

DATED  
OCT. 1981  
established filing  
exemption

STATE OF MINNESOTA  
DEPARTMENT OF COMMERCE  
INSURANCE DIVISION

In the matter of the proposed rules relating to exemption of insurers from certain filing requirements from commercial lines of insurance

STATEMENT OF NEED  
AND REASONABLENESS  
OF PROPOSED RULES

STATEMENT OF NEED AND AUTHORITY

Chapter 70A of the Minnesota Statutes provides statutory authority for regulatory requirements concerning filing of policy forms and rate schedules for most lines of property and casualty insurance. Minn. Stat. § 70A.02, subd. 3. permits the Commissioner of Insurance to:

exempt from any or all of the provisions of this chapter, if and to the extent that he finds their application unnecessary to achieve the purposes of this chapter;

- (1) Any specified person by order, or class of persons by rule; and
- (2) any specified risk by order, or any line or kind of insurance or subdivision thereof or class of risks or combination of classes by rule.

These rules are promulgated to exempt policy forms and schedules of rates used solely for business insureds from the filing and approval requirements of Ch. 70A.

Minn. Stat. § 70A.06, subd. 2. requires insurers to file policy forms with the Commissioner for approval. Subdivision 1 of that section requires rates to be filed, although the Commissioner's approval is not required. These requirements carry out the purposes of Minn. Stat. Chapter 70A as described in § 70A.01, subd. 2:

- (a) To protect policyholders and the public against adverse effects of excessive, inadequate or unfairly discriminatory rates;
- (b) To encourage, as the most effective way to produce rates that conform to the standards of par. (a), independent action by and reasonable price competition among insurers;
- (c) To provide formal regulatory controls for use if independent action and price competition fail.

In addition, policy form filing and approval is necessary in order to be certain that policy forms comply with the requirements of other Minnesota Statutes.

The limited insurance knowledge of consumers demands a formal review and approval process for non-commercial insurance policies. On the other hand, problems arising from misleading commercial policy provisions are unlikely due to the sophistication of business insureds. There are, moreover, comparatively few statutory requirements which relate to provisions of commercial line policy forms. For these reasons, there is little need for formal review of commercial line policies.

Formal review of rates is necessary for personal lines of insurance because of a potential for excessive or unfairly discriminatory rates. Greater competition for commercial lines business precludes the need for this review for commercial lines insurance rates. This competition is evidenced by flexibility built into many commercial rate schedules to allow subjective variation of rates by means of various credits or, in some cases, rates which are individually set for each risk.

Competition for business in commercial lines of insurance is also indicated by the Minnesota Market Share Data By Line table in Appendix A. This table of the market share which has been captured in the past four years by the 4, 8, and 20 insurers with the greatest premium in a given line of insurance. These measures, called concentration ratios can be seen as an index of the potential for a small group of insurers to control prices for insurance. As the concentration ratio decreases, the control of prices by the larger insurers also decreases. The data shows that the seven lines which could be considered strictly commercial lines: fire, allied lines, commercial multiperil, inland marine, workers' compensation, other liability and commercial auto ranked in the seven or eight least concentrated lines for each of the ratios in 1980. This indicates that there is less need for close scrutiny of commercial line rates.

As shown above, the filing and approval requirements of Minn. Stat. § 70A.06, subds. 1 and 2. are not necessary to assure that commercial line customers do buy policies which are not misleading or do not comply with statutory provisions. These requirements are also not necessary to prevent excessive or discriminatory rates. Thus, it can be seen that the statute requires adherence to requirements which result in unnecessary effort and expense for insurers and the Insurance Division. These rules remove as much of that burden as possible while maintaining the regulatory surveillance and controls which the Legislature intended and is required by Minn. Stat. § 70A.01, subd. 2.

#### FACTS ESTABLISHING REASONABLENESS

These rules provide exemptions from filing and approval requirements for commercial policies of insurance as defined

by 4 MCAR § 1.9350. This exemption, however, does not extend to rate service organizations which publish standard policy forms and rates. The Insurance Division will effectively carry out the surveillance function implied in Minn. Stat. § 70A.01 subd. 2, (c) by reviewing the comparatively few forms and rate schedules published by rate service organizations and used by insurers as the basis of the majority of forms and rate schedules issued by insurers. Furthermore, by maintaining the authority to approve these forms, the Division will sustain leverage to enforce its legal interpretation of general statutory provisions for most policies.

4 MCAR § 1.9350 defines "commercial policies" of insurance. This term is used as a shorthand reference for the policy forms affected by these rules. This term does not include crop hail or medical malpractice insurance because these coverages, although used by businesses, are purchased in a manner similar to the purchase of homeowner's or individual liability insurance. Liability insurance for individual professionals is also excluded because individual professionals are not always as careful in business insurance purchases as are businesses which employ professionals. For example, a physician or accountant is likely to pay less attention to liability purchases than a clinic or accounting firm.

4 MCAR § 1.9351 exempts insurers from the filing and review requirements of Minn. Stat. § 70A.06 for commercial lines of insurance. The exemptions are contingent upon the continued compliance of forms or rates with the provisions of the Minnesota Statutes. It is the intent of the Commissioner to presume that all exempt forms and rates comply with statutory requirements unless it is discovered via investigation of a consumer complaint or staff research that the presumption is not correct. When a form does not comply, the insurer will no longer be exempt from the filing and approval requirements. When the Commissioner finds that continued filing and approval is no longer necessary to assure continued compliance with the law, an order will be issued under Minn. Stat. § 70A.02, subd. 3. to provide an exemption for the insurer. The ability to remove the exemption in this manner will assure the successful operation of these rules and will fulfill the legislative intent expressed in Minn. Stat. § 70A.01, subd. 2, (c): To provide formal regulatory controls for use if independent action and price competition fail.

The exemption of insurers from filing and approval requirements for commercial lines of insurance is stated differently for policy forms, rate schedules, and for guide "a" and excess rates. This is necessary to reflect the differing exemptions and conditions for exemption for these three areas. 4 MCAR § 1.9351 exempts insurers from filing and approval requirements for commercial policy forms.


4 MCAR § 1.9351 provides exemption from filing requirements for commercial rates. Rates for lines governed by Chapter 70A are not subject to approval.

4 MCAR § 1.9351 exempts insurers from filing requirements for two specialized sets of rates - guide "a" and excess rates - which are set individually for individual insureds. This exemption is contingent upon the insurer's maintenance of a file containing the information normally required to be filed with the Commissioner. This exemption states the longstanding policy of the Insurance Division. It provides the same exemption as that in 4 MCAR § 1.9351 under the same conditions for all lines of insurance because it is unnecessary to require a complete filing for rates which apply to only one insured.

4 MCAR § 1.9352 requires an insurer to provide the Commissioner with any of the information which the previous rule exempts them from filing. This requirement allows the staff to investigate consumer complaints or to examine policies and rates when there is reason to question compliance with the requirements of the statutes. While the Commissioner can certainly require such information under the provisions of Minn. Stat. § 60A.17, subd. 9a, or 70A.06, subd. 4, this rule is proposed to make the possibility of this request and the expected time period for response clear to those insurers who will be affected.

Dated

Oct 28, 1981

  
Michael D. Markman  
Commissioner of Insurance