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State of Minnesota

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HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH  
SESSION

HOUSE FILE No. **2029**

March 23, 2009

Authored by Davnie

The bill was read for the first time and referred to the Committee on Commerce and Labor

April 6, 2009

Committee Recommendation and Adoption of Report:

To Pass as Amended and Read Second Time

By motion, re-referred to the Committee on Finance

1.1 A bill for an act

1.2 relating to commerce; regulating consumer small loan lenders and residential

1.3 mortgage originators and servicers; modifying bank restrictions on holding

1.4 real estate; providing for the calculation of reserves and nonforfeiture values

1.5 of preneed funeral insurance contracts; revising annual audit requirements

1.6 for insurers; regulating life and health guaranty association benefit limits and

1.7 notices; removing inflation indexing; regulating the powers of, and surplus

1.8 requests for, township mutuals; imposing penalties; amending Minnesota Statutes

1.9 2008, sections 47.58, subdivision 1; 47.60, subdivisions 1, 3, 6; 48.21; 58.05,

1.10 subdivision 3; 58.06, subdivision 2; 58.126; 58.13, subdivision 1; 60A.124;

1.11 60B.03, subdivision 15; 60L.02, subdivision 3; 61B.19, subdivision 4; 61B.28,

1.12 subdivisions 4, 8; 67A.01; 67A.06; 67A.07; 67A.14, subdivisions 1, 7; 67A.18,

1.13 subdivision 1; proposing coding for new law in Minnesota Statutes, chapters

1.14 60A; 61A; 67A; repealing Minnesota Statutes 2008, sections 60A.129; 61B.19,

1.15 subdivision 6; 67A.14, subdivision 5; 67A.17; 67A.19; Minnesota Rules, parts

1.16 2675.2180; 2675.7100; 2675.7110; 2675.7120; 2675.7130; 2675.7140.

1.17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.18 Section 1. Minnesota Statutes 2008, section 47.58, subdivision 1, is amended to read:

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

1.21 (a) "Reverse mortgage loan" means a loan:

1.22 (1) Made to a borrower wherein the committed principal amount is paid to the  
1.23 borrower in equal or unequal installments over a period of months or years, interest is  
1.24 assessed, and authorized closing costs are incurred as specified in the loan agreement;

1.25 (2) Which is secured by a mortgage on residential property owned solely by the  
1.26 borrower; and

1.27 (3) Which is due when the committed principal amount has been fully paid to the  
1.28 borrower, or upon sale of the property securing the loan, or upon the death of the last

2.1 surviving borrower, or upon the borrower terminating use of the property as principal  
2.2 residence so as to disqualify the property from the homestead credit given in chapter 290A.

2.3 (b) "Lender" means any bank subject to chapter 48, credit union subject to chapter  
2.4 52, savings bank organized and operated pursuant to chapter 50, savings association  
2.5 subject to chapter 51A, any residential mortgage originator subject to chapter 58, or any  
2.6 insurance company as defined in section 60A.02, subdivision 4. "Lender" also includes  
2.7 any federally chartered bank supervised by the comptroller of the currency or federally  
2.8 chartered savings association supervised by the Federal Home Loan Bank Board or  
2.9 federally chartered credit union supervised by the National Credit Union Administration,  
2.10 to the extent permitted by federal law.

2.11 (c) "Borrower" includes any natural person holding an interest in severalty or as joint  
2.12 tenant or tenant-in-common in the property securing a reverse mortgage loan.

2.13 (d) "Outstanding loan balance" means the current net amount of money owed by the  
2.14 borrower to the lender whether or not that sum is suspended pursuant to the terms of the  
2.15 reverse mortgage loan agreement or is immediately due and payable. The outstanding  
2.16 loan balance is calculated by adding the current totals of the items described in clauses (1)  
2.17 to (5) and subtracting the current totals of the item described in clause (6):

2.18 (1) The sum of all payments made by the lender which are necessary to clear the  
2.19 property securing the loan of any outstanding mortgage encumbrance or mechanics or  
2.20 material supplier's lien.

2.21 (2) The total disbursements made by the lender to date pursuant to the loan  
2.22 agreement as formulated in accordance with subdivision 3.

2.23 (3) All taxes, assessments, insurance premiums and other similar charges paid to  
2.24 date by the lender pursuant to subdivision 6, which charges were not reimbursed by the  
2.25 borrower within 60 days.

2.26 (4) All actual closing costs which the borrower has deferred, if a deferral provision  
2.27 is contained in the loan agreement as authorized by subdivision 7.

2.28 (5) The total accrued interest to date, as authorized by subdivision 5.

2.29 (6) All payments made by the borrower pursuant to subdivision 4.

2.30 (e) "Actual closing costs" mean reasonable charges or sums ordinarily paid at the  
2.31 time of closing for the following, whether or not retained by the lender:

2.32 (1) Any insurance premiums on policies covering the mortgaged property including  
2.33 but not limited to premiums for title insurance, fire and extended coverage insurance, flood  
2.34 insurance, and private mortgage insurance.

2.35 (2) Abstracting, title examination and search, and examination of public records  
2.36 related to the mortgaged property.

3.1 (3) The preparation and recording of any or all documents required by law or custom  
3.2 for closing a reverse mortgage loan agreement.

3.3 (4) Appraisal and survey of real property securing a reverse mortgage loan.

3.4 (5) A single service charge, which service charge shall include any consideration,  
3.5 not otherwise specified in this section as an "actual closing cost," paid by the borrower to  
3.6 the lender for or in relation to the acquisition, making, refinancing or modification of a  
3.7 reverse mortgage loan, and shall also include any consideration received by the lender  
3.8 for making a commitment for a reverse mortgage loan, whether or not an actual loan  
3.9 follows the commitment. The service charge shall not exceed one percent of the bona fide  
3.10 committed principal amount of the reverse mortgage loan.

3.11 (6) Charges and fees necessary for or related to the transfer of real property securing  
3.12 a reverse mortgage loan or the closing of a reverse mortgage loan agreement paid by the  
3.13 borrower and received by any party other than the lender.

3.14 Sec. 2. Minnesota Statutes 2008, section 47.60, subdivision 1, is amended to read:

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

3.17 (a) "Consumer small loan" is a loan transaction in which cash is advanced to a  
3.18 borrower for the borrower's own personal, family, or household purpose. A consumer  
3.19 small loan is a short-term, unsecured loan to be repaid in a single installment. The cash  
3.20 advance of a consumer small loan is equal to or less than \$350. A consumer small loan  
3.21 includes an indebtedness evidenced by but not limited to a promissory note or agreement  
3.22 to defer the presentation of a personal check for a fee.

3.23 (b) "Consumer small loan lender" is a financial institution as defined in section  
3.24 47.59 or a ~~person~~ business entity registered with the commissioner and engaged in the  
3.25 business of making consumer small loans.

3.26 Sec. 3. Minnesota Statutes 2008, section 47.60, subdivision 3, is amended to read:

3.27 Subd. 3. **Filing.** Before a ~~person~~ business entity other than a financial institution  
3.28 as defined by section 47.59 engages in the business of making consumer small loans to  
3.29 Minnesota residents, the ~~person~~ business entity shall file with the commissioner as a  
3.30 consumer small loan lender. The filing must be on a form prescribed by the commissioner  
3.31 together with a fee of \$250 for each place of business and contain the following  
3.32 information in addition to the information required by the commissioner:

3.33 (1) evidence that the filer has available for the operation of the business at the  
3.34 location specified, liquid assets of at least \$50,000; and

4.1 (2) a biographical statement on the principal person responsible for the operation  
4.2 and management of the business to be certified.

4.3 Revocation of the filing ~~and the right to engage in the business of a consumer small~~  
4.4 ~~loan lender~~ is the same as in the case of a regulated lender license in section 56.09.

4.5 For purposes of this subdivision, "business entity" includes one that does not have a  
4.6 physical location in Minnesota that makes a consumer small loan electronically via the  
4.7 Internet.

4.8 Sec. 4. Minnesota Statutes 2008, section 47.60, subdivision 6, is amended to read:

4.9 Subd. 6. **Penalties for violation.** A ~~person~~ business entity or the ~~person's~~ entity's  
4.10 members, officers, directors, agents, and employees who violate or participate in the  
4.11 violation of any of the provisions of this section may be liable in the same manner as in  
4.12 section 56.19.

4.13 Sec. 5. Minnesota Statutes 2008, section 48.21, is amended to read:

4.14 **48.21 REAL ESTATE; RESTRICTIONS ON HOLDING.**

4.15 Subdivision 1. **Specific restrictions.** (a) A bank may purchase, carry as an asset,  
4.16 and convey real estate only:

4.17 (1) as provided for in section 47.10;

4.18 (2) if acquired through foreclosure of a mortgage given to it in good faith as security  
4.19 for loans made by or money due to it;

4.20 (3) if conveyed to it in satisfaction of debts previously contracted in good faith in  
4.21 the course of its dealings;

4.22 (4) if acquired by sale on execution or judgment of a court in its favor; or

4.23 (5) if reasonably necessary to mitigate or avoid loss on a loan or investment  
4.24 theretofore made.

4.25 (b) Real estate acquired under clauses (2) to (5) shall be carried as an asset only in  
4.26 accordance with rules the commissioner prescribes. The maximum period for holding  
4.27 other real estate as an asset shall be five years, provided that upon application to the  
4.28 commissioner, the commissioner may approve the possession of such real estate by a bank  
4.29 for a period longer than five years, but not to exceed an additional five years, if:

4.30 (1) the bank has made a good faith attempt to dispose of the real estate within the  
4.31 initial five-year period; or

4.32 (2) disposal within the initial five-year period would be detrimental to the bank.

4.33 Subd. 2. **Real estate holdings not bank liabilities.** Real estate owned by a bank  
4.34 as a result of actions authorized in clauses (2) to (5) of subdivision 1 and subsequently

5.1 sold to any buyer on a contract for deed may not be considered creating a liability to a  
5.2 bank for purposes of section 48.24.

5.3 Subd. 3. **Real estate holdings not sold; authority to write off.** Notwithstanding  
5.4 any rules of the commissioner to the contrary, if real estate owned by a bank pursuant to  
5.5 clauses (2) to (5) of subdivision 1 is not sold or otherwise disposed of within the maximum  
5.6 period ~~established by rule by the commissioner~~, the bank may write off any remaining  
5.7 balance at a rate not less than one-fifth of that balance each subsequent calendar year.

5.8 Sec. 6. Minnesota Statutes 2008, section 58.05, subdivision 3, is amended to read:

5.9 Subd. 3. **Certificate of exemption.** A person must obtain a certificate of exemption  
5.10 from the commissioner to qualify as an exempt person under section 58.04, subdivision 1,  
5.11 paragraph (c), a financial institution under clause (2), or by order of the commissioner  
5.12 under clause (6); or under section 58.04, subdivision 2, paragraph (b), as a financial  
5.13 institution under clause ~~(3)~~ (4), or by order of the commissioner under clause ~~(7)~~ (8).

5.14 Sec. 7. Minnesota Statutes 2008, section 58.06, subdivision 2, is amended to read:

5.15 Subd. 2. **Application contents.** (a) The application must contain the name and  
5.16 complete business address or addresses of the license applicant. The license applicant  
5.17 must be a partnership, limited liability partnership, association, limited liability company,  
5.18 corporation, or other form of business organization, and the application must contain the  
5.19 names and complete business addresses of each partner, member, director, and principal  
5.20 officer. The application must also include a description of the activities of the license  
5.21 applicant, in the detail and for the periods the commissioner may require.

5.22 (b) ~~An~~ A residential mortgage originator applicant must submit one of the following:

5.23 (1) evidence which shows, to the commissioner's satisfaction, that either the federal  
5.24 Department of Housing and Urban Development or the Federal National Mortgage  
5.25 Association has approved the residential mortgage originator applicant as a mortgagee;

5.26 (2) a surety bond or irrevocable letter of credit in the amount of not less than  
5.27 \$50,000 in a form approved by the commissioner, issued by an insurance company or bank  
5.28 authorized to do so in this state. The bond or irrevocable letter of credit must be available  
5.29 for the recovery of expenses, fines, and fees levied by the commissioner under this chapter  
5.30 and for losses incurred by borrowers. The bond or letter of credit must be submitted with  
5.31 the license application, and evidence of continued coverage must be submitted with each  
5.32 renewal. Any change in the bond or letter of credit must be submitted for approval by the  
5.33 commissioner within ten days of its execution; or

6.1 (3) a copy of the residential mortgage originator applicant's most recent audited  
6.2 financial statement, including balance sheet, statement of income or loss, statements of  
6.3 changes in shareholder equity, and statement of changes in financial position. Financial  
6.4 statements must be as of a date within 12 months of the date of application.

6.5 (c) The application must also include all of the following:

6.6 (1) an affirmation under oath that the applicant:

6.7 (i) is in compliance with the requirements of section 58.125;

6.8 (ii) will maintain a perpetual roster of individuals employed as residential mortgage  
6.9 originators, including employees and independent contractors, which includes the ~~date~~  
6.10 dates that mandatory testing, initial education was, and continuing education were  
6.11 completed. In addition, the roster must be made available to the commissioner on demand,  
6.12 within three business days of the commissioner's request;

6.13 (iii) will advise the commissioner of any material changes to the information  
6.14 submitted in the most recent application within ten days of the change;

6.15 (iv) will advise the commissioner in writing immediately of any bankruptcy petitions  
6.16 filed against or by the applicant or licensee;

6.17 (v) will maintain at all times either a net worth, net of intangibles, of at least  
6.18 \$250,000 or a surety bond or irrevocable letter of credit in the amount of at least \$50,000;

6.19 (vi) complies with federal and state tax laws; and

6.20 (vii) complies with sections 345.31 to 345.60, the Minnesota unclaimed property  
6.21 law;

6.22 (2) information as to the mortgage lending, servicing, or brokering experience of the  
6.23 applicant and persons in control of the applicant;

6.24 (3) information as to criminal convictions, excluding traffic violations, of persons in  
6.25 control of the license applicant;

6.26 (4) whether a court of competent jurisdiction has found that the applicant or persons  
6.27 in control of the applicant have engaged in conduct evidencing gross negligence, fraud,  
6.28 misrepresentation, or deceit in performing an act for which a license is required under  
6.29 this chapter;

6.30 (5) whether the applicant or persons in control of the applicant have been the subject  
6.31 of: an order of suspension or revocation, cease and desist order, or injunctive order, or  
6.32 order barring involvement in an industry or profession issued by this or another state or  
6.33 federal regulatory agency or by the Secretary of Housing and Urban Development within  
6.34 the ten-year period immediately preceding submission of the application; and

6.35 (6) other information required by the commissioner.

7.1 Sec. 8. Minnesota Statutes 2008, section 58.126, is amended to read:

7.2 **58.126 EDUCATION AND TESTING REQUIREMENT.**

7.3 (a) No individual shall engage in residential mortgage origination or make residential  
7.4 mortgage loans, whether as an employee or independent contractor, before the completion  
7.5 of ~~15~~ 20 hours of educational training which has been approved by the commissioner, and  
7.6 covering state and federal laws concerning residential mortgage lending.

7.7 (b) In addition to the initial education requirements in paragraph (a), each individual  
7.8 must also complete eight hours of continuing education annually. The education must  
7.9 include:

7.10 (1) three hours of federal law and regulations;

7.11 (2) two hours of ethics, which must include fraud, consumer protection, and fair  
7.12 lending; and

7.13 (3) two hours of standards governing nontraditional mortgage lending.

7.14 (c) The commissioner may by rule establish testing requirements for individuals  
7.15 subject to the requirements of paragraphs (a) and (b). An individual must satisfy the  
7.16 testing requirements established by the commissioner before engaging in residential  
7.17 mortgage loan origination or making residential mortgage loans.

7.18 **EFFECTIVE DATE.** This section is effective September 1, 2009, and applies to  
7.19 license applications and renewals made on or after that date.

