

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed
Adoption of Rules Relating to
Prohibiting Discrimination in
Insurance Due to Blindness

STATEMENT OF NEED
AND REASONABLENESS

Pursuant to the authority of Minnesota Statute Section 72A.19 Subd. 2 and Minnesota Statute Section 45.023 the department has proposed rules pertaining to the prohibition of discrimination because of blindness. The proposed rule is based upon the National Association of Insurance Commissioners (NAIC) Model Regulation. A copy of the Model Regulation is attached to this statement of need and reasonableness and is incorporated as a part hereof. The Model Regulation was deemed to be necessary because of the many representations that had been made to the National Association of Insurance Commissioners and to United States Congress that insurance companies have in the past and continue to discriminate against blind people. The Model Rule was proposed in lieu of Federal regulation prohibiting discrimination based upon blindness. It is the department's position that such activities have always been prohibited by Minnesota Statutes Sections 72A.17 to 72A.32, commonly known as the Regulation of Trade Practices Statutes. However no specific mention was made in those sections as to blindness. Because groups representing the blind indicate that there have been difficulties in securing fair treatment because of the lack of specificity and because the department also believes that this action has always been prohibited specifically setting forth that prohibition as a separate rule is an appropriate step to make clear what the policy of the department is and what the status of the law is in the State of Minnesota.

The Model Regulation contains only the language in the first paragraph of subpart 11. The remaining three paragraphs of the proposed rule are included in the Model Regulation as drafting notes. However because the Minnesota Administrative Procedures Act does not recognize such drafting notes and as it was the purpose of these drafting notes to bring greater clarity to the rule they are included as additional paragraphs and made a part of the rule.

Subpart 11 Discrimination Because of Blindness.

The first paragraph, as indicated, contains the body of the proposed NAIC Model Rule. It is also remarkably similar to Subdivision 9 of Minnesota Statutes Section 72A.20 except that it specifically applies that language to the blind or partially blind. The partially blind are included because as a practical matter many of the people who are commonly considered blind have some minimal amount of vision. However the vision is of such low level and quality that it is usually tantamount to complete blindness. So that people in this situation would not lose protection of these rules merely because they have some

small amount of vision it was thought important to clarify that blindness in all its degrees is what the rule is intended to apply to.

The second paragraph further highlights the intention of these rules to prohibit discrimination solely because of the fact that someone is blind. This paragraph requires that except as to the condition of blindness a blind person must meet all other standards or principles that would apply to a sighted person. A blind person with a heart condition could be excluded or rated for an accident and health policy in the same manner that a sighted person could.

The last two paragraphs should be read together for purposes of clarity. A refusal to insure for purposes of determining discrimination is deemed to include denial of coverage for disability insurance on the ground that disability under the policy is presumed by the loss of eyesight. This is conditioned upon the obvious caveat that preexisting disabilities consisting solely of blindness or partial blindness are excludable if they existed at the time the policy is issued.

The Model Act with all of the qualifications contained in it is a compromise that was reached nationally by advocates for the blind, the National Association of Insurance Commissioners and the various insurance companies. As such it represents a commitment by all of those parties to prohibit discrimination in regard to insurance coverage for all of the blind. The blindness will not, except for the few minor situations noted, be a consideration in whether or not they are extended coverage.

Small Business Consideration

Pursuant to Minnesota Statutes Section 14.115 the department considered the impact of the rule on small businesses in the promulgation of these rules. This rule has broad impact upon the insurance industry of which only a few members are small businesses. However as to those that are small business the department did consider the impact on them. As the purpose of the rule is to prevent a form of discrimination and is intended to protect the parties discriminated against its application must be such that equal protection is given to those dealing with insurance companies that are small businesses and those that are not. Lesser standards for small businesses would weaken that protection. It also might have a negative effect on the competitive position of small businesses if they are perceived to be able to discriminate. Obviously no blind person would feel protected in applying to such company. There is also no justifiable reason for allowing a small business to discriminate as opposed to a business that is not.

In regard to Subd. 2 of Section 14.115 the department reviewed items a-e in considering the effect of the rules upon small businesses and decided as follows:

(a) As there are no reporting requirements less stringent requirements therefore would not be applicable. The rule only allows for compliance or noncompliance.

Items (b), (c), (d) and (e) would also be subject to the rationale set forth in regard to item (a) in that as the rule merely states a prohibition against an act there are no schedules or deadlines for compliance or reporting, there are no compliance or reporting requirements, and no performance standards except to comply or not to comply. An exemption from the rule would allow small businesses to do what other businesses are prohibited from doing and cause injury to a protected group.

Also as the department has always believed that the actions prohibited by this rule were prohibited by the underlying statutory authority previously mentioned. Accordingly this rule is not an additional requirement for companies to meet merely a separate statement as to requirements that they already should have been meeting.