

## CHAPTER 45

### DEPARTMENT OF COMMERCE; GENERAL POWERS

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**45.01** [Repealed, 1983 c 289 s 119]

#### **45.011 DEFINITIONS.**

Subdivision 1. **Scope.** As used in chapters 45 to 83, 155A, 332, 332A, 332B, 345, and 359, and sections 123A.21, subdivision 7, paragraph (a), clause (23); 123A.25; 325D.30 to 325D.42;

326B.802 to 326B.885; 386.61 to 386.78; 471.617; and 471.982, 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; 2006 c 212 art 1 s 3; 2007 c 57 art 3 s 2 2007 c 140 art 8 s 30; art 13 s 4; 2009 c 37 art 4 s 1; 2009 c 178 art 1 s 1

#### 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; 2007 c 140 art 8 s 30

#### 45.0112 STREET AND E-MAIL ADDRESSES REQUIRED.

Licensees 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, a street address where the licensee's business is physically located, and a current e-mail address for business use. The individual shall notify the department of any change in street address, e-mail address for business use, or residence telephone number within ten days.

**History:** 1997 c 222 s 3; 2010 c 384 s 1

#### 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 (f), 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.

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 of representatives 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, including surplus lines carriers, and having Minnesota earned premium the previous calendar year 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 to be an amount up to the following:

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	\$ 750
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; or township mutuals organized under chapter 67A.

**Subd. 8. Investigations; health-related boards.** (a) The Division of Insurance Fraud Prevention may consult with the appropriate health-related board when a licensee, licensed under chapter 144E, 147, 148, 148B, or 150A, is suspected of insurance fraud.

(b) The division shall, for any conviction involving or related to insurance, send copies of all public data in its possession to the appropriate health-related licensing board.

**History:** 2002 c 331 s 1; 2004 c 269 art 1 s 2-9; 2005 c 10 art 2 s 4; 2005 c 77 s 1; 2005 c 147 art 11 s 1; 2009 c 178 art 1 s 2

#### 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]

**45.022 CONSUMER SATISFACTION; COMMERCE.**

(a) The commissioner of commerce shall submit a memorandum each year to the governor and the chairs of the house of representatives and senate standing committees with jurisdiction over the department's programs that provides the following information:

(1) the number of calls made to each of the department's help lines by consumers and citizens regarding the services provided by the department;

(2) the program area related to the call;

(3) the number of calls resolved at the department;

(4) the number of calls that were referred to a county agency for resolution;

(5) the number of calls that were referred elsewhere for resolution;

(6) the number of calls that remain open; and

(7) the number of calls that were without merit.

(b) The initial memorandum shall be submitted no later than February 15, 2012, with subsequent memoranda submitted no later than February 15 each following year.

(c) The commissioner shall publish the annual memorandum on the department's Web site each year no later than March 1.

**History:** 2010 c 329 art 1 s 22

#### **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** Subdivision 1. [Repealed, 2007 c 104 s 22]

Subd. 2. [Repealed, 2007 c 104 s 22]

Subd. 3. [Repealed, 2007 c 104 s 22]

Subd. 4. [Repealed, 2007 c 104 s 22]

Subd. 5. [Repealed, 2007 c 104 s 22]

Subd. 6. [Repealed, 2007 c 104 s 22]

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

Subd. 8. [Repealed, 2007 c 104 s 22]

Subd. 9. [Repealed, 2007 c 104 s 22]

Subd. 10. [Repealed, 2007 c 104 s 22]

#### **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;



(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; and

(8) assess a natural person or entity subject to the jurisdiction of the commissioner the necessary expenses of the investigation performed by the department when an investigation is made by order of the commissioner. The cost of the investigation shall be determined by the commissioner and is based on the salary cost of investigators or assistants and at an average rate per day or fraction thereof so as to provide for the total cost of the investigation. All money collected must be deposited into the general fund. A natural person licensed under chapter 60K or 82 shall not be charged costs of an investigation if the investigation results in no finding of a violation. This clause does not apply to a natural person or entity already subject to the assessment provisions of sections 60A.03 and 60A.031.

