

State of Minnesota
Department of Commerce

In the Matter of Proposed Rules
Governing Homeowners Insurance
Nonrenewal Pursuant to Minn.
Stat. § 65A.29.

STATEMENT OF NEED
AND REASONABLENESS
OF PROPOSED RULES

STATEMENT OF AUTHORITY

Minnesota Statutes § 65A.29, provides that insurers may not refuse to renew policies of homeowners insurance except in certain specified situations. As amended by Minnesota Laws 1984, ch. 602, §§ 2-4, subdivision 8 of Minnesota Statutes § 65A.29 provides that the Commissioner of Commerce may adopt rules pursuant to Chapter 14 (the Administrative Procedures Act) to further specify the permissible grounds for nonrenewal of homeowners policies.

The rules as proposed set forth the criteria for nonrenewal of homeowners insurance policies based upon the statutory directions of Minnesota Statutes § 65A.29.

FACTS ESTABLISHING ESTABLISHING NEED AND REASONABLENESS

Part 2880.0050 Applicability.

This part specifies that the purpose of these rules is to protect insured owners of private dwellings. Therefore, insurance policies for commercial dwellings and farms and other instances not

commonly understood to be homeowners policies are excluded. Such commercial policies are usually of a different type and nature as to their underwriting standards, notes and similar criteria. Commercial insureds are usually better able to negotiate the terms and conditions of their insurance policies than the owners of private dwellings. The inclusion of commercial policies would require the consideration of many additional factors than policies on private dwellings. These rules would be inadequate for dealing with commercial policies. Separate rules would be necessary if commercial policies were subject to the statutory requirements of § 65.29.

Definitions. Part 2880.0100

Subpart 1. Scope. The scope section states that for the purposes of parts 2880.0050 to 2880.0800 the definitions in part 2880.0100 are applicable.

Subpart 2. Commercial Dwelling. This subpart defines commercial dwellings to be a building used primarily to produce income, such as a motel, hotel or apartment house, but does not include an owner-occupied dwelling of four units or less. Because it was the intent of these rules to exclude commercial dwellings from their application but to include private dwellings certain instances in which the dividing line between the two might be questionable needed to be dealt with. Accordingly, criteria of a dwelling as an income producer is deemed to be the best standard to measure a commercial dwelling by. However, the instances in which an owner might occupy part of that income producing building needed to be dealt with. To

preclude an overreaching of the scope of the rules a manageable standard had to be applied where the owner occupied part of an income producing property so that all income producing property in which the owner occupied even the smallest portion would not be included. It was deemed that a four unit or less dwelling would be the maximum extension of these rules without violating their purpose.

Subpart 3. Experience Period. Experience period is deemed by these rules to be the period of time which may be used by an insurer in determining the basis for nonrenewing a homeowners insurance policy. The period of three years is used because it is generally an accepted standard in the insurance industry at this time to use the past three years experience when underwriting new business. Using the three year experience period for nonrenewal would make this period consistent with other practices in the industry. A longer period than three years would allow an insurer to use events and other criteria which are outdated and unrelated to the risk that the insurer is subjected to by continuing to insure the policyholder at the present time. A shorter period of time than three years would not allow the insurer to take cognizance of patterns or experiences that would be indicative of the insurer's risk in continuing to insure the policyholder.

Subpart 4. Multiline Contract. This subpart defines the term "multiline contract" as a contract incorporating various types of coverages which traditionally have been sold as separate insurance policies but are now sometimes sold as a package. For example, home-

owners and automobile policies may be combined to afford coverage for both exposures under one policy. The definition recognizes current industry practices.

Subpart 5. Nonrenewal. This subpart defines a nonrenewal as being a termination action at the end of a policy period. The definition is broadly drafted to include various actions that effectively constitute nonrenewal whether or not they are so specified by the insurer in the notice. The definition carries out the intent expressed in the statute.

Subpart 6. Nonrenewal Notice. This subpart defines the nonrenewal notice as being a written notice informing the named insured of the insurer's intention to terminate the policy as of the renewal date.

Subpart 7. Policy of Homeowners Insurance. This subpart defines a homeowners policy as one providing property and liability coverage on dwellings, and includes policies with generic titles such as mobilehomeowners, dwelling owners, condominium owners and tenants policies. The definition does not include dwellings used for commercial purposes, nor farms.

Part 2880.0200. Grounds for Nonrenewal.

This part sets forth the specific permissible grounds for the nonrenewal of a homeowners insurance policy.

Item A provides that an insurer can nonrenew a homeowners insurance policy for the same reasons that it can cancel that same policy pursuant to Minn. Stat. § 65A.01, Subd. 3a. It would be

ridiculous to state that a policy could be cancelled but it could not be renewed for the very same reasons. The only result would be that the insured would be cancelled rather than nonrenewed. The result would be the same it would only be the semantic difference as to whether or not the insured was cancelled or nonrenewed.

