

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

File No. 1554 Docket # 05-0009-0119

DATE RECEIVED 12/19/88 ADOPTED W/O HEARING X

REVIEW DATE 12/28/88 EMERGENCY RULE _____

DUE DATE 1/3/89 REVISOR APPROVED X

APPROVED 12/28/88 JEA REVISOR DISAPPROVED _____

DISAPPROVED _____ FILED W/SEC. OF STATE _____

WITHDRAWN _____ RETURNED TO AGENCY _____

✓ Rule as adopted (4 copies)

_____ ~~Notice to Solicit Outside Information/Opinion (if applicable)~~

_____ Date published in State Register

_____ Comments

_____ ~~Petition for Adoption of a Rule (if applicable)~~

_____ ~~Board's Authorizing Resolution~~

_____ ~~Date adopted~~

✓ Proposed Rule

yes Revisor's Certificate

✓ Notice of Intent to Adopt Rule

340.409
45.023 Statutory Authority

yes Small Business Statement

no Expenditure of public money statement

yes Signature

✓ Statement of Need and Reasonableness (if applicable)

yes Small Business Statement

N/A Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule

5/17/88 Date (30)/25 days before adoption

~~yes~~ Notice attached

_____ ~~Copy of rule or summary attached~~

✓ Publication in State Register

5/23/88 Date (30)/25 days before adoption

_____ 180-day deadline from:

6/22/88 end of comment period (§ 14.26) (rules without hearing)

_____ ~~effective date of statutory authority (§ 14.29) (emergency rules)~~

_____ ~~Resolution Adopting~~

_____ ~~Date adopted~~

✓ Findings of Fact, Conclusions & Order Adopting

8/29/88 Date

✓ Written requests, submissions or comments (1)

✓ Declaration of attorney

A. Gilbert Name of SAAG representing agency

✓ Notice of Submission to Atty. Gen. (if applicable)

✓ Aff. of Mailing Notice to Atty. Gen. (if applicable)

SF-00006-05 (4/86)

DEPARTMENT : of Commerce

STATE OF MINNESOTA

Office Memorandum

DATE : 12/16/88

TO : A.G. Admin.

FROM : Richard G. Gomsrud

PHONE : 296-5689

SUBJECT : Higher Inability Assigned Risk Plan Rate Rules

Enclosed are copies of the following materials regarding the above captioned rules:

1. Notice of Intent to Solicit Outside Opinion as published in State Register (2010.0300 A)
2. Copy of the Proposed Rules with Revisor's Certificate (2010.0300 D)
3. Notice of Intent to Adopt Rule Without Public Hearing (2010.0300 E)
4. Statement of Need and Reasonableness (2010.0300 F)
5. Affidavit of Mailing Notice of Intent to Adopt Rule Without Public Hearing (2010.0300 G)
6. Copy of Notice of Intent to Adopt Rule Without Public Hearing and Rules as published in the State Register (2010.0300 H)
7. Four copies of Rule as adopted (2010.0300 I)
8. Findings of Fact, Conclusions & Order Adopting Rule (2010.0300 K)
9. Written Comments, Submission & Requests on Rule (2010.0300 L)
10. Declaration of Attorney General (2010.0300 M)
11. Notice of Submission to Attorney General (2010.0300 N)
12. Affidavit of Mailing Notice of Submission to Attorney General (2010.0300 O)

Missing

Recd 12/19/88 RGG

ATTORNEY GENERAL

January 3, 1988

RICHARD G. GOMSRUD
Department of Commerce

JACQUELYN E. ALBRIGHT
Special Assistant
Attorney General

6-9715

In the Matter of the Adopted Rule Relating to
Liquor Liability Assigned Risk Plan Rates

The above-referenced rule has been approved as to its legality by the Attorney General on December 28, 1988.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies with the Secretary of State who will forward one copy to the Revisor of Statutes. The fourth 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 accoradance 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.

JEA:rer
Enclosures

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

William Brown
Chief Administrative Law Judge
Office of Administrative Hearings

Department of Commerce

Adopted Permanent Rules Relating to Liquor Liability Assigned Risk Plan Rates

Rules as Adopted

2783.0060 RATING PLAN.

Rates Applicable To Minimum Coverage Required By Minnesota Statutes, Section 340A.409, Subdivision 1

Assigned Risk Liquor Liability Rates

Rate For Three or Fewer Incidents In The Last Three Years

Limits	Package Goods	Restaurants	Bars
50/100	$ .34	$1.17	$1.70

Rate For More Than Three Incidents In The Last Three Years

Four Incidents

50/100	$6.25

Each incident after the fourth incident will cause the rate charged to be increased by 20 percent over the rate charged for one less incident

For purposes of the rating plan, no experience or scheduled credits apply.

