


# Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1168 · · 6/13 - Gomsrud to send new Order Adopting

# RULE REVIEW CHECKLIST

DATE RULE RECEIVED 6-6-85
DATE FOR REVIEW 6-15-85
DATE DUE 6-20-85

Adopted w/a hearing ____
Adopted w/o hearing ✓
Temporary rule ____

Approved 6-18-85 mjc Disapproved ____ Returned to Agency ____

Resubmitted ____ Due ____
Approved ____ Disapproved ____ Returned to Agency ____

Date filed w/Secretary of State 6-19-85 Revisor approved ____ disapproved ____

---

✓ Rule as Adopted

✓ Rule as Proposed see SR 1

✓? Order Adopting 5.29.85 Date cites repealed statute as statutory authority for rule
new order Rec'd 6/18

✓ Notice of Intent to Solicit Outside Opinion SR. 5.14.84

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking no small biz statement.
? Sufficiency incorrect cite to APA statute on rulemaking. should be 14.22

✓ Affidavit of Mailing Notice or rulemaking
11.5.85 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

? Publication in State Register no small biz statement
11.5.85 At least 30/~~20~~ days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

Chief Hearing Examiner's Report(s)
____ Approving H.E.'s Report
____ Approving agency action

Agency's Findings of Fact

LCRAR Report or agency Affidavit

Certificate of Board's Resolution Adopting Rules

Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness includes small biz statement.

N/A Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

? Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

✓ Statement of Dick Gomsrud re Rulemaking procedure

this is submitted but the record indicates no requests for notice were received - so why did the agency bother? Especially since the rule was submitted to AG six days later!

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT of Commerce

# Office Memorandum

TO: Judith Wehrwein
Attorney General's Office

DATE: June 17, 1985

FROM: Richard G. Gomsrud
Department Counsel

PHONE: 6-5689

SUBJECT: Homeowner Non-Renewal Rules

Enclosed please find the Order Adopting Rules with the corrected statutory citation.

RGG:bn
Enclosures

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL - Bremer Tower **Office Memorandum**

TO: JUDITH WEHRWEIN
Attorney General - Administration Division

DATE: 6-5-85

FROM: THOMAS F. PURSELL Tom
Special Assistant Attorney General

PHONE: 6-2921

SUBJECT: Homeowners' Insurance Nonrenewal Rules.

Enclosed for your review pursuant to Minn. Stat. § 14.26 (1984), please find documents pertaining to proposed Department of Commerce rules governing homeowners insurance nonrenewal.

TFP:bl

cc: Richard Gomsrud
Charles Wikelius

RECEIVED
JUN 06 1985
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

# Office Memorandum

TO: MICHAEL A. HATCH, Commissioner
Minnesota Department of Commerce

DATE: 6-19-85

ATTN: THOMAS F. PURSELL
Special Assistant Attorney General

FROM: MARTHA J. CASSERLY MJC
Special Assistant Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Adoption of Rules Relating to Homeowners Insurance Nonrenewal.

The above-referenced rule has been approved as to its legality by the Attorney General on June 18, 1985.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies of the approved rule with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth copy is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

If you have any questions in this regard, please contact me.

MJC:sz

Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Administrative Rules

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

AG Copy

Department of Commerce

Adopted Rules Relating to Nonrenewal of Homeowners Insurance

State of Minnesota
NOV 13 1984
Department of Commerce

Rules as Adopted

2880.0050 APPLICABILITY.

Parts 2880.0050 to 2880.0800 do not apply to commercial dwellings or farms, nor to policies under joint underwriting agreements where one of the insurers is a township mutual.

2880.0100 DEFINITIONS.

Subpart 1. **Scope.** For the purpose of parts 2880.0050 to 2880.0800, the terms defined in this part have the meanings given them.

Subp. 2. **Commercial dwelling.** "Commercial dwelling" means a building used primarily to produce income, such as a motel, hotel, or apartment house, but does not include an owner-occupied dwelling of four units or less.

Subp. 3. **Experience period.** "Experience period" means the period of three years immediately preceding the insurer's nonrenewal of a policy of homeowners insurance.

Subp. 4. **Multiline contract.** "Multiline contract" means a single insurance contract which provides coverage for homeowners insurance and for at least one other line of insurance authorized under Minnesota Statutes, section 60A.06, subdivision 9.

Subp. 5. **Nonrenewal.** "Nonrenewal" means an action taken by an insurer on an existing policy, at the end of the policy period, to:

A. terminate the policy;

B. reduce the policy's coverage, unless all the existing policies and those policies to be accepted as new business by the insurer in this state will have the same coverages;

C. increase the policy's deductible, unless all existing policies and those policies to be accepted as new

business in this state, by the insurer, will provide for the same higher deductible; or

D. transfer a named insured from one rating plan to another within the same company, or from one company to another within a group of insurance companies, if the transfer results in a higher premium. A surcharge applied to a premium for a condition which increases the potential for loss, or the deletion of a claims free discount do not constitute a transfer of rating plans.

A policy of homeowners insurance written for a term longer than one year is not subject to nonrenewal until the end of the policy term even if the insurer can rerate the policy annually.

Subp. 6. **Nonrenewal notice.** "Nonrenewal notice" means a written notice to a named insured clearly and expressly informing the named insured of the insurer's intention not to renew the policy as of the renewal date.

Subp. 7. **Policy of homeowners insurance.** "Policy of homeowners insurance" means a policy providing property and liability coverage on dwellings and includes policies which are generally described as homeowners policies, mobile homeowners policies, dwelling owners policies, condominium owners policies, and tenants policies.

2880.0200 GROUNDS FOR NONRENEWAL.

No insurer shall refuse to renew a policy of homeowners insurance unless based on one or more reasons which shall be limited to the following:

A. The reasons stated for cancellation in Minnesota Statutes, section 65A.01, subdivision 3a.

B. Use of the premises for an illegal activity.

C. The termination of an agency contract, except as provided under Minnesota Statutes, section 60A.171, unless the insurer assigns the terminated agent's book of business to another agent. The insurer must transfer the policy to another agent if the insured makes a written request prior to the nonrenewal date. Notification of this right must be included in the nonrenewal notice.

D. Violations of local laws or ordinances which increase the possibility of a loss.

E. Refusal of the insured to eliminate known conditions which increase the potential for loss after notification by the insurer that the condition must be removed. Before a nonrenewal notice can be issued under this item, two written requests stating the condition to remove and the reason why the condition increases the potential for loss must be sent to the insured. The first notice must inform the insured as to any time limits for compliance. The second notice must inform the insured of the intent to nonrenew the policy if the condition is not removed.

F. A substantial change in the quality or availability of fire protection services.

G. If the insured has two or more losses during the experience period, but not to include:

(1) losses caused by natural causes including but not limited to lightning, wind, or hail; or

(2) losses for which no payment was made by the insurer; or

(3) losses for which the insurer recovers 80 percent or more of the payment through subrogation.

H. The insurer ceases to write homeowners insurance in Minnesota.

I. Failure of the named insured to provide necessary underwriting information upon written request from the insurer, provided that before a nonrenewal notice can be issued under this item, two written requests asking for the information must be sent to the insured stating the reasons why the information is necessary. The second request must inform the insured of the intent to nonrenew the policy if the information is not received.

J. If real property taxes owing on the insured property have been delinquent for two or more years and continue delinquent at the time notice of nonrenewal is issued.

K. The named insured no longer owns the property or resides at the insured location, unless the spouse resides at

the insured location and retains ownership, in which event the spouse will be endorsed onto the policy as the named insured.

If an insurer has grounds to nonrenew a homeowners policy on a primary residence of a named insured, homeowners policies on secondary residences of the insured may also be nonrenewed. Grounds for nonrenewing homeowners policies on secondary residences cannot be used to nonrenew a homeowners policy on the primary residence. If an insured fails to renew the primary residence with an insurer, the insurer may nonrenew the secondary residence.

L. The reasons stated in Minnesota Statutes, section 72A.20, subdivision 13.

2880.0300 WAIVER OF PENALTIES.

If an insurer encounters a situation in which the insurer believes that the nonrenewal is not addressed by parts 2880.0050 to 2880.0800, the insurer may seek a waiver of penalties under the following procedure:

A. Notify the commissioner in writing, at least 90 days prior to the policy renewal date, by referring to this part and by stating the reasons for the proposed nonrenewal action.

B. If the commissioner determines that the situation is not covered by parts 2880.0050 to 2880.0800, but warrants a nonrenewal, the penalties in part 2880.0800 must be waived. The commissioner may decline to render an opinion.

C. The waiver of penalty decision must be retained by the insurer. A copy of the waiver of penalty decision must be returned to the commissioner by the insurer with its response to a written complaint made by the insured.

D. The commissioner's decision regarding waiver of penalties will have no bearing on the final decision as to the approval or disapproval of the nonrenewal action.

E. There is no precedential value in the commissioner's action under this part and each request must be judged on individual considerations.

2880.0400 NONRENEWAL NOTICES.

A nonrenewal notice must be on a form approved by the department of commerce and the following information must be furnished to the insured on the front of the notice:

A. The specific reasons for the termination, which if based on loss experience must include the date of the loss, the type of loss, and amount of payment.

B. A statement advising the insured of the right of complaint with wording such as: "Minnesota law and rules limit the reasons for which your homeowners insurance policy may be nonrenewed, reduced as to the limits of coverage or coverage eliminated, or for which the policy may be canceled. If you believe this termination notice is in violation of Minnesota law or rule, you may, within 30 days of receiving this notice, send a written letter of complaint to the Commissioner of Commerce."

C. A statement advising the insured of the availability of insurance from the Minnesota Property Insurance Placement Facility with wording such as: "You may be eligible to obtain insurance coverage through the Minnesota Property Insurance Placement Facility. Your agent can assist you in arranging this coverage."

The named insured cannot waive his or her right to receive a nonrenewal notice under the nonrenewal statutes and parts 2880.0050 to 2880.0800.

2880.0500 VALIDITY OF NOTICE AND NONRENEWAL.

No nonrenewal and no notice of nonrenewal of a homeowners policy is valid unless done in compliance with parts 2880.0050 to 2880.0800.

2880.0600 RECORDKEEPING.

Each insurance company shall keep a register of all nonrenewals and company initiated cancellations, except those for nonpayment of premium. The register must be retained for three years and be available to the commissioner of commerce, or a designee, during business hours at the insurance company's place of business.

2880.0700 NONRENEWAL OF MULTILINE CONTRACTS.

Nothing in parts 2880.0050 to 2880.0800 prohibits an insurance company from nonrenewing a multiline insurance contract. However, if parts 2880.0050 to 2880.0800 prevent nonrenewal of the homeowners insurance portion of the contract, then the insurance company shall issue to the named insured a policy of homeowners insurance providing coverage as included in the multiline contract.

2880.0800 PENALTIES.

Subpart 1. **Generally.** An insurer failing to comply with parts 2880.0050 to 2880.0800 is subject to the following penalties during each calendar year period:

A. first violation, $100;

B. second violation, $300; and

C. third and subsequent violations, $500.

Subp. 2. **Waiver.** Monetary penalties will not be levied if the commissioner determines that the nonrenewal notice was based on a good faith judgment supported by evidence that was in the possession of the insurer at the time of the sending of the nonrenewal notice, or if the nonrenewal was subject to the waiver of penalty provisions in part 2880.0300.

Subp. 3. **Additional penalties.** Nothing contained in parts 2880.0050 to 2880.0800 prohibits the commissioner of commerce from applying additional penalties or remedies as may be imposed under Minnesota Statutes, chapter 72A.

APPROVED AS TO FORM AND LEGALITY

June 18 19 85

HUMPHREY, III

GENERAL

MJ Cassedy

ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

JUN 19 1985

Joan Anderson Growe

Secretary of State

10:20 A.M.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Adoption of Rules Relating to Homeowners Insurance Nonrenewal

ORDER ADOPTING RULES

Notice of the Commissioner's intent to adopt the above-entitled rules without a public hearing was published in the State Register on November 5, 1984 and was sent by the United States mail to all persons on the list maintained by the Department of Commerce pursuant to Minn. Stat. Section 14.14, subd. 1a, on November 5, 1984.

After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than twenty-five (25) written requests for a public hearing within the 30-day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules.

NOW, THEREFORE, IT IS ORDERED that these rules identified as Homeowners Insurance Nonrenewal are adopted this 29th day of May, 1985 pursuant to authority vested in me by Minn. Stat. Section 65A.29.

MICHAEL A. HATCH
Commissioner of Commerce

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Adoption of Rules Relating to Homeowners Insurance Nonrenewal

ORDER ADOPTING RULES

Notice of the Commissioner's intent to adopt the above-entitled rules without a public hearing was published in the State Register on November 5, 1984 and was sent by the United States mail to all persons on the list maintained by the Department of Commerce pursuant to Minn. Stat. Section 14.14, subd. 1a, on November 5, 1984.

After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than twenty-five (25) written requests for a public hearing within the 30-day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules.

NOW, THEREFORE, IT IS ORDERED that these rules identified as Homeowners Insurance Nonrenewal are adopted this 29th day of May, 1985 pursuant to authority vested in me by Minn. Stat. Section 14.21.

MICHAEL A. HATCH
Commissioner of Commerce

State of Minnesota
Department of Commerce

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Relating to Homeowner's Insurance Nonrenewal including the Impact of the Rules on Small Businesses

Notice is hereby given that the Department of Commerce is seeking information or opinions from persons outside the agency in preparing to promulgate new rules governing homeowner's insurance nonrenewal. Promulgation of these rules is authorized by Minnesota Statutes, section 65A.29.

Outside opinion is also being solicited as to how these rules will affect small businesses as defined by Minnesota Laws 1983, ch. 188, codified as Minnesota Statutes § 14.115, subd. 1.

The Department of Commerce requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing to: William Kyle, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101, (612) 296-6944.

All statements of information and comment shall be accepted until June 16, 1984. Any written material received by the Department of Commerce shall become part of the record in the event that the rules are promulgated.

Michael A. Hatch
Commissioner of Commerce

B. Training

1. Appraisers holding a Bachelor's degree with a core curriculum in Real Estate or in Valuation Sciences from a nationally accredited university or college shall have met the training requirements, or

2. An appraiser having completed any of the following apprisal course work sequences in the last 5 years shall have met the training requirements.

| | |
|---|---|
| AIREA Courses —Real Estate Appraisal Principles | (#1A-1) |
| —Basic Valuation Procedures | (#1A-2) |
| SRA Courses—An Introduction to Appraising Real Property | (101) |
| —Applied Residential Property Valuation | (102) |
| AFMRA Courses—Principles of Rural Appraisals | |
| —Advanced Rural Appraisals | |
| IFA Courses—Principles of Real Estate Appraising | (1.1) |
| —Income Property Appraising | (2.1) |
| —Farm, Ranch and Rural Property Appraising | (3.1) |

3. An appraiser having completed the above courses prior to January 1, 1979, shall submit a list of continuing education course work completed since that date.

