

MINNESOTA FAIR PLAN ACT

65A.31 MINNESOTA FAIR PLAN ACT.

Sections [65A.31](#) to [65A.42](#) shall be known and may be cited as the "Minnesota FAIR Plan Act."

History:

[1969 c 483 s 1](#); [1993 c 248 s 2](#)

65A.32 PURPOSES.

The purposes of sections [65A.31](#) to [65A.42](#) are:

(1) to encourage stability in the property and liability insurance market for property located in this state;

(2) to encourage maximum use, in obtaining property and liability insurance, as defined in sections [65A.31](#) to [65A.42](#), of the normal insurance market provided by the private property and casualty insurance industry;

(3) to encourage the improvement of the condition of properties located in this state and to further orderly community development generally;

(4) to provide for an organization known as the Minnesota FAIR plan, which will assure fair access to insurance requirements in order that no property is denied property or liability insurance through the FAIR plan due to the condition of the property, except after a physical inspection of the property and a fair evaluation of its individual underwriting characteristics;

(5) to publicize the purposes and procedures of the FAIR plan to the end that no one may fail to seek its assistance through lack of knowledge of its existence; and

(6) to provide for the formulation and administration by the Minnesota FAIR plan of a reinsurance arrangement whereby property and casualty insurers share equitably the responsibility for insuring insurable property for which property and liability insurance cannot be obtained through the normal insurance markets.

History:

[1969 c 483 s 2](#); [1986 c 455 s 42](#); [1993 c 248 s 3](#); [1999 c 120 s 1](#); [2003 c 40 s 5](#)

65A.33 DEFINITIONS.

Subdivision 1. **Scope.**

As used in sections [65A.31](#) to [65A.42](#), unless the context otherwise requires, the terms defined in this section have the following meanings given to them.

Subd. 2. **Insurer.**

"Insurer" means any insurance company or other organization licensed to write and engaged in writing property or liability insurance business, including the property or liability insurance components of multiperil policies, on a direct basis, in this state, except where such insurer is specifically exempted by statute from participation in this program.

Subd. 3. Property or liability insurance.

"Property or liability insurance" means the coverage against direct loss to real or tangible personal property at a fixed location that is provided in the standard fire policy, extended coverage endorsement, homeowners insurance, as defined in section [65A.27, subdivision 4](#), cooperative housing insurance, condominium unit owners insurance, builders risk, and such vandalism and malicious mischief insurance and such other classes of insurance as may be added to the program with respect to said property by amendment as hereinafter provided. Property or liability insurance does not include automobile, commercial liability, or such manufacturing risks as may be excluded by the commissioner.

Subd. 4. Minnesota FAIR plan.

"Minnesota FAIR plan," or "plan," means the organization formed by insurers to assist applicants in securing property or liability insurance and to administer the FAIR plan.

Subd. 5.

[Repealed, [2003 c 40 s 21](#)]

Subd. 5a. Member.

"Member" means any insurer as defined in subdivision 2.

Subd. 6. Premiums written.

"Premiums written" means direct written premiums charged during the second preceding calendar year with respect to property in this state for fire, allied lines, homeowners, the nonliability component of farm policies, and the nonliability component of commercial multiperil policies, as reported by the members to the NAIC.

Subd. 7. Commissioner.

"Commissioner" means the commissioner of commerce of the state of Minnesota.

Subd. 8.

[Repealed, [1993 c 248 s 17](#)]

Subd. 9. Board.

"Board" means the governing board of directors of the Minnesota FAIR plan.

Subd. 10. NAIC.

"NAIC" means the National Association of Insurance Commissioners.

History:

1969 c 483 s 3; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 455 s 43; 1989 c 260 s 12; 1993 c 248 s 4-6; 1994 c 465 art 2 s 1; 1999 c 120 s 2,3; 2003 c 40 s 6-10

65A.34 PLAN COVERAGE.

Subdivision 1. Application.

Any person having an insurable interest in real or tangible personal property who has been canceled, nonrenewed, or otherwise rejected for coverage in the private market may submit an application for coverage to the plan. If an inspection of the premises is performed, it must be done at no cost to the applicant.

