

1.1 A bill for an act

1.2 relating to insurance; regulating and supervising; title insurance and title insurers;
1.3 amending Minnesota Statutes 2008, section 60A.06, subdivision 1; proposing
1.4 coding for new law in Minnesota Statutes, chapter 68A; repealing Minnesota
1.5 Statutes 2008, sections 68A.01; 68A.02; 68A.03; 68A.04.

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

1.7 Section 1. Minnesota Statutes 2008, section 60A.06, subdivision 1, is amended to read:

1.8 Subdivision 1. **Statutory lines.** Insurance corporations may be authorized to
1.9 transact in any state or territory in the United States, in the Dominion of Canada, and in
1.10 foreign countries, when specified in their charters or certificates of incorporation, either as
1.11 originally granted or as thereafter amended, any of the following kinds of business, upon
1.12 the stock plan, or upon the mutual plan when the formation of such mutual companies is
1.13 otherwise authorized by law; and business trusts as authorized by law of this state shall
1.14 only be authorized to transact in this state the following kind of business hereinafter
1.15 specified in clause (7) hereof when specified in their "declaration of trust":

1.16 (1) To insure against loss or damage to property on land and against loss of rents
1.17 and rental values, leaseholds of buildings, use and occupancy and direct or consequential
1.18 loss or damage caused by fire, smoke or smudge, water or other fluid or substance,
1.19 lightning, windstorm, tornado, cyclone, earthquake, collapse and slippage, rain, hail,
1.20 frost, snow, freeze, change of temperature, weather or climatic conditions, excess or
1.21 deficiency of moisture, floods, the rising of waters, oceans, lakes, rivers or their tributaries,
1.22 bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped
1.23 power, electrical power interruption or electrical breakdown from any cause, railroad
1.24 equipment, motor vehicles or aircraft, accidental injury to sprinklers, pumps, conduits
1.25 or containers or other apparatus erected for extinguishing fires, explosion, whether fire

2.1 ensues or not, except explosions on risks specified in clause (3); provided, however, that
2.2 there may be insured hereunder the following: (a) explosion of any kind originating
2.3 outside the insured building or outside of the building containing the property insured, (b)
2.4 explosion of pressure vessels which do not contain steam or which are not operated with
2.5 steam coils or steam jackets; and (c) risks under home owners multiple peril policies;

2.6 (2)(a) To insure vessels, freight, goods, wares, merchandise, specie, bullion, jewels,
2.7 profits, commissions, bank notes, bills of exchange, and other evidences of debt, bottomry
2.8 and respondentia interest, and every insurance appertaining to or connected with risks of
2.9 transportation and navigation on and under water, on land or in the air;

2.10 (b) To insure all personal property floater risks;

2.11 (3) To insure against any loss from either direct or indirect damage to any property
2.12 or interest of the assured or of another, resulting from the explosion of or injury to
2.13 (a) any boiler, heater or other fired pressure vessel; (b) any unfired pressure vessel;
2.14 (c) pipes or containers connected with any of said boilers or vessels; (d) any engine,
2.15 turbine, compressor, pump or wheel; (e) any apparatus generating, transmitting or using
2.16 electricity; (f) any other machinery or apparatus connected with or operated by any of
2.17 the previously named boilers, vessels or machines; and including the incidental power
2.18 to make inspections of and to issue certificates of inspection upon, any such boilers,
2.19 apparatus, and machinery, whether insured or otherwise;

2.20 (4) To make contracts of life and endowment insurance, to grant, purchase, or
2.21 dispose of annuities or endowments of any kind; and, in such contracts, or in contracts
2.22 supplemental thereto to provide for additional benefits in event of death of the insured by
2.23 accidental means, total permanent disability of the insured, or specific dismemberment
2.24 or disablement suffered by the insured, or acceleration of life or endowment or annuity
2.25 benefits in advance of the time they would otherwise be payable;

2.26 (5)(a) To insure against loss or damage by the sickness, bodily injury or death by
2.27 accident of the assured or dependents, or those for whom the assured has assumed a
2.28 portion of the liability for the loss or damage, including liability for payment of medical
2.29 care costs or for provision of medical care;

2.30 (b) To insure against the legal liability, whether imposed by common law or by
2.31 statute or assumed by contract, of employers for the death or disablement of, or injury
2.32 to, employees;

2.33 (6) To guarantee the fidelity of persons in fiduciary positions, public or private, or
2.34 to act as surety on official and other bonds, and for the performance of official or other
2.35 obligations;

3.1 (7) To insure owners and others interested in real or personal property as described
 3.2 in section ~~68A.04~~ 68A.12;

3.3 (8) To insure against loss or damage by breakage of glass, located or in transit;

3.4 (9)(a) To insure against loss by burglary, theft, or forgery;

3.5 (b) To insure against loss of or damage to moneys, coins, bullion, securities, notes,
 3.6 drafts, acceptance or any other valuable paper or document, resulting from any cause,
 3.7 except while in the custody or possession of and being transported by any carrier for
 3.8 hire or in the mail;

3.9 (c) To insure individuals by means of an all risk type of policy commonly known as
 3.10 the "personal property floater" against any kind and all kinds of loss of or damage to, or
 3.11 loss of use of, any personal property other than merchandise;

3.12 (d) To insure against loss or damage by water or other fluid or substance;

3.13 (10) To insure against loss from death of domestic animals and to furnish veterinary
 3.14 service;

3.15 (11) To guarantee merchants and those engaged in business, and giving credit,
 3.16 from loss by reason of giving credit to those dealing with them; this shall be known
 3.17 as credit insurance;

3.18 (12) To insure against loss or damage to automobiles or other vehicles or aircraft
 3.19 and their contents, by collision, fire, burglary, or theft, and other perils of operation,
 3.20 and against liability for damage to persons, or property of others, by collision with such
 3.21 vehicles or aircraft, and to insure against any loss or hazard incident to the ownership,
 3.22 operation, or use of motor or other vehicles or aircraft;

3.23 (13) To insure against liability for loss or damage to the property or person of
 3.24 another caused by the insured or by those for whom the insured is responsible, including
 3.25 insurance of medical, hospital, surgical, funeral or other related expense of the insured
 3.26 or other person injured, irrespective of legal liability of the insured, when issued with or
 3.27 supplemental to policies of liability insurance;

3.28 (14) To insure against loss of or damage to any property of the insured, resulting
 3.29 from the ownership, maintenance or use of elevators, except loss or damage by fire;

3.30 (15) To insure against attorneys fees, court costs, witness fees and incidental
 3.31 expenses incurred in connection with the use of the professional services of attorneys
 3.32 at law.

