CHAPTER 60A

GENERAL INSURANCE POWERS

60A.02 DEFINITIONS.

[For text of subds 1 to 2a, see M.S.1996]

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) [Expired]

[For text of subds 4 to 29, see M.S.1996]

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.

(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 record date of the conversion or other date approved by the commissioner 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 securities representing a majority of voting control 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.

[For text of subds 2 to 7, see M.S.1996]

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 common shares of its parent company or a permitted issuer, or for a combination of the common shares of the reorganized company or common shares of 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 nontransferable subscription rights for the purchase of common shares being granted to officers, directors, or a tax qualified employee benefit plan of the reorganized company or its parent company, if any, or a permitted issuer, according to subdivision 11.

(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.

(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, except with permission of the commissioner.

(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.

[For text of subds 10 to 17, see M.S.1996]

History: *1997 c 231 art 15 s 1–3*

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 condi-

tion 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 and member interests are protected.

(b) All of the initial voting 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. 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 and their voting rights must be determined 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 one or more intermediate stock holding companies, control a majority of the voting shares of the capital stock of the reorganized insurance company, taking into account any potential dilution resulting from convertible securities.

(c) A majority of the board of directors of a mutual insurance holding company must be disinterested directors. For purposes of this section, a director is disinterested if (i) the director is not or has not within the past two years been an officer or employee of the mutual insurance holding company or any subsidiary or predecessor corporation, and (ii) the director does not hold, directly or indirectly, a material ownership interest in any subsidiary of the mutual insurance holding company. An ownership interest is material if it represents more than one–half of one percent of the voting securities of the issuer, or a larger percentage as the commissioner may approve.

Subd. 2. **Merger.** (a) A domestic or foreign 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 or of an intermediate stock 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 policyholders of the reorganizing company and the interests of the existing members of the mutual insurance holding company are properly protected and that the merger is fair and equitable to those parties, 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' or members' interests. The commissioner shall retain jurisdiction, under chapter 60D, over the mutual insurance holding company organized according to this section to assure that policyholder and member interests are protected.

(b) All of the initial voting 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. The membership 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 and their voting rights must be determined according to the articles of incorporation and bylaws of the mutual insurance holding company. The mutual insurance holding company shall, at all times, directly or through one or more intermediate stock holding companies, control a majority of the voting shares of the capital stock of the reorganized insurance company, taking into account any potential dilution resulting from convertible securities.

(c) A domestic mutual insurance holding company may merge with a domestic or foreign mutual insurance holding company in the manner prescribed for the merger of insurance companies set forth in section 60A.16, with any exceptions or modifications the commissioner may approve.

Subd. 3. **Plan of reorganization; approval by commissioner.** (a) A reorganizing or merging insurer or a merging mutual insurance holding company shall, by the affirmative vote of a majority of its board of directors, adopt a plan of reorganization or merger consistent

with the requirements of this section and file the plan with the commissioner. At any time before the approval of a plan by the commissioner, the company, by the affirmative vote of a majority of its directors, may amend or withdraw the plan. The plan must provide for the following:

(1) in the case of a reorganization under subdivision 1, establishing a mutual insurance holding company with at least one stock insurance company subsidiary, or in the case of a reorganization under subdivision 2, a description of the terms and conditions of the proposed merger;

(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) describing the mutual insurance holding company's plan for distributions to members or other uses of accumulated mutual holding company earnings;

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

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

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

(11) information sufficient to demonstrate that the financial condition of the reorganizing or merging company will not be materially diminished upon reorganization, including information concerning any subsidiaries of the reorganizing or merging insurers that will become subsidiaries of the mutual insurance holding company or an intermediate holding company as part of the reorganization;

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

(13) describing any plans for an initial sale or subscription of stock or other securities of the reorganized insurance company or any intermediate holding company; and

(14) 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.

[For text of subd 4, see M.S.1996]

Subd. 5. **Approval by members.** The plan shall be approved as provided in section 60A.075, subdivision 5, by the eligible members described in paragraphs (a) to (c).

(a) In the case of a formation under subdivision 1, the plan must be approved by the eligible members of the reorganizing insurance company.

(b) In the case of a merger under subdivision 2, paragraph (a), the plan must be approved by the eligible members of the merging insurance company and by the eligible members of the mutual insurance holding company into which the policyholders' membership interests are to be merged. The vote of the eligible members of the mutual insurance holding company is not required if the commissioner determines that the merger would not be material to the financial condition of the mutual insurance holding company.

(c) In the case of a merger of two mutual insurance holding companies under subdivision 2, paragraph (c), the plan must be approved by the eligible members of both companies. The vote of the eligible members of the surviving mutual holding company is not required if the commissioner determines that the merger would not be material to the financial condition of the surviving company.

