

1983: repeal of filing exemptions

STATE OF MINNESOTA  
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Repeal  
of Rules Relating to Commercial Insurance  
Filing Exemptions

STATEMENT OF NEED  
AND REASONABLENESS

Minnesota Statutes Chapter 70A provides authority for regulatory requirements concerning the filing of policy forms and rate schedules for most lines of property and casualty insurance. Additionally, Minnesota Statute Section 70A.02, subd. 3 provides:

"Exemptions. The commissioner may 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 rules; 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."

The rules proposed to be repealed exempted policy forms and schedules of rates used solely for business insureds from the filing and approval requirements of Chapter 70A. Specifically, Minnesota Statute 70A.06, subdivision 2 requires insurers to file policy forms with the

Commissioner for approval. Subdivision 1 of that same section requires that rates be filed. However, rates are not subject to the Commissioner's approval.

The purposes behind Chapter 70A - titled "Insurance Rate Regulation" - are set forth in Minnesota Statute 70A.01.

"70A.01 Construction and Purposes.

Subdivision 1. This chapter shall be liberally construed to achieve the purposes stated in subdivision 2, which shall constitute an aid and guide to interpretation but not an independent source of power.

Subd. 2. The purposes of this chapter are:

(a) To protect policyholders and the public against the 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 (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;

(d) To authorize cooperative action among insurers in the rate-making process, and to regulate such cooperation in order to prevent practices that tend to bring about monopoly or to lessen or destroy competition;

(e) To encourage efficient and economic practices."

In addition to the enumerated purposes set forth in that statute, the Statement of Need and Reasonableness for the rules indicated that policy form filing and approval was necessary to be certain that policy forms complied with requirements of other Minnesota Statutes.

The Statement of Need and Reasonableness differentiated between consumers who would purchase noncommercial insurance policies and those business insureds purchasing commercial policies due to the sophistication of the business insureds.

In addition, there was also a distinction noted between noncommercial and commercial rates with greater potential for excessive or unfairly discriminatory rates being seen for the noncommercial lines. The market forces of competition were presumed to be able to resolve any problems that would arise in commercial lines.

Accordingly, the Statement of Need and Reasonableness concluded that the filing and approval requirements of Minnesota Statute 70A.06, subd. 1 and 2 were not necessary to insure that commercial line customers buy policies which are not misleading and do not comply with statutory provisions. Nor was filing deemed necessary to prevent excessive or discriminatory rates. It was concluded that therefore filing requirements relative to commercial lines were an unnecessary effort and expense for both the insurer and the Insurance Division, now the Commerce Department.

The Statement of Need and Reasonableness stated "These rules remove as much of that burden as possible while maintaining the regulatory surveillance and controls which the legislature intended and as required by Minnesota Statute 70A.01, subd. 2."

The rationale enumerated in the foregoing paragraphs is repeated in the body of the Statement of Need and Reasonableness.

On February 3, 1982 the rules were formally adopted.

Since the adoption of those rules more than three years has passed in which the department has had a chance to test the validity of the assumptions set forth in the Statement of Need and Reasonableness and to evaluate the impact of the exemption in regard to other factors not considered in the Statement of Need and Reasonableness. Based upon the department's experience it has been concluded that continuance of the exemption would defeat the purposes of Minnesota Statute 70A.01 and other statutory insurance regulations and interfere with the department's ability to carry out its duties.

The best example of this pertains to liquor liability insurance. It's the best example because of the amount of publicity and effort that has been involved in that one particular area. It is not the only area where problems arise. Some of the other areas will be mentioned later.

Liquor liability insurance came to public attention in December of 1984 when a major carrier abruptly cancelled a substantial number of policies in the State of Minnesota due to insolvency problems in the state of New York. The inability of a large number of the cancelled insureds to quickly obtain replacement coverage became a matter of great public concern which subsequently lead to legislative action in the recent session of the legislature. Coupled with concern as to the availability of coverage were questions as to the pricing of the policies.

It quickly became apparent that the department, due to the fact that no filings had been made with it in regard to either the policies or the rates since the adoption of this exemption, had no information in regard to the questions being raised and more importantly had little if any forewarning of the problem. While the insolvency of the New York based carrier may not have been predicted by filings, the constriction of the market to only a few carriers would have become evident to the department as would the increasing rates.