**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 policyholders 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 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; 2009 c 37 art 2 s 5; 2010 c 384 s 2

#### **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 326B.802, 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 326B.802, 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 326B.802, 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 326B.802, 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; 2007 c 140 art 8 s 30; art 13 s 4

#### **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 326B.802 to 326B.885, 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; 2007 c 140 art 8 s 30; art 13 s 4

**45.0292 LICENSE RECIPROACITY.**

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** MS 2006 [Renumbered 61A.09, subdivision 3, paragraph (b)]

**45.0295** [Repealed, 1Sp2005 c 1 art 4 s 124]

**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]

#### **45.21 APPLICATION FEES.**

Subdivision 1. **Fee refunds.** Refunds must not be given other than for overpayment of fees. Overpayment means any payment of money in excess of a statutory fee or for a license for which a person does not qualify. An overpayment of a fee must be returned upon proper application by the applicant. If an applicant requests a refund of an overpayment, the request must be received by the commissioner within six months of the date of deposit or the overpayment will be forfeited. An overpayment of a fee may be returned to the person entitled to it upon determination by the commissioner that an overpayment was made.

Subd. 2. **Withdrawal of application.** An application that is incomplete is considered withdrawn if the applicant does not submit a complete application within six months of the date the application was received. The application fee is nonrefundable if an application is withdrawn according to this subdivision.

**History:** 2005 c 100 s 1

#### **45.22 LICENSE EDUCATION APPROVAL.**

License education courses must be approved in advance by the commissioner. Each education provider who offers a license education course must be approved by the commissioner. Each approved education provider must have at least one coordinator who meets the criteria specified in this chapter, and who is responsible for supervising the educational program and assuring compliance with all laws and rules.

For courses with an initial approval date on or before December 31, 2000, approval will expire on April 30, 2006. For courses with an initial approval date after January 1, 2001, but before August 1, 2005, approval will expire on April 30, 2007.

**History:** 2005 c 100 s 2; 2006 c 255 s 1; 2009 c 63 s 1,78

#### **45.23 LICENSE EDUCATION FEES.**

The following fees must be paid to the commissioner:

(1) initial course approval, \$10 for each hour or fraction of one hour of education course approval sought. Initial course approval expires on the last day of the 24th month after the course is approved;

(2) renewal of course approval, \$10 per course. Renewal of course approval expires on the last day of the 24th month after the course is renewed;

(3) initial education provider approval, \$100. Initial education provider approval issued under this section is valid for a period not to exceed 24 months and expires on January 31 of the renewal year assigned by the commissioner. Active education providers who have at least one approved coordinator as of June 1, 2006, are deemed to be approved education providers and are not required to submit an initial application for education provider approval; and

(4) renewal of education provider approval, \$10. Each renewal of education provider approval is valid for a period of 24 months. Active education providers who have at least one approved coordinator as of June 1, 2006, will have an expiration date of January 31, 2008.

**History:** *1Sp2005 c 1 art 4 s 3; 2006 c 255 s 2; 2009 c 63 s 2,78*

#### **45.24 LICENSE TECHNOLOGY FEES.**

(a) The commissioner may establish and maintain an electronic licensing database system for license origination, renewal, and tracking the completion of continuing education requirements by individual licensees who have continuing education requirements, and other related purposes.

(b) The commissioner shall pay for the cost of operating and maintaining the electronic database system described in paragraph (a) through a technology surcharge imposed upon the fee for license origination and renewal, for individual licenses that require continuing education.

(c) The surcharge permitted under paragraph (b) shall be up to \$40 for each two-year licensing period, except as otherwise provided in paragraph (f), and shall be payable at the time of license origination and renewal.

(d) The Commerce Department technology account is hereby created as an account in the special revenue fund.

(e) The commissioner shall deposit the surcharge permitted under this section in the account created in paragraph (d), and funds in the account are appropriated to the commissioner in the amounts needed for purposes of this section. The commissioner of management and budget shall transfer an amount determined by the commissioner of commerce from the account to the statewide electronic licensing system account under section 16E.22 for the costs of the statewide licensing system attributable to the inclusion of licenses subject to this section.

(f) The commissioner shall temporarily reduce or suspend the surcharge as necessary if the balance in the account created in paragraph (d) exceeds \$2,000,000 as of the end of any calendar year and shall increase or decrease the surcharge as necessary to keep the fund balance at an adequate level but not in excess of \$2,000,000.

