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CHAPTER 65

INSURANCE DIVISION; FIRE INSURANCE COMPANIES

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65.01 STANDARD FIRE POLICY. No fire company shall issue on property of this state any policy other than the standard form herein set forth, the blanks for which may be filled in print or in writing, and no condition, stipulation or term, other than those therein provided for, whether as to jurisdiction, limitation, magistrate, certificate, or otherwise, shall be valid if inserted in any such policy, except as follows:

(1) It may print on or in its policy its name, location, and date of incorporation, the amount of its paid-up capital, the names of its officers and agents, the number and date of the policy, and, if it is issued through an agent, the words, "This policy shall not be valid until countersigned by the duly authorized agent of the company at.....";

(2) It may print or use in its policy printed forms of description and specification of the property insured, including permits for the use of electricity, gasoline, acetylene or storage of other extra hazardous product or material, for repairs and improvements, for the operation or ceasing to operate, for the maintenance of sprinkling or other improvements, and for the use of the premises for ordinary work and materials incident to the business.

Any permit for the use or storage of a hazardous product may contain a caution giving instructions as to the proper method of use or storage.

It may print or use in its policy printed forms for insurance against loss of rents and rental values, leasehold values, use and occupancy, and indirect or consequential loss or damage caused by change of temperature resulting from the destruction of refrigerating or cooling apparatus, or any of its connections. It may also use a form specifically excluding the last mentioned hazard.

All contracts of insurance against loss of rents and rental values, leasehold values, use and occupancy, shall contain the following provision:

The period of indemnity under this contract shall be limited to such length of time, commencing with the date of the fire and not limited by the date of the expiration of the policy, as would be required with the exercise of due diligence and dispatch to rebuild, repair or replace such part of the property described in said policy as may be destroyed or damaged.

When the policy covers a lumber risk, upon the request of the insured, in writing, of which fact such writing shall be the only evidence, and if, in consideration thereof, a reduction in the rate of premium is made by the company, the form known as the "clear space lumber clause" may be used, said form to be in the following terms:

The rate of premium upon the within policy has been reduced from the sum of \$..... to the sum of \$....., and in consideration of such reduction the assured agrees that a continuous space of.....feet shall hereafter at all times be maintained between the property hereby insured and any wood-working or manufacturing establishment; said space shall, in all cases, exclude and be measured from the exterior boundary of any permanent structure or addition connected with or attached to (here insert description of nearest wood-worker); said space not to be occupied by any independent or disconnected building or struc-

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ture (here first exceptions, if any) or by accumulation of combustible material of any kind, and except the loading or unloading only within or transportation of lumber or timber products across such clear space. It shall not be used for handling, piling or sorting lumber for temporary purposes or otherwise. This clause shall not be construed to prohibit the maintenance of operation within said clear space of tramways used exclusively for the transportation of lumber; provided, that lumber is neither piled nor stored thereon. Sorting platforms shall not be held tramways within the meaning of this clause, and failure upon the part of the insured to comply with the terms of this clause shall not avoid this policy, nor in any manner lessen the liability of the company hereunder, but in case of such failure, the assured shall be liable to the company for the difference in the premium hereinbefore set forth.

It may also print or use in its policy, in case the assured desires, a permit containing what is known as the "watchman clause," said clause to be in the following words:

The insured agrees that during the continuance of this policy he will uniformly and constantly maintain a watch service in connection with the premises, and, in consideration of such uniform and constant watch service, the rate of premium charged upon the policy has been reduced from \$..... to \$....., and it is hereby expressly agreed and understood that the failure of the assured to maintain such uniform and constant watch service, or comply with this clause or agreement, shall in no manner nor to any extent avoid this policy, or in case of loss, lessen the liability of the company under this policy; but in the event of the failure of the assured to maintain such watch service or perform his part of this agreement, he shall then be liable, and hereby agrees to pay the full premium for the unexpired term of the policy.