Subd. 6. **Incorporation.** A mutual insurance holding company 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. Members of a mutual insurance holding company shall be entitled to vote on all matters required to be submitted to members under chapter 300 and shall additionally be treated as shareholders for purposes of the voting approval requirements of section 300.09.

Subd. 7. **Applicability of certain provisions.** (a) In the event of the insolvency of a mutual insurance holding company, the mutual insurance holding company is considered to be an insurer subject to chapter 60B. A mutual insurance holding company shall not dissolve or liquidate without the approval of the commissioner or as ordered by a court of competent jurisdiction.

(b) A mutual insurance holding company is subject to chapter 60D.

(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.

(d) No person or group of persons other than the chief executive officer of a mutual insurance holding company, or the chief executive officer's designee, shall seek to obtain proxies from the members of the mutual insurance holding company for the purposes of affecting a change of control of the mutual insurance holding company unless that person or persons have filed with the commissioner and have sent to the mutual insurance holding company a statement containing the information required by section 60D.17. Section 60D.17, subdivisions 2 to 7, apply in the event of a proxy solicitation regulated by this paragraph.

(e) For purposes of this subdivision, the term "control," including the terms "controlling," "controlled by," and "under common control with," means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through membership voting interests, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with, corporate office held by, or court appointment of, the person. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the membership voting interests of the mutual insurance holding company. This presumption may be rebutted by a showing made in the manner provided by section 60D.19, subdivision 11, that control does not exist in fact. The commissioner may determine after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

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.

(b) Section 60A.075 is applicable to demutualization of a mutual insurance holding company as if it were a mutual insurance company.

(c) Section 60A.075, subdivisions 14 to 16, are applicable to a reorganization or merger under this section.

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. No member of a mutual insurance holding company may transfer or pledge membership in the mutual insurance holding company or any right arising from the membership except as attendant to the valid transfer or assignment of the member's policy in any reorganized company that gave rise to the member's membership interest. A member of a mutual insurance holding company is not, as a member, personally liable for the acts, debts, liabilities, or obligations of the company. No assessments of any kind may be imposed upon the members of a mutual insurance holding company by the directors or members, or because of any liability of any company owned or controlled by the mutual insurance holding company or because of any act, debt, or liability of the mutual insurance holding company. A member's interest in the mutual insurance holding company shall automatically terminate upon cancellation, nonrenewal, expiration, or termination of the member's policy in any insurance company that gave rise to the member's membership interest.

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 cash flow 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 or an intermediate stock holding company.

(b) The aggregate pledges and encumbrances of a mutual insurance holding company's assets shall not affect more than 49 percent of the stock in ownership of 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.

Subd. 11. **Sale of stock and payment of dividends.** (a) A reorganized insurance company and an intermediate stock holding company may issue subscription rights and may issue or grant any other securities, rights, options, and similar items to the same extent as any business corporation organized under chapter 302A. However, except as provided in paragraphs (b) to (d), no sale of securities of the reorganized insurance company, or of an intermediate stock holding company that directly or indirectly controls a majority of voting shares of the reorganized insurance company, may be made without the commissioner's prior written approval.

(b) A registration statement covering securities that has been approved by the commissioner and filed with and declared effective by the Securities and Exchange Commission under the Securities Act of 1933 pursuant to any provision of that statute or rule that allows registration of securities to be sold on a delayed or continuous basis may be sold without further approval.

(c) Unless the commissioner has granted the mutual insurance holding company a written exemption from the requirements of this paragraph, any securities which are regularly traded on the New York Stock Exchange, the American Stock Exchange, or another exchange approved by the commissioner, or designated on the National Association of Securities Dealers automated quotations (NASDAQ) national market system, shall be sold according to the procedure in this paragraph. If the mutual insurance holding company, an inter-

mediate holding company, or a reorganized insurance company intends to offer securities that are governed by this paragraph, that entity shall deliver to the commissioner, not less than ten days before the offering, a notice of the planned offering and information regarding: (1) the approximate number of shares intended to be offered; (2) the target date of sale; (3) evidence the security is regularly traded on one of the public exchanges noted above; and (4) the recent history of the trading price and trading volume of the security. The commissioner is considered to have approved the sale unless within ten days following receipt of the notice, the commissioner issues an objection to the sale. If the commissioner issues an objection to the sale, the security may not be sold until the commissioner issues an order approving the sale.