**History:** *2007 c 57 art 3 s 3; 2009 c 101 art 2 s 66,109*

### **LICENSEE EDUCATION**

#### **45.25 DEFINITIONS.**

Subdivision 1. **Scope.** As used in sections 45.25 to 45.43, the terms defined in this section have the meanings given them.

Subd. 2. **Appropriate and related knowledge.** "Appropriate and related knowledge" means facts, information, or principles that are clearly relevant to the licensee in performing responsibilities under a license. These facts, information, or principles must convey substantive and procedural knowledge as it relates to postlicensing issues and must be relevant to the technical aspects of a particular area of continuing education.

Subd. 3. **Classroom hour.** "Classroom hour" means a 50-minute hour. Breaks must not be accumulated in order to dismiss the class early. Classes must not be offered to any one student for longer than eight hours in one day, excluding meal breaks.

Subd. 4. **Commissioner.** "Commissioner" means the commissioner of commerce.



Subd. 5. **Coordinator.** "Coordinator" means an individual who is responsible for monitoring approved educational offerings.

Subd. 6. **Education provider.** "Education provider" means a person offering or providing approved education.

Subd. 7. **Encrypted online examination.** "Encrypted online examination" means an examination offered over the Internet that is (1) inaccessible to anyone but the student taking the examination, who must have a unique login and password to see it, and (2) protected with security measures that make it unreadable if it is electronically stolen. In addition, the student must not have the ability to download and save the examination in any readable form.

Subd. 8. **Instructor.** "Instructor" means an individual who (1) lectures in an approved educational offering, or (2) creates an interactive Internet or self-study course.

Subd. 9. **Licensee.** "Licensee" means a person licensed by the Department of Commerce for whom an examination is required before licensure.

Subd. 10. **Overpayment.** "Overpayment" means any payment of money in excess of a statutory fee.

Subd. 11. **Person.** "Person" means a natural person, firm, institution, partnership, corporation, limited liability company, limited liability partnership, or association.

Subd. 12. **Proctor.** "Proctor" means a disinterested third party with no conflict of interest who verifies a student's identity and processes an affidavit testifying that the student received no outside assistance with the course or examination.

Subd. 13. **Professional designation.** "Professional designation" means a written, proctored, and graded examination, the passage of which leads to a bona fide professional designation used by licensees.

**History:** 2009 c 63 s 3,78

#### 45.26 PAYMENT OF FEES.

Subdivision 1. **Manner of payment.** All fees must be paid by check, draft, or other negotiable or nonnegotiable instrument or order of withdrawal that is drawn against funds held by a financial institution. Cash will not be accepted.

Subd. 2. **Refunds.** An overpayment of a course or coordinator approval fee must be refunded within 90 days after a letter requesting the refund is received by the commissioner and signed by the person making the overpayment.

Refunds must not be given for other than overpayment of fees. A request for a refund of an overpayment must be received by the commissioner within six months of the date of deposit or it will be forfeited.

**History:** 2009 c 63 s 4,78

#### 45.27 FORMS.

All forms required by this chapter must be made in the form set forth by the commissioner. Forms may be duplicated, but must be readable. Computer generated lists and forms with the

same information as required in existing forms must be accepted by the department if prior approval is granted by the department.

**History:** 2009 c 63 s 5,78

#### **45.28 TEXTBOOKS REQUIRED.**

All prelicense courses must require the use of a textbook or a detailed workbook. The textbook or workbook must cover the subject matter of the course and must be current.

**History:** 2009 c 63 s 6,78

#### **45.29 INITIAL EDUCATION.**

Subdivision 1. **Content.** Successful completion of prelicense education includes full-time attendance throughout the course, completion of required assignments or reading material if applicable, and passage of an examination designed by the education provider that is sufficiently comprehensive to measure the student's knowledge of all aspects of the course.

Prelicensing courses may include coverage of subject matter not prescribed in this section. However, the subject matter must be presented in addition to, and must not be substituted for, the course content or hours specified for the particular industry. A student must not be required to pass an examination, or part of an examination, on this material in order to be able to obtain a license.

Subd. 2. **Course submission.** Courses must be submitted by the coordinator, instructor, or education provider at least 30 days before the initial offering of the course.

