

## CHAPTER 45

## DEPARTMENT OF COMMERCE; GENERAL POWERS

45.011	Definitions.	45.025	Advertisement of interest rates.
45.0111	Temporary licenses.	45.026	Regulation of business of financial planning.
45.0112	Street addresses required.	45.027	Investigations and subpoenas.
45.012	Commissioner.	45.028	Service of process.
45.013	Power to appoint staff.	45.029	Financial statement.
45.0135	Division of Insurance Fraud Prevention.	45.0291	Department bonds.
45.014	Seal of Department of Commerce.	45.0292	License reciprocity.
45.015	Proof of mailing.	45.0293	Regulation of group life insurance.
45.016	Service of orders or other papers.	45.0295	Fees.
45.023	Rules.		
45.024	Hearings.		

45.01 [Repealed, 1983 c 289 s 119]

## 45.011 DEFINITIONS.

Subdivision 1. **Scope.** As used in chapters 45 to 83, 155A, 309, 332, 345, and 359, and sections 325D.30 to 325D.42, 326.83 to 326.991, and 386.61 to 386.78, unless the context indicates otherwise, the terms defined in this section have the meanings given them.

Subd. 2. **Commissioner.** "Commissioner" means the commissioner of commerce.

Subd. 3. **Department.** "Department" means the Department of Commerce.

Subd. 4. **Duties and responsibilities entrusted to the commissioner.** "Duties and responsibilities entrusted to the commissioner" includes the administration of those chapters referred to in subdivision 1 and chapter 115C, as well as rules adopted or orders issued under those chapters.

**History:** 1983 c 289 s 11; 1993 c 204 s 1,2; 1994 c 385 s 1,2; 1996 c 439 art 1 s 2; 1997 c 222 s 1; 1Sp2001 c 5 art 20 s 4

## 45.0111 TEMPORARY LICENSES.

Subdivision 1. **Authority.** The commissioner may grant a temporary license to an applicant who can demonstrate successful completion of all requirements for a permanent license. The temporary license will remain in effect until the earliest of:

- (1) receipt by the applicant of the permanent license;
- (2) the expiration of 45 days from the date on which the temporary license was granted; or
- (3) denial by the commissioner of the permanent license.

Subd. 2. **Nonapplication.** A temporary license as described in this section may not be issued to an applicant for licensure as a:

- (1) currency exchange regulated under chapter 53A;
- (2) collection agency regulated under sections 332.31 to 332.45;
- (3) credit service organization regulated under sections 332.52 to 332.60; or
- (4) broker-dealer, investment advisor, or agent regulated under chapter 80A.

**History:** 1997 c 222 s 2

## 45.0112 STREET ADDRESSES REQUIRED.

Licenses or applicants for licenses issued by the commissioner shall provide to the commissioner a residence telephone number, a street address where the licensee actually resides, and a street address where the licensee's business is physically located. A post office box address is not sufficient to satisfy this requirement. The individual shall notify the department of any change in street address or residence telephone number within ten days.

**History:** 1997 c 222 s 3

**45.012 COMMISSIONER.**

(a) The Department of Commerce is under the supervision and control of the commissioner of commerce. The commissioner is appointed by the governor in the manner provided by section 15.06.

(b) Data that is received by the commissioner or the commissioner's designee by virtue of membership or participation in an association, group, or organization that is not otherwise subject to chapter 13 is confidential or protected nonpublic data but may be shared with the department employees as the commissioner considers appropriate. The commissioner may release the data to any person, agency, or the public if the commissioner determines that the access will aid the law enforcement process, promote public health or safety, or dispel widespread rumor or unrest.

(c) It is part of the department's mission that within the department's resources the commissioner shall endeavor to:

(1) prevent the waste or unnecessary spending of public money;

(2) use innovative fiscal and human resource practices to manage the state's resources and operate the department as efficiently as possible;

(3) coordinate the department's activities wherever appropriate with the activities of other governmental agencies;

(4) use technology where appropriate to increase agency productivity, improve customer service, increase public access to information about government, and increase public participation in the business of government;

(5) utilize constructive and cooperative labor-management practices to the extent otherwise required by chapters 43A and 179A;

(6) report to the legislature on the performance of agency operations and the accomplishment of agency goals in the agency's biennial budget according to section 16A.10, subdivision 1; and

(7) recommend to the legislature appropriate changes in law necessary to carry out the mission and improve the performance of the department.

(d) The commissioner also has all the powers and responsibilities and shall perform all the duties previously assigned to the commissioner of public service and the Department of Public Service under chapters 216, 216A, 216B, 216C, 237, 238, 239, and other statutes prior to the date of final enactment of Laws 2001, First Special Session chapter 4, except in the case where those powers, responsibilities, or duties have been specifically otherwise assigned by law.

