in whole or in part, the commissioner shall mail an order of denial to the company in the manner prescribed in subdivision 8. An appeal from this order may be taken to the Minnesota tax court in the manner prescribed in section 271.06, or the company may commence an action against the commissioner to recover the denied overpayment. The action may be brought in the district court of the district in the county of its principal place of business, or in the district court for Ramsey county. The action in the district court must be commenced within 18 months following the mailing of the order of denial to the company. If a claim for refund is filed by a company and no order of denial is issued within six months of the filing, the company may commence an action in the district court as in the case of a denial, but the action must be commenced within two years of the date that the claim for refund was filed.

(3) **Consent to extend time.** If the commissioner and the company have, within the periods prescribed in clause (1), consented in writing to any extension of time for the assess-

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ment of the tax, the period within which a claim for refund may be filed, or a refund may be made or allowed, if no claim is filed, shall be the period within which the commissioner and the company have consented to an extension for the assessment of the tax and six months thereafter.

(4) **Overpayments; refunds.** If the amount determined to be an overpayment exceeds the taxes imposed by this section, the amount of excess shall be considered an overpayment. An amount paid as tax constitutes an overpayment even if in fact there was no tax liability with respect to which the amount was paid.

Notwithstanding any other provision of law to the contrary, in the case of any overpayment, the commissioner, within the applicable period of limitations, shall refund any balance of more than one dollar to the company if the company requests the refund.

Subd. 13. **No liability in case of compliance with laws of other states.** Each domestic insurance company, and its officers, directors, and trustees, may comply with any law of any state, territory, or political subdivision of either, which imposes any license, or tax, and pay same, unless, prior to such payment, such law is expressly held invalid by the United States Supreme Court. No such company, officer, director, or trustee shall be subject to liability by reason of any such compliance or payment either heretofore or hereafter made.

Subd. 14. [Repealed, 1Sp1985 c 10 s 123]

Subd. 15. **Guaranty association assessment offset.** An insurance company may offset against its premium tax liability to this state any amount paid pursuant to assessments made for insolvencies which occur after July 31, 1994, under sections 60C.01 to 60C.22, and any amount paid pursuant to assessments made after July 31, 1994, under Minnesota Statutes 1992, sections 61B.01 to 61B.16, or sections 61B.18 to 61B.32 as follows:

(a) Each such assessment shall give rise to an amount of offset equal to 20 percent of the amount of the assessment for each of the five calendar years following the year in which the assessment was paid.

(b) The amount of offset initially determined for each taxable year is the sum of the amounts determined under paragraph (a) for that taxable year.

(c) Each year the commissioner of revenue shall compare total guaranty association assessments levied over the preceding five calendar years to the sum of all premium tax and corporate franchise tax revenues collected from insurance companies, without reduction for any guaranty association assessment offset in the preceding calendar year, referred to in this subdivision as "preceding year insurance tax revenues." If total guaranty association assessments levied over the preceding five years exceed the preceding year insurance tax revenues, insurance companies shall be allowed only a proportionate part of the premium tax offset calculated under paragraph (b) for the current calendar year. The proportionate part of the premium tax offset allowed in the current calendar year is determined by multiplying the amount calculated under paragraph (b) by a fraction, the numerator of which equals the preceding year insurance tax revenues and the denominator of which equals total guaranty association assessments levied over the preceding five-year period. The proportionate part of the premium tax offset that is not allowed shall be carried forward to subsequent tax years and added to the amount of premium tax offset calculated under paragraph (b) prior to application of the limitation imposed by this paragraph. Any amount carried forward from prior years must be allowed before allowance of the offset for the current year calculated under paragraph (b). The premium tax offset limitation must be calculated separately for (1) insurance companies subject to assessment under sections 60C.01 to 60C.22, and (2) insurance companies subject to assessment under Minnesota Statutes 1992, sections 61B.01 to 61B.16, or sections 61B.18 to 61B.32. When the premium tax offset is limited by this provision, the commissioner of revenue shall notify affected insurance companies on a timely basis for purposes of completing premium and corporate franchise tax returns. The guaranty associations created under sections 60C.01 to 60C.22, Minnesota Statutes 1992, sections 61B.01 to 61B.16, and sections 61B.18 to 61B.32, shall provide the commissioner of revenue with the necessary information on guaranty association assessments. The limitation in this paragraph is effective for offsets allowable in 1999 and thereafter.

(d) If the offset determined by the application of paragraphs (a) to (c) exceeds the greater of the insurance company's premium tax liability under this section or its corporate fran-

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chise tax liability under chapter 290 prior to allowance of the credit for premium taxes, then the insurance company may carry forward the excess, referred to in this subdivision as the "carryforward credit," to subsequent taxable years. The carryforward credit shall be allowed as an offset against premium tax liability for the first succeeding year to the extent that the premium tax liability for that year exceeds the amount of the allowable offset for the year determined under paragraphs (a) to (c). The carryforward credit shall be reduced, but not below zero, by the greater of the amount of the carryforward credit allowed as an offset against the premium tax under this paragraph or the amount of the carryforward credit allowed as an offset against the insurance company's corporate franchise tax liability under section 290.35, subdivision 6, paragraph (d). The remainder, if any, of the carryforward credit must be carried forward to succeeding taxable years until the entire carryforward credit has been credited against the insurance company's liability for premium tax under this chapter and corporate franchise tax under chapter 290 if applicable for that taxable year.

(e) A refund paid by the Minnesota life and health insurance guaranty association to member insurers under Minnesota Statutes 1992, section 61B.07, subdivision 6, or section 61B.24, subdivision 6, with respect to an assessment payment which has been offset against taxes shall reduce the carryforward credit determined under paragraph (d). If the refund exceeds the amount of the carryforward credit, it shall be repaid by the insurers to the extent of the offset to the state in the manner the commissioner of revenue requires.

History: *1967 c 395 art 1 s 15; 1969 c 1001 s 1; 1971 c 575 s 1–3; 1973 c 123 art 5 s 7; 1973 c 492 s 14; 1981 c 356 s 272; 1983 c 247 s 29,30; 1984 c 558 art 1 s 1–7; 1984 c 592 s 10–26; 1Sp1985 c 14 art 15 s 1; 1986 c 444; 1Sp1986 c 1 art 7 s 1; 1Sp1986 c 3 art 1 s 82; 1987 c 268 art 2 s 1; art 17 s 41; 1988 c 719 art 2 s 1; 1Sp1989 c 1 art 10 s 3; 1990 c 480 art 1 s 46; art 6 s 1; 1990 c 604 art 2 s 1; 1992 c 511 art 6 s 1; 1992 c 549 art 9 s 2; 1993 c 375 art 10 s 1–3; 1994 c 587 art 1 s 2; 1994 c 625 art 8 s 2; 1995 c 264 art 9 s 3; art 13 s 1; 1996 c 446 art 1 s 3*

60A.151 [Repealed, 1989 c 324 s 29]

60A.152 INSURANCE PREMIUM TAX EQUIVALENT PAYMENT BY AUTOMOBILE RISK SELF–INSURERS.

Subdivision 1. **Definitions.** (a) **Application.** For purposes of this section, the definitions in paragraphs (b) to (f) apply.

(b) **Automobile risks.** "Automobile risks" means the risk of providing no–fault insurance under sections 65B.41 to 65B.71.

(c) **Motor vehicle.** "Motor vehicle" has the meaning given in section 65B.43, subdivision 2.

(d) **Person.** "Person" means an owner, as defined in section 65B.43, subdivision 4, but does not include the state or a political subdivision as defined in section 65B.43, subdivision 20.

(e) **Self–insurance.** "Self–insurance" means the condition of qualifying as a self–insurer by complying with section 65B.48, subdivisions 3 and 3a.

(f) **Self–insurer.** "Self–insurer" means a person who has arranged self–insurance for the automobile risks associated with the person's motor vehicle.

Subd. 2. **Premium tax amount.** Every self–insurer who owns, leases, or operates a motor vehicle required to be registered or licensed in this state or principally garaged in this state for at least two months in the applicable calendar year shall pay an annual amount for each vehicle of:

(1) $15 for a private passenger vehicle as defined in section 65B.001, subdivision 3, or a utility vehicle as defined in section 65B.001, subdivision 4, not including a taxi; or

(2) $25 for a taxi or any other self–insured vehicle not covered by clause (1).

The amount required under this subdivision is payable no later than July 1, annually, to the commissioner of revenue. A late payment penalty of $10 a vehicle is assessed if the amount is not paid on or before July 1, and an additional amount equal to the original payment amount if the total amount is not paid until after December 1 of the same year. A self–insurer who is more than six months delinquent in paying the amount due must be referred to

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the commissioner of commerce for action, which may include revocation of the self–insured's self–insurer status.

Subd. 3. **Deposit of payment amount.** The amounts paid under subdivision 2 must be deposited in the general fund to the credit of the account from which the police state aid provided for in sections 69.011 to 69.051 is payable.

Subd. 4. **Rules authorized.** The commissioner of revenue and the commissioner of commerce are authorized to make rules to permit the administration of this section.

History: *1992 c 487 s 1; 1992 c 511 art 6 s 2*

60A.16 MERGERS AND CONSOLIDATIONS.

Subdivision 1. **Scope.** (1) **Domestic insurance corporations.** Any two or more domestic insurance corporations, formed for any of the purposes for which stock, mutual, or stock and mutual insurance corporations might be formed under the laws of this state, may be

(a) merged into one of such domestic insurance corporations, or

(b) consolidated into a new insurance corporation to be formed under the laws of this state.

(2) **Domestic and foreign insurance corporations.** Any such domestic insurance corporations and any foreign insurance corporations formed to carry on any insurance business for the conduct of which an insurance corporation might be organized under the laws of this state, may be

(a) merged into one of such domestic insurance corporations, or

(b) merged into one of such foreign insurance corporations, or

(c) consolidated into a new insurance corporation to be formed under the laws of this state, or

(d) consolidated into a new insurance corporation to be formed under the laws of the government under which one of such foreign insurance corporations was formed, provided that each of such foreign insurance corporations is authorized by the laws of the government under which it was formed to effect such merger or consolidation.

Subd. 2. **Procedure to be followed.** (1) **Agreement.** The merger or consolidation of insurance corporations can be effected only as a result of a joint agreement entered into, approved, and filed as follows:

(a) The board of directors of each of such insurance corporations as desire to merge or consolidate may, by majority vote, enter into a joint agreement signed by such directors and prescribing the terms and conditions of merger or consolidation, the mode of carrying the same into effect, with such other details and provisions as are deemed necessary. In the case of merging or consolidating stock insurance corporations or stock and mutual insurance corporations, such joint agreement may prescribe that stock of one or more of such corporations shall be converted, in whole or in part, into stock or other securities of a corporation which is not a merging or consolidating corporation or into cash.

(b) The agreement shall be submitted to the shareholders or members, as the case may be, of each of the merging or consolidating insurance corporations, at a special meeting duly called for the purpose of considering and acting upon the agreement, and if the holders of two–thirds of the voting power of the shareholders or members present or represented at the meeting of each such insurance corporation shall vote for the adoption of the agreement, then that fact shall be certified on the agreement by the secretary of each insurance corporation, and the agreement so adopted and certified shall be signed and acknowledged by the president and secretary of each of said insurance corporations; provided, however, that in the case of a merger, except one whereby any shares of the surviving insurance corporation are to be converted into shares or other securities of another corporation or into cash, the agreement need not be submitted to the shareholders or members of that one of the insurance corporations into which it has been agreed the others shall be merged, but the agreement may be signed and acknowledged by the president and secretary of such insurance corporation at the direction of the board of directors.

(c) The agreement so adopted, certified and acknowledged shall be delivered to the commissioner of commerce, who, if the agreement is reasonable and if the provisions thereof

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providing for any transfer of assets and assumption of liabilities are fair and equitable to the claimants and policyholders, shall place a certificate of approval on the agreement and shall file the agreement in the commissioner's office, and a copy of the agreement, certified by the commissioner of commerce, shall be filed for record in the office of the secretary of state and in the offices of the county recorders of the counties in this state in which any of the corporate parties to the agreement have their home or principal offices, and of any counties in which any of the corporate parties have land, title to which will be transferred as a result of the merger or consolidation.

(2) **Articles of incorporation of new company.** (a) If the joint agreement is for a consolidation into a new insurance corporation to be formed under any law or laws of this state, articles of incorporation for such new insurance corporation shall be prepared and delivered to the commissioner of commerce together with the agreement as provided in clause (1) hereof.

(b) Such articles shall be prepared, executed, approved, filed and recorded in the form and manner prescribed in, or applicable to, the particular law or laws under which the new insurance corporation is to be formed.

Subd. 3. **Consummation of merger.** (1) A merger of one or more insurance corporations into a domestic insurance corporation shall be effective when the joint agreement has been approved and filed in the office of the commissioner of commerce.

(2) A consolidation of insurance corporations into a new domestic insurance corporation shall be effective when the joint agreement and the new articles of incorporation have been approved and filed in the office of the commissioner of commerce.

(3) A merger or consolidation of one or more domestic insurance corporations into a foreign insurance corporation shall be effective according to the provisions of law of the jurisdiction in which such foreign insurance corporation was formed, but not until the joint agreement has been adopted, certified and acknowledged, and copies thereof approved and filed in accordance with subdivision 2, clause (1).

Subd. 4. **Effect of merger or consolidation.** Upon the consummation of the merger or consolidation as provided in subdivision 3, the effect of such merger or consolidation shall be:

(1) That the several corporate parties to the joint agreement shall be one insurance corporation, which shall be

(a) in the case of a merger, that one of the constituent insurance corporations into which it has been agreed the others shall be merged and which shall survive the merger for that purpose, or

(b) in the case of a consolidation, the new insurance corporation into which it has been agreed the others shall be consolidated;

(2) The separate existence of the constituent insurance corporations shall cease, except that of the surviving insurance corporation in the case of a merger;

(3) The surviving or new insurance corporation, as the case may be, shall possess all the rights, privileges and franchises possessed by each of the former insurance corporations so merged or consolidated except that such surviving or new corporation shall not thereby acquire authority to engage in any insurance business or exercise any right which an insurance corporation may not be formed under the laws of this state to engage in or exercise;

(4) All the property, real, personal and mixed, of each of the constituent insurance corporations, and all debts due on whatever account to any of them, including without limitation subscriptions for shares, premiums on existing policies, and other choses in action belonging to any of them, shall be taken and be deemed to be transferred to and invested in such surviving or new insurance corporation, as the case may be, without further act or deed;

(5) The surviving or new insurance corporation shall be responsible for all the liabilities and obligations of each of the insurance corporations merged or consolidated, in accordance with the terms of the agreement for merger or consolidation; but the rights of the creditors of the constituent insurance corporations, or of any persons dealing with such insurance corporations shall not be impaired by such merger or consolidation, and any claim existing or action or proceeding pending by or against any of the constituent insurance corporations may

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be prosecuted to judgment as if the merger or consolidation had not taken place, or the surviving or new insurance corporation may be proceeded against or substituted in its place.

Subd. 5. **Nonconsenting shareholders.** (1) When an insurance corporation having capital stock has become a party to a merger or consolidation agreement, as hereinbefore provided, any shareholder of such an insurance corporation who voted against the merger or consolidation at the meeting at which it was authorized, may, at any time within 20 days after such authorization was given, object thereto in writing and demand payment for the shares held.

(2) If, after such a demand by a shareholder, the insurance corporation and the shareholder cannot agree upon the value of the shares at the time the merger or consolidation was authorized, such value shall be ascertained by three disinterested persons, one of whom shall be named by the shareholder, another by the insurance corporation and the third by the two thus chosen. The finding of the appraisers shall be final, and if their award is not paid by the insurance corporation within 30 days after it is made, it may be recovered in an action by the shareholder against the insurance corporation. The liability of the insurance corporation to the dissenting shareholder for the value of the shares so agreed upon or awarded shall also be a liability of the surviving or new insurance corporation, as the case may be. Upon payment by the insurance corporation or by the surviving or new corporation to the shareholder of the agreed or awarded price of the shares, the shareholder shall forthwith transfer and assign the shares held at, and in accordance with, the request of the corporation.

(3) A shareholder shall not be entitled to payment for shares under the provisions of this subdivision unless the value of the corporate assets which would remain after such payment would be at least equal to the aggregate amount of its debts and liabilities including outstanding capital stock.

Subd. 6. **Disclosure of expenses; prohibitions and penalty.** All actual expenses and costs incident to proceedings under the provisions of this section shall be paid by the surviving or new company and an itemized statement of the expenses and costs shall be filed with the commissioner prior to formal approval. No officer of any such company or employee of the department of commerce, shall receive any compensation, gratuity or otherwise, directly or indirectly, for in any manner aiding, promoting, or assisting in such consolidation or merger.

Any officer, director, or stockholder of any company, or any employee of the state, violating, or consenting to the violation of, the provisions of this subdivision shall be punished by a fine of not less than $20,000 and by imprisonment for not less than one year.

History: *1967 c 395 art 1 s 16; 1973 c 521 s 1; 1976 c 181 s 2; 1983 c 289 s 114 subd 1; 1984 c 628 art 3 s 11; 1984 c 655 art 1 s 92; 1986 c 444*

60A.161 INSURER DOMESTICATION AND CONVERSION.

Subdivision 1. **Approval as a domestic insurer.** Any insurer that is organized under the laws of any other state and is admitted to do business in this state for the purpose of writing insurance may become a domestic insurer of this state by complying with all of the requirements of law relative to the organization and licensing of a domestic insurer of the same type and by designating its principal place of business at a place in this state. The domestic insurer will be entitled to like certificates and licenses to transact business in this state and is subject to the authority and jurisdiction of this state.

Subd. 2. **Conversion to foreign insurer.** A domestic insurer of this state may, upon the approval of the commissioner, transfer its domicile to any other state in which it is admitted to transact the business of insurance, and upon the transfer shall cease to be a domestic insurer and shall be admitted to this state if qualified as a foreign insurer. The commissioner shall approve any proposed transfer unless the commissioner determines that the transfer is not in the interest of the policyholders of this state.

Subd. 3. **Effects.** The certificate of authority, agents appointments and licenses, rates, policy forms, and other items which the commissioner of commerce allows, in the commissioner's discretion, which are in existence at the time any insurer licensed to transact the business of insurance in this state transfers its corporate domicile to this or any other state by redomestication, merger, consolidation, or any other lawful method shall continue in full force

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and effect upon such transfer if such insurer remains duly qualified to transact the business of insurance in this state. All outstanding policies of any transferring insurer remain in full force and effect and need not be endorsed as to the new name of the company or its new location unless so ordered by the commissioner. However, every transferring insurer shall notify the commissioner of the details of the proposed transfer and shall file promptly resulting amendments to corporate documents filed or required to be filed with the commissioner.

Subd. 4. **Authority to adopt rules.** The commissioner of commerce may adopt rules to carry out the purposes of this section.

History: *1990 c 424 s 1*

60A.17 Subdivision 1. MS 1990 [Repealed, 1992 c 564 art 3 s 30]
Subd. 1a. MS 1990 [Repealed, 1992 c 564 art 3 s 30]
Subd. 1b. MS 1990 [Repealed, 1992 c 564 art 3 s 30]
Subd. 1c. MS 1990 [Repealed, 1992 c 564 art 3 s 30]
Subd. 1d. MS 1991 SUPP [Repealed, 1992 c 564 art 3 s 30]
Subd. 2. MS 1980 [Repealed, 1981 c 307 s 22]
Subd. 2a. MS 1980 [Repealed, 1981 c 307 s 22]
Subd. 2b. MS 1980 [Repealed, 1981 c 307 s 22]
Subd. 2c. MS 1990 [Repealed, 1992 c 564 art 3 s 30]
Subd. 2d. MS 1990 [Repealed, 1992 c 564 art 3 s 30]
Subd. 3. MS 1990 [Repealed, 1992 c 564 art 3 s 30]
Subd. 4. MS 1980 [Repealed, 1981 c 307 s 22]
Subd. 5. MS 1990 [Repealed, 1992 c 564 art 3 s 30]
Subd. 5a. MS 1980 [Repealed, 1981 c 307 s 22]
Subd. 5b. MS 1990 [Repealed, 1992 c 564 art 3 s 30]
Subd. 6. MS 1990 [Repealed, 1992 c 564 art 3 s 30]
Subd. 6a. MS 1980 [Repealed, 1981 c 307 s 22]
Subd. 6b. MS 1990 [Repealed, 1992 c 564 art 3 s 30]
Subd. 6c. MS 1990 [Repealed, 1992 c 564 art 3 s 30]
Subd. 6d. MS 1990 [Repealed, 1992 c 564 art 3 s 30]
Subd. 7. MS 1980 [Repealed, 1981 c 307 s 22]
Subd. 7a. MS 1990 [Repealed, 1992 c 564 art 3 s 30]
Subd. 8. MS 1990 [Repealed, 1992 c 564 art 3 s 30]
Subd. 8a. MS 1990 [Repealed, 1992 c 564 art 3 s 30]
Subd. 9. MS 1980 [Repealed, 1981 c 307 s 22]
Subd. 9a. MS 1990 [Repealed, 1992 c 564 art 3 s 30]
Subd. 10. MS 1990 [Repealed, 1992 c 564 art 3 s 30]
Subd. 11. MS 1990 [Repealed, 1992 c 564 art 3 s 30]
Subd. 12. MS 1990 [Repealed, 1992 c 564 art 3 s 30]
Subd. 13. MS 1990 [Repealed, 1992 c 564 art 3 s 30]
Subd. 14. MS 1990 [Repealed, 1992 c 564 art 3 s 30]
Subd. 15. MS 1990 [Repealed, 1992 c 564 art 3 s 30]
Subd. 16. MS 1990 [Repealed, 1992 c 564 art 3 s 30]
Subd. 17. MS 1990 [Repealed, 1992 c 564 art 3 s 30]
Subd. 18. MS 1990 [Repealed, 1992 c 564 art 3 s 30]
Subd. 19. MS 1990 [Repealed, 1992 c 564 art 3 s 30]
Subd. 20. MS 1990 [Repealed, 1992 c 564 art 3 s 30]
Subd. 21. MS 1990 [Repealed, 1992 c 564 art 3 s 30]

60A.1701 [Renumbered 60K.19]

60A.171 REHABILITATION AND CANCELLATION OF INDEPENDENT AGENT CONTRACTS BY INSURANCE COMPANIES.

Subdivision 1. (a) After an agency contractual relationship has been in effect for a period of three years, an insurance company writing fire or casualty loss insurance in this state

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may not terminate the agency contractual relationship with any appointed agent unless the company has attempted to rehabilitate the agent as provided in subdivision 4. The insurer shall provide written notice of intent to rehabilitate.

(b) If the agent and company are not able to reach a mutually acceptable plan of rehabilitation, the company may terminate the agency contractual relationship after providing written notice of termination to the agent at least 90 days in advance.

(c) The notice of termination must include the reasons for termination and a copy of the notice of intent to rehabilitate.

(d) An insurance company may not terminate an agency contract based upon any of the following:

(1) an adverse loss experience for a single year;

(2) the geographic location of the agent's auto and homeowners insurance business; or

(3) the performance of obligations required of an insurer under Minnesota Statutes.

Subd. 2. The company shall at the request of the agent renew any insurance contract written by the agent for the company for not more than one year for fire or casualty loss insurance during a period of nine months after the effective date of the termination, but in the event any risk does not meet current underwriting standards of the company, the company may decline its renewal, provided that the company shall give the agent not less than 60 days notice of its intention not to renew the contract of insurance.

Subd. 3. No new insurance or bond contract shall be written by the agent for the company after the effective date of the termination without the written approval of the company. The agent may increase liability on renewal or in force business for not more than one year for the insured after the effective date of the termination if the increased liability meets the current underwriting standards of the company.

Subd. 3a. MS 1990 [Renumbered subd 4]

Subd. 4. MS 1990 [Renumbered subd 5]

Subd. 4. (a) Before notice of termination of the agency contract, the company shall negotiate in good faith in an effort to reach mutual agreement with the agent on a written plan for rehabilitation.