**History:** 2009 c 63 s 7,78

#### **45.30 CONTINUING EDUCATION.**

Subdivision 1. **Content.** Continuing education consists of approved courses that impart appropriate and related knowledge in the field for which approval is requested. The burden of demonstrating that courses impart appropriate and related knowledge is upon the person seeking approval or credit. The commissioner may approve any educational offering approved by the regulatory agency of another state if it does not conflict with Minnesota law, and any courses leading to a nationally recognized professional designation used by licensees regulated by this chapter.

Subd. 2. **Examinations.** Course examinations are required for interactive Internet courses but are not required for other continuing education courses unless they are required by the education provider. When certain prelicense courses are permitted to be used for continuing education, the licensee must pass the same examination as is required for those taking the course for prelicensing.

Subd. 3. **Textbooks.** Textbooks are not required to be used for continuing education courses unless the course is also approved as a prelicense course. If textbooks are not used, students are to be provided with a syllabus containing, at a minimum, the course title, the times and dates of the course offering, the names and addresses or telephone numbers of the course coordinator and instructor, and a detailed outline of the subject materials to be covered. Any written or printed material given to students must be of readable quality and contain accurate and current information.

Subd. 4. **Credit earned.** (a) Upon completion of approved courses, students must earn one hour of continuing education credit for each hour approved by the commissioner. Continuing

education courses must be attended in their entirety in order to receive credit for the number of approved hours.

(b) Qualified instructors will earn three hours of continuing education credit for each classroom hour of approved instruction that they deliver (1) independently, or (2) as part of a team presentation in a course of two hours or less, if they attend the course in its entirety. For licensees other than appraisers, no more than one-half of the continuing education hours required for renewal of a license may be earned as a qualified instructor at the rate of three hours of continuing education credit for each classroom hour of approved instruction. For licensed appraisers, no more than one-half of the continuing education hours required for renewal of a license may be earned as a qualified instructor. No credit will be earned if the licensee has previously obtained credit for the same course as either a student or instructor during the same licensing period.

(c) A licensee must not receive credit for more than eight hours of continuing education in one day.

Subd. 5. **Nonapproved courses for continuing education.** The following courses will not be approved for credit:

- (1) courses designed solely to prepare students for passing a license examination;
- (2) courses in mechanical office or business skills, including typing, speed reading, or other machines or equipment. Computer skills courses are allowed, if appropriate and related to the industry to which the courses are directed;
- (3) courses in sales promotion, including meetings held in conjunction with the general business of the licensee;
- (4) courses in motivation, salesmanship, psychology, time management, or communication, except as prescribed in prelicense training;
- (5) courses related to office management or intended to improve the operation of the licensee's business; and
- (6) courses that are primarily intended to impart knowledge of specific products of specific companies, if the use of the product or products relates to the sales promotion or marketing of one or more of the products discussed.

Subd. 6. **Course approval.** (a) Courses must be approved by the commissioner in advance. A course that is required by federal criteria or a reciprocity agreement to receive a substantive review will be approved or disapproved on the basis of its compliance with the provisions of laws and rules relating to the appropriate industry. At the commissioner's discretion, a course that is not required by federal criteria or a reciprocity agreement to receive a substantive review may be approved based on a qualified provider's certification on a form specified by the commissioner that the course complies with the provisions of this chapter and the laws and rules relating to the appropriate industry. For the purposes of this section, a "qualified provider" is one of the following: (1) a degree-granting institution of higher learning located within this state; (2) a private school licensed by the Minnesota Office of Higher Education; or (3) when conducting courses for its members, a bona fide trade association that staffs and maintains in this state a physical location that contains course and student records and that has done so for not less than three years. The commissioner may review any approved course and may cancel its approval with regard to all future offerings. The commissioner must make the final determination as to accreditation and assignment of credit hours for courses. Courses must be at least one hour in length, except courses for real estate appraisers must be at least two hours in length.

Approval will not include time spent on meals or other unrelated activities.

(b) Courses must be submitted at least 30 days before the initial proposed course offering.

(c) Approval must be granted for a subsequent offering of identical continuing education courses without requiring a new application. The commissioner must deny future offerings of courses if they are found not to be in compliance with the laws relating to course approval.

(d) When either the content of an approved course or its method of instruction changes, the course is no longer approved for license education credit. A new application must be submitted for the changed course if the education provider intends to offer it for license education credit.