**History:** 1983 c 289 s 12; 1992 c 564 art 1 s 1; 1995 c 248 art 11 s 5; 1998 c 366 s 52; 1Sp2001 c 4 art 6 s 14

**45.013 POWER TO APPOINT STAFF.**

The commissioner of commerce may appoint four deputy commissioners; four assistant commissioners, and an assistant to the commissioner. Those positions, as well as that of a confidential secretary, are unclassified. The commissioner may appoint other employees necessary to carry out the duties and responsibilities entrusted to the commissioner.

**History:** 1983 c 289 s 13

**45.0135 DIVISION OF INSURANCE FRAUD PREVENTION.**

Subdivision 1. [Repealed, 2004 c 269 art 1 s 12]

Subd. 2. [Repealed, 2004 c 269 art 1 s 12]

Subd. 2a. **Authorization.** The commissioner may appoint peace officers, as defined in section 626.84, subdivision 1, paragraph (c), and establish a law enforcement agency, as defined in section 626.84, subdivision 1, paragraph (h), known as the Division of Insurance Fraud Prevention, to conduct investigations, and to make arrests under sections 629.30 and 629.34. The jurisdiction of the law enforcement agency is limited to offenses related to insurance fraud.

# MINNESOTA STATUTES 2004

Subd. 2b. **Duties.** The Division of Insurance Fraud Prevention shall:

(1) review notices and reports of insurance fraud submitted by authorized insurers, their employees, and agents or producers;

(2) respond to notifications or complaints of suspected insurance fraud generated by other law enforcement agencies, state or federal governmental units, or any other person;

(3) initiate inquiries and conduct investigations when the division has reason to believe that insurance fraud has been or is being committed; and

(4) report incidents of alleged insurance fraud disclosed by its investigations to appropriate law enforcement agencies, including, but not limited to, the attorney general, county attorneys, or any other appropriate law enforcement or regulatory agency, and shall assemble evidence, prepare charges, and otherwise assist any law enforcement authority having jurisdiction.

Subd. 2c. **Arrests and investigations.** The initial processing of a person arrested by the Division of Insurance Fraud Prevention for an offense within its jurisdiction is the responsibility of the Division of Insurance Fraud Prevention unless otherwise directed by the law enforcement agency with primary jurisdiction. Subsequent investigation shall be the responsibility of the Division of Insurance Fraud Prevention unless otherwise directed by the law enforcement agency with primary jurisdiction. At the request of the primary jurisdiction, the Division of Insurance Fraud Prevention may assist in a subsequent investigation being carried out by the primary jurisdiction.

Subd. 2d. **Policy for notice of investigations.** The Division of Insurance Fraud Prevention must develop a policy for notifying the law enforcement agency with primary jurisdiction when it has initiated investigation of any person within the jurisdiction of that agency.

Subd. 2e. **Chief law enforcement officer.** The commissioner shall appoint a peace officer employed full time to be the chief law enforcement officer and to be responsible for the management of the Division of Insurance Fraud Prevention. The chief law enforcement officer shall possess the necessary police and management experience to manage a law enforcement agency. The chief law enforcement officer may appoint, discipline, and discharge all employees of the Division of Insurance Fraud Prevention. All police managerial and supervisory personnel must be full-time employees of the Division of Insurance Fraud Prevention. Supervisory personnel must be on duty and available any time peace officers of the Division of Insurance Fraud Prevention are on duty.

Subd. 2f. **Compliance.** Except as otherwise provided in this section, the Division of Insurance Fraud Prevention shall comply with all statutes and administrative rules relating to the operation and management of a law enforcement agency.

Subd. 3. **Evidence, documentation, and related materials.** If the division seeks evidence, documentation, and related materials pertinent to an investigation, and the matter is located outside of this state, the division may designate representatives, including officials of the state where the matter is located, to secure the matter or inspect the matter on its behalf.

Subd. 4. **Confidentiality and immunity.** The provisions of chapter 13, including, but not limited to, section 13.82, apply to the classification, disclosure, and collection of data relating to the Division of Insurance Fraud Prevention.

Subd. 5. **Annual report on activities and cost-effectiveness.** The Division of Insurance Fraud Prevention shall maintain records and information in order to produce an annual report of its activities as may be prescribed by the commissioner of commerce. The commissioner shall report annually to the house and senate standing committees with jurisdiction over insurance issues as to the activities of the division and the cost-effectiveness of the programs established by the division.

Subd. 6. **Insurance fraud prevention account.** The insurance fraud prevention account is created in the state treasury. Money received from assessments under subdivision 7 is deposited in the account. Money in this fund is appropriated to the

commissioner of commerce for the purposes specified in this section and sections 60A.951 to 60A.956.

