

# House Research Act Summary

**CHAPTER:** 198

**SESSION:** 2014 Regular Session

**TOPIC:** Department of Commerce policy bill

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## Overview

This Department of Commerce bill consists of six articles that include policy, enforcement, and technical changes.

### Section

#### Article 1: Licensing

- 1**      **Qualifications for instructors in Minnesota Supervisor/Trainee Appraiser Course.** In addition to qualifying under subdivision 2, requires that an instructor in the real estate appraiser course offered as continuing education be licensed as either a certified residential or general real property appraiser and must have been so licensed for the past three years.
- 2**      **Qualifications for instructors of the Minnesota Supervisor/Trainee Appraiser course.** In addition to qualifying under subdivision 3, an instructor of the course offered as prelicense education must be licensed as a certified residential or general real estate appraiser, must have been so licensed for the immediately preceding three years, and must not have been the subject of any license or certificate suspension or revocation within the three years immediately prior to the application to become an instructor.
- 3**      **Supervision of trainee real property appraisers.** Specifies the requirements for supervising a trainee real property appraiser.
- 4**      **Reciprocity.** Authorizes the commissioner of commerce to waive education, experience, and examination requirements of this chapter (82B) for individuals who are licensed in another jurisdiction that has licensing requirements similar to those of Minnesota.

**Section**

- 5 Trainee real property appraiser.** Specifies the type of course required as part of qualifying as a trainee real property appraiser.
- 6 Submitting to commissioner.** Specifies how and what an applicant for a real estate appraiser license must submit as documentation to the commissioner.
- 7 License renewals.** Describes documentation of continuing education requirements that the commissioner requires from a licensed real estate appraiser before renewing the license. Eliminates a provision that permits the commissioner to place an appraiser in active status for up to 90 days pending completion of CE requirements.
- 8 Deferral.** Specifies the situations in which the commissioner may grant requests for deferrals to appraisers who have just returned from active duty military or have been impacted by a state- or federal-declared disaster.
- 9 Reinstatements.** Specifies the requirements applied to real estate appraisers who have been suspended for fewer than two years.
- 10 Money transmitters; no transit list; delayed effective date.** Corrects the effective date of a 2013 law relating to money transmitters. Changes it from January 1, 2014 to January 1, 2016. This section is unrelated to real estate appraisers, but is necessary to correct an error in 2013 legislation.
- 11 Repealer.** Repeals section 82B.10, subd. 7, which permits licensing reciprocity for real estate appraisers who are licensed only in a jurisdiction other than Minnesota.

**Article 2: Petrofund**

- 1 Tank in transport.** Changes the definition of the term to limit it to a tank that has a capacity greater than 250 gallons used to deliver petroleum into storage tanks or to dispense it into mobile tanks.
- 2 Application for reimbursement.** Provides that a reimbursement from the Petroleum Tank Release Compensation Board may not be made unless the application was submitted within seven years after the corrective action services for which reimbursement is requested have been performed.
- 3 Reimbursements; subrogation; appropriation.** Limits reimbursement for a petroleum release from a tank in transport to a maximum of \$100,000. Makes the section effective the day following final enactment.

**Article 3: Administrative Services**

- 1 Diesel fuel oil.** Updates an ASTM specification number for a biodiesel component.

**Section**

- 2**        **Liquefied petroleum gas account.** Redirects money in the liquefied petroleum gas account in the special revenue fund in the state treasury from the commissioner of education to the commissioner of commerce. This pays for programs to improve energy efficiency of heating equipment in low-income households and to provide weatherization services to the homes when necessary.

**Article 4: Enforcement**

- 1**        **Actions against licensees.** Requires the commissioner of commerce, when issuing an order to show cause, to provide an opportunity for a licensee or applicant to request a hearing under the contested case provisions of chapter 14. Specifies the content of the order and permits the commissioner to summarily suspend or revoke the license, except if the license is held by an insurer authorized to do business in Minnesota. Describes the process in considerable detail.
- 2**        **Powers of the commissioner.** Lists and describes the enforcement powers of the commissioner of commerce in regard to denial, suspension, and revocation of licenses of residential mortgage originators and servicers.
- 3**        **Declaratory judgment action.** In regard to a life insurance policy that may lack an insurable interest, permits the insurer or the policy owner to bring a declaratory judgment action to declare the policy void (the insurer) or to declare the policy valid (the policy owner). Effective date: The day following final enactment, subject to a December 31, 2016 sunset date.
- 4**        **Domestic companies.** Replaces the term “insurance companies” with “insurers,” in the context of real estate title insurance companies.
- 5**        **Criminal prosecutions.** Deals with the issue of when a criminal prosecution of an insurance agent (“insurance producer”) begins. Specifies that it begins on the date the indictment is returned or the date the criminal complaint is filed.
- 6**        **Requirements.** This subdivision requires that a life insurance company’s investments be held in its corporate or nominee name, subject to various exceptions. Adds a new exception, shown in paragraph (e), which applies to investments or cash posted as collateral or variation margin in connection with qualified financial contracts, as defined in section 60B.03, subdivision 22.
- 7**        **Surcharge prohibition.** Prohibits a homeowners insurance company from imposing a surcharge solely as the result of a consumer inquiry. Defines the terms “consumer inquiry” and “surcharge.”
- 8-26**    Replaces the term “title insurance companies” or similar terms with “title insurers” or similar terms.