It may also print or use in its policy a printed form providing that in case of a risk equipped with automatic sprinklers, the assured shall use due diligence in seeing that the equipment is properly maintained; also a permit that the premises may remain vacant or unoccupied for a stipulated number of days beyond the 30 days provided in the policy, for which permit an additional premium may be charged; also a form whereby the assured agrees that, for a reduction in the rate of premium, barrels and buckets of water shall be kept at hand at all times; that failing so to do, the assured shall be liable for the highest rate written in the policy; also a form may be attached excluding liability for loss or damage to dynamos and other electrical appliances caused by electric current, either natural or artificial.

It may also print or use in its policy printed forms providing that in case of loss, such loss shall be payable to the mortgagee, as his, her, its, or their interest may appear, in the following words:

Subject to the stipulations, provisions, and conditions contained in this policy, the loss, if any, is payable to....., mortgagee, as his, her, its, or their interest may appear.

It may also print or use in its policy, in case the assured desires liability to attach to several buildings, divisions, or locations under one item, a printed form in the following words:

It is hereby agreed in case of loss, this policy shall attach in or on each building, division, or location in such proportion as the value in or on such building, division, or location bears to the aggregate value of the subject insured.

It may also print or use in its policy the following clause:

The insured has relinquished all rights to recover for loss or damage by fire from.....(here insert name of individual, partnership, association, or corporation).

3. If insuring against damage by lightning, it may print in the clause enumerating the perils insured against, the additional words, "also any damage by lightning, whether fire ensues or not," and in the clause providing for apportionment of loss in case of other insurance, the words, "whether by fire, lightning, or both."

4. If incorporated or formed in the state, it may print in its policy any provision which it is authorized or required by law to insert therein; if not incorporated in this state, it may, with the approval of the commissioner, so print any provision required by its charter or deed of settlement, or by the laws of its own state or country, not contrary to the laws of this state.

5. It may print upon a policy issued in compliance herewith the words, "Minnesota standard policy."

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6. No provision shall be attached to or included in the policy limiting the amount to be paid in case of total loss on buildings to less than the amount of insurance on the same.

7. When two or more authorized companies unite in the issue of a joint policy, the heading thereof may show the severalty of the contract, and also the proportion of premium to be paid to each, and the proportion of liability which each assumes.

In the printed conditions of the standard policy the necessary changes may be made from the singular to the plural number when reference is had to the companies issuing the policy. It shall be plainly printed, no portion thereof in smaller than long primer type, and shall be as follows:

No..... \$.....
(Corporate name of the company or association, its principal place or places of business.)

In consideration of.....dollars, to be paid by the insured hereinafter named, the receipt whereof is hereby acknowledged, does insure.....and.....legal representatives, against loss or damage by fire, to the amount of.....dollars.

(Description of property insured.)

Bills of exchange, notes, accounts, evidences and securities of property of every kind, books, wearing apparel, plate, money, jewels, metals, patterns, models, scientific cabinets and collections, paintings, sculpture and curiosities are not included in this insured property unless specially mentioned.

This property is insured for the term.....beginning on the.....day of....., in the year 19....., at noon, and continuing until the.....day of....., in the year 19....., at noon, against all loss or damage by fire originating from any cause except invasion, foreign enemies, civil commotion, riots, or any military or usurped power whatever, the amount of the loss or damage to be estimated according to the actual value of the insured property at the time when the loss or damage happens, except in case of total loss on buildings; but not to include loss or damage caused by explosion of any kind, unless fire ensues, and then to include that caused by fire only.