Subd. 2. Inspections.

Before the plan may deny coverage due to the condition of the property or write coverage with a condition charge, it must first inspect the property for which coverage has been requested. The manner and scope of the inspections of Minnesota FAIR plan business must be prescribed by the plan with the approval of the commissioner.

Subd. 3. Initial inspection report.

An inspection report must be made for each property inspected. The report must cover pertinent structural and occupancy features as well as the general condition of the building and surrounding structures. A representative photograph of the property may be taken during the inspection.

Subd. 4. Condition charges.

Either during the inspection or immediately after the inspection, an employee of the FAIR plan shall inform the applicant as to the features that result in a condition charge if the risk is accepted. No inspector has the authority to advise whether the plan will provide the coverage.

Subd. 5. Completed inspection report.

Within ten business days after the inspection, the FAIR plan shall prepare or have prepared a completed inspection report that includes conditions that are subject to a condition charge under the rating plan approved by the commissioner. A copy of the inspection report must be made available to the applicant or the applicant's agent upon request.

Subd. 6.

[Repealed by amendment, 2003 c 40 s 11]

History:

1969 c 483 s 4; 1986 c 444; 1986 c 455 s 44; 1993 c 248 s 7; 1999 c 120 s 4-6; 2003 c 40 s 11

65A.35 ADMINISTRATION.

Subdivision 1. Membership.

Each insurer authorized to write and engaged in writing within this state, on a direct basis, property or liability insurance or any component of this insurance contained in a multiperil policy, including homeowners and commercial multiperil policies, shall participate in the plan as a condition of its authority to write such kinds of insurance within this state.

Subd. 2. Purposes.

The purposes of the Minnesota FAIR plan are:

(1) to formulate and administer, subject to the approval of the commissioner, a plan assuring fair access to insurance requirements in order that no property is denied property or liability insurance through the FAIR plan due to the condition of the property, except after a physical inspection of the property and a fair evaluation of its individual underwriting characteristics; and

(2) to formulate and administer, subject to the approval of the commissioner, a reinsurance arrangement whereby the members of the Minnesota FAIR plan share equitably the responsibility for insuring property which is insurable but for which property or liability insurance cannot be obtained through normal insurance markets.

Subd. 3. Plan of operation.

The plan of operation of the Minnesota FAIR plan, consistent with the provisions of sections [65A.31](#) to [65A.42](#) and the purpose of the plan must provide for the FAIR plan, the reinsurance arrangement, and the economical and efficient administration of the Minnesota FAIR plan, including, but not limited to, management of the plan, establishment of necessary facilities within this state, assessment of members to defray losses and expenses, commission arrangements, reasonable underwriting standards, acceptance and cession of reinsurance, and procedures for determining amounts of insurance to be provided.

The plan of operation is subject to approval by the commissioner.

Subd. 4. Amendment of plan of operation.

The Minnesota FAIR plan shall amend the plan of operation on its own initiative, subject to prior approval by the commissioner, or at the direction of the commissioner.

Subd. 5. Administration.

(1) The Minnesota FAIR plan is administered by a board of nine directors, five of whom are elected by the members of the plan and four who represent the public. Public directors may

include licensed insurance agents. Public directors are appointed by the commissioner. No less than two elected directors must be representatives of domestic insurers. In the election of directors, each member of the Minnesota FAIR plan is allotted votes bearing the same ratio to the total number of votes to be cast as its degree of participation in the plan bears to the total participation.

(2) Any vacancy among the elected directors must be filled by a vote of the other elected directors.

(3) If at any time the members fail to elect the required number of directors to the board, or a vacancy remains unfilled for more than 15 days, the commissioner may appoint the directors necessary to constitute a full board of directors.

(4) Vacancies among directors appointed by the commissioner must be filled by appointment by the commissioner. A person so appointed serves until the end of the term of the director the person is replacing.

(5) All public directors serve for a period of two years. The terms of all public directors begin on July 1 of the year their appointments begin.