3.33 Sec. 2. **[68A.10] TITLE.**

3.34 This chapter may be cited as the Minnesota Title Insurers Act.

4.1 Sec. 3. [68A.11] APPLICATION OF ACT AND CONSTRUCTION WITH
4.2 OTHER LAWS.

4.3 (a) This chapter applies to all persons engaged in the business of title insurance in
4.4 this state.

4.5 (b) Except as otherwise expressly provided in this chapter, and except where the
4.6 context otherwise requires, all provisions of the insurance laws of the state applying to
4.7 insurance and insurance companies generally apply to title insurance and title insurers.

4.8 Sec. 4. [68A.12] DEFINITIONS.

4.9 Subdivision 1. **Terms.** For purposes of this chapter, the definitions in this section
4.10 have the meanings given them.

4.11 Subd. 2. **Abstract of title or abstract.** "Abstract of title" or "abstract" means a
4.12 written history, synopsis, or summary of the recorded instruments affecting the title to
4.13 real property.

4.14 Subd. 3. **Affiliate.** "Affiliate" means a specific person that directly, or indirectly
4.15 through one or more intermediaries, controls, or is controlled by or is under common
4.16 control with, the person specified.

4.17 Subd. 4. **Bona fide employee.** "Bona fide employee" of the title insurer or title
4.18 insurance agent means an individual who devotes substantially all of the individual's time
4.19 to performing services on behalf of a title insurer or title insurance agent and whose
4.20 compensation for those services is in the form of salary or its equivalent paid by the title
4.21 insurer or title insurance agent.

4.22 Subd. 5. **Commissioner.** "Commissioner" means the commissioner of commerce
4.23 or the commissioner's representatives, or the commissioner, director, or superintendent
4.24 of insurance in any other state.

4.25 Subd. 6. **Control.** "Control," including the terms "controlling," "controlled by,"
4.26 and "under common control with" means the possession, direct or indirect, of the power
4.27 to direct or cause the direction of the management and policies of a person, whether
4.28 through the ownership of voting securities, by contract other than a commercial contract
4.29 for goods or nonmanagement services, or otherwise, unless the power is the result
4.30 of an official position or corporate office held by the person. Control is presumed to
4.31 exist if a person, directly or indirectly, owns, controls, holds with the power to vote,
4.32 or holds proxies representing ten percent or more of the voting securities of another
4.33 person. This presumption may be rebutted by a showing that control does not exist in
4.34 fact. The commissioner may determine, after furnishing all persons in interest notice and

5.1 opportunity to be heard and making specific findings of fact to support the determination,
5.2 that control exists in fact, notwithstanding the absence of a presumption to that effect.

5.3 Subd. 7. **Direct operations.** "Direct operations" means that portion of a title
5.4 insurer's operations which are attributable to business written by a bona fide employee.

5.5 Subd. 8. **Escrow.** "Escrow" means written instruments, money, or other items
5.6 deposited by one party with a depository, escrow agent, or escrowee for delivery to another
5.7 party upon the performance of a specified condition or the happening of a certain event.

5.8 Subd. 9. **Escrow, settlement, or closing fee.** "Escrow, settlement, or closing fee"
5.9 means the consideration for supervising or handling the actual execution, delivery, or
5.10 recording of transfer and lien documents and for disbursing funds.

5.11 Subd. 10. **Foreign title insurer.** "Foreign title insurer" means a title insurer
5.12 incorporated or organized under the laws of any other state of the United States, the
5.13 District of Columbia, or any other jurisdiction of the United States.

5.14 Subd. 11. **Net retained liability.** "Net retained liability" means the total liability
5.15 retained by a title insurer for a single risk, after taking into account any ceded liability and
5.16 collateral, acceptable to the commissioner, maintained by the insurer.

5.17 Subd. 12. **Non-United States title insurer.** "Non-United States title insurer"
5.18 means any title insurer incorporated or organized under the laws of a foreign nation or a
5.19 province or territory.

5.20 Subd. 13. **Person.** "Person" means a natural person, partnership, association,
5.21 cooperative, corporation, trust, or other legal entity.

5.22 Subd. 14. **Producer.** "Producer" means a person, including an officer, director, or
5.23 owner of five percent or more of the equity or capital of any person, engaged in this state
5.24 in the trade, business, occupation, or profession of:

5.25 (1) buying or selling interests in real property;

5.26 (2) making loans secured by interests in real property; or

5.27 (3) acting as broker, agent, representative, or attorney of a person who buys or sells
5.28 an interest in real property or who lends or borrows money with the interest as security.

5.29 Subd. 15. **Qualified financial institution.** "Qualified financial institution" means
5.30 an institution that is:

5.31 (1) organized or, in the case of a United States branch or agency office of a foreign
5.32 banking organization, licensed under the laws of the United States or any state and has
5.33 been granted authority to operate with fiduciary powers;

5.34 (2) regulated, supervised, and examined by federal or state authorities having
5.35 regulatory authority over banks and trust companies;

5.36 (3) insured by the appropriate federal entity; and

6.1 (4) qualified under any additional rules established by the commissioner.

6.2 Subd. 16. **Referral.** "Referral" means the directing or the exercising of any power
6.3 or influence over the direction of title insurance business, whether or not the consent or
6.4 approval of any other person is sought or obtained with respect to the referral.