7.20 Sec. 9. Minnesota Statutes 2008, section 58.13, subdivision 1, is amended to read:

7.21 Subdivision 1. **Generally.** (a) No person acting as a residential mortgage originator  
7.22 or servicer, including a person required to be licensed under this chapter, and no person  
7.23 exempt from the licensing requirements of this chapter under section 58.04, except as  
7.24 otherwise provided in paragraph (b), shall:

7.25 (1) fail to maintain a trust account to hold trust funds received in connection with a  
7.26 residential mortgage loan;

7.27 (2) fail to deposit all trust funds into a trust account within three business days of  
7.28 receipt; commingle trust funds with funds belonging to the licensee or exempt person; or  
7.29 use trust account funds for any purpose other than that for which they are received;

7.30 (3) unreasonably delay the processing of a residential mortgage loan application,  
7.31 or the closing of a residential mortgage loan. For purposes of this clause, evidence of  
7.32 unreasonable delay includes but is not limited to those factors identified in section 47.206,  
7.33 subdivision 7, clause (d);

7.34 (4) fail to disburse funds according to its contractual or statutory obligations;

- 8.1 (5) fail to perform in conformance with its written agreements with borrowers,  
8.2 investors, other licensees, or exempt persons;
- 8.3 (6) charge a fee for a product or service where the product or service is not actually  
8.4 provided, or misrepresent the amount charged by or paid to a third party for a product  
8.5 or service;
- 8.6 (7) fail to comply with sections 345.31 to 345.60, the Minnesota unclaimed property  
8.7 law;
- 8.8 (8) violate any provision of any other applicable state or federal law regulating  
8.9 residential mortgage loans including, without limitation, sections 47.20 to 47.208, and  
8.10 47.58;
- 8.11 (9) make or cause to be made, directly or indirectly, any false, deceptive, or  
8.12 misleading statement or representation in connection with a residential loan transaction  
8.13 including, without limitation, a false, deceptive, or misleading statement or representation  
8.14 regarding the borrower's ability to qualify for any mortgage product;
- 8.15 (10) conduct residential mortgage loan business under any name other than that  
8.16 under which the license or certificate of exemption was issued;
- 8.17 (11) compensate, whether directly or indirectly, coerce or intimidate an appraiser for  
8.18 the purpose of influencing the independent judgment of the appraiser with respect to the  
8.19 value of real estate that is to be covered by a residential mortgage or is being offered as  
8.20 security according to an application for a residential mortgage loan;
- 8.21 (12) issue any document indicating conditional qualification or conditional approval  
8.22 for a residential mortgage loan, unless the document also clearly indicates that final  
8.23 qualification or approval is not guaranteed, and may be subject to additional review;
- 8.24 (13) make or assist in making any residential mortgage loan with the intent that the  
8.25 loan will not be repaid and that the residential mortgage originator will obtain title to  
8.26 the property through foreclosure;
- 8.27 (14) provide or offer to provide for a borrower, any brokering or lending services  
8.28 under an arrangement with a person other than a licensee or exempt person, provided that  
8.29 a person may rely upon a written representation by the residential mortgage originator that  
8.30 it is in compliance with the licensing requirements of this chapter;
- 8.31 (15) claim to represent a licensee or exempt person, unless the person is an employee  
8.32 of the licensee or exempt person or unless the person has entered into a written agency  
8.33 agreement with the licensee or exempt person;
- 8.34 (16) fail to comply with the record keeping and notification requirements identified  
8.35 in section 58.14 or fail to abide by the affirmations made on the application for licensure;

9.1 (17) represent that the licensee or exempt person is acting as the borrower's agent  
9.2 after providing the nonagency disclosure required by section 58.15, unless the disclosure  
9.3 is retracted and the licensee or exempt person complies with all of the requirements of  
9.4 section 58.16;

9.5 (18) make, provide, or arrange for a residential mortgage loan that is of a lower  
9.6 investment grade if the borrower's credit score or, if the originator does not utilize credit  
9.7 scoring or if a credit score is unavailable, then comparable underwriting data, indicates  
9.8 that the borrower may qualify for a residential mortgage loan, available from or through  
9.9 the originator, that is of a higher investment grade, unless the borrower is informed that  
9.10 the borrower may qualify for a higher investment grade loan with a lower interest rate  
9.11 and/or lower discount points, and consents in writing to receipt of the lower investment  
9.12 grade loan;

9.13 For purposes of this section, "investment grade" refers to a system of categorizing  
9.14 residential mortgage loans in which the loans are: (i) commonly referred to as "prime" or  
9.15 "subprime"; (ii) commonly designated by an alphabetical character with "A" being the  
9.16 highest investment grade; and (iii) are distinguished by interest rate or discount points  
9.17 or both charged to the borrower, which vary according to the degree of perceived risk  
9.18 of default based on factors such as the borrower's credit, including credit score and  
9.19 credit patterns, income and employment history, debt ratio, loan-to-value ratio, and prior  
9.20 bankruptcy or foreclosure;

9.21 (19) make, publish, disseminate, circulate, place before the public, or cause to be  
9.22 made, directly or indirectly, any advertisement or marketing materials of any type, or any  
9.23 statement or representation relating to the business of residential mortgage loans that is  
9.24 false, deceptive, or misleading;

9.25 (20) advertise loan types or terms that are not available from or through the licensee  
9.26 or exempt person on the date advertised, or on the date specified in the advertisement.  
9.27 For purposes of this clause, advertisement includes, but is not limited to, a list of sample  
9.28 mortgage terms, including interest rates, discount points, and closing costs provided by  
9.29 licensees or exempt persons to a print or electronic medium that presents the information  
9.30 to the public;

9.31 (21) use or employ phrases, pictures, return addresses, geographic designations, or  
9.32 other means that create the impression, directly or indirectly, that a licensee or other  
9.33 person is a governmental agency, or is associated with, sponsored by, or in any manner  
9.34 connected to, related to, or endorsed by a governmental agency, if that is not the case;

9.35 (22) violate section 82.49, relating to table funding;

10.1 (23) make, provide, or arrange for a residential mortgage loan all or a portion  
10.2 of the proceeds of which are used to fully or partially pay off a "special mortgage"  
10.3 unless the borrower has obtained a written certification from an authorized independent  
10.4 loan counselor that the borrower has received counseling on the advisability of the  
10.5 loan transaction. For purposes of this section, "special mortgage" means a residential  
10.6 mortgage loan originated, subsidized, or guaranteed by or through a state, tribal, or  
10.7 local government, or nonprofit organization, that bears one or more of the following  
10.8 nonstandard payment terms which substantially benefit the borrower: (i) payments vary  
10.9 with income; (ii) payments of principal or interest are not required or can be deferred under  
10.10 specified conditions; (iii) principal or interest is forgivable under specified conditions;  
10.11 or (iv) where no interest or an annual interest rate of two percent or less is charged in  
10.12 connection with the loan. For purposes of this section, "authorized independent loan  
10.13 counselor" means a nonprofit, third-party individual or organization providing homebuyer  
10.14 education programs, foreclosure prevention services, mortgage loan counseling, or credit  
10.15 counseling certified by the United States Department of Housing and Urban Development,  
10.16 the Minnesota Home Ownership Center, the Minnesota Mortgage Foreclosure Prevention  
10.17 Association, AARP, or NeighborWorks America;

10.18 (24) make, provide, or arrange for a residential mortgage loan without verifying  
10.19 the borrower's reasonable ability to pay the scheduled payments of the following, as  
10.20 applicable: principal; interest; real estate taxes; homeowner's insurance, assessments,  
10.21 and mortgage insurance premiums. For loans in which the interest rate may vary, the  
10.22 reasonable ability to pay shall be determined based on a fully indexed rate and a repayment  
10.23 schedule which achieves full amortization over the life of the loan. For all residential  
10.24 mortgage loans, the borrower's income and financial resources must be verified by tax  
10.25 returns, payroll receipts, bank records, or other similarly reliable documents.

10.26 Nothing in this section shall be construed to limit a mortgage originator's or exempt  
10.27 person's ability to rely on criteria other than the borrower's income and financial resources  
10.28 to establish the borrower's reasonable ability to repay the residential mortgage loan,  
10.29 including criteria established by the United States Department of Veterans Affairs or the  
10.30 United States Department of Housing and Urban Development for interest rate reduction  
10.31 refinancing loans or streamline loans, or criteria authorized or promulgated by the  
10.32 Federal National Mortgage Association or Federal Home Loan Mortgage Corporation;  
10.33 however, such other criteria must be verified through reasonably reliable methods and  
10.34 documentation. The mortgage originator's analysis of the borrower's reasonable ability  
10.35 to repay may include, but is not limited to, consideration of the following items, if  
10.36 verified: (1) the borrower's current and expected income; (2) current and expected cash

11.1 flow; (3) net worth and other financial resources other than the consumer's equity in the  
11.2 dwelling that secures the loan; (4) current financial obligations; (5) property taxes and  
11.3 insurance; (6) assessments on the property; (7) employment status; (8) credit history; (9)  
11.4 debt-to-income ratio; (10) credit scores; (11) tax returns; (12) pension statements; and  
11.5 (13) employment payment records, provided that no mortgage originator shall disregard  
11.6 facts and circumstances that indicate that the financial or other information submitted by  
11.7 the consumer is inaccurate or incomplete. A statement by the borrower to the residential  
11.8 mortgage originator or exempt person of the borrower's income and resources or sole  
11.9 reliance on any single item listed above is not sufficient to establish the existence of the  
11.10 income or resources when verifying the reasonable ability to pay.

11.11 (25) engage in "churning." As used in this section, "churning" means knowingly or  
11.12 intentionally making, providing, or arranging for a residential mortgage loan when the  
11.13 new residential mortgage loan does not provide a reasonable, tangible net benefit to the  
11.14 borrower considering all of the circumstances including the terms of both the new and  
11.15 refinanced loans, the cost of the new loan, and the borrower's circumstances;

11.16 (26) the first time a residential mortgage originator orally informs a borrower of the  
11.17 anticipated or actual periodic payment amount for a first-lien residential mortgage loan  
11.18 which does not include an amount for payment of property taxes and hazard insurance,  
11.19 the residential mortgage originator must inform the borrower that an additional amount  
11.20 will be due for taxes and insurance and, if known, disclose to the borrower the amount of  
11.21 the anticipated or actual periodic payments for property taxes and hazard insurance. This  
11.22 same oral disclosure must be made each time the residential mortgage originator orally  
11.23 informs the borrower of a different anticipated or actual periodic payment amount change  
11.24 from the amount previously disclosed. A residential mortgage originator need not make  
11.25 this disclosure concerning a refinancing loan if the residential mortgage originator knows  
11.26 that the borrower's existing loan that is anticipated to be refinanced does not have an  
11.27 escrow account; or

11.28 (27) make, provide, or arrange for a residential mortgage loan, other than a reverse  
11.29 mortgage pursuant to United States Code, title 15, chapter 41, if the borrower's compliance  
11.30 with any repayment option offered pursuant to the terms of the loan will result in negative  
11.31 amortization during any six-month period.

11.32 (b) Paragraph (a), clauses (24) through (27), do not apply to a state or federally  
11.33 chartered bank, savings bank, or credit union, an institution chartered by Congress under  
11.34 the Farm Credit Act, or to a person making, providing, or arranging a residential mortgage  
11.35 loan originated or purchased by a state agency or a tribal or local unit of government. This  
11.36 paragraph supersedes any inconsistent provision of this chapter.

12.1 Sec. 10. Minnesota Statutes 2008, section 60A.124, is amended to read:

12.2 **60A.124 INDEPENDENT AUDIT.**

12.3 The audit report of the independent certified public accountant that performs the  
12.4 audit of an insurer's annual statement as required under section ~~60A.129~~ 60A.1291,  
12.5 subdivision ~~3~~ 2, ~~paragraph (a)~~, should contain a statement as to whether anything, in  
12.6 connection with their audit, came to their attention that caused them to believe that the  
12.7 insurer failed to adopt and consistently apply the valuation procedure as required by  
12.8 sections 60A.122 and 60A.123.

12.9 Sec. 11. **[60A.1291] ANNUAL AUDIT.**

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

12.11 (a) "Accountant" and "independent public accountant" mean an independent certified  
12.12 public accountant or accounting firm in good standing with the American Institute of  
12.13 Certified Public Accountants and in all states in which the accountant or firm is licensed  
12.14 or is required to be licensed to practice. For Canadian and British companies, the term  
12.15 means a Canadian-chartered or British-chartered accountant.

12.16 (b) "Audit committee" means a committee or equivalent body established by the  
12.17 board of directors of an entity for the purpose of overseeing the accounting and financial  
12.18 reporting processes of an insurer or group of insurers, and audits of financial statements of  
12.19 the insurer or group of insurers. The audit committee of any entity that controls a group of  
12.20 insurers may be deemed to be the audit committee for one or more of these controlled  
12.21 insurers solely for the purposes of this section at the election of the controlling person  
12.22 under subdivision 15, paragraph (e). If an audit committee is not designated by the insurer,  
12.23 the insurer's entire board of directors constitutes the audit committee.

12.24 (c) "Indemnification" means an agreement of indemnity or a release from liability  
12.25 where the intent or effect is to shift or limit in any manner the potential liability of the  
12.26 person or firm for failure to adhere to applicable auditing or professional standards,  
12.27 whether or not resulting in part from knowing of other misrepresentations made by the  
12.28 insurer or its representatives.

12.29 (d) "Independent board member" has the same meaning as described in subdivision  
12.30 15, paragraph (c).

12.31 (e) "Internal control over financial reporting" means a process effected by an entity's  
12.32 board of directors, management and other personnel designed to provide reasonable  
12.33 assurance regarding the reliability of the financial statements, for example, those items  
12.34 specified in subdivision 4, paragraphs (a), clauses (2) to (6), (b), and (c), and includes  
12.35 those policies and procedures that:

13.1 (1) pertain to the maintenance of records that, in reasonable detail, accurately and  
13.2 fairly reflect the transactions and dispositions of assets;

13.3 (2) provide reasonable assurance that transactions are recorded as necessary to permit  
13.4 preparation of the financial statements, for example, those items specified in subdivision 4,  
13.5 paragraphs (a), clauses (2) to (6), (b), and (c), and that receipts and expenditures are being  
13.6 made only in accordance with authorizations of management and directors; and

13.7 (3) provide reasonable assurance regarding prevention or timely detection of  
13.8 unauthorized acquisition, use or disposition of assets that could have a material effect on  
13.9 the financial statements, for example, those items specified in subdivision 4, paragraphs  
13.10 (a), clauses (2) to (6), (b), and (c).

13.11 (f) "SEC" means the United States Securities and Exchange Commission.

13.12 (g) "Section 404" means Section 404 of the Sarbanes-Oxley Act of 2002 and the  
13.13 SEC's rules and regulations promulgated under it.

13.14 (h) "Section 404 report" means management's report on "internal control over  
13.15 financial reporting" as defined by the SEC and the related attestation report of the  
13.16 independent certified public accountant as described in paragraph (a).

13.17 (i) "SOX compliant entity" means an entity that either is required to be  
13.18 compliant with, or voluntarily is compliant with, all of the following provisions of the  
13.19 Sarbanes-Oxley Act of 2002: (i) the preapproval requirements of Section 201 (section  
13.20 10A(i) of the Securities Exchange Act of 1934); (ii) the audit committee independence  
13.21 requirements of Section 301 (section 10A(m)(3) of the Securities Exchange Act of 1934);  
13.22 and (iii) the internal control over financial reporting requirements of Section 404 (Item  
13.23 308 of SEC Regulation S-K).