At this time, more than half a year after the triggering of that in regard to liquor liability insurance, the department is still without much of the information it needs to evaluate the problem in this particular field. Much of the information the department has been able to obtain has been provided voluntarily by such of the companies as the department has been able to determine are selling the coverages in the state and who are willing to respond to the department's request. Because no filing requirements currently exist in regard to these policies, the department cannot be absolutely certain it has contacted all the insurers writing

such policies. Therefore the information the department has obtained may or may not be indicative of the status of the entire market at this time. This is a very inappropriate position for a department that's charged with the regulation of an industry to find itself in. By reverting to the filing requirements exempted by the current rules the department would at least have available to it those policies and rates currently being used in the state and be able to develop a picture of the market based upon those filings.

As indicated earlier, liquor liability insurance is the best example of the damage the exemptions have caused to the department's ability to carry out its duties but other areas have also shown the detrimental nature of these rules. Environmental impairment liability insurance, insurance for taxi cab drivers, long haul truck drivers, asbestos removal contractors and many other types of business policies have problems similar to those mentioned in regard to liquor liability, namely a constricting market and increasing rates. In some cases the availability of any coverage for certain types of risks is questionable.

The department's experience in regard to these various types of coverage has indicated that these rules must be repealed and the department obtain the information that reverting to the statutory filing requirements would generate as well as such additional information as may be appropriate so that the department may fully discharge its duties. A recent study by the Insurance Services Office, Inc. indicates that there will be a capacity shortage in the insurance industry in the near future.

(A copy of the report is attached and incorporated into this Statement of Need and Reasonableness by reference.) If this proves accurate, availability of insurance will be a growing problem.

Because of the time it takes to respond to a crisis once it comes into existence, it is appropriate that the department has as much information as possible available to it so that it may either avert the crisis or be properly prepared to respond to it when it does occur. Because the department is unable to predict where the next problems will arise in regard to the commercial lines that are now exempt from filing an individualized approach which would continue the exemptions for certain types of lines or policies and repeal them for others is not appropriate. The department needs information on the entire market. It is imperative that the department charged with the regulation of insurance in general should know as much as possible about what is happening in the marketplace in Minnesota in regard to insurance in all respects. Continuation of the present exemptions prevents the department from having this information readily available.

Alternative methods of obtaining this information such as using Orders of the commissioner and similar devices have been reviewed and rejected as unduly burdensome and not guaranteeing as complete a picture of the marketplace as a repeal of these rules would produce. Repeal of these rules would require all parties engaged in the sale of these types of lines in Minnesota to file the required information with the department. The use of Orders and other devices would in most cases procedurally require each individual insurance company to be served with

the Order to produce this information and has other procedural drawbacks that would make it a much less satisfactory method of obtaining the information than making the filing exempted by these Rules. Additionally, insurers not known to the department as selling these particular lines and therefore possibly not served with the appropriate Orders would not have to produce that information.

Much was made in the Statement of Need and Reasonableness of the ability of the market, through competition, to maintain competitive and nonexcessive rates. Unfortunately, as the number of companies is reduced who are willing to sell any particular line of insurance or if the Insurance Services Office report is correct as the demand increases while the capacity decreases then it becomes a sellers market and competition between those selling the products begins to lose its effectiveness as a control.

While it may be argued that the Insurance Services Office's study may be incorrect, it does highlight the necessity for the department to have as much information as possible available to in regard to the industry it is charged with regulating. Present rules provide it with less information than is necessary.

The last factor mentioned in the original Statement of Need and Reasonableness that has not been discussed before in this Statement of Need and Reasonableness is cost. For the department costs may come in many forms. Repeal of these rules will require additional staff time to evaluate policies and rates filed with the department. However, as has

been brought home in regard to the various lines of insurance discussed above, trying to obtain this information after the fact and on a voluntary or even a compulsory basis is far more burdensome and probably not as complete as if the information were already on file with the department and subject to ongoing evaluation. Even if the net costs to the department were less because of the continuation of these rules than by virtue of their repeal, the cost to the public during the department's inability to predict future problems in the marketplace and prepare or respond to them will be far greater than any savings generated and would be an abdication of the department's responsibilities.

As for the additional cost to the companies, while there will be some generated, policies and forms are already prepared and the insurers are required to file them with various other states. In all but a few cases there will not be something required of the company that they have not already produced for another purpose. The additional cost generated will be that of actually filing the documents and paying whatever filing fees are appropriate. This is a relatively minimal cost to the insurers which will be presumably passed on to the consumers. As the purpose of the repeal of the exemption and of chapter 70A in general is to provide for the protection of those consumers, this is an acceptable additional cost of assuring the quality of that protection. Failure to repeal the exemptions may result in a far higher cost to the consumer through the department's inability to discharge its duties.