6.5 Subd. 17. **Security or security deposit.** "Security" or "security deposit" means
6.6 funds or other property received by the title insurer as collateral to secure an indemnitor's
6.7 obligation under an indemnity agreement pursuant to which the insurer is granted a
6.8 perfected security interest in the collateral in exchange for agreeing to provide coverage in
6.9 a title insurance policy for a specific title exception to coverage.

6.10 Subd. 18. **Subsidiary.** "Subsidiary" means an affiliate controlled by a person
6.11 directly or indirectly through one or more intermediaries.

6.12 Subd. 19. **Title insurance agent or agent.** "Title insurance agent" or "agent" means
6.13 an authorized person, other than a bona fide employee of the title insurer who, on behalf
6.14 of the title insurer, performs the following acts, in conjunction with the issuance of a
6.15 title insurance report or policy:

6.16 (1) determines insurability and issues title insurance reports or policies, or both,
6.17 based upon the performance or review of a search or abstract of title; and

6.18 (2) performs one or more of the following functions:

6.19 (i) collects or disburses premiums, escrow or security deposits, or other funds;

6.20 (ii) handles escrows, settlements, or closings;

6.21 (iii) solicits or negotiates title insurance business; or

6.22 (iv) records closing documents.

6.23 Subd. 20. **Title insurance business or business of title insurance.** "Title insurance
6.24 business" or "business of title insurance" means:

6.25 (1) issuing as insurer or offering to issue as insurer a title insurance policy;

6.26 (2) transacting or proposing to transact by a title insurer any of the following
6.27 activities when conducted or performed in contemplation of or in conjunction with the
6.28 issuance of a title insurance policy:

6.29 (i) soliciting or negotiating the issuance of a title insurance policy;

6.30 (ii) guaranteeing, warranting, or otherwise insuring the correctness of title searches
6.31 for all instruments affecting titles to real property, any interest in real property, cooperative
6.32 units and proprietary leases, and for all liens or charges affecting the same;

6.33 (iii) handling of escrows, settlements, or closings;

6.34 (iv) executing title insurance policies;

6.35 (v) effecting contracts of reinsurance; or

6.36 (vi) abstracting, searching, or examining titles;

7.1 (3) guaranteeing, warranting, or insuring searches or examinations of title to real
 7.2 property or any interest in real property;

7.3 (4) guaranteeing or warranting the status of title as to ownership of or liens on real
 7.4 property and personal property by any person other than the principals to the transaction; or

7.5 (5) doing or proposing to do any business substantially equivalent to any of the
 7.6 activities listed in this subdivision in a manner designed to evade the provisions of this
 7.7 chapter.

7.8 Subd. 21. **Title insurance policy or policy.** "Title insurance policy" or "policy"
 7.9 means a contract insuring or indemnifying owners of, or other persons lawfully interested
 7.10 in, real or personal property or any interest in real property, against loss or damage arising
 7.11 from any or all of the following conditions existing on or before the policy date and
 7.12 not excepted or excluded:

7.13 (1) defects in or liens or encumbrances on the insured title;

7.14 (2) unmarketability of the insured title;

7.15 (3) invalidity, lack of priority, or unenforceability of lines or encumbrances on
 7.16 the stated property;

7.17 (4) lack of legal right of access to the land; or

7.18 (5) unenforceability of rights in title to the land.

7.19 Subd. 22. **Title insurance report or report.** "Title insurance report" or "report"
 7.20 means a preliminary report, commitment, or binder issued before the issuance of a title
 7.21 insurance policy containing the terms, conditions, exceptions, and any other matters
 7.22 incorporated by reference under which the title insurer is willing to issue its title insurance
 7.23 policy.

7.24 Subd. 23. **Title insurer or insurer.** "Title insurer" or "insurer" means a company
 7.25 organized under laws of this state for the purpose of transacting the business of title
 7.26 insurance and any foreign or non-United States title insurer licensed in this state to
 7.27 transact the business of title insurance.

7.28 Subd. 24. **Title plant.** "Title plant" means a set of records consisting of documents,
 7.29 maps, surveys, or entries affecting title to real property or any interest in or encumbrance
 7.30 on the property, which have been filed or recorded in the jurisdiction for which the title
 7.31 plant is established or maintained.

7.32 **Sec. 5. [68A.13] CORPORATE FORM REQUIRED.**

7.33 No person other than a domestic, foreign, or non-United States title insurer organized
 7.34 on the stock plan and licensed under section 60A.07 as a title insurer shall issue a title
 7.35 insurance policy or otherwise transact the business of title insurance in this state.

8.1 **Sec. 6. [68A.14] AUTHORIZED ACTIVITIES OF TITLE INSURERS.**

8.2 Subject to the exceptions and restrictions contained in this chapter, a title insurer
8.3 may:

8.4 (1) do only title insurance business;

8.5 (2) reinsure title insurance policies; and

8.6 (3) perform ancillary activities, unless prohibited by the commissioner, including
8.7 examining titles to real property and any interest in real property and procuring and
8.8 furnishing related information and information about relevant personal property, when not
8.9 in contemplation of, or in conjunction with, the issuance of a title insurance policy.

8.10 **Sec. 7. [68A.15] LIMITATIONS ON POWERS.**

8.11 (a) An insurer that transacts any class, type, or kind of business other than title
8.12 insurance is not eligible for the issuance or renewal of a license to transact the business of
8.13 title insurance in this state and may not transact, underwrite, or issue title insurance.

8.14 (b) A title insurer shall not engage in the business of guaranteeing payment of the
8.15 principal or the interest of bonds or mortgages.