C. Sample Appraisal

The State reserves the right to request a sample appraisal done for a client. The sample appraisal is to be examined for compliance with generally recognized appraisal procedures.

III. Certification to a state list of qualified appraisers is not a guarantee of subsequent assignments. The State of Minnesota reserves the right to assign appraisers at the discretion of the assigning agency, dependent on the qualifications of the appraisers, geographic location, and fee requirements.

NOTE: Appraisers will be entitled to reject any assignment offered.

A list of the basic standards may be obtained upon written request to the address below.

Mail resumes, requests and other material:

Department of Natural Resources
Bureau of Land Acquisition and Exchange Section
670 Space Center Building
444 Lafayette Road
St. Paul, Minnesota 55101

Phone calls may be directed to:

Denis Dailey at 296-7945, or
Russ Gustafson at 296-1135

# Department of Commerce

## Outside Opinion Sought Regarding Proposed Rules Relating to Homeowner's Insurance Nonrenewal Including the Impact of the Rules on Small Businesses

Notice is hereby given that the Department of Commerce is seeking information or opinions from persons outside the agency in preparing to promulgate new rules governing homeowner's insurance nonrenewal. Promulgation of these rules is authorized by Minnesota Statutes, section 65A.29.

Outside opinion is also being solicited as to how these rules will affect small businesses as defined by Minnesota Laws 1983, ch. 188, codified as Minnesota Statutes § 14.115, subd. 1.

The Department of Commerce requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing to: William Kyle, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101, (612) 296-6944.

All statements of information and comment shall be accepted until June 13, 1984. Any written material received by the Department of Commerce shall become part of the record in the event that the rules are promulgated.

Michael A. Hatch
Commissioner of Commerce

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Adoption of Rules Relating to Homeowners Insurance Nonrenewal

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT HEARING

IT IS ORDERED this 18th day of October, 1984 that Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Department of commerce for that purpose and be published in the State Register.

Michael A. Hatch
Commissioner of Commerce

In the Matter of the Proposed Adoption of
Rules Relating to Homeowners Insurance
Nonrenewal

AFFIDAVIT OF
MAILING

STATE OF MINNESOTA )
) ss.
COUNTY OF RAMSEY )

Rose T. Weiner , being first duly sworn, deposes and says:

That on the 5th day of November, 1984, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Rules Without Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the Department of Commerce for the purpose of receiving notice of the proposed adoption of rules.

A copy of the proposed rules is attached.

Rose T. Weiner
Rose T. Weiner

Subscribed and sworn to before me this
18th day of December , 1984.

Nancy I. Link

NANCY I. LINK
NOTARY PUBLIC-MINNESOTA
HENNEPIN COUNTY
MY COMMISSION EXPIRES DECEMBER 1, 1990

State of Minnesota
Department of Commerce

In the Matter of the Proposed Adoption of
Rules Relating to Homeowners Nonrenewal Rules

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Department of Commerce proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Commerce has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, sec. 14.21.

Persons interested in these rules shall have 30 days to submit comments in support of or in opposition to the rules. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change.

No public hearing will be held unless twenty-five (25) or more persons make a written request for a hearing within the 30-day comment period. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, sec. 14.14, subd. 1.

Persons who wish to submit comments or a written request for a public hearing should submit them to Bill Kyle, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101. Any person requesting a public hearing should state her/his name and address, identify the portion of the proposed rule addressed, the reason for the request and any change proposed and send this information to the above address.

Authority for the adoption of these rules is contained in Minnesota Statutes, sec. 65A.29 . Additionally, a Statement of Need and Reasonableness describing the need for and reasonableness of each provision and identifying the data and information relied upon to support the proposed rules has been prepared and is available upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Richard Gomsrud, Department Counsel, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101.

A copy of the proposed rules is attached to this Notice.

Copies of this Notice and the proposed rules are available and may be obtained by contacting Richard Gomsrud, General Counsel or Rose Weiner, Secretary, at the above address.

Michael A. Hatch
Commissioner of Commerce

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption of
Rules Relating to Homeowners Insurance Nonrenewal

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minnesota Statutes, section 14.14, subd. 1a, that their names be placed on file with and maintained by the Department of Commerce for the purpose of receiving notice of the proposed adoption of rules is accurate and complete as of 12:00 P.M., this 5th day of November, 1984.

Rose T. Weiner

Robert R. Abrahams
Robert R. Abrahams Agency, Inc.
1112 Plymouth Bldg.
Minneapolis, MN 55402
Mr. Abrahams:

John B. LaMacchia & Associates
Actuaries Management Consultants
12 North Central Avenue
St. Louis, MO 63105
Sir:

Sam Ruhle
Office of Administrative Hearings
400 Summit Bank Building
Minneapolis, MN 55415
Mr. Ruhle:

Joseph T. Justice, Counsel
Alexander Howden Group U.S. Inc.
P.O. Box 19539
Atlanta, GA 30325
Mr. Justice:

Alliance of American Insurers
Attn: Debra G. Wozniak
1501 Woodfield Rd., Suite 400 West
Schaumberg, IL 60195
Ms. Wozniak:

Willys P. Jones
Allison-Williams Co.
2300 IDS Center
Minneapolis, MN 55402
Mr. Jones:

Mr. Robert J. Demichelis

1850 K Street NW
Washington, DC 20006
Mr. Demichelis:

Fred McGarvey
American Insurance Association
230 W. Monroe
Chicago, IL 60606
Mr. McGarvey:

Daniel D. Foth
Associated Builders & Contractors
6300 Walker Street, Room 109
Minneapolis, MN 55416
Mr. Foth:

Morris J. Anderson, Exec. Dir.
Association of Minnesota Counties
555 Park Street, Suite 300
St. Paul, MN 55103
Mr. Shipman:

R. G. Lanham, Dir. of Research
Carleton Financial Computations
P.O. Box 570
South Bend, IN 46624
Mr. Lanham:

John F. Sheski, Counsel
Central Life Assurance Company
P.O. Box 5620
Madison, WI 53705
Mr. Sheski:

Glen Tullman
Certified Collateral Corporation
640 N. LaSalle, Suite 640
Chicago, IL 60610
Mr. Tullman:

M. D. Monette, V. P. & Counsel
Colonial Penn Group, Inc.
5 Penn Center Plaza
Philadelphia, PA 19181
Mr. Monette:

Timothy L. Tucker
Consumer Credit Insurance Assoc.
307 N. Michigan Ave.
Chicago, IL 60601
Mr. Tucker:

Coury, Schwinn, Kodadek & McRoberts
1380 Soo Line Bldg.
Minneapolis, MN 55402

Sir:

Norman E. Nelson, Govt. Affairs Dept.
Crum & Forster Corporation
305 Madison Avenue
Morristown, NJ 07960
Mr. Nelson:

Gerard P. Davey

One Newport Pl., Suite 900
Newport Beach, CA 92660
Mr. Davey:

Michael Bernardino, Mgr.
Dean Witter Reynolds, Inc.
5 World Trade Center
New York, NY 10048
Mr. Bernardino

Gerald G. Dederick, Esq.
6800 France Ave. S., #750
Edina, MN 55435

Mr. Dederick:

Director
Developmental Disabilities Office
201 Capitol Square Building
St. Paul, MN 55101
Sir:

David L. Boehnen
Dorsey & Whitney
1st Bank Place East
Minneapolis, MN 55402
Mr. Boehnen:

Nicholas T. Kakos
Federal Cartridge Corporation
Twin Cities Army Ammunition Plant
New Brighton, MN 55112
Mr. Kakos:

Richard Russell, Esq.
Finley, Kumble, Wagner, et al
425 Park Ave.
New York, NY 10022
Mr. Russell:

Fireman's Fund Emp. Ins. Co.
Contracts Department
P.O. Box 1100
Green Bay, WI 54305
Sir:

Conrad M. Fredin
811 Norwest Center
Duluth, MN 55802

Mr. Fredin:

George H. Frisch
1781 Saunders
St. Paul, MN 55116

Mr. Frisch:

Michael D. Johnson
Frundt, Frundt & Johnson
117 W. 5th Street
Blue Earth, MN 56013
Mr. Johnson:

Mr. Larry A. Bakken

1536 Hewitt
St. Paul, MN 55102
Mr. Bakken:

John A. Knapp, Esq.
Hessian, McKasy & Soderberg, P. A.
1500 Midwest Plaza Building
Minneapolis, MN 55402
Mr. Knapp:

Norbert A. McCrady
Independent Bankers of Minn.
7850 Metro Pkway., Suite 213
Bloomington, MN 55420
Mr. McCrady:

Investment Company Institute
1775 K Street NW
Washington, DC 20006

Sir:

J. David Wise
Investors Diversified Serv., Inc.
IDS Tower
Minneapolis, MN 55402
Mr. Wise:

Stan Jacobson
Research Dept., State of MN
Room 17, State Capitol
St. Paul, MN 55155
Mr. Jacobson:

Kathleen P. Burek
Exec. Dir., LCRAR
Rm. 510, State Office Building
St. Paul, MN 55155
Ms. Burek:

Susan J. Ladwig
900 Midland Bank Building
Minneapolis, MN 55401

Ms. Ladwig:

Richard H. Smith, Dir.
Dept. of Land Registration
P.O. Box 569
Bentonville, AR 72712
Mr. Smith:

Vincent A. Pellerito, President
Land Registrations, Inc.
4603 N. 16th St., Suite 2
Phoenix, AZ 85016
Mr. Pellerito:

League Service Corporation
575 University Avenue
St. Paul, MN 55103

Sir:

John P. Houston, Esq.

4200 IDS Center
Minneapolis, MN 55402
Mr. Houston:

Mary Beth Brody
MacIntosh & Commers
430 Marquette
Minneapolis, MN 55402
Ms. Brody:

Jean M. Reynolds, Treasurer
Mairs and Power, Inc.
W-2062 First National Bank Bldg.
St. Paul, MN 55101
Ms. Reynolds:

Ron Marien
9604 13th Ave. S.
Bloomington, MN 55420

Mr. Marien:

Katie McLenighan
299 E. State Office Bldg.
St. Paul, MN 55155

Ms. McLenighan:

Mr. Ronald R. Radtke, Mgr., Comp. Svcs.
Metropolitan Prop. & Liability Ins. Co.
700 Quaker Lane
Warwick, RI 02887
Mr. Radtke:

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# STATE REGISTER

STATE OF MINNESOTA




## VOLUME 9, NUMBER 19

**November 5, 1984**

**Pages 941-1012**


See pp. 956, et seq.

# STATE REGISTER

## Printing Schedule for Agencies

| Issue Number | *Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules | *Submission deadline for State Contract Notices and other **Official Notices | Issue Date |
|---|---|---|---|
| | SCHEDULE FOR VOLUME 9 | | |
| 20 | Monday Oct 29 | Friday Nov 2 | Monday Nov 12 |
| 21 | Friday Nov 2 | Friday Nov 9 | Monday Nov 19 |
| 22 | Friday Nov 9 | Friday Nov 16 | Monday Nov 26 |
| 23 | Friday Nov 16 | Monday Nov 26 | Monday Dec 3 |

*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

**Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

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# CONTENTS

**MCAR AMENDMENTS AND ADDITIONS**

Issues 14-19, inclusive ..... 944

**MINNESOTA RULES AMENDMENTS AND ADDITIONS**

Issues 14-19, inclusive ..... 945

**PROPOSED RULES**

**Commerce Department**
Proposed Rules Governing Political Subdivision Self-Insurance Pools ..... 946
Proposed Rules Relating to Nonrenewal of Homeowners Insurance ..... 956
Withdrawal of Proposed Rules Relating to Nonrenewal of Homeowner Insurance ..... 960

**Commerce Department**
**Financial Examinations Division**
Proposed Rules Relating to the Operating of Commercial Banks ..... 960

**Energy and Economic Development Department**
Proposed Emergency Rules Governing Energy Financial Assistance ..... 967

**Human Services Department**
**Long Term Care Rates Management**
Proposed Emergency Rules Governing Rates for Intermediate Care Facilities for the Mentally Retarded ..... 980

**Pollution Control Agency**
Proposed Rules Governing Manifests for Transportation of Hazardous Wastes ..... 985

**ADOPTED RULES**

**Agriculture Department**
**Agronomy Services Division**
Adopted Amendments to Rules Governing Pesticides ..... 989

**Commerce Department**
Adopted Rules Governing Employee Health and Disability Joint Self-Insurance ..... 989

**Education State Board**
**Education Department**
**Operations Division**
Adopted Rules Governing Required Three-Year and Four-Year Senior Secondary School Curriculum Offerings ..... 989

**Energy and Economic Development**
Adopted Rules Governing Tax Credit Certification ..... 990

**Higher Education Coordinating Board**
Adopted Rules Governing the State Scholarships and Grants-in-Aid Dependency Standards ..... 991

**Public Utilities Commission**
Adopted Rules Relating to Cogeneration and Small Power Production ..... 993

**Waste Management Board**
Adopted Rules Governing the Hazardous Waste Reduction Grants Program ..... 994

**OFFICIAL NOTICES**

**Corrections Department**
Notice of Amended Statement of Need and Reasonableness for Proposed Rules Governing Adult Halfway Houses ..... 995
Notice of Amended Statement of Need and Reasonableness for Proposed Rules Governing Group Foster Homes ..... 995
Notice of Meeting of Minnesota Task Force on Sexual Exploitation by Counselors and Therapists ..... 995

**Energy and Economic Development Department**
**Energy and Economic Development Authority**
Public Hearing on Proposed Project and the Issuance of Bonds Under Minnesota Statutes, Section 116M.01 to Section 116M.13, Inclusive—Chas. A. Bernick, Incorporated ..... 995
Public Hearing on Proposed Project and the Issuance of Bonds Under Minnesota Statutes, Section 116M.01 to Section 116M.13, Inclusive—Computer Controlled Machines of Minnesota, Incorporated ..... 996
Public Hearing on Proposed Project and the Issuance of Bonds Under Minnesota Statutes, Section 116M.01 to Section 116M.13, Inclusive—Litchfield Woolen Mills Co. Incorporated ..... 997
Public Hearing on Proposed Project and the Issuance of Bonds Under Minnesota Statutes, Section 116M.01 to Section 116M.13, Inclusive—Metro Mold and Design, Incorporated ..... 998

**Finance Department**
Notice of Maximum Interest Rate for Municipal Obligations, November, 1984 ..... 998

**Metropolitan Council**
Public Hearing on Amendments to the Housing Chapter of the Metropolitan Development Guide ..... 999

**Secretary of State Office**
Outside Opinion Sought Regarding Proposed Rules Relating to Uniform Commercial Code Standard Forms Including the Impact of the Rules on Small Businesses ..... 1000

**STATE CONTRACTS**

**Administration Department**
**Procurement Division**
Commodities Contracts and Requisitions Currently Open for Bidding ..... 1000

**Administration Department**
**Information Services Bureau**
Contract Available for Technical Writing Services ..... 1001

**Energy and Economic Development Department**
**Energy Division**
Request for Proposals for Evaluation of Performance of the HVAC System in the St. Paul Retrofit House ..... 1002

**SUPREME COURT**

Decisions of the Supreme Court Filed Friday, October 26, 1984 ..... 1003
Order Filed October 18, 1984 ..... 1004

# PROPOSED RULES

Pursuant to Minn. Stat. of 1982, §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

## Department of Commerce

### Proposed Rules Governing Political Subdivision Self-Insurance Pools

#### Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Department of Commerce proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Commerce has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, section 14.21.