Subd. 7. **Assessment.** Each insurer authorized to sell insurance in the state of Minnesota shall remit an assessment to the commissioner for deposit in the insurance fraud prevention account on or before June 1 of each year. The amount of the assessment shall be based on the insurer's total assets and on the insurer's total written Minnesota premium, for the preceding fiscal year, as reported pursuant to section 60A.13. The assessment is calculated as follows:

Total Assets	Assessment
Less than \$100,000,000	\$ 200
\$100,000,000 to \$1,000,000,000	\$ 750
Over \$1,000,000,000	\$2,000
Minnesota Written Premium	Assessment
Less than \$10,000,000	\$ 200
\$10,000,000 to \$100,000,000	\$ 50
Over \$100,000,000	\$2,000

For purposes of this subdivision, the following entities are not considered to be insurers authorized to sell insurance in the state of Minnesota: risk retention groups; township mutuals organized under chapter 67A; or health maintenance organizations organized under chapter 62D.

**History:** 2002 c 331 s 1; 2004 c 269 art 1 s 2-9

#### 45.014 SEAL OF DEPARTMENT OF COMMERCE.

The commissioner of commerce shall devise a seal for official use as the seal of the Department of Commerce. The seal must be capable of being legibly reproduced under photographic methods. A description of the seal, and a copy of it, must be filed in the Office of the Secretary of State.

**History:** 1995 c 202 art 1 s 1

#### 45.015 PROOF OF MAILING.

In any provision of law related to the duties and responsibilities entrusted to the commissioner, and unless a different method is specified, when a person is required to provide notice or perform a similar act, this action may be accomplished by mail, and proof of mailing is sufficient to prove compliance with the requirement.

**History:** 1994 c 485 s 1

#### 45.016 SERVICE OF ORDERS OR OTHER PAPERS.

Service of orders or other papers required or permitted to be issued by the commissioner related to the duties and responsibilities entrusted to the commissioner may be by any of the following methods:

(1) personal service consistent with requirements for service of a summons or process under section 303.13 or 543.19, or under rule 4.03 of the Minnesota Rules of Civil Procedure;

(2) first class United States mail, including certified United States mail, or overnight express mail service, postage prepaid and addressed to the party at the party's last known address. Service by United States mail, including certified mail, is complete upon placing the order or other paper in the mail or otherwise delivering the order or other paper to the United States mail service. Service by overnight express mail service is complete upon delivering the order or other document to an authorized agent of the express mail service; or

(3) any other method of service provided under the laws relating to duties and responsibilities entrusted to the commissioner.

**History:** 1996 c 439 art 1 s 3

45.02 [Repealed, 1983 c 289 s 119]

45.021 [Repealed, 1983 c 289 s 119]

#### 45.023 RULES.

The commissioner of commerce may adopt, amend, suspend, or repeal rules in accordance with chapter 14, and as otherwise provided by law, whenever necessary or proper in discharging the commissioner's official responsibilities.

**History:** 1983 c 289 s 14; 1984 c 640 s 32; 1995 c 233 art 2 s 56

#### 45.024 HEARINGS.

Subdivision 1. **General.** In any case in which the commissioner of commerce is required by law to conduct a hearing, the hearing must be conducted in accordance with chapter 14 and other applicable laws.

Subd. 2. **Delegation.** The commissioner of commerce may delegate to a deputy commissioner, assistant commissioner, or director the exercise of the commissioner's statutory powers and duties, including the authority to decide and issue final orders in contested cases, rulemaking proceedings, and other hearings held under chapter 14.

This delegation is in addition to, and does not in any way limit, the commissioner's authority to delegate pursuant to section 15.06, subdivision 6, or any other law.

**History:** 1983 c 289 s 15; 1987 c 337 s 2; 1994 c 485 s 2

#### 45.025 ADVERTISEMENT OF INTEREST RATES.

Subdivision 1. **Definitions.** For the purposes of this section only, the following terms have the meanings given them:

(a) "Advertisement" includes:

(1) printed or published material, audio visual material, and descriptive literature of an issuer or agent used in direct mail, newspapers, magazines, other periodicals, radio scripts, television scripts, billboards, and other similar displays, excluding advertisements prepared for the sole purpose of obtaining employees, agents, or agencies;

(2) descriptive literature and sales aids of all kinds issued by an issuer or agent for presentation to members of the public, including but not limited to circulars, leaflets, booklets, depictions, illustrations, and form letters;

(3) prepared sales talks, presentations, and materials for use by issuers and agents and representations made by issuers and agents in accordance with these talks, presentations, and materials; and

(4) statements, written or oral, by an agent or issuer.

(b) "Agent" is a person who effects or attempts to effect or assist in the purchase or sale of an investment product.

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

(d) "Effective annual yield" is the annualized income expressed as a simple interest rate per annum based on the initial investment principal.

(e) "Effective net annual yield" means the effective annual yield, based on a hypothetical \$1,000 investment, minus any annual fee or similar regular periodic charges.