The policy shall be void if any material fact or circumstance, stated in writing, has not been fairly represented by the insured, or if the assured now has or shall hereafter make, any other insurance on the property without the assent of the company, or if without such assent the property shall be removed, except that, if the removal shall be necessary for the preservation of the property from fire, this policy shall be valid without such assent for five days thereafter, or if without such assent the situation or circumstances affecting the risk shall, by or with the knowledge, advice, agency, or consent of insured, be so altered as to cause an increase of the risks, or if, without such assent, the property shall be sold or this policy assigned, or if the premises hereby insured shall become vacant by the removal of the owner or occupant, and so remain vacant for more than 30 days without such assent, or if it be a manufacturing establishment running, in whole or in part, extra time, except such establishment may run, in whole or in part, extra hours, not later than nine o'clock P. M., or if such establishment shall cease operations for more than 30 days without permission, in writing, endorsed thereon, or if the insured shall make any attempt to defraud the company, either before or after the loss, or if gunpowder or other articles subject to legal restrictions shall be kept in quantities or manner different from those allowed or prescribed by law, or if camphene, benzine, naphtha, or other chemical oils or burning fluids shall be kept or used by the insured on the premises insured, except that what is known as refined petroleum, kerosene, or coal oil may be used for lighting, and in dwelling houses kerosene oil stoves may be used for domestic purposes, to be filled when cold, by daylight, and with oil of lawful fire test only.

If the insured property shall be exposed to loss or damage by fire, the insured shall make all reasonable exertions to save and protect same.

In case of any loss or damage under this policy, a statement, in writing, signed and sworn to by the insured, shall be forthwith rendered to the company, setting forth the value of the property insured, except in case of total loss on buildings the value of the buildings need not be stated, the interest of the insured therein, all other insurance thereon, in detail, the purposes for which and the persons by whom

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the building insured, or containing the property insured, was used, and the time at which and manner in which the fire originated, so far as known to the insured.

The company may also examine the books of account and vouchers of the insured, and make extracts from the same.

In case of any loss or damage, the company, within 60 days after the insured shall have submitted a statement, as provided in the preceding clause, shall either pay the amount for which it shall be liable, which amount, if not agreed upon, shall be ascertained by award of referees, as hereinafter provided, or replace the property with other of the same kind and goodness, or it may, within 15 days after such statement is submitted, notify the insured of its intention to rebuild or repair the premises or any portion thereof separately insured by this policy, and shall thereupon enter upon the premises and proceed to rebuild or repair the same with reasonable expedition.

It is moreover understood that there can be no abandonment of the property insured to the company, and that the company shall not in any case be liable for more than the sum insured, with interest thereon from the time the loss shall become payable, as above provided.

If there shall be any other insurance on the property insured, whether prior or subsequent, the insured shall recover on this policy no greater proportion of loss sustained, except in case of total loss on buildings, than the sum hereby insured bears to the whole amount insured thereon.

When the company shall pay any loss, the insured shall assign to it, to the extent of the amount so paid, all rights to recover satisfaction for the loss or damage from any person, town, or other corporation, excepting other insurers, or the insured, if requested, shall prosecute therefor at the charge and for the account of the company.

If this policy shall be made payable to a mortgagee of the insured real estate, no act or default of any person other than the mortgagee, or his agents, or those claiming under him, shall affect the mortgagee's right to recover in case of loss on the real estate; provided, that the mortgagee shall, on demand, pay according to the established scale of rates for any increase of risks not paid for by the insured; and when this company shall be liable to a mortgagee for any sum for loss under this policy, for which no liability exists as to the mortgagor or owner, and this company shall elect, by itself or with others, to pay the mortgagee the full amount secured by the mortgage, then the mortgagee shall assign and transfer to the company interested, upon such payment, the mortgage, together with the note and debts thereby secured.

This policy may be canceled at any time at the request of the insured, who shall thereupon be entitled to a return of the portion of the above premium remaining, after deducting the customary monthly short rates for the time this policy shall have been in force.

The company also reserves the right, after giving written notice to the insured, and to any mortgagee to whom this policy is made payable, and tendering to the insured a ratable proportion of the premium, to cancel this policy as to all risks subsequent to the expiration of ten days from the notice, and no mortgagee shall then have the right to recover as to those risks.