Persons interested in these rules shall have 30 days to submit comments in support of or in opposition to the rules. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change.

No public hearing will be held unless twenty-five (25) or more persons make a written request for a hearing within the 30-day comment period. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, section 14.14, subd. 1.

Persons who wish to submit comments or a written request for a public hearing should submit them to Richard G. Gomsrud, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101. Any person requesting a public hearing should state her/his name and address, identify the portion of the proposed rule addressed, the reason for the request and any change proposed and send this information to the above address.

Authority for the adoption of these rules is contained in Minnesota Statutes, sections 471.617, subd. 2 and 471.982, subd. 2. Additionally, a Statement of Need and Reasonableness describing the need for and reasonableness of each provision and identifying the data and information relied upon to support the proposed rules has been prepared and is available upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Rose Weiner Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101.

A copy of the proposed rules is attached to this notice.

Copies of this notice and the proposed rules are available and may be obtained by contacting Richard Gomsrud, General Counsel, or Rose Weiner, Secretary at the above address.

Reynard Harp,
Deputy Commissioner
for
Michael A. Hatch
Commissioner of Commerce





#### Rules as Proposed (all new material)

**CHAPTER 2785**
**DEPARTMENT OF COMMERCE**
**POLITICAL SUBDIVISION SELF-INSURANCE POOLS**

**2785.0100 DEFINITIONS.**

**Subpart 1. Scope.** For the purposes of parts 2785.0100 to 2785.1600, the terms defined in this part have the meanings given them.

**Subp. 2. Board.** "Board" means a pool's board of trustees.

**Subd. 3. Bylaws.** "Bylaws" means the statements and organizational documents adopted by a plan that prescribe its purpose, government, and administration.

**Subp. 4. Commissioner.** "Commissioner" means the commissioner of the Department of Commerce.

**Subp. 5. Coverage.** "Coverage" means the right of a covered person or entity to benefits or indemnification provided directly or indirectly by a pool, by virtue of the coverage document.

**Subp. 6. Coverage document.** "Coverage document" means the document specifying the characteristics and duration of coverage provided through a pool. Characteristics of coverage include the kind of loss or benefit that the pool will reimburse, subject to specific exclusions, limitations, or deductibles.

**Subp. 7. Days.** "Days" means calendar days.

**Subp. 8. Employee health benefit pool.** "Employee health benefit pool" means a pool that covers employee health benefits, disability benefits, or both.

**Subp. 9. Financial administrator.** "Financial administrator" means an entity employing persons trained and experienced in money management and investments, and possessing no less than five years' experience as an organization in money management and investments with demonstrated competence.

**Subp. 10. Fund year.** "Fund year" means a pool's 12-month fiscal year.

**Subp. 11. Member.** "Member" means a political subdivision or private employer member of a pool. Reference to actions of a member include actions on behalf of the member's covered employees or other covered persons.

**Subp. 12. Political subdivision.** "Political subdivision," in reference to employee health benefit pools, means the same as defined in Minnesota Statutes, section 471.617, subdivision 2, and in reference to all other pools means the same as defined in Minnesota Statutes, section 471.98, subdivision 2.

**Subp. 13. Pool.** "Pool" means any self-insurance fund or agreement for the reciprocal assumption of risk established by or among two or more political subdivisions for coverage of their respective risks, but also includes private employers for the purpose of a public/private pool. Reference to actions of a pool include actions by the pool's designated agents.

**Subp. 14. Premium.** "Premium" means the amount paid or to be paid for coverage by members. Premium does not include assessments or penalties.

**Subp. 15. Public/private pool.** "Public/private pool" means a workers' compensation pool including as members a political subdivision and one or more private employers.

**Subp. 16. Runoff pool.** "Runoff pool" means a pool that no longer has authority to self-insure, but that continues to exist for the purpose of paying claims, preparing reports, and administering transactions associated with the period when the pool provided coverage.

**Subp. 17. Self-insure.** "Self-insure" means to assume primary liability or responsibility for certain risks or benefits, rather than transferring liability or responsibility to some other entity.

**Subp. 18. Service company.** "Service company" means an entity licensed under Minnesota Statutes, section 60A.23, subdivision 8, and rules adopted thereunder, as a self-insurance plan administrator, or an entity named in Minnesota Statutes, section 60A.23, subdivision 8, paragraph (1), clause (a) or (b).

**Subp. 19. Sponsoring association.** "Sponsoring association" means a statewide nonprofit organization of political

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

subdivisions that sponsors or organizes a pool, and which has as its primary purpose providing services to Minnesota political subdivisions that are not related to insurance or self-insurance.

**Subp. 20. Surplus.** "Surplus" means a pool's total assets minus total liabilities. Surplus includes paid-in capital and retained earnings. The amount of a pool's surplus is determined according to the instructions provided for a pool's financial statements.

**Subp. 21. Workers' compensation pool.** "Workers' compensation pool" means a pool that covers workers' compensation liability, employer's liability, or both.

**2785.0200 PURPOSE.**

Parts 2785.0100 to 2785.1600 govern the formation, operation, and dissolution of political subdivision self-insurance pools. They are intended to ensure that the financial integrity of these people is maintained, and that they are administered competently and equitably.

**2785.0300 SCOPE.**

The following are subject to the requirements of parts 2785.0100 to 2785.1600:

A. political subdivision self-insurance pools;

B. political subdivisions of Minnesota that form, join, or leave a self-insurance pool;

C. private Minnesota employers that form, join, or leave a self-insurance pool including a political subdivision; and

D. service companies that provide services to a pool.

**2785.0400 BYLAWS.**

**Subpart 1. Content.** Bylaws may contain any provisions that do not conflict with parts 2785.0100 to 2785.1600. Bylaws must, at a minimum, contain the following provisions:

A. the pool's name, purpose, fiscal year, and initial date of existence;

B. definitions of key terms;

C. a statement of the powers, duties, and responsibilities assigned to the board, the service company, the financial administrator, and reserved by the membership;

D. the number, term of office, and method of selection and replacement of the members of the board;

E. the procedure for calling board meetings;

F. the method of periodic selection and review of the service company and financial administrator;

G. the procedure for amending the bylaws;

H. the procedure for resolving disputes among members, which must not include submitting disputes to the commissioner;

I. the criteria for membership in the pool, including standards of financial integrity and loss experience;

J. the procedure for admitting new members to the pool;

K. the criteria for expelling members from the pool, including nonpayment of premium;

L. the procedure for withdrawal and expulsion of members from the pool, including the minimum required period of membership;

M. a statement of the coverages the pool intends to provide;

N. the procedure for adding and dropping a member's participation in a particular coverage;

O. a schedule for premium payments by members and, if applicable, their employees;

P. the procedure for changing premium rates;

Q. the procedure for levying and collecting an assessment;

R. a statement of who may have access to pool funds and for what purposes;

S. the procedure for distributing dividends, and the eligibility of past members and past covered employees for dividends; and

T. the procedure for distributing any assets remaining upon the pool's dissolution.





**Subp. 2. Adoption and changes.** The bylaws must be adopted in writing by all initial members. Authority to change the bylaws must reside with the membership or the board, according to the terms of the bylaws. Authority to change the bylaws may not be delegated to a contractor or other outside party. The pool must file bylaw changes with the commissioner not less than 30 days after adoption.

**2785.0500 BOARD.**

**Subpart 1. Structure.** A pool must have a board of trustees consisting of at least three persons, who must be officials or employees of the members or of the sponsoring association, if any. No member may have more than one representative on the board, unless the pool has only two members, in which case each member must have at least one representative on the board. The sponsoring association must not have majority representation on the board. No trustee may be an employee, agent, or representative of the pool's service company, financial administrator, insurer, or other person or entity under contract with the pool, except that a trustee may be an employee, agent, or representative of the sponsoring association. Trustees shall be elected by the membership, or appointed by the sponsoring association. One trustee shall be designated the chairperson. The board shall meet no less than four times annually.

**Subp. 2. Duties.** The board is responsible for operation of the pool. The board may delegate some or all of its responsibilities to the chairperson or other trustees between board meetings. All responsibilities of the pool not expressly delegated by the board or parts 2785.0100 to 2785.1600 are the responsibility of the board. The board shall, at a minimum, have the following responsibilities:

A. fiduciary responsibility for the pool's operation and financial condition;

B. selection, supervision, and evaluation of the service company, financial administrator, accountant, insurer, and any other contractors;

C. on the basis of the pool's overall financial condition, authorizing changes in premium, reserve, or investment practices; and declaring assessments or dividends as appropriate;

D. approving all reports concerning the pool's operations and status to the commissioner;

E. monitoring delinquent premiums, loss experience, and the financial condition of individual members; and authorizing disciplinary action or expulsion as appropriate;

F. authorizing acceptance or rejection of applications for membership;

G. as permitted by the bylaws, making or recommending changes to the bylaws for the improvement of the pool's operation and financial integrity; and

H. monitoring the pool's compliance with all statutes and rules governing its operation.

**2785.0600 APPLICATION.**

**Subpart 1. Initial application.** Two or more political subdivisions may apply to the commissioner for authority to form a self-insurance pool. One or more private employers and a political division may apply for authority to form a public/private pool, if statutorily authorized. Applications must be submitted on forms prescribed by the commissioner. Applications must be submitted not later than 60 days prior to the requested date for authority to self-insure. Applications submitted without responses to certain questions, or with responses that are inadequate, must be returned to the applicant for resubmission. Applications not returned to the applicant for resubmission within 14 days of receipt must be approved or disapproved within 60 days of receipt.

**Subp. 2. Prior existing pools.** Pools in existence at the time parts 2785.0100 to 2785.1600 are effective must submit their initial application for self-insurance authority no later than July 1, 1985.

**Subp. 3. Renewal application.** Existing plans may apply for renewal of their self-insurance authority by so indicating on their annual status report preceding expiration of their current authority. Applications must be approved or disapproved within 60 days of receipt of the status report.

**Subp. 4. Merger.** Two or more existing pools may apply to merge, provided the merged pool assumes all financial and regulatory obligations of the former pools. Merger applications are subject to the same requirements as prospective new pools.

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**Subp. 5. Approval or disapproval.** Upon approval of an application, the commissioner shall issue an order authorizing the proposed self-insurance pool. Initial authorization orders for new pools shall be effective for 27 months after the initial authorization date. Renewal authorization orders shall be for two-year periods. Approval of applications for authority to self-insure must be granted if the proposed pool conforms with:

A. all requirements of parts 2785.0100 to 2785.1600;

B. all applicable requirements of Minnesota insurance statutes and rules; as described in part 2785.0100, subpart 2;

C. Minnesota Statutes, sections 72A.19 to 72A.32; and

D. all applicable requirements of other Minnesota statutes and rules.

**2785.0700 ENDING SELF-INSURANCE, RUNOFF PERIOD, AND PLAN DISSOLUTION.**

**Subpart 1. Ending self-insurance authority.** A pool may decide to end its self-insurance authority and cease to provide coverage effective at the end of a fund year. The pool must notify the commissioner within 14 days of such a decision. A pool may not elect to end its self-insurance authority less than 45 days prior to the end of the fund year in question. Voluntary ending of self-insurance authority does not constitute pool dissolution under subpart 4.

**Subp. 2. Revocation of self-insurance authority.** The commissioner shall, by order, revoke the authority of a pool to self-insure upon no less than ten days' written notice if any of the following events occur or conditions develop, and if the commissioner judges them to be material:

A. failure of the pool to comply with parts 2785.0100 to 2785.1600, or with other applicable Minnesota statutes or rules;

B. failure of the pool to comply with any lawful order of the commissioner;

C. commission by the pool of an unfair or deceptive practice as defined in Minnesota Statutes, sections 72A.17 to 72A.32, or in related rules; or

D. a deterioration of the pool's financial integrity to the extent that its present or future ability to meet obligations promptly and in full is or will be significantly impaired.

**Subp. 3. Runoff period.** A pool shall continue to exist as a runoff after its authority to self-insure has ended, for the purpose of paying claims, preparing reports, and administering transactions associated with the period when the pool provided coverage. A runoff pool must continue to comply with parts 2785.0100 to 2785.1600, and with other applicable Minnesota statutes and rules. Authority to exist as a runoff plan is open-ended, and does not require renewal of authority under part 2785.0600, subpart 3.

**Subp. 4. Dissolution.** A pool, including a runoff pool, that desires to cease existence shall apply to the commissioner for authorization to dissolve. Applications must be approved or disapproved within 60 days of receipt. Dissolution without authorization is prohibited and void, and does not absolve a pool or runoff pool from fulfilling its continuing obligations, and does not absolve its members from assessments under part 2785.1400, subpart 3. The pool's assets at dissolution must be distributed to the members and covered persons as provided in the bylaws. Authorization to dissolve must be granted if either of the following conditions are met:

A. the pool demonstrates that it has no outstanding liabilities, including incurred but not reported liabilities; or

B. the pool has obtained an irrevocable commitment from a licensed insurer that provides for payment of all outstanding liabilities, and for providing all related services, including payment of claims, preparation of reports, and administration of transactions associated with the period when the pool provided coverage.