**Subd. 7. Courses open to all.** All course offerings must be open to any interested individuals. Access may be restricted by the education provider based on class size only, except that access to a course offering sponsored by, offered by, or affiliated with an insurance company or agency may be restricted to agents of the company or agency. Courses must not be approved if attendance is restricted to any particular group of people, except for company-sponsored courses allowed by statute.

**History:** 2009 c 63 s 8,78; 2010 c 215 art 4 s 8; 2010 c 384 s 3

#### **45.305 PRELICENSE EDUCATION COURSES OFFERED OVER THE INTERNET.**

**Subdivision 1. Appraiser and insurance Internet prelicense courses.** The design and delivery of an appraiser prelicense education course or an insurance prelicense education course must be approved by the International Distance Education Certification Center (IDECC) before the course is submitted for the commissioner's approval.

**Subd. 2. Real estate Internet prelicense courses.** The design and delivery of a real estate prelicense education course must be approved by either IDECC or the Association of Real Estate License Law Officials before the course is submitted for the commissioner's approval.

**Subd. 3. Academic credit Internet courses.** Subdivisions 1 and 2 do not apply to Internet prelicense courses offered for academic credit by an accredited college, community college, or university that offers distance education programs and is approved or accredited by the Commission on Colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the United States Secretary of Education.

**Subd. 4. Interactive Internet course requirements.** An interactive Internet prelicense education course must:

- (1) specify the minimum system requirements;
- (2) provide encryption that ensures that all personal information, including the student's name, address, and credit card number, cannot be read as it passes across the Internet;
- (3) include technology to guarantee seat time;
- (4) include a high level of interactivity;
- (5) include graphics that reinforce the content;
- (6) include the ability for the student to contact an instructor within a reasonable amount of time;
- (7) include the ability for the student to get technical support within a reasonable amount of time;

(8) include a statement that the student's information will not be sold or distributed to any third party without prior written consent of the student. Taking the course does not constitute consent;

(9) be available 24 hours a day, seven days a week, excluding minimal down time for updating and administration, except that this provision does not apply to live courses taught by an actual instructor and delivered over the Internet;

(10) provide viewing access to the online course at all times to the commissioner, excluding minimal down time for updating and administration;

(11) include a process to authenticate the student's identity;

(12) inform the student and the commissioner how long after its purchase a course will be accessible;

(13) inform the student that license education credit will not be awarded for taking the course after it loses its status as an approved course;

(14) provide clear instructions on how to navigate through the course;

(15) provide automatic bookmarking at any point in the course;

(16) provide questions after each unit or chapter that must be answered before the student can proceed to the next unit or chapter;

(17) include a reinforcement response when a quiz question is answered correctly;

(18) include a response when a quiz question is answered incorrectly;

(19) include a comprehensive final examination covering all required topics;

(20) allow the student to go back and review any unit at any time, except during the final examination;

(21) provide a course evaluation at the end of the course. At a minimum, the evaluation must ask the student to report any difficulties caused by the online education delivery method; and

(22) provide a completion certificate when the course and exam have been completed and the provider has verified the completion. Electronic certificates are sufficient.

Subd. 5. **Final examination.** The final examination for a prelicense education course offered over the Internet must be monitored by a proctor who certifies that the student took the examination. The exam must be either a paper examination or an encrypted online examination. The student must not be allowed to review the course content once the examination has begun.

**History:** 2009 c 63 s 9,78

#### **45.306 CONTINUING EDUCATION COURSES OFFERED OVER THE INTERNET.**

Subdivision 1. **Appraiser Internet continuing education courses.** The design and delivery of an appraiser continuing education course must be approved by the International Distance Education Certification Center (IDECC) before the course is submitted for the commissioner's approval.

Subd. 2. **Interactive Internet course requirements.** An interactive Internet continuing education course must:

(1) specify the minimum system requirements;