(d) A reorganized insurance company or intermediate holding company that has issued securities that are regularly traded on one of the exchanges or markets described in paragraph (c), may establish stock option, incentive, and share ownership plans customary for publicly traded companies in the same or similar industries. If the reorganized insurance company or intermediate holding company intends to establish a stock option, incentive or share ownership plan, that entity shall deliver to the commissioner, not less than 30 days before the establishment of the plan, a notice of the proposed plan along with any information about the proposed plan the commissioner requires. The commissioner is considered to have approved the plan unless within 30 days following receipt of the notice, the commissioner issues an objection to the proposed plan. If the commissioner issues an objection to the proposed plan, the plan may not be established until the commissioner issues an order approving the plan. If the commissioner approves the establishment of the stock option, incentive, or share ownership plan, the reorganized insurance company or the intermediate holding company that obtained the approval may sell or issue securities according to the approved plan without further approval.

(e) The total number of shares of capital stock issued by the reorganized insurance company or an intermediate holding company that may be held by directors and officers of the mutual insurance holding company, any intermediate holding company, and of any reorganized insurance company, and acquired according to subscription rights or stock option, incentive, and share ownership plans, may not exceed the percentage limits set forth in section 60A.075, subdivision 11, paragraph (b). Subject to the requirements of subdivision 1, paragraph (c), nothing in this section prohibits the acquisition of any securities of a reorganized insurance company or intermediate stock holding company through a licensed securities broker–dealer by any officer or director of the reorganized company, an intermediate stock holding company, or the mutual insurance holding company.

(f) Dividends and other distributions to the shareholders of the reorganized stock insurance company or of an intermediate stock holding company must comply with section 60D.20. Any dividends and other distributions to the members of the mutual insurance holding company must comply with section 60D.20 and any other approval requirements contained in the mutual insurance holding company's articles of incorporation.

(g) Unless previously approved as part of the plan of reorganization, the initial offering of any voting shares to the public by a reorganized company, a stock insurance company subsidiary, or an intermediate holding company which holds a majority of the voting shares of a reorganized insurance company or stock insurance company subsidiary, must be approved by a majority of votes cast at a regular or special meeting of the members of the mutual insurance holding company. Any issuer repurchase program, plan of exchange, recapitalization, or offering of capital securities to the public, shall, in addition to any other approvals required by law or by the issuer's articles of incorporation, be approved by a majority of the board of directors of the mutual insurance holding company and by a majority of the disinterested members of the board of directors of the mutual insurance holding company.

Subd. 12. **Provisions in the event of insurer insolvency.** (a) In the event of any insolvency proceeding involving an insolvent stock subsidiary, the assets of the mutual insurance holding company, together with any assets of any intermediate holding company that directly or indirectly controls the insolvent stock subsidiary, must be available to satisfy the policyholder obligations of the insolvent stock subsidiary in an amount determined by the commissioner, but in no event more than the total amount of nonpolicyholder dividends paid by the

insolvent stock subsidiary to the mutual insurance holding company, or any intermediate holding company that controls the insolvent stock subsidiary, during the ten–year period immediately preceding the date of insolvency.

(b) In determining the required contribution by the mutual insurance holding company or any intermediate stock holding company which controls the insolvent stock subsidiary, the commissioner shall take into account among other factors:

(1) the possible direct or indirect negative effects of any required contribution on any insurance company affiliate of the insolvent stock subsidiary; and

(2) the possible direct or indirect, long–term, or short–term negative effects on the members of the mutual insurance holding company, other than those members who, are, or were policyholders of the insolvent stock subsidiary.

Nothing in this subdivision limits the powers of the commissioner or the liquidator under chapter 60B.

(c) For purposes of this subdivision, the following terms have the meanings given:

(1) "date of insolvency" means, as to an insolvent stock subsidiary, the date established in accordance with chapter 60B or comparable statute of another state governing the rehabilitation or liquidation of a foreign insolvent stock subsidiary;

(2) "insolvency proceeding" means any proceeding under chapter 60B or comparable statute of another state governing the rehabilitation and liquidation of a foreign insolvent stock subsidiary;

(3) "insolvent stock subsidiary" means any stock insurance company subsidiary of a mutual insurance holding company that resulted from the reorganization of a domestic or foreign mutual insurance company according to subdivision 1 or 2, or any other stock insurance company subsidiary that is subject to an insolvency proceeding, which on the date of insolvency has in force policies that have given rise to membership interests in the mutual insurance holding company;

(4) "control" has the meaning given in section 60D.15, subdivision 4; and

(5) "dividends" include distributions of cash or any other assets.

History: *1997 c 231 art 15 s 4–14*

60A.13 ANNUAL STATEMENT, INQUIRIES, ABSTRACTS, PUBLICATION.

[For text of subds 1 to 5, see M.S.1996]

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.

[For text of subd 7, see M.S.1996]

History: *1997 c 187 art 3 s 13*

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, 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), (e), (h), and (i), 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.

(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 service plan corporations, and community integrated service networks, the installments must be based on an amount determined under paragraph (h) or (i).