8.16 (c) Notwithstanding paragraph (a), and to the extent such coverage is lawful within
8.17 this state, a title insurer is expressly authorized to issue closing or settlement protection to
8.18 a proposed insured upon request if the title insurer issues a preliminary report, binder, or
8.19 title insurance policy. The closing or settlement protection must conform to the terms of
8.20 coverage and form of instrument as required by the commissioner and may indemnify a
8.21 proposed insured solely against loss of settlement funds only because of the following acts
8.22 of a title insurer's named title insurance agent:

8.23 (i) theft of settlement funds; and

8.24 (ii) failure to comply with written closing instructions by the proposed insured when
8.25 agreed to by the title insurance agent relating to title insurance coverage.

8.26 The commissioner may adopt or approve a required charge for providing the
8.27 coverage.

8.28 A title insurer shall not provide any other coverage which purports to indemnify
8.29 against improper acts or omissions of a person with regard to escrow, settlement, or
8.30 closing services.

8.31 **Sec. 8. [68A.16] MINIMUM CAPITAL AND SURPLUS REQUIREMENTS.**

8.32 Before being licensed to do an insurance business in this state, a title insurer shall
8.33 establish and maintain a minimum paid-in capital of not less than \$..... and, in addition,
8.34 paid-in initial surplus of at least \$.....

9.1 Sec. 9. **[68A.17] SINGLE RISK LIMIT.**

9.2 (a) The net retained liability of a title insurer for a single risk in regard to property,
9.3 whether assumed directly or as reinsurance, must not exceed the aggregate of 50 percent
9.4 of surplus as regards policyholders plus the statutory premium reserve less the company's
9.5 investment in title plants, all as shown in the most recent annual statement of the insurer
9.6 on file with the commissioner.

9.7 (b) For purposes of this chapter:

9.8 (1) a single risk is the insured amount of a title insurance policy, except that, where
9.9 two or more title insurance policies are issued simultaneously covering different estates
9.10 in the same real property, a single risk is the sum of the insured amounts of all the title
9.11 insurance policies; and

9.12 (2) a policy under which a claim payment reduces the amount of insurance under
9.13 one or more other title insurance policies is included in computing the single risk sum
9.14 only to the extent that its amount exceeds the aggregate amount of the policy or policies
9.15 whose amount of insurance is reduced.

9.16 Sec. 10. **[68A.18] ADMITTED ASSET STANDARDS.**

9.17 In determining the financial condition of a title insurer doing business under
9.18 this chapter, the general investment provisions of section 60A.11 apply, except that an
9.19 investment in a title plant or plants in an amount equal to the actual cost is allowed
9.20 as an admitted asset for title insurers. The aggregate amount of the investment must
9.21 not exceed the lesser of 20 percent of admitted assets or 40 percent of surplus to
9.22 policyholders, as shown on the most recent annual statement of the title insurer on file
9.23 with the commissioner.

9.24 Sec. 11. **[68A.19] RESERVES.**

9.25 Subdivision 1. **Generally.** In determining the financial condition of a title insurer
9.26 doing business under this chapter, the general provisions of the insurance laws of the
9.27 state requiring the establishment of reserves sufficient to cover all known and unknown
9.28 liabilities including allocated and unallocated loss adjustment expense apply, except that a
9.29 title insurer shall establish and maintain the reserves required by subdivisions 2 to 4.

9.30 Subd. 2. **Claims reserve.** A known claim reserve must be established and
9.31 maintained in an amount estimated to be sufficient to cover all unpaid losses, claims,
9.32 and allocated loss adjustment expenses arising under title insurance policies, guaranteed
9.33 certificates of title, guaranteed searches and guaranteed abstracts of title, and all unpaid
9.34 losses, claims, and allocated loss adjustment expenses for which the title insurer may be

10.1 liable, and for which the insurer has received notice by or on behalf of the insured, holder
 10.2 of a guarantee or escrow or security depositor.

10.3 Subd. 3. **Statutory or unearned premium reserve.** A statutory or unearned
 10.4 premium reserve must be established and maintained consisting of:

10.5 (1) the amount of statutory or unearned premium reserve required by the laws of
 10.6 the domiciliary state of the insurer if the insurer is a foreign or non-United States title
 10.7 insurer; or

10.8 (2) if the insurer is a domestic insurer of this state, a statutory or unearned premium
 10.9 reserve consisting of:

10.10 (i) the amount of the statutory or unearned premium or reinsurance reserve on the
 10.11 effective date of this chapter, which balance must be released in accordance with the law
 10.12 in effect at the time such sums were added to the reserve; and

10.13 (ii) out of total charges for policies of title insurance written or assumed commencing
 10.14 with the effective date of this chapter, and until December 31,, a title insurer shall add
 10.15 to and set aside in this reserve an amount equal to of the sum of the following items
 10.16 set forth in the title insurer's most recent annual statement on file with the commissioner:

10.17 (A) direct premiums written;

10.18 (B) escrow and settlement service fees;

10.19 (C) other title fees and service charges including fees for closing protection letters;

10.20 and

10.21 (D) premiums for reinsurance assumed less premiums for reinsurance ceded during
 10.22 the year;

10.23 (iii) additions to the reserve after January 1, must be made out of total charges for
 10.24 title insurance policies and guarantees written, equal to the sum of the following items, as
 10.25 set forth in the title insurer's most recent annual statement on file with the commissioner:

10.26 (A) for each title insurance policy on a single risk written or assumed after January
 10.27 1,, \$..... per \$1,000 of net retained liability for policies under \$500,000 and \$..... per
 10.28 \$1,000 of net retained liability for policies of \$500,000 or greater; and

10.29 (B) \$..... of escrow, settlement, and closing fees collected in contemplation of the
 10.30 issuance of title insurance policies or guarantees;

10.31 (iv) the aggregate of the amounts set aside in this reserve in any calendar year
 10.32 pursuant to clause (2), items (ii) and (iii), must be released from the reserve and restored
 10.33 to net profits over a period of 20 years pursuant to the following formula: 35 percent of
 10.34 the aggregate sum on July 1 of the year next succeeding the year of addition; 15 percent
 10.35 of the aggregate sum on July 1 of each of the succeeding two years; ten percent of the
 10.36 aggregate sum on July 1 of the next succeeding year; three percent of the aggregate sum