In case of loss, except in case of total loss on buildings, under this policy and a failure of the parties to agree as to the amount of the loss, it is mutually agreed that the amount of the loss shall, as above provided, be ascertained by two competent, disinterested, and impartial appraisers, who shall be residents of this state, the insured and this company each selecting one within 15 days after a statement of the loss has been rendered to the company, as herein provided, and in case either party fail to select an appraiser within such time, the other appraiser and the umpire selected, as herein provided, may act as a board of appraisers, and whatever award they shall find shall be as binding as though the two appraisers had been chosen; and the two so chosen shall first select a competent, disinterested, and impartial umpire; provided, that if after five days the two appraisers cannot agree on such an umpire, the presiding judge of the district court of the county wherein the loss occurs may appoint such an umpire upon application of either party, in writing, by giving five days' notice thereof, in writing, to the other party. Unless, within 15 days after a statement of the loss has been rendered to the company, either party, the assured or the company, shall have notified the other, in writing, that the party demands an appraisal, the right to an appraisal shall be waived; the appraisers together shall then estimate and appraise the loss, stating separately

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sound value and damage, and, failing to agree, shall submit their differences to the umpire; and the award, in writing, of any two shall determine the amount of the loss; the parties thereto shall pay the appraisers respectively selected by them and shall bear equally the expenses for the appraisal and umpire. The fees of any appraiser or umpire shall in no case exceed \$10.00 per day.

No suit or action against the company for the recovery of any claim by virtue of this policy shall be sustained in any court of law or equity in this state, unless commenced within two years from the time the loss occurred.

In witness whereof, the.....Company has caused this policy to be signed by its president and attested by its secretary (or by such proper officers as may be designated), at its office in.....
Date.....

[R. L. s. 1640; 1909 c. 331 s. 1; 1913 c. 405 s. 1; 1913 c. 421 s. 1; 1923 c. 410] (3512)

65.02 AUTOMOBILE FIRE INSURANCE POLICIES. Insurance on automobiles, motorcycles and other motor vehicles, against loss or damage by fire, when combined in one policy with insurance against one or more of the other hazards mentioned in section 60.29, subdivision (1), clause (15), need not be in accordance with section 65.01.

[1921 c. 342 s. 1] (3513)

65.03 CANCELATION OF FIRE POLICY. Any fire insurance company which has not collected the premium on its policy at the time of the delivery thereof may print or endorse, or attach by rider, on its policy the following clause:

"If the insured hereunder shall not have actually paid the premium hereon, or any part thereof, within 60 days from the date of this policy, then this policy may be canceled by the insurer by giving five days' written notice to the insured and to the mortgagee, or other person to whom the policy is made payable, if any, without tendering any part or portion of such premium, anything to the contrary in the policy contract notwithstanding."

[1923 c. 390 s. 1] (3514)

65.04 VIOLATION. Every company and every agent who shall wilfully make, issue, or deliver a policy in violation of section 65.01 shall be guilty of a gross misdemeanor; but every stipulation of the policy in favor of the insured shall, nevertheless, be binding upon the company issuing the same.

[R. L. s. 1641] (3515)

65.05 WHOLE AMOUNT COLLECTIBLE. Every company insuring any building or other structure against loss or damage by fire, lightning, or other hazard, by the issue of a policy or renewal of one theretofore issued, or otherwise, shall cause the structure to be previously examined, a full description thereof to be made, and its insurable value to be fixed, all by the insurer or his agent, and the amount thereof to be stated in the policy. In the absence of any change increasing the risk, without the consent of the insurer, of which the burden of proof shall be upon it, and in the absence of intentional fraud on the part of the insured, the whole amount mentioned in the policy or renewal upon which the insurer receives a premium, shall be paid in case of total loss, and in case of partial loss, the full amount thereof. If there are two or more policies upon the property, each shall contribute to the payment of the whole or partial loss in proportion to the amount specified. Any policy where the entire risk covered by the same amounts to \$5,000, or more, may contain a coinsurance clause, if the insured requests the same, in writing, of which fact such writing shall be the only evidence, and if, in consideration thereof, a reduction in the rate of premium is made by the company. When so demanded and attached to the policy, this agreement shall be binding upon both the insured and the company, and, in case of loss, the actual cash value of the property so insured at the time of the loss, including the buildings, shall be the basis for determining the proper amount of the coinsurance, and the amount of loss, notwithstanding any previous valuation of the building. Every person who solicits insurance and procures an application therefor shall be held to be the agent of the party afterwards issuing insurance thereon or a renewal thereof.

