Overview

This bill makes changes to various provisions of statutes enforced by the department of commerce. Among other provisions, it increases the maximum fine the commissioner can generally impose, provides for procedures relating to show cause orders, and modifies miscellaneous provisions relating to building contractors, cooperatives, real estate appraisers, collection agencies, and insurers.

Section 5 adds new language providing for indemnification and immunity for receivers involved in delinquency proceedings relating to insurers.

1 **Violations and penalties.** Increases the general maximum penalty the commissioner of commerce can impose from $2,000 to $10,000 per violation.

2 **Actions against licensees.** Provides that if the commissioner intends to act against a licensee, the commissioner is to issue an order requiring the applicant or licensee to show cause why the action should not be taken. Provides for procedures for the show cause order and hearing, and for the actions the commissioner is permitted to take while the matter is pending. Allows summary suspension of licenses under certain circumstances, but not in the case of actions against an insurer's certificate of authority to do business.

3 **How made.** The section at issue generally provides that a person who violates a statute that the commissioner has the authority to enforce is considered to have authorized the commissioner to accept service of process for the person in legal actions relating to the violation. Current law provides that service of process in those situations may be made by leaving a copy of the process in the commissioner's office. This section provides that it also may be made by sending a copy of the process to the commissioner by certified mail.

4 **Jurisdiction.** Provides that in insurer delinquency proceedings, the requirements in statute control over any conflicting contractual provisions between the involved insurer and third parties on matters such as arbitration and choice of law.
Immunity and indemnification of the receiver and employees. This section grants certain protection to receivers involved in insurer delinquency proceedings.

Subd. 1. Scope. Explains who is granted protection under the section. Those protected include receivers who conduct a delinquency proceeding as well as their employees. Attorneys, accountants, auditors, and other professionals who act as independent contractors for the receiver are not covered.

Subd. 2. Immunity from liability. Provides that the receiver and its employees have official immunity from civil liability with respect to duties performed as receiver. The immunity granted does not apply to intentional or willful and wanton misconduct.

Subd. 3. Indemnification. Provides that if a legal action is brought against a receiver based on the performance of its duties, the receiver is to be indemnified from the assets of the insurer except in the case of a claim not based on the receiver's duties or arising from misconduct by the receiver. Provides for the setting aside of funds from the insurer's assets or for the commissioner to obtain a bond to make sure that funds are available if indemnification is needed.

Subd. 4. Settlement coverage. Provides that settlement amounts are subject to the indemnity requirements unless the commissioner determines that the claim was not a result of the performance of duties as receiver or that the claim was caused by misconduct.

Subd. 5. Settlement approval. Provides that settlement amounts are subject to court approval, and will not be approved if the claim was not a result of receiver duties or was caused by misconduct.

Subd. 6. Construction. Provides that this section does not limit any other immunity, indemnity, benefits of the law, rights, or other defenses that may otherwise be available to the receiver or the employee.

Sale of securities by cooperatives. Current law provides an exemption from certain securities registration and filing requirements for a cooperative selling its securities to its members. This section provides that the exemption only applies if the cooperative is seeking to raise $1,000,000 or less by the sale of the securities.

Criminal penalty. Provides that any person who violates the provisions of the chapter regulating real estate appraisers is guilty of a gross misdemeanor.

Roofer. The current definition of a "roofer" is a person who is "doing" certain kinds of work. This section changes the definition to refer to a person who is "contracting, or offering to contract with an owner, to complete" that work.

Examination. Provides that a passing grade on a residential contractor examination expires after two years. An applicant who applies for a license after the examination result expires must either present another score that has not expired or must show that the applicant has complied with the continuing education requirements for licensees in the time since the results expired.

Gross misdemeanor. Provides that an unlicensed residential contractor who violates a cease and desist order from the commissioner is guilty of a gross misdemeanor.

Insurance. Provides that a building contractor's required public liability insurance must be written by an insurer licensed to do business in Minnesota.

Prohibited practices. Adds two items to the prohibited practices section relating to collection agencies. First is any attempt to collect money or charge a fee to a creditor that has not been authorized by the client, and second is to falsify documents with the intent to deceive a creditor, a debtor, or a governmental agency.

Repealer. Repeals provision dealing with license eligibility of those who pass the residential contractor examination. (This issue is dealt with in the new language of section 9.)
Effective dates. Provides that sections 1 to 5, 7 to 10, 12, and 13 are effective the day following final enactment and sections 6 and 11 are effective August 1, 1999.