(b) The rehabilitation plan must be in writing and must contain the following elements:

(1) identification by the company of the problem areas which need rehabilitation;

(2) what the agent must do to avoid termination;

(3) how the company intends to assist the agent to avoid termination;

(4) the mutually agreed upon corrective action to be undertaken by the agent and the specific target dates for accomplishment;

(5) periodic meeting dates at which the status of rehabilitation will be reviewed; and

(6) the term of the written plan which must extend for at least one year.

(c) All agency contracts in existence on May 13, 1987, are subject to the rehabilitation requirement under subdivision 1. The rehabilitation plan need not be incorporated into the agency contract.

Subd. 5. MS 1990 [Renumbered subd 6]

Subd. 5. Nothing contained in this section prohibits the earlier termination of an amendment or addendum subsequent to the inception date of the original agency agreement provided that the subsequent amendment or addendum provides for termination on shorter notice and the agent agrees in writing to the earlier termination.

Subd. 6. MS 1990 [Renumbered subd 7]

Subd. 6. During the term of the contract the company shall not refuse to renew such business from the agent as would be in accordance with the company's current underwriting standards.

Subd. 7. MS 1990 [Renumbered subd 8]

Subd. 7. The provisions of this section do not apply to the termination of an agent's contract for insolvency, abandonment, gross and willful misconduct, or failure to pay over to the company money due to the company after receipt by the agent of a written demand therefor,

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or after revocation of the agent's license by the commissioner of commerce. This section does not apply to the termination of an agent's contract if the agent is directly employed by the company or if the agent writes 80 percent or more of the agent's gross annual insurance business for one company or any or all of its subsidiaries.

Subd. 8. MS 1990 [Renumbered subd 9]

Subd. 8. All future and presently existing agency contractual relationships between an agent and a company writing fire or casualty loss insurance in this state are subject to the provisions of this section.

Subd. 9. If it is found, after notice and an opportunity to be heard as determined by the commissioner of commerce, that an insurance company has violated this section, the insurance company shall be subject to a civil action by the agent for actual damages suffered because of the premature termination of the contract by the company. The commissioner of commerce shall employ the department's investigative and enforcement authority if the commissioner has a reason to believe that an insurer has violated this section. An insurer found in violation of this section is subject to a civil penalty imposed by the commissioner not to exceed $10,000 per violation.

Subd. 10. In the event that a company's compliance with this section is demonstrated to the satisfaction of the commissioner to represent a hazard or potential hazard to the financial integrity of the company, the commissioner may, after a hearing, issue an order relieving the company from its obligation to provide the renewal policies otherwise required by this section.

Subd. 11. Upon termination of an agency, a company is prohibited from soliciting business in the notice of nonrenewal required by section 60A.37.

Subd. 12. For purposes of this section, a cancellation or termination of an agent's contract is considered to have occurred if the company cancels a line of insurance business or a volume of insurance business that equals or exceeds 75 percent of the insurance business placed by that agent with the company.

History: *1977 c 287 s 1; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444; 1987 c 92 s 1–3; 1991 c 39 s 1; 1996 c 446 art 1 s 4,5*

60A.172 INSURANCE AGENCY CONTRACTS; CANCELLATION.

(a) An insurer may not cancel a written agreement with an agent or reduce or restrict an agent's underwriting authority with respect to property or casualty insurance, based solely on the loss ratio experience on that agent's book of business, if: the insurer required the agent to submit the application for underwriting approval, all material information on the application was fully completed, and the agent has not omitted or altered any information provided by the applicant.

(b) For purposes of this section, "loss ratio experience" means the ratio of claims paid divided by the premiums paid.

(c) This section applies only to agents who write 80 percent or more of their gross annual insurance business for one company or any or all of its subsidiaries, and are not in the direct employ of the company.

History: *1987 c 288 s 1; 1989 c 170 s 1; 1992 c 379 s 1*

60A.173 EFFECTIVE DATE.

Section 60A.172 is effective January 1, 1987, and applies to cancellations begun as of that date. As a condition of doing business in the state of Minnesota, an insurer shall promptly reinstate any agreements canceled under section 60A.172 and shall restore any authority reduced or restricted under section 60A.172 from January 1, 1987, until May 29, 1987.

History: *1987 c 288 s 2*

60A.174 SEVERABILITY.

If section 60A.173 is determined by a final, nonappealable order of any Minnesota or federal court of competent jurisdiction to be invalid or unconstitutional, section 60A.172 is effective May 29, 1987.

History: *1987 c 288 s 3*

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60A.175 AGENT COMMISSIONS.

(a) An insurer that cancels a written agreement with an agent under section 60A.171 or 60A.172 or cancels a line of business sold by the agent must pay to the agent all commissions, bonuses, and other compensation earned by that agent prior to or after termination. The commission rate must be the rate in effect at the time of the notice of termination.

(b) An insurer may not reduce agent commissions, bonuses, or other compensation contained in written agreements without first providing written notice of the change to the agent at least 180 days before its effective date.

History: *1989 c 170 s 2; 1991 c 39 s 2*

60A.176 DEFINITIONS.

Subdivision 1. **Application.** The definitions in this section apply to this section and section 60A.177.

Subd. 2. [Repealed, 1991 c 207 s 8]

Subd. 3. **Agent.** "Agent" means an agent who is not an employee of the insurer, who has an agency contractual relationship that has been in effect for five or more years, and who writes 80 percent or more of the agent's business through one insurer or its subsidiaries.

Subd. 4. **Insurer.** "Insurer" means an insurance company writing property or casualty loss insurance in this state through agents.

History: *1990 c 457 s 1; 1991 c 207 s 1*

60A.177 INVOLUNTARY TERMINATION OF AN AGENT BY THE INSURER.

Subdivision 1. **Termination review process.** An insurer shall establish a termination review process for an agent involuntarily terminated by the insurer. The review process is available for use at the option of the agent. The review process must be completed within 15 days of the request or before the date of termination, whichever is later.

Subd. 2. **Notice; hearing.** If an agent is terminated by an insurer, the agent may request a hearing before the board of review. If an insurer initiates the termination of an agent's agreement, the written notice of termination must advise the agent of the agent's right to a hearing before the board of review. Upon receipt of an agent's request for a hearing, the commissioner shall establish a hearing date within 30 days of the request or longer with the approval of the agent and the insurer. The agent and the insurer shall be notified in writing of the date, time, and place of the hearing. The hearing provided for under this section is not subject to chapter 14. The review board shall provide the parties to the hearing with an opportunity to present evidence and arguments in support of their respective positions.

Subd. 3. **Board of review.** A three–member board of review shall be selected from a list of ten agents and ten insurer representatives compiled by the commissioner. One member shall be selected by the agent and one by the insurer. The third member shall be mutually agreed upon by both parties. If the parties do not agree upon a third member, the commissioner shall request the American Arbitration Association to provide the commissioner with three names of potential members. If the American Arbitration Association declines to provide the names, the commissioner of the bureau of mediation services shall provide the names. The agent member and the insurer member shall each strike one person from the list. The remaining person shall be selected as the third member of the review board. The insurer and the agent shall each pay one–half of the fee charged by the third member. The board member selected by the agent may not be a relative of the agent. The board members selected by the agent and insurer may not be presently or formerly associated with an insurer represented by the agent. An insurer is immune from civil liability to the agent for disclosures made at the hearing. This immunity does not extend to disclosures made in bad faith or with knowledge of their falseness.

Subd. 4. **Board's determination.** Upon completion of the hearing, the board of review shall determine if the termination of the agent's agreement is justified. If in the opinion of the board of review an involuntary termination is not justified, and in the absence of a reasonable contractual financial provision for termination as determined by the board, the board shall order the insurer to pay an amount of compensation that the board considers appropriate to the agent.

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If in the opinion of the board of review a voluntary termination was not voluntary and the insurer is not justified in terminating the agent's agreement, and in the absence of a reasonable contractual financial provision for termination as determined by the board, the board shall order the insurer to pay an amount of compensation that the board considers appropriate to the agent.

Subd. 5. **Appeal.** A final determination of the board of review under subdivision 4 may be appealed to district court by either party for a trial de novo. If the insurer appeals and the agent prevails, the insurer is responsible for the agent's legal fees as approved by the court.

Subd. 6. **Civil penalty.** A person who intimidates or coerces a member of the board of review is subject to a civil penalty imposed by the commissioner in an amount not to exceed $25,000.

Subd. 7. **Exemption.** This section does not apply to an agent whose license has expired, is revoked, or is currently under suspension.

Subd. 8. **Administrative penalties.** Failure to comply with a final order or determination of the review board constitutes a basis for disciplinary action under section 45.027, subdivision 7.

History: *1990 c 457 s 2; 1991 c 207 s 2–5; 1992 c 379 s 2*

60A.178 LIFE OR HEALTH INSURANCE POLICY QUOTAS.

No insurer, its officers, or managers shall require licensed property and casualty agents to sell a specified number of life or health insurance policies or a specified dollar amount of life and health insurance as a condition of selling property–casualty insurance. No insurer, its officers, or managers may reduce or restrict an agent's underwriting authority on property–casualty insurance policies based upon the sale of life or health insurance. The provisions of this section do not apply to agents who are directly employed by the insurer or who write 80 percent or more of their gross annual insurance business for one company or any or all of its subsidiaries.

History: *1995 c 152 s 1*

60A.179 LIFE OR HEALTH INSURANCE POLICY QUOTAS FOR EXCLUSIVE AGENTS.

Subdivision 1. **Application.** This section applies to licensed insurance agents as defined by section 60A.176.

Subd. 2. **Prohibited practice.** No insurer shall require an agent who has been licensed as an agent three years or more to sell a specified number of life or health insurance policies or a specified dollar amount of life and health insurance in relation to the sale of other insurance products. No insurer may terminate an agent's contract or reduce or restrict an agent's underwriting authority on property and casualty insurance policies based upon the sale of life or health insurance.

History: *1996 c 446 art 1 s 6*

60A.18 SALE BY VENDING MACHINES; SCOPE AND REQUIREMENTS.

Subdivision 1. **General requirement.** No insurance shall be offered for sale, issued or sold by or from any vending machine or appliance or any other medium, device or object designed or used for vending purposes, herein called a device, except as provided in this section.

Subd. 2. **Conditions.** Resident insurance agents and solicitors licensed under this section to solicit for and to sell policies of personal travel accident insurance providing benefits for accidental bodily injury or accidental death may also solicit applications for and issue or sell such insurance by means of devices supervised by them and placed in locations for convenience of the traveling public, upon the following conditions only:

(1) That each policy to be sold by or from a device is reasonably suited for sale and issuance through a device, and that use of such device therefor in a particular proposed location would be of material convenience to the traveling public;

(2) That the type of device proposed to be used is reasonably suitable and practical for the purpose;

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(3) That reasonable means, as determined by the commissioner, are provided for informing the prospective purchaser of any such policy of the benefits, limitations and exclusions of the policy, the premium rates therefor, the name and address of the agent and the name and home office address of the insuring company;

(4) That such device shall be so constructed and operated that it shall retain, or shall be provided with a suitable place for deposit and safe keeping of, a copy of the application, which shall show the date of the application, name and address of the applicant and the beneficiary, and the amount of insurance;

(5) That no policy of insurance sold by or from a device shall be for a period of time longer than the duration of a specified one–way trip or round trip of not to exceed 180 days;

(6) That such device shall have provided on it or immediately adjacent thereto, in a prominent location, adequate envelopes for use of purchasers in mailing policies vended through such device, or that the policy itself, if designed to permit such procedure, may be mailed without an envelope; provided, however, the commissioner may in writing delivered to the agent modify or waive these requirements;

(7) That each such device shall be supervised, inspected and tested by the agent with such frequency as may reasonably be necessary or as may reasonably be required by the commissioner, and should any device not be in good working condition the agent shall promptly cause a notice to be displayed thereon that the same is out of order, and cause said device to be promptly removed from service until it is in proper working order;

(8) That prompt refund by the agent is provided to each applicant or prospective applicant of money deposited in any defective device and for which no insurance, or a less amount than paid for, is actually received;

(9) In addition to, and without limiting the general powers of the commissioner to regulate and supervise insurance business in this state, the commissioner may establish such other and additional rules for types and locations of devices authorized hereunder, their maintenance and operation and the methods to be used by the agent in the solicitation and sale of insurance by means of such devices as shall be reasonable and necessary.

Subd. 3. **License, application, contents.** The application for a license for each device to be used shall be made by the agent in such form and with such information as shall be prescribed by the commissioner. A fee of $20 for each device shall be paid at the time of making application. Upon approval of the application, the commissioner shall issue to the agent a special vending machine license. The license shall apply to a specific device or to any device of identical type which, after written notice by the agent to the commissioner, is substituted for it. The license shall specify the name and address of the agent, the name and home office address of the insuring company, the name or other identifying information of the policy or policies to be sold, the serial number or other identification of the device and the address, including the location on the premises, where the device is to be in operation; provided, however, that a device for which a license has been issued for operation at a specific address may be transferred to a different address during the license year upon written notice to the commissioner at the time of such transfer. The license for each device shall expire on May 31st of each year, but may be renewed from year to year by the commissioner upon approval of the application by the agent and the furnishing of such information as shall be requested by the commissioner, and the payment of $20 for each license year or part thereof for each device. Proof of the existence of a subsisting license shall be displayed on or about each such device in use in such manner as the commissioner may reasonably require.

Subd. 4. **Suspension or revocation of license.** The license for each device shall be subject to expiration, suspension or revocation coincidentally with that of the agent or the insuring company. The commissioner also may suspend or revoke the license as to any device concerning which the commissioner finds any conditions upon which the device was licensed as referred to in subdivision 2 have been violated, or no longer exist, or that the device is being used or operated by the agent in violation of the laws of this state; provided, that before suspending or revoking a license for a device, the commissioner shall conduct a hearing in the manner prescribed in chapter 72A, and shall make a determination upon the basis of the standards, conditions and requirements of this section.

History: *1967 c 395 art 1 s 18; 1984 c 592 s 37; 1985 c 248 s 70; 1986 c 444*

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60A.19 FOREIGN COMPANIES.

Subdivision 1. **Requirements.** Any insurance company of another state, upon compliance with all laws governing such corporations in general and with the foregoing provisions so far as applicable and the following requirements, shall be admitted to do business in this state:

(1) It shall deposit with the commissioner a certified copy of its charter or certificate of incorporation and its bylaws, and a statement showing its financial condition and business, verified by its president and secretary or other proper officers;

(2) It shall furnish the commissioner satisfactory evidence of its legal organization and authority to transact the proposed business and that its capital, assets, deposits with the proper official of its own state, amount insured, number of risks, reserve and other securities, and guaranties for protection of policyholders, creditors, and the public, comply with those required of like domestic companies;

(3) By a duly executed instrument filed in the office of the commissioner, it shall appoint the commissioner and successors in office its lawful attorneys in fact and therein irrevocably agree that legal process in any action or proceeding against it may be served upon them with the same force and effect as if personally served upon it, so long as any of its liability exists in this state;

(4) It shall appoint, as its agents in this state, residents thereof, and obtain from the commissioner a license to transact business;

(5) Regardless of what lines of business an insurer of another state is seeking to write in this state, the lines of business it is licensed to write in its state of incorporation shall be the basis for establishing the financial requirements it must meet for admission in this state or for continuance of its authority to write business in this state;

(6) No insurer of another state shall be admitted to do business in this state for a line of business that it is not authorized to write in its state of incorporation.

Subd. 2. **Service of garnishee process.** When garnishee process is served upon the commissioner, as attorney for any insurance company, no garnishee fee shall be paid the commissioner. After the receipt of copy of the process the insurance company may demand of the attorney of the person making the garnishee the proper fees, and if the demand is not complied with before the day fixed for the disclosure of the garnishee, the proceeding may be dismissed.

Subd. 3. **Commissioner appointed attorney for service of process.** Before any corporation, association, or company issuing policies of insurance of any character and not organized or existing pursuant to the laws of this state is admitted to or authorized to transact the business of insurance in this state, it shall, by a duly executed instrument to be filed in the office of the commissioner, constitute and appoint the commissioner and successors in office its true and lawful attorney, upon whom proofs of loss, any notice authorized or required by any contract with the company to be served on it, summonses and all lawful processes in any action or legal proceeding against it may be served, and that the authority thereof shall continue in force irrevocable so long as any liability of the company remains outstanding in this state.

This instrument shall contain a provision and agreement declaring that the company, association, or corporation desires to transact the business of insurance in this state, and that it will accept a license therefor according to the laws of this state.

In case of the failure of any such insurance company to comply with any of the provisions of this subdivision and subdivision 4, or if it shall violate any of the conditions or agreements contained in the instrument filed, its right to transact insurance business in this state shall cease and it shall be the duty of the commissioner to immediately declare its license revoked; and, in case of revocation, the company shall not be again licensed to transact business in this state for the period of one year from date of the revocation.

Subd. 4. **Service of process.** The service of process authorized by this section shall be made in compliance with section 45.028, subdivision 2.

Subd. 5. **Provision as to alien companies.** (1) **Deposit.** Such company of any foreign country, except fraternal benefit societies, shall not be admitted until, besides complying with the foregoing requirements, it has made a deposit with the commissioner in accordance

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with section 60A.10, subdivision 4, or with the proper officer of some other state of the United States, of a sum not less than the deposit required of a like company by the laws of this state and this deposit shall be of the same class of securities and subject to the same limitations required for the deposit of domestic companies that must by law maintain a deposit.

This deposit shall be in exclusive trust for all its policyholders and creditors in the United States, and for all purposes of the insurance laws shall be deemed assets of the company.

(2) **Trustees, investments and funds.** Any company of a foreign country may duly appoint one or more citizens of the United States, approved by the commissioner, to hold funds or other property for the benefit of its policyholders and creditors therein. A certified copy of their appointment and of the instrument of trust shall be filed with the commissioner, who shall have the same authority in the premises as in the case of the affairs of all companies. These funds shall be invested in the same securities as required of other insurance companies and, together with the deposits required, shall constitute the assets of the company in respect to its policyholders and creditors in the United States.

Subd. 6. **Retaliatory provisions.** (1) When by the laws of any other state or country any taxes, fines, deposits, penalties, licenses, or fees, other than assessments made by an insurance guaranty association or similar organization, in addition to or in excess of those imposed by the laws of this state upon foreign insurance companies and their agents doing business in this state, other than assessments by an insurance guaranty association or similar organization organized under the laws of this state, are imposed on insurance companies of this state and their agents doing business in that state or country, or when any conditions precedent to the right to do business in that state are imposed by the laws thereof, beyond those imposed upon these foreign companies by the laws of this state, the same taxes, fines, deposits, penalties, licenses, fees, and conditions precedent shall be imposed upon every similar insurance company of that state or country and their agents doing or applying to do business in this state so long as these foreign laws remain in force. Special purpose obligations or assessments, or assessments imposed in connection with particular kinds of insurance, are not taxes, licenses, or fees as these terms are used in this section.

(2) In the event that a domestic insurance company, after complying with all reasonable laws and rulings of any other state or country, is refused permission by that state or country to transact business therein after the commissioner of commerce of Minnesota has determined that that company is solvent and properly managed and after the commissioner has so certified to the proper authority of that other state or country, then, and in every such case, the commissioner may forthwith suspend or cancel the certificate of authority of every insurance company organized under the laws of that other state or country to the extent that it insures, or seeks to insure, in this state against any of the risks or hazards which that domestic company seeks to insure against in that other state or country. Without limiting the application of the foregoing provision, it is hereby determined that any law or ruling of any other state or country which prescribes to a Minnesota domestic insurance company the premium rate or rates for life insurance issued or to be issued outside that other state or country shall not be reasonable.

(3) This section does not apply to insurance companies organized or domiciled in a state or country, the laws of which do not impose retaliatory taxes, fines, deposits, penalties, licenses, or fees or which grant, on a reciprocal basis, exemptions from retaliatory taxes, fines, deposits, penalties, licenses, or fees to insurance companies domiciled in this state.

Subd. 7. **Policy not invalidated by occurrence of hostilities.** No policy of insurance issued to a resident of this state shall be invalidated by the occurrence of hostilities between any foreign country and the United States.

Subd. 8. **Insurance from unlicensed foreign companies.** Any person, firm, or corporation desiring to obtain insurance upon any property, interests, or risks of any nature other than life insurance in this state in companies not authorized to do business therein shall give bond to the commissioner of commerce in such sum as the commissioner shall deem reasonable, with satisfactory resident sureties, conditioned that the obligors, on the expiration of a license to obtain such insurance, shall pay to the commissioner of revenue, for the use of the state, a tax of two percent upon the gross premiums paid by the licensee. Thereupon the com-

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missioner of commerce shall issue such license, good for one year, and all insurance procured thereunder shall be lawful and valid and the provisions of all policies thereof shall be deemed in accordance, and construed as if identical in effect, with the standard policy prescribed by the laws of this state and the insurers may enter the state to perform any act necessary or proper in the conduct of the business. This bond may be enforced by the commissioner of commerce in the commissioner's name in any district court. The licensee shall file with the commissioner of commerce on June 30 and December 31 annually a verified statement of the aggregate premiums paid and returned premiums received on account of such insurance.

The commissioner of revenue, or duly authorized agents, may conduct investigations, inquiries, and hearings to enforce the tax imposed by this subdivision and, in connection with those investigations, inquiries, and hearings, the commissioner and duly authorized agents have all the powers conferred by section 270.06.

History: *1967 c 395 art 1 s 19; 1969 c 291 s 3; 1971 c 145 s 21; 1974 c 425 s 4; 1977 c 195 s 2; 1978 c 465 s 7; 1983 c 289 s 114 subd 1; 1984 c 592 s 38,39; 1984 c 609 s 3; 1984 c 655 art 1 s 92; 1986 c 444; 1Sp1989 c 1 art 10 s 4; 1991 c 291 art 9 s 2; 1992 c 511 art 7 s 2; 1992 c 564 art 1 s 54; art 2 s 3; 1994 c 485 s 10; 1994 c 632 art 4 s 24*

60A.195 CITATION.

Sections 60A.195 to 60A.209 shall be known and may be cited as the Minnesota surplus lines insurance act.

History: *1981 c 221 s 1*

60A.196 DEFINITIONS.

Unless the context otherwise requires, the following terms have the meanings given them for the purposes of sections 60A.195 to 60A.209:

(a) "Surplus lines insurance" means insurance placed with an insurer permitted to transact the business of insurance in this state only pursuant to sections 60A.195 to 60A.209.

(b) "Eligible surplus lines insurer" means an insurer recognized as eligible to write insurance business under sections 60A.195 to 60A.209 but not licensed by any other Minnesota law to transact the business of insurance.

(c) "Ineligible surplus lines insurer" means an insurer not recognized as an eligible surplus lines insurer pursuant to sections 60A.195 to 60A.209 and not licensed by any other Minnesota law to transact the business of insurance. "Ineligible surplus lines insurer" includes a risk retention group as defined under the Liability Risk Retention Act, Public Law Number 99–563.

(d) "Surplus lines licensee" or "licensee" means a person licensed under sections 60A.195 to 60A.209 to place insurance with an eligible or ineligible surplus lines insurer.

(e) "Association" means an association registered under section 60A.208.

(f) "Alien insurer" means any insurer which is incorporated or otherwise organized outside of the United States.

(g) "Insurance laws" means chapters 60 to 79 inclusive.

History: *1981 c 221 s 2; 1987 c 337 s 11*

60A.197 RATES AND FORMS.

(a) Rates used by eligible and ineligible surplus lines insurers shall not be subject to the insurance laws except that a rate shall not be unfairly discriminatory.

(b) Forms used by eligible and ineligible surplus lines insurers pursuant to sections 60A.195 to 60A.209 shall not be subject to the insurance laws, except that a policy shall not contain language which misrepresents the true nature of the policy or class of policies.

History: *1981 c 221 s 3*

60A.198 TRANSACTION OF SURPLUS LINES INSURANCE.

Subdivision 1. **License required.** A person shall not act in any other manner as an agent or broker in the transaction of surplus lines insurance unless licensed under sections 60A.195 to 60A.209.