[R. L. s. 1642; 1907 c. 446; 1913 c. 79 s. 1] (3516)

65.06 INSURANCE IN EXCESS OF VALUE. No company shall knowingly issue any policy upon property in this state for an amount which, together with any existing insurance thereon, exceeds the fair value of the property, nor for a longer term than five years. Any company wilfully insuring property for more than its

real value shall forfeit to the state, for the benefit of the school fund, double the premium collected on the policy.

[R. L. s. 1643] (3517)

65.07 PAYMENT TO MORTGAGEE. When the whole, or any part, of the loss is payable, in terms or otherwise, to or for one or more mortgagees, upon proof before payment of the rights of the parties, the company shall pay the same in the order of priority to the extent of its liability, and every such payment to such extent shall be payment and satisfaction of its liability under the policy.

[R. L. s. 1644] (3518)

65.08 ADJUSTMENT; REFERENCE. Any person who shall not, within five days after written request, appoint a qualified referee, as provided in the policy, shall be deemed to have waived the right to reference, and, if it be the insurer, shall be liable to suit. If any two such referees fail for ten days to agree upon a third, either party may, within the next ten days, make written application to a judge of the district court of the county wherein the fire occurred, setting forth the facts; whereupon the judge shall make the appointment. No person shall be a qualified referee who is not a resident of the state, disinterested, and willing to act.

[R. L. s. 1645] (3519)

65.09 LIABILITY OF COMPANY. Notwithstanding any penalty prescribed for the making, issuing, or delivery of any policy in violation of any provision of law, every such policy shall be binding upon the company issuing the same.

[R. L. s. 1646] (3520)

65.10 SALVAGE CORPS AND FIRE PATROLS. Every authorized board of fire underwriters in any municipality containing 50,000, or more, inhabitants may provide a salvage corps, a fire patrol, with competent superintendent, for the purpose of discovering and preventing fires, suitable rooms for their accommodation, and necessary apparatus to save and preserve property and life at and after a fire. Such superintendent and patrol, subject to the control of the fire chief of the fire department of the municipality, may enter any building on fire or in danger of taking fire and endeavor to protect, save, or remove the contents, or any part thereof, during or after the fire; provided, that the employees of the fire patrol salvage corps shall be divided into two platoons or shifts, to be known as the day and the night shift. The working hours to be as follows: The time of the night shift shall be 14 hours, and that of the day shift shall be ten hours, each day, except days for changing from the day shift to the night shift, as hereinafter provided; the shift which shall be assigned to day duty shall, for the first day thereof, remain on duty for the full 24 hours of that day. A change of shift from day duty to night duty shall be made every week, on Sunday.

Each employee shall be entitled to a vacation of not less than 15 days, each year, with pay. No employees shall be subject to call or perform any duties in the department out of his regular hours, as defined in this section; provided, that their superintendent may establish such rules as may be necessary to insure attendance of employees in case of a great conflagration, and in such case the superintendent may require each and every employee in the protection of life or property, notwithstanding the employee has been relieved from duty under the provisions of this section.

[R. L. s. 1656; 1919 c. 515 s. 1] (3521)

65.11 GUARANTY SURPLUS AND SPECIAL RESERVE FUND. Any insurance company organized under the laws of this state authorized to transact a fire insurance business may create the funds herein provided for, to be known and designated as the guaranty surplus fund and the special reserve fund, and may avail itself of the provisions of sections 65.11 to 65.20, upon complying with the requirements thereof.