A combined bar and package establishment is rated as a bar for purposes of the plan.

A restaurant for purposes of the rating plan is a liquor vendor whose revenue from liquor sales is less than 50 percent of its combined liquor and food sales.

A bar for purposes of the rating plan is a liquor vendor whose revenues from liquor sales is 50 percent or more of its combined liquor and food sales.

An incident is either a loss or a violation. A loss and the violation that resulted in that loss are deemed to be one incident for purposes of the rating plan. A loss shall not be considered an incident for purposes of the rating plan if the circumstances which resulted in that loss would not result in a

loss at the time of application to the assigned risk plan because state law prohibits recovery by an insurance company against any liquor vendor under subrogation clauses of the uninsured, underinsured, collision, or other first party coverages of a motor vehicle insurance policy as a result of payments made by the company to persons who have claims that arise in whole or in part under Minnesota Statutes, section 340A.801. The applicant shall have the burden of proof to establish that a loss which occurred prior to the adoption of Minnesota Statutes, section 340A.801 should not be classified as a loss.

The rates charged by the assigned risk plan shall not be deemed to be the maximum rates allowed to be charged for liquor liability insurance in Minnesota.

Upon adoption of this chapter any certificate of coverage previously issued by the assigned risk plan shall be subject to retroactive rebate, dividend, surcharge or other charge as may be necessitated by the adoption of this rating plan. Premiums for certificates of coverage previously issued shall be determined as if this rating plan were in effect at the time of issuance of the certificate of coverage.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

DEC 29 1988

Joan Anderson Growe
Secretary of State

1:55 PM

APPROVED AS TO FORM AND LEGALITY

Dec. 28 19 88

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Jacquelyn E. Albright
SPECIAL ASSISTANT ATTORNEY GENERAL

Findings

No stmt re.: ~~request for submission to Ag~~ Ask Rita significance

Ask if — that the SONAR was prepared before the notice of intent was mailed

— Checked w/ A. Gilbert 12/88 — SONAR was prepared b4 notice of intent sent out.

Comments

You may be getting a comment from the same firm which ~~sent~~ submitted their comment to the agency.

Authority

340A.409

45.023.8k

Department of Commerce

Proposed Permanent Rules Relating to Liquor Liability Assigned Risk Plan Rates

Rules as Proposed

2783.0060 RATING PLAN.

Rates Applicable To Minimum Coverage Required By Minnesota Statutes, Section 340A.409, Subdivision 1

Assigned Risk Liquor Liability Rates

Rate For Three or Fewer Incidents In The Last Three Years

Limits	Package Goods	Restaurants	Bars
50/100	~~$-.42~~ $ .34	~~$1.52~~ $1.17	~~$1.89~~ $1.70

Rate For More Than Three Incidents In The Last Three Years

Four Incidents

Limits	
50/100	$6.25

Each incident after the fourth incident will cause the rate charged to be increased by 20 percent over the rate charged for one less incident

For purposes of the rating plan, no experience or scheduled credits apply.

A combined bar and package establishment is rated as a bar for purposes of the plan.

A restaurant for purposes of the rating plan is a liquor vendor whose revenue from liquor sales is less than 50 percent of its combined liquor and food sales.

A bar for purposes of the rating plan is a liquor vendor whose revenues from liquor sales is 50 percent or more of its combined liquor and food sales.

An incident is either a loss or a violation. A loss and the violation that resulted in that loss are deemed to be one incident for purposes of the rating plan. A loss shall not be considered an incident for purposes of the rating plan if the circumstances which resulted in that loss would not result in a

Approved by Revisor

loss at the time of application to the assigned risk plan because state law prohibits recovery by an insurance company against any liquor vendor under subrogation clauses of the uninsured, underinsured, collision, or other first party coverages of a motor vehicle insurance policy as a result of payments made by the company to persons who have claims that arise in whole or in part under Minnesota Statutes, section 340A.801. The applicant shall have the burden of proof to establish that a loss which occurred prior to the adoption of Minnesota Statutes, section 340A.801 should not be classified as a loss.

The rates charged by the assigned risk plan shall not be deemed to be the maximum rates allowed to be charged for liquor liability insurance in Minnesota.

Upon adoption of this chapter any certificate of coverage previously issued by the assigned risk plan shall be subject to retroactive rebate, dividend, surcharge or other charge as may be necessitated by the adoption of this rating plan. Premiums for certificates of coverage previously issued shall be determined as if this rating plan were in effect at the time of issuance of the certificate of coverage.