(6) The plan of operation must provide for adequate compensation of public directors. A per diem amount and a procedure for reimbursement of expenses incurred in the discharge of their duties must be included in the plan. Private directors are not eligible for compensation.

(7) At the option of the board, employees may participate in an insurance plan administered by the commissioner of management and budget under chapter 43A, except as otherwise provided in section [43A.27, subdivision 2](#), clause (6).

Subd. 6.Participation.

All members of the Minnesota FAIR plan shall participate in its expenses, losses, and equity distribution in the proportion that the premiums written as defined in this subdivision, but excluding that portion, if any, of premiums attributable to the reinsurance arrangement maintained by the facility, by each such member during the second preceding calendar year bear to the aggregate premiums written in this state by all members of the plan. Participation by each member in the plan is determined annually by the plan on the basis of such premiums written during the second preceding calendar year as disclosed in the annual statements and other reports filed by the member with the NAIC.

History:

[1969 c 483 s 5](#); [1979 c 207 s 5](#); [1986 c 444](#); [1986 c 455 s 45,46](#); [1987 c 337 s 93](#); [1993 c 248 s 8](#); [2003 c 40 s 12](#); [2014 c 184 s 2](#)

65A.36 UNDERWRITING.

Subdivision 1.Evaluation of risk.

Agents are not permitted to bind coverage. The Minnesota FAIR plan shall issue a policy if the risk meets preliminary underwriting requirements. The plan may request an inspection report to obtain further underwriting information. If the inspection reveals that the applicant is not eligible for the coverage applied for, the plan shall inform the applicant within 59 days of the inception of the policy that the policy will be rescinded under section [65A.01, subdivision 3](#), paragraph (b), or canceled under section [65A.38](#). If the applicant is eligible for other coverage provided by the plan, the plan will offer to replace the rescinded or canceled policy with a policy providing coverage for which the applicant is eligible.

Before the 60th day after the inception of the policy, the FAIR plan shall advise the applicant that:

(1) the risk is acceptable with or without a condition charge or adjustment of policy limits. If a condition charge applies, the plan will tell the insured what improvements are necessary in order to remove the charge;

(2) the risk is not acceptable unless improvements noted by the plan are made by the applicant and confirmed by the plan; or

(3) the risk is not acceptable for the reasons stated by the plan.

Subd. 2. Premium invoice.

If the risk is accepted, an invoice will be delivered to the applicant requiring remittance of the appropriate premium.

Subd. 3. Declining a risk.

In the event a risk is declined because it fails to meet reasonable underwriting standards, the applicant must be so notified. Reasonable underwriting standards include, but are not limited to:

(1) the physical condition of the property, such as its construction, heating, wiring, evidence of previous fires, significant unrepaired damage, or general deterioration;

(2) the present use or housekeeping of the property such as vacancy, overcrowding, storage of rubbish, or flammable materials; or

(3) other specific characteristics of ownership, condition, occupancy, or maintenance which are violative of public policy and result in increased exposure to loss.

Neighborhood or area location or any environmental hazard beyond the control of the property owner are not acceptable criteria for declining a risk.

Subd. 4. Appeal of plan decision.

In the event that a risk is declined on the basis that it does not meet reasonable underwriting standards, or the coverage will be written on condition that the property be improved, the plan shall, within five business days, send copies of the inspection report to the

applicant and the commissioner, and shall advise the applicant of the right to and the procedure for an appeal to the governing board and to the commissioner.

Subd. 5. Action on completed application.

The plan must within five business days of the receipt of a completed application advise the applicant that the risk has been declined, the risk has been accepted, or that the limit of coverage has been adjusted to reflect the insurable value of the subject property.

History:

1969 c 483 s 6; 1986 c 444; 1993 c 248 s 9; 1999 c 120 s 7,8; 2003 c 40 s 13

65A.37 POLICY FORMS.

All policies must be on standard policy forms issued for a term of one year and approved by the commissioner.

History:

1969 c 483 s 7; 1986 c 455 s 47; 1993 c 248 s 10; 1999 c 120 s 9; 2003 c 40 s 14; 2008 c 344 s 41

65A.375 RATES.