Item B allows nonrenewal if the insured premises is used for illegal activity. This recognizes the right to nonrenew when there is a high risk situation. Since an illegal activity is never a contemplated activity by an insured when a homeowners insurance policy is issued, such types of activity are outside the scope of the intended risk insured against and the insurer is therefore not properly able to evaluate its risk nor could it agree to insure for an illegal activity.

Item C allows nonrenewal if the agency contract between the insurer and an independent agent is terminated. An independent agent, by contract, owns the book of business, in contrast to an exclusive agent in which case the insurer owns the book of business (the various insurance policies which he has sold). In the usual case involving an exclusive agent who is terminated, the book of business is transferred to another exclusive agent of that company, thus no nonrenewal occurs. The company wishes to continue the business. In the instance of an independent agent, that agent wishes to keep the business for himself and will in most cases try to encourage his clients to insure with a new company that he is licensed to write policies for. To protect the insured from the problems that arise between the agent and the company and also to take care of situations where an exclusive agent's business is not

transferred to a new agent, the rules provide that the insured be notified of their right at the time of cancellation, to require a transfer of their policy to another agent of that company. This makes the insured's rights to continued coverage with that company paramount over whatever rights the insurance agent may have in the insurance business and also does not allow an insurance company to cancel or nonrenew insureds under the guise of the termination of an agency contract, for reasons other than those allowable under the rules. The insured can make a written request to the insurer, requiring the insurer to transfer the policy to another agent for the company.

Item D allows nonrenewal if the insured violates local laws or ordinances which increase the possibility of a loss. This recognizes the right to nonrenew when there is a high risk situation.

Item E allows nonrenewal when the insured refuses to eliminate known conditions which increase the potential for loss after notification by the insurer of the existence of the condition. Two written requests stating the requirement that the condition be removed must be sent to the insured. The first request must inform the insured of any time limits for compliance; and the second request, if necessary, must inform the insured of the intent to send a nonrenewal notice if the condition is not removed.

Item F allows for nonrenewal if a substantial change in the quality or availability of fire protection occurs. This recognizes the right of an insurer to nonrenew where there is a significant increase in the risk.

Item G allows for nonrenewal if the insured has two or more losses during the experience period. Losses which cannot be used as a basis for nonrenewal are: those losses caused by natural causes, including but not limited to lightning, wind, or hail; losses for which no payment was made by the insurer; or losses for which the insurer recovers 80% or more of the payment through subrogation. This recognizes the insurer's right to nonrenewal based upon past experience. This recognizes the probability that what has occurred in the past has the potential for occurring in the future.

Item H allows all insureds of a particular insurer to be nonrenewed if the insurer ceases to write homeowners insurance in Minnesota. This allows the insurer to cease doing business in Minnesota and not be forced to continue to write business because of the nonrenewal rules.

Item I allows nonrenewal for failure to provide the insurer with sufficient information necessary to properly classify and rate the risk. Two written requests asking for the information must be sent to the insured, the second request must inform the insured of the intent of the insurer to send a nonrenewal notice if the information is not received. This allows the insurer to nonrenew when the insured prevents the insurer from determining the risks involved.

Item J allows nonrenewal if real property taxes have been delinquent for two or more years and continue to be delinquent at the time the nonrenewal notice is issued. This section acknowledges that failure to pay real estate taxes may be indicative of the fact that the insured is also not either expending funds or have the funds available to take appropriate cautions and safeguards in regard to

maintaining the property. It also can be deemed to be indicative of the insured's deteriorating financial circumstances which may make arson for profit attractive.

Item K allows nonrenewal when the named insured no longer owns or resides at the insured property. If a spouse continues to reside at the insured property and retains ownership, the policy will be endorsed to make the spouse the named insured instead of allowing a nonrenewal. This subpart recognizes that homeowners policies are underwritten and rated based on the named insured being a resident of the insured property and that they are eligible for only one homeowners policy at a time. The exception to the single homeowners policy requirement is the case of an insured who owns a secondary residence, in which case a second homeowners policy is issued on the secondary residence. An insurer is allowed to nonrenew the secondary residence if there are grounds to nonrenew the primary residence, but grounds sufficient to nonrenew a secondary residence cannot be used to nonrenew a primary residence. An insurer can also nonrenew a secondary residence if the insured fails to nonrenew the primary residence homeowner policy. Insurers do not actively solicit dwellings used as secondary residences, because of the added exposure to theft and vandalism due to being unoccupied much of the time, and usually only insure secondary residences as an accomodation to their insureds.

Item L incorporates the reasons stated in Minn. Stat. § 72A.20, subdivision 13 which does not allow nonrenewal of a homeowners policy based solely on the location of the property or the age of the primary structure.