- (2) provide encryption that ensures that all personal information, including the student's name, address, and credit card number, cannot be read as it passes across the Internet;
- (3) include technology to guarantee seat time;
- (4) include a high level of interactivity;
- (5) include graphics that reinforce the content;
- (6) include the ability for the student to contact an instructor within a reasonable amount of time;
- (7) include the ability for the student to get technical support within a reasonable amount of time;
- (8) include a statement that the student's information will not be sold or distributed to any third party without prior written consent of the student. Taking the course does not constitute consent;
- (9) be available 24 hours a day, seven days a week, excluding minimal down time for updating and administration, except that this provision does not apply to live courses taught by an actual instructor and delivered over the Internet;
- (10) provide viewing access to the online course at all times to the commissioner, excluding minimal down time for updating and administration;
- (11) include a process to authenticate the student's identity;
- (12) inform the student and the commissioner how long after its purchase a course will be accessible;
- (13) inform the student that license education credit will not be awarded for taking the course after it loses its status as an approved course;
- (14) provide clear instructions on how to navigate through the course;
- (15) provide automatic bookmarking at any point in the course;
- (16) provide questions after each unit or chapter that must be answered before the student can proceed to the next unit or chapter;
- (17) include a reinforcement response when a quiz question is answered correctly;
- (18) include a response when a quiz question is answered incorrectly;
- (19) include a final examination;
- (20) allow the student to go back and review any unit at any time, except during the final examination;
- (21) provide a course evaluation at the end of the course. At a minimum, the evaluation must ask the student to report any difficulties caused by the online education delivery method; and
- (22) provide a completion certificate when the course and exam have been completed and the provider has verified the completion. Electronic certificates are sufficient.

Subd. 3. **Final examination.** The final examination must be either an encrypted online examination or a paper examination that is monitored by a proctor who certifies that the student took the examination. The student must not be allowed to review the course content once the examination has begun.

**History:** 2009 c 63 s 10,78

**45.307 EDUCATION PROVIDER.**

A person applying for approval as an education provider must make available upon request such records and data required by the commissioner to administer the provisions and further the purposes of this chapter.

**History:** 2009 c 63 s 11,78

**45.31 COURSE COORDINATOR.**

Subdivision 1. **Requirement.** Each course of study must have at least one coordinator, approved by the commissioner, who is responsible for supervising the program and assuring compliance with all laws and rules. Education providers may engage an additional coordinator, approved for their providership, in order to assist the coordinator or to act as a substitute for the coordinator in the event of an emergency or illness.

Subd. 2. **Approval.** (a) The commissioner must approve as a coordinator a person meeting one or more of the following criteria: at least three years of full-time experience in the administration of an education program during the five-year period immediately before the date of application, or a degree in education plus two years experience during the immediately preceding five-year period in one of the regulated industries for which courses are being approved, or a minimum of five years experience within the previous six years in the regulated industry for which courses are held. A person applying for approval as a course coordinator must make available upon request such records and data required by the commissioner to administer the provisions and further the purposes of this chapter.

(b) Coordinator approval may not be transferred to an individual who has not already been approved as an additional coordinator for the applicable license type for the providership in question. An individual must be approved as a coordinator by the commissioner before acting on behalf of an approved education provider.

Subd. 3. **Responsibilities.** A coordinator is responsible for:

(1) assuring compliance with all laws and rules relating to educational offerings governed by the commissioner;

(2) assuring that students are provided with current and accurate information relating to the laws and rules governing their licensed activity;

(3) supervising and evaluating courses and instructors. Supervision includes assuring, especially when a course will be taught by more than one instructor, that all areas of the curriculum are addressed without redundancy and that continuity is present throughout the entire course;

(4) ensuring that instructors are qualified to teach the course offering;

(5) furnishing the commissioner, upon request, with copies of course and instructor evaluations and qualifications of instructors. Evaluations must be completed by students and coordinators;

(6) investigating complaints related to course offerings and instructors and forwarding a copy of the written complaints to the Department of Commerce;

(7) maintaining accurate records relating to course offerings, instructors, tests taken by students, and student attendance for a period of three years from the date on which the course was completed. These records must be made available to the commissioner upon request. In the event that an education provider ceases operation for any reason, the coordinator is responsible for

maintaining the records or providing a custodian for the records acceptable to the commissioner. The coordinator must notify the commissioner of the name and address of that person. In order to be acceptable to the commissioner, custodians must agree to make copies of acknowledgments available to students at a reasonable fee. Under no circumstances will the commissioner act as custodian of the records;

(8) ensuring that the coordinator is available to instructors and students throughout course offerings and providing to the students and instructor the name of the coordinator and a telephone number at which the coordinator can be reached;

(9) attending workshops or instructional programs as reasonably required by the commissioner;

(10) providing course completion certificates within ten days of, but not before, completion of the entire course. Course completion certificates must be completed in their entirety. It is not necessary to provide a written course completion certificate if the course completion certificate has been electronically delivered to the department or its designated licensing contractor. A coordinator may require payment of the course tuition as a condition for receiving the course completion certificate;

(11) notifying the commissioner immediately of any change in an application for the course, coordinator, or instructor approval application; and

(12) in conjunction with the instructor, assuring and certifying attendance of students enrolled in courses.