[1909 c. 437 s. 1] (3522)

65.12 ACTION OF STOCKHOLDERS TO BE FILED WITH COMMISSIONER. Any such insurance company, desiring to create such funds, may do so if such action is authorized by its stockholders, upon the adoption of a resolution to that effect by its board of directors at a regular meeting of the board, or at any special meeting called for that purpose, and filing with the commissioner a copy thereof, declaring the intention of the company to create these funds and to do business under the provisions of sections 65.11 to 65.20; and, as soon after the filing of a copy of the resolution as convenient, the commissioner shall make, or cause to be

made, an examination of the company, and he shall make a certificate of the result thereof, which shall particularly set forth the amount of surplus funds held by the company at the date of the examination, the whole or any part of which, under the provisions of sections 65.11 to 65.20, may be equally divided between and set apart to constitute guaranty surplus and special reserve funds, which certificate shall be recorded in the department of insurance.

[1909 c. 437 s. 2] (3523)

65.13 DIVIDENDS MAY BE DECLARED OUT OF SURPLUS PROFITS. After the date of filing any such resolution with the commissioner, the company shall not make or declare or pay in any form any dividend upon its capital stock, exceeding eight per cent per annum thereupon and six per cent per annum upon the surplus funds to be formed hereunder, until after its guaranty surplus fund and its special reserve fund shall have together accumulated to an amount equal to its capital stock or to the sum of \$2,000,000; and any part of the surplus profits of the company above this annual dividend may be equally divided between and set apart to constitute the guaranty surplus fund and the special reserve fund, which funds shall be held and used as hereinafter provided, and not otherwise. Any company doing business under sections 65.11 to 65.20, whose guaranty surplus fund and special reserve fund shall have together accumulated to an amount equal to its capital stock or to the sum of \$2,000,000, may, from time to time, declare dividends out of its surplus profits in such amounts as its board of directors may prescribe, subject only to the limitation that the payment of these dividends shall not deplete its capital, nor reduce the aggregate amount of the guaranty surplus and special reserve funds to an amount less than the amount of its capital stock, or if its capital stock exceeds \$2,000,000, to an amount less than \$2,000,000; and, subject to the further limitation that no dividends exceeding ten per cent upon the capital stock shall be declared in any year if the payment thereof would reduce the aggregate amount of all surplus funds, including guaranty surplus and special reserve funds, below an amount equal to 30 per cent of its unearned premiums. Any company doing business under sections 65.11 to 65.20, which shall declare or pay any dividend contrary to the provisions herein contained, shall forfeit its charter and be liable to be proceeded against by the attorney general for its dissolution.

[1909 c. 437 s. 3; 1911 c. 263 s. 1; 1923 c. 130 s. 1] (3524)

65.14 COMMISSIONER TO MAKE EXAMINATION. When the company shall notify the commissioner that it has fulfilled the requirements already expressed in sections 65.11 to 65.20, and that its guaranty surplus fund and its special reserve fund, taken together, equal its capital stock or amount to the sum of \$2,000,000, the commissioner shall make an examination of the company and make a certificate of the result thereof, and file the same in his office and, if the commissioner shall find that the combined funds shall equal the capital stock of the company or amount to the sum of \$2,000,000, thereafter the company may continue, out of any subsequent profits of its business, to add to these funds; provided, that when any addition is made to the special reserve fund, an equal sum shall be carried to the guaranty surplus fund.

[1909 c. 437 s. 4; 1923 c. 130 s. 2] (3525)

65.15 ITEMS CONSIDERED IN ESTIMATING PROFIT. In estimating the profit of any such company for the purpose of making a division thereof between the guaranty surplus fund and the special reserve fund, until these funds shall together amount to a sum equal to the capital stock of the company or amount to the sum of \$2,000,000, there shall be deducted from the gross assets of the company, including for this purpose the amount of the special reserve fund, the sum of the following items:

- (1) The amount of all outstanding claims;
- (2) An amount sufficient to meet the liability of the company for the unearned premiums upon its unexpired policies, which amount shall at least equal one-half the premiums received on policies having one year or less to run from the date of policy, and a pro rata proportion of the premiums received on the policies having more than one year to run from the date of policy, and shall be known as the reinsurance liability;
- (3) The amount of its guaranty surplus fund and of its special reserve fund;
- (4) The amount of the capital of the company; and
- (5) Interest at the rate of eight per cent per annum upon the amount of the capital, and six per cent per annum upon the amount of the said funds for what-

ever time shall have elapsed since the last preceding cash dividend. The balance shall constitute the net surplus of the company, any portion of which is subject to an equal division between these funds, as herein provided.