**2785.0800 ADMINISTRATION.**

**Subpart 1. Service company.** A pool must contract with a service company for services necessary to the pool's day-to-day operations, except services and responsibilities reserved to the members, the board, individual trustees, the financial administrator, the accountant, or other contractors. The service company must have expertise in and be licensed for the coverages the pool provides. Subject to the oversight of the board, the service company shall, directly or through subcontractors, provide all services directly related to the administration of coverages. These services include but are not limited to:

A. accounting and recordkeeping;

B. billing and collection of premiums and assessments;

C. claims investigation, settlement, and reserving;

D. claims payment, including claims wholly or partially subject to stop-loss insurance or member deductibles;

E. general administration;





F. loss control, safety programs, or both; and

G. underwriting.

**Subp. 2. Financial administrator.** A pool must contract with a financial administrator for investment of the pool's assets and other financial or accounting services. No staff member of the financial administrator may be an owner, officer, employee, or agent of the service company, or of a subcontractor of the service company.

**Subp. 3. Recordkeeping.** A pool must maintain within Minnesota all records necessary to verify the accuracy and completeness of all reports submitted to the commissioner under part 2785.1600. The commissioner may examine the pool's records in order to ascertain the pool's compliance with parts 2785.0100 to 2785.1600, and with other applicable statutes and rules. All records concerning claims, reserves, financial transactions, and other matters necessary for the pool's operations are the pool's property.

**2785.0900 MEMBERSHIP.**

**Subpart 1. Availability.** Pool membership is open only to political subdivisions of Minnesota, except that private employers may join a public/private pool. A pool may establish other nondiscriminatory criteria for membership. Nothing in parts 2785.0100 to 2785.1600 requires a pool to accept members that do not meet the pool's underwriting standards.

**Subp. 2. Joining.** New members must be admitted according to the standards and procedures specified in the bylaws. Membership is not effective before the applicant has signed a membership agreement affirming its commitment to comply with the bylaws and parts 2785.0100 to 2785.1600, including joint and several liability. The membership agreement must disclose that under the rules governing the pool, the board of trustees, or the Minnesota commissioner of commerce may order that an assessment be levied against the members, if necessary to maintain the pool's sound financial condition.

**Subp. 3. Public/private pool membership.** Only Minnesota domiciled employers whose primary places of employment are within 40 miles of a political subdivision pool member are eligible for membership in a public/private pool. If all political subdivisions elect to withdraw from a public/private pool, the pool's authority to self-insure is terminated simultaneously with the date of the last political division's withdrawal. As a condition of a private employer's membership in a public/private pool, the employer must furnish a surety bond in a form prescribed by the commissioner. The pool shall be the bond's obligee, conditioned on the employer's paying all premiums, penalties, and assessments when due. The bond must be maintained on file with the commissioner until the end of the period of continuing liability, or until the pool terminates, whichever occurs first. The period of continuing liability is as defined in part 2785.1400, subpart 1. The bond must provide a penalty amount no less than:

A. the greatest one-year premium paid by the member for the coverage through the pool during the past three years;

B. if the member has not belonged to the pool for one full fund year, the annual premium to be paid by the member for the first year's coverage; or

C. if the member no longer belongs to the pool, the greatest one-year premium paid by the past member during the final three years in the pool.

**Subp. 4. Leaving.** The membership agreement must state the procedures for leaving the pool. A member must notify the pool of its desire to withdraw not less than 30 days before the date upon which it desires to withdraw. If the board determines that the withdrawal would cause the pool to be in violation of the minimum annual premium requirement or would compromise the pool's financial integrity, the pool must notify the commissioner as required under part 2785.1100, subpart 2. Withdrawal is prohibited and void unless:

A. the member has belonged to the pool continuously for the period required by the bylaws, which shall provide for:

(1) a minimum of one complete fund year, in the case of employee health benefit pools; or

(2) a minimum of three complete fund years, in the case of all other pools; and

B. all outstanding premiums and assessments owed by the member have been paid.

**Subp. 5. Expulsion.** No less often than annually a pool must compare the status and experience of each member with the criteria for expulsion in the bylaws. Expulsion is subject to the procedures and requirements for voluntary withdrawal of a member, except that:

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A. a member may be expelled with outstanding premiums or assessments owing; and

B. a member may be expelled notwithstanding that the minimum term of membership has not been satisfied.

**Subp. 6. Runoff pool membership.** After revocation of a pool's self-insurance authority or after a pool notifies the commissioner in writing of its intent to end self-insurance authority voluntarily, no member may join, leave, or be expelled from the pool.

**2785.1000 COVERAGE.**

**Subpart 1. Distinct pool types.** Employee health benefit pools and workers' compensation pools may provide only the coverages specified in the definitions for that pool type. Other pools may not provide any of the coverages permitted for employee health benefit pools and workers' compensation pools.

**Subp. 2. Coverage administration and related requirements.** Pools are subject to the requirements of Minnesota statutes and rules applicable to insurance companies providing insurance in Minnesota similar to the pool's coverage. These include requirements contained in Minnesota Statutes, chapters 60A, 62A, 62E, 65A, 65B, 70A, 72A, 72C, 79, and 176, and rules adopted under these chapters, concerning:

A. filing and requesting approval for coverage documents and rates;

B. coverage document content and language;

C. mandated benefits, including coverage conversion and continuation requirements;

D. coverage administration, including notices to covered parties;

E. underwriting;

F. claim administration; and

G. other practices affecting coverage.

**Subp. 3. Uniform underwriting.** All coverages offered by a pool must be available according to the same underwriting standards to all members and, if applicable, to all members' employees.

**Subp. 4. Continuing responsibility.** Notwithstanding cancellation or termination of coverage to a particular member, ceasing to offer a particular coverage, or ending or revocation of authority to self-insure, a pool retains indefinitely all responsibilities to members and other covered persons associated with the period while coverage was in force. This responsibility ceases only after a pool dissolves under part 2785.0700, subpart 4.

**2785.1100 PREMIUMS, CASH FLOW, AND DIVIDENDS.**

**Subpart 1. Minimum annual premium.** All pools must have and maintain an annual premium volume of no less than $300,000. A pool or prospective pool may apply to the commissioner for reduction of the minimum annual premium requirement, stating the amount of reduction requested and the supporting rationale and data. The commissioner must approve the applications within 60 days after receipt if the pool has demonstrated that the lesser premium volume would not compromise its financial integrity and stability.

**Subp. 2. Monitoring premium volume.** A pool must monitor its premium volume. If premium decreases to an annualized volume of less than $400,000, or less than 133 percent of the amount approved pursuant to subpart 1, the pool must notify the commissioner at monthly intervals of the then-current annualized premium volume, until the annualized volume exceeds $400,000. "Annualized premium volume" means the gross premiums written for the previous 12 months. If premium decreases to an annualized volume of less than $300,000, or a lesser amount if approved pursuant to subpart 1, the pool must notify the commissioner:

A. of its intent to end its self-insurance authority; or

B. of its proposal for restoring compliance with subpart 1. If the proposal is unlikely, in the commissioner's judgment, to restore compliance with subpart 1 within 90 days, or if after 90 days the pool continues to be out of compliance, the commissioner shall revoke the pool's self-insurance authority.

**Subp. 3. Surplus or stop-loss advancement.** A pool may protect itself from cash flow difficulties by methods including but not limited to the following:

A. establishing and maintaining a surplus consisting of funds contributed by members and the pool's retained earnings; or

B. obtaining language in the pool's stop-loss insurance policy requiring the insurer to advance funds to the pool if the policy limits have been or are likely to be exceeded. The funds may be considered an advance against the insurer's potential liability for the policy period.





**Subp. 4. New pool deposit premium.** As a condition for authorization to self-insure a prospective pool must submit evidence that an initial premium payment has been made. The following requirements also apply to premium payments in a pool's first year of operation:

A. For all pools except employee health benefit pools, the initial payment must equal no less than 50 percent of the initial members' first year premium. If the initial payment is less than 100 percent of the initial members' first year premium, the remainder of the initial members' first year premium must be paid in three or more equal installments at equal intervals throughout the year.

B. For employee health benefit pools, the initial premium payment must be no less than 25 percent of the initial members' first year premium. If the initial payment is less than 100 percent of the initial members' first year premium, the remainder of the initial members' first year premium must be paid in six or more equal installments at equal intervals throughout the year.

C. A prospective pool may apply to the commissioner for reduction of the new pool deposit premium requirement, stating the payment schedule requested and the supporting rationale and data. The commissioner must approve the applications within 60 days after receipt if the pool has demonstrated that a less restrictive payment schedule would not compromise its ability to pay large claims promptly during its first year of operation. The commissioner must consider arrangements the pool has made under subpart 3 in evaluating the application.

**Subp. 5. Premium payments.** A pool may permit installment payments if payment is always due before premium is to be earned. A pool shall promptly take appropriate action to collect premiums, assessments, or penalties that are past due. Collection costs are the obligation of the delinquent member.

**Subp. 6. Dividend procedures.** A pool may declare and pay a dividend or distribution from its surplus only if:

A. the dividend would not cause the pool's surplus to be negative;

B. the pool does not have a stop-loss advancement liability or other borrowed money; and

C. for workers' compensation pools, the dividend will not be paid sooner than one year after it is declared, and at the time of payment the conditions of items A and B are fulfilled.

**2785.1200 RESERVES.**

A pool must establish reserves for all incurred losses, both reported and unreported, and for unearned premiums. To the extent that the amount of a loss is uncertain, the reserve must be set conservatively. As the degree of uncertainty concerning a loss is changed by new events or information, the amount of the reserve must be changed appropriately. Accounting for reserves must be as required by the financial statement forms and instructions, under part 2785.1600, subpart 2.

**2785.1300 STOP-LOSS INSURANCE.**

**Subpart 1. Purchase and change.** A pool may purchase stop-loss insurance for indemnification of a portion of its losses. If the pool determines that a stop-loss insurance policy will be terminated or modified causing a violation of subpart 2, or otherwise compromising the pool's financial integrity, the pool must notify the commissioner prior to the termination or modification taking effect. The pool must indicate what corrective action will be taken.

**Subp. 2. Required stop-loss coverage.** All pools except employee health benefit pools are restricted in the amount of potential liability they may retain on any one incident to ten percent of its annual premium volume during the most recent fund year, plus 20 percent of its surplus. The restriction for pools without a year's experience is based on the pool's estimated premium volume during the first full fund year. All liability in excess of the restricted amount must be assumed by a stop-loss insurer under contract with the pool and licensed to do business in Minnesota. For employee health benefit pools required to maintain individual excess stop-loss insurance under Minnesota Statutes, section 471.617, subdivision 3, the self-insured retention per person per year shall not exceed $50,000.

**Subp. 3. Return of liability.** No liability transferred to an insurer under subpart 2 may, directly or indirectly, be returned to a pool or a member.

**2785.1400 DEFICIT AND ASSESSMENTS.**

**Subpart 1. Joint and several liability.** Each current member is jointly and severally liable for all liabilities and expenses of the

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pool. Each past member is jointly and severally liable for all liabilities and expenses of the pool during the period of continuing liability. After the period of continuing liability, past members are no longer jointly and severally liable for the pool's liabilities and expenses, except as provided in subpart 2. The period of continuing liability for past members varies according to the type of pool, as follows:

A. for employee health benefit pools, past members continue to be jointly and severally liable for three complete fund years after leaving the pool;

B. for workers' compensation pools, past members continue to be jointly and severally liable for ten complete fund years after leaving the pool; and

C. for all other pools, past members continue to be jointly and severally liable for five complete fund years after leaving the pool.

**Subp. 2. Runoff pool liability.** If a pool's self-insurance authority is ended under part 2785.0700, subpart 1 or 2, members and past members continue to be jointly and severally liable for the pool's liabilities and expenses until final pool dissolution, as follows:

A. all members at the time self-insurance authority is ended continue to be jointly and severally liable until the pool is dissolved; and

B. all past members that were jointly and severally liable under the standards of subpart 1 at the time self-insurance authority is ended continue to be jointly and severally liable until the pool is dissolved.

**Subp. 3. Correction of a deficit.** If the board determines that the pool's total liabilities exceed its total assets, the board must restore a positive surplus within 90 days after the determination. A deficit may be corrected using one or more of the following types of assessments. A pool may, in a particular case, elect to assess some but not all jointly and severally liable members and past members. Methods of assessment must not exclude liable members or past members arbitrarily, or impose arbitrary amounts in relation to the amounts imposed on other members and past members. The bylaws may state what methods of assessment are preferred. The commissioner must order an assessment to correct a deficit using the procedure described in item A, if the board fails to do so when required.

A. All jointly and severally liable members and past members may be assessed proportionately to their share of the total premiums paid and owed during the assessment base period. The assessment base period at the time of a pool's self-insurance authority ending under part 2785.0700, subpart 1 or 2, shall remain the basis of assessments under this item until final pool dissolution. The assessment base period includes all completed quarters of the current fund year, and includes the following periods depending on the type of pool:

(1) for employee health benefit pools, the most recent three complete fund years;

(2) for workers' compensation pools, the most recent ten complete fund years; and

(3) for all other pools, the most recent five complete fund years.

B. Jointly and severally liable members and past members may be assessed according to a formula stated in the bylaws, whereby members and past members with worse than average losses pay more than those with better loss experience.

C. Jointly and severally liable members and past members may be assessed according to a formula stated in the bylaws, whereby current members pay more than past members.

D. Jointly and severally liable members and past members may be assessed accordingly to a formula stated in the bylaws, whereby members belonging to the pool in poor loss years pay more than members belonging to the pool in better loss years.

E. Jointly and severally liable members and past members may be assessed according to any formula stated in the bylaws, including combinations of items A to D, if the formula is consistent with the requirements of this part.

**Subp. 4. Assessment to increase surplus.** The board may assess current members in order to increase the surplus. The assessment may be made without the existence of a deficit in order to forestall a deficit, or otherwise to improve the pool's financial strength. The assessment may be calculated using any reasonable procedure, consistent with the pool's bylaws.

**2785.1500 FINANCIAL INTEGRITY.**

**Subpart 1. Fidelity bond.** All contractors and individuals who handle pool funds or who will have authority to gain access to pool funds, including board members, must be covered by a fidelity bond. The bond must cover losses from dishonesty, robbery, forgery or alteration, misplacement, or mysterious and unexplainable disappearance. The amount of coverage for each occurrence must be $300,000 or more. The pool must purchase a fidelity bond covering the required contractors and individuals, or submit separate proof of coverage for all required contractors and individuals not covered under the plan's bond.





**Subp. 2. Integrity of assets.** A pool's assets:

A. must not be commingled with the assets of any member;

B. must not be loaned to anyone for any purpose or used as security for a loan, except as permitted under subpart 5 for investments;

C. must be employed solely for the purposes stated in the bylaws, and in compliance with parts 2785.0100 to 2785.1600 and related statutes; and

D. must not be considered the property or right of any member or covered person, except:

(1) for benefits under the coverage documents;

(2) for dividends declared in accordance with part 2785.1100, subpart 5; and

(3) for a portion of the assets remaining after the plan's dissolution, in accordance with part 2785.0700, subpart 4.