Approved
by Revisor _____

State of Minnesota
Department of Commerce

In the Matter of the Proposed Adoption of Rules Relating to Liquor Liability Assigned Risk Plan Rates

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Department of Commerce intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedures Act for adopted rules without a public hearing in Minnesota Statutes, section 14.22-14.28. Authority for the adoption of these rules is contained in Minnesota Statutes, Section 45.023 and 340A.409.

All persons have 30 days to submit comments in support of or in opposition to the proposed rule or any part or subpart of the rule. 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 rules may be modified if the modifications are supported by the data and views submitted to the Department and do not result in a substantial change.

Any person may make a written request for a public hearing within the 30 day comment period. If 25 or more persons submit a written request for a public hearing within the 30 day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a 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. If a public hearing is required, the department will proceed pursuant to Minnesota Statutes, sections 14.13 to 14.20.

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

Richard G. Gomsrud
Department Counsel
Department of Commerce
500 Metro Square Building
St. Paul, MN 55101
(612) 296-5689

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from Richard G. Gomsrud.

Pursuant to Minnesota Statutes Section 14.115, subdivision 2, the impact on small business has been considered in the promulgation of the rules. Anyone wishing to present evidence or argument as to the rules' effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth in the Statement of Need and Reasonableness.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 adopted rule, must submit the written request to Richard G. Gomsrud.

Michael A. Hatch
Commissioner of Commerce

Statement of Need and Reasonableness for the Proposed Change in the Rates for the Liquor Liability Assigned Risk Plan

Minnesota Statutes, section 340A.409, subdivision 3 (g), requires that rates used by the Assigned Risk Plan (ARP) for liquor liability insurance must be on an actuarially sound basis. This is a change from the prior law which required premiums to be based on the rates used in the market. Given the new directive, the rate structure used by the ARP was reviewed by the Commerce Department actuary. Based on an analysis of the experience of the ARP and of the Transcontinental and Columbia Casualty Insurance companies, and with reference to the Rate Level Study of Liquor Liability done by Tillinghast, Nelson and Warren, Inc. in 1985 for The Insurance Federation, an overall rate decrease of 16.7% is recommended for the ARP. Larger or smaller rate decreases can be justified using the cited data. However in the opinion of the actuary the proposed rates are the most reasonable. The amount of decrease varies between the three classes. The proposed rates for the ARP are shown below:

ARP Basic Limit Rate for Vendors with Three or Fewer Incidents in the Last Three Years

Bars	$1.70 per $100 of liquor receipts
Restaurants	$1.17 per $100 of liquor receipts
Package Stores	$ .34 per $100 of liquor receipts

The rates for vendors with four or more incidents in the last three years would be unchanged.

The basic data for this analysis are the total premiums and losses for liquor liability insurance as reported by Transcontinental Insurance Company, a subsidiary of CNA Insurance Companies. Transcontinental is the major writer of liquor liability insurance in Minnesota, writing 87% of the market in 1986. The basic data from CNA is summarized in the chart below.

Minnesota Liquor Liability Cummulative Data as of 12/31/87

Accident Year	Written Premium	Earned Premium	Paid Loss & Expense	Incurred Loss & Expense	Undeveloped Loss Ratio
1983	2,656	1,713	2,096	2,778	1.62
1984	1,941	2,375	1,629	2,593	1.09
1985	9,969	6,997	1,262	3,518	.50
1986	18,604	16,375	434	4,342	.27
1987	17,422	18,139	16	1,635	.09

The ARP was established in late 1984 because of the sharp restriction in the market place. The withdrawal or insolvency of several companies which had previously written liquor liability coverage on a monoline basis resulted in Transcontinental's predecessor, Columbia Casualty, also owned by CNA, becoming virtually the only monoline writer. At the same time the rate for the coverage increased dramatically. The ARP adopted the basic limit rates used by Columbia Casualty effective 11-1-84.

CNA did not provide any actuarial justification for the rates they were using. Concerned about the rate level, the Insurance Federation of Minnesota hired Tillinghast, Nelson & Warren, Inc., an actuarial consulting firm, to review the rates. The Tillinghast report concluded that the ARP rates were within the range of reasonableness; in particular "Experience indications as of January 1, 1985, vary from 4.0% higher to 18.7% lower than the proposed assigned risk rate level, depending on the source data utilized and the assumption regarding general overhead expense".

The dramatic rate increase promulgated by CNA in late 1984 had a significant effect on loss experience clearly shown in the above chart. However, CNA is not able to quantify the rate change. Consequently, the rate analysis in this review was based on the most recent three years of data. This data also incorporates a second rate increase of 10.9%, effective June 1, 1985, when CNA shifted the book of business from Columbia Casualty to Transcontinental.