11.1 on July 1 of each of the next three succeeding years; two percent of the aggregate sum on
 11.2 July 1 of each of the next three succeeding years; and one percent of the aggregate sum on
 11.3 July 1 of each of the next succeeding ten years;

11.4 (v) the insurer shall calculate an adjusted statutory or unearned premium reserve
 11.5 as of the effective date of this chapter. The adjusted reserve must be calculated as if
 11.6 clause (2), items (ii) to (iv) had been in effect for all years beginning 20 years prior to
 11.7 the effective date of this chapter. For purposes of this calculation, the balance of the
 11.8 reserve as of that date is deemed to be zero. If the adjusted reserve so calculated exceeds
 11.9 the aggregate amount set aside for statutory or unearned premiums in the insurer's annual
 11.10 statement on file with the commissioner on the effective date of this chapter, the insurer
 11.11 shall, out of total charges for policies of title insurance, increase its statutory or unearned
 11.12 premium reserve by an amount equal to one-sixth of that excess in each of the succeeding
 11.13 six years, beginning with the calendar year that includes the effective date of this chapter,
 11.14 until the entire excess has been added;

11.15 (vi) the aggregate of the amounts set aside in this reserve in any calendar year as
 11.16 adjustments to the insurer's statutory or unearned premium reserve pursuant to clause
 11.17 (2), item (v), must be released from the reserve and restored to net profits, or equity if
 11.18 the additions required by clause (2), item (v), reduced equity directly, over a period not
 11.19 exceeding ten years pursuant to the following table:

<u>Year of Addition</u>	<u>Release</u>
<u>Year 1*</u>	<u>Equally over 10 years</u>
<u>Year 2</u>	<u>Equally over 9 years</u>
<u>Year 3</u>	<u>Equally over 8 years</u>
<u>Year 4</u>	<u>Equally over 7 years</u>
<u>Year 5</u>	<u>Equally over 6 years</u>
<u>Year 6</u>	<u>Equally over 5 years</u>

11.27 *The calendar year following the effective date of this chapter.

11.28 Subd. 4. **Supplemental reserve.** (a) A supplemental reserve must be established
 11.29 consisting of any other reserves necessary, when taken in combination with the reserves
 11.30 required by subdivision 2 or 3, to cover the company's liabilities with respect to all losses,
 11.31 claims, and loss adjusted expenses.

11.32 (b) The supplemental reserve required under paragraph (a) must be phased in as
 11.33 follows: 25 percent of the otherwise applicable supplemental reserve will be required until
 11.34 December 31,; 50 percent of the otherwise applicable supplemental reserve will be
 11.35 required until December 31,; and, 75 percent of the otherwise applicable supplemental
 11.36 reserve will be required until December 31,

12.1 Subd. 5. **Actuarial certification.** Each title insurer subject to the provisions of this
12.2 chapter shall file with its annual statement required under section 60A.13 a certification
12.3 by a member in good standing of the American Academy of Actuaries. The actuarial
12.4 certification required of a title insurer must conform to the Nation Association of Insurance
12.5 Commissioners' annual statement instructions for title insurers.

12.6 **Sec. 12. [68A.20] LIQUIDATION, DISSOLUTION, OR INSOLVENCY.**

12.7 Subdivision 1. **Applicable law.** Chapter 60B applies to all title insurers subject to
12.8 this chapter, except as otherwise provided in this section. In applying the provisions of
12.9 chapter 60B, the court shall consider the unique aspects of title insurance and shall have
12.10 broad authority to fashion relief that provides for the maximum protection of the title
12.11 insurance policyholders.

12.12 Subd. 2. **Security and escrow funds.** Security and escrow funds held by or on
12.13 behalf of the title insurer do not become general assets and must be administered as
12.14 secured creditor claims under section 60B.43.

12.15 Subd. 3. **Policy cancellations.** Title insurance policies that are in force at the time
12.16 an order of liquidation is entered must not be canceled except upon a showing to the court
12.17 of good cause by the liquidator. The determination of good cause is within the discretion
12.18 of the court. In making this determination, the court shall consider the unique aspects of
12.19 title insurance and all other relevant circumstances.

12.20 Subd. 4. **Claims filings.** The court may set appropriate dates that potential claimants
12.21 must file their claims with the liquidator. The court may set different dates for claims
12.22 based upon the title insurance policy than for all other claims. In setting dates, the court
12.23 shall consider the unique aspects of title insurance and all other relevant circumstances.

12.24 Subd. 5. **Premiums.** As of the date of the order of insolvency or liquidation, all
12.25 premiums paid, due or to become due under policies of the title insurers are fully earned.
12.26 It is the obligation of agents, insureds, or representatives of the title insurer to pay fully
12.27 earned premiums to the liquidator or rehabilitator.

12.28 **Sec. 13. [68A.21] RESTRICTIONS ON DIVIDENDS.**

12.29 A title insurer shall only declare or distribute a dividend to shareholders without the
12.30 prior written approval of the commissioner, as would be permitted under section 60A.23,
12.31 subdivision 4, for insurers other than life insurers.

12.32 **Sec. 14. [68A.22] DIVERSIFICATION REQUIREMENT.**

13.1 Subdivision 1. **Reduction on accepting additional business.** Without the prior
 13.2 written approval of the commissioner, a domestic title insurer shall not accept:

13.3 (1) additional business from a title insurance agent that is not an affiliated company
 13.4 with the insurer if, when added to other business written through the title insurance agent
 13.5 during the same calendar year, that agent's aggregate premiums written on behalf of the
 13.6 title insurer will exceed 20 percent of the title insurer's gross premiums written during the
 13.7 prior calendar year, as shown on the title insurer's most recent annual statement on file
 13.8 with the commissioner; or

13.9 (2) additional direct operations business from a single source if, when added to
 13.10 other direct operations business from the single source during the same calendar year,
 13.11 the aggregate premiums written on the direct operations business of the single source
 13.12 will exceed 20 percent of the title insurer's gross premiums written during the prior
 13.13 calendar year as shown on the title insurers most recent annual statement on file with the
 13.14 commissioner. For purposes of this section, a "single source" means a person that refers
 13.15 business to the title insurer and any other person that controls, is controlled by, or is
 13.16 under common control with, that person.