13.24 Subd. 2. **Filing requirements.** Every insurance company doing business in this  
13.25 state, including fraternal benefit societies, reciprocal exchanges, service plan corporations  
13.26 licensed pursuant to chapter 62C, and legal service plans licensed pursuant to chapter  
13.27 62G, unless exempted by the commissioner pursuant to subdivision 9, paragraph (a), or by  
13.28 subdivision 18, shall have an annual audit of the financial activities of the most recently  
13.29 completed calendar year performed by an independent certified public accountant, and  
13.30 shall file the report of this audit with the commissioner on or before June 1 for the  
13.31 immediately preceding year ending December 31. The commissioner may require an  
13.32 insurer to file an audited financial report earlier than June 1 with 90 days' advance notice  
13.33 to the insurer.

13.34 Extensions of the June 1 filing date may be granted by the commissioner for 30-day  
13.35 periods upon a showing by the insurer and its independent certified public accountant of

14.1 the reasons for requesting the extension and a determination by the commissioner of good  
14.2 cause for the extension.

14.3 The request for extension must be submitted in writing not less than ten days before  
14.4 the due date in sufficient detail to permit the commissioner to make an informed decision  
14.5 with respect to the requested extension.

14.6 If an extension is granted in accordance with this subdivision, a similar extension of  
14.7 30 days is granted to the filing of management's report of internal control over financial  
14.8 reporting.

14.9 Every insurer required to file an annual audited financial report pursuant to this  
14.10 subdivision shall designate a group of individuals as constituting its audit committee. The  
14.11 audit committee of an entity that controls an insurer may be deemed to be the insurer's  
14.12 audit committee for purposes of this subdivision at the election of the controlling person.

14.13 Subd. 3. **Exemptions.** Foreign and alien insurers filing audited financial reports in  
14.14 another state under the other state's requirements of audited financial reports which have  
14.15 been found by the commissioner to be substantially similar to these requirements are  
14.16 exempt from this subdivision if a copy of the audited financial report, communication of  
14.17 internal control related matters noted in an audit, accountant's letter of qualifications, and  
14.18 report on significant deficiencies in internal controls, which are filed with the other state,  
14.19 are filed with the commissioner in accordance with the filing dates specified in subdivision  
14.20 2 (Canadian insurers may submit accountants' reports as filed with the Canadian Dominion  
14.21 Department of Insurance); and a copy of any notification of adverse financial condition  
14.22 report filed with the other state is filed with the commissioner within the time specified  
14.23 in subdivision 11. Foreign or alien insurers required to file management's report of  
14.24 internal control over financial reporting in another state are exempt from filing the report  
14.25 in this state provided the other state has substantially similar reporting requirements and  
14.26 the report is filed with the commissioner of the other state within the time specified.  
14.27 This subdivision does not prohibit or in any way limit the commissioner from ordering,  
14.28 conducting, and performing examinations of insurers under the authority of this chapter.

14.29 Subd. 4. **Contents of annual audit; financial report.** (a) The annual audited  
14.30 financial report must report, in conformity with statutory accounting practices required  
14.31 or permitted by the commissioner of insurance of the state of domicile, the financial  
14.32 position of the insurer as of the end of the most recent calendar year and the results of  
14.33 its operations, cash flows, and changes in capital and surplus for the year ended. The  
14.34 annual audited financial report must include:

14.35 (1) a report of an independent certified public accountant;

14.36 (2) a balance sheet reporting admitted assets, liabilities, capital, and surplus;

15.1 (3) a statement of operations;

15.2 (4) a statement of cash flows;

15.3 (5) a statement of changes in capital and surplus; and

15.4 (6) notes to the financial statements.

15.5 (b) The notes required under paragraph (a) are those required by the appropriate  
15.6 National Association of Insurance Commissioners (NAIC) annual statement instructions  
15.7 and National Association of Insurance Commissioners Accounting Practices and  
15.8 Procedures Manual and include reconciliation of differences, if any, between the audited  
15.9 statutory financial statements and the annual statement filed under section 60A.13,  
15.10 subdivision 1, with a written description of the nature of these differences.

15.11 (c) The financial statements included in the audited financial report must be prepared  
15.12 in a form and using language and groupings substantially the same as the relevant sections  
15.13 of the annual statement of the insurer filed with the commissioner. The financial statement  
15.14 must be comparative, presenting the amounts as of December 31 of the current year and  
15.15 the amounts as of the immediately preceding December 31. In the first year in which  
15.16 an insurer is required to file an audited financial report, the comparative data may be  
15.17 omitted. The amounts may be rounded to the nearest \$1,000, and all immaterial amounts  
15.18 may be combined.

15.19 Subd. 5. **Designation of independent certified public accountant.** Each insurer  
15.20 required by this section to file an annual audited financial report must notify the  
15.21 commissioner in writing of the name and address of the independent certified public  
15.22 accountant or accounting firm retained to conduct the annual audit within 60 days after  
15.23 becoming subject to the annual audit requirement. The insurer shall obtain from the  
15.24 accountant a letter which states that the accountant is aware of the provisions that relate  
15.25 to accounting and financial matters in the insurance laws and the rules of the insurance  
15.26 regulatory authority of the state of domicile. The letter shall affirm that the accountant will  
15.27 express an opinion on the financial statements in terms of their conformity to the statutory  
15.28 accounting practices prescribed or otherwise permitted by that insurance regulatory  
15.29 authority, specifying the exceptions believed to be appropriate. A copy of the accountant's  
15.30 letter shall be filed with the commissioner.

15.31 Subd. 6. **Report of disagreements.** If an accountant who was the accountant for  
15.32 the immediately preceding filed audited financial report is dismissed or resigns, the  
15.33 insurer shall notify the commissioner of this event within five business days. Within  
15.34 ten business days of this notification, the insurer shall also furnish the commissioner  
15.35 with a separate letter stating whether in the 24 months preceding this event there were  
15.36 any disagreements with the former accountant on any matter of accounting principles or

16.1 practices, financial statement disclosure, or auditing scope or procedure, which, if not  
16.2 resolved to the satisfaction of the former accountant, would have caused that person to  
16.3 make reference to the subject matter of the disagreement in connection with the opinion  
16.4 on the financial statements. The disagreements required to be reported in response to this  
16.5 subdivision include both those resolved to the former accountant's satisfaction and those  
16.6 not resolved to the former accountant's satisfaction. Disagreements contemplated by this  
16.7 subdivision are those disagreements between personnel of the insurer responsible for  
16.8 presentation of its financial statements and personnel of the accounting firm responsible  
16.9 for rendering its report. The insurer shall also in writing request the former accountant  
16.10 to furnish a letter addressed to the insurer stating whether the accountant agrees with  
16.11 the statements contained in the insurer's letter and, if not, stating the reasons for any  
16.12 disagreement. The insurer shall furnish this responsive letter from the former accountant  
16.13 to the commissioner together with its own.

16.14 Subd. 7. **Qualifications of independent certified public accountant.** (a) The  
16.15 commissioner shall not recognize any person or firm as a qualified independent certified  
16.16 public accountant that is not in good standing with the American Institute of Certified  
16.17 Public Accountants and in all states in which the accountant is licensed or is required  
16.18 to be licensed to practice, or for a Canadian or British company, that is not a chartered  
16.19 accountant. Except as otherwise provided, an independent certified public accountant must  
16.20 be recognized as qualified as long as the person conforms to the standards of the person's  
16.21 profession, as contained in the Code of Professional Conduct of the American Institute  
16.22 of Certified Public Accountants and the Code of Professional Conduct of the Minnesota  
16.23 Board of Public Accountancy or similar code and the person is properly licensed in good  
16.24 standing with all required state boards of accountancy.

16.25 (b) The lead or coordinating audit partner, having primary responsibility for the  
16.26 audit, may not act in that capacity for more than five consecutive years. The person shall  
16.27 be disqualified from acting in that or a similar capacity for the same company or its  
16.28 insurance subsidiaries or affiliates for a period of five consecutive years. An insurer may  
16.29 make application to the commissioner for relief from this rotation requirement on the  
16.30 basis of unusual circumstances. This application must be made at least 30 days before  
16.31 the end of the calendar year. The commissioner may consider the following factors in  
16.32 determining if the relief should be granted:

16.33 (1) number of partners, expertise of the partners, or the number of insurance clients  
16.34 in the currently registered firm;

16.35 (2) premium volume of the insurer; or

16.36 (3) number of jurisdictions in which the insurer transacts business.

17.1 The insurer shall file, with its annual statement filing, the approval for relief from this  
17.2 paragraph with the states that it is licensed in or doing business in and with the NAIC. If  
17.3 the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the  
17.4 approval in an electronic format acceptable to the NAIC.

17.5 (c) The commissioner shall not recognize as a qualified independent certified public  
17.6 accountant, nor accept an annual audited financial report, prepared in whole or in part by  
17.7 an accountant who provides to an insurer, contemporaneously with the audit, the following  
17.8 nonaudit services:

17.9 (1) bookkeeping or other services related to the accounting records or financial  
17.10 statements of the insurer;

17.11 (2) financial information systems design and implementation;

17.12 (3) appraisal or valuation services, fairness opinions, or contribution in-kind reports;

17.13 (4) actuarially oriented advisory services involving the determination of amounts  
17.14 recorded in the financial statements. The accountant may assist an insurer in understanding  
17.15 the methods, assumptions, and inputs used in the determination of amounts recorded in the  
17.16 financial statement only if it is reasonable to conclude that the services provided will not  
17.17 be subject to audit procedures during an audit of the insurer's financial statements. An  
17.18 accountant's actuary may also issue an actuarial opinion or certification on an insurer's  
17.19 reserves if the following conditions have been met:

17.20 (i) neither the accountant nor the accountant's actuary has performed any  
17.21 management functions or made any management decisions;

17.22 (ii) the insurer has competent personnel, or engages a third-party actuary, to estimate  
17.23 the loss reserves for which management takes responsibility; and

17.24 (iii) the accountant's actuary tests the reasonableness of the reserves after the  
17.25 insurer's management has determined the amount of the loss reserves;

17.26 (5) internal audit outsourcing services;

17.27 (6) management functions or human resources;

17.28 (7) broker or dealer, investment adviser, or investment banking services;

17.29 (8) legal services or expert services unrelated to the audit; and

17.30 (9) any other services that the commissioner determines, by rule, are impermissible.

17.31 (d) The commissioner shall not recognize as a qualified independent certified public  
17.32 accountant, nor accept any audited financial report, prepared in whole or in part by any  
17.33 natural person who has been convicted of fraud, bribery, a violation of the Racketeer  
17.34 Influenced and Corrupt Organizations Act, United States Code, title 18, sections 1961 to  
17.35 1968, or any dishonest conduct or practices under federal or state law, has been found to  
17.36 have violated the insurance laws of this state with respect to any previous reports submitted

18.1 under this section, or has demonstrated a pattern or practice of failing to detect or disclose  
18.2 material information in previous reports filed under the provisions of this section.

18.3 (e) The commissioner, after notice and hearing under chapter 14, may find that  
18.4 the accountant is not qualified for purposes of expressing an opinion on the financial  
18.5 statements in the annual audited financial report. The commissioner may require the  
18.6 insurer to replace the accountant with another whose relationship with the insurer is  
18.7 qualified within the meaning of this section.

18.8 **Subd. 8. Exemptions to qualifications of certified public accountant.** (a) Insurers  
18.9 having direct written and assumed premiums of less than \$100,000,000 in any calendar  
18.10 year may request an exemption from subdivision 7, paragraph (c). The insurer shall  
18.11 file with the commissioner a written statement discussing the reasons why the insurer  
18.12 should be exempt from these provisions. If the commissioner finds, upon review of this  
18.13 statement, that compliance with this section would constitute a financial or organizational  
18.14 hardship upon the insurer, an exemption may be granted.

18.15 (b) A qualified independent certified public accountant who performs the audit  
18.16 may engage in other nonaudit services, including tax services, that are not described in  
18.17 subdivision 7, paragraph (c), only if the activity is approved in advance by the audit  
18.18 committee, in accordance with paragraph (c).

18.19 (c) All auditing services and nonaudit services provided to an insurer by the qualified  
18.20 independent certified public accountant of the insurer must be preapproved by the audit  
18.21 committee. The preapproval requirement is waived with respect to nonaudit services if  
18.22 the insurer is a SOX compliant entity or a direct or indirect wholly owned subsidiary of a  
18.23 SOX compliant entity or:

18.24 (1) the aggregate amount of all such nonaudit services provided to the insurer  
18.25 constitutes not more than five percent of the total amount of fees paid by the insurer to  
18.26 its qualified independent certified public accountant during the fiscal year in which the  
18.27 nonaudit services are provided;

18.28 (2) the services were not recognized by the insurer at the time of the engagement to  
18.29 be nonaudit services; and

18.30 (3) the services are promptly brought to the attention of the audit committee and  
18.31 approved before the completion of the audit by the audit committee or by one or more  
18.32 members of the audit committee who are the members of the board of directors to whom  
18.33 authority to grant such approvals has been delegated by the audit committee.

18.34 (d) The audit committee may delegate to one or more designated members of the  
18.35 audit committee the authority to grant the preapprovals required by paragraph (c). The

19.1 decisions of any member to whom this authority is delegated must be presented to the full  
19.2 audit committee at each of its scheduled meetings.

19.3 (e) The commissioner shall not recognize an independent certified public accountant  
19.4 as qualified for a particular insurer if a member of the board, president, chief executive  
19.5 officer, controller, chief financial officer, chief accounting officer, or any person serving in  
19.6 an equivalent position for that insurer, was employed by the independent certified public  
19.7 accountant and participated in the audit of that insurer during the one-year period preceding  
19.8 the date that the most current statutory opinion is due. This paragraph applies only to  
19.9 partners and senior managers involved in the audit. An insurer may make application to  
19.10 the commissioner for relief from this paragraph on the basis of unusual circumstances.

19.11 (f) The insurer shall file, with its annual statement filing, the approval for relief with  
19.12 the states that it is licensed in or doing business in and the NAIC. If the nondomestic state  
19.13 accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic  
19.14 format acceptable to the NAIC.

19.15 Subd. 9. **Consolidated or combined audits.** (a) The commissioner may allow  
19.16 an insurer to file consolidated or combined audited financial statements required by  
19.17 subdivision 2, in lieu of separate annual audited financial statements, where it can be  
19.18 demonstrated that an insurer is part of a group of insurance companies that has a pooling  
19.19 or 100 percent reinsurance agreement which substantially affects the solvency and  
19.20 integrity of the reserves of the insurer and the insurer cedes all of its direct and assumed  
19.21 business to the pool. An affiliated insurance company not meeting these requirements may  
19.22 be included in the consolidated or combined audited financial statements, if the company's  
19.23 total admitted assets are less than five percent of the consolidated group's total admitted  
19.24 assets. If these circumstances exist, then the company may file a written application to  
19.25 file consolidated or combined audited financial statements. This application must be for  
19.26 a specified period.

19.27 (b) Upon written application by a domestic insurer, the commissioner may  
19.28 authorize the domestic insurer to include additional affiliated insurance companies in the  
19.29 consolidated or combined audited financial statements. A foreign insurer must obtain the  
19.30 prior written authorization of the commissioner of its state of domicile in order to submit  
19.31 an application for authority to file consolidated or combined audited financial statements.  
19.32 This application must be for a specified period.

19.33 (c) A consolidated annual audit filing must include a columnar consolidated or  
19.34 combining worksheet. Amounts shown on the audited consolidated or combined financial  
19.35 statement must be shown on the worksheet. Amounts for each insurer must be stated  
19.36 separately. Noninsurance operations may be shown on the worksheet on a combined or

20.1 individual basis. Explanations of consolidating or eliminating entries must be shown on  
20.2 the worksheet. A reconciliation of any differences between the amounts shown in the  
20.3 individual insurer columns of the worksheet and comparable amounts shown on the annual  
20.4 statement of the insurers must be included on the worksheet.