(f) "Investment product" includes but is not limited to:

(1) certificate of deposits, deposits, or fiduciary funds entrusted to banks, savings associations, trust companies, credit unions, savings banks, industrial loan and thrift companies, and any other financial institution whether or not licensed by or registered with the Department of Commerce;

(2) annuities, endowment policies, or other life insurance products;

(3) securities, including: a note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit sharing agreement; collateral trust certificate; preorganizational certificate or subscription; transferable shares; investment contract, including but not limited to metals, gems, and coins; voting trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining right, title or lease, or in payments out of production under the right, title or lease; or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, temporary or interim certificate for, receipt for guarantee of, or warrant or right to subscribe to or purchase, any of the securities listed in this clause.

(g) "Issuer" includes but is not limited to: banks, savings associations, trust companies, credit unions, savings banks, industrial loan and thrift companies, insurance companies, investment companies, trusts, or a person who issues an investment product.

(h) "Person" means an individual, corporation, a partnership, an association, a joint stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, a political subdivision of a government, or any other entity.

(i) "Yield to maturity" means the discount rate which, when applied to all future principal and interest payments to be received from an investment product assuming the investment product is held to maturity, results in a present value exactly equal to the price of the investment product.

**Subd. 2. General restriction.** A person may not advertise the interest rate of an investment product unless the effective net annual yield, or the yield to maturity if the investment product is a note, bond, or debenture that bears interest at a fixed rate and has a stated maturity, is disclosed in an equally prominent manner.

The name and address of the issuer, or a person from whom the name and address of the issuer may be obtained, and any prepayment expense, surrender charge, or withdrawal penalty charged by the issuer must also be disclosed in a prominent manner. If the expense, charge, or penalty varies according to the length of time the product is held, the advertisement must disclose the expense, fee, or penalty imposed if surrendered or terminated within one year.

**Subd. 3. Variable rates.** With the exception of life insurance policy and annuity contract illustrations based upon a prospective purchaser's age and sex that do not provide a comparison with another policy or contract, an investment product whose interest rate varies according to the income or earnings of the issuer may not advertise projections of effective annual yield for a period exceeding one year. In addition, the advertisement must include in a prominent manner substantially the following statement:

"The effective annual yield or total return will fluctuate along with market and other economic conditions. Past performance does not guarantee future results."

**Subd. 4. Past performance.** If the advertisement refers to the past performance of an investment product, the advertisement must disclose the effective net annual yield for the one-year period immediately preceding the most recent quarter. "Quarters" for the purposes of this subdivision end on March 31, June 30, September 30, and December 31.

**Subd. 5. Comparative illustrations.** Illustrations comparing a life insurance policy or annuity contract of one company with a life insurance policy or an annuity contract of another company must clearly disclose with equal prominence for each policy or contract:

- (1) the guaranteed rate of interest paid on the cash value;
- (2) the current dividend scale or current rate of interest paid on the cash value;

(3) the nonguaranteed nature of any current dividends, current interest rates, charges, or other fees applied to the policy or contract, including the issuer's rights to alter any of these factors;

(4) any limitations on the crediting of dividends or interest;

(5) the frequency and timing by which dividends or the current interest rate is determined; and

(6) the net cash surrender value at all ages and contract durations illustrated.

Subd. 6. **Waiver.** The commissioner may by rule or order waive or defer implementation of the provisions of subdivisions 2 to 5 with regard to any person or persons who comply with similar restrictions imposed by the Securities and Exchange Commission or other regulatory agency.

Subd. 7. [Repealed, 1992 c 427 s 3]

Subd. 8. **Civil remedy.** A person violating this section is liable to a purchaser of the investment product. The purchaser may sue either in equity for rescission upon tender of the investment product or at law for damages if the purchaser no longer owns the investment product. In an action for rescission, the purchaser is entitled to recover the consideration paid for the investment product, together with interest at the legal rate, costs, and reasonable attorney fees, less the amount of any income received on the investment product. In an action at law, damages are the consideration paid for the investment product together with interest at the legal rate to the date of disposition, costs, and reasonable attorney fees, less the value of the investment product at the date of disposition. Subject to the exceptions in subdivision 3, if the advertisement advertises an investment product whose interest rate varies according to the earnings or income of the issuer and if the advertisement projects the accumulated earnings for a period longer than one year, the issuer and agent are jointly and severally liable to the purchaser for the difference in the principal and interest received by the purchaser and the principal and interest as projected in the advertisement.

Subd. 9. **Denial, suspension, or revocation.** The commissioner may by order deny, suspend, or revoke an agent's or issuer's license or may censure the licensee if the commissioner finds that: (1) the order is in the public interest; (2) the agent or issuer violated any provision of this section; and (3) the agent or issuer is licensed by the department.

Subd. 10. **Alternative compliance.** In lieu of complying with the provisions of this section with respect to any deposit or certificate of deposit, a depository institution defined in section 19(b)(1)(A)(i)-(vi) of the Federal Reserve Act, United States Code, title 12, section 461, or a deposit broker defined in section 29(g) of the Federal Deposit Insurance Act, United States Code, title 12, section 1831f(g), may comply with the requirements of the Federal Truth in Savings Act and regulations, notwithstanding whether or not that act or those regulations apply to the deposit or certificate of deposit.