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Subd. 2. **Compliance with statutory provisions.** A person shall not offer, solicit, make a quotation on, sell, or issue a policy of insurance, binder, or any other evidence of insurance with an eligible or ineligible surplus lines insurer, except in compliance with sections 60A.195 to 60A.209.

Subd. 3. **Procedure for obtaining license.** A person licensed as an agent in this state pursuant to other law may obtain a surplus lines license by doing the following:

(a) filing an application in the form and with the information the commissioner may reasonably require to determine the ability of the applicant to act in accordance with sections 60A.195 to 60A.209;

(b) maintaining an agent's license in this state;

(c) delivering to the commissioner a financial guarantee bond from a surety acceptable to the commissioner for the greater of the following:

(1) $5,000; or

(2) the largest semiannual surplus lines premium tax liability incurred by the applicant in the immediately preceding five years;

(d) agreeing to file with the commissioner of revenue no later than February 15 and August 15 annually, a sworn statement of the charges for insurance procured or placed and the amounts returned on the insurance canceled under the license for the preceding six–month period ending December 31 and June 30 respectively, and at the time of the filing of this statement, paying the commissioner a tax on premiums equal to three percent of the total written premiums less cancellations;

(e) paying a fee as prescribed by section 60K.06, subdivision 2, paragraph (a), clause (4); and

(f) paying penalties imposed under section 289A.60, subdivision 1, as it relates to withholding and sales or use taxes, if the tax due under clause (d) is not timely paid.

Subd. 4. **Licensee's powers.** A surplus lines licensee may do any or all of the following:

(a) Place insurance on risks in this state with eligible surplus lines insurers;

(b) Place insurance on risks in this state with ineligible surplus lines insurers in strict compliance with section 60A.209. If the insurance is provided through the participation of several surplus lines insurers and the licensee has reason to believe that a substantial portion of the insurance would be assumed by eligible surplus lines insurers, then with respect to the ineligible surplus lines insurers, the insured or the insured's representative shall be informed as provided in section 60A.209, subdivision 1, clause (a); or

(c) Engage in any other acts expressly or implicitly authorized by sections 60A.195 to 60A.209 and the other insurance laws.

Subd. 5. **Disclosures.** Before placement of insurance with an eligible surplus lines insurer, a surplus lines licensee shall inform an insured or the insured's representative that coverage may be placed in conformance with sections 60A.195 to 60A.209 with an insurer not licensed in this state and that payment of loss is not guaranteed in the event of insolvency of the eligible surplus lines insurer.

Subd. 6. **Allocation of premiums according to location of subject matter.** If the insurance described in subdivision 4 also covers a subject of insurance residing, located, or to be performed outside this state, for the purposes of this section, a proper pro rata portion of the entire premium payable for all of that insurance must be allocated according to the subjects of insurance residing, located, or to be performed in this state.

History: *1981 c 221 s 4; 1983 c 328 s 7; 1984 c 592 s 40; 1986 c 444; 1987 c 337 s 12; 1989 c 260 s 6; 1990 c 480 art 6 s 2; 1993 c 375 art 10 s 4; 1994 c 632 art 4 s 25*

60A.199 EXAMINATIONS.

Subdivision 1. **Examination of books and records.** If the commissioner considers it necessary, the commissioner may examine the books and records of a surplus lines licensee to determine whether the licensee is conducting business in accordance with sections 60A.195 to 60A.209. For the purposes of facilitating examinations, the licensee shall allow the commissioner free access at reasonable times to all of the licensee's books and records

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relating to the transactions to which sections 60A.195 to 60A.209 apply. If an examination is conducted, the cost of the examination shall be paid by the surplus line agent or agency.

Subd. 2. **Examination of returns; assessment; refunds.** The commissioner of revenue shall, as soon as practicable after a return required by section 60A.198 is filed, examine it and make any investigation or examination of the licensee's records and accounts that the commissioner deems necessary for determining the correctness of the return. The tax computed by the commissioner on the basis of the examination and investigation is the tax to be paid by the licensee. If the tax found due is greater than the amount reported due on the licensee's return, the commissioner shall assess a tax in the amount of the excess and the whole amount of the excess shall be paid to the commissioner within 60 days after notice of the amount and demand for its payment is mailed to the licensee by the commissioner. If the amount of the tax found due by the commissioner is less than that reported due on the licensee's return, the excess shall be refunded to the licensee in the manner provided by this section. No refund shall be made except as provided in this section after the expiration of 3–1/2 years after the filing of the return.

If the commissioner examines returns of a licensee for more than one year, the commissioner may issue one order covering the several years under consideration reflecting the aggregate refund or additional tax due.

The notices and demands provided for by this section shall be in the form the commissioner determines, including a statement, and shall contain a brief explanation of the computation of the tax and shall be sent by mail to the licensee at the address given on the return. If the address is not given, then they will be sent to the last known address.

At the request of the commissioner of revenue, the commissioner of commerce may examine and investigate the returns under section 60A.198 that the commissioner of revenue designates. The commissioner of commerce shall report to the commissioner of revenue the results of the examination in the manner required by the commissioner of revenue.

Subd. 3. **Failure to file; false or fraudulent return.** If any licensee required by section 60A.198 to file any return fails to do so within the time prescribed or makes, willfully or otherwise, an incorrect, false, or fraudulent return, the licensee must, on the written demand of the commissioner of revenue, file the return, or corrected return, within 60 days after the mailing of the written demand and at the same time pay the whole tax, or additional tax, due on the basis thereof. If the licensee fails within that time to file the return, or corrected return, the commissioner shall make a return, or corrected return, from personal knowledge and from the information obtainable through testimony, or otherwise, and assess a tax on the basis thereof. The tax assessed, less any payments theretofore made on account of the tax for the taxable year covered by the return, must be paid within 60 days after the commissioner has mailed to the licensee a written notice of the amount thereof and demand for payment. Any return or assessment made by the commissioner on account of the failure of the licensee to make a return, or a corrected return, is prima facie correct and valid, and the licensee has the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto.

Subd. 4. **Failure to file; penalties and interest.** In case of any failure to make and file a return as required by this chapter within the time prescribed by law or prescribed by the commissioner in pursuance of law there shall be added to the tax penalties as provided in section 289A.60, subdivision 2, as it relates to withholding and sales or use taxes.

Subd. 5. **Intent to evade tax; penalty.** If any licensee with intent to evade the tax imposed by this chapter, fails to file any return required by this chapter or with such intent files a false or fraudulent return there shall also be imposed on it a penalty as provided in section 289A.60, subdivision 6.

Subd. 6. **Negligence or intentional disregard; penalty.** If any part of any additional assessment is due to negligence or intentional disregard of the statute or a rule (but without intent to defraud), there shall be added to the tax a penalty as provided in section 289A.60, subdivision 5.

Subd. 6a. **Penalty for repeated failures to file returns or pay taxes.** If there is a pattern by a person of repeated failures to timely file returns or timely pay taxes, and written notice is given that a penalty will be imposed if such failures continue, a penalty of 25 percent

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of the amount of tax not timely paid as a result of each such subsequent failure is added to the tax. The penalty can be abated under the abatement authority in section 270.07, subdivisions 1, paragraph (e), and 6.

Subd. 7. **Collection of tax.** The tax required to be paid by section 60A.198 may be collected in any ordinary action at law by the commissioner of revenue against the licensee. In any action commenced pursuant to this section, upon the filing of an affidavit of default, the court administrator of the district court wherein the action was commenced shall enter judgment for the state for the amount demanded in the complaint together with costs and disbursements.

Subd. 8. **Refund procedure; time limit; appropriation.** A licensee which has paid, voluntarily or otherwise, or from which there was collected an amount of tax for any year in excess of the amount legally due for that year, may file with the commissioner of revenue a claim for a refund of the excess. Except as provided in subdivision 3, no claim or refund shall be allowed or made after the period prescribed in section 289A.40, subdivision 1. For this purpose, a return or amended return claiming an overpayment constitutes a claim for refund.

Upon the filing of a claim the commissioner shall examine it, shall make written findings thereon denying or allowing the claim in whole or in part, and shall mail a notice thereof to the licensee at the address stated upon the return. If the claim is allowed in whole or in part, the commissioner shall issue a certificate for a refund of the excess paid by the licensee, with interest at the rate specified in section 270.76 computed from the date of the payment of the tax until the date the refund is paid or credit is made to the licensee. The commissioner of finance shall cause the refund to be paid as other state moneys are expended. So much of the proceeds of the taxes as is necessary are appropriated for that purpose.

Subd. 9. **Denial of claim; court proceedings.** If the claim is denied in whole or in part, the commissioner shall mail an order of denial to the licensee in the manner prescribed in this section. An appeal from this order may be taken to the Minnesota tax court in the manner prescribed in section 271.06, or the licensee may commence an action against the commissioner to recover the denied overpayment. The action may be brought in the district court of the district in which lies the county of its principal place of business, or in the district court for Ramsey county. The action in the district court shall be commenced within 18 months following the mailing of the order of denial to the licensee. If a claim for refund is filed by a licensee and no order of denial is issued within six months of the filing, the licensee may commence an action in the district court as in the case of a denial, but the action must be commenced within two years of the date that the claim for refund was filed.

Subd. 10. **Consent to extend time.** If the commissioner and the licensee have, within the periods prescribed by this section, consented in writing to any extension of time for the assessment of the tax, the period within which a claim for refund may be filed, or a refund may be made or allowed, if no claim is filed, is the period within which the commissioner and the licensee have consented to an extension for the assessment of the tax and six months thereafter.

Subd. 11. **Overpayment; refunds.** If the amount determined to be an overpayment exceeds the taxes imposed by section 60A.198, the amount of excess shall be considered an overpayment. An amount paid as tax shall constitute an overpayment even if in fact there was no tax liability with respect to which the amount was paid.

Notwithstanding any other provision of law to the contrary, in the case of any overpayment the commissioner, within the applicable period of limitations, shall refund any balance of more than $10 if the licensee so requests.

History: *1981 c 221 s 5; 1984 c 592 s 41; 1Sp1985 c 14 art 15 s 2; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1987 c 268 art 2 s 2–10; art 17 s 41; 1990 c 480 art 1 s 46; 1993 c 375 art 10 s 5,6; 1995 c 264 art 13 s 2,3*

60A.20 [Repealed, 1981 c 221 s 15]

60A.201 PLACEMENT OF INSURANCE BY LICENSEE.

Subdivision 1. **Restrictions.** Insurance shall not be placed by the surplus lines licensee with an eligible or ineligible surplus lines insurer when coverage is available from a licensed insurer.

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Subd. 2. **Availability of other coverage; presumption.** There shall be a rebuttable presumption that the following coverages are available from a licensed insurer:

(a) All mandatory automobile insurance coverages required by chapter 65B;

(b) Private passenger automobile physical damage coverage;

(c) Homeowners and property insurance on owner occupied dwellings whose value is less than $500,000. This figure shall be changed annually by the commissioner by the same percentage as the consumer price index for the Minneapolis–St. Paul metropolitan area is changed;

(d) Any coverage readily available from three or more licensed insurers unless the licensed insurers quote a premium and terms not competitive with a premium and terms quoted by an eligible surplus lines insurer; and

(e) Workers' compensation insurance, except excess workers' compensation insurance which is not available from the workers' compensation reinsurance association.

Subd. 3. **Unavailability of other coverage; presumption.** There shall be a rebuttable presumption that the following coverages are unavailable from a licensed insurer:

(a) Coverages on a list of unavailable coverages maintained by the commissioner pursuant to subdivision 4;

(b) Coverages where one portion of the risk is acceptable to licensed insurers but another portion of the same risk is not acceptable. The entire coverage may be placed with eligible surplus lines insurers if it can be shown that the eligible surplus lines insurer will accept the entire coverage but not the rejected portion alone; and

(c) Any coverage that the licensee is unable to procure after diligent search among licensed insurers.

Subd. 4. **Lists of unavailable lines of insurance; maintenance.** The commissioner shall maintain on a current basis a list of those lines of insurance for which coverages are believed by the commissioner to be generally unavailable from licensed insurers. The commissioner shall republish a list and make it available to all licensees at least annually. Any person may request in writing that the commissioner add or remove coverage from the current list at the next publication of the list. The commissioner's determinations of coverages to be added to or removed from the list shall not be subject to the administrative procedure act but prior to making determinations the commissioner shall provide opportunity for comment from interested parties.

History: *1981 c 221 s 6; 1992 c 564 art 1 s 21*

60A.202 PLACEMENT OF INSURANCE BY LICENSEE.

Subdivision 1. **Restriction.** Only a surplus lines licensee shall issue evidence of placement of insurance with an eligible or ineligible surplus lines insurer.

Subd. 2. **Written communication of coverage to be delivered.** A licensee shall, within seven working days after the date on which the risk was bound or the insured or applicant was advised that coverage has been or will be obtained, deliver to the insured or the insured's representative a policy, a written binder, a certificate or other written evidence of insurance placed with an eligible or ineligible surplus lines insurer.

Subd. 3. **Contents of written communication.** The written communication showing that insurance has been obtained shall identify all known surplus lines insurers directly assuming any risk of loss. If there is more than one surplus lines insurer, any document issued or certified by the licensee pursuant to subdivision 2 shall specify, to the extent known by the licensee, whether the obligation is joint or several, and if the obligation is several, the proportion of the obligation assumed by each insurer.

History: *1981 c 221 s 7*

60A.203 FILING REQUIREMENTS.

Each surplus lines licensee shall keep a separate account of each transaction entered into pursuant to sections 60A.195 to 60A.209. Evidence of these transactions shall be documented in the form and manner designated by the commissioner and retained by the licensee

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for a minimum of five years. The forms must be readily available for review and audit by the commissioner.

History: *1981 c 221 s 8; 1992 c 564 art 1 s 22*

60A.204 ADDITIONAL CHARGES AND FEES.

Subdivision 1. **Placement fees.** A surplus lines licensee may charge, in addition to the premium charged by an eligible or ineligible surplus lines insurer, a fee to cover the cost incurred in the placement of the policy which exceeds $25, but only to the extent that the actual additional cost incurred for services performed by persons or entities unrelated to the licensee exceeds that amount.

Subd. 2. **Regulation of fees.** A fee charged pursuant to subdivision 1 shall not be excessive or discriminatory. The licensee shall maintain complete documentation of all fees charged. Those fees shall not be included as part of the premium for purposes of the computation of the premium taxes.

Subd. 3. **Commission charges.** Notwithstanding the provisions of subdivision 1, a licensee may add a commission charge if the insurer quotes a rate net of commission and the commission is not excessive or discriminatory.

History: *1981 c 221 s 9*

60A.205 COMPENSATION.

Subdivision 1. **Authorization.** A surplus lines licensee may be compensated by an eligible surplus lines insurer and the licensee may compensate a licensed resident agent in this state for obtaining surplus lines insurance business. A licensed resident agent authorized by the licensee may collect a premium on behalf of the licensee, and as between the insured and the licensee, the licensee shall be considered to have received the premium if the premium payment has been made to the agent.

Subd. 2. **Consequences of receipt.** If an eligible surplus lines insurer has assumed a risk, and if the premium for that risk has been received by the licensee who placed the insurance, then as between the insurer and the insured, the insurer shall be considered to have received the premium due to it for the coverage and shall be liable to the insured for any loss covered by the insurance and for the unearned premium upon cancellation of the insurance, regardless of whether the licensee is indebted to the insurer.

History: *1981 c 221 s 10*

60A.206 QUALIFICATION AS ELIGIBLE SURPLUS LINES INSURER.

Subdivision 1. **Insurers to be recognized by the commissioner.** A surplus lines licensee shall place surplus lines insurance only with insurers which are in a stable and unimpaired financial condition. An insurer recognized by the commissioner as an eligible surplus lines insurer pursuant to subdivision 2 shall be considered to meet the requirements of this subdivision. Recognition as an eligible surplus lines insurer shall be conditioned upon the insurers continued compliance with sections 60A.195 to 60A.209.

Subd. 2. **Application for recognition.** An insurer not otherwise licensed to engage in the business of insurance in Minnesota may apply for recognition as an eligible surplus lines insurer by filing an application in the form and with the information as reasonably required by the commissioner regarding the insurer's financial stability, reputation, integrity and operating plans, accompanied by a license fee of $500. The commissioner may delegate to an association the power to process and make recommendations on applications for recognition as an eligible surplus lines insurer. Notwithstanding delegation by the commissioner, an applicant may file an application directly with the commissioner.

Subd. 3. **Standards to be met by insurers.** (a) The commissioner shall recognize the insurer as an eligible surplus lines insurer when satisfied that the insurer is in a stable, unimpaired financial condition and that the insurer is qualified to provide coverage in compliance with sections 60A.195 to 60A.209. If filed with full supporting documentation before July 1 of any year, applications submitted under subdivision 2 shall be acted upon by the commissioner before December 31 of the year of submission.

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(b) The commissioner shall not authorize an insurer as an eligible surplus lines insurer unless the insurer continuously maintains capital and surplus of at least $3,000,000 and transaction of business by the insurer is not hazardous, financially or otherwise, to its policyholders, its creditors, or the public. Each alien surplus lines insurer shall have current financial data filed with the National Association of Insurance Commissioners Nonadmitted Insurers Information Office.

(c) Eligible surplus lines insurers domiciled within the United States shall file an annual statement and an annual financial audit, under the terms and conditions of section 60A.13, subdivisions 1, 3a, and 6, and are subject to the penalties of section 72A.061, and are subject to section 60A.03, subdivision 5, in regard to those requirements. The commissioner also has the powers provided in section 60A.13, subdivision 2, in regard to eligible surplus lines insurers.

(d) Eligible surplus lines insurers domiciled outside the United States shall file an annual statement on the standard nonadmitted insurers information office financial reporting format as prescribed by the National Association of Insurance Commissioners and an annual financial audit performed by an independent accounting firm.

Subd. 4. **Removal of insurers.** When the commissioner considers it necessary, the commissioner may request information about or examine the affairs of any eligible surplus lines insurer at the expense of the insurer, to determine whether the insurer should continue to remain on the list of eligible surplus lines insurers. If the commissioner determines that it is in the public interest to remove an insurer from the list because the insurer no longer meets the requirements of sections 60A.195 to 60A.209, or is no longer qualified to provide coverage under sections 60A.195 to 60A.209, the commissioner shall do so. If an insurer removed from the list desires a hearing pursuant to the administrative procedure act, the hearing shall be scheduled within 30 days following request for the hearing.

Subd. 5. **Trust fund to be maintained.** Before recognition as an eligible surplus lines insurer in this state, an alien insurer shall maintain a trust fund in the United States in cash, marketable securities, or other substantially equivalent instruments of at least $1,500,000 with a United States bank which is a member of the Federal Reserve System or which is on deposit with regulatory authorities in this or another state for the benefit of all United States policyholders and beneficiaries. A trust fund required under this subdivision shall not have an expiration date which is at any time less than five years in the future, on a continuing basis.

Subd. 6. **Alternative means of compliance.** Subdivisions 3 and 5 shall not apply to a group including incorporated and unincorporated, individual alien insurers which, in place of the requirements prescribed in subdivisions 3 and 5, maintain assets as provided in subdivision 3 and hold in trust for all policyholders and beneficiaries in the United States not less than $50,000,000 in the aggregate. The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and must be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members.

Subd. 7. **Appointment of agent for service of process.** Each eligible surplus lines insurer shall appoint the commissioner as its resident agent, for purposes of service of process.

History: *1981 c 221 s 11; 1986 c 444; 1987 c 358 s 95; 1992 c 564 art 1 s 23; 1994 c 426 s 8; 1994 c 485 s 11*

60A.207 POLICIES TO INCLUDE NOTICE.

Each policy, cover note, or instrument evidencing surplus lines insurance from an eligible surplus lines insurer which is delivered to an insured or a representative of an insured shall have printed, typed, or stamped in red ink upon its face in not less than 10 point type, the following notice: "THIS INSURANCE IS ISSUED PURSUANT TO THE MINNESOTA SURPLUS LINES INSURANCE ACT. THE INSURER IS AN ELIGIBLE SURPLUS LINES INSURER BUT IS NOT OTHERWISE LICENSED BY THE STATE OF MINNESOTA. IN CASE OF INSOLVENCY, PAYMENT OF CLAIMS IS NOT GUARANTEED." This notice shall not be covered or concealed in any manner.

History: *1981 c 221 s 12*

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60A.208 LICENSEE ASSOCIATION.

Subdivision 1. **Licensee's right to associate.** Surplus lines licensees may associate and the commissioner may register the association for one or more of the following purposes:

(a) Advising the commissioner as to the availability of surplus lines coverage and market practices and standards for surplus lines insurers and licensees;

(b) Collecting and furnishing records and statistics; or

(c) Submitting recommendations regarding administration of sections 60A.195 to 60A.209.

Subd. 2. **Filing requirements.** (a) Each association shall file with the commissioner for approval all of the following:

(1) A copy of the association's constitution and articles of agreement or association, or the association's certificate of incorporation and bylaws and any rules governing the association's activities; and

(2) An agreement that, as a condition of continued registration under subdivision 1, the commissioner may examine the association.

(b) Each association shall file with the commissioner and keep current all of the following:

(1) A list of members; and

(2) The name and address of a resident of this state upon whom notices or orders of the commissioner or process issued by the commissioner may be served.

Subd. 3. **Commissioner's powers; suspension of registration.** The commissioner may refuse to register, or may suspend or revoke the registration of an association for any of the following reasons:

(a) It reasonably appears that the association will not be able to carry out the purposes of sections 60A.195 to 60A.209;

(b) The association fails to maintain and enforce rules which will assure that members of the association and persons associated with those members comply with sections 60A.195 to 60A.209, other applicable chapters of the insurance laws and rules promulgated under either;

(c) The rules of the association do not assure a fair representation of its members in the selection of directors and in the administration of its affairs;

(d) The rules of the association do not provide for an equitable allocation of reasonable dues, fees, and other charges among members;

(e) The rules of the association impose a burden on competition; or

(f) The association fails to meet other applicable requirements prescribed in sections 60A.195 to 60A.209.

Subd. 4. **Membership limited to licensees.** An association shall deny membership to any person who is not a licensee.

Subd. 5. **Association is voluntary.** No licensee may be compelled to join an association as a condition of receiving a license or continuing to be licensed under sections 60A.195 to 60A.209.

Subd. 6. **Financial statement to be filed.** Each association shall annually file a certified audited financial statement.

Subd. 7. **Reports and recommendations by the association.** An association may submit reports and make recommendations to the commissioner regarding the financial condition of any eligible surplus lines insurer. These reports and recommendations shall not be considered to be public information. There shall not be liability on the part of, or a cause of action of any nature shall not arise against, eligible surplus lines insurers, the association or its agents or employees, the directors, or the commissioner or authorized representatives of the commissioner, for statements made by them in any reports or recommendations made under this subdivision.

Subd. 8. **Operating assessment.** (a) Upon request from the association, the commissioner may approve the levy of an assessment of not more than one-half of one percent of premiums charged pursuant to sections 60A.195 to 60A.209 for operation of the association

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to the extent that the operation relieves the commissioner of duties otherwise required of the commissioner pursuant to sections 60A.195 to 60A.209. Any assessment so approved may be subtracted from the premium tax owed by the licensee.

(b) The association may revoke the membership and the commissioner may revoke the license in this state, of any licensee who fails to pay an assessment when due, if the assessment has been approved by the commissioner.

History: *1981 c 221 s 13*

60A.209 INSURANCE PROCURED FROM INELIGIBLE INSURERS.