Part 2880.0300. Waiver of Penalties.

This part provides a mechanism by which nonrenewal for purposes not specified in the proceeding parts may be attempted where the insurer feels such renewal is appropriate and the penalty for improper nonrenewal waived. The insurer must follow the procedures set forth to convince the commissioner to waive the penalties for nonrenewal. Waiver of the penalties does not affect the right of the insured to appeal a nonrenewal nor does it preclude the commissioner from disapproving the renewal. Instead, it provides a mechanism to allow the insurer, in advance, and when acting in a nonarbitrary and noncapricious manner, to avoid monetary penalties if the nonrenewal is later disallowed.

Part 2880.0400. Nonrenewal Notices.

This part specifies the form of the nonrenewal notice and the information it must contain. The specific reason for the nonrenewal must be on the front of the notice. If the reason for the termination is based on loss experience, the date of the loss, the type of loss and the amount of payment must be included on the notice. Statements must be included in the notice informing the insured of the right to complain to the commissioner of commerce, if the insured believes and the nonrenewal is in violation of Minnesota law or rules, and also of the availability of the Minnesota Property Insurance Placement Facility, commonly referred to as the FAIR Plan.

These requirements allow the insured to evaluate the correctness of the nonrenewal and to be aware of all rights that are available in contesting the nonrenewal.

Part 2880.0500. Validity of Notice and Renewal.

This part negates a nonrenewal notice unless it is in compliance with parts 2880.0050 to 2880.0800. This item, along with monetary penalties, encourage insurers to comply with the rules.

Part 2880.0600. Recordkeeping.

This part requires the insurer to keep records of company initiated terminations for a period of three years to assure compliance with these rules and the statutes. This provides the commissioner of commerce with a means to assure compliance on a company-wide basis, or after discovering a high number of improper non-renewals, to contact other insureds who may not have complained of their nonrenewals to assure that all their rights were granted.

Part 2880.0700. Nonrenewal of Multiline Contracts.

This part requires an insurer nonrenewing a multiline contract which contains homeowners coverage to issue a homeowners policy unless the multiline contract was terminated for reasons allowed in these rules. This precludes a situation where homeowners

coverage could be nonrenewed even though the nonrenewal would not be justified on its own merits. It forecloses the possibility of non-renewal for reasons other than those specified in these rules.

Part 2880.0800. Penalties.

Subpart 1 sets penalties for violations of the rules. This subpart creates an incremental penalty for each violation during any calendar year with the first violation incurring a \$100 penalty; the second violation a \$300 penalty; and a \$500 penalty for the third and all subsequent violations. The intent of this is to make each violation more expensive than the last and to deter continued violations because of the increasing cost.

Subpart 2 allows waiver of penalties by the commissioner based upon a showing of good faith on the part of the insurer and adequate proof as to the reasonable basis for that good faith. Penalties may also be waived if compliance with Part 2880.0300, previously described, is shown. This method allows the penalty to more appropriately fit the situation.

Subpart 3 recognizes and clarifies that the commissioner is not limited to the penalties set forth in these rules but may apply such other remedies as are available under Minn. Stat. § 72A, which allows the commissioner to issue cease and desist orders; rescind certificates of authorities and levy other fines if necessary. This precludes any ambiguity as to the commissioner's powers under the rules and the effect of the rules.

SMALL BUSINESS CONSIDERATIONS

Minnesota Statutes § 14.115 requires that the impact of proposed rules on small businesses be considered in the development of those rules. Specifically, the statute, at subdivision 2, requires that less stringent compliance standards and reporting requirements for small businesses be considered. The statute also requires that methods designed to reduce the impact of the rules on small businesses be incorporated into the rules if they are feasible and consistent with the statutory objectives associated with the rules.

Despite the lack of comments, the Department considered whether the provisions of the rule might be modified to accommodate the interests of small businesses.

If a small business is authorized to insure it would be affected by the rule's requirements. Very few, if any, insurance companies would qualify as a small business. Consideration was given to possible ways in which the requirements might be relaxed for small businesses or amended to reduce any burden on small businesses. It was concluded, however, that the requirements of the rule are necessary to the attainment of the statutory objectives upon which the rules are based. The statutory objective upon which these rules are based is to limit the grounds upon which all insurers may nonrenew homeowner policies. The insured's protection is uppermost in the intent of Minnesota Statute § 65A.29, subdivision 8. It was determined that no requirements of the rules could be relaxed for insurers

that might be small businesses without reducing the protections granted to their insureds. If the public perception then became that they would have less protection if their policy was with an insurer that was a small business the result could be a disinclination to purchase a policy from such a company.

Each of the methods described at Minnesota Statutes § 14.115, subdivision 2 (a) - (3) was considered in proposing the rule. The provisions contained in the proposed rule are believed to be necessary to achieve the legislative purposes.