**History:** 1987 c 153 s 1; 1989 c 330 s 1; 1992 c 427 s 1,2; 1992 c 540 art 3 s 1; 1993 c 257 s 1

#### 45.026 REGULATION OF BUSINESS OF FINANCIAL PLANNING.

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

(a) "Person" means an individual, corporation, partnership, joint venture, joint stock association, trust, or unincorporated association.

(b) "Financial planner" means a person who, on advertisements, cards, signs, circulars, letterheads, or in another manner, indicates that the person is a "financial planner," "financial counselor," "financial adviser," "investment counselor," "investment adviser," "financial consultant," or other similar designation, title, or combination is considered to be representing that the person is engaged in the business of financial planning.

(c) "Advertisement" includes:

(1) printed or published material, audiovisual material, and descriptive literature of a financial planner used in direct mail, newspapers, magazines, other periodicals, radio scripts, television scripts, billboards, and other similar displays, excluding advertisements prepared for the sole purpose of obtaining employees, agents, or agencies;

(2) descriptive literature and sales ads of all kinds issued by a financial planner for presentation to members of the public, including but not limited to, circulars, leaflets, booklets, depictions, illustrations, and form letters;

(3) prepared sales talks, presentations, and materials for use by a financial planner and any representations made by a financial planner in accordance with these talks, presentations, and materials; and

(4) statements, written or oral, by a financial planner.

**Subd. 2. Fiduciary duty.** Persons who represent that they are financial planners have a fiduciary duty to persons for whom services are performed for compensation. In an action for breach of fiduciary duty, a person may recover actual damages resulting from the breach, together with costs and disbursements.

**Subd. 3. Penalty.** A financial planner is subject to section 45.027, subdivision 5.

**History:** 1987 c 336 s 1

#### 45.027 INVESTIGATIONS AND SUBPOENAS.

**Subdivision 1. General powers.** In connection with the duties and responsibilities entrusted to the commissioner, and Laws 1993, chapter 361, section 2, the commissioner of commerce may:

(1) make public or private investigations within or without this state as the commissioner considers necessary to determine whether any person has violated or is about to violate any law, rule, or order related to the duties and responsibilities entrusted to the commissioner;

(2) require or permit any person to file a statement in writing, under oath or otherwise as the commissioner determines, as to all the facts and circumstances concerning the matter being investigated;

(3) hold hearings, upon reasonable notice, in respect to any matter arising out of the duties and responsibilities entrusted to the commissioner;

(4) conduct investigations and hold hearings for the purpose of compiling information related to the duties and responsibilities entrusted to the commissioner;

(5) examine the books, accounts, records, and files of every licensee, and of every person who is engaged in any activity regulated; the commissioner or a designated representative shall have free access during normal business hours to the offices and places of business of the person, and to all books, accounts, papers, records, files, safes, and vaults maintained in the place of business;

(6) publish information which is contained in any order issued by the commissioner; and

(7) require any person subject to duties and responsibilities entrusted to the commissioner, to report all sales or transactions that are regulated. The reports must be made within ten days after the commissioner has ordered the report. The report is accessible only to the respondent and other governmental agencies unless otherwise ordered by a court of competent jurisdiction.

**Subd. 1a. Response to department requests.** An applicant, registrant, certificate holder, licensee, or other person subject to the jurisdiction of the commissioner shall comply with requests for information, documents, or other requests from the department within the time specified in the request, or, if no time is specified, within 30 days of the mailing of the request by the department. Applicants, registrants, certificate holders, licensees, or other persons subject to the jurisdiction of the commissioner shall appear before the commissioner or the commissioner's representative when requested to do so and shall bring all documents or materials that the commissioner or the commissioner's representative has requested.



Subd. 2. **Power to compel production of evidence.** For the purpose of any investigation, hearing, proceeding, or inquiry related to the duties and responsibilities entrusted to the commissioner, the commissioner or a designated representative may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of books, papers, correspondence, memoranda, agreements, or other documents or records that the commissioner considers relevant or material to the inquiry.