Subdivision 1. **Authorization; regulation.** A resident of this state may obtain insurance from an ineligible surplus lines insurer in this state through a surplus lines licensee. The licensee shall first attempt to place the insurance with a licensed insurer, or if that is not possible, with an eligible surplus lines insurer. If coverage is not obtainable from a licensed insurer or an eligible surplus lines insurer, the licensee shall certify to the commissioner, on a form prescribed by the commissioner, that these attempts were made. Upon obtaining coverage from an ineligible surplus lines insurer, the licensee shall:

(a) Have printed, typed, or stamped in red ink upon the face of the policy in not less than 10–point type the following notice: "THIS INSURANCE IS ISSUED PURSUANT TO THE MINNESOTA SURPLUS LINES INSURANCE ACT. THIS INSURANCE IS PLACED WITH AN INSURER THAT IS NOT LICENSED BY THE STATE NOR RECOGNIZED BY THE COMMISSIONER OF COMMERCE AS AN ELIGIBLE SURPLUS LINES INSURER. IN CASE OF ANY DISPUTE RELATIVE TO THE TERMS OR CONDITIONS OF THE POLICY OR THE PRACTICES OF THE INSURER, THE COMMISSIONER OF COMMERCE WILL NOT BE ABLE TO ASSIST IN THE DISPUTE. IN CASE OF INSOLVENCY, PAYMENT OF CLAIMS IS NOT GUARANTEED." The notice may not be covered or concealed in any manner; and

(b) Collect from the insured appropriate premium taxes and report the transaction to the commissioner of revenue on a form prescribed by the commissioner. If the insured fails to pay the taxes when due, the insured shall be subject to a civil fine of not more than $3,000, plus accrued interest from the inception of the insurance.

Subd. 2. **Penalty.** Except as provided in this section, a person who assists or in any manner aids directly or indirectly in the procurement of insurance from an ineligible surplus lines insurer in this state is guilty of a misdemeanor, punishable by imprisonment for not more than one year, or by a fine of not more than $1,000, or both.

Subd. 3. **Duty to report.** Each insured in this state who procures, causes to be procured, or continues or renews insurance with an ineligible surplus lines insurer or any self–insurer in this state who procures or continues excess of loss, catastrophe, or other insurance upon a subject of insurance resident, located, or to be performed within this state, other than insurance procured pursuant to section 60A.201 or subdivision 1 shall file a written report regarding the insurance with the commissioner of revenue on forms prescribed by the commissioner of revenue and furnished to the insured upon request. The report shall be filed within 30 days after the date the insurance was procured, continued, or renewed and shall be accompanied by the tax on the premiums of two percent. The report shall show all of the following:

(a) The name and address of the insured;

(b) The name and address of the insurer;

(c) The subject of the insurance;

(d) A general description of the coverage;

(e) The amount of premium currently charged for the insurance; and

(f) Any additional pertinent information reasonably requested by the commissioner of revenue.

Subd. 4. **Allocation of premiums according to location of subject matter.** If the insurance described in subdivision 1 also covers a subject of insurance residing, located, or to be performed outside this state, for the purposes of this section, a proper pro rata portion of the entire premium payable for all of that insurance shall be allocated according to the subjects of insurance residing, located, or to be performed in this state.

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Subd. 5. **Acts constituting procurement of insurance in the state.** Any insurance placed with an ineligible surplus lines insurer procured through negotiations or an application in whole or in part occurring or made within or from without this state, or for which premiums in whole or in part are remitted directly or indirectly from within this state, shall be considered to be insurance procured, continued, or renewed in this state under subdivision 3.

Subd. 6. **Ineligible surplus lines insurers; liability on policies or contracts.** Except with respect to placement pursuant to section 60A.198, subdivision 4, if an ineligible insurer offering benefits under a written contract which constitutes the transaction of insurance or which offers benefits substantially similar to benefits under policies of insurance, whether or not the benefits are identified or described as insurance, fails to pay a claim or loss within the provision of the contract, any person who assisted or aided, directly or indirectly, in the procurement of the contract shall be liable to the person to whom the obligations are owed for the full amount of the claim or loss, in the manner provided by the contract.

History: *1981 c 221 s 14; 1983 c 289 s 114 subd 1; 1984 c 628 art 3 s 11; 1984 c 655 art 1 s 92; 1987 c 268 art 2 s 11,12*

60A.2095 CONSTRUCTION.

Nothing in sections 60A.195 to 60A.209 shall be construed to permit the state to impose requirements beyond those granted by the Liability Risk Retention Act, Public Law Number 99–563.

History: *1987 c 337 s 13*

60A.21 UNAUTHORIZED INSURERS PROCESS ACT.

Subdivision 1. **Purpose.** The purpose of the unauthorized insurers process act is to subject certain insurers to the jurisdiction of courts of this state in suits by or on behalf of insureds or beneficiaries under insurance contracts.

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 while not authorized to do business in this state, thus presenting to such residents the often insuperable obstacle of resorting to distant forums for the purpose of asserting legal rights under such policies. 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 to define for the purpose of this statute what constitutes doing business in this state 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.

Subd. 2. **Service of process upon unauthorized insurer.** (1) Any of the following acts in this state effected by mail or otherwise by an unauthorized foreign or alien insurer: (a) the issuance or delivery of contracts of insurance to residents of this state or to corporations authorized to do business therein; (b) the solicitation of applications for such contracts; (c) the collection of premiums, membership fees, assessments, or other considerations for such contracts; or (d) any other transaction of insurance business, is equivalent to and shall constitute an appointment by such insurer of the commissioner of commerce and the commissioner's successor or successors in office to be its true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such contract of insurance and any such act shall be signification of its agreement that such service of process is of the same legal force and validity as personal service of process in this state upon such insurer.

(2) Such service of process shall be made in compliance with section 45.028, subdivision 2.

(3) Service of process in any such action, suit, or proceeding shall in addition to the manner provided in clause (2) of this subdivision be valid if served upon any person within this state who, in this state on behalf of such insurer, is: (a) soliciting insurance, or (b) making, issuing, or delivering any contract of insurance, or (c) collecting or receiving any premium, membership fee, assessment, or other consideration for insurance; and if a copy of

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such process is sent within ten days thereafter by certified mail by the plaintiff or plaintiff's attorney 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 and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the administrator of the court in which such action is pending on or before the date the defendant is required to appear or within such further time as the court may allow.

(4) No plaintiff or complainant shall be entitled to a judgment by default under this subdivision until the expiration of 30 days from the date of the filing of the affidavit of compliance.

(5) Nothing in this subdivision contained shall limit or abridge the right to serve any process, notice, or demand upon any insurer in any other manner now or hereafter permitted by law.

(6) The provisions of this section shall not apply to surplus line insurance lawfully effectuated under Minnesota law, or to reinsurance, nor to any action or proceeding against an unauthorized insurer arising out of:

(a) Wet marine and transportation insurance;

(b) Insurance on or with respect to subjects located, resident, or to be performed wholly outside this state, or on or with respect to vehicles or aircraft owned and principally garaged outside this state;

(c) Insurance on property or operations of railroads engaged in interstate commerce; or

(d) Insurance on aircraft or cargo of such aircraft, or against liability, other than employer's liability, arising out of the ownership, maintenance, or use of such aircraft, where the policy or contract contains a provision designating the commissioner as its attorney for the acceptance of service of lawful process in any action or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such policy, or where the insurer enters a general appearance in any such action.

Subd. 3. **Defense of action by unauthorized insurer.** (1) Before any unauthorized foreign or alien insurer shall file or cause to be filed any pleading in any action, suit, or proceeding instituted against it such unauthorized insurer shall: (a) Deposit with the administrator of the court in which such action, suit, or proceeding is pending cash or securities or file with such administrator a bond with good and sufficient sureties to be approved by the court in an amount to be fixed by the court sufficient to secure the payment of any final judgment which may be rendered in such action; or (b) procure a certificate of authority to transact the business of insurance in this state.

(2) The court in any action, suit, or proceeding in which service is made in the manner provided in clauses (2) or (3) of subdivision 2 hereof, may, in its discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of clause (1) of this subdivision and to defend such action.

(3) Nothing in clause (1) is to be construed to prevent an unauthorized foreign or alien insurer from filing a motion to quash a writ or to set aside service thereof made in the manner provided in clauses (2) and (3) of subdivision 2 hereof on the ground either (a) that such unauthorized insurer has not done any of the acts enumerated in clause (1) of subdivision 2 hereof, or (b) that the person on whom service was made pursuant to clause (3) of subdivision 2 hereof, was not doing any of the acts therein enumerated.

Subd. 4. **Attorney fees and judgment.** In any action hereunder against an unauthorized foreign or alien insurer upon a contract of insurance issued or delivered in this state to a resident thereof or to a corporation authorized to do business therein, if the insurer has failed for 30 days after demand prior to the commencement of the action to make payment in accordance with the terms of the contract and it appears to the court that such refusal was vexatious and without reasonable cause, the court may allow to the plaintiff a reasonable attorney fee and include such fee in any judgment that may be rendered in such action. Failure of an insurer to defend any such action shall be deemed prima facie evidence that its failure to make payment was vexatious and without reasonable cause.

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Subd. 5. **Constitutionality.** If any provision of this section or the application thereof to any person or circumstances is held invalid such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application and to this end the provisions of this section are declared to be severable.

Subd. 6. **Citation.** This section may be cited as the unauthorized insurers process act.

History: *1967 c 395 art 1 s 21; 1978 c 674 s 60; 1983 c 289 s 114 subd 1; 1984 c 592 s 42; 1984 c 655 art 1 s 92; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1992 c 564 art 2 s 4; 1994 c 485 s 12; 1994 c 632 art 4 s 26*

60A.22 SPECIAL PROVISIONS AS TO STOCK COMPANIES; STOCKHOLDERS, OFFICERS, DIRECTORS AND INVESTORS.

Subdivision 1. **Shareholders' rights.** (1) If an insurance corporation has given notice to shareholders of a proposal to amend the articles of incorporation, which proposed amendment would substantially change the corporate purposes or would extend the duration of the corporation, a shareholder may, at any time prior to the date of the meeting at which such proposed amendment is to be voted upon, file a written objection to such amendment in the office of the secretary or president of the corporation and demand payment for shares held; provided, that such demand shall be of no force and effect if such shareholder votes in favor of the amendment, or at any time consents thereto in writing, or if the proposed amendment be not in fact effected.

(2) If, after such a demand by a shareholder, the corporation and the shareholder cannot agree upon the fair cash value of the shares at the time such amendment was authorized, such value shall be determined by three disinterested appraisers, one of whom shall be named by the shareholder, another by the corporation, and the third by the two thus chosen. The determination of a majority of the appraisers in good faith made shall be final, and if the amount so determined is not paid by the corporation within 30 days after it is made, such amount may be recovered in an action by the shareholder against the corporation. The corporation shall not be required to make payment of such amount except upon transfer to it of the shares for which such payment was demanded and upon surrender of the certificate or certificates evidencing the same.

(3) A shareholder shall not be entitled to payment for shares under the provisions of this subdivision unless the value of the corporate assets which would remain after such payment would be at least equal to the aggregate amount of its debts and liabilities exclusive of stated capital.

Subd. 2. **Transactions of principal stockholders, directors, and officers in equity securities.** (1) Every person who is directly or indirectly the beneficial owner of more than ten percent of any class of any equity security of a domestic stock insurance company, or who is a director or an officer of such company, shall file in the office of the commissioner of commerce on or before January 31, 1966, or within ten days after becoming such beneficial owner, director, or officer, a statement, in such form as the commissioner of commerce may prescribe, of the amount of all equity securities of such company of which that person is the beneficial owner, and within ten days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file in the office of the commissioner of commerce a statement, in such form as the commissioner of commerce may prescribe, indicating ownership at the close of the calendar month and such changes in ownership as may have occurred during such calendar month.

(2) For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of that person's relationship to such company, any profit realized by that person from any purchase and sale, or any sale and purchase, of any equity security of such company within any period of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the company, irrespective of any intention on the part of such beneficial owner, director, or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the company, or by the owner of any security of the company in the

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name and in behalf of the company if the company shall fail or refuse to bring such suit within 60 days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than two years after the date such profit was realized. This clause shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the commissioner of commerce by rules may exempt as not comprehended within the purpose of this clause.

(3) It shall be unlawful for any such beneficial owner, director, or officer, directly or indirectly, to sell any equity security of such company if the person selling the security or that person's principal (a) does not own the security sold, or (b) if owning the security, does not deliver it against such sale within 20 days thereafter, or does not within five days after such sale deposit it in the mails or other usual channels of transportation; but no person shall be deemed to have violated this clause on proving, notwithstanding the exercise of good faith, the inability to make such delivery or deposit within such time, or without causing undue inconvenience or expense.

(4) The provisions of clause (2) shall not apply to any purchase and sale, or sale and purchase, and the provisions of clause (3) shall not apply to any sale, of any equity security of a domestic stock insurance company not then or theretofore held by the person in an investment account, by a dealer in the ordinary course of business and incident to the establishment or maintenance by the person of a primary or secondary market, otherwise than on an exchange as defined in the federal Securities Exchange Act of 1934, for such security. The commissioner of commerce may, by such rules as the commissioner deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

(5) The provisions of this subdivision shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules as the commissioner of commerce may adopt in order to carry out the purposes of this subdivision.

Subd. 3. **Regulation of proxies, consents and authorizations.** (1) It shall be unlawful for any person, in contravention of such rules as the commissioner of commerce may prescribe as necessary or appropriate in the public interest or for the protection of investors, to solicit or to permit the use of that person's name to solicit any proxy or consent or authorization in respect of any equity security of a domestic stock insurance company.

(2) Unless proxies, consents, or authorizations in respect of an equity security of a domestic stock insurance company are solicited by or on behalf of the management of such company from the holders of record of such security in accordance with the rules prescribed under clause (1), prior to any annual or other meeting of the holders of such security, such company shall, in accordance with such rules as the commissioner of commerce may prescribe as necessary or appropriate in the public interest or for the protection of investors, if required thereby, file with the commissioner of commerce and transmit to all holders of record of such security information substantially equivalent to the information which would be required to be transmitted if a solicitation were made.

Subd. 4. **Securities excepted.** The provisions of subdivisions 2 and 3 hereof shall not apply to equity securities of a domestic stock insurance company if (a) any equity security of such company shall be registered, or shall be required to be registered, pursuant to section 12 of the federal Securities Exchange Act of 1934, or if (b) such company shall not have equity securities held of record by 100 or more persons on the last day of the year next preceding the year in which the provisions of subdivisions 2 and 3 hereof would apply except for the provisions of this clause (b).

Subd. 5. **Rules.** The commissioner of commerce shall have the power to make such rules as may be necessary for the execution of the functions vested in the commissioner by subdivisions 2 and 3 hereof, and may for such purpose classify domestic stock insurance companies, securities, and other persons or matters within the commissioner's jurisdiction. No provision of subdivisions 2 and 3 hereof imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule of the commissioner of commerce, not-

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withstanding that such rule may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

Subd. 6. **Definitions.** (1) The term "equity security" when used in this section means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the commissioner of commerce shall deem to be of similar nature and consider necessary or appropriate, by such rules as the commissioner may prescribe in the public interest or for the protection of investors, to treat as an equity security.

(2) The term "domestic stock insurance company" when used in this section includes a domestic stock and mutual insurance company as defined in sections 61A.33 to 61A.38.

History: *1967 c 395 art 1 s 22; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1985 c 248 s 70; 1986 c 444*

60A.23 MISCELLANEOUS.

Subdivision 1. **Liability of directors and officers generally.** If a company be at any time under liability for losses exceeding its net assets, and the president and directors, or any of them, knowing it, directly or indirectly, issue or consent to the issue of further insurance, each shall be personally liable for any loss under this insurance; and if any of them insures or allows to be insured on a single risk a larger sum than is authorized by law, that person shall be personally liable for any loss thereon above the amount which might lawfully be insured.

Subd. 2. **Liability of directors and officers of mutual company.** No director or other officer of any mutual company shall, officially or privately, guarantee a policyholder thereof against an assessment to which the policyholder would otherwise be liable. When the directors of any mutual company fail for 30 days after entry of any judgment, or for six months after the accruing of any other indebtedness against it, to levy and deliver for collection any assessment required by law for payment thereof, or to apply the proceeds thereof in either case, each shall be personally liable for the amount thereof, and for all debts and claims then outstanding or which may accrue until the assessment shall be levied and put in process of collection. When the treasurer unreasonably fails to collect and properly apply the proceeds of any such assessment the treasurer shall be personally liable, not exceeding the total assessment, to any person entitled thereto, and shall be repaid only out of funds thereafter collected thereon.

Subd. 3. **Conflict of interest and compensation in mutual fire company.** No officer or other person employed to determine the character of a risk, and decide the question of its acceptance by any mutual fire company other than a town or farmers company, shall receive a commission or other payment therefrom, but that person's compensation shall be by fixed salary and such share, if any, of the net profits as the directors may determine; and such officer or person shall not be an employee of any other officer or agent of the company, nor interested in the officer's or agent's business.

Subd. 4. **Dividends; limitations.** Domestic stock companies shall follow the dividend limitation and reporting requirements set forth in chapter 60D.

Subd. 5. **Provisions as to fidelity and surety companies.** (1) **Requirements and acceptability.** No company for guaranteeing the fidelity of persons in fiduciary positions, public or private, or for acting as surety, shall transact any business in this state until it shall have satisfied the commissioner that it has complied with all the provisions of law and obtained the commissioner's certificate to that effect. Thereupon it shall be authorized to execute as sole or joint surety any bond, undertaking, or recognizance which, by any municipal or other law, or by the rules or regulations of any municipal or other board, body, organization, or officer, is required or permitted to be made, given, tendered, or filed for the security or protection of any person, corporation, or municipality, or any department thereof, or of any other organization, conditioned for the doing or omitting of anything in such bond or other instrument specified or provided; and any and all courts, judges, officers, and heads of departments, boards, and municipalities required or permitted to accept or approve of the sufficiency of any such bond or instrument may in their discretion accept the same when executed, or the conditions thereof guaranteed solely or jointly by any such company, and the same shall be in all re-

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spects full compliance with every law or other provisions for the execution or guaranty by one surety or by two or more sureties, or that sureties shall be residents or householders, or freeholders, or all or either.

(2) **Limits of risk.** No fidelity or surety company shall insure or reinsure in a single risk, less any portion thereof reinsured, a larger sum than one-tenth of its net assets.

Subd. 6. **Company's principal place of business to be designated.** When a company establishes any agency in a place other than that of its principal place of business, all signs, cards, pamphlets, or other printed matter issued shall designate such principal place.

Subd. 7. [Repealed, 1989 c 330 s 37]

Subd. 8. **Self-insurance or insurance plan administrators who are vendors of risk management services.** (1) **Scope.** This subdivision applies to any vendor of risk management services and to any entity which administers, for compensation, a self-insurance or insurance plan. This subdivision does not apply (a) to an insurance company authorized to transact insurance in this state, as defined by section 60A.06, subdivision 1, clauses (4) and (5); (b) to a service plan corporation, as defined by section 62C.02, subdivision 6; (c) to a health maintenance organization, as defined by section 62D.02, subdivision 4; (d) to an employer directly operating a self-insurance plan for its employees' benefits; (e) to an entity which administers a program of health benefits established pursuant to a collective bargaining agreement between an employer, or group or association of employers, and a union or unions; or (f) to an entity which administers a self-insurance or insurance plan if a licensed Minnesota insurer is providing insurance to the plan and if the licensed insurer has appointed the entity administering the plan as one of its licensed agents within this state.

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

(a) "Administering a self-insurance or insurance plan" means (i) processing, reviewing or paying claims, (ii) establishing or operating funds and accounts, or (iii) otherwise providing necessary administrative services in connection with the operation of a self-insurance or insurance plan.

(b) "Employer" means an employer, as defined by section 62E.02, subdivision 2.

(c) "Entity" means any association, corporation, partnership, sole proprietorship, trust, or other business entity engaged in or transacting business in this state.

(d) "Self-insurance or insurance plan" means a plan providing life, medical or hospital care, accident, sickness or disability insurance for the benefit of employees or members of an association, or a plan providing liability coverage for any other risk or hazard, which is or is not directly insured or provided by a licensed insurer, service plan corporation, or health maintenance organization.

(e) "Vendor of risk management services" means an entity providing for compensation actuarial, financial management, accounting, legal or other services for the purpose of designing and establishing a self-insurance or insurance plan for an employer.

(3) **License.** No vendor of risk management services or entity administering a self-insurance or insurance plan may transact this business in this state unless it is licensed to do so by the commissioner. An applicant for a license shall state in writing the type of activities it seeks authorization to engage in and the type of services it seeks authorization to provide. The license may be granted only when the commissioner is satisfied that the entity possesses the necessary organization, background, expertise, and financial integrity to supply the services sought to be offered. The commissioner may issue a license subject to restrictions or limitations upon the authorization, including the type of services which may be supplied or the activities which may be engaged in. The license fee is $100. All licenses are for a period of two years.

(4) **Regulatory restrictions; powers of the commissioner.** To assure that self-insurance or insurance plans are financially solvent, are administered in a fair and equitable fashion, and are processing claims and paying benefits in a prompt, fair, and honest manner, vendors of risk management services and entities administering insurance or self-insurance plans are subject to the supervision and examination by the commissioner. Vendors of risk management services, entities administering insurance or self-insurance plans, and insurance or self-insurance plans established or operated by them are subject to the trade practice

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requirements of sections 72A.19 to 72A.30. In lieu of an unlimited guarantee from a parent corporation for a vendor of risk management services or an entity administering insurance or self–insurance plans, the commissioner may accept a surety bond in a form satisfactory to the commissioner in an amount equal to 120 percent of the total amount of claims handled by the applicant in the prior year. If at any time the total amount of claims handled during a year exceeds the amount upon which the bond was calculated, the administrator shall immediately notify the commissioner. The commissioner may require that the bond be increased accordingly.

(5) **Rulemaking authority.** To carry out the purposes of this subdivision, the commissioner may adopt rules pursuant to sections 14.001 to 14.69. These rules may:

(a) establish reporting requirements for administrators of insurance or self–insurance plans;

(b) establish standards and guidelines to assure the adequacy of financing, reinsuring, and administration of insurance or self–insurance plans;

(c) establish bonding requirements or other provisions assuring the financial integrity of entities administering insurance or self–insurance plans; or

(d) establish other reasonable requirements to further the purposes of this subdivision.

History: *1967 c 395 art 1 s 23; Ex1967 c 1 s 6; 1969 c 497 s 1; 1975 c 145 s 1; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1978 c 465 s 8; 1980 c 528 s 1; 1Sp1981 c 4 art 2 s 44,45; 1982 c 424 s 130; 1983 c 154 s 1; 1983 c 289 s 114 subd 1; 1983 c 328 s 8; 1984 c 592 s 43; 1984 c 655 art 1 s 92; 1986 c 444; 1987 c 337 s 14; 1987 c 358 s 96; 1990 c 422 s 10; 1992 c 564 art 4 s 4; 1993 c 299 s 6; 1994 c 425 s 5; 1995 c 233 art 2 s 56; 1995 c 258 s 5*

60A.235 STANDARDS FOR DETERMINING WHETHER CONTRACTS ARE HEALTH PLAN CONTRACTS OR STOP LOSS CONTRACTS.

Subdivision 1. **Findings and purpose.** The purpose of this section is to establish a standard for the determination of whether an insurance policy or other evidence or coverage should be treated as a policy of accident and sickness insurance or a stop loss policy for the purpose of the regulation of the business of insurance. The laws regulating the business of insurance in Minnesota impose distinctly different requirements upon accident and sickness insurance policies and stop loss policies. In particular, the regulation of accident and sickness insurance in Minnesota includes measures designed to reform the health insurance market, to minimize or prohibit selective rating or rejection of employee groups or individual group members based upon health conditions, and to provide access to affordable health insurance coverage regardless of preexisting health conditions. The health care reform provisions enacted in Minnesota will only be effective if they are applied to all insurers and health carriers who in substance, regardless of purported form, engage in the business of issuing health insurance coverage to employees of an employee group. This section applies to insurance companies and health carriers and the policies or other evidence of coverage that they issue. This section does not apply to employers or the benefit plans they establish for their employees.

Subd. 2. **Definitions.** For purposes of this section, the terms defined in this subdivision have the meanings given.

(a) "Attachment point" means the claims amount beyond which the insurance company or health carrier incurs a liability for payment.

(b) "Direct coverage" means coverage under which an insurance company or health carrier assumes a direct obligation to an individual, under the policy or evidence of coverage, with respect to health care expenses incurred by the individual or a member of the individual's family.

(c) "Expected claims" means the amount of claims that, in the absence of a stop loss policy or other insurance or evidence of coverage, are projected to be incurred under an employer–sponsored plan covering health care expenses.