In any rate review, expected loss development is a key part of the analysis. Although the CNA loss development is the most recent available and is based on Minnesota experience, there is concern that the CNA reserves may be overly conservative. The CNA development patterns are significantly worse than any seen before in Minnesota, despite changes in the law designed to reduce loss costs. It is the department's belief that as losses are settled, these reserves will develop downward. The true answers, of course, will not be known until the claims are closed. In the interim, the industry patterns as stated in the Tillinghast Report were used for loss development because they reflect a greater period of experience. The development in the most recent year was additive rather than multiplicative, reflecting the need for increased stability in this period.

As mentioned before, there was no way to adjust premiums to current rate level. There was also no way to adjust for premium deviations, either credit or debits. Given this, it was not appropriate to adjust losses for inflation. Instead, it was assumed that the average loss ratio reflected current conditions. The developed losses were increased 5% to allow for loss cost increases in excess of premium growth during the year the proposed rates will be in effect, a percentage based on the Tillinghast study.

The permissible loss ratio of 59.5% was also based on the Tillinghast study. This is a break-even loss ratio, offsetting the fact that no adjustment was made for investment income.

Once the overall rate indication of -16.7% was developed, it was necessary to distribute the effect by class. Although the class data is relatively new and of limited credibility, it should be given some recognition. The premium and loss data shown in the chart below indicates that restaurants and package stores have had significantly fewer losses than bars. The ratios for the former are approximately half of the bars' ratio.

1985 - 1987 Minnesota Liquor Liability by Program as of 12/31/87
(dollars in thousands)

	Earned Premium	Incurred Loss + Alloc Exp	Undeveloped Loss Ratio
Bars	18,829	6,015	.32
Restaurants	11,856	1,866	.16
Package Stores	4,120	597	.14
Other	5,858	671	.11
Total	40,663	9,149	.23

The chart below compares the old ARP rate with the new ARP rate. The reductions reflect the differences by class shown in the chart above, with the decreases for restaurants and package stores being twice as large as the decrease for bars. When these changes are averaged, using CNA's distribution of earned premium as weights, the overall effect is -16.7%.

Rates Changes Proposed for the ARP

	Old Rate	New Rate	% Change
Bars	$1.89	$1.70	-10%
Restaurants	$1.52	$1.17	-23%
Package	.42	.34	-20%

Small Business Consideration

Minnesota Statutes §14.115 requires that an agency when proposing a new rule or an amendment to an existing rule which may affect small businesses, shall consider the impact on small businesses and in particular certain specified considerations as to the impact on small businesses.

It is the department's position that the nature of this rule, since it sets the rate for the Liquor Liability Assigned Risk Plan and by statute must be done on an actuarial sound basis, does not allow for deviations in regard to the impact on small businesses. A rate which would not be actuarially sound cannot be set for small businesses. The rate must be based on the risk each type of business presents to satisfy this requirement. Because the actual premium paid is based on sales volume the rate applied to that volume automatically reduces or raises the premium paid in accordance with the size of the business. In addition it is the department's belief that by and large all of the entities that would likely be obtaining insurance through the Assigned Risk Plan would be small businesses. Accordingly the impact on this type of business is considered throughout the rulemaking process. However, once again the department is working within the constraints of the statutory requirement of establishing an actuarily sound rate.

As to the specific requirements of subdivision 2 of section 14.115 the department does not believe that:

(a) the establishment of less stringent compliance or reporting requirements for small businesses applies in this instance since there are no compliance or reporting requirements.

(b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses applies in this instance since we are only establishing a rate for insurance.

(c) The consolidation or simplification of reporting compliance requirements for small businesses is applicable because its a rate establishment rule.

(d) The establishment of performance standards for small businesses to replace design or operational standards required in the rule is applicable because there are no design or operational standards.

(e) The exemption of small business from any and all requirements of the rule is applicable because of the nature of the rule.

In the Matter of the Proposed Rules
Relating to Liquor Liability Assigned
Risk Plan Rates

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

AFFIDAVIT OF
MAILING

Jane Schaub being first duly sworn, deposes and says:

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 17th day of May 1988.

That on the 17th day of May 1988, at the City of St. Paul, County of Ramsey, State of Minnesota, the attached Notice of Intent to Adopt Without a Public Hearing was served by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy properly prepared with first-class postage prepaid, on all persons and associations who have requested that their names be placed on file with the Minnesota Department of Commerce for the purpose of receiving notice of the proposed adoption of rules by the department.

Jane Schaub

Subscribed and sworn to before me
this 17th day of May 1988.