(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) If the aggregate amount of premium tax payments under this section and the fire marshal tax payments under section 299F.21 made during a calendar year is equal to or exceeds $120,000, all tax payments in the subsequent calendar year must be paid by means of a funds transfer as defined in section 336.4A–104, paragraph (a). The funds transfer payment date, as defined in section 336.4A–401, must be on or before the date the payment is due. If the date the payment is due is not a funds transfer business day, as defined in section 336.4A–105, paragraph (a), clause (4), the payment date must be on or before the funds transfer business day next following the date the payment is due.

(g) Premiums under medical assistance, general assistance medical care, the MinnesotaCare program, and the Minnesota comprehensive health insurance plan and all payments, revenues, and reimbursements received from the federal government for Medicare–related coverage as defined in section 62A.31, subdivision 3, paragraph (e), are not subject to tax under this section.

(h) For calendar years 1998 and 1999, the installments for health maintenance organizations, community integrated service networks, and nonprofit health service plan corporations must be based on an amount equal to one percent of premiums described under paragraph (b). Health maintenance organizations, community integrated service networks, and nonprofit health service plan corporations that have met the cost containment goals established under section 62J.04 in the individual and small employer market for calendar year 1996 are exempt from payment of the tax imposed under this section for premiums paid after March 30, 1997, and before April 1, 1998. Health maintenance organizations, community integrated service networks, and nonprofit health service plan corporations that have met the cost containment goals established under section 62J.04 in the individual and small employer market for calendar year 1997 are exempt from payment of the tax imposed under this section for premiums paid after March 30, 1998, and before April 1, 1999.

(i) For calendar years after 1999, the commissioner of finance shall determine the balance of the health care access fund on September 1 of each year beginning September 1, 1999. If the commissioner determines that there is no structural deficit for the next fiscal year, no tax shall be imposed under paragraph (d) for the following calendar year. If the commissioner determines that there will be a structural deficit in the fund for the following fiscal year, then the commissioner, in consultation with the commissioner of revenue, shall determine the amount needed to eliminate the structural deficit and a tax shall be imposed under paragraph (d) for the following calendar year. The commissioner shall determine the rate of the tax as either one–quarter of one percent, one–half of one percent, three–quarters of one percent, or one percent of premiums described in paragraph (b), whichever is the lowest of

those rates that the commissioner determines will produce sufficient revenue to eliminate the projected structural deficit. The commissioner of finance shall publish in the State Register by October 1 of each year the amount of tax to be imposed for the following calendar year.

(j) In approving the premium rates as required in sections 62L.08, subdivision 8, and 62A.65, subdivision 3, the commissioners of health and commerce shall ensure that any exemption from the tax as described in paragraphs (h) and (i) is reflected in the premium rate.

[For text of subds 1a to 1e, see M.S.1996]

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 of revenue.

(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 1.

(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.

[For text of subds 4 and 5, see M.S.1996]

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 of revenue may deem necessary for determining the correctness of the return. The tax computed by the commissioner of revenue 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 of revenue 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 of revenue. 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 of revenue. If the amount of the tax found due by the commissioner of revenue 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 of revenue examines returns of a company for more than one year, the commissioner of revenue 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 of revenue 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 of revenue shall make for it a return, or corrected return, from personal knowledge and from such information as the commissioner of revenue 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 of revenue 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 of revenue 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.

[For text of subds 9a to 11, see M.S.1996]

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 of revenue 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 of revenue 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 of revenue 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 of revenue 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 of revenue and the company have, within the periods prescribed in clause (1), 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, shall be the period within which the commissioner of revenue 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 of revenue, within the applicable period of limitations, shall refund any balance of more than one dollar to the company if the company requests the refund.

[For text of subds 13 and 15, see M.S.1996]

History: *1997 c 7 art 1 s 17; 1997 c 31 art 2 s 1; 1997 c 84 art 6 s 2; 1997 c 225 art 3 s 2*

60A.23 MISCELLANEOUS.

[For text of subds 1 to 6, see M.S.1996]

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 $500 for the initial application and $500 for each two–year renewal. 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 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 immediate-

ly 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: *1997 c 200 art 1 s 41*

60A.71 LICENSURE.

[For text of subds 1 to 6, see M.S.1996]

Subd. 7. **Fees.** Each applicant for a reinsurance intermediary license shall pay to the commissioner a fee of $160 for an initial two–year license and a fee of $120 for each renewal. Applications shall be submitted on forms prescribed by the commissioner.

History: *1997 c 200 art 1 s 42*

60A.951 DEFINITIONS.

[For text of subds 1 to 4, see M.S.1996]

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, community 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.

[For text of subd 6, see M.S.1996]

History: *1997 c 225 art 2 s 1*