13.17 Subd. 2. **Prior approval by commissioner.** In determining whether prior approval
 13.18 may be given, the commissioner shall consider:

13.19 (1) the potential that the acceptance of more business from the title agent or source
 13.20 may adversely affect the financial solidity of the title insurer;

13.21 (2) the availability of competing title agents or additional sources in the territories in
 13.22 which the title insurer accepts risks;

13.23 (3) the number of years the title insurer has been in business;

13.24 (4) reinsurance arrangements mitigating the concentration of business from the
 13.25 agent or source;

13.26 (5) the comparative profitability of the agent's or source's book of business;

13.27 (6) the degree of oversight of the agent's operations exercised by the title insurer; and

13.28 (7) any other circumstances deemed by the commissioner to be appropriate.

13.29 **Sec. 15. [68A.23] DIRECT OPERATIONS; POLICYHOLDER TREATMENT.**

13.30 Subdivision 1. **Offer to issue certain owner's policy.** When a title insurance
 13.31 report includes an offer to issue an owner's policy covering the resale of owner-occupied
 13.32 residential property, the report must be furnished to the purchaser-mortgagor or its
 13.33 representative as soon as reasonably possible before closing. If the report cannot be
 13.34 delivered before the day of closing, the title insurer shall document the reasons for the

14.1 delay. The report furnished to the purchaser-mortgagor must incorporate the following
 14.2 statement on the first page in bold type:

14.3 **"Please read the exceptions and the terms shown or referred to herein carefully.**
 14.4 **The exceptions are meant to provide you with notice of matters which are not**
 14.5 **covered under the terms of the title insurance policy and should be carefully**
 14.6 **considered.**
 14.7 **It is important to note that this form is not a written representation as to the**
 14.8 **condition of title and may not list all liens, defects, and encumbrances affecting**
 14.9 **title to the land."**

14.10 Subd. 2. **Lender's title insurance policy; notice to purchaser-mortgagor.** A
 14.11 title insurer issuing a lender's title insurance policy in conjunction with a mortgage loan
 14.12 made simultaneously with the purchase of all or part of the real estate securing the loan,
 14.13 where no owner's title insurance policy has been requested, shall give written notice, on
 14.14 a form prescribed or approved by the commissioner, to the purchaser-mortgagor at the
 14.15 time the commitment is prepared. The notice must explain that a lender's title insurance
 14.16 policy is to be issued protecting the mortgage-lender, and that the policy does not provide
 14.17 title insurance protection to the purchaser-mortgagor as the owner of the property being
 14.18 purchased. The notice must explain what a title policy insures against and what possible
 14.19 exposures exist for the purchaser-mortgagor that could be insured against through the
 14.20 purchase of an owner's policy. The notice must also explain that the purchaser-mortgagor
 14.21 may obtain an owner's title insurance policy protecting the property owner at a specified
 14.22 cost or approximate cost, if the proposed coverages or amount of insurance is not then
 14.23 known. A copy of the notice, signed by the purchaser-mortgagor, must be retained in the
 14.24 relevant underwriting file at least five years after the effective date of the policy.

14.25 Sec. 16. **[68A.24] DUTIES OF TITLE INSURERS USING THE SERVICES OF**
 14.26 **TITLE INSURANCE AGENTS.**

14.27 Subdivision 1. **Contract required.** The title insurer shall not accept business from a
 14.28 title insurance agent unless there is in force a written contract between the parties which
 14.29 sets forth the responsibilities of each party and, where both parties share responsibility for
 14.30 a particular function, specifies the division of responsibilities.

14.31 Subd. 2. **Statement of financial condition of agent.** For each title insurance agent
 14.32 under contract with the insurer, the title insurer shall have on file a statement of financial
 14.33 condition, of each title insurance agent as of the end of the previous calendar year setting
 14.34 forth an income statement of business done during the preceding year and a balance sheet
 14.35 showing the condition of its affairs as of the prior December 31 certified by the agent as

15.1 being a true and accurate representation of the agent's financial condition. Attorneys
 15.2 actively engaged in the practice of law, other than that related to title insurance business,
 15.3 are exempt from the requirements of this subdivision.

15.4 Subd. 3. **Annual review.** The title insurer shall, at least annually, conduct an on-site
 15.5 review of the underwriting, claims, and escrow practices of the agent which includes a
 15.6 review of the agent's policy blank inventory and processing operations. If the title agent
 15.7 does not maintain separate bank or trust accounts for each title insurer it represents, the
 15.8 title insurer shall verify that the funds held on its behalf are reasonably ascertainable from
 15.9 the books of account and records of the title agent.

15.10 Subd. 4. **Executing or terminating contract; notice to commissioner.** Within 30
 15.11 days of executing or terminating a contract with a title insurance agent, the title insurer
 15.12 shall provide written notification of the appointment or termination and the reason for
 15.13 termination to the commissioner. Notices of appointment of a title insurance agent shall be
 15.14 made on a form adopted by the commissioner.

15.15 Subd. 5. **Board appointments.** A title insurer shall not appoint to its board of
 15.16 directors an officer, director, employee, or controlling shareholder of any title insurance
 15.17 agent who wrote one percent or more of the title insurer's direct premiums written during
 15.18 the previous calendar year as shown on the title insurer's most recent annual statement on
 15.19 file with the commissioner. This subdivision does not apply to relationships governed by
 15.20 chapter 60D.

15.21 Subd. 6. **Inventory of policy forms and numbers.** The title insurer shall maintain
 15.22 an inventory of all policy forms or policy numbers allocated to each title insurance agent.

15.23 Subd. 7. **Proof of agent license.** The title insurer shall have on file proof that the
 15.24 title insurance agent is licensed by this state.