[1909 c. 437 s. 5; 1923 c. 130 s. 3] (3526)

65.16 INVESTMENT OF GUARANTY SURPLUS. The guaranty surplus shall be held and be invested by the company in the same manner as its capital stock and surplus accumulation may be held and be invested, and shall be liable and applicable in the same manner as the capital stock to the payment generally of the losses of the company.

[1909 c. 437 s. 6] (3527)

65.17 INVESTMENT OF SPECIAL RESERVE FUND. The special reserve fund shall be invested according to existing laws relating to investments of capital by fire insurance companies and shall be deposited, from time to time, as the same shall accumulate and be invested, with the commissioner, who shall permit the company depositing the same to change these deposits by substituting for those withdrawn others of equal amount and value, and to collect and receive the interest or dividends upon these securities as the same may accrue; and this fund shall not be regarded as any part of the assets in possession of the company, so as to be or render the same liable for any claim for loss by fire, or otherwise, except as provided in sections 65.11 to 65.20.

[1909 c. 437 s. 7] (3528)

65.18 WHEN CLAIMS EXCEED GUARANTY SURPLUS AND CAPITAL STOCK. When the claims upon the company shall exceed the amount of its capital stock and of guaranty surplus fund, provided for by sections 65.11 to 65.20, and of its surplus funds, other than the special reserve fund, the company shall notify the commissioner of the fact, who shall then make, or cause to be made, an examination of the company, and issue his certificate of the result, showing the amounts of capital, of guaranty surplus fund, of special reserve fund, of reinsurance liability, and of other assets, and upon his issuing this certificate, in duplicate, one copy to be given to the company and one to be recorded in the department of insurance, the special reserve fund shall be immediately held to protect all policyholders of the company, other than such as are claimants upon it at the date of the certificate, and the special reserve fund, together with other assets, certified by the commissioner as equal in value to the amount of the unearned premiums of the company, to be ascertained, as hereinbefore provided, shall constitute the capital and assets of the company for the protection of policyholders, other than these claimants, and for the further conduct of its business, and any official certificate of the commissioner, herein provided for, shall be binding and conclusive upon all parties interested in the company, whether as stockholders, creditors, or policyholders, and upon the payment to claimants who are such at the date of the certificate, of the full amount of the capital of the company and of its guaranty surplus fund and of its assets at that date, excepting only the special reserve fund and an amount of its assets equal to the liability of the commissioner, the company shall be forever discharged from any and all further liability to these claimants, and to each of them, and the commissioner shall, after issuing his certificate, upon the demand of the company, transfer to it all such securities as shall have been deposited with him by the company as a special reserve fund and, if the amount of this special reserve fund be less than 50 per cent of the full amount of the capital of the company, if the capital be \$2,000,000, or less, or if the amount of the special reserve fund be less than \$1,000,000, if the capital be over \$2,000,000, a requisition shall be issued by the commissioner upon the stockholders, to make up the capital to that proportion of its full amount, not exceeding \$1,000,000; provided, that any capital so impaired shall be made up at least to the sum of \$100,000, and in case the company, after this requisition, shall fail to make up its capital at least to the sum of \$100,000, as therein directed, the special reserve fund shall still be held as security and liable for any and all losses occurring upon policies of the company. If, after this application of the special reserve fund and requisition on the stockholders, the par value of outstanding shares of stock shall exceed the new amount of capital so established, outstanding shares, to the amount of the excess, shall be surrendered by the stockholders pro rata. The company shall, in its annual statement to the commissioner, set forth the amount of the special reserve fund and of its guaranty surplus fund. If, in consequence of the payment of losses by fires, or of the expenses of the busi-