Notary Public

CYNTHIA L. CLAXTON
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES FEBRUARY 16, 1992

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Susan J. Ladwig Associates
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Mr/Ms:

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Minn. Retail Merchants Assoc.
180 Metro Square Bldg.
St. Paul, MN 55101

STATE OF MINNESOTA

DEPARTMENT OF COMMERCE
500 METRO SQUARE BUILDING
ST. PAUL, MN 55101

ATTENTION:

RULE RELATED MATERIAL

FIRST CLASS MAIL

State of Minnesota
Department of Commerce

In the Matter of the Proposed Adoption of Rules Re ating to Liquor Liability Assigned Risk Plan Rates

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Department of Commerce intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedures Act for adopted rules without a public hearing in Minnesota Statutes, section 14.22-14.28. Authority for the adoption of these rules is contained in Minnesota Statutes, Section 45.023 and 340A.409.

All persons have 30 days to submit comments in support of or in opposition to the proposed rule or any part or subpart of the rule. 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 rules may be modified if the modifications are supported by the data and views submitted to the Department and do not result in a substantial change.

Any person may make a written request for a public hearing within the 30 day comment period. If 25 or more persons submit a written request for a public hearing within the 30 day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a 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. If a public hearing is required, the department will proceed pursuant to Minnesota Statutes, sections 14.13 to 14.20.

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

Richard G. Gomsrud
Department Counsel
Department of Commerce
500 Metro Square Building
St. Paul, MN 55101
(612) 296-5689

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from Richard G. Gomsrud.

Pursuant to Minnesota Statutes Section 14.115, subdivision 2, the impact on small business has been considered in the promulgation of the rules. Anyone wishing to present evidence or argument as to the rules' effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth in the Statement of Need and Reasonableness.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 adopted rule, must submit the written request to Richard G. Gomsrud.

Michael A. Hatch
Commissioner of Commerce

Department of Commerce

Proposed Permanent Rules Relating to Liquor Liability Assigned Risk Plan Rates

Rules as Proposed

2783.0060 RATING PLAN.

Rates Applicable To Minimum Coverage Required By Minnesota Statutes, Section 340A.409, Subdivision 1

Assigned Risk Liquor Liability Rates

Rate For Three or Fewer Incidents

In The Last Three Years

Limits	Package Goods	Restaurants	Bars
50/100	~~$.42~~ $ .34	~~$1.52~~ $1.17	~~$1.89~~ $1.70

Rate For More Than Three Incidents

In The Last Three Years

Four Incidents

50/100	$6.25

Each incident after the fourth incident will cause the rate charged to be increased by 20 percent over the rate charged for one less incident

For purposes of the rating plan, no experience or scheduled credits apply.

A combined bar and package establishment is rated as a bar for purposes of the plan.

A restaurant for purposes of the rating plan is a liquor vendor whose revenue from liquor sales is less than 50 percent of its combined liquor and food sales.

A bar for purposes of the rating plan is a liquor vendor whose revenues from liquor sales is 50 percent or more of its combined liquor and food sales.

An incident is either a loss or a violation. A loss and the violation that resulted in that loss are deemed to be one incident for purposes of the rating plan. A loss shall not be considered an incident for purposes of the rating plan if the circumstances which resulted in that loss would not result in a

Approved by Revisor

loss at the time of application to the assigned risk plan because state law prohibits recovery by an insurance company against any liquor vendor under subrogation clauses of the uninsured, underinsured, collision, or other first party coverages of a motor vehicle insurance policy as a result of payments made by the company to persons who have claims that arise in whole or in part under Minnesota Statutes, section 340A.901. The applicant shall have the burden of proof to establish that a loss which occurred prior to the adoption of Minnesota Statutes, section 340A.801 should not be classified as a loss.

The rates charged by the assigned risk plan shall not be deemed to be the maximum rates allowed to be charged for liquor liability insurance in Minnesota.

Upon adoption of this chapter any certificate of coverage previously issued by the assigned risk plan shall be subject to retroactive rebate, dividend, surcharge or other charge as may be necessitated by the adoption of this rating plan. Premiums for certificates of coverage previously issued shall be determined as if this rating plan were in effect at the time of issuance of the certificate of coverage.

Approved
by Revisor _____

Department of Commerce

Proposed Permanent Rules Relating to Developmental Lending and Investment Performance Ratings of Financial Institutions Owned by Interstate Holding Companies

Notice of Extension of Comment Period

NOTICE IS HEREBY GIVEN that the Department of Commerce is extending the comment period on the above-entitled rules to June 11, 1988. The original notice of intent to adopt rules without a public hearing, along with the proposed rules, appeared in Vol. 12 #41, pages 2233-2238 of the State Register dated April 11, 1988.

All persons wishing to comment may submit comments in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Persons who wish to submit comments or a written request for a public hearing should submit them to: James Miller, deputy commissioner, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101, (612) 296-2715.