20.5 Subd. 10. **Scope of audit and report of independent certified public accountant.**

20.6 Financial statements furnished pursuant to subdivision 4 must be examined by an  
20.7 independent certified public accountant. The audit of the insurer's financial statements  
20.8 must be conducted in accordance with generally accepted auditing standards. In  
20.9 accordance with AICPA Statement on Auditing Standards (SAS) No. 109, Understanding  
20.10 the Entity and its Environment and Assessing the Risks of Material Misstatement, or its  
20.11 replacement, the independent certified public accountant should obtain an understanding  
20.12 of internal control sufficient to plan the audit. To the extent required by SAS No. 109,  
20.13 for those insurers required to file a management's report of internal control over financial  
20.14 reporting pursuant to subdivision 17, the independent certified public accountant should  
20.15 consider (as that term is defined in SAS No. 102, Defining Professional Requirements in  
20.16 Statements on Auditing Standards or its replacement) the most recently available report in  
20.17 planning and performing the audit of the statutory financial statements. Consideration  
20.18 should be given to other procedures illustrated in the Financial Condition Examiners  
20.19 Handbook promulgated by the National Association of Insurance Commissioners as the  
20.20 independent certified public accountant deems necessary.

20.21 Subd. 11. **Notification of adverse financial condition.** The insurer required to  
20.22 furnish the annual audited financial report shall require the independent certified public  
20.23 accountant to provide written notice within five business days to the board of directors of  
20.24 the insurer or its audit committee of any determination by that independent certified public  
20.25 accountant that the insurer has materially misstated its financial condition as reported to  
20.26 the commissioner as of the balance sheet date currently under audit or that the insurer does  
20.27 not meet the minimum capital and surplus requirement of sections 60A.07, 66A.32, and  
20.28 66A.33 as of that date. An insurer required to file an annual audited financial report who  
20.29 received a notification of adverse financial condition from the accountant shall file a  
20.30 copy of the notification with the commissioner within five business days of the receipt  
20.31 of the notification. The insurer shall provide the independent certified public accountant  
20.32 making the notification with evidence of the report being furnished to the commissioner.  
20.33 If the independent certified public accountant fails to receive the evidence within the  
20.34 required five-day period, the independent certified public accountant shall furnish to the  
20.35 commissioner a copy of the notification to the board of directors or its audit committee  
20.36 within the next five business days. No independent certified public accountant is liable in

21.1 any manner to any person for any statement made in connection with this subdivision if  
21.2 the statement is made in good faith in compliance with this subdivision. If the accountant  
21.3 becomes aware of facts which might have affected the audited financial report after  
21.4 the date it was filed, the accountant shall take the action prescribed by AU section  
21.5 561, Subsequent Discovery of Facts Existing at the Date of the Auditor's Report of the  
21.6 Professional Standards issued by the American Institute of Certified Public Accountants,  
21.7 or its replacement.

21.8 Subd. 12. **Communication of internal control related matters noted in an**  
21.9 **audit.** In addition to the annual audited financial report, each insurer shall furnish the  
21.10 commissioner with a written communication as to any unremediated material weaknesses  
21.11 in its internal control over financial reporting noted during the audit. The communication  
21.12 must be prepared by the accountant within 60 days after the filing of the annual audited  
21.13 financial report, and must contain a description of any unremediated material weakness, as  
21.14 the term material weakness is defined by SAS No. 115, Communicating Internal Control  
21.15 Related Matters Identified in an Audit, as of December 31 immediately preceding so as  
21.16 to coincide with the audited financial report discussed in subdivision 2 in the insurer's  
21.17 internal control over financial reporting noted by the accountant during the course of their  
21.18 audit of the financial statements. If no unremediated material weaknesses were noted, the  
21.19 communication should so state.

21.20 The insurer is required to provide a description of remedial actions taken or  
21.21 proposed to correct unremediated material weaknesses, if the actions are not described in  
21.22 the accountant's communication.

21.23 Subd. 13. **Accountant's letter of qualification.** The accountant shall furnish the  
21.24 insurer in connection with, and for inclusion in, the filing of the annual audited financial  
21.25 report, a letter stating that the accountant is independent with respect to the insurer and  
21.26 conforms to the standards of the accountant's profession as contained in the Code of  
21.27 Professional Conduct of the American Institute of Certified Public Accountants and the  
21.28 Code of Professional Conduct of the Minnesota Board of Accountancy or similar code;  
21.29 the background and experience in general, and the experience in audits of insurers of the  
21.30 staff assigned to the engagement and whether each is an independent certified public  
21.31 accountant; that the accountant understands that the annual audited financial report and the  
21.32 opinion on it will be filed in compliance with this statute and that the commissioner will  
21.33 be relying on this information in the monitoring and regulation of the financial position of  
21.34 insurers; that the accountant consents to the requirements of subdivision 14 and that the  
21.35 accountant consents and agrees to make available for review by the commissioner, or the  
21.36 commissioner's designee or appointed agent, the work papers, as defined in subdivision

22.1 14; a representation that the accountant is properly licensed in good standing by the  
22.2 appropriate state licensing authorities and is a member in good standing in the American  
22.3 Institute of Certified Public Accountants; and a representation that the accountant complies  
22.4 with subdivision 7. Nothing in this section prohibits the accountant from utilizing staff  
22.5 the accountant deems appropriate where use is consistent with the standards prescribed  
22.6 by generally accepted auditing standards.

22.7 **Subd. 14. Availability and maintenance of independent certified public**  
22.8 **accountants' work papers.** Work papers are the records kept by the independent certified  
22.9 public accountant of the procedures followed, tests performed, information obtained, and  
22.10 conclusions reached pertinent to the independent certified public accountant's audit of the  
22.11 financial statements of an insurer. Work papers may include audit planning documents,  
22.12 work programs, analyses, memoranda, letters of confirmation and representation,  
22.13 management letters, abstracts of company documents, and schedules or commentaries  
22.14 prepared or obtained by the independent certified public accountant in the course of the  
22.15 audit of the financial statements of an insurer and that support the accountant's opinion.  
22.16 Every insurer required to file an audited financial report shall require the accountant,  
22.17 through the insurer, to make available for review by the examiners the work papers  
22.18 prepared in the conduct of the audit and any communications related to the audit between  
22.19 the accountant and the insurer. The work papers must be made available at the offices of  
22.20 the insurer, at the offices of the commissioner, or at any other reasonable place designated  
22.21 by the commissioner. The insurer shall require that the accountant retain the audit work  
22.22 papers and communications until the commissioner has filed a report on examination  
22.23 covering the period of the audit but no longer than seven years after the period reported  
22.24 upon, provided retention of the working papers beyond the seven years is not required by  
22.25 other professional or regulatory requirements. In the conduct of the periodic review by  
22.26 the examiners, it must be agreed that photocopies of pertinent audit work papers may be  
22.27 made and retained by the commissioner. These copies shall be part of the commissioner's  
22.28 work papers and must be given the same confidentiality as other examination work papers  
22.29 generated by the commissioner.

22.30 **Subd. 15. Requirements for audit committee.** (a) The audit committee must  
22.31 be directly responsible for the appointment, compensation, and oversight of the work  
22.32 of any accountant including resolution of disagreements between management and the  
22.33 accountant regarding financial reporting for the purpose of preparing or issuing the audited  
22.34 financial report or related work pursuant to this regulation. Each accountant shall report  
22.35 directly to the audit committee.

23.1 (b) Each member of the audit committee must be a member of the board of directors  
23.2 of the insurer or a member of the board of directors of an entity elected pursuant to  
23.3 paragraph (e) and subdivision 1, paragraph (b).

23.4 (c) In order to be considered independent for purposes of this section, a member of  
23.5 the audit committee may not, other than in his or her capacity as a member of the audit  
23.6 committee, the board of directors, or any other board committee, accept any consulting,  
23.7 advisory, or other compensatory fee from the entity or be an affiliated person of the entity  
23.8 or any subsidiary of the entity. However, if law requires board participation by otherwise  
23.9 nonindependent members, that law shall prevail and such members may participate in the  
23.10 audit committee and be designated as independent for audit committee purposes, unless  
23.11 they are an officer or employee of the insurer or one of its affiliates.

23.12 (d) If a member of the audit committee ceases to be independent for reasons outside  
23.13 the member's reasonable control, that person, with notice by the responsible entity to the  
23.14 state, may remain an audit committee member of the responsible entity until the earlier of  
23.15 the next annual meeting of the responsible entity or one year from the occurrence of the  
23.16 event that caused the member to be no longer independent.

23.17 (e) To exercise the election of the controlling person to designate the audit committee  
23.18 for purposes of this section, the ultimate controlling person shall provide written notice to  
23.19 the commissioners of the affected insurers. Notification must be made timely before the  
23.20 issuance of the statutory audit report and include a description of the basis for the election.  
23.21 The election can be changed through notice to the commissioner by the insurer, which  
23.22 shall include a description of the basis for the change. The election remains in effect for  
23.23 perpetuity, until rescinded.

23.24 (f) The audit committee shall require the accountant that performs for an insurer any  
23.25 audit required by this section to timely report to the audit committee in accordance with  
23.26 the requirements of SAS No. 114, The Auditor's Communication with Those Charged  
23.27 with Governance, including:

23.28 (1) all significant accounting policies and material permitted practices;

23.29 (2) all material alternative treatments of financial information within statutory  
23.30 accounting principles that have been discussed with management officials of the insurer,  
23.31 ramifications of the use of the alternative disclosures and treatments, and the treatment  
23.32 preferred by the accountant; and

23.33 (3) other material written communications between the accountant and the  
23.34 management of the insurer, such as any management letter or schedule of unadjusted  
23.35 differences.

24.1 (g) If an insurer is a member of an insurance holding company system, the reports  
24.2 required by paragraph (f) may be provided to the audit committee on an aggregate basis  
24.3 for insurers in the holding company system, provided that any substantial differences  
24.4 among insurers in the system are identified to the audit committee.

24.5 (h) The proportion of independent audit committee members shall meet or exceed  
24.6 the following criteria:

24.7 (1) for companies with prior calendar year direct written and assumed premiums \$0  
24.8 to \$300,000,000, no minimum requirements;

24.9 (2) for companies with prior calendar year direct written and assumed premiums  
24.10 over \$300,000,000 to \$500,000,000, majority of members must be independent; and

24.11 (3) for companies with prior calendar year direct written and assumed premiums  
24.12 over \$500,000,000, 75 percent or more must be independent.

24.13 (i) An insurer with direct written and assumed premium, excluding premiums  
24.14 reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less  
24.15 than \$500,000,000 may make application to the commissioner for a waiver from the  
24.16 requirements of this subdivision based upon hardship. The insurer shall file, with its  
24.17 annual statement filing, the approval for relief from this subdivision with the states that  
24.18 it is licensed in or doing business in and the NAIC. If the nondomestic state accepts  
24.19 electronic filing with the NAIC, the insurer shall file the approval in an electronic format  
24.20 acceptable to the NAIC.

24.21 This subdivision does not apply to foreign or alien insurers licensed in this state or  
24.22 an insurer that is a SOX compliant entity or a direct or indirect wholly-owned subsidiary  
24.23 of a SOX compliant entity.

24.24 **Subd. 16. Conduct of insurer in connection with the preparation of required**  
24.25 **reports and documents.** (a) No director or officer of an insurer shall, directly or indirectly:

24.26 (1) make or cause to be made a materially false or misleading statement to an  
24.27 accountant in connection with any audit, review, or communication required under this  
24.28 section; or

24.29 (2) omit to state, or cause another person to omit to state, any material fact necessary  
24.30 in order to make statements made, in light of the circumstances under which the statements  
24.31 were made, not misleading to an accountant in connection with any audit, review, or  
24.32 communication required under this section.

24.33 (b) No officer or director of an insurer, or any other person acting under the direction  
24.34 thereof, shall directly or indirectly take any action to coerce, manipulate, mislead, or  
24.35 fraudulently influence any accountant engaged in the performance of an audit pursuant to

25.1 this section if that person knew or should have known that the action, if successful, could  
25.2 result in rendering the insurer's financial statements materially misleading.

25.3 (c) For purposes of paragraph (b), actions that, "if successful, could result in  
25.4 rendering the insurer's financial statements materially misleading" include, but are not  
25.5 limited to, actions taken at any time with respect to the professional engagement period to  
25.6 coerce, manipulate, mislead, or fraudulently influence an accountant:

25.7 (1) to issue or reissue a report on an insurer's financial statements that is not  
25.8 warranted in the circumstances due to material violations of statutory accounting  
25.9 principles prescribed by the commissioner, generally accepted auditing standards, or  
25.10 other professional or regulatory standards;

25.11 (2) not to perform audit, review, or other procedures required by generally accepted  
25.12 auditing standards or other professional standards;

25.13 (3) not to withdraw an issued report; or

25.14 (4) not to communicate matters to an insurer's audit committee.

25.15 **Subd. 17. Management's report of internal control over financial reporting.**

25.16 (a) Every insurer required to file an audited financial report pursuant to this section that  
25.17 has annual direct written and assumed premiums, excluding premiums reinsured with the  
25.18 Federal Crop Insurance Corporation and Federal Flood Program, of \$500,000,000 or  
25.19 more, shall prepare a report of the insurer's or group of insurers' internal control over  
25.20 financial reporting, as these terms are defined in subdivision 1. The report must be filed  
25.21 with the commissioner along with the communication of internal control related matters  
25.22 noted in an audit described under subdivision 12. Management's report of internal control  
25.23 over financial reporting shall be as of December 31 immediately preceding.

25.24 (b) Notwithstanding the premium threshold in paragraph (a), the commissioner may  
25.25 require an insurer to file management's report of internal control over financial reporting if  
25.26 the insurer is in any RBC level event, or meets any one or more of the standards of an  
25.27 insurer deemed to be in hazardous financial condition as pursuant to sections 606.20  
25.28 to 606.22.

25.29 (c) An insurer or a group of insurers that is:

25.30 (1) directly subject to Section 404;

25.31 (2) part of a holding company system whose parent is directly subject to Section 404;

25.32 (3) not directly subject to Section 404 but is a SOX compliant entity; or

25.33 (4) a member of a holding company system whose parent is not directly subject to  
25.34 Section 404 but is a SOX compliant entity;

25.35 may file its or its parent's Section 404 report and an addendum in satisfaction of this  
25.36 requirement provided that those internal controls of the insurer or group of insurers

26.1 having a material impact on the preparation of the insurer's or group of insurers' audited  
26.2 statutory financial statements, consisting of those items included in subdivision 4,  
26.3 paragraphs (a), clauses (2) to (6), (b), and (c), were included in the scope of the Section  
26.4 404 report. The addendum shall be a positive statement by management that there are  
26.5 no material processes with respect to the preparation of the insurer's or group of insurers'  
26.6 audited statutory financial statements, consisting of those items included in subdivision 4,  
26.7 paragraphs (a), clauses (2) to (6), (b), and (c), excluded from the Section 404 report. If  
26.8 there are internal controls of the insurer or group of insurers that have a material impact on  
26.9 the preparation of the insurer's or group of insurers' audited statutory financial statements  
26.10 and those internal controls were not included in the scope of the Section 404 report, the  
26.11 insurer or group of insurers may either file (i) a report under this subdivision, or (ii) the  
26.12 Section 404 report and a report under this subdivision for those internal controls that have  
26.13 a material impact on the preparation of the insurer's or group of insurers' audited statutory  
26.14 financial statements not covered by the Section 404 report.

26.15 (d) Management's report of internal control over financial reporting shall include:

26.16 (1) a statement that management is responsible for establishing and maintaining  
26.17 adequate internal control over financial reporting;

26.18 (2) a statement that management has established internal control over financial  
26.19 reporting and an assertion, to the best of management's knowledge and belief, after diligent  
26.20 inquiry, as to whether its internal control over financial reporting is effective to provide  
26.21 reasonable assurance regarding the reliability of financial statements in accordance with  
26.22 statutory accounting principles;

26.23 (3) a statement that briefly describes the approach or processes by which  
26.24 management evaluated the effectiveness of its internal control over financial reporting;

26.25 (4) a statement that briefly describes the scope of work that is included and whether  
26.26 any internal controls were excluded;

26.27 (5) disclosure of any unremediated material weaknesses in the internal control over  
26.28 financial reporting identified by management as of December 31 immediately preceding.  
26.29 Management is not permitted to conclude that the internal control over financial reporting  
26.30 is effective to provide reasonable assurance regarding the reliability of financial statements  
26.31 in accordance with statutory accounting principles if there is one or more unremediated  
26.32 material weaknesses in its internal control over financial reporting;

26.33 (6) a statement regarding the inherent limitations of internal control systems; and

26.34 (7) signatures of the chief executive officer and the chief financial officer or  
26.35 equivalent position or title.