ness, or of the interest or dividends payable under the provisions of sections 65.11 to 65.20 to stockholders, or from any cause, the guaranty surplus fund shall be reduced in amount below the amount of the special reserve fund, the directors of the corporation shall make no additions to the special reserve fund until the guaranty surplus fund is equal to the special reserve fund. The policy registers, insurance maps, books of record, and other books in use by the company in its business, and its policy and other blanks, office furniture, fixtures, and supplies are not to be considered as assets, but shall be held by the company for its use in the protection of its policyholders. If any amount greater than a sum equal to one-half of its capital stock shall, by the company under the provisions of sections 65.11 to 65.20, have been deposited with the commissioner, he shall retain of these securities an amount equal to one-half of what amount he shall so hold thereof in excess of a sum equal to such one-half of such capital stock if the capital be \$2,000,000, or less, or in excess of \$3,000,000 if the capital be over \$2,000,000, and he shall transfer the balance thereof to the company, as herein provided, and the amount so transferred to the company shall, from the time of the transfer, provided the amount thereof shall not be less than \$100,000, constitute the capital stock of the company for the further conduct of its business, as hereinbefore provided, and the securities so retained shall be regarded as the special reserve fund of the company, to which additions may be made, as herein provided, and shall be held in the same manner, and for the same purpose, and under the same conditions, as the original special reserve fund of the company was held. The provisions of this section, providing for discharge of the company from further liability to existing claimants upon application to the payment of such claims of its capital, surplus, and assets, excepting the special reserve fund, and an amount equal to the liability for unearned premiums, shall not be construed to relieve the stockholders of the corporation from any liability imposed by the constitution of this state.

[1909 c. 437 s. 8; 1923 c. 130 s. 4] (3529)

65.19 DIRECTORS TO CALL UPON STOCKHOLDERS TO MAKE UP IMPAIRMENT. If, at any time after the special reserve fund shall have been accumulated by any company, the directors of the company shall present evidence satisfactory to the commissioner that the capital of the company has become impaired, he shall order the directors to call upon the stockholders to make up this impairment, and the board of directors may thereupon require the necessary payment by the stockholders to make good the whole of the impairment, or they may apply for that purpose the whole or any part of the special reserve fund and require of the stockholders payment of such amount as may be necessary to make up the balance of the impairment not made up out of the special reserve fund. The stock of every stockholder shall be pledged and liable for the amount assessed upon him to make up the impairment, either in whole or in part, and in case any stockholder refuses to pay the assessment, the stock standing in his name may be sold at public auction, after 30 days' notice, in such manner as the directors may provide. If the board of directors elect to make good the impairment, or any part thereof, out of the special reserve fund, the commissioner shall, upon request of the board, transfer to the company so much of the special reserve fund as is necessary for the purpose. No company doing business under sections 65.11 to 65.20 shall insure any larger amount upon any single risk than is permitted by law to a company possessing the same amount of capital, irrespective of the fund provided for in sections 65.11 to 65.20.

[1909 c. 437 s. 9] (3530)

65.20 STATEMENT PRINTED ON POLICY. Every policy issued by a company which has constituted and set apart a guaranty surplus and special reserve fund, under sections 65.11 to 65.20, or any prior law of this state, shall have printed thereon by the company a statement that the same is issued under and in pursuance of the laws of the state relating to guaranty surplus and special reserve funds, and every policy shall be deemed to have been issued and received subject to the provisions thereof.

[1909 c. 437 s. 10] (3531)

65.21 RAILROAD COMPANY LIABLE FOR PROPERTY INJURED OR DESTROYED BY FIRE FROM ENGINES. Each railroad corporation owning or operating a railroad in this state shall be responsible in damages to every person and corporation whose property may be injured or destroyed by fire communicated,

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directly or indirectly, by the locomotive engines in use upon the railroad owned or operated by the railroad corporation, and each railroad corporation shall have an insurable interest in the property upon the route of the railroad owned or operated by it and may procure insurance thereon, in its own behalf, for its protection against such damages.

[R. L. s. 2041; 1909 c. 378 s. 1] (3532)