(d) "Expected plan claims" means the expected claims less the projected claims in excess of the specific attachment point, adjusted to be consistent with the employer's aggregate contract period.

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(e) "Health plan" means a health plan as defined in section 62A.011 and includes group coverage regardless of the size of the group.

(f) "Health carrier" means a health carrier as defined in section 62A.011.

Subd. 3. **Health plan policies issued as stop loss coverage.** (a) An insurance company or health carrier issuing or renewing an insurance policy or other evidence of coverage, that provides coverage to an employer for health care expenses incurred under an employer–sponsored plan provided to the employer's employees, retired employees, or their dependents, shall issue the policy or evidence of coverage as a health plan if the policy or evidence of coverage:

(1) has a specific attachment point for claims incurred per individual that is lower than $10,000; or

(2) has an aggregate attachment point that is lower than the sum of:

(i) 140 percent of the first $50,000 of expected plan claims;

(ii) 120 percent of the next $450,000 of expected plan claims; and

(iii) 110 percent of the remaining expected plan claims.

(b) Where the insurance policy or evidence of coverage applies to a contract period of more than one year, the dollar amounts set forth in paragraph (a), clauses (1) and (2), must be multiplied by the length of the contract period expressed in years.

(c) The commissioner may adjust the constant dollar amounts provided in paragraph (a), clauses (1) and (2), on January 1 of any year, based upon changes in the medical component of the Consumer Price Index (CPI). Adjustments must be in increments of $100 and must not be made unless at least that amount of adjustment is required. The commissioner shall publish any change in these dollar amounts at least three months before their effective date.

(d) A policy or evidence of coverage issued by an insurance company or health carrier that provides direct coverage of health care expenses of an individual including a policy or evidence of coverage administered on a group basis is a health plan regardless of whether the policy or evidence of coverage is denominated as stop loss coverage.

Subd. 4. **Compliance.** (a) An insurance company or health carrier that is required to issue a policy or evidence of coverage as a health plan under this section shall, even if the policy or evidence of coverage is denominated as stop loss coverage, comply with all the laws of this state that apply to the health plan, including, but not limited to, chapters 62A, 62C, 62D, 62E, 62L, and 62Q.

(b) With respect to an employer who had been issued a policy or evidence of coverage denominated as stop loss coverage before June 2, 1995, compliance with this section is required as of the first renewal date occurring on or after June 2, 1995.

History: *1995 c 258 s 6*

60A.236 STOP LOSS REGULATION.

A contract providing stop loss coverage, issued or renewed to a small employer, as defined in section 62L.02, subdivision 26, or to a plan sponsored by a small employer, must include a claim settlement period no less favorable to the small employer or plan than coverage of all claims incurred during the contract period regardless of when the claims are paid.

History: *1995 c 258 s 7*

60A.24 EXEMPTIONS FROM INSURANCE LAWS OF THIS STATE.

The following are exempt from all insurance laws of the state: All organizations listed in section 64B.38 of the laws relating to fraternal benefit societies.

History: *1967 c 395 art 1 s 24; 1985 c 49 s 41; 1992 c 564 art 1 s 54*

60A.25 INSOLVENT COMPANIES.

Subdivision 1. **Notification of policyholders.** Whenever any foreign or domestic insurance company authorized to transact the business of insurance in Minnesota is adjudicated insolvent, or whenever its policies are declared null and void by court order, the com-

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missioner of commerce shall ascertain the names and last known addresses of all Minnesota policyholders of said company, and shall notify all Minnesota policyholders within 30 days of such adjudication or court order. In the case of foreign insurers authorized to do business in this state, the commissioner of commerce may elect to notify all of the company's licensed agents in Minnesota with a directive that the agents notify all insureds of the company's insolvency or that its policies have been declared null and void.

Subd. 2. **Remittance of premiums.** Every agency contract written by an insurance company writing property and casualty insurance in Minnesota shall contain or be construed to contain the following provision: "Notwithstanding any other provision of this contract, the obligation of the agent to remit written premiums to the company shall be changed upon the commencement of any administrative or legal proceeding by any state against the carrier regarding its financial condition. After the commencement of the proceedings, the obligation of the agent to remit premiums shall be confined to the premiums earned before the commencement of the proceedings. The agent shall not owe or remit to the company or to the liquidator or receiver any premiums that are unearned as of the date of the commencement of the delinquency proceedings, and any unearned premiums in the possession of the agent on the date shall be returned promptly by the agent to the insured or, with the approval of the insured, be used to purchase new coverage for the insured with a different insurer."

History: *1967 c 368 s 1; 1971 c 527 s 1; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 455 s 7*

60A.26 SUSPENSION OF INSURERS; NOTIFICATIONS AND REPORTS.

Subdivision 1. **Other states.** The commissioner of commerce shall notify the insurance departments of all other states whenever, under any law then in effect, the commissioner suspends the right of a foreign or domestic insurer to transact business in this state.

Subd. 2. **NAIC.** The commissioner of commerce shall report public regulatory actions, investigative information, and complaints to the appropriate reporting system or database of the National Association of Insurance Commissioners.

History: *1967 c 369 s 1; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444; 1995 c 258 s 8*

60A.27 DISCIPLINE OF INSURER BY ANOTHER STATE; NOTICE TO COMMISSIONER.

Subdivision 1. An insurance company licensed to transact business in this state is hereby required to notify the commissioner of commerce within ten business days of the happening of any one or more of the following:

(1) the suspension or revocation of its right to transact business in another state;

(2) the receipt by the insurance company of an order to show why its license should not be suspended or revoked; or

(3) the imposition of a penalty by any other state for any violation of the insurance laws of such other state.

Subd. 2. Any insurance company which fails to notify the commissioner of commerce within the time period specified in subdivision 1 is subject to a penalty of not more than $500, or suspension, or both.

History: *1967 c 448 s 1,2; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1991 c 325 art 21 s 1*

60A.28 DOCUMENTS FILED WITH COMMISSIONER, VERIFICATION.

The commissioner of commerce may require that any document required by law to be filed with the commissioner, be accompanied by a sworn verification of its contents by a responsible officer of the corporation filing it. The commissioner shall prescribe the form of the verification by rule.

History: *1967 c 457 s 1; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444*

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60A.29 NONPROFIT RISK INDEMNIFICATION TRUST ACT.

Subdivision 1. **Title.** This section may be cited as the "nonprofit risk indemnification trust act."

Subd. 2. **Purpose.** The purpose of this section is to authorize the establishment of trust funds for the purpose of indemnifying nonprofit beneficiary organizations and their officers, directors, and agents for financial loss due to the imposition of legal liability or for damage or destruction of property, and to regulate the operation of trust funds established under this section.

Subd. 3. **Approval of commissioner.** No trust fund with the purpose of indemnifying multiple nonprofit beneficiary organizations shall be established without the prior approval of the commissioner of the department of commerce. The commissioner shall withhold approval of any trust fund that fails to comply with the provisions and requirements of this section.

Subd. 4. **Eligible beneficiaries.** No organization, corporation, agency, or program shall be a beneficiary of any trust fund established under this section unless it is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954, as amended through December 30, 1985. No trust fund established under this section shall agree to indemnify the state of Minnesota, any political subdivision of the state, or any hospital licensed pursuant to section 144.55. No trust fund established under this section shall indemnify any beneficiary for loss or damage to property permanently located outside the boundaries of this state or for legal liabilities arising from operations or activities occurring outside this state, except where those operations or activities are of a nonroutine nature; provided, however, that this restriction shall not apply to a beneficiary which is incorporated under the laws of this state and has its principal office located in this state.

Subd. 5. **Ineligible risks.** No trust fund established under this section shall indemnify any beneficiary for liabilities incurred under the workers' compensation act, or for benefits provided to employees pursuant to any medical, dental, life, or disability income protection plan.

Subd. 6. **Benefit schedules.** Every trust fund established under this section shall establish in its bylaws or plan of operation a schedule of benefits, to be approved by the commissioner, governing the indemnification of beneficiaries of the trust. The schedule of benefits shall include all conditions, limitations, and exclusions relevant to indemnification.

Subd. 7. **Indemnification agreements.** Every trust fund established under this section shall provide each of its beneficiaries with a written indemnification agreement specifying the rights and obligations of the trust fund and the beneficiary under the agreement. Each form of indemnification agreement shall be filed with and approved by the commissioner.

Subd. 8. **Contributions.** The trust fund shall establish contributions required of beneficiaries necessary to fund the operations of the fund. All contribution schedules shall be filed with and approved by the commissioner prior to use. Contributions must be based on sound actuarial principles and be adequate to fund the operation of the trust fund. Contributions may not be excessive, in relation to the benefits provided, or unfairly discriminatory.

Subd. 9. **Multiple trust agreements prohibited.** No trust fund established under this section shall enter into an agreement with any other trust fund whereby the risks assumed by each are pooled or shared.

Subd. 10. **Board of trustees.** Every trust fund established under this section shall be governed by a board of no fewer than five trustees. The initial trustees need not be appointed or elected by the beneficiaries of the trust fund. During the second year following the creation of an authorized trust fund, at least one–fourth of all its trustees in office shall have been elected or appointed by the beneficiaries. After the end of the second year following the creation of an authorized trust fund, a majority of all trustees in office shall have been elected or appointed by the beneficiaries. All trustees serving during the first two years following the creation of an authorized trust fund shall be elected or appointed for one–year terms. All trustees serving thereafter shall be elected or appointed for two–year terms, provided that the trustees may be elected or appointed for one–year terms to the extent necessary in order to create staggered terms. Any trustee may be removed at any time, with or without cause, by a

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majority vote of the beneficiaries. The board of trustees shall meet no fewer than four times each year.

Subd. 11. **Trustees; compensation.** No trustee shall be paid a salary or receive other compensation for service as a trustee, except that the bylaws or plan of operation may provide for reimbursement for actual expenses incurred on behalf of the trust fund and for the payment of a reasonable per diem amount for attendance at meetings of the board.

Subd. 12. **Bylaws; plan of operation.** The trustees of each trust fund authorized under this section shall cause to be adopted a set of bylaws or plan of operation which shall govern the operation of the trust fund. All bylaws or plans of operation or amendments to them are subject to prior approval by the commissioner. The commissioner shall adopt rules governing the content and approval of bylaws or plans of operation.

Subd. 13. **Financial statement; report on operations.** Every trust fund authorized under this section shall, by June 1 of every year, file with the commissioner a financial statement for the previous year's operations. The financial statement must include the opinion of a certified public accountant that the statement was prepared in conformity with generally accepted accounting principles. Also by June 1 of every year, every trust fund must file with the commissioner, on forms provided by the department, a report summarizing the trust fund's operations during the previous year.

Subd. 14. **Financial standards.** Every authorized trust fund shall have and maintain financial assets sufficient to satisfy all current and future financial obligations and responsibilities to beneficiaries. The commissioner shall adopt rules establishing minimum financial standards for authorized trust funds.

Subd. 15. **Contracts; fees.** Authorized trust funds may enter into contracts with risk management service providers, actuarial consultants, or other vendors as are necessary to ensure the effective and efficient operation of the trust fund. Fees paid to vendors for services provided must not be excessive.

Subd. 16. **Reinsurance.** Authorized trust funds may insure or reinsure their obligations and liabilities with:

(1) insurance companies authorized to do business in Minnesota, pursuant to section 60A.06;

(2) insurance companies similarly authorized in any other state of the United States;

(3) insurance companies not authorized in Minnesota or any other state if the unauthorized insurance company establishes reinsurance security in favor of the ceding trust fund conforming to the general rules for allowance of reinsurance credits stated in the Financial Condition Examiners Handbook adopted by the National Association of Insurance Commissioners; or

(4) other trust funds organized under this section or under similar laws of any other state if the reinsuring trust fund establishes reinsurance security as specified in clause (3) in favor of the ceding trust fund.

Subd. 17. **Interbeneficiary cause of action.** No beneficiary shall have any cause of action against any other beneficiary arising solely out of the insolvency or inability of the trust fund to meet its obligations.

Subd. 18. **Examination.** The commissioner may examine authorized trust funds to the same extent and with the same purpose as is provided, with respect to insurance companies, by section 60A.031.

Subd. 19. **Security deposit.** As a condition of authorization, every trust fund shall deposit with the commissioner an acceptable security of a value equal to not less than $500,000. In the event that a trust fund fails to honor the obligations assumed by it under trust agreements issued to its beneficiaries, use of the security deposit shall revert to the commissioner for the purpose of executing the trust fund's obligations to its beneficiaries. The commissioner shall adopt rules governing the amount of security required and the acceptable forms of security.

Subd. 20. **Rules.** The commissioner may adopt rules to enforce and administer the requirements of this section.

Subd. 21. **Trust funds not subject to insurance rules.** Trust funds established under this section shall not be considered insurance companies or to be in the business of insurance

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nor shall they be subject to regulation by the commissioner, except as provided for in this section.

Subd. 22. **Foreign trust funds.** A trust fund organized and existing under the laws of another state for the sole purpose of indemnifying nonprofit beneficiary organizations and their officers, directors, and agents for financial loss due to the imposition of legal liability or for damage or destruction of property, as provided in subdivisions 2 and 4, may apply to the commissioner for authority to operate within this state, provided that:

(1) the trust fund has been continuously in operation for a period of not less than five years prior to the date it applies for authorization under this subdivision, during which period it must have issued only nonassessable indemnification agreements to its beneficiaries, and during each of those years the trust fund received not less than $1,000,000 in contributions from beneficiaries for protections afforded by the trust fund;

(2) the trust fund has been authorized by and is subject to regulation and examination by the department of insurance of its domiciliary state;

(3) the trust fund must file with the commissioner its trust agreement, bylaws or plan of operation, schedule of benefits, forms of indemnification agreements, and contribution schedules applicable to beneficiaries in this state;

(4) the trust fund must be governed by a board of not fewer than five trustees, all of whom must be elected by the beneficiaries of the trust fund, and none of whom may receive compensation for service as a trustee;

(5) the trust fund has, as of the last day of the calendar year immediately prior to its application for authority, a net fund balance surplus of not less than $1,000,000, as evidenced by its financial statements certified by an independent certified public accountant in accordance with generally accepted accounting principles consistently applied; and

(6) the trust fund must, upon and at all times after authorization by the commissioner, maintain a registered office within this state.

Subd. 23. **Standards for authorization.** Within 60 days after receipt of the documents specified under subdivision 22 and supporting evidence which establishes compliance with the standards set forth under that subdivision, the commissioner shall grant to the trust fund a certificate of authority to conduct operations in this state. The operations in this state are subject to the limitations and standards set forth in subdivisions 4 to 22. In the event an authorized foreign trust fund violates one of those subdivisions or the rules of the commissioner applicable to foreign trust funds, the commissioner may suspend or revoke the certificate of authority.

Subd. 24. **Rules.** The commissioner may adopt rules to enforce and administer requirements of subdivisions 22 and 23.

History: *1985 c 248 s 70; 1986 c 455 s 8; 1987 c 337 s 15–20*

60A.30 MS 1992 [Renumbered 60A.351]

60A.31 MS 1992 [Renumbered 60A.352]

CROP HAIL INSURANCE RATE FILING

60A.32 RATE FILING FOR CROP HAIL INSURANCE.

An insurer issuing policies of insurance against crop damage by hail in this state shall file its insurance rates with the commissioner. The insurance rates must be filed before March 1 of the year in which a policy is issued.

History: *1988 c 688 art 9 s 1; 1995 c 24 s 1*

CANCELLATION AND RENEWAL OF COMMERCIAL LIABILITY AND/OR PROPERTY POLICIES

60A.35 SCOPE.

Except as specifically limited in section 60A.351, sections 60A.35 to 60A.38 apply to all commercial liability and/or property insurance policies issued by companies licensed to

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do business in this state except ocean marine insurance, accident and health insurance, excess insurance, surplus lines insurance, and reinsurance.

History: *1987 c 337 s 23; 1994 c 485 s 65*

60A.351 RENEWAL OF INSURANCE POLICY WITH ALTERED RATES.

If an insurance company licensed to do business in this state offers or purports to offer to renew any commercial liability and/or property insurance policy at less favorable terms as to the dollar amount of coverage or deductibles, higher rates, and/or higher rating plan, the new terms, the new rates and/or rating plan may take effect on the renewal date of the policy if the insurer has sent to the policyholder notice of the new terms, new rates and/or rating plan at least 60 days prior to the expiration date. If the insurer has not so notified the policyholder, the policyholder may elect to cancel the renewal policy within the 60–day period after receipt of the notice. Earned premium for the period of coverage, if any, shall be calculated pro rata upon the prior rate. This subdivision does not apply to ocean marine insurance, accident and health insurance, and reinsurance.

This section does not apply if the change relates to guide "a" rates or excess rates also known as "consent to rates."

History: *1986 c 455 s 58; 1987 c 337 s 21; 1994 c 485 s 65*

60A.352 WORKER'S COMPENSATION INSURANCE.

In addition to the requirements of Minnesota Statutes 1984, section 176.185, subdivision 1, a policy of insurance issued to cover the liability to pay compensation under Minnesota Statutes 1984, chapter 176, shall comply with sections 60A.35 to 60A.38.

History: *1986 c 455 s 59; 1987 c 337 s 22; 1994 c 485 s 65*

60A.36 MIDTERM CANCELLATION.

Subdivision 1. **Reason for cancellation.** No insurer may cancel a policy of commercial liability and/or property insurance during the term of the policy, except for one or more of the following reasons:

(1) nonpayment of premium;

(2) misrepresentation or fraud made by or with the knowledge of the insured in obtaining the policy or in pursuing a claim under the policy;

(3) actions by the insured that have substantially increased or substantially changed the risk insured;

(4) refusal of the insured to eliminate known conditions that increase the potential for loss after notification by the insurer that the condition must be removed;

(5) substantial change in the risk assumed, except to the extent that the insurer should reasonably have foreseen the change or contemplated the risk in writing the contract;

(6) loss of reinsurance by the insurer which provided coverage to the insurer for a significant amount of the underlying risk insured. A notice of cancellation under this clause shall advise the policyholder that the policyholder has ten days from the date of receipt of the notice to appeal the cancellation to the commissioner of commerce and that the commissioner will render a decision as to whether the cancellation is justified because of the loss of reinsurance within 30 business days after receipt of the appeal;

(7) a determination by the commissioner that the continuation of the policy could place the insurer in violation of the insurance laws of this state; or

(8) nonpayment of dues to an association or organization, other than an insurance association or organization, where payment of dues is a prerequisite to obtaining or continuing the insurance. This provision for cancellation for failure to pay dues does not apply to persons who are retired at 62 years of age or older or who are disabled according to social security standards.

Subd. 2. **Notice.** Cancellation under subdivision 1, clauses (2) to (8), shall not be effective before 60 days after notice to the policyholder. The notice of cancellation shall contain a specific reason for cancellation as provided in subdivision 1.

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A policy shall not be canceled for nonpayment of premium pursuant to subdivision 1, clause (1), unless the insurer, at least ten days before the effective cancellation date, has given notice to the policyholder of the amount of premium due and the due date. The notice shall state the effect of nonpayment by the due date. No cancellation for nonpayment of premium shall be effective if payment of the amount due is made before the effective date in the notice.

Subd. 3. **New policies.** Subdivisions 1 and 2 do not apply to any insurance policy that has not been previously renewed if the policy has been in effect less than 90 days at the time the notice of cancellation is mailed or delivered. No cancellation under this subdivision is effective until at least ten days after the written notice to the policyholder.

Subd. 4. **Longer term policies.** A policy may be issued for a term longer than one year or for an indefinite term with a clause providing for cancellation by the insurer for the reasons stated in subdivision 1 by giving notice as required by subdivision 2 at least 60 days before any anniversary date.

Subd. 5. **Rescission.** (a) No insurer may rescind or void a contract of liability or property insurance unless there was material misrepresentation, material omission, or fraud made by or with the knowledge of the insured in obtaining the contract or in pursuing a claim under the policy.

(b) No misrepresentation or omission shall be material unless knowledge by the insurer of the facts misrepresented or omitted would have led to a refusal by the insurer to make such a contract. In determining the question of materiality, evidence of the practice of the insurer with respect to the acceptance or rejection of similar risks shall be admissible.

(c) For purposes of this section, a representation is a statement as to past or present fact, made to an insurer or the insurer's agent by the applicant as an inducement for issuing a contract of commercial liability or property insurance. A misrepresentation is a false representation, and the facts misrepresented are those facts which make the representation false.

(d) This subdivision does not limit the right to cancel the policy prospectively for the reasons stated in subdivision 1, clause (2).

History: *1987 c 337 s 24; 1994 c 485 s 13; 1996 c 446 art 1 s 7*

60A.37 NONRENEWAL.

Subdivision 1. **Notice required.** At least 60 days before the date of expiration provided in the policy, a notice of intention not to renew the policy beyond the agreed expiration date must be made to the policyholder by the insurer. If the notice is not given at least 60 days before the date of expiration provided in the policy, the policy shall continue in force until 60 days after a notice of intent not to renew is received by the policyholder.

Subd. 2. **Exceptions.** This section does not apply if the policyholder has insured elsewhere, has accepted replacement coverage, or has requested or agreed to nonrenewal.

History: *1987 c 337 s 25*

60A.38 INTERPRETATION AND PENALTIES.

Subdivision 1. **Sections not exclusive.** Sections 60A.35 to 60A.38 are not exclusive, and the commissioner may also consider other provisions of Minnesota law to be applicable to the circumstances or situations addressed by sections 60A.35 to 60A.38. The rights provided by sections 60A.35 to 60A.38 are in addition to and do not prejudice any other rights the policyholder may have at common law, under statute, or rules.

Subd. 2. **Penalties.** A violation of any provisions of sections 60A.35 to 60A.38 shall be deemed to be an unfair trade practice in the business of insurance and shall subject the violator to the penalties provided by sections 72A.17 to 72A.32 in addition to any other penalty provided by law.

Subd. 3. **Notices required.** All notices required by sections 60A.35 to 60A.38 shall only be made by first class mail addressed to the policyholder's last known address or by delivery to the policyholder's last known address. Notice by first class mail is effective upon deposit in the United States mail. In addition to giving notice to the policyholder, the insurer must also give notice to the agent of record, if any, in the manner specified for the policyholder.

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Subd. 4. **Proof of mailing notice.** Unless otherwise specifically required, United States Postal Service proof of mailing of the notice of cancellation, reduction in the limits of liability of coverage, or nonrenewal of an insurance policy is sufficient proof the proper notice has been given.

History: *1987 c 337 s 26; 1990 c 475 s 1*

60A.40 [Repealed, 1996 c 446 art 1 s 72]

60A.41 SUBROGATION AGAINST INSUREDS PROHIBITED.

(a) An insurance company providing insurance coverage or its reinsurer for that underlying insurance coverage may not proceed against its insured in a subrogation action where the loss was caused by the nonintentional acts of the insured.

(b) An insurance company providing insurance coverage or its reinsurer for that underlying insurance coverage may not subrogate itself to the rights of its insured to proceed against another person if that other person is insured for the same loss, by the same company. This provision applies only if the loss was caused by the nonintentional acts of the person against whom subrogation is sought.

(c) This provision does not apply to or affect claims of a surety against its principal.

(d) Nothing in this section prevents an insurer from allocating the loss internally to the at–fault insured for purposes of underwriting, agency, and claims information.

History: *1989 c 201 s 1; 1990 c 399 s 1*

REGULATION OF RISK–BASED CAPITAL

60A.60 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 60A.60 to 60A.696, the terms defined in this section have the meanings given them.

Subd. 2. **Adjusted risk–based capital report.** "Adjusted risk–based capital report" means a risk–based capital report that has been adjusted by the commissioner according to section 60A.61, subdivision 5.

Subd. 3. **Corrective order.** "Corrective order" means an order issued by the commissioner specifying corrective actions that the commissioner has determined are required.

Subd. 4. **Domestic insurer.** "Domestic insurer" means an insurance company incorporated or organized in this state.

Subd. 5. **Foreign insurer.** "Foreign insurer" means an insurance company that is admitted to do business in this state under section 60A.19 but is not incorporated or organized in this state.

Subd. 6. **NAIC.** "NAIC" means the National Association of Insurance Commissioners.