**Subp. 3. Sources and uses of funds.** A pool may expend funds for payment of losses and expenses, and for other costs customarily borne by insurers under conventional insurance policies in Minnesota. Except as provided in part 2785.1100, subpart 3, item B, a pool must not borrow money or issue debt instruments. A pool may bring legal suits to collect delinquent debts. A pool must not obtain funds through subrogation of the rights of covered persons. A pool may receive funds only from:

A. its members as premiums, assessments, or penalties;

B. its insurers or indemnitors pursuant to insurance or indemnification agreements;

C. dividends, interest, or the proceeds of sale of investments;

D. refunds of excess payments;

E. coordination of benefits with other insurance or group self-insurance coverages;

F. collection of money owed to the pool;

G. the special compensation fund under Minnesota Statutes, chapter 176, for workers' compensation pools only; or

H. indemnification under Minnesota Statutes, section 176.181, subdivision 5, for workers' compensation pools only. Public/private pools are eligible for indemnification under this part only in the amount of the public members' liability to the pool.

**Subp. 4. Separate accounts.** A pool may establish separate accounts for the payment of claims or certain types of expenses. These accounts must be used only by the service company, its authorized subcontractors, or the financial administrator, as appropriate to the account's purpose. The amount in these special accounts must not exceed an amount reasonably sufficient to pay the claims or expenses for which it is established. All monetary and investment assets not in such accounts must be under the control of the pool's financial administrator.

**Subp. 5. Investments.** A pool's investments are subject to Minnesota Statutes, section 475.66, as regards both permitted types of investments, maturities, and depositories. In addition, a pool must not invest in securities or debt of a member, or a member's parent, subsidiary, or affiliate; or any person or entity under contract with the pool. For this purpose, the state of Minnesota is not considered a political subdivision's parent or affiliate.

**Subp. 6. Monitoring financial condition.** The board must regularly monitor the pool's revenues, expenses, and loss development, and evaluate its current and expected financial condition. The board must attempt in good faith to maintain or restore the pool's sound financial condition, using any means at its disposal. These means include but are not limited to adjusting premium rates, underwriting standards, dividend rates, expulsion standards, and other powers granted in parts 2785.0100 to 2785.1600 and the bylaws. If the commissioner judges that the board's actions are inadequate to maintain or restore the pool's sound financial condition, the commissioner shall, as appropriate: order an increase in the premium rates; revoke the pool's self-insurance authority; or order that an assessment be levied against the members.

**2785.1600 REPORTING.**

**Subpart 1. Financial statements.** A pool must prepare annual financial statements containing a balance sheet; a statement of revenues, expenses, and surplus; a statement of changes in financial position; and a schedule of investments. The statements must be prepared on forms and according to instructions prescribed by the commissioner. The financial statements must be

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filed with the commissioner no later than March 1 of each year, or if the pool's fund year is other than the calendar year, no later than 60 days after the end of the pool's fund year. The financial statements must be audited by an independent certified public accountant, and the auditor's report must be submitted no later than 180 days after the end of the pool's fund year. For employee health benefit pools, the first annual financial statement and every second annual financial statement thereafter must be accompanied by a statement from a qualified actuary concerning the balance sheet items that are based on actuarial assumptions and methods. The form of the actuary's statement and the scope of the actuarial review must be according to instructions prescribed by the commissioner.

**Subp. 2. Quarterly reports.** If the commissioner determines that a pool's financial integrity is deteriorating, to the extent that if then-current trends continue for two years or less, the pool's ability to meet obligations promptly and in full will be significantly impaired, the commissioner shall require the pool to file quarterly reports with the commissioner no later than 30 days after the end of the first, second, and third quarters of each fund year. The commissioner shall remove the requirement to file quarterly reports if the conditions warranting the requirement no longer exist. Quarterly reports must contain statements of the pool's:

A. current total cash on hand and on deposit, and total investment;

B. current total reserve for unearned and advance premiums, and total reserve for outstanding losses reported and unreported;

C. dividends declared and dividends paid during the quarter;

D. gross premiums written during the quarter;

E. losses paid during the quarter;

F. current total members; and

G. any other matters the commissioner requests that the board address.

**Subp. 3. Extraordinary audits.** Upon sufficient cause, the commissioner shall require a pool to investigate the accuracy of one or more entries on its financial statements or quarterly reports, and to report its findings. If necessary for the investigation's purposes, the commissioner shall require a pool to hire a qualified actuary, claims specialist, auditor, or other specialist as appropriate to the type of entry being investigated. If warranted by the investigation's findings, the commissioner shall require changes in the pool's reserving, accounting, or recordkeeping practices. These extraordinary audits are in addition to the commissioner's rights to examine self-insurance pools directly, as applicable to insurance companies under Minnesota Statutes, sections 60A.03, subdivisions 3, 5, and 6, and 60A.031. Sufficient cause includes:

A. losses that appear significantly different than losses experienced by other self-insurance pools or insurance companies for similar coverage;

B. unusual changes in the amount of entries from period to period that are not sufficiently explained by the financial statements or footnotes; or

C. other indications that a pool's financial statements may not accurately reflect the pool's status and transactions.

**Subp. 4. Annual status report.** No later than 60 days after the end of a pool's fund year, a pool must file with the commissioner a statement describing any changes that have occurred in the information filed with its initial application for authority to self-insure, or with the pool's most recent status report. The status report must be filed in a form and according to instructions prescribed by the commissioner.

**Subp. 5. Penalty.** The financial statements and status report required under subparts 1 and 4 are considered together to be a pool's annual statement. This filing and other filings required by parts 2785.0100 to 2785.1600 and related statutes are subject to Minnesota Statutes, section 72A.061, as applicable to licensed insurance companies for comparable filings.

# Department of Commerce

## Proposed Rules Relating to Nonrenewal of Homeowners Insurance

### Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Department of Commerce proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Commerce has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, sec. 14.21.

Persons interested in these rules shall have 30 days to submit comments in support of or in opposition to the rules. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.





The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change.

No public hearing will be held unless twenty-five (25) or more persons make a written request for a hearing within the 30-day comment period. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, sec. 14.14, subd. 1.

Persons who wish to submit comments or a written request for a public hearing should submit them to Bill Kyle, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101. Any person requesting a public hearing should state her/his name and address, identify the portion of the proposed rule addressed, the reason for the request and any change proposed and send this information to the above address.

Authority for the adoption of these rules is contained in Minnesota Statutes, sec. 65A.29. Additionally, a Statement of Need and Reasonableness describing the need for and reasonableness of each provision and identifying the data and information relied upon to support the proposed rules has been prepared and is available upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Richard Gomsrud, Department Counsel, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101.

A copy of the proposed rules is attached to this notice.

Copies of this notice and the proposed rules are available and may be obtained by contacting Richard Gomsrud, General Counsel or Rose Weiner, Secretary, at the above address.

Michael A. Hatch
Commissioner of Commerce

### Rules as Proposed (all new material)

**2880.0050 APPLICABILITY.**

Parts 2880.0050 to 2880.0800 do not apply to commercial dwellings or farms, nor to policies under joint underwriting agreements where one of the insurers is a township mutual.

**2880.0100 DEFINITIONS.**

**Subpart 1. Scope.** For the purpose of parts 2880.0050 to 2880.0800, the terms defined in this part have the meanings given them.

**Subp. 2. Commercial dwelling.** "Commercial dwelling" means a building used primarily to produce income, such as a motel, hotel, or apartment house, but does not include an owner-occupied dwelling of four units or less.

**Subp. 3. Experience period.** "Experience period" means the period of three years immediately preceding the insurer's nonrenewal of a policy of homeowners insurance.

**Subp. 4. Multiline contract.** "Multiline contract" means a single insurance contract which provides coverage for homeowners insurance and for at least one other line of insurance authorized under Minnesota Statutes, section 60A.06, subdivision 9.

**Subp. 5. Nonrenewal.** "Nonrenewal" means an action taken by an insurer on an existing policy, at the end of the policy period, to:

A. terminate the policy;

B. reduce the policy's coverage, unless all the existing policies and those policies to be accepted as new business by the insurer in this state will have the same coverages;

C. increase the policy's deductible, unless all existing policies and those policies to be accepted as new business in this state, by the insurer, will provide for the same higher deductible; or

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D. transfer a named insured from one rating plan to another within the same company, or from one company to another within a group of insurance companies, if the transfer results in a higher premium. A surcharge applied to a premium for a condition which increases the potential for loss, or the deletion of a claims free discount do not constitute a transfer of rating plans.

A policy of homeowners insurance written for a term longer than one year is not subject to nonrenewal until the end of the policy term even if the insurer can rerate the policy annually.

**Subp. 6. Nonrenewal notice.** "Nonrenewal notice" means a written notice to a named insured clearly and expressly informing the named insured of the insurer's intention not to renew the policy as of the renewal date.

**Subp. 7. Policy of homeowners insurance.** "Policy of homeowners insurance" means a policy providing property and liability coverage on dwellings and includes policies which are generally described as homeowners policies, mobile homeowners policies, dwelling owners policies, condominium owners policies, and tenants policies.

**2880.0200 GROUNDS FOR NONRENEWAL.**

No insurer shall refuse to renew a policy of homeowners insurance unless based on one or more reasons which shall be limited to the following:

A. The reasons stated for cancellation in Minnesota Statutes, section 65A.01, subdivision 3a.

B. Use of the premises for an illegal activity.

C. The termination of an agency contract, except as provided under Minnesota Statutes, section 60A.171, unless the insurer assigns the terminated agent's book of business to another agent. The insurer must transfer the policy to another agent if the insured makes a written request prior to the nonrenewal date. Notification of this right must be included in the nonrenewal notice.

D. Violations of local laws or ordinances which increase the possibility of a loss.

E. Refusal of the insured to eliminate known conditions which increase the potential for loss after notification by the insurer that the condition must be removed. Before a nonrenewal notice can be issued under this item, two written requests stating the condition to remove and the reason why the condition increases the potential for loss must be sent to the insured. The first notice must inform the insured as to any time limits for compliance. The second notice must inform the insured of the intent to nonrenew the policy if the condition is not removed.

F. A substantial change in the quality or availability of fire protection services.

G. If the insured has two or more losses during the experience period, but not to include:

(1) losses caused by natural causes including but not limited to lightning, wind, or hail; or

(2) losses for which no payment was made by the insurer; or

(3) losses for which the insurer recovers 80 percent or more of the payment through subrogation.

H. The insurer ceases to write homeowners insurance in Minnesota.

I. Failure of the named insured to provide necessary underwriting information upon written request from the insurer, provided that before a nonrenewal notice can be issued under this item, two written requests asking for the information must be sent to the insured stating the reasons why the information is necessary. The second request must inform the insured of the intent to nonrenew the policy if the information is not received.

J. If real property taxes owing on the insured property have been delinquent for two or more years and continue delinquent at the time notice of nonrenewal is issued.

K. The named insured no longer owns the property or resides at the insured location, unless the spouse resides at the insured location and retains ownership, in which event the spouse will be endorsed onto the policy as the named insured.

If an insurer has grounds to nonrenew a homeowners policy on a primary residence of a named insured, homeowners policies on secondary residences of the insured may also be nonrenewed. Grounds for nonrenewing homeowners policies on secondary residences cannot be used to nonrenew a homeowners policy on the primary residence. If an insured fails to renew the primary residence with an insurer, the insurer may nonrenew the secondary residence.

L. The reasons stated in Minnesota Statutes, section 72A.20, subdivision 13.

**2880.0300 WAIVER OF PENALTIES.**

If an insurer encounters a situation in which the insurer believes that the nonrenewal is not addressed by parts 2880.0050 to 2880.0800, the insurer may seek a waiver of penalties under the following procedure:





A. Notify the commissioner in writing, at least 90 days prior to the policy renewal date, by referring to this part and by stating the reasons for the proposed nonrenewal action.

B. If the commissioner determines that the situation is not covered by parts 2880.0050 to 2880.0800, but warrants a nonrenewal, the penalties in part 2880.0800 must be waived. The commissioner may decline to render an opinion.

C. The waiver of penalty decision must be retained by the insurer. A copy of the waiver of penalty decision must be returned to the commissioner by the insurer with its response to a written complaint made by the insured.

D. The commissioner's decision regarding waiver of penalties will have no bearing on the final decision as to the approval or disapproval of the nonrenewal action.

E. There is no precedential value in the commissioner's action under this part and each request must be judged on individual considerations.

**2880.0400 NONRENEWAL NOTICES.**

A nonrenewal notice must be on a form approved by the department of commerce and the following information must be furnished to the insured on the front of the notice:

A. The specific reasons for the termination, which if based on loss experience must include the date of the loss, the type of loss, and amount of payment.

B. A statement advising the insured of the right of complaint with wording such as: "Minnesota law and rules limit the reasons for which your homeowners insurance policy may be nonrenewed, reduced as to the limits of coverage or coverage eliminated, or for which the policy may be canceled. If you believe this termination notice is in violation of Minnesota law or rule, you may, within 30 days of receiving this notice, send a written letter of complaint to the Commissioner of Commerce."

C. A statement advising the insured of the availability of insurance from the Minnesota Property Insurance Placement Facility with wording such as: "You may be eligible to obtain insurance coverage through the Minnesota Property Insurance Placement Facility. Your agent can assist you in arranging this coverage."

The named insured cannot waive his or her right to receive a nonrenewal notice under the nonrenewal statutes and parts 2880.0050 to 2880.0800.

**2880.0500 VALIDITY OF NOTICE AND NONRENEWAL.**

No nonrenewal and no notice of nonrenewal of a homeowners policy is valid unless done in compliance with parts 2880.0050 to 2880.0800.

**2880.0600 RECORDKEEPING.**

Each insurance company shall keep a register of all nonrenewals and company initiated cancellations, except those for nonpayment of premium. The register must be retained for three years and be available to the commissioner of commerce, or a designee, during business hours at the insurance company's place of business.

**2880.0700 NONRENEWAL OF MULTILINE CONTRACTS.**

Nothing in parts 2880.0050 to 2880.0800 prohibits an insurance company from nonrenewing a multiline insurance contract. However, if parts 2880.0050 to 2880.0800 prevent nonrenewal of the homeowners insurance portion of the contract, then the insurance company shall issue to the named insured a policy of homeowners insurance providing coverage as included in the multiline contract.