**History:** 2009 c 63 s 12,78; 2010 c 275 art 1 s 1

#### **45.32 INSTRUCTORS.**

Subdivision 1. **Requirement.** Each course of study, except self-study courses, must have an instructor who is qualified by education, training, or experience to ensure competent instruction. In the case of a self-study course, this requirement applies to the author of the course material. Failure to have only qualified instructors teach at an approved course offering will result in loss of course approval. A person applying for approval as an instructor must make available upon request such records and data required by the commissioner to administer the provisions and further the purposes of this chapter.

Subd. 2. **Qualification for continuing education instructors.** Qualified continuing education instructors must have one of the following qualifications:

(1) a four-year degree in any area plus two years practical experience in the subject area being taught;

(2) five years of practical experience in the subject area being taught; or

(3) a college or graduate degree in the subject area being taught.

Subd. 3. **Qualifications for prelicensing instructors.** Qualified prelicense instructors must have one of the following qualifications:

(1) a four-year degree in the industry for which the course is being taught;

(2) a four-year degree with three years full-time experience in the industry for which the course is being taught;

(3) a four-year degree with three years full-time experience in the business or profession relating to the subject being taught;



(4) a postgraduate degree and completion of 45 hours of continuing education in the industry for which the course is being taught;

(5) a two-year degree in the industry for which the education is being given and completion of 45 hours of continuing education in the industry for which the course is being taught;

(6) a two-year degree or certificate with five years full-time experience in the industry for which the course is being taught;

(7) a degree or certificate with five years full-time experience in the business or profession relating to the subject being taught; or

(8) eight years of experience in the subject area being taught, gained in the eight years immediately preceding the first course offering taught.

Subd. 4. **Responsibilities.** Approved instructors are responsible for:

(1) compliance with all laws and rules relating to industry education;

(2) providing students with current and accurate information;

(3) maintaining an atmosphere conducive to learning in the classroom;

(4) in conjunction with the coordinator, assuring and certifying attendance of students enrolled in courses;

(5) providing assistance to students and responding to questions relating to course materials; and

(6) attending the workshops or instructional programs that are required by the commissioner.

**History:** 2009 c 63 s 13,78

#### **45.33 PROHIBITED PRACTICES FOR COORDINATORS AND INSTRUCTORS.**

Subdivision 1. **Prohibitions.** In connection with an approved course, coordinators and instructors must not:

(1) recommend or promote the services or practices of a particular business;

(2) encourage or recruit individuals to engage the services of, or become associated with, a particular business;

(3) use materials, clothing, or other evidences of affiliation with a particular entity;

(4) require students to participate in other programs or services offered by the instructor, coordinator, or education provider;

(5) attempt, either directly or indirectly, to discover questions or answers on an examination for a license;

(6) disseminate to any other person specific questions, problems, or information known or believed to be included in licensing examinations;

(7) misrepresent any information submitted to the commissioner;

(8) fail to cover, or ensure coverage of, all points, issues, and concepts contained in the course outline approved by the commissioner during the approved instruction; and

(9) issue inaccurate course completion certificates.

Subd. 2. **Notification of disciplinary action.** Coordinators must notify the commissioner within ten days of a felony or gross misdemeanor conviction or of disciplinary action taken

against an occupational license held by the coordinator or an instructor teaching an approved offering. The notification may be grounds to suspend, deny, or revoke the approval of the coordinator and grounds to disallow the use of a particular instructor.

**History:** 2009 c 63 s 14,78

#### **45.34 FEES.**

Fees for approved courses and related materials must be clearly identified to students. In the event that a course is canceled for any reason, all fees must be returned within 15 days from the date of cancellation. In the event that a course is postponed for any reason, students must be given the choice of attending the course at a later date or of having their fees refunded in full. If a student is unable to attend a course or cancels the registration in a course, education provider policies regarding refunds will govern.