27.1 (e) Management shall document and make available upon financial condition  
27.2 examination the basis upon which its assertions, required in paragraph (d), are made.  
27.3 Management may base its assertions, in part, upon its review, monitoring, and testing of  
27.4 internal controls undertaken in the normal course of its activities.

27.5 (1) Management has discretion as to the nature of the internal control framework  
27.6 used, and the nature and extent of documentation, in order to make its assertion in a  
27.7 cost-effective manner and, as such, may include assembly of or reference to existing  
27.8 documentation.

27.9 (2) Management's report on internal control over financial reporting, required by  
27.10 paragraph (a), and any documentation provided in support of the report during the course  
27.11 of a financial condition examination, must be kept confidential by the Department of  
27.12 Commerce.

27.13 Subd. 18. **Exemptions.** (a) Upon written application of any insurer, the  
27.14 commissioner may grant an exemption from compliance with the provisions of this  
27.15 section. In order to receive an exemption, an insurer must demonstrate to the satisfaction  
27.16 of the commissioner that compliance would constitute a financial or organizational  
27.17 hardship upon the insurer. An exemption may be granted at any time and from time  
27.18 to time for specified periods. Within ten days from the denial of an insurer's written  
27.19 request for an exemption, the insurer may request in writing a hearing on its application  
27.20 for an exemption. This hearing must be held in accordance with chapter 14. Upon written  
27.21 application of any insurer, the commissioner may permit an insurer to file annual audited  
27.22 financial reports on some basis other than a calendar year basis for a specified period. An  
27.23 exemption may not be granted until the insurer presents an alternative method satisfying  
27.24 the purposes of this section. Within ten days from a denial of a written request for an  
27.25 exemption, the insurer may request in writing a hearing on its application. The hearing  
27.26 must be held in accordance with chapter 14.

27.27 (b) This section applies to all insurers, unless otherwise indicated, required to file  
27.28 an annual audit by subdivision 2, except insurers having less than \$1,000,000 of direct  
27.29 written premiums in this state in any calendar year and fewer than 1,000 policyholders  
27.30 or certificate holders of directly written policies nationwide at the end of the calendar  
27.31 year, are exempt from this section for that year, unless the commissioner makes a  
27.32 specific finding that compliance is necessary for the commissioner to carry out statutory  
27.33 responsibilities, except that insurers having assumed premiums from reinsurance contracts  
27.34 or treaties of \$1,000,000 or more are not exempt.

27.35 Subd. 19. **Canadian and British companies.** (a) In the case of Canadian and  
27.36 British insurers, the annual audited financial report means the annual statement of total

28.1 business on the form filed by these companies with their domiciliary supervision authority  
28.2 and duly audited by an independent chartered accountant.

28.3 (b) For these insurers the letter required in subdivision 5 shall state that the  
28.4 accountant is aware of the requirements relating to the annual audited statement filed  
28.5 with the commissioner under subdivision 2, and shall affirm that the opinion expressed  
28.6 is in conformity with those requirements.

28.7 Subd. 20. **Commercial mortgage loan valuation procedures.** A report of the  
28.8 independent certified public accountant that performs the audit of an insurer's annual  
28.9 statement as required under subdivision 2, shall be filed and contain a statement as to  
28.10 whether anything in connection with the audit came to the accountant's attention that  
28.11 caused the accountant to believe that the insurer failed to adopt and consistently apply the  
28.12 valuation procedures as required by sections 60A.122 and 60A.123.

28.13 Subd. 21. **Examinations.** (a) The commissioner or a designated representative shall  
28.14 determine the nature, scope, and frequency of examinations under this section conducted  
28.15 by examiners under section 60A.031. These examinations may cover all aspects of the  
28.16 insurer's assets, condition, affairs, and operations and may include and be supplemented  
28.17 by audit procedures performed by independent certified public accountants. Scheduling  
28.18 of examinations will take into account all relevant matters with respect to the insurer's  
28.19 condition, including results of the National Association of Insurance Commissioners,  
28.20 Insurance Regulatory Information Systems, changes in management, results of market  
28.21 conduct examinations, and audited financial reports. The type of examinations performed  
28.22 by examiners under this section must be compliance examinations, targeted examinations,  
28.23 and comprehensive examinations.

28.24 (b) Compliance examinations will consist of a review of the accountant's workpapers  
28.25 defined under this section and a general review of the insurer's corporate affairs and  
28.26 insurance operations to determine compliance with the Minnesota insurance laws and  
28.27 the rules of the Department of Commerce. The examiners may perform alternative or  
28.28 additional examination procedures to supplement those performed by the accountant  
28.29 when the examiners determine that the procedures are necessary to verify the financial  
28.30 condition of the insurer.

28.31 (c) Targeted examinations may cover limited areas of the insurer's operations as  
28.32 the commissioner may deem appropriate.

28.33 (d) Comprehensive examinations will be performed when the report of the  
28.34 accountant as provided for in subdivision 7, paragraph (b), the notification required by  
28.35 subdivision 7, paragraph (c), the results of compliance or targeted examinations, or other

29.1 circumstances indicate in the judgment of the commissioner or a designated representative  
29.2 that a complete examination of the condition and affairs of the insurer is necessary.

29.3 (e) Upon completion of each targeted, compliance, or comprehensive examination,  
29.4 the examiner appointed by the commissioner shall make a full and true report on the  
29.5 results of the examination. Each report shall include a general description of the audit  
29.6 procedures performed by the examiners and the procedures of the accountant that  
29.7 the examiners may have utilized to supplement their examination procedures and the  
29.8 procedures that were performed by the registered independent certified public accountant  
29.9 if included as a supplement to the examination.

29.10 Subd. 22. **Penalties.** An annual statement, report, or document related to the  
29.11 business of insurance must not be filed with the commissioner or issued to the public if it  
29.12 is signed by anyone who is represented in the instrument as an "accountant," unless the  
29.13 person is qualified as defined by this section. A violation of this subdivision is a violation  
29.14 of section 72A.19 and punishable in accordance with section 72A.25.

29.15 **EFFECTIVE DATE.** (a) Domestic insurers retaining a certified public accountant  
29.16 on the effective date of this section who qualify as independent shall comply with this  
29.17 section for the year ending December 31, 2010, and each year thereafter unless the  
29.18 commissioner permits otherwise.

29.19 (b) Domestic insurers not retaining a certified public accountant on the effective  
29.20 date of this section who qualifies as independent shall meet the following schedule for  
29.21 compliance unless the commissioner permits otherwise.

29.22 (1) As of December 31, 2010, file with the commissioner an audited financial report.

29.23 (2) For the year ending December 31, 2010, and each year thereafter, such insurers  
29.24 shall file with the commissioner all reports and communication required by this section.

29.25 (c) Foreign insurers shall comply with this section for the year ending December 31,  
29.26 2010, and each year thereafter, unless the commissioner permits otherwise.

29.27 (d) The requirements of subdivision 7, paragraph (b), are in effect for audits of the  
29.28 year beginning January 1, 2010, and thereafter.

29.29 (e) The requirements of subdivision 15 are in effect January 1, 2010. An insurer or  
29.30 group of insurers that is not required to have independent audit committee members or  
29.31 only a majority of independent audit committee members, as opposed to a supermajority,  
29.32 because the total written and assumed premium is below the threshold and subsequently  
29.33 becomes subject to one of the independence requirements due to changes in premium has  
29.34 one year following the year the threshold is exceeded, but not earlier than January 1,  
29.35 2010, to comply with the independence requirements. Likewise, an insurer that becomes  
29.36 subject to one of the independence requirements as a result of a business combination

30.1 has one calendar year following the date of acquisition or combination to comply with  
 30.2 the independence requirements.

30.3 (f) An insurer or group of insurers that is not required to file a report because the total  
 30.4 written premium is below the threshold and subsequently becomes subject to the reporting  
 30.5 requirements has two years following the year the threshold is exceeded, but not earlier  
 30.6 than December 31, 2010, to file a report. Likewise, an insurer acquired in a business  
 30.7 combination has two calendar years following the date of acquisition or combination to  
 30.8 comply with the reporting requirements.

30.9 (g) The requirements and provisions contained in this section are effective January  
 30.10 1, 2010, and thereafter.

30.11 Sec. 12. Minnesota Statutes 2008, section 60B.03, subdivision 15, is amended to read:

30.12 Subd. 15. **Insolvency.** "Insolvency" means:

30.13 (a) For an insurer organized under sections 67A.01 to 67A.26, the inability to pay  
 30.14 any uncontested debt as it becomes due ~~or any other loss within 30 days after the due date~~  
 30.15 ~~specified in the first assessment notice issued pursuant to section 67A.17.~~

30.16 (b) For any other insurer, that it is unable to pay its debts or meet its obligations  
 30.17 as they mature or that its assets do not exceed its liabilities plus the greater of (1) any  
 30.18 capital and surplus required by law to be constantly maintained, or (2) its authorized and  
 30.19 issued capital stock. For purposes of this subdivision, "assets" includes one-half of the  
 30.20 maximum total assessment liability of the policyholders of the insurer, and "liabilities"  
 30.21 includes reserves required by law. For policies issued on the basis of unlimited assessment  
 30.22 liability, the maximum total liability, for purposes of determining solvency only, shall be  
 30.23 deemed to be that amount that could be obtained if there were 100 percent collection of an  
 30.24 assessment at the rate of ten mills per dollar of insurance written by it and in force.

30.25 Sec. 13. Minnesota Statutes 2008, section 60L.02, subdivision 3, is amended to read:

30.26 Subd. 3. **Additional requirements.** (a) In order to be eligible to be governed by  
 30.27 sections 60L.01 to 60L.15, the insurer must meet the requirements specified under this  
 30.28 subdivision.

30.29 (b) The insurer shall:

30.30 (1) have been in continuous operation for a minimum of five years; and

30.31 (2) maintain a minimum claims-paying, financial strength, or equivalent rating from  
 30.32 at least one nationally recognized statistical rating organization in one of the organization's  
 30.33 three highest rating categories for the time period during which sections 60L.01 to 60L.15  
 30.34 apply to the insurer. For purposes of this subdivision, the rating must be based on a

31.1 review of the insurer by the nationally recognized statistical rating organization with the  
31.2 cooperation of the insurer; must not depend on a guarantee or other credit enhancement  
31.3 from another entity; and must not be modified or otherwise qualified to show dependence  
31.4 of the rating on the performance or a contractual obligation of, or the insurer's affiliation  
31.5 with, another insurer.

31.6 (c) The insurer or an affiliate, as defined in section 60D.15, subdivision 2, of the  
31.7 insurer shall employ at least one individual as a professional investment manager for  
31.8 the insurer's investments whom the board of directors or trustees of the insurer finds  
31.9 is qualified on the basis of experience, education or training, competence, personal  
31.10 integrity, and who conducts professional investment management activities in accordance  
31.11 with the Code of Ethics and Standards of Professional Conduct of the Association for  
31.12 Investment Management and Research. For purposes of complying with this paragraph,  
31.13 an employee of an affiliate may only be used if they are responsible for managing the  
31.14 insurer's investments.

31.15 (d) The board of directors of the insurer must annually adopt a resolution finding  
31.16 that the insurer or an affiliate, as defined in section 60D.15, subdivision 2, of the insurer  
31.17 has employed a professional investment manager for the insurer's investments with  
31.18 sufficient expertise and has sufficient other resources to implement and monitor the  
31.19 insurer's investment policies and strategies.

31.20 (e) In the report required under section ~~60A.129~~ 60A.1291, subdivision ~~3~~ 12,  
31.21 ~~paragraph (1)~~, the insurer's independent auditor shall not have identified any significant  
31.22 deficiencies in the insurer's internal control structure related to investments during any of  
31.23 the five years immediately preceding the date on which sections 60L.01 to 60L.15 begin to  
31.24 apply to the insurer, and as long as sections 60L.01 to 60L.15 apply to the insurer.

31.25 Sec. 14. **[61A.258] PRENEED INSURANCE PRODUCTS; MINIMUM**  
31.26 **MORTALITY STANDARDS FOR RESERVES AND NONFORFEITURE VALUES.**

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

31.29 (1) "2001 CSO Mortality Table (2001 CSO)" means that mortality table, consisting  
31.30 of separate rates of mortality for male and female lives, developed by the American  
31.31 Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table  
31.32 developed by the Society of Actuaries Individual Life Insurance Valuation Mortality  
31.33 Task Force, and adopted by the National Association of Insurance Commissioners  
31.34 (NAIC) in December 2002. The 2001 CSO Mortality Table (2001 CSO) is included in  
31.35 the Proceedings of the NAIC (2nd Quarter 2002). Unless the context indicates otherwise,

32.1 the "2001 CSO Mortality Table (2001 CSO)" includes both the ultimate form of that  
32.2 table and the select and ultimate form of that table and includes both the smoker and  
32.3 nonsmoker mortality tables and the composite mortality tables. It also includes both the  
32.4 age-nearest-birthday and age-last-birthday bases of the mortality tables;

32.5 (2) "Ultimate 1980 CSO" means the Commissioners' 1980 Standard Ordinary Life  
32.6 Valuation Mortality Tables (1980 CSO) without ten-year selection factors, incorporated  
32.7 into the 1980 amendments to the NAIC Standard Valuation Law approved in December  
32.8 1983; and

32.9 (3) "preneed insurance" is any life insurance policy or certificate that is issued  
32.10 in combination with, in support of, with an assignment to, or as a guarantee for a  
32.11 prearrangement agreement for goods and services to be provided at the time of and  
32.12 immediately following the death of the insured. Goods and services may include, but  
32.13 are not limited to embalming, cremation, body preparation, viewing or visitation, coffin  
32.14 or urn, memorial stone, and transportation of the deceased. The status of the policy or  
32.15 contract as preneed insurance is determined at the time of issue in accordance with the  
32.16 policy form filing.

32.17 Subd. 2. **Minimum valuation mortality standards.** For preneed insurance  
32.18 contracts, the minimum mortality standard for determining reserve liabilities and  
32.19 nonforfeiture values for both male and female insureds shall be the Ultimate 1980 CSO.

32.20 Subd. 3. **Minimum valuation interest rate standards.** (a) The interest rates used  
32.21 in determining the minimum standard for valuation of preneed insurance shall be the  
32.22 calendar year statutory valuation interest rates as defined in section 61A.25.

32.23 (b) The interest rates used in determining the minimum standard for nonforfeiture  
32.24 values for preneed insurance shall be the calendar year statutory nonforfeiture interest  
32.25 rates as defined in section 61A.24.

32.26 Subd. 4. **Minimum valuation method standards.** (a) The method used in  
32.27 determining the standard for the minimum valuation of reserves of preneed insurance shall  
32.28 be the method defined in section 61A.25.

32.29 (b) The method used in determining the standard for the minimum nonforfeiture  
32.30 values for preneed insurance shall be the method defined in section 61A.24.

32.31 **EFFECTIVE DATE; TRANSITION RULES.** (a) This section is effective January  
32.32 1, 2009, and applies to preneed insurance policies and certificates issued on or after that  
32.33 date.

32.34 (b) For preneed insurance policies issued on or after the effective date of this  
32.35 section and before January 1, 2012, the 2001 CSO may be used as the minimum standard

33.1 for reserves and minimum standard for nonforfeiture benefits for both male and female  
33.2 insureds.