**2880.0800 PENALTIES.**

**Subpart 1. Generally.** An insurer failing to comply with parts 2880.0050 to 2880.0800 is subject to the following penalties during each calendar year period:

A. first violation, $100;

B. second violation, $300; and

C. third and subsequent violations, $500.

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**Subp. 2. Waiver.** Monetary penalties will not be levied if the commissioner determines that the nonrenewal notice was based on a good faith judgment supported by evidence that was in the possession of the insurer at the time of the sending of the nonrenewal notice, or if the nonrenewal was subject to the waiver of penalty provisions in part 2880.0300.

**Subp. 3. Additional penalties.** Nothing contained in parts 2880.0050 to 2880.0800 prohibits the commissioner of commerce from applying additional penalties or remedies as may be imposed under Minnesota Statutes, chapter 72A.

## Department of Commerce

### Withdrawal of Proposed Rules Relating to Nonrenewal of Homeowner Insurance

Notice is hereby given that the Proposed Rules Relating to Nonrenewal of Homeowners Insurance published in the *State Register* on Monday, October 8, 1984 at 9 S.R. 721 to 9 S.R. 724 are hereby withdrawn. New prepared rules will be published in their stead.

Michael A. Hatch
Commissioner of Commerce

## Department of Commerce
## Financial Examinations Division

### Proposed Rules Relating to the Operation of Commercial Banks

#### Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Commissioner of Commerce proposes to adopt amendments to the above rules without a public hearing. The Commissioner has determined that the proposed adoption of these amendments will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. §§ 14.21 to 14.28. The amendments including repeal of certain rules are needed to respond to changes already made in state and federal law relating to banking and with particular attention to removing burdensome or unnecessary requirements.

Persons interested in these rules shall have 30 days after publication in the *State Register* to submit comments in support of or in opposition to the proposed amendments. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed amendments may be modified if the modifications are supported by the data and views submitted to the Commissioner and do not result in a substantial change to the proposed language.

Unless twenty-five or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. §§ 14.14 to 14.20, and a notice of the public hearing will be published in the *State Register*.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or requests to:

David A. Shern, Deputy Commissioner
Division of Financial Examinations
Department of Commerce
500 Metro Square Building
Seventh and Robert Streets
St. Paul, Minnesota 55101
(612) 296-2135

Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed.

Authority for the adoption of these rules is contained in Minn. Stat. § 46.01, subdivision 2. A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed amendments and which identifies the data and information relied upon to support the proposed amendments has been prepared and is available from the Deputy Commissioner upon request.





Upon adoption of the final rules without a public hearing, the proposed amendments, this notice, the statement of need and reasonableness, all written comments reviewed, and the final rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to revise a copy of the final rules as proposed for adoption, should submit a written statement of such request to the Deputy Commissioner. Notice of the date of submission of the proposed rules to the Attorney General for review will be mailed to any person requesting to receive the notice. Copies of this notice and the proposed rules are available and may be obtained by contacting Linda Phillips, at the Department of Commerce, 500 Metro Square Building, Seventh and Robert Streets, St. Paul, Minnesota 55101, (612) 297-2548.

A copy of the proposed rules is attached to this notice.

Michael A. Hatch
Commissioner of Commerce

#### Rules as Proposed

**2675.0200 FINANCIAL STATEMENTS.**

~~All unsecured loans of $500 or more in banks of less than $1,000,000 in deposits and unsecured loans of $1,000 or more in banks of $1,000,000 or more of deposits shall be supported by~~ Signed, current financial statements of the borrowers, endorsers, or guarantors~~. Such current financial information is also~~ are required on loans which the commissioner or ~~his~~ an examiner ~~considers~~ determines to be inadequately secured ~~or those which are secured by a chattel mortgage on farm livestock and/or machinery. Such~~ Financial statements ~~shall be~~ are considered current when renewed at least annually ~~as long as such loans remain unpaid at such amounts~~.

**2675.0300 DELINQUENT LOANS.**

**Subpart 1. When delinquent.** ~~Any note, including a real estate mortgage note, in the absence of a properly executed extension, will be considered past due the next day after maturity, unless subsequent interest has been received, in which case the date to which interest has been paid becomes the maturity date. If that date has gone by, the entire note becomes "B" paper, except that after six months it becomes "A" paper.~~ For the purposes of the report of examination of banks, loans, leases, and unplanned overdrafts are considered delinquent and are separated into two distinct groupings as follows:

A. "A" paper consists of all loans and leases which are six months past their maturity, or on which interest or principal is due and unpaid for six months or more, including unplanned overdrafts.

B. "B" paper consists of all other loans and leases which are 30 days, but less than six months past their maturity, or on which interest or principal is due and unpaid for a period of 30 days, but less than six months including unplanned overdrafts. An installment loan will not be considered overdue until at least two monthly payments are due. The same will apply to real estate mortgage loans, term loans, or any other loans payable on regular monthly installments of principal and/or interest.

**Subp. 2. Installment loans Examples of "A" paper and "B" paper.** ~~All notes due on a monthly installment basis are allowed 30 days grace and neither the principal nor payment is considered as past due, if any payment is less than 30 days overdue. However, in the event that a payment runs over 30 days delinquent, the whole principal balance becomes past due and subject to "B" classification, except that if such delinquency runs six months or more, it becomes subject to "A" classification. Interest payments will have no effect to change classification described above.~~ The following examples will illustrate the applications to "A" paper and "B" paper:

A. Single payment notes: Note dated January 2, 1984, due July 2, 1984, with interest to be paid at maturity. If unpaid, the note becomes "B" paper at close of business August 2, 1984, and "A" paper at close of business January 2, 1985.

B. Demand notes: Note dated January 2, 1984, written "due on demand." Interest will be considered to be due every six months, if not otherwise indicated in the body of the note. If interest is unpaid, this note becomes "B" paper at the close of business January 2, 1985.

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C. Installment notes: Note dated January 2, 1984, to be paid in monthly installments beginning February 2, 1984. Allowing one month grace, if the installment due on February 2, 1984, is unpaid, the balance of this note will become "B" paper at the close of business March 2, 1984, and "A" paper at the close of business on August 2, 1984.

**Subp. 3. ~~Demand notes~~ Apportionment.** ~~Demand notes are considered current if no longer than six months have elapsed since the date to which interest was previously paid. Such notes are considered to mature exactly six months from such a date and become past due one day thereafter, unless subsequent interest is received.~~ The overdue figure shall include the total dollar balance of the lease or loan that is not current.

For examination purposes, past due loans that are in a nonaccrual status or that are renegotiated troubled debt are to be apportioned to "A" paper or "B" paper as appropriate.

**2675.0901 REAL ESTATE LOANS-DOCUMENTATION.**

Each real estate secured loan file shall include the following documentation and evidence where the loan is in an amount over $7,500 or not otherwise exempt from the definition of real estate in Minnesota Statutes, section 48.19, subdivision 4:

A. An attorney's opinion, a title insurance policy, or, in the case of Torrens title property, the mortgagee's duplicate certificate of title with memorial of the bank's mortgage thereon is required on all real estate loans which shall describe the status of fee title, the validity of the bank's lien, and the position of the lien.

B. Evidence of adequate insurance coverage with loss payable clause payable to the bank shall be required for mortgages on improved property.

Written binders of insurance are acceptable evidence of insurance. No bank shall refuse to accept a binder tendered at the time of closing as evidence of any insurance coverage required as a condition of a loan agreement if the binder conforms with usual and customary conditions as to designation of loss payee and mortgagor.

C. Real estate appraisal reports are required for each mortgage. The appraisal and the reasonableness of its accuracy is the responsibility of the appraisal committee. The appraisal report and its acceptance by the appraisal committee shall be made part of the mortgage file.

**2675.1100 BOND INVESTMENT RECORDS.**

During the period in which such investment is carried on a bank's books, it shall be required that original invoices of bond purchases and sales be retained as a part of the records of a bank; a record be maintained of all securities bought and sold showing date of purchase or sale, interest rate, maturity, par value, description, from whom purchased, to whom sold, selling price, and where pledged or deposited for safekeeping; ~~and~~ all municipal and corporation bonds owned by a bank be supported by full credit information at the time of purchase; and every sale and every purchase will be considered a separate transaction and trades, switches and securities received under debt readjustment, as well as new purchases, must meet the requirements of these parts.

**2675.1110 ELIGIBLE SECURITIES.**

An obligation of indebtedness which may be purchased for its own account by a state bank, in order to come within the classification of eligible securities within the meaning of this part, must be a marketable obligation. It must be salable under ordinary circumstances with reasonable promptness at a fair value; and with respect to the particular security, there must be present one or more of the following characteristics:

A. a public distribution of the securities must have been provided for or made in a manner to protect or insure the marketability of the issue; or;

B. other existing securities of the obligor must have such a public distribution as to protect or insure the marketability of the issue under consideration; or;

C. in the case of eligible securities for which a public distribution as set forth in item A or B cannot be so provided, or so made, and which are issued by established commercial or industrial businesses or enterprises, that can demonstrate the ability to service such securities, the debt evidenced thereby must mature not later than ~~ten~~ 20 years after the date of issuance of the security and must be of such sound value or so secured as reasonably to assure its payments; ~~and such securities must, by their terms, provide for the amortization of the debt evidenced thereby so that at least 75 percent of the principal will be extinguished by the maturity date by substantial periodic payments. Provided, that no amortization need be required for the period of the first year after the date of issuance of such securities.~~





**2675.1130 INVESTMENT QUALITIES.**

Securities, in order to be eligible for purchase by state banks, must be in the form of bonds, notes, and/or debentures, and must be of recognized investment quality. Eligible securities are those which are included among the four highest ratings of the rating services, and nonrated securities of equivalent value~~, the latter to be determined by the bond department of the Banking Division~~. With regard to the ratings, the following items shall apply:

A. to C. [Unchanged.]

**2675.1140 HOLDING BONDS ON PAR OR FACE VALUE.**

The statutory limitation on the amount of the eligible securities of any one obligor or maker which may be held by the bank, not otherwise exempted by Minnesota Statutes, section 48.24, subdivision 6, is to be determined on the basis of the par or face value of the securities, and not on their book value.

**2675.1150 ~~WHEN~~ PURCHASE ~~PRICE MAY EXCEED PAR~~ OF ASSET AT A PREMIUM OR DISCOUNT.**

~~Subpart 1. Purchase. Purchase of an eligible security at a price exceeding par is prohibited, unless the bank shall:~~

~~A. charge off the premium when the securities are placed on the books; or~~

~~B. provide, for the regular amortization of the premium paid so that the premium shall be entirely extinguished at or before the maturity of the security and the security (including premium) shall at no intervening date be carried at an amount in excess of that at which the obligor may legally redeem such security; or~~

~~C. set up a reserve account to amortize the premium, said account to be credited periodically with an amount not less than the amount required for amortization under item B.~~

~~Subp. 2. Interest and commissions. Accrued interest paid on securities must be charged to interest received. Bond commissions and all costs of sales or purchases must be charged to expense.~~

When assets are purchased at a premium or discount, a bank:

A. shall charge off the premium when the asset is placed on the books; or, provide for the regular amortization of the premium pursuant to generally accepted accounting principles; and

B. may provide for the regular accretion of the discount pursuant to generally accepted accounting principles.

**2675.1180 FOREIGN BORROWERS SECURITIES.**

Purchase of securities of foreign borrowers, whether private, corporate, or governmental, is prohibited with the exception of:

A. [Unchanged.]

B. bonds of the International Bank for Reconstruction and Development, which are payable in dollars of the United States; provided, however, that the total par value of such bonds held by any bank or trust company shall never exceed ~~ten~~ 20 percent of its capital and of its actual surplus fund; provided further, that this part is intended to permit limited purchase of the bonds of the International Bank for Reconstruction and Development only by banks, trust companies, and savings banks;

C. bonds of the Inter-American Development Bank, which are payable in dollars of the United States; provided, however, that the total par value of such bonds held by any bank or trust company shall never exceed ~~ten~~ 20 percent of its capital and of its actual surplus fund; provided further, that this part is intended to permit limited purchase of the bonds of the Inter-American Development Bank only by banks, trust companies, and savings banks; ~~and~~

D. bonds of the Asian Development Bank, which are payable in dollars of the United States; provided, however, that the total par value of such bonds held by any bank or trust company shall never exceed ~~ten~~ 20 percent of its capital and of its actual surplus fund; provided further, that this part is intended to permit limited purchase of the bonds of the Asian Development Bank only by banks, trust companies, and savings banks; and

E. bonds of the African Development Bank, which are payable in dollars of the United States; provided however, that the total par value of such bonds held by any bank or trust company shall never exceed 20 percent of its capital and of its actual

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surplus fund; provided further, that this part is intended to permit limited purchase of the bonds of the African Development Bank only by banks, trust companies, and savings banks.

**2675.2000 BANKS SELLING WITH REPURCHASE AGREEMENT.**

As to repurchase agreements accompanying sales of securities, it is permissible for the bank selling securities to another to agree that the bank shall have an option or right to repurchase the securities from the buyer at a price stated or at a price subject to determination under the terms of the agreement, but in no case in excess of the market value at the time of repurchase.

Except for securities which are the direct obligation of, or obligations that are fully guaranteed as to principal and interest by, the United States government or an agency thereof, it is not permissible for the bank selling securities to another to agree that the purchaser shall have the right or the option to require the bank to repurchase said securities at a price stated or at a price subject to determination under the terms of the agreement, notwithstanding the fact that the bank may also, under such agreement have the right or option to repurchase the securities from the buyer at a price stated or at a price subject to determination under the terms of the agreement.

**2675.2050 PURCHASE OF NONELIGIBLE SECURITIES PROHIBITED; DISPOSITION; EXCEPTIONS.**

The purchase of securities other than eligible securities as defined in part 2675.1110 is prohibited. Any such purchase will be considered a violation of this part and the commissioner ~~of banks, in his discretion,~~ will require that any ~~such~~ noneligible security so purchased be disposed of within a reasonable length of time. No bank shall be permitted to purchase securities of business or municipal corporations that shall have undergone debt readjustment until 12 months shall have elapsed since the effective date of the readjustment. Such securities, if purchased, must also be disposed of. However, the purchase of railroad equipment trust obligations which are not in default either as to principal or interest, or both, and which are considered to be of eligible quality shall not be prohibited.

**2675.2100 CASH ITEMS.**

A daily record shall be maintained of all cash items for anything other than currency or coin being held over until the following day's business and not in the process of being forwarded for collection or being returned to endorsers. No checks shall be held in a bank's cash account to avoid the showing of overdrafts. ~~These daily records shall be retained for a period of at least two years.~~

**2675.2110 BANKING HOUSE.**

~~All new investments in banking quarters must be approved by the commissioner of banks, subject to statutory requirements, whether or not a fee interest is involved, with the exception that subsequent expenditures for improvements or remodeling need not require such approval, provided that the total such charges to this account will not increase such investments to a point where the total will exceed 40 percent of a bank's capital and surplus accounts.~~

A. Investment for banking house and premises requires no prior written approval of the commissioner pursuant to Minnesota Statutes, section 47.10, unless:

(1) the investment is in nonadjacent property, or

(2) the total investment exceeds 50 percent of the bank's capital and paid-in surplus.