The commissioner shall set the insurance rates for cooperative housing, organized under chapter 308A, and for neighborhood real estate trusts, characterized as nonprofit ownership of real estate with resident control. The rates must be actuarially sound. All other rates used by the Minnesota FAIR plan must be approved by the commissioner prior to use.

History:

1987 c 337 s 94; 1989 c 356 s 5; 1993 c 248 s 11; 2003 c 40 s 15

65A.38 POLICY CANCELLATION.

Subdivision 1. Reasons.

The Minnesota FAIR plan shall not cancel a policy issued under sections 65A.31 to 65A.42 except:

- (1) for cause which would have been grounds for nonacceptance of the risk under the program had the cause been known to the plan at the time of acceptance;
- (2) for nonpayment of premium; or
- (3) with the approval of the governing board.

Subd. 2. Notice and statement of reasons.

Except as otherwise required under subdivision 4 or 5, at least 15 days' notice of cancellation together with a statement of the reason therefor shall be sent to the insured with a copy sent to the commissioner.

Subd. 3. Statement of appeal rights.

Any cancellation notice or notice of refusal to renew to the insured shall be accompanied by a statement that the insured has a right of appeal as hereinafter provided.

Subd. 4. Homeowner's insurance.

Cancellation of homeowner's insurance, as defined in sections [65A.27](#) to [65A.29](#), is subject to the provisions of those sections.

Subd. 5. Commercial property insurance.

Cancellation of a commercial property insurance policy issued by the Minnesota FAIR plan must comply with sections [60A.35](#) to [60A.38](#).

History:

[1969 c 483 s 8](#); [1993 c 248 s 12](#); [1994 c 485 s 65](#); [1999 c 120 s 10](#); [2003 c 40 s 16,17](#)

65A.39 APPEALS.

(a) Any applicant or participating insurer shall have the right of appeal to the board of directors, which shall promptly determine the appeal. A decision of the board may be appealed to the commissioner within 30 days from notice of the action or decision. The commissioner shall promptly determine the appeal. Each denial of insurance shall be accompanied by a statement that the applicant has the right of appeal to the board and the commissioner and setting forth the procedures to be followed for the appeal. A final action of the commissioner is subject to judicial review as provided in chapter 14.

(b) In lieu of the appeal to the commissioner under paragraph (a), an applicant or insurer may seek judicial review of the board's action.

History:

[1969 c 483 s 9](#); [1987 c 337 s 95](#); [1993 c 248 s 13](#)

65A.40 EDUCATION PROGRAMS.

The plan will undertake a continuing public education program, in cooperation with producers and others, to assure that the Minnesota FAIR Plan Act receives adequate public attention.

History:

[1969 c 483 s 10](#); [1993 c 248 s 14](#); [2003 c 40 s 18](#)

65A.41 AGENTS.

Subdivision 1. Generally.

A person licensed under chapter 60K may submit an application for coverage to the Minnesota FAIR plan and receive a commission from the plan for premiums paid for coverage.

However, the licensee is not an agent of the Minnesota FAIR plan for purposes of state law. All checks or similar instruments submitted in payment of plan premiums must be made payable to the Minnesota FAIR plan and not the agent.

Subd. 2. Duty to submit application.

An agent or broker shall not refuse to submit an application for basic property insurance coverage to the Minnesota FAIR plan if licensed to write and actively engaged in writing such insurance.

History:

1969 c 483 s 11; 1986 c 444; 1993 c 248 s 15; 2003 c 40 s 19

65A.42 IMMUNITY FROM LIABILITY.

There is no civil or criminal liability on the part of, and no cause of action of any nature arises against insurers, the Minnesota FAIR plan, the governing board, or employees of the plan or the commissioner or the commissioner's authorized representatives, for any acts or omissions by them if the acts or omissions were in good faith and within the scope of their responsibilities under sections 65A.31 to 65A.42. The inspection reports and communications of the inspection vendors and the Minnesota FAIR plan are not public documents.

History:

1969 c 483 s 12; 1971 c 24 s 11; 1986 c 444; 1993 c 248 s 16; 1999 c 120 s 11; 2003 c 40 s 20