**History:** 2009 c 63 s 15,78

#### **45.35 FACILITIES.**

Each course of study, except self-study courses, must be conducted in a classroom or other facility that is adequate to comfortably accommodate the faculty and the number of students enrolled. The education provider may limit the number of students enrolled in a course. Approved courses must not be held on the premises of a company doing business in the regulated area, except for company-sponsored courses allowed by statute.

**History:** 2009 c 63 s 16,78

#### **45.36 SUPPLEMENTARY MATERIALS.**

An adequate supply of supplementary materials to be used or distributed in connection with an approved course must be available in order to ensure that each student receives all necessary materials. Outlines and any other materials that are reproduced must be legible.

**History:** 2009 c 63 s 17,78

#### **45.37 ADVERTISING COURSES.**

(a) Paragraphs (b) to (f) govern the advertising of prelicense and continuing education courses.

(b) Advertising must be truthful and not deceptive or misleading. Courses must not be advertised in any manner as approved unless approval has been granted in writing by the commissioner.

(c) No advertisement, pamphlet, circular, or other similar materials pertaining to an approved offering may be circulated or distributed in this state, unless one of the following statements is prominently displayed:

For prelicense education courses, "This course has been approved by the Minnesota Commissioner of Commerce for (relevant industry) prelicense education."

For continuing education courses, "This course has been approved by the Minnesota Commissioner of Commerce for ..... hours for (relevant industry) continuing education."

(d) Advertising of approved courses must be clearly distinguishable from the advertisement of other nonapproved courses and services.

(e) Courses must not be advertised before approval, unless the course is described in the advertising as "approval pending" and that is, in fact, the case.

(f) The number of hours for which a course has been approved must be prominently displayed on an advertisement for the course. If the course offering is longer than the number of hours of credit to be given, it must be clear that credit is not earned for the entire course.

**History:** 2009 c 63 s 18,78

#### **45.38 NOTICE TO STUDENTS.**

At the beginning of each approved offering, the following notice must be handed out in printed form or must be read to students: "This educational offering is recognized by the Minnesota Commissioner of Commerce as satisfying ..... hours of credit toward (choose one or more of the following as appropriate: prelicensing or continuing) (insert appropriate industry) education requirements."

**History:** 2009 c 63 s 19,78

#### **45.39 AUDITS.**

The commissioner reserves the right to audit subject offerings with or without notice to the education provider.

**History:** 2009 c 63 s 20,78

#### **45.40 FALSIFICATION OF REPORTS.**

A licensee or applicant found to have falsified an education report to the commissioner will be considered to have violated the laws relating to the industry for which the person has a license and will be subject to suspension or revocation of the license or denial of the application for licensure.

The commissioner reserves the right to audit a licensee's education records.

**History:** 2009 c 63 s 21,78

#### **45.41 DISCIPLINARY ACTION.**

The commissioner may deny, censure, suspend, or revoke the approval of a coordinator or course and disallow the use of a qualified instructor if it is determined that the coordinator, course, or instructor is not in compliance with this chapter.

**History:** 2009 c 63 s 22,78

#### **45.42 WAIVERS AND EXTENSIONS.**

Subdivision 1. **Waivers.** When a licensee documents to the commissioner's satisfaction that the person is unable, and will continue to be unable, to attend actual classroom course work or complete a self-study program because of a physical disability, medical condition, or similar reason, attendance at continuing education courses may be waived for a period not to exceed one year. The commissioner may require that the individual read, listen to, or watch a sufficient number of materials related to that industry as would be necessary for the licensee to satisfy educational credit hour needs. The commissioner will award the licensee credit hours by determining how many credit hours would be granted to a classroom course involving the same material.

Subd. 2. **Extensions.** When a licensee documents to the commissioner's satisfaction that the person is unable to complete continuing education requirements within the required time period owing to a financial or medical hardship, the commissioner may extend, for up to 90 days, the time period during which the continuing education must be successfully completed.

Loss of income from either attendance at courses or cancellation of a license is not a bona fide financial hardship. Requests for extensions must be submitted in writing no later than 60 days before the education is due and must include an explanation with verification of the hardship, plus verification of enrollment in an approved course of study.

Subd. 3. **Exception.** This section does not apply to appraiser license education.

**History:** 2009 c 63 s 23,78

#### **45.43 REPORTING REQUIREMENTS.**

Required education must be reported in a manner prescribed by the commissioner within ten days of the course completion.

**History:** 2009 c 63 s 24,78