B. In determining the total investment in banking premises, the net book value for land, buildings, real estate for future use, leasehold improvements, and leases capitalized according to financial accounting standard board practices are to be aggregated.

C. A bank shall maintain documentation to reflect that investments in banking premises are depreciated or amortized pursuant to generally accepted accounting principles. The documentation shall disclose the period of time the assets are expected to remain on the books, and the accepted practice used to consistently assign the cost and write down the value.

D. Investment in nonadjacent real estate to be used for future banking premises not utilized as intended within five years shall be considered other real estate unless definite plans for utilization are in process and extended time is approved by the commissioner.

E. Prior to December 31, 1985, a bank may, without obtaining approval, restate the net book value of its banking premises to reflect the original cost less any prior write down required under generally accepted accounting principles. Adequate documentation shall be maintained to substantiate any restatement of banking premises. Alternatively, a bank not restating the value of banking premises may write down the remaining net book value pursuant to generally accepted accounting principles.





**2675.2130 FURNITURE AND FIXTURES, PERSONAL PROPERTY, AUTOMOBILES, AND EQUIPMENT.**

Purchases capitalized in this account shall be amortized ~~at the minimum rate of ten percent annually~~ as required by generally accepted accounting principles, ~~with such exceptions~~ or a greater amount as may be ~~made~~ approved in writing by the commissioner ~~of banks. Each such annual charge shall be based on the remaining book value at the end of each year~~ Furniture and fixtures, personal property, automobiles, and equipment used in the conduct of banking business may be acquired by purchase or lease without obtaining prior approval of the commissioner unless the seller or lessor has an existing direct or indirect interest in the management or ownership of the acquiring bank.

**2675.2140 LEASEHOLD INVESTMENT AMORTIZATION.**

~~A~~ Leasehold ~~investment which has been approved by the commissioner of banks~~ investments shall be amortized ~~over the period of the lease~~ as required by generally accepted accounting principles. Leasehold investments receiving prior approval pursuant to Minnesota Statutes, section 47.10, subdivision 3, are subject to further prior approval of renegotiated and amended terms. If there is an optional clause in such lease for an additional period to be covered thereby, this shall serve to extend the amortization period to such extent. ~~In no event, however, shall the rate of amortization be less than five percent or less than four percent if the total of a bank's investment in banking quarters be more than 40 percent of its capital and surplus accounts.~~

**2675.2170 OTHER REAL ESTATE.**

Other real estate:

A. Any real estate acquired or owned by a bank ~~through foreclosure; conveyed to a bank as satisfaction of a debt previously contracted, or acquired by a bank in any legal manner in satisfaction of debts previously contracted~~ (1) pursuant to Minnesota Statutes, section 48.21, clauses (2) to (5); (2) not used in the business resulting from relocation of the principal office, or closing of a detached facility; or (3) abandonment of plans to use real estate acquired for future expansion, shall be designated as "other real estate." The property acquired pursuant to (1) shall be so designated from the date upon which the bank actually acquires title. Property owned pursuant to subitems (2) and (3) shall be so designated from the date the determination is made to divert or abandon as actual operating bank premises.

B. "Other real estate" ~~cannot~~ shall not be entered upon the books of a bank at an amount greater than the balance of the principal amount of the indebtedness at the time of acquisition or the remaining book value if owned. In any case, the book value of other real estate shall never exceed the estimated fair market value of the property. The fair market value shall be determined by an appraisal prepared by an independent qualified appraiser within 30 days of acquisition. The appraisal shall be made part of the other real estate file.

C. ~~A chargeoff of ten percent of the original amount at which the "other real estate" was placed on the books shall be made annually at the close of each calendar year. The chargeoff for the first calendar year of ownership shall be an amount to be arrived at by using the same percentage to the full annual chargeoff requirements as the number of months investment has been on the books is to a 12 month period~~ Reasonable attempts shall be made to dispose of other real estate by sale. The other real estate file shall be documented with disposal attempts. In no case, is depreciation required on other real estate, but it shall be removed from the books within five years after acquisition.

D. "Other real estate" sold on contract for deed ~~must~~ may be carried as ~~"other real estate" until at least 25 percent of the purchase price has been paid in cash, after which it may be transferred to loans and discounts~~ a loan at the lesser of the principal balance due on the contract, or at its present book value. Loss on sale of "other real estate" shall be recognized in the period the sale occurs. Gains on sale of other real estate shall be either accreted ratably on the same basis as repayment, or may be deferred until title is transferred to the buyer.

E. ~~It is required that a bank have an abstract of title, continued to show title in the bank on each item of "other real estate." Insurance should be obtained where necessary and taxes must be kept current if the "other real estate" is carried as an asset.~~

~~Bank must also have an attorney's opinion or equivalent evidence to show the status of its ownership as to other possible existing liens against each property~~ "Other real estate" shall be documented with an attorney's opinion or equivalent evidence

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to reflect title and all encumbrances. Adequate property and liability insurance shall be carried, and taxes shall be kept current.

**2675.2200 CHARGED OFF ASSETS; DUAL CONTROL.**

**Subpart 1. Record.** A complete record of charged off assets shall be maintained on which all recoveries shall be shown. This record shall also cite authority of directors with regard to any debts that have been compromised, and include signed compromise agreements, if it is possible to obtain them.

The original records of charged off assets shall be maintained under dual control to effect any entry subsequent to the board's charge off resolution.

**Subp. 2. and 3.** [See repealer.]

**2675.2220 ADDITIONAL COMMON STOCK SALES.**

Any bank which increases its common capital account by means of the sale of additional common stock need not carry such funds in any other bank but may carry them on its own books among demand liabilities and furnishing appropriate certificate to the commissioner ~~of banks~~ as to the total paid in.

**2675.2240 DIVIDENDS.**

The dividend period for the purpose of declaring dividends in accordance with ~~the provisions of~~ Minnesota Statutes, section 48.09 shall be the period commencing on January 1 and ending as of the close of business December 31 of each calendar year and the net ~~profits~~ income for each such period shall be determined from the ~~annual earnings and dividends reports~~ consolidated report of income of each bank.

The ~~Division of Banking~~ Department of Commerce will supply each bank with forms to be completed with information called for ~~by such~~. The forms ~~and returned~~ must be mailed or delivered to the commissioner ~~of banks~~ within ten days of the date of declaration of any dividend and at least 15 days prior to the proposed payment date of any dividend. The forms shall contain a statement by the commissioner ~~of banks~~ providing that if certain requirements as set forth therein are met, the bank may pay a cash dividend or dividends without specific approval of the commissioner ~~of banks~~ in the year succeeding the dividend period in such amount or amounts as will not reduce the bank's capital, surplus, undivided profits, and reserves below such requirements. Except as provided in the preceding sentence, no bank or trust compaany shall pay a cash dividend to its stockholders until written approval for ~~such~~ the dividend has been obtained from the commissioner ~~of banks~~.

~~The Division of Banking will supply forms to each bank which shall, within ten days of the date of declaration of any dividend, report to the commissioner of banks the date of declaration, the rate and amount of the dividend, and the date on which such dividend is payable~~ Declared dividends shall be deducted from undivided profits and carried on the books as another liability entitled "dividends payable." The other liability account shall be reversed upon payment or nonapproval by the commissioner.

**2675.2246 CERTIFICATE OF DEPOSIT OF OTHER ~~BANKS~~ FINANCIAL INSTITUTIONS.**

~~Where a bank incurs a direct liability to another bank by an issuance of a certificate of deposit, such must be carried on its books as "bills payable."~~

Where a bank makes a direct investment in a certificate of deposit of another ~~bank~~ financial institution, such investment shall not exceed its legal lending limit as provided in Minnesota Statutes, section 48.24 ~~and shall also be carried under "other assets."~~; however, this limitation shall apply only to that portion, if any, of the investment which is not insured by an agency of the United States.

**2675.2250 OVERDRAFTS; OFFICERS OR EMPLOYEES.**

~~Overdrafts:~~

~~A. All checks which are to be honored by a bank shall be charged to the proper account on the same or next business day after receipt.~~

~~B. Checks which are not paid because of causing overdrafts shall be returned to the proper endorser before the close of the next business day after receipt.~~

~~C. Such checks as have been referred to in item B shall at no time be carried as cash items, beyond midnight of the next business day after receipt, but returned to respective endorsers, excepting in instances where checks are cashed over the counter and there is no opportunity to return them to the endorser.~~

~~D.~~ No overdraft shall be permitted to an officer or employee of a bank with the exception of those which occur in the ordinary course of posting and are reimbursed during the same or following business day. Overdrafts originating and disposed of in this manner shall not be construed as being in violation of Minnesota Statutes, section 48.08.

**2675.2420 ~~INSURANCE COMMISSION~~ OTHER BUSINESS; EXPENSE REIMBURSEMENT AGREEMENTS.**

If an officer of a bank is acting as an insurance agent ~~and such~~, acting to effect transactions in securities or the business of an insurance agency or securities broker-dealer not owned by the bank is being conducted on the banking premises, there must be an arrangement as to allocating overhead expenses or as to distribution of net earnings and ~~to~~ be included in an appropriate board resolution. The allocations may include the credit insurance income required to be turned over to the bank pursuant to Minnesota Statutes, section 47.016, or commissions.

**2675.2500 DISPLAY AND REPLACEMENT COPIES.**

Every bank shall display its bank charter in a prominent place in the lobby. In case of destruction or misplacement of the charter, the ~~Division of Banking~~ commissioner will supply a duplicate, upon application, ~~without~~ at the cost set out in Minnesota Statutes, section 46.131, subdivision 10.

**REPEALER.** Minnesota Rules, parts 2675.0700; 2675.0800; 2675.0900; 2675.0910; 2675.0920; 2675.0930; 2675.0940; 2675.0950; 2675.1160; 2675.2010; 2675.2020; 2675.2030; 2675.2060; 2675.2070; 2675.2080; 2675.2090; 2675.2120; 2675.2150; 2675.2160; 2675.2190; 2675.2200, subparts 2 and 3; 2675.2230; 2675.2290; and 2675.2410 are repealed.

# Department of Energy and Economic Development

## Proposed Emergency Rules Governing Energy Financial Assistance

### Notice of Intent to Adopt Emergency Rules and Request for Public Comment

Notice is hereby given that the Minnesota Department of Energy and Economic Development is proposing to adopt emergency rules for the Energy Loan Insurance Program and the Energy Development Loan Program. The agency is authorized by Minnesota Statutes 116J.91 Subdivision 8 (1983 Supp) and 116J.91 Subdivision 4 (1983 Supp as amended Minnesota Laws 1984 Chapter 583 Section 17) to adopt emergency rules for the Energy Loan Insurance Program and the Energy Development Loan Program.

All interested parties have 25 days from the day of publication of this notice in the *State Register* to submit written comments to the agency on the proposed emergency rules. With publication of this notice in the November 5, 1984 *State Register*, written comments must be received by the agency no later than 4:30 p.m. on November 30, 1984. Written comments should be sent to:

Kathryn Hahne
Energy Finance Division
Department of Energy & Economic Development
900 American Center Building
150 East Kellogg Blvd.
St. Paul, Minnesota 55101
Telephone: (612) 297-1391

Please be advised that the proposed emergency rules may be modified as a result of the comments received. Any written material received by the agency will become part of the record in this matter.

The proposed emergency rules with any modifications adopted by the agency, will be submitted to the Attorney General for review as to form and legality after close of the comment period. Persons wishing to be informed of the date of submission of the proposed emergency rules to the Attorney General should notify the agency of such desire at the address given above. The Attorney General has ten working days to approve or disapprove the rules.

The emergency rules will be effective five working days following approval of the rules by the Attorney General. It is the agency's intent to keep the rules in effect for a period of 180 days upon publication of a separate notice to such effect.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

State of Minnesota
Department of Commerce

In the Matter of Proposed Rules Governing Homeowners Insurance Nonrenewal Pursuant to Minn. Stat. § 65A.29.

STATEMENT OF NEED AND REASONABLENESS OF PROPOSED RULES

## STATEMENT OF AUTHORITY

Minnesota Statutes § 65A.29, provides that insurers may not refuse to renew policies of homeowners insurance except in certain specified situations. As amended by Minnesota Laws 1984, ch. 602, §§ 2-4, subdivision 8 of Minnesota Statutes § 65A.29 provides that the Commissioner of Commerce may adopt rules pursuant to Chapter 14 (the Administrative Procedures Act) to further specify the permissible grounds for nonrenewal of homeowners policies.

The rules as proposed set forth the criteria for nonrenewal of homeowners insurance policies based upon the statutory directions of Minnesota Statutes § 65A.29.

## FACTS ESTABLISHING ESTABLISHING NEED AND REASONABLENESS

### Part 2880.0050 Applicability.

This part specifies that the purpose of these rules is to protect insured owners of private dwellings. Therefore, insurance policies for commercial dwellings and farms and other instances not

commonly understood to be homeowners policies are excluded. Such commercial policies are usually of a different type and nature as to their underwriting standards, notes and similar criteria. Commercial insureds are usually better able to negotiate the terms and conditions of their insurance policies than the owners of private dwellings. The inclusion of commercial policies would require the consideration of many additional factors than policies on private dwellings. These rules would be inadequate for dealing with commercial policies. Separate rules would be necessary if commercial policies were subject to the statutory requirements of § 65.29.

Definitions. Part 2880.0100

Subpart 1. Scope. The scope section states that for the purposes of parts 2880.0050 to 2880.0800 the definitions in part 2880.0100 are applicable.

Subpart 2. Commercial Dwelling. This subpart defines commercial dwellings to be a building used primarily to produce income, such as a motel, hotel or apartment house, but does not include an owner-occupied dwelling of four units or less. Because it was the intent of these rules to exclude commercial dwellings from their application but to include private dwellings certain instances in which the dividing line between the two might be questionable needed to be dealt with. Accordingly, criteria of a dwelling as an income producer is deemed to be the best standard to measure a commercial dwelling by. However, the instances in which an owner might occupy part of that income producing building needed to be dealt with. To

preclude an overreaching of the scope of the rules a manageable standard had to be applied where the owner occupied part of an income producing property so that all income producing property in which the owner occupied even the smallest portion would not be included. It was deemed that a four unit or less dwelling would be the maximum extension of these rules without violating their purpose.