33.3 (c) If an insurer elects to use the 2001 CSO as a minimum standard for any policy  
33.4 issued on or after the effective date of section 1 and before January 1, 2012, the insurer  
33.5 shall provide, as a part of the actuarial opinion memorandum submitted in support of  
33.6 the company's asset adequacy testing, an annual written notification to the domiciliary  
33.7 commissioner. The notification shall include:

33.8 (1) a complete list of all preneed policy forms that use the 2001 CSO as a minimum  
33.9 standard;

33.10 (2) a certification signed by the appointed actuary stating that the reserve  
33.11 methodology employed by the company in determining reserves for the preneed policies  
33.12 issued after the effective date and using the 2001 CSO as a minimum standard, develops  
33.13 adequate reserves (For the purposes of this certification, the preneed insurance policies  
33.14 using the 2001 CSO as a minimum standard cannot be aggregated with any other  
33.15 policies.); and

33.16 (3) supporting information regarding the adequacy of reserves for preneed insurance  
33.17 policies issued after the effective date of section 1 and using the 2001 CSO as a minimum  
33.18 standard for reserves.

33.19 (d) Preneed insurance policies issued on or after January 1, 2012, must use the  
33.20 Ultimate 1980 CSO in the calculation of minimum nonforfeiture values and minimum  
33.21 reserves.

33.22 Sec. 15. Minnesota Statutes 2008, section 61B.19, subdivision 4, is amended to read:

33.23 Subd. 4. **Limitation of benefits.** The benefits for which the association may become  
33.24 liable shall in no event exceed the lesser of:

33.25 (1) the contractual obligations for which the insurer is liable or would have been  
33.26 liable if it were not an impaired or insolvent insurer; or

33.27 (2) subject to the limitation in clause (5), with respect to any one life, regardless of  
33.28 the number of policies or contracts:

33.29 (i) ~~\$300,000~~ \$500,000 in life insurance death benefits, but not more than ~~\$100,000~~  
33.30 \$130,000 in net cash surrender and net cash withdrawal values for life insurance;

33.31 (ii) ~~\$300,000~~ \$500,000 in health insurance benefits, including any net cash surrender  
33.32 and net cash withdrawal values;

33.33 (iii) ~~\$100,000~~ \$250,000 in annuity net cash surrender and net cash withdrawal values;

33.34 (iv) ~~\$300,000~~ \$410,000 in present value of annuity benefits for structured settlement  
33.35 annuities or for annuities in regard to which periodic annuity benefits, for a period of not

34.1 less than the annuitant's lifetime or for a period certain of not less than ten years, have  
34.2 begun to be paid, on or before the date of impairment or insolvency; or

34.3 (3) subject to the limitations in clauses (5) and (6), with respect to each individual  
34.4 resident participating in a retirement plan, except a defined benefit plan, established under  
34.5 section 401, 403(b), or 457 of the Internal Revenue Code of 1986, as amended through  
34.6 December 31, 1992, covered by an unallocated annuity contract, or the beneficiaries  
34.7 of each such individual if deceased, in the aggregate, ~~\$100,000~~ \$250,000 in net cash  
34.8 surrender and net cash withdrawal values;

34.9 (4) where no coverage limit has been specified for a covered policy or benefit, the  
34.10 coverage limit shall be ~~\$300,000~~ \$500,000 in present value;

34.11 (5) in no event shall the association be liable to expend more than ~~\$300,000~~  
34.12 \$500,000 in the aggregate with respect to any one life under clause (2), items (i), (ii), (iii),  
34.13 (iv), and clause (4), and any one individual under clause (3);

34.14 (6) in no event shall the association be liable to expend more than ~~\$7,500,000~~  
34.15 \$10,000,000 with respect to all unallocated annuities of a retirement plan, except a defined  
34.16 benefit plan, established under section 401, 403(b), or 457 of the Internal Revenue Code  
34.17 of 1986, as amended through December 31, 1992. If total claims from a plan exceed  
34.18 ~~\$7,500,000~~ \$10,000,000, the ~~\$7,500,000~~ \$10,000,000 shall be prorated among the  
34.19 claimants;

34.20 (7) for purposes of applying clause (2)(ii) and clause (5), with respect only to  
34.21 health insurance benefits, the term "any one life" applies to each individual covered by a  
34.22 health insurance policy;

34.23 (8) where covered contractual obligations are equal to or less than the limits stated in  
34.24 this subdivision, the association will pay the difference between the covered contractual  
34.25 obligations and the amount credited by the estate of the insolvent or impaired insurer, if  
34.26 that amount has been determined or, if it has not, the covered contractual limit, subject  
34.27 to the association's right of subrogation;

34.28 (9) where covered contractual obligations exceed the limits stated in this subdivision,  
34.29 the amount payable by the association will be determined as though the covered  
34.30 contractual obligations were equal to those limits. In making the determination, the estate  
34.31 shall be deemed to have credited the covered person the same amount as the estate would  
34.32 credit a covered person with contractual obligations equal to those limits; or

34.33 (10) the following illustrates how the principles stated in clauses (8) and (9) apply.  
34.34 The example illustrated concerns hypothetical claims subject to the limit stated in clause  
34.35 (2)(iii). The principles stated in clauses (8) and (9), and illustrated in this clause, apply  
34.36 to claims subject to any limits stated in this subdivision.

35.1	CONTRACTUAL OBLIGATIONS OF:		
35.2		\$50,000	
35.3			Guaranty
35.4	Estate		Association
35.5	0% recovery	\$ 0	\$ 50,000
35.6	from estate		
35.7	25% recovery	\$ 12,500	\$ 37,500
35.8	from estate		
35.9	50% recovery	\$ 25,000	\$ 25,000
35.10	from estate		
35.11	75% recovery	\$ 37,500	\$ 12,500
35.12	from estate		
35.13		\$100,000	
35.14			Guaranty
35.15	Estate		Association
35.16	0% recovery	\$ 0	\$ 100,000
35.17	from estate		
35.18	25% recovery	\$ 25,000	\$ 75,000
35.19	from estate		
35.20	50% recovery	\$ 50,000	\$ 50,000
35.21	from estate		
35.22	75% recovery	\$ 75,000	\$ 25,000
35.23	from estate		
35.24		\$200,000	
35.25			Guaranty
35.26	Estate		Association
35.27	0% recovery	\$ 0	\$ 100,000
35.28	from estate		
35.29	25% recovery	\$ 50,000	\$ 75,000
35.30	from estate		
35.31	50% recovery	\$ 100,000	\$ 50,000
35.32	from estate		
35.33	75% recovery	\$ 150,000	\$ 25,000
35.34	from estate		

35.35 For purposes of this subdivision, the commissioner shall determine the discount rate  
 35.36 to be used in determining the present value of annuity benefits.

35.37 **EFFECTIVE DATE.** This section is effective the day following final enactment  
 35.38 and applies to member insurers who are first determined to be impaired or insolvent on or  
 35.39 after that date. Member insurers who are subject to an order of impairment in effect on the  
 35.40 effective date but are not declared insolvent until after the effective date shall continue to  
 35.41 be governed by the law in effect prior to the effective date.

35.42 Sec. 16. Minnesota Statutes 2008, section 61B.28, subdivision 4, is amended to read:

36.1 Subd. 4. **Prohibited sales practice.** No person, including an insurer, agent, or  
 36.2 affiliate of an insurer, shall make, publish, disseminate, circulate, or place before the  
 36.3 public, or cause directly or indirectly, to be made, published, disseminated, circulated,  
 36.4 or placed before the public, in any newspaper, magazine, or other publication, or in the  
 36.5 form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television  
 36.6 station, or in any other way, an advertisement, announcement, or statement, written or  
 36.7 oral, which uses the existence of the Minnesota Life and Health Insurance Guaranty  
 36.8 Association for the purpose of sales, solicitation, or inducement to purchase any form of  
 36.9 insurance covered by sections 61B.18 to 61B.32. The notice required by subdivision 8  
 36.10 is not a violation of this subdivision nor is it a violation of this subdivision to explain  
 36.11 verbally to an applicant or potential applicant the coverage provided by the Minnesota  
 36.12 Life and Health Insurance Guaranty Association at any time during the application process  
 36.13 or thereafter. This subdivision does not apply to the Minnesota Life and Health Insurance  
 36.14 Guaranty Association or an entity that does not sell or solicit insurance. ~~A person violating~~  
 36.15 ~~this section is guilty of a misdemeanor.~~

36.16 Sec. 17. Minnesota Statutes 2008, section 61B.28, subdivision 8, is amended to read:

36.17 Subd. 8. **Form.** The form of notice referred to in subdivision 7, paragraph (a),  
 36.18 is as follows:

36.19 ".....  
 36.20 .....  
 36.21 .....

(insert name, current address, and  
 telephone number of insurer)

36.24 NOTICE CONCERNING POLICYHOLDER RIGHTS IN AN  
 36.25 INSOLVENCY UNDER THE MINNESOTA LIFE AND HEALTH  
 36.26 INSURANCE GUARANTY ASSOCIATION LAW

36.27 If the insurer that issued your life, annuity, or health insurance policy becomes  
 36.28 impaired or insolvent, you are entitled to compensation for your policy from the assets of  
 36.29 that insurer. The amount you recover will depend on the financial condition of the insurer.

36.30 In addition, residents of Minnesota who purchase life insurance, annuities, or health  
 36.31 insurance from insurance companies authorized to do business in Minnesota are protected,  
 36.32 **SUBJECT TO LIMITS AND EXCLUSIONS,** in the event the insurer becomes financially  
 36.33 impaired or insolvent. This protection is provided by the Minnesota Life and Health  
 36.34 Insurance Guaranty Association.

36.35 Minnesota Life and Health Insurance Guaranty Association  
 36.36 (insert current  
 36.37 address and telephone number)

37.1 The maximum amount the guaranty association will pay for all policies issued on  
37.2 one life by the same insurer is limited to ~~\$300,000~~ \$500,000. Subject to this ~~\$300,000~~  
37.3 \$500,000 limit, the guaranty association will pay up to ~~\$300,000~~ \$500,000 in life  
37.4 insurance death benefits, ~~\$100,000~~ \$130,000 in net cash surrender and net cash withdrawal  
37.5 values for life insurance, ~~\$300,000~~ \$500,000 in health insurance benefits, including any  
37.6 net cash surrender and net cash withdrawal values, ~~\$100,000~~ \$250,000 in annuity net  
37.7 cash surrender and net cash withdrawal values, ~~\$300,000~~ \$410,000 in present value of  
37.8 annuity benefits for annuities which are part of a structured settlement or for annuities  
37.9 in regard to which periodic annuity benefits, for a period of not less than the annuitant's  
37.10 lifetime or for a period certain of not less than ten years, have begun to be paid on or  
37.11 before the date of impairment or insolvency, or if no coverage limit has been specified  
37.12 for a covered policy or benefit, the coverage limit shall be ~~\$300,000~~ \$500,000 in present  
37.13 value. Unallocated annuity contracts issued to retirement plans, other than defined benefit  
37.14 plans, established under section 401, 403(b), or 457 of the Internal Revenue Code of  
37.15 1986, as amended through December 31, 1992, are covered up to ~~\$100,000~~ \$250,000 in  
37.16 net cash surrender and net cash withdrawal values, for Minnesota residents covered by  
37.17 the plan provided, however, that the association shall not be responsible for more than  
37.18 ~~\$7,500,000~~ \$10,000,000 in claims from all Minnesota residents covered by the plan. If  
37.19 total claims exceed ~~\$7,500,000~~ \$10,000,000, the ~~\$7,500,000~~ \$10,000,000 shall be prorated  
37.20 among all claimants. These are the maximum claim amounts. Coverage by the guaranty  
37.21 association is also subject to other substantial limitations and exclusions and requires  
37.22 continued residency in Minnesota. If your claim exceeds the guaranty association's limits,  
37.23 you may still recover a part or all of that amount from the proceeds of the liquidation of  
37.24 the insolvent insurer, if any exist. Funds to pay claims may not be immediately available.  
37.25 The guaranty association assesses insurers licensed to sell life and health insurance in  
37.26 Minnesota after the insolvency occurs. Claims are paid from this assessment.

37.27 THE COVERAGE PROVIDED BY THE GUARANTY ASSOCIATION IS NOT  
37.28 A SUBSTITUTE FOR USING CARE IN SELECTING INSURANCE COMPANIES  
37.29 THAT ARE WELL MANAGED AND FINANCIALLY STABLE. IN SELECTING AN  
37.30 INSURANCE COMPANY OR POLICY, YOU SHOULD NOT RELY ON COVERAGE  
37.31 BY THE GUARANTY ASSOCIATION.

37.32 THIS NOTICE IS REQUIRED BY MINNESOTA STATE LAW TO ADVISE  
37.33 POLICYHOLDERS OF LIFE, ANNUITY, OR HEALTH INSURANCE POLICIES  
37.34 OF THEIR RIGHTS IN THE EVENT THEIR INSURANCE CARRIER BECOMES  
37.35 FINANCIALLY INSOLVENT. THIS NOTICE IN NO WAY IMPLIES THAT THE  
37.36 COMPANY CURRENTLY HAS ANY TYPE OF FINANCIAL PROBLEMS. ALL LIFE,

38.1 ANNUITY, AND HEALTH INSURANCE POLICIES ARE REQUIRED TO PROVIDE  
 38.2 THIS NOTICE."

38.3 Additional language may be added to the notice if approved by the commissioner  
 38.4 prior to its use in the form. This section does not apply to fraternal benefit societies  
 38.5 regulated under chapter 64B.

38.6 Sec. 18. Minnesota Statutes 2008, section 67A.01, is amended to read:

38.7 **67A.01 NUMBER OF MEMBERS REQUIRED, PROPERTY AND**  
 38.8 **TERRITORY.**

38.9 Subdivision 1. Number of members. (a) It shall be lawful for any number of  
 38.10 persons, not less than 25, residing in adjoining ~~townships~~ counties in this state, who shall  
 38.11 collectively own property worth at least \$50,000, to form themselves into a corporation  
 38.12 for mutual insurance against loss or damage by the perils listed in section 67A.13.

38.13 ~~(b) Except as otherwise provided in this section, the company shall operate in no~~  
 38.14 ~~more than 150 adjoining townships in the aggregate at the same time. The company may,~~  
 38.15 ~~if approval has been granted by the commissioner, operate in more than 150 adjoining~~  
 38.16 ~~townships in the aggregate at the same time, subject to a maximum of 300 townships.~~  
 38.17 ~~If the company confines its operations to one county it may transact business in that~~  
 38.18 ~~county by so providing in its certificate of incorporation. In case of merger of two or~~  
 38.19 ~~more companies having contiguous territories, the surviving company in the merger may~~  
 38.20 ~~transact business in the entire territory of the merged companies, but the territory of the~~  
 38.21 ~~surviving company in the merger must not be larger than 300 townships.~~

38.22 Subd. 2. Authorized territory. (a) A township mutual fire insurance company may  
 38.23 be authorized to write business in up to nine adjoining counties in the aggregate at the  
 38.24 same time. If policyholder surplus is at least \$500,000 as reported in the company's last  
 38.25 annual financial statement filed with the commissioner, the company may, if approval has  
 38.26 been granted by the commissioner, be authorized to write business in ten or more counties  
 38.27 in the aggregate at the same time, subject to a maximum of 20 adjoining counties, in  
 38.28 accordance with the following schedule:

	<u>Number of</u>	<u>Surplus</u>
	<u>Counties</u>	<u>Requirement</u>
38.29	<u>10</u>	<u>\$500,000</u>
38.30		
38.31	<u>11</u>	<u>600,000</u>
38.32	<u>12</u>	<u>700,000</u>
38.33	<u>13</u>	<u>800,000</u>
38.34	<u>14</u>	<u>900,000</u>
38.35	<u>15</u>	<u>1,000,000</u>
38.36		

39.1	<u>16</u>	<u>1,100,000</u>
39.2	<u>17</u>	<u>1,200,000</u>
39.3	<u>18</u>	<u>1,300,000</u>
39.4	<u>19</u>	<u>1,400,000</u>
39.5	<u>20</u>	<u>1,500,000</u>

39.6 (b) In the case of a merger of two or more companies having contiguous territories,  
 39.7 the surviving company in the merger may transact business in the entire territory of the  
 39.8 merged companies; however, the territory of the surviving company in the merger may not  
 39.9 be larger than 20 counties.