State of Minnesota

STATE REGISTER

Department of Administration—Documents Division

STATE OF MINNESOTA

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DEPARTMENT OF COMMERCE



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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 Permanent Rules Relating to Liquor Liability Assigned Risk Plan Rates

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Department of Commerce intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedures Act for adopted rules without a public hearing in *Minnesota Statutes*, section 14.22-14.28. Authority for the adoption of these rules is contained in *Minnesota Statutes*, Section 45.023 and 340A.409.

All persons have 30 days to submit comments in support of or in opposition to the proposed rule or any part or subpart of the rule. 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 rules may be modified if the modifications are supported by the data and views submitted to the Department and do not result in a substantial change.

Any person may make a written request for a public hearing within the 30 day comment period. If 25 or more persons submit a written request for a public hearing within the 30 day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a 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. If a public hearing is required, the department will proceed pursuant to *Minnesota Statutes*, sections 14.13 to 14.20.

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

Richard G. Gomsrud
Department Counsel
Department of Commerce
500 Metro Square Building
St. Paul, MN 55101
(612) 296-5689

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from Richard G. Gomsrud.

Pursuant to *Minnesota Statutes* Section 14.115, subdivision 2, the impact on small business has been considered in the promulgation of the rules. Anyone wishing to present evidence or argument as to the rules' effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth in the Statement of Need and Reasonableness.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 adopted rule, must submit the written request to Richard G. Gomsrud.

Michael A. Hatch
Commissioner of Commerce

Rules as Proposed

2783.0060 RATING PLAN.

Rates Applicable To Minimum Coverage Required By Minnesota Statutes, Section 340A.409, Subdivision 1

Assigned Risk Liquor Liability Rates

Rate For Three or Fewer Incidents In The Last Three Years

Limits	Package Goods	Restaurants	Bars
50/100	~~$.42~~ $ .34	~~$1.52~~ $1.17	~~$1.89~~ $1.70

Rate For More Than Three Incidents In The Last Three Years

Four Incidents

50/100	$6.25

Each incident after the fourth incident will cause the rate charged to be increased by 20 percent over the rate charged for one less incident

For purposes of the rating plan, no experience or scheduled credits apply.

A combined bar and package establishment is rated as a bar for purposes of the plan.

A restaurant for purposes of the rating plan is a liquor vendor whose revenue from liquor sales is less than 50 percent of its combined liquor and food sales.

A bar for purposes of the rating plan is a liquor vendor whose revenues from liquor sales is 50 percent or more of its combined liquor and food sales.

An incident is either a loss or a violation. A loss and the violation that resulted in that loss are deemed to be one incident for purposes of the rating plan. A loss shall not be considered an incident for purposes of the rating plan if the circumstances which resulted in that loss would not result in a loss at the time of application to the assigned risk plan because state law prohibits recovery by an insurance company against any liquor vendor under subrogation clauses of the uninsured, underinsured, collision, or other first party coverages of a motor vehicle insurance policy as a result of payments made by the company to persons who have claims that arise in whole or in part under Minnesota Statutes, section 340A.801. The applicant shall have the burden of proof to establish that a loss which occurred prior to the adoption of Minnesota Statutes, section 340A.801 should not be classified as a loss.

The rates charged by the assigned risk plan shall not be deemed to be the maximum rates allowed to be charged for liquor liability insurance in Minnesota.

Upon adoption of this chapter any certificate of coverage previously issued by the assigned risk plan shall be subject to retroactive rebate, dividend, surcharge or other charge as may be necessitated by the adoption of this rating plan. Premiums for certificates of coverage previously issued shall be determined as if this rating plan were in effect at the time of issuance of the certificate of coverage.

Department of Health

Proposed Permanent Rules Relating to Asbestos Abatement

Notice of Intent to Adopt a Rule Without a Public Hearing, Notice of Intent to Adopt a Rule With a Public Hearing If 25 or More Persons Request a Hearing, and Notice of Intent to Cancel Hearing If Fewer Than 25 Persons Request a Hearing

I. Explanation of Alternative Notices

The Minnesota Department of Health (hereinafter "Department") is hereby giving notice of its intent to adopt a rule without a public hearing under the noncontroversial rulemaking procedure of *Minnesota Statutes* §§ 14.22 to 14.28 (1986). However, in case 25 or more persons request a hearing, thus necessitating that one be held pursuant to *Minnesota Statutes* § 14.25 (1986), and in order to expedite the rulemaking process should that occur, the Department is at the same time hereby giving notice of the hearing

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 the Proposed Rules Regarding Liquor Liability Assigned Risk Plan Rates	FINDINGS OF FACT CONCLUSIONS & ORDER OF ADOPTION

Notice of the Commissioner's proposed adoption of the above entitled rules without public hearing was published in the State Register on May 23, 1988. On May 17, 1988 the Department of Commerce sent copies of the Notice by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, Section 14.14, subdivision 1, paragraph (a) and 14.22.