Subd. 7. **Life and/or health insurer.** "Life and/or health insurer" means an insurance company authorized to transact business under section 60A.06, subdivision 1, clause (4), or a property and casualty insurer transacting business only under section 60A.06, subdivision 1, clause (5)(a).

Subd. 8. **Property and casualty insurer.** "Property and casualty insurer" means an insurance company authorized to transact business under section 60A.06, subdivision 1, clauses (1), (2), (3), (5), (6), (8), (9), (10), (11), (12), (13), (14), and (15), but does not include monoline mortgage guaranty insurers, and financial guaranty insurers.

Subd. 9. **Negative trend.** "Negative trend" means, with respect to a life and/or health insurer, negative trend over a period of time, as determined according to the "trend test calculation" included in the risk–based capital instructions.

Subd. 10. **Risk–based capital instructions.** "Risk–based instructions" means the risk–based capital report including risk–based capital instructions adopted by the NAIC, as those risk–based instructions may be amended by the NAIC from time to time according to the procedures adopted by the NAIC.

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Subd. 11. **Risk–based capital level.** "Risk–based capital level" means an insurer's company action level risk–based capital, regulatory action level risk–based capital, authorized control level risk–based capital, or mandatory control level risk–based capital where:

(1) "company action level risk–based capital" means, with respect to an insurer, the product of 2.0 and its authorized control level risk–based capital;

(2) "regulatory action level risk–based capital" means the product of 1.5 and its authorized control level risk–based capital;

(3) "authorized control level risk–based capital" means the number determined under the risk–based capital formula according to the risk–based capital instructions;

(4) "mandatory control level risk–based capital" means the product of .70 and the authorized control level risk–based capital.

Subd. 12. **Risk–based capital plan.** "Risk–based capital plan" means a comprehensive financial plan containing the elements specified in section 60A.62, subdivision 2. If the commissioner rejects the risk–based capital plan, and it is revised by the insurer, with or without the commissioner's recommendation, the plan must be called the "revised risk–based capital plan."

Subd. 13. **Risk–based capital report.** "Risk–based capital report" means the report required in section 60A.61.

Subd. 14. **Total adjusted capital.** "Total adjusted capital" means the sum of:

(1) an insurer's statutory capital and surplus as determined in accordance with statutory accounting applicable to the annual statement required to be filed under section 60A.13; and

(2) other items, if any, as the risk–based capital instructions may provide.

History: *1995 c 253 s 2*

60A.61 RISK–BASED CAPITAL REPORTS.

Subdivision 1. **General requirements.** Every domestic insurer shall, on or before each March 1, prepare and submit to the commissioner a report of its risk–based capital levels as of the end of the calendar year just ended, in a form and containing the information required by the risk–based capital instructions. In addition, every domestic insurer shall file its risk–based capital report:

(1) with the NAIC according to the risk–based capital instructions; and

(2) with the insurance commissioner in a state in which the insurer is authorized to do business, if the insurance commissioner has notified the insurer of its request in writing, in which case the insurer shall file its risk–based capital report not later than the later of:

(i) 15 days from the receipt of notice to file its risk–based capital report with that state; or

(ii) March 1.

Subd. 2. **Life and/or health insurers.** A life and/or health insurer's risk–based capital must be determined according to the formula set forth in the risk–based capital instructions. The formula must take into account, and may adjust for the covariance between:

(1) the risk with respect to the insurer's assets;

(2) the risk of adverse insurance experience with respect to the insurer's liabilities and obligations;

(3) the interest rate risk with respect to the insurer's business; and

(4) all other business risks and other relevant risks set forth in the risk–based capital instructions;

determined in each case by applying the factors in the manner set forth in the risk–based capital instructions.

Subd. 3. **Property and casualty insurers.** A property and casualty insurer's risk–based capital must be determined according to the formula set forth in the risk–based capital instructions. The formula must take into account, and may adjust for the covariance between:

(1) asset risk;

(2) credit risk;

(3) underwriting risk; and

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(4) all other business risks and other relevant risks set forth in the risk–based capital instructions;

determined in each case by applying the factors in the manner set forth in the risk–based capital instructions.

Subd. 4. **Maintaining additional capital.** An excess of capital over the amount produced by the risk–based capital requirements contained in sections 60A.60 to 60A.696 and the formulas, schedules, and instructions referenced in sections 60A.60 to 60A.696 is desirable in the business of insurance. Accordingly, insurers should seek to maintain capital above the risk–based capital levels required by sections 60A.60 to 60A.696. Additional capital is used and useful in the insurance business and helps to secure an insurer against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the risk–based capital requirements contained in sections 60A.60 to 60A.696.

Subd. 5. **Adjusted risk–based capital report.** If a domestic insurer files a risk–based capital report that in the judgment of the commissioner is inaccurate, then the commissioner shall adjust the risk–based capital report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice must contain a statement of the reason for the adjustment. A risk–based capital report as so adjusted is referred to as an "adjusted risk–based capital report."

History: *1995 c 253 s 3*

60A.62 COMPANY ACTION LEVEL EVENT.

Subdivision 1. **Definition.** "Company action level event" means any of the following events:

(1) the filing of a risk–based capital report by an insurer which indicates that:

(i) the insurer's total adjusted capital is greater than or equal to its regulatory action level risk–based capital but less than its company action level risk–based capital; or

(ii) if a life and/or health insurer, the insurer has total adjusted capital that is greater than or equal to its company action level risk–based capital but less than the product of its authorized control level risk–based capital and 2.5 and has a negative trend;

(2) the notification by the commissioner to the insurer of an adjusted risk–based capital report that indicates an event in clause (1), provided the insurer does not challenge the adjusted risk–based report under section 60A.66; or

(3) if, pursuant to section 60A.66, an insurer challenges an adjusted risk–based capital report that indicates the event in clause (1), the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

Subd. 2. **Plan.** In the event of a company action level event, the insurer shall prepare and submit to the commissioner a risk–based capital plan that:

(1) identifies the conditions that contribute to the company action level event;

(2) contains proposals of corrective actions that the insurer intends to take and would be expected to result in the elimination of the company action level event;

(3) provides projections of the insurer's financial results in the current year and at least the four succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projected statutory balance sheets, income statements, and cash flow statements. The projections for both new and renewal business might include separate projections for each major line of business and separately identify each significant income, expense, and benefit component;

(4) identifies the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions; and

(5) identifies the quality of, and problems associated with, the insurer's business, including, but not limited to, its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance, if any, in each case.

Subd. 3. **Submission.** The risk–based capital plan must be submitted:

(1) within 45 days of the company action level event; or

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(2) if the insurer challenges an adjusted risk–based capital report pursuant to section 60A.66, within 45 days after notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

Subd. 4. **Notification by commissioner.** Within 60 days after the submission by an insurer of a risk–based capital plan to the commissioner, the commissioner shall notify the insurer whether the risk–based capital plan must be implemented or is, in the judgment of the commissioner, unsatisfactory. If the commissioner determines the risk–based capital plan is unsatisfactory, the notification to the insurer must set forth the reasons for the determination, and may set forth proposed revisions that will render the risk–based capital plan satisfactory, in the judgment of the commissioner. Upon notification from the commissioner, the insurer shall prepare a revised risk–based capital plan, that may incorporate by reference any revisions proposed by the commissioner, and shall submit the revised risk–based capital plan to the commissioner:

(1) within 45 days after the notification from the commissioner; or

(2) if the insurer challenges the notification from the commissioner under section 60A.66, within 45 days after a notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

Subd. 5. **Unsatisfactory plan.** In the event of a notification by the commissioner to an insurer that the insurer's risk–based capital plan or revised risk–based capital plan is unsatisfactory, the commissioner may at the commissioner's discretion, subject to the insurer's right to a hearing under section 60A.66, specify in the notification that the notification constitutes a regulatory action level event.

Subd. 6. **Filings to other states.** Every domestic insurer that files a risk–based capital plan or revised risk–based capital plan with the commissioner shall file a copy of the risk–based capital plan or revised risk–based capital plan with the insurance commissioner in any state in which the insurer is authorized to do business if:

(1) the state has a risk–based capital provision substantially similar to section 60A.67, subdivision 1; and

(2) the insurance commissioner of that state has notified the insurer of its request for the filing in writing, in which case the insurer shall file a copy of the risk–based capital plan or revised risk–based capital plan in that state no later than the later of:

(i) 15 days after the receipt of notice to file a copy of its risk–based capital plan or revised risk–based plan with the state; or

(ii) the date on which the risk–based capital plan or revised risk–based capital plan is filed under section 60A.62, subdivisions 3 and 4.

History: *1995 c 253 s 4*

60A.63 REGULATORY ACTION LEVEL EVENT.

Subdivision 1. **Definition.** "Regulatory action level event" means, with respect to an insurer, any of the following events:

(1) the filing of a risk–based capital report by the insurer that indicates that the insurer's total adjusted capital is greater than or equal to its authorized control level risk–based capital but less than its regulatory action level risk–based capital;

(2) the notification by the commissioner to an insurer of an adjusted risk–based capital report that indicates the event in clause (1), provided the insurer does not challenge the adjusted risk–based capital report under section 60A.66;

(3) if, pursuant to section 60A.66, the insurer challenges an adjusted risk–based capital report that indicates the event in clause (1), the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge;

(4) the failure of the insurer to file a risk–based capital report by March 1, unless the insurer has provided an explanation for the failure that is satisfactory to the commissioner and has cured the failure within ten days after March 1;

(5) the failure of the insurer to submit a risk–based capital plan to the commissioner within the time period set forth in section 60A.62, subdivision 3;

(6) notification by the commissioner to the insurer that:

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(i) the risk–based capital plan or revised risk–based capital plan submitted by the insurer is, in the judgment of the commissioner, unsatisfactory; and

(ii) the notification constitutes a regulatory action level event with respect to the insurer, provided the insurer has not challenged the determination under section 60A.66;

(7) if, pursuant to section 60A.66, the insurer challenges a determination by the commissioner under clause (6), the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the challenge;

(8) notification by the commissioner to the insurer that the insurer has failed to adhere to its risk–based capital plan or revised risk–based capital plan, but only if the failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event according to its risk–based capital plan or revised risk–based capital plan and the commissioner has so stated in the notification, provided the insurer has not challenged the determination under section 60A.66; or

(9) if, pursuant to section 60A.66, the insurer challenges a determination by the commissioner under clause (8), the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the challenge.

Subd. 2. **Commissioner's duties.** In the event of a regulatory action level event, the commissioner shall:

(1) require the insurer to prepare and submit a risk–based capital plan, or, if applicable, a revised risk–based capital plan;

(2) examine or analyze as the commissioner considers necessary the assets, liabilities, and operations of the insurer including reviewing its risk–based capital plan or revised risk–based capital plan; and

(3) subsequent to the examination or analysis, issue a corrective order specifying the corrective actions the commissioner determines are required.

Subd. 3. **Corrective action.** In determining corrective actions, the commissioner may take into account factors considered relevant with respect to the insurer based upon the commissioner's examination or analysis of the assets, liabilities and operations of the insurer, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the risk–based capital instructions. The risk–based capital plan or revised risk–based capital plan must be submitted:

(1) within 45 days after the occurrence of the regulatory action level event;

(2) if the insurer challenges an adjusted risk–based capital report pursuant to section 60A.66 and the challenge is not frivolous in the judgment of the commissioner, within 45 days after the notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge; or

(3) if the insurer challenges a revised risk–based capital plan pursuant to section 60A.66 and the challenge is not frivolous in the judgment of the commissioner, within 45 days after the notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

Subd. 4. **Examination and review.** The commissioner may retain actuaries and investment experts and other consultants as may be necessary in the judgment of the commissioner to review the insurer's risk–based capital plan or revised risk–based capital plan, examine or analyze the assets, liabilities, and operations of the insurer and formulate the corrective order with respect to the insurer. The fees, costs, and expenses relating to consultants shall be borne by the affected insurer or other party as directed by the commissioner.

History: *1995 c 253 s 5*

60A.64 AUTHORIZED CONTROL LEVEL EVENT.

Subdivision 1. **Definition.** "Authorized control level event" means any of the following events:

(1) the filing of a risk–based capital report by the insurer that indicates that the insurer's total adjusted capital is greater than or equal to its mandatory control level risk–based capital but less than its authorized control level risk–based capital;

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(2) the notification by the commissioner to the insurer of an adjusted risk–based capital report that indicates the event in clause (1), provided the insurer does not challenge the adjusted risk–based capital report under section 60A.66;

(3) if, pursuant to section 60A.66, the insurer challenges an adjusted risk–based capital report that indicates the event in clause (1), notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge;

(4) the failure of the insurer to respond, in a manner satisfactory to the commissioner, to a corrective order, provided the insurer has not challenged the corrective order under section 60A.66; or

(5) if the insurer has challenged a corrective order under section 60A.66 and the commissioner has, after a hearing, rejected the challenge or modified the corrective order, the failure of the insurer to respond, in a manner satisfactory to the commissioner, to the corrective order subsequent to rejection or modification by the commissioner.

Subd. 2. **Commissioner's duties.** In the event of an authorized control level event with respect to an insurer, the commissioner shall:

(1) take the actions required under section 60A.63 regarding an insurer with respect to which a regulatory action level event has occurred; or

(2) if the commissioner considers it to be in the best interests of the policyholders and creditors of the insurer and of the public, take the actions necessary to cause the insurer to be placed under regulatory control under chapter 60B. In the event the commissioner takes these actions, the authorized control level event is considered sufficient grounds for the commissioner to take action under chapter 60B, and the commissioner has the rights, powers, and duties with respect to the insurer set forth in chapter 60B. In the event the commissioner takes actions under this clause pursuant to an adjusted risk–based capital report, the insurer is entitled to the protections afforded to insurers under section 60B.11 pertaining to summary proceedings.

History: *1995 c 253 s 6*

60A.65 MANDATORY CONTROL LEVEL EVENT.

Subdivision 1. **Definition.** "Mandatory control level event" means any of the following events:

(1) the filing of a risk–based capital report that indicates that the insurer's total adjusted capital is less than its mandatory control level risk–based capital;

(2) notification by the commissioner to the insurer of an adjusted risk–based capital report that indicates the event in clause (1), provided the insurer does not challenge the adjusted risk–based capital report under section 60A.66; or

(3) if, pursuant to section 60A.66, the insurer challenges an adjusted risk–based capital report that indicates the event in clause (1), notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

Subd. 2. **Commissioner's duties.** In the event of a mandatory control level event:

(1) with respect to a life and/or health insurer, the commissioner shall take the actions necessary to place the insurer under regulatory control under chapter 60B. In that event, the mandatory control level event is considered sufficient grounds for the commissioner to take action under chapter 60B, and the commissioner has the rights, powers, and duties with respect to the insurer set forth in chapter 60B. If the commissioner takes actions pursuant to an adjusted risk–based capital report, the insurer is entitled to the protections of section 60B.11 pertaining to summary proceedings. However, the commissioner may forego action for up to 90 days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the 90–day period; and

(2) with respect to a property and casualty insurer, the commissioner shall take the actions necessary to place the insurer under regulatory control under chapter 60B, or, in the case of an insurer that is writing no business and that is running off its existing business, may allow the insurer to continue its run–off under the supervision of the commissioner. In either event, the mandatory control level event is sufficient grounds for the commissioner to take action

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under chapter 60B, and the commissioner has the rights, powers, and duties with respect to the insurer set forth in chapter 60B. If the commissioner takes actions pursuant to an adjusted risk–based capital report, the insurer is entitled to the protections of section 60B.11 pertaining to summary proceedings. However, the commissioner may forego action for up to 90 days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the 90–day period.

History: *1995 c 253 s 7*

60A.66 HEARINGS.

Upon:

(1) notification to an insurer by the commissioner of an adjusted risk–based report;

(2) notification to an insurer by the commissioner that:

(i) the insurer's risk–based capital plan or revised risk–based capital plan is unsatisfactory; and

(ii) the notification constitutes a regulatory action level event with respect to the insurer;

(3) notification to an insurer by the commissioner that the insurer has failed to adhere to its risk–based capital plan or revised risk–based capital plan and that the failure has substantial adverse effect on the ability of the insurer to eliminate the company action level event with respect to the insurer according to its risk–based capital plan or revised risk–based capital plan; or

(4) notification to an insurer by the commissioner of a corrective order with respect to the insurer,

the insurer has the right to a confidential hearing conducted in accordance with chapter 14, on a record, at which the insurer may challenge any determination or action by the commissioner. The insurer shall notify the commissioner of its request for a hearing within five days after the notification by the commissioner under clause (1), (2), (3), or (4). Upon receipt of the insurer's request for a hearing, the commissioner shall set a date for the hearing no less than ten nor more than 30 days after the date of the insurer's request.

History: *1995 c 253 s 8*

60A.67 CONFIDENTIALITY.

Subdivision 1. **Generally.** All risk–based capital reports, to the extent the information in them is not required to be set forth in a publicly available annual statement schedule, and risk–based capital plans, including the results or report of an examination or analysis of an insurer performed pursuant to sections 60A.60 to 60A.696, and any corrective order issued by the commissioner pursuant to an examination or analysis, with respect to a domestic insurer or foreign insurer that are filed with the commissioner constitute information that might be damaging to the insurer if made available to its competitors, and shall be maintained by the commissioner as nonpublic data as defined in section 13.02, subdivision 9. This information is not subject to subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner pursuant to sections 60A.60 to 60A.696 or other provision of the insurance laws of this state.

Subd. 2. **Prohibition on announcements.** The comparison of an insurer's total adjusted capital to any of its risk–based capital levels is a regulatory tool that may indicate the need for possible corrective action with respect to the insurer and is not intended as a means to rank insurers generally. Except as otherwise required under sections 60A.60 to 60A.696, the making, publishing, dissemination, 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 or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the risk–based capital levels of an insurer, or of any component derived in the calculation, by an insurer, agent, broker, or other person engaged in any manner in the insurance business would be misleading and is prohibited. However, if a materially false

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statement with respect to the comparison regarding an insurer's total adjusted capital to its risk–based capital levels, or any of them, or an inappropriate comparison of any other amount to the insurer's risk–based capital levels is published in a written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of the statement, or the inappropriateness, as the case may be, then the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement. This subdivision does not prohibit an insurance company or its holding company from disclosing information about its risk–based capital levels in the notes to its financial statements if required by pronouncements of the American Institute of Certified Public Accountants or the Financial Accounting Standards Board, or making this disclosure as required by other governmental regulatory agencies.

Subd. 3. **Prohibition on use in ratemaking.** The risk–based capital instructions, risk–based capital reports, adjusted risk–based capital reports, risk–based capital plans, and revised risk–based capital plans are intended solely for use by the commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers. This information shall not be used by the commissioner for ratemaking nor considered or introduced as evidence in a rate proceeding nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for a line of insurance that an insurer or an affiliate is authorized to write.

History: *1995 c 253 s 9; 1996 c 446 art 2 s 6*

60A.68 SUPPLEMENTAL PROVISIONS; RULES; EXEMPTION.

(a) Sections 60A.60 to 60A.696 are supplemental to other laws of this state and do not preclude or limit other powers or duties of the commissioner under those laws, including, but not limited to, chapters 60B and 60G.

(b) The commissioner may exempt from the application of sections 60A.60 to 60A.696 a domestic property and casualty insurer that:

(1) writes direct business only in this state;

(2) writes direct annual premiums of $2,000,000 or less; and

(3) assumes no reinsurance in excess of five percent of direct premium written.

History: *1995 c 253 s 10*

60A.69 FOREIGN INSURERS.

Subdivision 1. **Reporting requirements.** A foreign insurer shall, upon the written request of the commissioner, submit to the commissioner a risk–based capital report as of the end of the calendar year just ended not later than the later of:

(1) the date a risk–based capital report would be required to be filed by a domestic insurer under sections 60A.60 to 60A.696; or

(2) fifteen days after the request is received by the foreign insurer.

A foreign insurer shall, at the written request of the commissioner, promptly submit to the commissioner copies of all risk–based capital plans that are filed by the insurer with the insurance commissioners of other states.

Subd. 2. **A risk–based capital plan requirement.** In the event of a company action level event, regulatory action level event, or authorized control level event with respect to a foreign insurer as determined under the risk–based capital statute applicable in the state of domicile of the insurer, or, if no risk–based capital statute is in force in that state, under sections 60A.60 to 60A.696, if the insurance commissioner of the state of domicile of the foreign insurer fails to require the foreign insurer to file a risk–based capital plan in the manner specified under that state's risk–based capital statute, or, if no risk–based capital statute is in force in that state, under section 60A.62, the commissioner may require the foreign insurer to file a risk–based capital plan with the commissioner. In this event, the failure of the foreign insurer to file a risk–based capital plan with the commissioner shall be grounds to order the insurer to cease and desist from writing new insurance business in this state. This section does not limit the commissioner's authority to require a foreign insurer to file a copy of the risk–based capital plan submitted to the commissioner in the state of domicile.

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Subd. 3. **Liquidation of property.** In the event of a mandatory control level event with respect to a foreign insurer, if no domiciliary receiver has been appointed with respect to the foreign insurer under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign insurer, the commissioner may make application to the district court permitted under chapter 60B with respect to the liquidation of property of foreign insurers found in this state, and the occurrence of the mandatory control level event is adequate grounds for the application.

History: *1995 c 253 s 11*

60A.695 IMMUNITY.

There is no liability on the part of, and no cause of action arises against, the commissioner or the commerce department or its employees or agents for an action taken by them in the performance of their powers and duties under sections 60A.60 to 60A.696.

History: *1995 c 253 s 12*

60A.696 NOTICES.

All notices by the commissioner to an insurer that may result in regulatory action under sections 60A.60 to 60A.696 are effective upon dispatch if transmitted by registered or certified mail, or in the case of other transmission is effective upon the insurer's receipt of the notice.

History: *1995 c 253 s 13*

REINSURANCE INTERMEDIARY ACT

60A.70 TITLE.

Sections 60A.70 to 60A.756 may be cited as the reinsurance intermediary act.

History: *1991 c 325 art 11 s 1*

60A.705 DEFINITIONS.

Subdivision 1. **Terms.** For purposes of sections 60A.70 to 60A.756, the terms defined in this section have the meanings given them.

Subd. 2. **Actuary.** "Actuary" means a person who is a member in good standing of the American Academy of Actuaries.

Subd. 3. **Controlling person.** "Controlling person" means a person, firm, association, or corporation who directly or indirectly has the power to direct or cause to be directed, the management, control, or activities of the reinsurance intermediary.

Subd. 4. **Insurer.** "Insurer" means any person, firm, association, or corporation duly licensed in this state pursuant to the applicable provisions of the insurance law as an insurer.

Subd. 5. **Licensed producer.** "Licensed producer" means an agent, broker, or reinsurance intermediary licensed pursuant to the applicable provision of the insurance law.

Subd. 6. **Reinsurance intermediary.** "Reinsurance intermediary" means a reinsurance intermediary–broker or a reinsurance intermediary–manager.

Subd. 7. **Reinsurance intermediary–broker.** "Reinsurance intermediary–broker" or "RB" means any person, other than an officer or employee of the ceding insurer, firm, association, or corporation who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of this insurer.

Subd. 8. **Reinsurance intermediary–manager.** "Reinsurance intermediary–manager" or "RM" means any person, firm, association, or corporation who has authority to bind or manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department, or underwriting office, and acts as an agent for that reinsurer whether known as an RM, manager, or other similar term. However, the following persons are not considered an RM, with respect to that reinsurer, for the purposes of sections 60A.70 to 60A.756:

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(1) an employee of the reinsurer;

(2) a United States manager of the United States branch of an alien reinsurer;

(3) an underwriting manager which, pursuant to contract, manages all or part of the reinsurance operations of the reinsurer, is under common control with the reinsurer, subject to the holding company act, and whose compensation is not based on the volume of premiums written; or

(4) the manager of a group, association, pool, or organization of insurers which engage in joint underwriting or joint reinsurance and who are subject to examination by the insurance commissioner of the state in which the manager's principal business office is located.