Because of the reasons enumerated in the foregoing paragraphs, the department feels that it cannot properly discharge its duties in regard to the regulation of the insurance industry in general and chapter 70A in particular so long as the exemption for commercial filings continues. Accordingly, this exemption must be repealed.

#### Small Business Consideration

Minnesota Statute Section 14.115 requires that the impact of rules as they pertain to small businesses be considered in the promulgation of the rules. The removal of these exemptions has a two tiered effect in regard to small businesses. Certain insurers who are small businesses will be required to make filings and incur an expense which they have not previously been required to make. However, as described above, there are overriding concerns regarding the protection of the consumer that require the imposition of this burden. While most insurers would not be classified as a small business as there are some that might be so characterized. Reduced standards for filing would not be acceptable because they would reduce the protection for the consumer by providing less than adequate information to the department. However, it was felt that the burden imposed would be less on small businesses because they would be likely to have fewer policies and forms to file and therefore a proportionately lighter burden.

The second aspect of the impact on small businesses are to those small businesses who would be the consumers of the insurance products being sold. In that respect, although the cost of the additional filing

requirements would in all probability be passed onto these consumers the ability of the department to properly discharge its duties would result in far greater benefit to these small businesses than any additional cost generated. For the most part these small businesses are not able to avail themselves of the benefits of competition. Bigger companies may represent a significant enough block of business to generate competition between competing insurers, but no individual small business is equally attractive. Therefore, small businesses purchase at the rate offered without the ability to negotiate a rate. In addition, small businesses are less able to either pay for the kind of advice that allows them to evaluate commercial policies or have the sophistication themselves that was mentioned in the original Statement of Need and Reasonableness. Small businesses, in regard to commercial line policies, are in much the same position as the consumers that that Statement of Need and Reasonableness felt necessitated continuing filings and regulation by the department of noncommercial lines.

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SUPPLEMENT OF STATEMENT  
OF NEED AND  
REASONABLENESS

Department of Personnel who may be testifying in regard to the above captioned rules are as follows: Richard G. Gomsrud, Thomas O'Malley, Nancy Myers, Don Peterson, William Kyle, and David Corum.

Supplement to Small Business Considerations

In the process of considering the repeal of these rules it was determined that the impact of the rules falls exclusively upon insurance companies and that few, if any, insurance companies qualify as small businesses. To comply with Minnesota Statute 14.115 the various methods for reducing the impact of the rule on small businesses enumerated in Minnesota Statute 14.115, subd. 2 were considered.

- (a) The establishment of less stringent reporting requirements for small businesses were considered, however since the requirement of the rule is that insurance companies file copies of the policies and the rates that they use the only alternative to such a filing would be no filing at all which would defeat the purposes of Chapter 70A and therefore this was not feasible.
- (b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements was considered. Once again for the purposes of Chapter 70A this was deemed to not be feasible.
- (c) Item c of subd. 2 pertains to the consolidation or simplification of compliance or reporting requirements for small businesses. Since the requirement imposed by the repeal of these rules would merely be to file documents and rates already existing it was deemed to be impossible to further simplify or consolidate the reporting requirements.
- (d) The establishment of performance standards and place design or operational standards required to this rule is not applicable to this particular situation.
- (e) The exemption of small businesses from many or all requirements of this rule would defeat the purposes of Chapter 70A and accordingly is not a viable option.

As stated in the original Statement of Need and Reasonableness the purpose of the statutory requirement for filing the policies and rates is to provide sufficient information and data for the Commissioner of Commerce to be able to effectively monitor the market to insure the protection of the consumer. All of the items in Minnesota Statute 14.115 pertaining to small business would be inappropriate and at odds with this particular requirement. The policy forms and rates have already been prepared by the various businesses involved, be they small businesses or not. The repeal of these rules merely imposes a requirement that they be filed with the Commissioner as the statute originally required prior to the exemption of filing of all commercial lines policies and rates from filing. After careful review as to whether or not small businesses could in any way be differentiated from larger insurers it was deemed impossible to make such differentiation. Policy rates and forms are not different in any way because they come from a small insurer than if they came from a large insurer. Therefore the following requirement falls equally upon all and there would be no way modifying this requirement without defeating the purpose of the statute. Part of the need for information about policies and rates is to allow the Commissioner to have a complete understanding of the entire market. Anything that would preclude this such as exempting small businesses from the requirements would defeat this. In addition the consumer would not be well served if the rates and policy forms of small insurers were not regulated in the same manner as those of larger insurers which is the intent of Chapter 70A.