All persons were given the opportunity to submit comments on the rule for thirty days after notice of proposed rulemaking. Less than twenty-five persons submitted requests for hearing within the thirty day comment period.

Based upon the comments and evidence on the record I find the following: The above-captioned rule is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rules identified as the Rules Regarding Liquor Liability Assigned Risk Plan Rates are adopted this 29th day of August pursuant to the authority vested in me by Minnesota Statutes, Section 45.023 and 340A.409.

MICHAEL A. HATCH
Commissioner of Commerce

Dated this 29th day of
August, 1988.

CNA INSURANCE COMPANIES

CNA Plaza, Chicago, Illinois 60685

Jerry Shotola
Assistant General Counsel
(312) 822-5436

June 20, 1988

JUN 23 1988

Mr. Richard G. Gomsrud
Department Counsel
Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101

Re: Proposed Permanent Rules Relating to
Liquor Liability Assigned Risk Plan Rates
Notice of Intent to Adopt Rules Without a Public
Hearing
2783.0060 Rating Plan

Dear Mr. Gomsrud:

The CNA Insurance Companies make the following comments on the captioned proposed rule published on May 23, 1988 at 12 State Register 2546 and 2547. I ask that this letter be made a part of the formal record on this matter. I also request that I be advised of the submission of the rule and supporting documentation to the Minnesota Attorney General.

As the Statement of Need and Reasonableness states, two of the CNA Insurance Companies have written liquor liability insurance in Minnesota since 1983. Prior to June 1, 1985, this business was written by Columbia Casualty Company. Since June 1, 1985, this business has been written by Transcontinental Insurance Company.

The CNA Insurance Companies wish to comment on the following remarks in the Statement of Need and Reasonableness:

> "The ARP was established in late 1984 because of the sharp restriction in the marketplace. The withdrawal or insolvency of several companies which had previously written liquor liability coverage on a monoline basis resulted in Transcontinental's predecessor, Columbia Casualty, also owned by CNA, becoming virtually the only monoline writer. At the same time, the rate for the coverage increased dramatically. The ARP adopted the basic limit rates used by Columbia Casualty effective November 1, 1984."

"CNA did not provide any actuarial justification for the rates they were using."

From these remarks, a reader might infer that:

- Columbia Casualty Company's rates had no actuarial justification; and/or

- Columbia Casualty Company exploited the situation created by "the withdrawal or insolvency of several companies which had previously written liquor liability coverage on a monoline basis" in order to charge excessive rates.

Neither inference is correct. The reason Columbia Casualty "did not provide any actuarial justification for the rates they were using" was that Columbia Casualty Company was, and is, an Eligible Surplus Lines Insurer operating in Minnesota pursuant to §§ 60A195 to 60A.205 of the Minnesota Insurance Code. Since the Minnesota Insurance Code does not require that eligible surplus lines insurers submit actuarial justification for their rates, Columbia Casualty did not do so. We also wish to point out that CNA has provided all data requested by the Insurance Division concerning CNA's Minnesota liquor liability business.

Any inference that Columbia Casualty was charging excessive rates is negated by even a cursory glance at the undeveloped loss ratios of 162% in 1983 and 109% in 1984.

Further, the Statement of Need and Reasonableness states:

"In any rate review, expected loss development is a key part of the analysis. Although the CNA Loss development is the most recent available, and is based on Minnesota experience, there is concern that the CNA reserves may be overly conservative. The CNA development patterns are significantly worse than any seen before in Minnesota, despite changes in the law designed to reduce loss costs. It is the Department's belief that as losses are settled, these reserves will develop downward. The true answers, of course, will not be known until the claims are closed."

Obviously, CNA agrees with the statements that:

"Expected loss development is a key part of any [rate review] analysis," and

"The true answers...will not be known until the claims are closed."

CNA does not, however, agree with the statement: "The CNA development patterns are significantly worse than any seen before in Minnesota." We wish to point out that ISO data indicates that other liability lines, e.g., manufacturers and contractors liability, are experiencing development patterns similar to Minnesota liquor liability. Further, there is no basis for the Department's assertion that CNA reserves may be overly conservative.

CNA has several comments concerning the following paragraph:

> "As mentioned before, there was no way to adjust premiums to current rate level. There was also no way to adjust for premium deviations, either credit or debits. Given this, it was not appropriate to adjust losses for inflation. Instead, it was assumed that the average loss ratio reflected current conditions. The developed losses were increased 5% to allow for loss cost increases in excess of premium growth during the year the proposed rates will be in effect, a percentage based on the Tillinghast study."