39.10 (c) A township mutual fire insurance company may write new and renewal insurance  
 39.11 on property in cities within the company's authorized territory having a population less  
 39.12 than 25,000. A township mutual may continue to write new and renewal insurance once  
 39.13 the population increases to 25,000 or greater provided that amended and restated articles  
 39.14 are filed with the commissioner along with a certification that such city's population has  
 39.15 increased to 25,000 or greater.

39.16 (d) A township mutual fire insurance company may write new and renewal insurance  
 39.17 on property in cities within the company's authorized territory with a population of 25,000  
 39.18 or greater, but less than 150,000, if approval has been granted by the commissioner.  
 39.19 No township mutual fire insurance company shall insure any property in cities with a  
 39.20 population of 150,000 or greater.

39.21 (e) If a township mutual fire insurance company provides evidence to the  
 39.22 commissioner that the company had insurance in force on December 31, 2007, in a city  
 39.23 within the company's authorized territory with a population of 25,000 or greater, but less  
 39.24 than 150,000, the company may write new and renewal insurance on property in that city  
 39.25 provided that the company files amended and restated articles by July 31, 2010, naming  
 39.26 that city.

39.27 Sec. 19. Minnesota Statutes 2008, section 67A.06, is amended to read:

39.28 **67A.06 POWERS OF CORPORATION.**

39.29 Every corporation formed under the provisions of sections 67A.01 to 67A.26,  
 39.30 shall have power:

39.31 (1) to have succession by its corporate name for the time stated in its certificate of  
 39.32 incorporation;

39.33 (2) to sue and be sued in any court;

39.34 (3) to have and use a common seal and alter the same at pleasure;

40.1 (4) to acquire, by purchase or otherwise, and to hold, enjoy, improve, lease,  
 40.2 encumber, and convey all real and personal property necessary for the purpose of its  
 40.3 organization, subject to such limitations as may be imposed by law or by its articles of  
 40.4 incorporation;

40.5 (5) to elect or appoint in such manner as it may determine all necessary or proper  
 40.6 officers, agents, boards, and committees, fix their compensation, and define their powers  
 40.7 and duties;

40.8 (6) to make and amend consistently with law bylaws providing for the management  
 40.9 of its property and the regulation and government of its affairs;

40.10 (7) to wind up and liquidate its business in the manner provided by chapter 60B; ~~and~~

40.11 (8) to indemnify certain persons against expenses and liabilities as provided in  
 40.12 section 302A.521. In applying section 302A.521 for this purpose, the term "members"  
 40.13 shall be substituted for the terms "shareholders" and "stockholders-"; and

40.14 (9) to eliminate or limit a director's personal liability to the company or its members  
 40.15 for monetary damages for breach of fiduciary duty as a director. A company shall not  
 40.16 eliminate or limit the liability of a director:

40.17 (i) for breach of loyalty to the company or its members;

40.18 (ii) for acts or omissions made in bad faith or with intentional misconduct or  
 40.19 knowing violation of law;

40.20 (iii) for transactions from which the director derived an improper personal benefit; or

40.21 (iv) for acts or omissions occurring before the date that the provisions in the articles  
 40.22 eliminating or limiting liability become effective.

40.23 Sec. 20. Minnesota Statutes 2008, section 67A.07, is amended to read:

40.24 **67A.07 PRINCIPAL OFFICE.**

40.25 The principal office of a township mutual fire insurance company shall be located in  
 40.26 ~~a township or in a city in a township~~ county in which the company is authorized to do  
 40.27 business.

40.28 Sec. 21. Minnesota Statutes 2008, section 67A.14, subdivision 1, is amended to read:

40.29 Subdivision 1. **Kinds of property; property outside authorized territory.** (a)  
 40.30 Township mutual fire insurance companies may insure qualified property. Qualified  
 40.31 property means dwellings, household goods, appurtenant structures, farm buildings, farm  
 40.32 personal property, churches, church personal property, county fair buildings, community  
 40.33 and township meeting halls and their usual contents.

41.1 (b) Township mutual fire insurance companies may extend coverage to include  
41.2 an insured's secondary property if the township mutual fire insurance company covers  
41.3 qualified property belonging to the insured. Secondary property means any real or  
41.4 personal property that is not considered qualified property for a township mutual fire  
41.5 insurance company to cover under this chapter. The maximum amount of coverage that a  
41.6 township mutual fire insurance company may write for secondary property is 25 percent of  
41.7 the total limit of liability of the policy issued to an insured covering the qualified property.

41.8 (c) A township mutual fire insurance company may insure any real or personal  
41.9 property, including qualified or secondary property, subject to the limitations in  
41.10 subdivision 1, paragraph (b), located outside the limits of the territory in which the  
41.11 company is authorized by its certificate or articles of incorporation to transact business, if  
41.12 the company is already covering qualified property belonging to the insured, inside the  
41.13 limits of the company's territory.

41.14 (d) A township mutual fire insurance company may insure property temporarily  
41.15 outside of the authorized territory of the township mutual fire insurance company.

41.16 Sec. 22. Minnesota Statutes 2008, section 67A.14, subdivision 7, is amended to read:

41.17 Subd. 7. **Amount of insurable risk.** No township mutual fire insurance company  
41.18 shall insure or reinsure a single risk or hazard in a larger sum than the greater of \$3,000, or  
41.19 one tenth of its net assets plus two tenths of a mill of its insurance in force; provided that  
41.20 no portion of any such risk or hazard which shall have been reinsured, as authorized by  
41.21 the laws of this state, shall be included in determining the limitation of risk prescribed  
41.22 by this subdivision.

41.23 Sec. 23. **[67A.175] SURPLUS REQUIREMENTS.**

41.24 Subdivision 1. **Minimum.** Township mutual fire insurance companies shall maintain  
41.25 a minimum policyholders' surplus of \$300,000 at all times.

41.26 Subd. 2. **Corrective action plan; filing.** A township mutual fire insurance company  
41.27 that falls below the \$300,000 minimum surplus requirement must file a corrective action  
41.28 plan with the commissioner. The plan shall state how the company will correct its surplus  
41.29 deficiency. The plan must be submitted within 45 days of the company falling below the  
41.30 minimum surplus level.

41.31 Subd. 3. **Corrective action plan; commissioner's notification.** Within 30 days  
41.32 after the submission by a township mutual fire insurance company of a corrective action  
41.33 plan, the commissioner shall notify the insurer whether the plan may be implemented or  
41.34 is, in the judgment of the commissioner, unsatisfactory. If the commissioner determines

42.1 the plan is unsatisfactory, the notification to the company must set forth the reasons for the  
42.2 determination, and may set forth proposed revisions that will render the plan satisfactory  
42.3 in the judgment of the commissioner. Upon notification from the commissioner, the  
42.4 insurer shall prepare a revised corrective action plan that may incorporate by reference  
42.5 any revisions proposed by the commissioner, and shall submit the revised plan to the  
42.6 commissioner within 45 days.

42.7 Sec. 24. Minnesota Statutes 2008, section 67A.18, subdivision 1, is amended to read:

42.8 Subdivision 1. **By member.** Any member may terminate membership in the  
42.9 company by giving written notice or returning the member's policy to the secretary ~~and~~  
42.10 ~~paying the withdrawing member's share of all existing claims.~~

42.11 Sec. 25. **REPEALER.**

42.12 Subdivision 1. **Annual audits.** Minnesota Statutes 2008, section 60A.129, is  
42.13 repealed.

42.14 Subd. 2. **Township mutual insured properties, joint or partial risks, and**  
42.15 **assessments.** Minnesota Statutes 2008, sections 67A.14, subdivision 5; 67A.17; and  
42.16 67A.19, are repealed.

42.17 Subd. 3. **Banking procedures; real estate tax records.** Minnesota Rules, part  
42.18 2675.2180, is repealed.

42.19 Subd. 4. **Debt prorating companies.** Minnesota Rules, parts 2675.7100;  
42.20 2675.7110; 2675.7120; 2675.7130; and 2675.7140, are repealed.

42.21 Subd. 5. **Guaranty association; inflation indexing.** Minnesota Statutes 2008,  
42.22 section 61B.19, subdivision 6, is repealed.

**60A.129 LOSS RESERVE CERTIFICATION AND ANNUAL AUDIT.**

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

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

- (1) a member in good standing of the Casualty Actuarial Society; or
- (2) a member in good standing of the American Academy of Actuaries who has been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries; or
- (3) a person who otherwise has competency in loss reserve evaluation as demonstrated to the satisfaction of the insurance regulatory official of the domiciliary state. In such case, at least 90 days prior to the filing of its annual statement, the insurer must request approval that the person be deemed qualified and that request must be approved or denied. The request must include the National Association of Insurance Commissioners biographical form and a list of all loss reserve opinions issued in the last three years by this person.

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

- (1) a member in good standing of the American Academy of Actuaries;
- (2) qualified to sign statements of actuarial opinion for life and health insurance company annual statements in accordance with the American Academy of Actuaries qualification standards for actuaries signing these statements;
- (3) familiar with the valuation requirements applicable to life and health insurance companies.

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

- (1) has not been found by the commissioner, or if so found has subsequently been reinstated as a qualified actuary, following appropriate notice and hearing to have:
  - (i) violated any provision of, or any obligation imposed by, the state insurance law or other law in the course of the actuary's dealings as a qualified actuary;
  - (ii) been found guilty of fraudulent or dishonest practices;
  - (iii) demonstrated incompetency, lack of cooperation, or untrustworthiness to act as a qualified actuary; or
  - (iv) submitted to the commissioner during the past five years, pursuant to this chapter, an actuarial opinion that the commissioner rejected because it did not meet the provisions of this chapter including standards set by the actuarial standards board;
- (2) has resigned or been removed as an actuary within the past five years as a result of acts or omissions indicated in any adverse report on examination or as a result of failure to adhere to generally acceptable actuarial standards of the American Academy of Actuaries; and
- (3) has not failed to notify the commissioner of any action taken by any commissioner of any other state similar to that under clause (1).

(d) "Accountant" and "independent public accountant" mean an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant or firm is licensed to practice. For Canadian and British companies, the term means a Canadian-chartered or British-chartered accountant.

**Subd. 2. Loss reserve certification.** (a) Each domestic company engaged in providing the types of coverage described in section 60A.06, subdivision 1, clause (1), (2), (3), (5)(b), (6), (8), (9), (10), (11), (12), (13), or (14), must have its loss reserves certified by a qualified actuary. The company must file the certification with the commissioner within 30 days of completion of the certification, but not later than June 1. The actuary providing the certification may be an employee of the company but the commissioner may still require an independent actuarial certification as described in subdivision 1. This subdivision does not apply to township mutual companies, or to other domestic insurers having less than \$1,000,000 of premiums written in any year and fewer than 1,000 policyholders. The commissioner may allow an exception to the stand alone certification where it can be demonstrated that a company in a group has a pooling or 100 percent reinsurance agreement used in a group which substantially affects the solvency and integrity of the reserves of the company, or where it is only the parent company of a group which is licensed to do business in Minnesota. If these circumstances exist, the company may file a written request with the commissioner for an exception. Companies writing reinsurance alone are not exempt from this requirement. The certification must contain the following statement: "In my opinion,

## APPENDIX

### Repealed Minnesota Statutes: H2029-1

the reserves described in this certification are consistent with reserves computed in accordance with standards and principles established by the Actuarial Standards Board and are fairly stated."

(b) Each foreign company engaged in providing the types of coverage described in section 60A.06, subdivision 1, clause (1), (2), (3), (5)(b), (6), (8), (9), (10), (11), (12), (13), or (14), required by this section to file an annual audited financial report, whose total net earned premium for Schedule P, Part 1A to Part 1H plus Part 1R, (Schedule P, Part 1A to Part 1H plus Part 1R, Column 4, current year premiums earned, from the company's most currently filed annual statement) is equal to one-third or more of the company's total net earned premium (Underwriting and Investment Exhibit, Part 2, Column 4, total line, of the annual statement) must have a reserve certification by a qualified actuary at least every three years. In the year that the certification is due, the company must file the certification with the commissioner within 30 days of completion of the certification, but not later than June 1. The actuary providing the certification may be an employee of the company. Companies writing reinsurance alone are not exempt from this requirement. The certification must contain the following statement: "The loss reserves and loss expense reserves have been examined and found to be calculated in accordance with generally accepted actuarial principles and practices and are fairly stated."

Subd. 3. **Annual audit.** (a) Every insurance company doing business in this state, including fraternal benefit societies, reciprocal exchanges, service plan corporations licensed pursuant to chapter 62C, and legal service plans licensed pursuant to chapter 62G, unless exempted by the commissioner pursuant to subdivision 5, paragraph (a), or by subdivision 7, shall have an annual audit of the financial activities of the most recently completed calendar year performed by an independent certified public accountant, and shall file the report of this audit with the commissioner on or before June 1 for the immediately preceding year ending December 31. The commissioner may require an insurer to file an audited financial report earlier than June 1 with 90 days' advance notice to the insurer.

Extensions of the June 1 filing date may be granted by the commissioner for 30-day periods upon a showing by the insurer and its independent certified public accountant of the reasons for requesting the extension and a determination by the commissioner of good cause for the extension.

The request for extension must be submitted in writing not less than ten days before the due date in sufficient detail to permit the commissioner to make an informed decision with respect to the requested extension.

(b) Foreign and alien insurers filing audited financial reports in another state under the other state's requirements of audited financial reports which have been found by the commissioner to be substantially similar to these requirements are exempt from this subdivision if a copy of the audited financial report, accountant's letter of qualifications, and report on significant deficiencies in internal controls, which are filed with the other state, are filed with the commissioner in accordance with the filing dates specified in paragraphs (a) and (l), (Canadian insurers may submit accountants' reports as filed with the Canadian Dominion Department of Insurance); and a copy of any notification of adverse financial condition report filed with the other state is filed with the commissioner within the time specified in paragraph (k). This paragraph does not prohibit or in any way limit the commissioner from ordering, conducting, and performing examinations of insurers under the authority of this chapter.

(c)(i) The annual audited financial report shall report, in conformity with statutory accounting practices required or permitted by the commissioner of insurance of the state of domicile, the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows, and changes in capital and surplus for the year ended. The annual audited financial report shall include a report of an independent certified public accountant; a balance sheet reporting admitted assets, liabilities, capital, and surplus; a statement of operations; a statement of cash flows; a statement of changes in capital and surplus; and notes to the financial statements.

(ii) The notes required under item (i) shall be those required by the appropriate National Association of Insurance Commissioners annual statement instructions and National Association of Insurance Commissioners Accounting Practices and Procedures Manual and shall include reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed under section 60A.13, subdivision 1, with a written description of the nature of these differences.

(iii) The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the commissioner. The financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. In the first year in which an insurer is required to file an

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audited financial report, the comparative data may be omitted. The amounts may be rounded to the nearest \$1,000, and all insignificant amounts may be combined.

(d) Each insurer required by this section to file an annual audited financial report must notify the commissioner in writing of the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit within 60 days after becoming subject to the annual audit requirement. The insurer shall obtain from the accountant a letter which states that the accountant is aware of the provisions that relate to accounting and financial matters in the insurance laws and the rules of the insurance regulatory authority of the state of domicile. The letter shall affirm that the accountant will express an opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by that insurance regulatory authority, specifying the exceptions believed to be appropriate. A copy of the accountant's letter shall be filed with the commissioner.