Section**Article 5: Model Holding Company Act changes**

- 1 Penalties.** (1) Specifies a civil penalty of \$1,000 for each day of delay for failure to file registration statement. (2) Specifies a civil penalty of \$5,000 for failure to provide notice and filing regarding an affiliated transaction or agreement. (3) Permits the commissioner of commerce to order the insurer to cease and desist immediately if the insurer is engaged in a holding company transaction that would have been disapproved by the commissioner if the commissioner had been informed of the violation, and permits the commissioner to require the insurer to void any related contracts and restore the status quo. (4) Permits the commissioner of commerce to start criminal proceedings against an insurance company if it appears to the commissioner that the company has willfully violated the insurance holding company system act.
- 2 Enterprise risk.** Defines the term “enterprise risk” as a situation in which an insurer is involved with one or more affiliates of the insurer that is likely to have an adverse impact on the financial condition or liquidity of the insurer or its insurance holding company system, including a negative impact on the insurer’s risk-based capital or cause the insurer to be in a hazardous financial condition.
- 3 Filing requirements.** Requires a controlling investor seeking to divest its financial interest in a domestic insurer to file a confidential notice of that intent with the commissioner of commerce. Also requires a person who wishes to acquire that financial interest to file a pre-acquisition notice with the commissioner. Requires the filings with the commissioner to remain confidential until the commissioner approves the transaction, but requires attachments filed with those filings to remain confidential.
- 4 Content of statement.** Adds additional provisions regarding the financial statements referenced in the preceding sections.
- 5 Approval by commissioner; hearings.** Adds details to the process by which the commissioner of commerce decides whether to approve a change in control of a holding company. This can include the involvement of more than one commissioner in a consolidated hearing.
- 6 Violations.** Adds divestiture to the list of outcomes that are not permitted unless the commissioner approves it.
- 7 Jurisdiction; consent to service of process.** Specifies how legal process must be served on the commissioner of commerce.
- 8 Scope.** Provides that an acquisition that is subject to approval or disapproval by the commissioner of commerce under section 60D.17 is not subject to approval under section 60D.18.
- 9 Inapplicable provisions.** Corrects statutory references to statutes that do not apply to certain acquisitions.

**Section**

- 10 Registration.** Limits the requirement to register with the commissioner to domestic insurers that are members of an insurance holding company system. Excludes non-domestic insurers.
- 11 Information and form required.** Makes technical changes regarding holding company registration filing requirements.
- 12 Summary of changes to registration statement.** Amends the headnote to include “changes to” a registration statement.
- 13 Disclaimer.** Rewrites language that relates to disclaimers of affiliation.
- 14 Enterprise risk filing.** Adds a new subdivision that requires “the ultimate controlling person of an insurer subject to registration” to file “an annual enterprise risk report.”
- 15 Violations.** Makes the failure to file an “enterprise risk-filing” a violation of section 60D.19.
- 16 Transactions within an insurance holding company system.** Adds a new standard to the list of standards that apply within an insurance company holding company system. Lists several additional requirements.
- 17 Management of domestic insurers subject to registration.** Clarifies requirements for domestic insurers, including committees and boards of directors. Permits waivers from the requirements based upon low premium volume or other reasons.
- 18 Power of commissioner.** Permits the commissioner to perform a financial examination of an insurer that is a member of the holding company system.
- 19 Access to books and records.** Specifies the process by which the commissioner may order a financial examination of the books and records of a company that is a member of the insurance holding company system.
- 20 Compelling production.** Provides that, if an insurer fails to comply with an order by the commissioner for examination of the insurer’s records, the commissioner may examine the insurer’s affiliates to get the information.
- 21 Supervisory colleges.** Provides that the commissioner may, in order to determine compliance with the relevant laws and assess its business practices, participate in a “supervisory college” for a domestic insurer that is part of an insurance company holding system with international operations.
- 22 Confidentiality.** Specifies what documents and other information are confidential and how the commissioner, the NAIC, and other related entities treat those records.

Section**Article 6****Risk Assessment and Own Risk and Solvency Assessment Model Act**

- 1 Purpose and scope.** Specifies that the “purpose and scope” of this Article 6 is to provide the requirements for maintaining a risk management framework, completing an Own Risk and Solvency Assessment (“ORSA”), and providing guidance and instructions for filing a ORSA Summary Report with the commissioner. This Article 6 applies to all insurers domiciled in MN unless exempt under section 5 of this article.
- 2 Definitions.** Defines five terms that involve ORSA and are relevant to this article.
- 3 Risk management framework.** Requires insurers to maintain a risk management framework to assist the insurer or the insurer’s insurance group.
- 4 ORSA requirement.** Requires that an insurer, or the insurance group in which the insurer is a member, regularly conduct an ORSA consistent with the ORSA Guidance Manual. Requires that an ORSA be conducted at least annually, or more frequently when there have been significant changes in its risk profile.
- 5 ORSA summary report.** Requires that an insurer submit an ORSA Summary Report upon the commissioner’s request and no more often than once per year. Provides details, including attestation and alternative compliance.
- 6 Exemption.** Specifies exemptions from the ORSA requirements, including exemptions based on the insurer’s annual premium levels, those of a group of which the insurer is a member, or a waiver based on unique circumstances.
- 7 Contents of ORSA summary report.** It must be prepared by the insurer consistent with the ORSA Guidance Manual. The insurer must maintain the documentation and supporting information, which is maintained by the insurer but is required to be available upon examination or request by the commissioner.
- 8 Confidentiality.** Specifies the classification protection and use of information by the commissioner; the testimonial privilege; the use of information by the commissioner; the testimonial privilege in a private civil action; sharing of information by the commissioner; and classification, protection, and use of information by others.
- 9 Sanctions.** Provides a penalty for an insurer that fails to file the ORSA Summary Report as required.
- 10 Effective date.** Makes sections 1 to 9 of this article effective January 1, 2015. Provides that the first filing of an ORSA Summary Report is in 2015, as provided in Minnesota Statutes, section 60D.54.