15.25 Subd. 8. **Underwriting guidelines and settlement authority.** The title insurer shall
 15.26 establish the underwriting guidelines and, where applicable, limitations on title claims
 15.27 settlement authority to be incorporated into contracts with its title insurance agents.

15.28 **Sec. 17. [68A.25] CONDITIONS FOR MAINTAINING ESCROW AND**
 15.29 **SECURITY DEPOSIT ACCOUNTS.**

15.30 Subdivision 1. **General requirements.** (a) A title insurer may operate as an escrow,
 15.31 security, settlement, or closing agent, provided that the requirements of this section are met.

15.32 (b) All funds deposited with the title insurer in connection with any escrow,
 15.33 settlement, closing, or security deposit must be submitted for collection to or deposited in
 15.34 a separate fiduciary trust account or accounts in a qualified financial institution no later
 15.35 than the close of the next business day, in accordance with the following requirements:

16.1 (1) the funds shall be the property of the person or persons entitled to them under
16.2 the provisions of the escrow, settlement, security deposit, or closing agreement and shall
16.3 be segregated for each depository by escrow, settlement, security deposit, or closing
16.4 in the records of the title insurer in a manner that permits the funds to be identified on
16.5 an individual basis; and

16.6 (2) the funds shall be applied only in accordance with the terms of the individual
16.7 instructions or agreements under which the funds were accepted.

16.8 Subd. 2. **Disbursements.** (a) Funds held in an escrow account must be disbursed
16.9 only pursuant to a written instruction or agreement specifying how and to whom the
16.10 funds may be disbursed.

16.11 (b) Funds held in a security deposit account must be disbursed only pursuant to
16.12 a written agreement specifying:

16.13 (1) what actions the indemnitor shall take to satisfy the indemnitor's obligation
16.14 under the agreement;

16.15 (2) the duties of the title insurer with respect to disposition of the funds held,
16.16 including a requirement to maintain evidence of the disposition of the title exception
16.17 before any balance may be paid over to the depositing party or that party's designee; and

16.18 (3) any other provisions the commissioner may require.

16.19 (c) Disbursements may be made out of an escrow, settlement, or closing account
16.20 only if deposits in amounts at least equal to the disbursement have first been made directly
16.21 relating to the transaction disbursed against and if the deposits are in one of the following
16.22 forms:

16.23 (1) cash;

16.24 (2) wire transfers such that the funds are unconditionally received by the title insurer
16.25 or the insurer's depository;

16.26 (3) checks, drafts, negotiable orders of withdrawal, money orders, and any other
16.27 item that had been finally paid before any disbursements;

16.28 (4) a depository check, including a certified check, governed by the provisions
16.29 of the Federal Expedited Funds Availability Act, United States Code, title 12, sections
16.30 4001, et. seq; or

16.31 (5) credit transfers through the Automated Clearing House (ACH) which have
16.32 been deemed available by the depository institution receiving the credits. The credits
16.33 must conform to the operating rules set forth by the National Automated Clearing House
16.34 Association (NACHA).

16.35 Subd. 3. **Payment of interest.** Any interest received on funds deposited in
16.36 connection with any escrow, settlement, security deposit, or closing shall be paid, net of

17.1 administrative costs, to the depositing party, unless the instructions for the funds or a
17.2 governing statute provides otherwise.

17.3 Subd. 4. **Recording of documents.** Nothing in this chapter prohibits the recording
17.4 of documents before the time funds are available for disbursement with respect to a
17.5 transaction, provided all parties consent to the transaction in writing.

17.6 Subd. 5. **Other law.** Nothing in this chapter is intended to amend, alter, or supersede
17.7 other sections of this chapter, or the laws of this state or the United States, regarding
17.8 an escrow holder's duties and obligations.

17.9 Subd. 6. **Standard agreement.** The commissioner may prescribe a standard
17.10 agreement for escrow, settlement, closing, or security deposit funds.

17.11 Sec. 18. **[68A.26] REBATE AND FEE SPLITTING.**

17.12 Subdivision 1. **Prohibition.** A title insurer or other person shall not give or receive,
17.13 directly or indirectly, any consideration for the referral of title insurance business or
17.14 escrow or other service provided by a title insurer.

17.15 Subd. 2. **Cause of action.** A title insurer doing business in the same county as a title
17.16 insurer or title insurance agent who may be in violation of the prohibitions or limitations of
17.17 this section has a cause of action against the violating title insurer or title insurance agent
17.18 or recipient and, upon establishing the existence of a violation, is entitled to injunctive
17.19 relief as the court may deem necessary or desirable to prevent violations of this section in
17.20 the future. In an action under this subdivision, the court may award to the successful party
17.21 the court costs of the action together with reasonable attorney fees.

17.22 Sec. 19. **[68A.27] FAVORED AGENT OF TITLE INSURER.**

17.23 A title insurer shall not participate in a transaction in which it knows that a producer
17.24 or other person requires, directly or indirectly, or through a trustee, director, officer, agent,
17.25 employee, or affiliate, as a condition, agreement, or understanding to selling or furnishing
17.26 any other person a loan, or loan extension, credit, sale, property, contract, lease, or service,
17.27 that the other person shall place a title insurance policy of any kind with the title insurer or
17.28 through a particular title insurance agent.

17.29 Sec. 20. **[68A.28] PREMIUM RATE FILINGS AND STANDARDS.**

17.30 Subdivision 1. **Requirement.** No title insurer may charge any rates regulated by the
17.31 state after the effective date of this chapter, except in accordance with the premium rate
17.32 schedule and manual filed with and approved by the commissioner in accordance with

18.1 applicable statutes and rules governing rate filings. The commissioner may provide by rule
 18.2 for interim use of premium rate schedules in effect prior to the effective date of this chapter.