Subd. 3. **Court orders.** In case of a refusal to appear or a refusal to obey a subpoena issued to any person, the district court, upon application by the commissioner, may issue to any person an order directing that person to appear before the commissioner, or the officer designated by the commissioner, there to produce documentary evidence if so ordered or to give evidence relating to the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

Subd. 4. **Scope of privilege.** No person is excused from attending and testifying or from producing any document or record before the commissioner, or from obedience to the subpoena of the commissioner or any officer designated by the commissioner or in a proceeding instituted by the commissioner, on the ground that the testimony or evidence required may tend to incriminate that person or subject that person to a penalty of forfeiture. No person may be prosecuted or subjected to a penalty or forfeiture for or on account of a transaction, matter, or thing concerning which the person is compelled, after claiming the privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

Subd. 5. **Legal actions; injunctions.** Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any law, rule, or order related to the duties and responsibilities entrusted to the commissioner, the commissioner may bring an action in the name of the state in Ramsey County District Court or the district court of an appropriate county to enjoin the acts or practices and to enforce compliance, or the commissioner may refer the matter to the attorney general or the county attorney of the appropriate county. A permanent injunction or other appropriate relief must be granted based solely upon a showing that the person has engaged or is about to engage in an act or practice constituting a violation of a law, rule, cease and desist order, or other order related to the duties and responsibilities entrusted to the commissioner. The terms of this subdivision govern an action brought under this subdivision, including an action against a person who, for whatever reason, claims that the subject law, rule, cease and desist order or other order does not apply to the person.

Subd. 5a. **Cease and desist orders.** (a) Whenever it appears to the commissioner that a person has engaged or is about to engage in an act or practice constituting a violation of a law, rule, or order related to the duties and responsibilities entrusted to the commissioner, the commissioner may issue and cause to be served upon the person an order requiring the person to cease and desist from violations.

(b) The cease and desist order must be calculated to give reasonable notice of the rights of the person to request a hearing and must state the reasons for the entry of the order. A hearing must be held not later than ten days after the request for the hearing is received by the commissioner. After the completion of the hearing, the administrative law judge shall issue a report within ten days. Within 15 days after receiving the administrative law judge's report, the commissioner shall issue a further order vacating or making permanent the cease and desist order. The time periods provided in this provision may be waived by agreement of the person requesting the hearing and the Department of Commerce and the person against whom the cease and desist order is issued. If the person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, the person is in default, and the proceeding may be determined against that person upon consideration of the cease and desist order, the allegations of which may be considered to be true. Unless otherwise provided, all

hearings must be conducted according to chapter 14. The commissioner may adopt rules of procedure concerning all proceedings conducted under this subdivision.

(c) If no hearing is requested within 30 days of service of the order, the cease and desist order will become permanent.

(d) A cease and desist order issued under this subdivision remains in effect until it is modified or vacated by the commissioner. The administrative proceeding provided by this subdivision, and subsequent appellate judicial review of that administrative proceeding, constitutes the exclusive remedy for determining whether the commissioner properly issued the cease and desist order and whether the cease and desist order should be vacated or made permanent.

**Subd. 5b. Enforcement of violations of cease and desist orders.** (a) Whenever the commissioner under subdivision 5 seeks to enforce compliance with a cease and desist order that has been made permanent, the allegations in the cease and desist order are considered conclusively established for purposes of a proceeding under subdivision 5 for permanent or temporary relief to enforce the cease and desist order. Whenever the commissioner under subdivision 5 seeks to enforce compliance with a cease and desist order when a hearing or hearing request on the cease and desist order is pending, or the time has not yet expired to request a hearing on whether a cease and desist order should be vacated or made permanent, the allegations in the cease and desist order are considered conclusively established for purposes of a proceeding under subdivision 5 for temporary relief to enforce the cease and desist order.

(b) Notwithstanding this subdivision or subdivision 5 or 5a to the contrary, the person against whom the cease and desist order is issued and who has requested a hearing under subdivision 5a may within 15 days after service of cease and desist order bring an action in Ramsey County District Court for issuance of an injunction to suspend enforcement of the cease and desist order pending a final decision of the commissioner under subdivision 5a to vacate or make permanent the cease and desist order. The court shall determine whether to issue such an injunction based on traditional principles of temporary relief.

**Subd. 6. Violations and penalties.** The commissioner may impose a civil penalty not to exceed \$10,000 per violation upon a person who violates any law, rule, or order related to the duties and responsibilities entrusted to the commissioner unless a different penalty is specified. If a civil penalty is imposed on a health carrier as defined in section 62A.011, the commissioner must divide 50 percent of the amount among any policy holders or certificate holders affected by the violation, unless the commissioner certifies in writing that the division and distribution to enrollees would be too administratively complex or that the number of enrollees affected by the penalty would result in a distribution of less than \$50 per enrollee.

**Subd. 7. Actions against licensees.** (a) In addition to any other actions authorized by this section, the commissioner may, by order, deny, suspend, or revoke, the authority or license of a person subject to the duties and responsibilities entrusted to the commissioner, as described under section 45.011, subdivision 4, or censure that person if the commissioner finds that:

- (1) the order is in the public interest; and
- (2) the person has violated any law, rule, or order related to the duties and responsibilities entrusted to the commissioner; or
- (3) the person has provided false, misleading, or incomplete information to the commissioner or has refused to allow a reasonable inspection of records or premises; or
- (4) the person has engaged in an act or practice, whether or not the act or practice directly involves the business for which the person is licensed or authorized, which demonstrates that the applicant or licensee is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the authority or license granted by the commissioner.