The first sentence is inaccurate. The rates in the proposed rule are based on the last three (3) years' data. During this period, the business was written by Transcontinental Insurance Company, an admitted insurer whose rates were on file. Thus, premiums could have been adjusted to current rate levels. As a matter of fact, this adjustment would have been simple, since the only rate action was a 10.9% rate increase effective June 1, 1985 - a rate increase referred to in the Statement.

With respect to premium deviations, there is no need for an adjustment for premium credits. CNA applies credits for loss free accounts on an objective basis. Rating debits are not used. The proportion of accounts with loss free experience is stable over time and so is the effect on the average rate level.

The third sentence is based on the false premise of the first two (2) sentences - that it is impossible to adjust premiums to current levels. Even if the statements were true, the conclusion that "it was not appropriate to adjust losses for inflation" is incorrect. It is <u>always</u> appropriate to adjust losses for inflation, even if premium adjustments must be estimated.

The fifth sentence indicates that the "developed losses were increased 5% to allow for loss cost increases in excess of the premum growth." If this means that a one-time 5% increase was applied, we feel that this is inadequate. A 5% annual increase would be reasonable.

The Statement of Need and Reasonableness refers to a 1985 actuarial report prepared by Tillinghast, Nelson & Warren, Inc. I request that I be provided with a copy of the Tillinghast report. I would also appreciate a copy of the actuarial report and associated working papers used by the Department of Commerce in developing the captioned proposed rule. CNA will pay any reasonable cost (e.g., photocopying) associated with obtaining these documents. Upon receipt of these documents, CNA requests the right to submit additional comments concerning their assumptions and methodology.

Respectfully submitted,

JS:ds
Enclosure

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Permanent Rules Relating to Liquor Liability Assigned Risk Plan Rates

NOTICE OF SUBMISSION OF RULE ADOPTED WITHOUT PUBLIC HEARING TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes, section 14.26:

PLEASE TAKE NOTICE that the above-captioned rule as adopted has been submitted to the Office of the Attorney General on the date of this notice, December 16, 1988, for review as to legality and form to the extent form relates to legality. The proposed rule, the rule as adopted, all the notices, the Statement of Need and Reasonableness, all written comments and requests for a hearing received, and other required documents also have been submitted to the Attorney General.

The rule must be approved or disapproved by the Attorney General within 14 calendar days of the date of submission to the attorney general. You may submit written comments to the attorney general on the legality of the rule. Any written comments must be submitted within eight calendar days of the date of submission of the rule to the Attorney General. Your comments must address only the issue of legality of the rule or the legality of the specific parts or subparts of the rule. The attorney general standards for review are set forth in Minnesota Rules, part 2010.1000. You may receive a copy of the attorney general decision upon written request to the attorney general. Your comments or requests for the decision must be directed to:

The Office of the Attorney General
Public Finance Division
515 Transportation Building
John Ireland Boulevard
Saint Paul, MInnesota 55155
Telephone Number: (612) 297-2040

Any written comments submitted to the Attorney General must be submitted simultaneously to:

Richard G. Gomsrud
Department of Commerce
500 Metro Square Building
St. Paul, MN 55101

Dated: December 12, 1988

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Permanent Rules Relating to Liquor Liability Assigned Risk Plan Rates

AFFIDAVIT OF MAILING THE NOTICE OF SUBMISSION OF RULE ADOPTED WITHOUT PUBLIC HEARING TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Richard G. Gomsrud being sworn says:

That on the 16th day of December, 1988, in the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Submission to the Attorney General by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations who requested notice that the rule in the above-entitled matter has been submitted to the Attorney General.

Richard G. Gomsrud

Department Counsel

MARILYN J. ROBINSON
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Commission Expires JUNE 18 1993

Marilyn J. Robinson

Subscribed and sworn to before me
this 16th day of December, 1988.

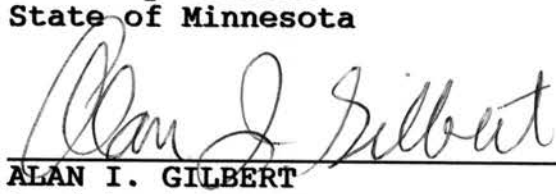
In the Matter of the Proposed Adoption of Rules Relating to Liquor Liability Assigned Risk Plan Rates

DECLARATION OF COUNSEL

I, **ALAN I. GILBERT,** Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. For Attorney General billing purposes, the four-digit docket client code is 0119.

Dated: December 19, 1988.

HUBERT H. HUMPHREY, III
Attorney General
State of Minnesota



ALAN I. GILBERT
Assistant Attorney General

1100 Bremer Tower
Seventh Place and Minnesota Street
Saint Paul, Minnesota 55101
Telephone: (612) 296-9412

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