Subd. 9. **Reinsurer.** "Reinsurer" means a person, firm, association, or corporation licensed in this state as an insurer with the authority to assume reinsurance.

Subd. 10. **To be in violation.** "To be in violation" means that the reinsurance intermediary, insurer, or reinsurer for whom the reinsurance intermediary was acting failed to substantially comply with the provisions of sections 60A.70 to 60A.756.

Subd. 11. **Qualified United States financial institution.** "Qualified United States financial institution" means an institution that:

(1) is organized, or in the case of a United States office of a foreign banking organization, is licensed, under the laws of the United States or any state;

(2) is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

(3) has been determined by either the commissioner, or the securities valuation office of the National Association of Insurance Commissioners, to meet the standards of financial condition and standing considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

History: *1991 c 325 art 11 s 2; 1995 c 214 s 10*

60A.71 LICENSURE.

Subdivision 1. **Reinsurance intermediary–broker requirements.** No person, firm, association, or corporation shall act as an RB in this state if the RB maintains an office either directly or as a member or employee of a firm or association, or an officer, director, or employee of a corporation:

(1) in this state, unless the RB is a licensed producer in this state; or

(2) in another state, unless the RB is a licensed producer in this state or another state having a law substantially similar to this law or the RB is licensed in this state as a nonresident reinsurance intermediary.

Subd. 2. **Reinsurance intermediary–manager requirements.** No person, firm, association, or corporation shall act as a RM:

(1) for a reinsurer domiciled in this state, unless the RM is a licensed producer in this state;

(2) in this state, if the RM maintains an office either directly or as a member or employee of a firm or association, or an officer, director, or employee of a corporation in this state, unless the RM is a licensed producer in this state; or

(3) in another state for a nondomestic insurer, unless the RM is a licensed producer in this state or another state having a law substantially similar to this law or the person is licensed in this state as a nonresident reinsurance intermediary.

Subd. 3. **Bond and insurance requirements for reinsurance intermediary–manager.** The commissioner may require an RM subject to subdivision 2 to:

(1) file a bond in an amount from an insurer acceptable to the commissioner for the protection of the reinsurer; and

(2) maintain an errors and omissions policy in an amount acceptable to the commissioner.

Subd. 4. **Terms.** (a) The commissioner may issue a reinsurance intermediary license to any person, firm, association, or corporation who has complied with the requirements of sections 60A.70 to 60A.756. The license issued to a firm or association will authorize all the

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members of the firm or association and any designated employees to act as reinsurance intermediaries under the license, and these persons shall be named in the application and any supplements to it. The license issued to a corporation shall authorize all of the officers, and any designated employees and directors of the corporation to act as reinsurance intermediaries on behalf of the corporation, and all these persons shall be named in the application and any supplements to it.

(b) If the applicant for a reinsurance intermediary license is a nonresident, the applicant, as a condition precedent to receiving or holding a license, shall designate the commissioner as agent for service of process in the manner, and with the same legal effect, provided for by sections 60A.70 to 60A.756 for designation of service of process upon unauthorized insurers. The applicant shall also furnish the commissioner with the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting the nonresident reinsurance intermediary may be served. The licensee shall promptly notify the commissioner in writing of every change in its designated agent for service of process, and the change shall not become effective until acknowledged by the commissioner.

Subd. 5. **Refusal to issue.** The commissioner may refuse to issue a reinsurance intermediary license if, in the commissioner's judgment, the applicant, anyone named on the application, or any member, principal, officer, or director of the applicant, is not trustworthy, or that any controlling person of the applicant is not trustworthy to act as a reinsurance intermediary, or that any of the foregoing has given cause for revocation or suspension of the license, or has failed to comply with any prerequisite for the issuance of the license. Upon written request, the commissioner will furnish a summary of the basis for refusal to issue a license. This document is privileged and not subject to chapter 13.

Subd. 6. **Attorneys exemption.** Licensed attorneys at law of this state when acting in their professional capacity as such are exempt from this section.

History: *1991 c 325 art 11 s 3*

60A.715 REQUIRED CONTRACT PROVISIONS; REINSURANCE INTERMEDIARY–BROKERS.

Transactions between a RB and the insurer it represents in this capacity shall only be entered into pursuant to a written authorization, specifying the responsibilities of each party. The authorization must, at a minimum, provide that:

(1) the insurer may terminate the RB's authority at any time;

(2) the RB will render accounts to the insurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to the RB, and remit all funds due to the insurer within 30 days of receipt;

(3) all funds collected for the insurer's account will be held by the RB in a fiduciary capacity in a bank that is a qualified United States financial institution and may be invested in direct obligations of, or obligations guaranteed or insured by, the United States, its agencies, or its instrumentalities, excluding mortgage–backed securities. These funds may not be invested in obligations whose maturities exceed 90 days;

(4) the RB will comply with section 60A.72;

(5) the RB will comply with the written standards established by the insurer for the cession or retrocession of all risks; and

(6) the RB will disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded.

History: *1991 c 325 art 11 s 4; 1995 c 163 s 1*

60A.72 BOOKS AND RECORDS; REINSURANCE INTERMEDIARY–BROKERS.

Subdivision 1. **Records of transactions.** For at least ten years after expiration of each contract of reinsurance transacted by the RB, the RB will keep a complete record for each transaction showing:

(1) the type of contract, limits, underwriting restrictions, classes or risks, and territory;

(2) period of coverage, including effective and expiration dates, cancellation provisions, and notice required of cancellation;

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(3) reporting and settlement requirements of balances;

(4) rate used to compute the reinsurance premium;

(5) names and addresses of assuming reinsurers;

(6) rates of all reinsurance commissioners, including the commissions on any retrocessions handled by the RB;

(7) related correspondence and memoranda;

(8) proof of placement;

(9) details regarding retrocessions handled by the RB including the identity of retrocessionaires and percentage of each contract assumed or ceded;

(10) financial records, including, but not limited to, premium and loss accounts; and

(11) when the RB procures a reinsurance contract on behalf of a licensed ceding insurer:

(i) directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(ii) if placed through a representative of the assuming reinsurer, other than an employee, written evidence that such reinsurer has delegated binding authority to the representative.

Subd. 2. **Access by insurer.** The insurer will have access and the right to copy and audit all accounts and records maintained by the RB related to its business in a form usable by the insurer.

History: *1991 c 325 art 11 s 5*

60A.725 DUTIES OF INSURERS UTILIZING THE SERVICES OF A REINSURANCE INTERMEDIARY–BROKER.

(a) An insurer shall not engage the services of a person, firm, association, or corporation to act as an RB on its behalf unless the person is licensed as required by section 60A.71, subdivision 1.

(b) An insurer may not employ an individual who is employed by an RB with which it transacts business, unless the RB is under common control with the insurer and subject to chapter 60D.

(c) The insurer shall annually obtain a copy of statements of the financial condition of each RB with which it transacts business.

History: *1991 c 325 art 11 s 6*

60A.73 REQUIRED CONTRACT PROVISIONS; REINSURANCE INTERMEDIARY–MANAGERS.

Subdivision 1. **Approval by commissioner.** Transactions between an RM and the reinsurer it represents in this capacity must only be entered into pursuant to a written contract, specifying the responsibilities of each party. The contract shall be approved by the reinsurer's board of directors. At least 30 days before the reinsurer assumes or cedes business through this producer, a true copy of the approved contract must be filed with the commissioner for approval. The contract must, at a minimum, contain the provisions in subdivisions 2 to 14.

Subd. 2. **Terminations.** The reinsurer may terminate the contract for cause upon written notice to the RM. The reinsurer may immediately suspend the authority of the RM to assume or cede business during the pendency of any dispute regarding the cause for termination.

Subd. 3. **Periodic accounting.** The RM will render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to the RM, and remit all funds due under the contract to the reinsurer on not less than a monthly basis.

Subd. 4. **Handling of funds.** All funds collected for the reinsurer's account will be held by the RM in a fiduciary capacity in a bank which is a qualified United States financial institution as defined herein and may be invested in direct obligations of, or obligations guaranteed or insured by, the United States, its agencies, or its instrumentalities, excluding mortgage–backed securities. These funds may not be invested in obligations whose maturities

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exceed 90 days. The RM may retain no more than three months estimated claims payments and allocated loss adjustment expenses. The RM shall maintain a separate account for each reinsurer that it represents.

Subd. 5. **Business records.** For at least ten years after expiration of each contract of reinsurance transacted by the RM, the RM will keep a complete record for each transaction showing:

(1) the type of contract, limits, underwriting restrictions, classes or risks, and territory;

(2) period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation, and disposition of outstanding reserves on covered risks;

(3) reporting and settlement requirements of balances;

(4) rate used to compute the reinsurance premium;

(5) names and addresses of reinsurers;

(6) rates of all reinsurance commissions, including the commissions on any retrocessions handled by the RM;

(7) related correspondence and memoranda;

(8) proof of placement;

(9) details regarding retrocessions handled by the RM, as permitted by section 60A.74, subdivision 4, including the identity of retrocessionaires and percentage of each contract assumed or ceded;

(10) financial records, including, but not limited to, premium and loss accounts; and

(11) when the RM places a reinsurance contract on behalf of a ceding insurer:

(i) directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(ii) if placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative.

Subd. 6. **Reinsurer access to records.** The reinsurer will have access and the right to copy all accounts and records maintained by the RM related to its business in a form usable by the reinsurer.

Subd. 7. **Nonassignment of contract.** The contract cannot be assigned in whole or in part by the RM.

Subd. 8. **Underwriting and rating standards.** The RM will comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection, or cession of all risks.

Subd. 9. **Charges and commissions.** The rates, terms and purposes of commission, charges, and other fees which the RM may levy against the reinsurer will be specified in the contract.

Subd. 10. **Claims settlement.** If the contract permits the RM to settle claims on behalf of the reinsurer, the contract will specify that:

(1) all claims will be reported to the reinsurer in a timely manner;

(2) a copy of the claim file will be sent to the reinsurer at its request or as soon as it becomes known that the claim:

(i) has the potential to exceed the lesser of an amount determined by the commissioner or the limit set by the reinsurer;

(ii) involves a coverage dispute;

(iii) may exceed the RM's claims settlement authority;

(iv) is open for more than six months; or

(v) is closed by payment of the lesser of an amount set by the commissioner or an amount set by the reinsurer;

(3) all claim files will be the joint property of the reinsurer and RM. However, upon an order of liquidation of the reinsurer the files become the sole property of the reinsurer or its estate. The RM shall have reasonable access to and the right to copy the files on a timely basis; and

(4) settlement authority granted to the RM may be terminated for cause upon the reinsurer's written notice to the RM or upon the termination of the contract. The reinsurer may

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suspend the settlement authority during the pendency of the dispute regarding the cause of termination.

Subd. 11. **Interim profits.** If the contract provides for a sharing of interim profits by the RM, interim profits will not be paid until one year after the end of each underwriting period for property business and five years after the end of each underwriting period for casualty business, or a later period set by the commissioner for specified lines of insurance, and not until the adequacy of reserves on remaining claims has been verified pursuant to section 60A.74, subdivision 3.

Subd. 12. **Certified financial statement.** The RM will annually provide the reinsurer with a statement of its financial condition prepared by an independent certified accountant.

Subd. 13. **On–site review by reinsurer.** The reinsurer shall periodically, at least semi-annually, conduct an on–site review of the underwriting and claims processing operations of the RM.

Subd. 14. **Disclosure of insurer relationship.** The RM will disclose to the reinsurer any relationship it has with any insurer before ceding or assuming any business with the insurer pursuant to this contract.

Subd. 15. **Responsibility of reinsurer.** Within the scope of its actual or apparent authority, the acts of the RM are considered to be the acts of the reinsurer on whose behalf it is acting.

History: *1991 c 325 art 11 s 7; 1995 c 163 s 2*

60A.735 PROHIBITED ACTS.

The RM shall not:

(1) cede retrocessions on behalf of the reinsurer, except that the RM may cede facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for these retrocessions. These guidelines must include a list of reinsurers with which these automatic agreements are in effect, and for each reinsurer, the coverages and amounts or percentages that may be reinsured, and commission schedules;

(2) commit the reinsurer to participate in reinsurance syndicates;

(3) appoint any producer without assuring that the producer is lawfully licensed to transact the type of reinsurance for which the producer is appointed;

(4) without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim, net of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or one percent of the reinsurer's policyholder's surplus as of December 31 of the last complete calendar year;

(5) collect any payment from a retrocessionaire or commit the reinsurer to any claim settlement with a retrocessionaire, without prior approval of the reinsurer. If prior approval is given, a report must be promptly forwarded to the reinsurer;

(6) jointly employ an individual who is employed by the reinsurer unless such RM is under common control with the reinsurer subject to chapter 60D;

(7) appoint a sub–RM.

History: *1991 c 325 art 11 s 8*

60A.74 DUTIES OF REINSURER UTILIZING THE SERVICES OF A REINSURANCE INTERMEDIARY–MANAGER.

Subdivision 1. **Licensed persons to be used.** A reinsurer shall not engage the services of any person, firm, association, or corporation to act as an RM on its behalf unless the person is licensed as required by section 60A.71, subdivision 2.

Subd. 2. **Annual financial statements to be obtained.** The reinsurer shall annually obtain a copy of statements of the financial condition of each RM which the reinsurer has engaged prepared by an independent certified accountant in a form acceptable to the commissioner.

Subd. 3. **Loss reserve opinions.** If an RM establishes loss reserves, the reinsurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves estab-

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lished for losses incurred and outstanding on business produced by the RM. This opinion must be in addition to any other required loss reserve certification.

Subd. 4. **Binding authority.** Binding authority for all retrocessional contracts or participation in reinsurance syndicates shall rest with an officer of the reinsurer who shall not be affiliated with the RM.

Subd. 5. **Notification of termination.** Within 30 days of termination of a contract with an RM, the reinsurer shall provide written notification of the termination to the commissioner.

Subd. 6. **Restriction on board appointments.** A reinsurer shall not appoint to its board of directors, any officer, director, employee, controlling shareholder, or subproducer of its RM. This subdivision does not apply to relationships governed by chapter 60D or, if applicable, the producer controlled property/casualty insurer act, sections 60J.06 to 60J.11.

History: *1991 c 325 art 11 s 9; 1993 c 13 art 1 s 16*

60A.745 EXAMINATION AUTHORITY.

(a) A reinsurance intermediary is subject to examination by the commissioner. The commissioner shall have access to all books, bank accounts, and records of the reinsurance intermediary in a form usable to the commissioner.

(b) An RM may be examined as if it were the reinsurer.

History: *1991 c 325 art 11 s 10*

60A.75 VIOLATIONS.

Subdivision 1. **Administrative and civil penalties and liabilities.** A reinsurance intermediary, insurer, or reinsurer found by the commissioner, after a hearing conducted in accordance with chapter 14, to be in violation of any provision of sections 60A.70 to 60A.756, shall:

(1) for each separate violation, pay a penalty in an amount not exceeding $5,000; and

(2) be subject to revocation or suspension of its license.

Subd. 2. **Civil remedies.** (a) If it was found that because of the violation the insurer or reinsurer has suffered loss or damage, the commissioner may maintain a civil action for recovery of compensatory damages for the benefit of the reinsurer or insurer and its policyholders and creditors or seek other appropriate relief.

(b) If an order of rehabilitation or liquidation of the insurer has been entered pursuant to chapter 60B, and the receiver appointed under that order determines that the reinsurance intermediary or any other person has violated sections 60A.70 to 60A.756, or any rule or order adopted under those sections, and the insurer suffered any loss or damage, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

Subd. 3. **Judicial review.** The decision, determination, or order of the commissioner pursuant to subdivision 1 is subject to judicial review pursuant to chapter 14.

Subd. 4. **Other penalties.** Nothing contained in this section affects the right of the commissioner to impose any other penalties provided in the insurance laws.

History: *1991 c 325 art 11 s 11; 1995 c 214 s 11*

60A.755 SCOPE.

Nothing contained in sections 60A.70 to 60A.756 is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, creditors, or other third parties or confer any rights to these persons.

History: *1991 c 325 art 11 s 12*

60A.756 RULES.

The commissioner may adopt rules for the implementation and administration of sections 60A.70 to 60A.756.

History: *1991 c 325 art 11 s 13*

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LIFE REINSURANCE AGREEMENTS

60A.80 [Repealed, 1994 c 426 s 14]

60A.801 [Repealed, 1994 c 426 s 14]

60A.802 [Repealed, 1994 c 426 s 14]

60A.803 LIFE AND HEALTH REINSURANCE AGREEMENTS.

Subdivision 1. **Scope.** This section applies to:

(1) all domestic life and accident and sickness insurers;

(2) all other licensed life and accident and sickness insurers which are not subject to a substantially similar regulation in their domiciliary state; and

(3) licensed insurers with respect to their accident and sickness business.

This section does not apply to assumption reinsurance, yearly renewable term reinsurance, or certain nonproportional reinsurance such as stop loss or catastrophe reinsurance.

Subd. 2. **Accounting requirements.** No insurer subject to this section shall, for reinsurance ceded, reduce any liability or establish any asset in any financial statement filed with the commissioner if, by the terms of the reinsurance agreement, in substance or effect, any of the conditions in paragraphs (a) to (k) exist:

(a) The renewal expense allowances provided or to be provided to the ceding insurer by the reinsurer in any accounting period, are not sufficient to cover anticipated allocable renewal expenses of the ceding insurer on the portion of the business reinsured, unless a liability is established for the present value of the shortfall, using assumptions equal to the applicable statutory reserve basis on the business reinsured. Those expenses include commissions, premium taxes, and direct expenses including, but not limited to, billing, valuation, claims, and maintenance expected by the company at the time the business is reinsured.

(b) The ceding insurer can be deprived of surplus or assets at the reinsurer's option or automatically upon the occurrence of some event, such as the insolvency of the ceding insurer, except that termination of the reinsurance agreement by the reinsurer for nonpayment of reinsurance premiums or other amounts due, such as modified coinsurance reserve adjustments, interest and adjustments on funds withheld, and tax reimbursements, shall not be considered to be a deprivation of surplus or assets.

(c) The ceding insurer is required to reimburse the reinsurer for negative experience under the reinsurance agreement, except that neither offsetting experience refunds against current and prior years' losses under the agreement nor payment by the ceding insurer of an amount equal to the current and prior years' losses under the agreement upon voluntary termination of in force reinsurance by the ceding insurer is considered such a reimbursement to the reinsurer for negative experience. Voluntary termination does not include situations where termination occurs because of unreasonable provisions which allow the reinsurer to reduce its risk under the agreement. An example of such a provision is the right of the reinsurer to increase reinsurance premiums or risk and expense charges to excessive levels forcing the ceding company to prematurely terminate the reinsurance treaty.

(d) The ceding insurer must, at specific points in time scheduled in the agreement, terminate or automatically recapture all or part of the reinsurance ceded.

(e) The reinsurance agreement involves the possible payment by the ceding insurer to the reinsurer of amounts other than from income realized from the reinsured policies. It is improper for a ceding company to pay reinsurance premiums, or other fees or charges to a reinsurer, which are greater than the direct premiums collected by the ceding company.

(f) The reinsurance agreement does not transfer all of the significant risk inherent in the business being reinsured. The following table identifies, for a representative sampling of products or type of business, the risks that are considered to be significant. For products not specifically included, the risks determined to be significant must be consistent with this table.

Risk categories:

(1) morbidity;

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(2) mortality;

(3) lapse, which is the risk that a policy will voluntarily terminate prior to the recoupment of a statutory surplus strain experienced at issue of the policy;

(4) credit quality (C1), which is the risk that invested assets supporting the reinsured business will decrease in value. The main hazards are that assets will default or that there will be a decrease in earning power. It excludes market value declines due to changes in interest rate;

(5) reinvestment (C3), which is the risk that interest rates will fall and funds reinvested (coupon payments or money received upon asset maturity or call) will therefore earn less than expected. If asset durations are less than liability durations, the mismatch will increase; and

(6) disintermediation (C3), which is the risk that interest rates rise and policy loans and surrenders increase or maturing contracts do not renew at anticipated rates of renewal. If asset durations are greater than the liability durations, the mismatch will increase. Policyholders will move their funds into new products offering higher rates. The company may have to sell assets at a loss to provide for these withdrawals.

RISK CATEGORY

+ = Significant

0 = Insignificant

	1	2	3	4	5	6
Health Insurance – other than LTC/LTD*	+	0	+	0	0	0
Health Insurance – LTC/LTD*	+	0	+	+	+	0
Immediate Annuities	0	+	0	+	+	0
Single Premium Deferred Annuities	0	0	+	+	+	+
Flexible Premium Deferred Annuities	0	0	+	+	+	+
Guaranteed Interest Contracts	0	0	0	+	+	+
Other Annuity Deposit Business	0	0	+	+	+	+
Single Premium Whole Life	0	+	+	+	+	+
Traditional Nonpar Permanent	0	+	+	+	+	+
Traditional Nonpar Term	0	+	+	0	0	0
Traditional Par Permanent	0	+	+	+	+	+
Traditional Par Term	0	+	+	0	0	0
Adjustable Premium Permanent	0	+	+	+	+	+
Indeterminate Premium Permanent	0	+	+	+	+	+
Universal Life Flexible Premium	0	+	+	+	+	+
Universal Life Fixed Premium	0	+	+	+	+	+
Universal Life Fixed Premium (dump–in premiums allowed)	0	+	+	+	+	+

*LTC = Long Term Care Insurance

LTD = Long Term Disability Insurance

(g)(1) The credit quality, reinvestment, or disintermediation risk is significant for the business reinsured and the ceding company does not, other than for the classes of business excepted in clause (2), either transfer the underlying assets to the reinsurer or legally segregate such assets in a trust or escrow account or otherwise establish a mechanism satisfactory to the commissioner that legally segregates, by contract or contract provision, the underlying assets.

(2) Notwithstanding the requirements of clause (1), the assets supporting the reserves for the following classes of business and any classes of business that do not have a significant credit quality, reinvestment or disintermediation risk, may be held by the ceding company without segregation of the assets:

(i) Health Insurance – LTC/LTD;

(ii) Traditional Nonpar Permanent;

(iii) Traditional Par Permanent;

(iv) Adjustable Premium Permanent;

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(v) Indeterminate Premium Permanent; and/or

(vi) Universal Life Fixed Premium (no dump–in premiums allowed).

The associated formula for determining the reserve interest rate adjustment must reflect the ceding company's investment earnings and incorporate all realized and unrealized gains and losses reflected in the statutory statement. The following is an acceptable formula:

Rate = 2(I+CG) / (X + Y – I – CG)

Where: I is the net investment income
CG is capital gains less capital losses
X is the current year cash and invested assets plus investment income due and accrued less borrowed money
Y is the same as X but for the prior year

(h) Settlements are made less frequently than quarterly or payments due from the reinsurer are not made in cash within 90 days of the settlement date.

(i) The ceding insurer is required to make representations or warranties not reasonably related to the business being reinsured.

(j) The ceding insurer is required to make representations or warranties about future performance of the business being reinsured.

(k) The reinsurance agreement is entered into for the principal purpose of producing significant surplus aid for the ceding insurer, typically on a temporary basis, while not transferring all of the significant risks inherent in the business reinsured and, in substance or effect, the expected potential liability to the ceding insurer remains basically unchanged.

Subd. 3. **Commissioner approval.** Notwithstanding subdivision 2, an insurer subject to this section may, with the prior approval of the commissioner, take such reserve credit or establish such asset as the commissioner deems consistent with state insurance law or rules.

Subd. 4. **Filing.** (a) Agreements entered into after August 1, 1994, that involve the reinsurance of business issued prior to the effective date of the agreements, along with any subsequent amendments thereto, shall be filed by the ceding company with the commissioner within 30 days from their date of execution. Each filing shall include data detailing the financial impact of the transaction. The ceding insurer's actuary who signs the financial statement actuarial opinion with respect to valuation of reserves shall consider this section and any applicable actuarial standards of practice when determining the proper credit in financial statements filed with the commissioner. The actuary shall maintain adequate documentation and be prepared upon request to describe the actuarial work performed for inclusion in the financial statements and to demonstrate that the work conforms to this section.