(b) The commissioner shall issue an order requiring a licensee or applicant for a license to show cause why the license should not be revoked or suspended, or the licensee censured, or the application denied. The order must be calculated to give

# MINNESOTA STATUTES 2004

reasonable notice of the time and place for a hearing on the action, and must state the reasons for the entry of the order. The commissioner may, by order, summarily suspend a license pending final determination of an order to show cause. If a license is suspended pending final determination of an order to show cause, a hearing on the merits must be held within 30 days of the issuance of the order of suspension. All hearings must be conducted according to chapter 14. After the hearing, the commissioner shall enter an order disposing of the matter as the facts require. If the licensee or applicant fails to appear at a hearing after having been duly notified of it, the person is considered in default, and the proceeding may be determined against the licensee or applicant upon consideration of the order to show cause, the allegations of which may be considered true. The summary suspension or summary revocation procedures does not apply to action by the commissioner against the certificate of authority of an insurer authorized to do business in Minnesota.

Except for information classified as confidential under sections 60A.03, subdivision 9; 60A.031; 60A.93; and 60D.22, the commissioner may make any data otherwise classified as private or confidential pursuant to this section accessible to an appropriate person or agency if the commissioner determines that the access will aid the law enforcement process, promote public health or safety, or dispel widespread rumor or unrest. If the commissioner determines that private or confidential information should be disclosed, the commissioner shall notify the attorney general as to the information to be disclosed, the purpose of the disclosure, and the need for the disclosure. The attorney general shall review the commissioner's determination. If the attorney general believes that the commissioner's determination does not satisfy the purpose and intent of this provision, the attorney general shall advise the commissioner in writing that the information may not be disclosed. If the attorney general believes the commissioner's determination satisfies the purpose and intent of this provision, the attorney general shall advise the commissioner in writing, accordingly.

After disclosing information pursuant to this provision, the commissioner shall advise the chairs of the senate and house of representatives judiciary committees of the disclosure and the basis for it.

**Subd. 7a. Authorized disclosures of information and data.** (a) The commissioner may release and disclose any active or inactive investigative information and data to any national securities exchange or national securities association registered under the Securities Exchange Act of 1934 when necessary for the requesting agency in initiating, furthering, or completing an investigation.

(b) The commissioner may release any active or inactive investigative data relating to the conduct of the business of insurance to the Office of the Comptroller of the Currency or the Office of Thrift Supervision in order to facilitate the initiation, furtherance, or completion of the investigation.

**Subd. 8. Stop order.** In addition to any other actions authorized by this section, the commissioner may issue a stop order denying effectiveness to or suspending or revoking any registration.

**Subd. 9. Powers additional.** The powers contained in subdivisions 1 to 8 are in addition to all other powers of the commissioner.

**Subd. 10. Rehabilitation of criminal offenders.** Chapter 364 does not apply to an applicant for a license or to a licensee where the underlying conduct on which the conviction is based would be grounds for denial, censure, suspension, or revocation of the license.

**Subd. 11. Actions against lapsed license.** If a license lapses, is surrendered, withdrawn, terminated, or otherwise becomes ineffective, the commissioner may institute a proceeding under this subdivision within two years after the license was last effective and enter a revocation or suspension order as of the last date on which the license was in effect, or impose a civil penalty as provided for in subdivision 6.

**Subd. 12. Conditions of relicensure.** A revocation of a license prohibits the licensee from making a new application for a license for at least two years from the effective date of the revocation. The commissioner may, as a condition of reapplication,

require the applicant to obtain a bond or comply with additional reasonable conditions of licensure the commissioner considers necessary to protect the public.

**History:** 1987 c 336 s 2; 1989 c 330 s 2; 1990 c 415 s 1; 1991 c 306 s 1-6; 1992 c 564 art 1 s 2-8; 1993 c 145 s 1; 1993 c 204 s 3-7; 1993 c 361 s 3; 1994 c 385 s 3; 1996 c 384 s 1,2; 1996 c 439 art 1 s 4,5; art 2 s 1; 1997 c 7 art 2 s 7; 1999 c 137 s 1,2; 2000 c 483 s 1; 1Sp2001 c 9 art 16 s 1; 2002 c 379 art 1 s 113; 2004 c 285 art 4 s 1; 2004 c 290 s 20

#### 45.028 SERVICE OF PROCESS.

Subdivision 1. **Requirement.** (a) When a person, including any nonresident of this state, engages in conduct prohibited or made actionable by chapters 45 to 83, 155A, 309, and 332, and section 326.83, or any rule or order under those chapters, and the person has not filed a consent to service of process under chapters 45 to 83, 155A, 309, and 332, and section 326.83, that conduct is equivalent to an appointment of the commissioner as the person's attorney to receive service of process in any noncriminal suit, action, or proceeding against the person which is based on that conduct and is brought under chapters 45 to 83, 155A, 309, and 332, and section 326.83, or any rule or order under those chapters.