Subpart 3. Experience Period. Experience period is deemed by these rules to be the period of time which may be used by an insurer in determining the basis for nonrenewing a homeowners insurance policy. The period of three years is used because it is generally an accepted standard in the insurance industry at this time to use the past three years experience when underwriting new business. Using the three year experience period for nonrenewal would make this period consistent with other practices in the industry. A longer period than three years would allow an insurer to use events and other criteria which are outdated and unrelated to the risk that the insurer is subjected to by continuing to insure the policyholder at the present time. A shorter period of time than three years would not allow the insurer to take cognizance of patterns or experiences that would be indicative of the insurer's risk in continuing to insure the policyholder.

Subpart 4. Multiline Contract. This subpart defines the term "multiline contract" as a contract incorporating various types of coverages which traditionally have been sold as separate insurance policies but are now sometimes sold as a package. For example, home-

owners and automobile policies may be combined to afford coverage for both exposures under one policy. The definition recognizes current industry practices.

Subpart 5. Nonrenewal. This subpart defines a nonrenewal as being a termination action at the end of a policy period. The definition is broadly drafted to include various actions that effectively constitute nonrenewal whether or not they are so specified by the insurer in the notice. The definition carries out the intent expressed in the statute.

Subpart 6. Nonrenewal Notice. This subpart defines the nonrenewal notice as being a written notice informing the named insured of the insurer's intention to terminate the policy as of the renewal date.

Subpart 7. Policy of Homeowners Insurance. This subpart defines a homeowners policy as one providing property and liability coverage on dwellings, and includes policies with generic titles such as mobilehomeowners, dwelling owners, condominium owners and tenants policies. The definition does not include dwellings used for commercial purposes, nor farms.

Part 2880.0200. Grounds for Nonrenewal.

This part sets forth the specific permissible grounds for the nonrenewal of a homeowners insurance policy.

Item A provides that an insurer can nonrenew a homeowners insurance policy for the same reasons that it can cancel that same policy pursuant to Minn. Stat. § 65A.01, Subd. 3a. It would be

ridiculous to state that a policy could be cancelled but it could not be renewed for the very same reasons. The only result would be that the insured would be cancelled rather than nonrenewed. The result would be the same it would only be the semantic difference as to whether or not the insured was cancelled or nonrenewed.

Item B allows nonrenewal if the insured premises is used for illegal activity. This recognizes the right to nonrenew when there is a high risk situation. Since an illegal activity is never a contemplated activity by an insured when a homeowners insurance policy is issued, such types of activity are outside the scope of the intended risk insured against and the insurer is therefore not properly able to evaluate its risk nor could it agree to insure for an illegal activity.

Item C allows nonrenewal if the agency contract between the insurer and an independent agent is terminated. An independent agent, by contract, owns the book of business, in contrast to an exclusive agent in which case the insurer owns the book of business (the various insurance policies which he has sold). In the usual case involving an exclusive agent who is terminated, the book of business is transferred to another exclusive agent of that company, thus no nonrenewal occurs. The company wishes to continue the business. In the instance of an independent agent, that agent wishes to keep the business for himself and will in most cases try to encourage his clients to insure with a new company that he is licensed to write policies for. To protect the insured from the problems that arise between the agent and the company and also to take care of situations where an exclusive agent's business is not

transferred to a new agent, the rules provide that the insured be notified of their right at the time of cancellation, to require a transfer of their policy to another agent of that company. This makes the insured's rights to continued coverage with that company paramount over whatever rights the insurance agent may have in the insurance business and also does not allow an insurance company to cancel or nonrenew insureds under the guise of the termination of an agency contract, for reasons other than those allowable under the rules. The insured can make a written request to the insurer, requiring the insurer to transfer the policy to another agent for the company.

Item D allows nonrenewal if the insured violates local laws or ordinances which increase the possibility of a loss. This recognizes the right to nonrenew when there is a high risk situation.

Item E allows nonrenewal when the insured refuses to eliminate known conditions which increase the potential for loss after notification by the insurer of the existence of the condition. Two written requests stating the requirement that the condition be removed must be sent to the insured. The first request must inform the insured of any time limits for compliance; and the second request, if necessary, must inform the insured of the intent to send a nonrenewal notice if the condition is not removed.

Item F allows for nonrenewal if a substantial change in the quality or availability of fire protection occurs. This recognizes the right of an insurer to nonrenew where there is a significant increase in the risk.

Item G allows for nonrenewal if the insured has two or more losses during the experience period. Losses which cannot be used as a basis for nonrenewal are: those losses caused by natural causes, including but not limited to lightning, wind, or hail; losses for which no payment was made by the insurer; or losses for which the insurer recovers 80% or more of the payment through subrogation. This recognizes the insurer's right to nonrenewal based upon past experience. This recognizes the probability that what has occurred in the past has the potential for occurring in the future.

Item H allows all insureds of a particular insurer to be nonrenewed if the insurer ceases to write homeowners insurance in Minnesota. This allows the insurer to cease doing business in Minnesota and not be forced to continue to write business because of the nonrenewal rules.

Item I allows nonrenewal for failure to provide the insurer with sufficient information necessary to properly classify and rate the risk. Two written requests asking for the information must be sent to the insured, the second request must inform the insured of the intent of the insurer to send a nonrenewal notice if the information is not received. This allows the insurer to nonrenew when the insured prevents the insurer from determining the risks involved.

Item J allows nonrenewal if real property taxes have been delinquent for two or more years and continue to be delinquent at the time the nonrenewal notice is issued. This section acknowledges that failure to pay real estate taxes may be indicative of the fact that the insured is also not either expending funds or have the funds available to take appropriate cautions and safeguards in regard to

maintaining the property. It also can be deemed to be indicative of the insured's deteriorating financial circumstances which may make arson for profit attractive.

Item K allows nonrenewal when the named insured no longer owns or resides at the insured property. If a spouse continues to reside at the insured property and retains ownership, the policy will be endorsed to make the spouse the named insured instead of allowing a nonrenewal. This subpart recognizes that homeowners policies are underwritten and rated based on the named insured being a resident of the insured property and that they are eligible for only one homeowners policy at a time. The exception to the single homeowners policy requirement is the case of an insured who owns a secondary residence, in which case a second homeowners policy is issued on the secondary residence. An insurer is allowed to nonrenew the secondary residence if there are grounds to nonrenew the primary residence, but grounds sufficient to nonrenew a secondary residence cannot be used to nonrenew a primary residence. An insurer can also nonrenew a secondary residence if the insured fails to nonrenew the primary residence homeowner policy. Insurers do not actively solicit dwellings used as secondary residences, because of the added exposure to theft and vandalism due to being unoccupied much of the time, and usually only insure secondary residences as an accomodation to their insureds.

Item L incorporates the reasons stated in Minn. Stat. § 72A.20, subdivision 13 which does not allow nonrenewal of a homeowners policy based solely on the location of the property or the age of the primary structure.

Part 2880.0300. Waiver of Penalties.

This part provides a mechanism by which nonrenewal for purposes not specified in the proceeding parts may be attempted where the insurer feels such renewal is appropriate and the penalty for improper nonrenewal waived. The insurer must follow the procedures set forth to convince the commissioner to waive the penalties for nonrenewal. Waiver of the penalties does not affect the right of the insured to appeal a nonrenewal nor does it preclude the commissioner from disapproving the renewal. Instead, it provides a mechanism to allow the insurer, in advance, and when acting in a nonarbitrary and noncapricious manner, to avoid monetary penalties if the nonrenewal is later disallowed.

Part 2880.0400. Nonrenewal Notices.

This part specifies the form of the nonrenewal notice and the information it must contain. The specific reason for the non-renewal must be on the front of the notice. If the reason for the termination is based on loss experience, the date of the loss, the type of loss and the amount of payment must be included on the notice. Statements must be included in the notice informing the insured of the right to complain to the commissioner of commerce, if the insured believes and the nonrenewal is in violation of Minnesota law or rules, and also of the availability of the Minnesota Property Insurance Placement Facility, commonly referred to as the FAIR Plan.

These requirements allow the insured to evaluate the correctness of the nonrenewal and to be aware of all rights that are available in contesting the nonrenewal.

Part 2880.0500. Validity of Notice and Renewal.

This part negates a nonrenewal notice unless it is in compliance with parts 2880.0050 to 2880.0800. This item, along with monetary penalties, encourage insurers to comply with the rules.

Part 2880.0600. Recordkeeping.

This part requires the insurer to keep records of company initiated terminations for a period of three years to assure compliance with these rules and the statutes. This provides the commissioner of commerce with a means to assure compliance on a company-wide basis, or after discovering a high number of improper nonrenewals, to contact other insureds who may not have complained of their nonrenewals to assure that all their rights were granted.

Part 2880.0700. Nonrenewal of Multiline Contracts.

This part requires an insurer nonrenewing a multiline contract which contains homeowners coverage to issue a homeowners policy unless the multiline contract was terminated for reasons allowed in these rules. This precludes a situation where homeowners

coverage could be nonrenewed even though the nonrenewal would not be justified on its own merits. It forecloses the possibility of nonrenewal for reasons other than those specified in these rules.

Part 2880.0800. Penalties.

Subpart 1 sets penalties for violations of the rules. This subpart creates an incremental penalty for each violation during any calendar year with the first violation incurring a $100 penalty; the second violation a $300 penalty; and a $500 penalty for the third and all subsequent violations. The intent of this is to make each violation more expensive than the last and to deter continued violations because of the increasing cost.

Subpart 2 allows waiver of penalties by the commissioner based upon a showing of good faith on the part of the insurer and adequate proof as to the reasonable basis for that good faith. Penalties may also be waived if compliance with Part 2880.0300, previously described, is shown. This method allows the penalty to more appropriately fit the situation.

Subpart 3 recognizes and clarifies that the commissioner is not limited to the penalties set forth in these rules but may apply such other remedies as are available under Minn. Stat. § 72A, which allows the commissioner to issue cease and desist orders; rescind certificates of authorities and levy other fines if necessary. This precludes any ambiguity as to the commissioner's powers under the rules and the effect of the rules.

## SMALL BUSINESS CONSIDERATIONS

Minnesota Statutues § 14.115 requires that the impact of proposed rules on small businesses be considered in the development of those rules. Specifically, the statute, at subdivision 2, requires that less stringent compliance standards and reporting requirements for small businesses be considered. The statute also requires that methods designed to reduce the impact of the rules on small businesses be incorporated into the rules if they are feasible and consistent with the statutory objectives associated with the rules.

Despite the lack of comments, the Department considered whether the provisions of the rule might be modified to accomodate the interests of small businesses.

If a small business is authorized to insure it would be affected by the rule's requirements. Very few, if any, insurance companies would qualify as a small business. Consideration was given to possible ways in which the requirements might be relaxed for small businesses or amended to reduce any burden on small businesses. It was concluded, however, that the requirements of the rule are necessary to the attainment of the statutory objectives upon which the rules are based. The statutory objective upon which these rules are based is to limit the grounds upon which all insurers may nonrenew homeowner policies. The insured's protection is uppermost in the intent of Minnesota Statute § 65A.29, subdivision 8. It was determined that no requirements of the rules could be relaxed for insurers

that might be small businesses without reducing the protections granted to their insureds. If the public perception then became that they would have less protection if their policy was with an insurer that was a small business the result could be a disinclination to purchase a policy from such a company.

Each of the methods described at Minnesota Statutes § 14.115, subdivision 2 (a) - (3) was considered in proposing the rule. The provisions contained in the proposed rule are believed to be necessary to achieve the legislative purposes.

In the Matter of the Proposed Adoption
of Rules Governing Homeowners Insurance
Nonrenewal

STATEMENT OF
COMPLIANCE WITH
RULEMAKING PROCEDURES

I, Thomas F. Pursell, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Thomas F Pursell

Special Assistant Attorney General

Dated: 6-5-85

In the Matter of the Proposed Adoption of Rules Relating to Homeowners Insurance Nonrenewal

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA )
) ss.
COUNTY OF RAMSEY )

Richard G. Gomsrud, being first duly sworn, desposes and says:

That on the 30th day of May, 1985 in the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Submission to the Attorney General by depositing in the State of Minnesota Central Mail System for United States mailing at the City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, to all persons and associations who requested notice that the rules in the above-entitled matter have been submitted to the Attorney General.

Richard G. Gomsrud

Richard G. Gomsrud

Subscribed and sworn to before me this 30th day of May, 1985.

Marilyn J. Robinson

MARILYN J. ROBINSON
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Commission Expires June 18, 1987

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

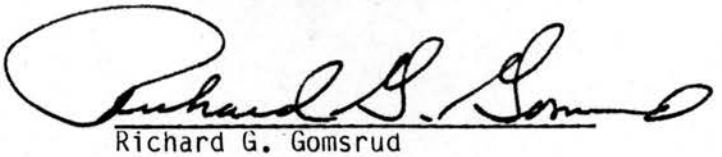
In the Matter of the Proposed Adoption of Rules Relating to Homeowners Insurance Nonrenewal

NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

Pursuant to your request and inaccordance with Minn. Stat. Section 14.26:

PLEASE TAKE NOTICE THAT THE above-captioned rules have been submitted to the Office of the Attorney General on this date, May 30, 1985, for review as to form and legality. Pursuant to Minn. Stat. Section 14.26, the Attorney General will approve or disapprove the rules within 14 calendar days after receipt. If you desire to comment on the legality of the above-captioned rules, you should direct comments to the Office of the Attorney General, G-25 State Administration Building, 50 Sherburne Avenue, St. Paul, Minnesota 55155, (612) 296-7030.

If you are interested in determining what changes, if any, were made in the proposed rules after publication in the State Register and before submission to the Attorney General, you may contact Richard Gomsrud, Department of Commerce, 500 Metro Square Building, St. Paul, Minnesota 55101, (612) 296-5689.



Richard G. Gomsrud

In the Matter of the Proposed Adoption of
Rules Relating to Homeowners Insurance
Nonrenewal

STATEMENT OF
RICHARD G. GOMSRUD

The undersigned is Department Counsel for the Department of Commerce. As part of my duties I supervised the promulgation of the above captioned rules.

As a result of the Notice to Solicit outside Opinions, meetings were held with various groups and persons in regard to the proposed rules. No written comments were received in regard to the Notice. As a result of these discussions, proposed rules were published in the State Register on October 8, 1984.

During the comment period after publication certain problems with the rules were brought to the department's attention. As a result of this, the rules published on October 8, 1984 were withdrawn and new rules correcting the problems were published on November 5, 1984 in the State Register.

No comments or requests for hearing were received in regard to the rules published on November 5, 1984 at 9 S.R. 721.

May 29, 1985

Richard G. Gomsrud