18.3 Subd. 2. **Rulemaking.** The commissioner may establish rules, including rules
 18.4 providing statistical plans, for use by all title insurers and title insurance agents in the
 18.5 recording and reporting of revenue, loss, and expense in the form and detail necessary to
 18.6 aid the commissioner in the establishment of rates and fees.

18.7 Subd. 3. **Verification and auditing of information.** The commissioner may require
 18.8 that the information provided under this section be verified by oath of the insurer's or
 18.9 agent's president or vice president or secretary or actuary, as applicable. The commissioner
 18.10 may further require that the information required under this section be subject to an audit
 18.11 conducted by an independent certified public accountant. The commissioner may establish
 18.12 a minimum threshold level at which an audit would be required.

18.13 Subd. 4. **Classification of information.** Information filed with the commissioner
 18.14 relating to the experience of a particular agent shall be kept confidential unless the
 18.15 commissioner finds it in the public interest to disclose the information required of title
 18.16 insurers or title insurance agents under this section.

18.17 **Sec. 21. [68A.29] FORM FILING.**

18.18 Subdivision 1. **Requirement.** A title insurer or authorized rate service organization
 18.19 shall not deliver or issue for delivery or permit any of its authorized title insurance agents
 18.20 to deliver in this state, any form, in connection with title insurance written, unless it has
 18.21 been filed with the commissioner and approved by the commissioner or 30 days have
 18.22 elapsed and it has not been disapproved as misleading or violative of public policy.

18.23 Subd. 2. **Scope.** Forms covered by this section shall include:

18.24 (1) title insurance policies, including standard form endorsements; and

18.25 (2) title insurance reports issued prior to the issuance of a title insurance policy.

18.26 Subd. 3. **Withdrawal of approval.** After notice and opportunity to be heard are
 18.27 given to the insurer or rate service organization which submitted a form for approval, the
 18.28 commissioner may withdraw approval of the form on finding that the use of the form is
 18.29 contrary to the legal requirements applicable at the time of withdrawal. The effective date
 18.30 of withdrawal of approval must not be less than 90 days after notice of withdrawal is given.

18.31 Subd. 4. **Additional coverage.** An approved policy form or endorsement providing
 18.32 coverage for which no identifiable premium is assessed must be incorporated into every
 18.33 applicable title insurance policy. The insurer shall disclose any additional coverage to the
 18.34 insured. The provisions of this section shall not operate to eliminate any underwriting
 18.35 standard of conditions relating to the approved policy forms or endorsements.

19.1 Subd. 5. **Inclusion of related term or condition.** Any term or condition related to
 19.2 an insurance coverage provided by an approved title insurance policy or any exception to
 19.3 the coverage, except those ascertained from a search and examination of records relating
 19.4 to a title or inspection or survey of a property to be insured, may only be included in
 19.5 the policy after the term, condition, or exception has been filed with the commissioner
 19.6 and approved.

19.7 Sec. 22. **[68A.30] FILING BY RATING BUREAUS.**

19.8 (a) A title insurer or title insurance agent may satisfy its obligation to file premium
 19.9 rates, rating manuals, and forms as required by this chapter by becoming a member of, or
 19.10 a subscriber to, a rate service organization, organized and licensed under the provisions of
 19.11 this code, where the organization makes the filings, and by authorizing the commissioner
 19.12 in writing to accept the filings on the insurer's behalf.

19.13 (b) Nothing in this chapter requires a title insurer or title insurance agent to become a
 19.14 member of, or a subscriber to, a rate service organization. Nothing in this chapter prohibits
 19.15 the filing of deviations from rate service organization filings by a member or subscriber.

19.16 Sec. 23. **[68A.31] RECORD RETENTION REQUIREMENTS.**

19.17 Evidence of the examination of title and determination of insurability for business
 19.18 written by a title insurer and records relating to escrow and security deposits must be
 19.19 preserved and retained by the insurer for as long as appropriate to the circumstances
 19.20 but, in no event, less than years after the title insurance policy has been issued or
 19.21 years after the escrow or security deposit account has been closed. This section
 19.22 does not apply to a title insurer acting as coinsurer if one of the other coinsurers has
 19.23 complied with this section.

19.24 Sec. 24. **[68A.32] RULES AND ORDERS.**

19.25 The commissioner may issue rules and orders necessary to carry out the provisions
 19.26 of this chapter.

19.27 Sec. 25. **[68A.33] PENALTIES AND LIABILITIES.**

19.28 (a) If the commissioner determines that the title insurer or any other person has
 19.29 violated this chapter, or any rule or order adopted under this chapter, after notice and
 19.30 opportunity to be heard, the commissioner may order:

- 19.31 (1) a penalty not exceeding \$..... for each violation; and
 19.32 (2) revocation or suspension of the title insurer's license.

20.1 (b) Nothing contained in this section affects the right of the commissioner to impose
20.2 other penalties provided for in the insurance laws of the state.

20.3 (c) Nothing contained in this chapter is intended to or shall in any manner limit or
20.4 restrict the rights of policyholders, claimants, and creditors.

20.5 Sec. 26. **[68A.34] VIOLATIONS OF THE REAL ESTATE SETTLEMENT**
20.6 **PROCEDURES ACT (RESPA).**

20.7 The commissioner or attorney general may bring an action in a court of competent
20.8 jurisdiction to enjoin violations of the Real Estate Settlement Procedures Act, United
20.9 States Code, title 12, section 2607, as amended.

20.10 Sec. 27. **REPEALER.**

20.11 Minnesota Statutes 2008, sections 68A.01; 68A.02; 68A.03; and 68A.04, are
20.12 repealed.

20.13 Sec. 28. **EFFECTIVE DATE.**

20.14 Sections 1 to 27 are effective on and applies to all transactions entered in to
20.15 after the effective date, except that:

20.16 (1) if the capital and surplus required before the effective date of this act was less
20.17 than that required by section 8, a title insurer has two years after the effective date of this
20.18 act to comply with section 8; and

20.19 (2) section 11 provides for a multiyear compliance period during which requisite
20.20 reserves must be established.