(b) Subdivision 2 applies in all other cases under chapters 45 to 83, 155A, 309, and 332, and section 326.83, or any rule or order under those chapters, in which a person, including a nonresident of this state, has filed a consent to service of process. This paragraph supersedes any inconsistent provision of law.

(c) Subdivision 2 applies in all cases in which service of process is allowed to be made on the commissioner of commerce.

Subd. 2. **How made.** Service of process under this section may be made by leaving a copy of the process in the office of the commissioner, or by sending a copy of the process to the commissioner by certified mail, and is not effective unless: (1) the plaintiff, who may be the commissioner in an action or proceeding instituted by the commissioner, sends notice of the service and a copy of the process by certified mail to the defendant or respondent at the last known address; and (2) the plaintiff's affidavit of compliance is filed in the action or proceeding on or before the return day of the process, if any, or within further time as the court allows.

**History:** 1987 c 336 s 3; 1989 c 209 art 2 s 5; 1989 c 330 s 3; 1992 c 564 art 2 s 1; 1997 c 222 s 4; 1999 c 137 s 3

#### 45.029 FINANCIAL STATEMENT.

Wherever used in chapters 45 to 83, or rules adopted thereunder, the term "certified" as applied to balance sheets, profit and loss statements or other financial statements shall be construed as meaning an audited financial statement prepared in accordance with generally accepted accounting principles that has been examined by an independent certified public accountant for the purpose of expressing an opinion. The opinion by the certified public accountant shall contain a statement that it fairly represents the financial position of the organization or person.

**History:** 1987 c 336 s 4

#### 45.0291 DEPARTMENT BONDS.

Bonds issued under chapters 45 to 83, 309, 332, and sections 326.83 to 326.98, are not state bonds or contracts for purposes of sections 8.05 and 16C.05, subdivision 2.

**History:** 1992 c 564 art 4 s 1; 1998 c 386 art 2 s 22

#### 45.0292 LICENSE RECIPROCITY.

The commissioner may waive all or part of the requirements of prelicense education, examination, and continuing education for individuals of other jurisdictions if:

- (1) a written reciprocal licensing agreement is in effect between the commissioner and the licensing officials of that jurisdiction;
- (2) the individual is licensed in that jurisdiction; and

(3) the licensing requirements of that jurisdiction are substantially similar to the corresponding licensing requirements of the Commerce Department.

**History:** 1997 c 222 s 5

#### 45.0293 REGULATION OF GROUP LIFE INSURANCE.

The commissioner may waive all or part of the requirements of section 61A.09, subdivision 3, if:

- (1) all the premiums under the group policy are paid by the group policyholder;
- (2) the loans insured are first real estate residential mortgage loans owned or guaranteed by the group policyholder; and
- (3) the group policy is in the best interests of insured debtors.

**History:** 1997 c 222 s 6

#### 45.0295 FEES.

(a) The following fees shall be paid to the commissioner:

- (1) for each hour or fraction of one hour of education course approval sought, \$10; and
- (2) for each course coordinator approval, \$100.

(b) All fees paid to the commissioner under this section are nonrefundable, except that an overpayment of a fee shall be returned upon proper application.

**History:** 1997 c 200 art 1 s 40; 1999 c 223 art 2 s 1; 2001 c 208 s 1

45.03 [Repealed, 1983 c 289 s 119]

45.031 [Repealed, 1983 c 289 s 119]

45.032 [Repealed, 1983 c 289 s 119]

45.033 [Repealed, 1983 c 289 s 119]

45.034 [Repealed, 1983 c 289 s 119]

45.04 [Renumbered 46.041]

45.05 [Renumbered 46.042]

45.06 [Renumbered 46.043]

45.07 [Renumbered 46.044]

45.071 [Renumbered 46.045]

45.08 [Renumbered 46.046]

45.15 [Repealed, 1983 c 289 s 119]

45.16 Subdivision 1. [Renumbered 8.32, subdivision 1]

Subd. 2. [Renumbered 8.32, subd 2]

Subd. 3. [Repealed, 1973 c 638 s 66]

Subd. 4. [Repealed, 1983 c 289 s 119]

Subd. 5. [Repealed, 1983 c 289 s 119]

45.17 Subdivision 1. [Renumbered 8.33, subdivision 1]

Subd. 2. [Renumbered 8.33, subd 2]

Subd. 3. [Renumbered 8.33, subd 3]

Subd. 4. [Renumbered 8.33, subd 4]

Subd. 5. [Renumbered 8.33, subd 5]

Subd. 6. [Repealed, 1983 c 289 s 119]

Subd. 7. [Renumbered 8.33, subd 6]

Subd. 8. [Renumbered 8.33, subd 7]