(b) Any increase in surplus net of federal income tax resulting from arrangements described in paragraph (a) must be identified separately on the insurer's statutory financial statement as a surplus item (aggregate write–ins for gains and losses in surplus in the capital and surplus account of the annual statement) and recognition of the surplus increase as income must be reflected on a net of tax basis in the "Reinsurance ceded" line of the annual statement as earnings emerge from the business reinsured.

Subd. 5. **Written agreements.** No reinsurance agreement or amendment to any agreement may be used to reduce any liability or to establish any asset in any financial statement filed with the commissioner, unless the agreement, amendment, or a binding letter or intent has been duly executed by both parties no later than the "as of date" of the financial statement. In the case of a letter of intent, a reinsurance agreement or an amendment to a reinsurance agreement must be executed within a reasonable period of time, not exceeding 90 days from the execution date of the letter of intent, in order for credit to be granted for the reinsurance ceded. The reinsurance agreement must provide that:

(1) the agreement constitutes the entire agreement between the parties with respect to the business being reinsured under it and that there are no understandings between the parties other than as expressed in the agreement; and

(2) any change or modification to the agreement is null and void unless made by amendment to the agreement and signed by both parties.

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Subd. 6. **Reserve credits.** Insurers subject to this section shall reduce to zero by December 31, 1995, any reserve credits or assets established with respect to reinsurance agreements entered into prior to August 1, 1994, that under the provisions of this section would not be entitled to recognition of the reserve credits or assets; provided, however, that the reinsurance agreements have been in compliance with laws or regulations in existence immediately preceding August 1, 1994.

History: *1994 c 426 s 9*

INSURANCE REGULATORY INFORMATION SYSTEM

60A.90 SCOPE.

Sections 60A.90 to 60A.94 apply to all domestic, foreign, and alien insurers who are authorized to transact business in this state.

History: *1991 c 325 art 12 s 1*

60A.91 FILING REQUIREMENTS.

(a) A domestic, foreign, and alien insurer who is authorized to transact insurance in this state shall annually on or before March 1 of each year, file with the National Association of Insurance Commissioners (NAIC) a copy of its annual statement convention blank, along with additional filings prescribed by the commissioner for the preceding year. The information filed with the National Association of Insurance Commissioners must be in the same format and scope as that required by the commissioner and must include the signed jurat page and the actuarial certification. Amendments and addenda to the annual statement filing subsequently filed with the commissioner must also be filed with the NAIC.

(b) Foreign insurers that are domiciled in a state that has a law substantially similar to paragraph (a) is considered to be in compliance with this section.

History: *1991 c 325 art 12 s 2*

60A.92 IMMUNITY.

In the absence of actual malice, members of the NAIC, their duly authorized committees, subcommittees, and task forces, their delegates, NAIC employees, and all others charged with the responsibility of collecting, reviewing, analyzing, and disseminating the information developed from the filing of the annual statement convention blanks are acting as agents of the commissioner under the authority of sections 60A.90 to 60A.94 and are not subject to civil liability for libel, slander, or any other cause of action by virtue of their collection, review, and analysis or dissemination of the data and information collected from the filings required under sections 60A.90 to 60A.94.

History: *1991 c 325 art 12 s 3*

60A.93 CONFIDENTIALITY.

All financial analysis ratios and examination synopses concerning insurance companies that are submitted to the department by the National Association of Insurance Commissioners' Insurance Regulatory Information System are confidential and may not be disclosed by the department.

History: *1991 c 325 art 12 s 4*

60A.94 REVOCATION OF CERTIFICATE OF AUTHORITY.

The commissioner may suspend, revoke, or refuse to renew the certificate of authority of an insurer failing to file its annual statement when due or within any extension of time that the commissioner, for good cause, may have granted.

History: *1991 c 325 art 12 s 5*

INSURANCE FRAUD

60A.951 DEFINITIONS.

Subdivision 1. **Application.** The definitions in this section apply to sections 60A.951 to 60A.955.

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Subd. 2. **Authorized person.** "Authorized person" means the county attorney, sheriff, or chief of police responsible for investigations in the county where the suspected insurance fraud occurred; the superintendent of the bureau of criminal apprehension; the commissioner of commerce; the commissioner of labor and industry; the attorney general; or any duly constituted criminal investigative department or agency of the United States.

Subd. 3. **Commissioner.** "Commissioner" means the commissioner of commerce for insurers regulated by the commissioner of commerce, and means the commissioner of health for insurers regulated by the commissioner of health.

Subd. 4. **Insurance fraud.** "Insurance fraud" occurs when a person presents or causes to be presented to any insurer, or prepares with knowledge or belief that it will be so presented, a written or oral statement, including a computer–generated document, an electronic claim filing, or other electronic transmission, that contains materially false or misleading information, or a material and misleading omission, concerning:

(1) an application for the issuance of an insurance policy;

(2) the rating of an insurance policy;

(3) a claim for payment, reimbursement, or benefits payable under an insurance policy to an insured, a beneficiary, or a third party;

(4) premiums on an insurance policy; or

(5) payments made in accordance with the terms of an insurance policy.

Subd. 5. **Insurer.** "Insurer" means insurance company, risk retention group as defined in section 60E.02, service plan corporation as defined in section 62C.02, health maintenance organization as defined in section 62D.02, integrated service network as defined in section 62N.02, fraternal benefit society regulated under chapter 64B, township mutual company regulated under chapter 67A, joint self–insurance plan or multiple employer trust regulated under chapter 60F, 62H, or section 471.617, subdivision 2, persons administering a self–insurance plan as defined in section 60A.23, subdivision 8, clause (2), paragraphs (a) and (d), and the workers' compensation reinsurance association established in section 79.34.

Subd. 6. **Relevant information.** "Relevant information" includes, but is not limited to:

(1) pertinent insurance policy information, including the application for a policy;

(2) policy premium payment records;

(3) a history of previous claims made by the insured including, where the insured is a corporation, limited liability company, or partnership, a history of claims by a subsidiary or any affiliates, and a history of claims of any other business association in which individual officers or partners or their family members are known to be involved;

(4) material relating to the investigation, including the statement of any person and the proof of loss;

(5) billing records; and

(6) any other information which an authorized person identifies and which appears reasonably related to the investigation.

History: *1994 c 574 s 1; 1995 c 258 s 9,10*

60A.952 DISCLOSURE OF INFORMATION.

Subdivision 1. **Request.** After receiving a written request from an authorized person stating that the authorized person has reason to believe that a crime or civil fraud has been committed in connection with an insurance claim, payment, or application, an insurer must release to the authorized person all relevant information in the insurer's possession.

Subd. 2. **Notification by insurer required.** If an insurer has reason to believe that an insurance fraud has been committed, the insurer shall, in writing, notify an authorized person and provide the authorized person with all relevant information in the insurer's possession. It is sufficient for the purpose of this subdivision if an insurer notifies and provides relevant information to one authorized person. The insurer may also release relevant information to any person authorized to receive the information under section 72A.502, subdivision 2.

Subd. 3. **Immunity from liability.** If insurers, agents acting on the insurers' behalf, or authorized persons release information in good faith under this section, whether orally or in

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writing, they are immune from any liability, civil or criminal, for the release or reporting of the information.

History: *1994 c 574 s 2*

60A.953 ENFORCEMENT.

The intentional failure to provide relevant information as required by section 60A.952, subdivision 1, or to provide notification of insurance fraud as required by section 60A.952, subdivision 2, is punishable as a misdemeanor.

History: *1994 c 574 s 3*

60A.954 INSURANCE ANTIFRAUD PLAN.

Subdivision 1. **Establishment.** An insurer shall institute, implement, and maintain an antifraud plan. For the purpose of this section, the term insurer does not include reinsurers, the workers' compensation reinsurance association, self–insurers, and excess insurers. Within 30 days after instituting or modifying an antifraud plan, the insurer shall notify the commissioner in writing. The notice must include the name of the person responsible for administering the plan. An antifraud plan shall establish procedures to:

(1) prevent insurance fraud, including: internal fraud involving the insurer's officers, employees, or agents; fraud resulting from misrepresentations on applications for insurance; and claims fraud;

(2) report insurance fraud to appropriate law enforcement authorities; and

(3) cooperate with the prosecution of insurance fraud cases.

Subd. 2. **Review.** The commissioner may review each insurer's antifraud plan to determine whether it complies with the requirements of this section. If the commissioner finds that an insurer's antifraud plan does not comply with the requirements of this section, the commissioner shall disapprove the plan and send a notice of disapproval, along with the reasons for disapproval, to the insurer. An insurer whose antifraud plan has been disapproved by the commissioner shall submit a new plan to the commissioner within 60 days after the plan was disapproved. The commissioner may examine an insurer's procedures to determine whether the insurer is complying with its antifraud plan. The commissioner shall withhold from public inspection any part of an insurer's antifraud plan for so long as the commissioner deems the withholding to be in the public interest.

History: *1994 c 574 s 4; 1995 c 258 s 11*

60A.955 CLAIM FORMS TO CONTAIN FRAUD WARNING.

All insurance claim forms issued by an insurer for use in submitting a claim for payment or a claim for any other benefit pursuant to a policy shall clearly contain a warning substantially as follows: "A person who files a claim with intent to defraud or helps commit a fraud against an insurer is guilty of a crime." An insurer may comply with this section by including the warning on an addendum attached to the claim form. The absence of the required warning does not constitute a defense in a prosecution for a violation of chapter 609 or any other chapter of Minnesota Statutes.

History: *1994 c 574 s 5; 1995 c 258 s 12*

60A.961 DEFINITIONS.

Subdivision 1. **Application.** For the purposes of sections 60A.961 to 60A.974, the definitions in this section have the meanings given them.

Subd. 2. **Person.** "Person" means a natural or artificial entity, including individuals, partnerships, associations, trusts, limited liability companies, or corporations.

Subd. 3. **Viatical settlement broker.** "Viatical settlement broker" means an individual, partnership, limited liability company, corporation, or other entity who or which for another and for a fee, commission, or other valuable consideration, offers or advertises the availability of viatical settlements, introduces viators to viatical settlement providers, or offers or attempts to negotiate viatical settlements between a viator and one or more viatical settlement

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providers. "Viatical settlement broker" does not include an attorney, accountant, or financial planner retained to represent the viator whose compensation is not paid by the viatical settlement provider.

Subd. 4. **Viatical settlement contract.** "Viatical settlement contract" means a written agreement entered into between a viatical settlement provider and a person owning a life insurance policy or who owns or is covered under a group policy insuring the life of a person who has a catastrophic or life threatening illness or condition. The agreement must establish the terms under which the viatical settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the policy owner's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider.

Subd. 5. **Viatical settlement provider.** "Viatical settlement provider" means an individual, partnership, limited liability company, corporation, or other entity that enters into an agreement with a person owning a life insurance policy or who owns or is covered under a group policy insuring the life of a person who has a catastrophic or life threatening illness or condition, under the terms of which the viatical settlement provider pays compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the policy owner's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider. Viatical settlement provider does not include:

(1) a bank, savings bank, savings association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan;

(2) the issuer of a life insurance policy providing accelerated benefits under section 61A.072; or

(3) a natural person who enters into no more than one agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit.

Subd. 6. **Viator.** "Viator" means the owner or certificate holder of a life insurance policy insuring the life of a person with a catastrophic or life threatening illness or condition who enters into an agreement under which the viatical settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider.

History: *1995 c 151 s 2*

60A.962 LICENSE REQUIREMENTS.

Subdivision 1. **License.** No individual, partnership, limited liability company, corporation, or other entity may act as a viatical settlement provider or enter into or solicit a viatical settlement contract without first having obtained a license from the commissioner of commerce.

Subd. 2. **Form.** An applicant for a viatical settlement provider license shall submit an application to the commissioner of commerce on a form prescribed by the commissioner.

Subd. 3. **Contents.** The applicant shall provide information that the commissioner requires on forms prepared by the commissioner. The commissioner may, at any time, require the applicant to fully disclose the identity of all shareholders, members, partners, officers, and employees. The commissioner may, in the exercise of discretion, refuse to issue a license in the name of a firm, partnership, limited liability company, or corporation if not satisfied that an officer, employee, shareholder, member, or partner who may materially influence the applicant's conduct meets the requirements of sections 60A.961 to 60A.974.

Subd. 4. **Named persons.** A license issued to a partnership, limited liability company, corporation, or other entity authorizes all members, officers, partners, and designated employees to act as viatical settlement providers under the license, and all those persons must be named in the application and any supplements to the application.

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Subd. 5. **Investigation.** Upon the filing of an application and the payment of the license fee, the commissioner shall investigate each applicant and may issue a license if the commissioner finds that the applicant:

(1) has provided a detailed plan of operation;

(2) is competent and trustworthy and intends to act in good faith in the capacity involved in the license applied for;

(3) has a good business reputation and has had experience, training, or education so as to be qualified in the business for which the license is applied for; and

(4) if a corporation is a corporation incorporated under the laws of this state or a foreign corporation authorized to transact business in this state.

History: *1995 c 151 s 3*

60A.963 SERVICE OF PROCESS; NONRESIDENT LICENSING.

Subdivision 1. **License.** A nonresident of this state may be licensed as a viatical settlement provider upon compliance with all provisions of sections 60A.961 to 60A.974.

Subd. 2. **Service of process.** Section 45.028 applies to service of process upon a viatical settlement provider.

History: *1995 c 151 s 4*

60A.964 FEES.

Subdivision 1. **Amount.** The licensing fee for a viatical settlement provider license is $750 for initial licensure and $250 for each annual renewal. The commissioner may adjust the fees as provided under section 16A.1285 to recover the costs of administration and enforcement. The fees must be limited to the cost of license administration and enforcement and must be deposited in the state treasury, credited to a special account, and appropriated to the commissioner.

Subd. 2. **Automatic revocation.** A license is automatically revoked for failure to pay the licensing fee within the terms prescribed by the commissioner.

History: *1995 c 151 s 5*

60A.965 LICENSE REVOCATION.

Subdivision 1. **Revocation.** The commissioner may suspend, revoke, or refuse to renew the license of a viatical settlement provider if the commissioner finds that:

(1) there was any misrepresentation in the application for the license;

(2) the holder of the license has been found guilty of fraudulent or dishonest practices, is subject to a final administrative action or is otherwise shown to be untrustworthy or incompetent to act as a viatical settlement provider;

(3) the licensee demonstrates a pattern of unreasonable payments to policy owners;

(4) the licensee has been convicted of a felony or a misdemeanor of which criminal fraud is an element; or

(5) the licensee has violated any of the provisions of sections 60A.961 to 60A.974.

Subd. 2. **Administrative action.** Section 45.027 applies to any action taken by the commissioner in connection with the administration of sections 60A.961 to 60A.974.

History: *1995 c 151 s 6*

60A.966 APPROVAL OF VIATICAL SETTLEMENTS CONTRACTS.

A viatical settlement provider may not use a viatical settlement contract form in this state unless it has been filed with and approved by the commissioner. A viatical settlement contract form filed with the commissioner is considered to have been approved if it has not been disapproved within 60 days of the filing. The commissioner shall disapprove a viatical settlement contract form if, in the commissioner's opinion, the contract or contract provisions are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the policy owner.

History: *1995 c 151 s 7*

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60A.967 REPORTING REQUIREMENTS.

Each licensee shall file with the commissioner on or before March 1 of each year an annual statement containing the following information for the previous calendar year:

(1) for each policy viaticated, the date that the viatical settlement was entered into; the life expectancy of the viator at the time of the contract; the face amount of the policy; the amount paid by the viatical settlement provider to viaticate the policy; and if the viator has died, the date of death and the total insurance premiums paid by the viatical settlement provider to maintain the policy in force;

(2) a breakdown of applications received, accepted, and rejected, by disease category;

(3) a breakdown of policies viaticated by issuer and policy type;

(4) the number of secondary market versus primary market transactions;

(5) the portfolio size; and

(6) the amount of outside borrowings.

History: *1995 c 151 s 8*

60A.968 EXAMINATION.

Subdivision 1. **Authorization.** The commissioner may, when the commissioner considers it reasonably necessary to protect the interests of the public, examine the business and affairs of a licensee or applicant for a license. The commissioner may order a licensee or applicant to produce records, books, files, or other information reasonably necessary to determine whether or not the licensee or applicant is acting or has acted in violation of the law or otherwise contrary to the interests of the public. The licensee or applicant shall pay the expenses incurred in conducting an examination.

Subd. 2. **Private data.** Names and individual identification data for all viators is private and confidential information and must not be disclosed by the commissioner, unless required by law.

Subd. 3. **Records.** The licensee shall maintain records of all transactions of viatical settlement contracts and shall make them available to the commissioner for inspection during reasonable business hours.

History: *1995 c 151 s 9*

60A.969 DISCLOSURE.

A viatical settlement provider shall disclose the following information to the viator no later than the date the viatical settlement contract is signed by all parties:

(1) possible alternatives to viatical settlement contracts for persons with catastrophic or life threatening illnesses, including accelerated benefits offered by the issuer of the life insurance policy;

(2) the fact that some or all of the proceeds of the viatical settlement may be taxable and that assistance should be sought from a personal tax advisor;

(3) the fact that the viatical settlement may be subject to the claims of creditors;

(4) the fact that receipt of a viatical settlement may adversely affect the recipients' eligibility for Medicaid or other government benefits or entitlements and that advice should be obtained from the appropriate agencies;

(5) the policy owner's right to rescind a viatical settlement contract within 30 days of the date it is executed by all parties or 15 days of the receipt of the viatical settlement proceeds by the viator, whichever is less, as provided in section 60A.970, subdivision 3; and

(6) the date by which the funds will be available to the viator and the source of the funds.

History: *1995 c 151 s 10*

60A.970 GENERAL REQUIREMENTS.

Subdivision 1. **Required documents.** A viatical settlement provider entering into a viatical settlement contract with a person with a catastrophic or life threatening illness or condition shall first obtain:

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(1) a written statement from a licensed attending physician that the person is of sound mind and under no constraint or undue influence; and

(2) a witnessed document in which the person consents to the viatical settlement contract, acknowledges the catastrophic or life threatening illness, represents that the person has a full and complete understanding of the viatical settlement contract, acknowledges that the person has a full and complete understanding of the benefits of the life insurance policy, releases the person's medical records, and acknowledges that the person has entered into the viatical settlement contract freely and voluntarily.

Subd. 2. **Confidentiality of medical information.** All medical information solicited or obtained by a licensee is subject to the applicable provisions of state law relating to confidentiality of medical information.

Subd. 3. **Unconditional refund provision.** All viatical settlement contracts entered into in this state must contain an unconditional refund provision of at least 30 days from the date that the viator signs an agreement to transfer an insurance policy or 15 days of the receipt of the viatical settlement proceeds, whichever is less.

Subd. 4. **Payment of proceeds.** Immediately upon receipt from the viator of documents to effect the transfer of the insurance policy, the viatical settlement provider shall pay the proceeds of the settlement to an escrow or trust account managed by a trustee or escrow agent in a bank approved by the commissioner, pending acknowledgment of the transfer by the issuer of the policy. The trustee or escrow agent must transfer the proceeds due to the viator immediately upon receipt of acknowledgment of the transfer from the insurer. Payment of the proceeds must be made by means of wire transfer to the viator or by certified check or cashier's check.

Subd. 5. **Lump sum payment.** Payment of the proceeds under a viatical settlement must be made in a lump sum. Retention of a portion of the proceeds by the viatical settlement provider or escrow agent is not permissible. Payment must not be made by installments unless the viatical settlement company has purchased an annuity or similar financial instrument issued by a licensed insurance company or bank.

Subd. 6. **Additional payment.** With respect to policies containing a provision for double or other additional indemnity for accidental death, the additional payment must remain payable to the beneficiary last named by the viator before entering into the viatical settlement agreement, or to a beneficiary designated by the viator, other than the viatical settlement provider, or in the absence of a designation, to the estate of the viator.

Subd. 7. **Prohibited payments.** A viatical settlement provider or broker must not pay or offer to pay a finder's fee, commission, or other compensation to a viator's physician, attorney, accountant, or other person providing medical, legal, or financial planning services to the viator, or to any other person acting as an agent of the viator with respect to the viatical settlement.

Subd. 8. **Discrimination prohibited.** A viatical settlement provider or broker must not discriminate in the making of viatical settlements on the basis of race, age, sex, national origin, creed, religion, occupation, marital or family status, or sexual orientation, or discriminate between viators with dependents and without.

Subd. 9. **Health status contacts.** Contacts for the purpose of determining the health status of the viator by the viatical settlement provider or broker after the viatical settlement has occurred must not exceed one every three months for viators with a life expectancy of more than one year and must not exceed one per month for viators with a life expectancy of one year or less. The provider or broker must explain the procedure for these contacts at the time the viatical settlement contract is entered into.

Subd. 10. **Prohibited investor solicitation.** Viatical settlement providers and brokers shall not solicit investors who may influence the treatment of the illness of the viators whose coverage is the subject of the investment.

Subd. 11. **Contract null and void.** Failure to tender the viatical settlement by the date disclosed to the viator renders the contract null and void.

History: *1995 c 151 s 11*

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60A.971 STANDARDS FOR EVALUATIONS OF REASONABLE PAYMENTS.

In order to assure that viators receive a reasonable return for viaticating an insurance policy, the following are the minimum permitted discounts:

Insured's Life Expectancy	Minimum Percentage of Face Value Less Outstanding Loans Received by Viator
Less than 6 months	80%
At least 6 but less than 12 months	70%
At least 12 but less than 18 months	65%
At least 18 but less than 24 months	60%
Twenty–four months or more	50%

The percentage may be reduced by five percent for viaticating a policy written by an insurer rated lower than the highest four categories by A.M. Best, or a comparable rating by another rating agency.

History: *1995 c 151 s 12*

60A.972 VIATICAL SETTLEMENT BROKERS.

Subdivision 1. **License.** A viatical settlement broker may not solicit a viatical settlement contract without first obtaining a license from the commissioner of commerce.

Subd. 2. **Form.** An applicant for a viatical settlement broker license shall submit an application to the commissioner on a form prescribed by the commissioner.

Subd. 3. **Fees.** The licensing fee for a viatical settlement broker is $750 for initial licensure and $250 for each annual renewal. Failure to pay the renewal fee within the time required by the commissioner results in an automatic revocation of the license. The commissioner may adjust the fees as provided under section 16A.1285 to recover the costs of administration and enforcement. The fees must be limited to the cost of license administration and enforcement and must be deposited in the state treasury, credited to a special account, and appropriated to the commissioner.

Subd. 4. **License limitation.** The license is a limited license which allows solicitation only of viatical settlements.

Subd. 5. **License revocation.** The commissioner may suspend, revoke, or refuse to renew the license of a viatical settlement broker if the commissioner finds that:

(1) there was any misrepresentation in the application for a license;

(2) the broker has been found guilty of fraudulent or dishonest practices, has been found guilty of a felony or a misdemeanor of which criminal fraud is an element, or is otherwise shown to be untrustworthy or incompetent;

(3) the licensee has placed or attempted to place a viatical settlement with a viatical settlement provider not licensed in this state; or

(4) the licensee has violated any of the provisions of sections 60A.961 to 60A.974.

Subd. 6. **Agent.** In the absence of a written agreement making the broker the viator's agent, viatical settlement brokers are presumed to be agents of viatical settlement providers.

Subd. 7. **Compensation prohibited.** A viatical settlement broker must not, without the written agreement of the viator obtained before performing any services in connection with a viatical settlement, seek or obtain any compensation from the viator.

History: *1995 c 151 s 13*

60A.973 ADVERTISING STANDARDS.

Subdivision 1. **Generally.** Advertising by viatical settlement providers or brokers must be truthful and not misleading by fact or implication.

Subd. 2. **Average time.** If the advertiser emphasizes the speed with which the viatication will occur, the advertising must disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator.

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Subd. 3. **Average purchase price.** If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase prices as a percent of face value obtained by viators contracting with the advertiser during the previous six months.

History: *1995 c 151 s 14*

60A.974 UNFAIR TRADE PRACTICES.

A violation of sections 60A.961 to 60A.974 is an unfair trade practice under chapter 72A.

History: *1995 c 151 s 15*

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