(e) If an accountant who was the accountant for the immediately preceding filed audited financial report is dismissed or resigns, the insurer shall notify the commissioner of this event within five business days. Within ten business days of this notification, the insurer shall also furnish the commissioner with a separate letter stating whether in the 24 months preceding this event there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which, if not resolved to the satisfaction of the former accountant, would have caused that person to make reference to the subject matter of the disagreement in connection with the opinion. The disagreements required to be reported in response to this paragraph include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this section are those disagreements between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report. The insurer shall also in writing request the former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for any disagreement. The insurer shall furnish this responsive letter from the former accountant to the commissioner together with its own.

(f) The commissioner shall not recognize any person or firm as a qualified independent certified public accountant that is not in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant is licensed to practice, or for a Canadian or British company, that is not a chartered accountant. Except as otherwise provided, an independent certified public accountant shall be recognized as qualified as long as the person conforms to the standards of the person's profession, as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants and the rules of professional conduct of the Minnesota Board of Public Accountancy or similar code.

(g) No partner or other person responsible for rendering a report for calendar year 1997 and thereafter may act in that capacity for more than seven consecutive years. Following any period of service, the person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of two years. An insurer may make application to the commissioner for relief from the above rotation requirement on the basis of unusual circumstances. The commissioner may consider the number of partners, the expertise of the partners or the number of insurance clients in the currently registered firm, the premium volume of the insurer, or the number of jurisdictions in which the insurer transacts business in determining if the relief should be granted.

(h) The commissioner shall not recognize as a qualified independent certified public accountant, nor accept any audited financial report, prepared in whole or in part by any natural person who has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, United States Code, title 18, sections 1961 to 1968, or any dishonest conduct or practices under federal or state law, has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this section, or has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this section.

(i) The commissioner, after notice and hearing under chapter 14, may find that the accountant is not qualified for purposes of expressing an opinion on the financial statements in the annual audited financial report. The commissioner may require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of this section.

(j) Financial statements furnished under paragraph (a), shall be examined by an independent certified public accountant. The examination of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards and consideration

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should be given to other procedures illustrated in the Financial Condition Examiners Handbook, issued by the National Association of Insurance Commissioners, as the independent certified public accountant considers necessary.

(k) The insurer required to furnish the annual audited financial report shall require the independent certified public accountant to provide written notice within five business days to the board of directors of the insurer or its audit committee of any determination by that independent certified public accountant that the insurer has materially misstated its financial condition as reported to the commissioner as of the balance sheet date currently under examination or that the insurer does not meet the minimum capital and surplus requirement of sections 60A.07, 66A.32, and 66A.33 as of that date. An insurer required to file an annual audited financial report who received a notification of adverse financial condition from the accountant shall file a copy of the notification with the commissioner within five business days of the receipt of the notification. The insurer shall provide the independent certified public accountant making the notification with evidence of the report being furnished to the commissioner. If the independent certified public accountant fails to receive the evidence within the required five-day period, the independent certified public accountant shall furnish to the commissioner a copy of the notification to the board of directors or its audit committee within the next five business days. No independent certified public accountant shall be liable in any manner to any person for any statement made in connection with this paragraph if the statement is made in good faith in compliance with this paragraph. If the accountant becomes aware of facts which might have affected the audited financial report after the date it was filed under this section, the accountant shall take the action prescribed by Professional Standards issued by the American Institute of Certified Public Accountants.

(l) In addition to the annual audited financial statements, each insurer shall furnish the commissioner with a written report prepared by the accountant describing significant deficiencies in the insurer's internal control structure noted by the accountant during the audit. The accountant shall follow the professional standards issued by the American Institute of Certified Public Accountants, which require an accountant to communicate significant deficiencies, known as reportable conditions, noted during a financial statement audit, to the appropriate parties within an entity. No report shall be issued if the accountant does not identify significant deficiencies. Any such report by the accountant describing significant deficiencies in the insurer's internal control structure, shall be filed annually by the insurer with the commissioner within 60 days after the filing of the annual audited financial statements. This report on internal control shall be in the form prescribed by generally accepted auditing standards. The insurer shall provide the commissioner with a description of remedial actions taken or proposed to correct significant deficiencies, if those actions are not described in the accountant's report.

(m) The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating that the accountant is independent with respect to the insurer and conforms to the standards of the accountant's profession as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants and the rules of professional conduct of the Minnesota Board of Accountancy or similar code; the background and experience in general, and the experience in audits of insurers of the staff assigned to the engagement and whether each is an independent certified public accountant; that the accountant understands that the annual audited financial report and the opinion thereon will be filed in compliance with this statute and that the commissioner will be relying on this information in the monitoring and regulation of the financial position of insurers; that the accountant consents to the requirements of paragraph (n) and that the accountant consents and agrees to make available for review by the commissioner, or the commissioner's designee or appointed agent, the workpapers, as defined in paragraph (n); a representation that the accountant is properly licensed by the appropriate state licensing authority and is a member in good standing in the American Institute of Certified Public Accountants; and, a representation that the accountant complies with paragraph (f). Nothing in this section shall be construed as prohibiting the accountant from utilizing staff the accountant deems appropriate where use is consistent with the standards prescribed by generally accepted auditing standards.

(n) Workpapers are the records kept by the independent certified public accountant of the procedures followed, tests performed, information obtained, and conclusions reached pertinent to the independent certified public accountant's examination of the financial statements of an insurer. Workpapers may include audit planning documents, work programs, analyses, memoranda, letters of confirmation and representation, management letters, abstracts of company documents, and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of the examination of the financial statements of an insurer and that support the accountant's opinion. Every insurer required to file an audited financial report shall require the accountant, through the insurer, to make available for review by the examiners the workpapers

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prepared in the conduct of the examination and any communications related to the audit between the accountant and the insurer. The workpapers shall be made available at the offices of the insurer, at the offices of the commissioner, or at any other reasonable place designated by the commissioner. The insurer shall require that the accountant retain the audit workpapers and communications until the commissioner has filed a report on examination covering the period of the audit but no longer than seven years after the period reported upon. In the conduct of the periodic review by the examiners, it shall be agreed that photocopies of pertinent audit workpapers may be made and retained by the commissioner. These copies shall be part of the commissioner's workpapers and shall be given the same confidentiality as other examination workpapers generated by the commissioner.

(o)(i) In the case of Canadian and British insurers, the annual audited financial report means the annual statement of total business on the form filed by these companies with their domiciliary supervision authority and duly audited by an independent chartered accountant.

(ii) For these insurers, the letter required in paragraph (d), shall state that the accountant is aware of the requirements relating to the annual audited statement filed with the commissioner under paragraph (a), and shall affirm that the opinion expressed is in conformity with those requirements.

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

**Subd. 4. Examinations.** (a) The commissioner or a designated representative shall determine the nature, scope, and frequency of examinations under this section conducted by examiners under section 60A.031. These examinations may cover all aspects of the insurer's assets, condition, affairs, and operations and may include and be supplemented by audit procedures performed by independent certified public accountants. Scheduling of examinations will take into account all relevant matters with respect to the insurer's condition, including results of the National Association of Insurance Commissioners, Insurance Regulatory Information Systems, changes in management, results of market conduct examinations, and audited financial reports. The type of examinations performed by examiners under this section shall be compliance examinations, targeted examinations, and comprehensive examinations.

(b) Compliance examinations will consist of a review of the accountant's workpapers defined under this section and a general review of the insurer's corporate affairs and insurance operations to determine compliance with the Minnesota insurance laws and the rules of the Department of Commerce. The examiners may perform alternative or additional examination procedures to supplement those performed by the accountant when the examiners determine that the procedures are necessary to verify the financial condition of the insurer.

(c) Targeted examinations may cover limited areas of the insurer's operations as the commissioner may deem appropriate.

(d) Comprehensive examinations will be performed when the report of the accountant as provided for in subdivision 3, paragraph (g), the notification required by subdivision 3, paragraph (h), the results of compliance or targeted examinations, or other circumstances indicate in the judgment of the commissioner or a designated representative that a complete examination of the condition and affairs of the insurer is necessary.

(e) Upon completion of each targeted, compliance, or comprehensive examination, the examiner appointed by the commissioner shall make a full and true report on the results of the examination. Each report shall include a general description of the audit procedures performed by the examiners and the procedures of the accountant that the examiners may have utilized to supplement their examination procedures and the procedures that were performed by the registered independent certified public accountant if included as a supplement to the examination.

**Subd. 5. Consolidated filing.** (a) The commissioner may allow an insurer to file a consolidated loss reserve certification required by subdivision 2, in lieu of separate loss certifications and may allow an insurer to file consolidated or combined audited financial statements required by subdivision 3, paragraph (a), in lieu of separate annual audited financial statements, where it can be demonstrated that an insurer is part of a group of insurance companies that has a pooling or 100 percent reinsurance agreement which substantially affects the solvency and integrity of the reserves of the insurer and the insurer cedes all of its direct and assumed business to the pool. An affiliated insurance company not meeting these requirements may be included in the consolidated or combined audited financial statements, if the company's total admitted assets are less than five percent of the consolidated group's total admitted assets. If these circumstances exist, then the company may file a written application to file a consolidated

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loss reserve certification and/or consolidated or combined audited financial statements. This application shall be for a specified period.

(b) Upon written application by a domestic insurer, the commissioner may authorize the domestic insurer to include additional affiliated insurance companies in the consolidated or combined audited financial statements. Foreign insurers must obtain the prior written authorization of the commissioner of their state of domicile in order to submit an application for authority to file consolidated or combined audited financial statements. This application shall be for a specified period.

(c) A consolidated annual audit filing shall include a columnar consolidated or combining worksheet. Amounts shown on the audited consolidated or combined financial statement shall be shown on the worksheet. Amounts for each insurer shall be stated separately. Noninsurance operations may be shown on the worksheet on a combined or individual basis. Explanations of consolidating or eliminating entries shall be shown on the worksheet. A reconciliation of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statement of the insurers shall be included on the worksheet.

Subd. 6. **Penalties.** No annual statement, report, or document related to the business of insurance shall be filed with the commissioner or issued to the public if it is signed by anyone who is represented in the instrument as an "actuary" or "accountant," unless the person is qualified as defined by this section. A violation of this subdivision is a violation of section 72A.19 and punishable in accordance with section 72A.25.

Subd. 7. **Exemptions.** (a) Upon written application of any insurer, the commissioner may grant an exemption from compliance with the provisions of this section. In order to receive an exemption, an insurer must demonstrate to the satisfaction of the commissioner that compliance would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for specified periods. Within ten days from the denial of an insurer's written request for an exemption, the insurer may request in writing a hearing on its application for an exemption. This hearing shall be held in accordance with chapter 14. Upon written application of any insurer, the commissioner may permit an insurer to file annual audited financial reports on some basis other than a calendar year basis for a specified period. No exemption shall be granted until the insurer presents an alternative method satisfying the purposes of this section. Within ten days from a denial of a written request for an exemption, the insurer may request in writing a hearing on its application. The hearing shall be held in accordance with chapter 14.

(b) This section applies to all insurers, unless otherwise indicated, required to file an annual audit by subdivision 3, paragraph (a), except insurers having less than \$1,000,000 of direct written premiums in this state in any calendar year and fewer than 1,000 policyholders or certificate holders of directly written policies nationwide at the end of the calendar year, are exempt from this section for that year, unless the commissioner makes a specific finding that compliance is necessary for the commissioner to carry out statutory responsibilities, except that insurers having assumed premiums from reinsurance contracts or treaties of \$1,000,000 or more are not exempt.

**61B.19 PURPOSE; SCOPE; LIMITATION OF COVERAGE; LIMITATION OF BENEFITS; CONSTRUCTION.**

Subd. 6. **Adjustment of liability limits.** The dollar amounts stated in subdivision 4 shall be adjusted for inflation based upon the implicit price deflator for the gross domestic product compiled by the United States Department of Commerce and hereafter referred to as the index. The dollar amounts stated in subdivision 4 are based upon the value of the index for the fourth quarter of 1992, which is the reference base index for purposes of this subdivision. The dollar amounts in subdivision 4 shall change on October 1 of each year after 1993 based upon the percentage difference between the index for the fourth quarter of the preceding year and the reference base index, calculated to the nearest whole percentage point. The commissioner shall announce and publish, on or before April 30 of each year, the changes in the dollar amounts required by this subdivision to take effect on October 1 of that year. The commissioner shall use the most recent revision of the relevant gross domestic product implicit price deflators available as of April 1. If the United States Department of Commerce changes the base year for the gross domestic product implicit price deflator, the commissioner shall make the calculations necessary

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to convert from the old to the new base year. Changes must be in increments of \$10,000. No adjustment may be made until the change in the index results in at least a \$10,000 increase.

#### **67A.14 INSURABLE PROPERTY.**

##### **Subd. 5. What may not be insured; property outside designated territory; exceptions.**

(a) No township mutual insurance company shall insure any property in cities of the first or second class.

(b) If by annexation or other growth in population a city, town, township or unorganized territory or any portion thereof is reclassified into a city of the second class, a township mutual insurance company may do business in that portion of the city in which it was authorized to do business prior to the reclassification.

(c) A township mutual insurance company may insure any real or personal property, including qualified or secondary property, subject to the limitations in subdivision 1, paragraph (b), located outside of the limits of the territory in which the company is authorized by its certificate or articles of incorporation to transact business, if the company is already covering qualified property belonging to the insured, inside the limits of the company's territory.

(d) A township mutual fire insurance company may insure property temporarily outside of the authorized territory of the township mutual insurance company.

(e) Except as otherwise provided in paragraph (b) or elsewhere in this chapter, a company may operate in adjoining cities of the second class if approval has been granted by the commissioner.

#### **67A.17 ASSESSMENTS.**

Subdivision 1. **Determination.** When any loss shall be ascertained which exceeds in amount the cash funds of the company, the secretary, or, in the secretary's absence, the president, shall convene the directors, who shall levy an assessment upon each policyholder for the proportionate amount to be paid to cover this excess; or the company may borrow not to exceed two mills on each dollar of insurance written by it and then in force, and from this fund pay these losses, and afterwards levy assessments to pay the loans.

If the fund for the payment of expenses is insufficient, the amount of the deficiency may be added to any assessment.

Subd. 1a. **Advance premiums or assessments.** The directors of a company may collect an advance premium or an assessment for the purpose of maintaining surplus funds in its treasury to be used in payment of losses or expenses.

Subd. 2. **Secretary's duties.** It shall be the duty of the secretary or chosen manager, after the assessment is completed, to immediately notify every person composing the company, by letter sent to the person's usual post office address, of the amount of the loss, and the sum due as the person's share thereof, and of the time when and to whom the payment is to be made, but this time shall not be less than 60, nor more than 90, days from the date of the notice, and every person designated to receive this money may demand and receive two percent in addition to the amount due on the assessment, as aforesaid, for fees in receiving and paying over the same.

Subd. 3. **Member subject to suit and directors' liability.** Suits at law may be brought against any member of the company who refuses or neglects to pay any assessment. The articles may eliminate or limit a director's personal liability to the company or its members for monetary damages for breach of fiduciary duty as a director. The articles shall not eliminate or limit the liability of a director:

- (1) for breach of loyalty to the company or its members;
- (2) for acts or omissions made in bad faith or with intentional misconduct or knowing violation of law;
- (3) for transactions from which the director derived an improper personal benefit; or
- (4) for acts or omissions occurring before the date that the provisions in the articles eliminating or limiting liability become effective.

#### **67A.19 JOINT OR PARTIAL RISKS.**

Township mutual fire insurance companies may issue joint or partial risk policies in conjunction with adjoining companies of the same class and, in this case, they are not confined to the townships in which they are otherwise authorized to do business; but no such insurance of a joint or partial risk shall be valid or binding upon the company insuring the same until approved by all the companies holding prior policies on the property so insured, and the total amount of

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the joint insurance on any one piece of property shall in no case exceed the total percentage of its value for which the property is insurable by the company.