Overview

This bill recodifies insurance tax law. This summary is prepared for the Civil Law Committee and covers provisions in article 1 dealing with subpoena power, access to documents, limitations period, and civil penalties.

"Commissioner" in the bill and summary means the commissioner of revenue. "Taxpayer" is an insurance company, association, surplus lines licensee, automobile risk self-insurer, or insured or other person or entity required to pay any amount due under the insurance tax laws.

12 Examinations, audits, and collections.

Subd. 1. Examination of taxpayer. States that to determine return or report accuracy or fix insurance tax liability the commissioner may examine or investigate taxpayer place of business, personal property, and records.

Subd. 2. Access to records of other persons. When auditing or investigating a taxpayer or for purposes of collections the commissioner, as permitted by statute, agreement, or reciprocity, may examine the records of private parties or of state, federal, and other states' government agencies, except where privileged by law. Allows the commissioner to serve a subpoena to compel production of records.

Subd. 3. Power to compel testimony. Lets the commissioner under this chapter administer oaths and compel witness attendance and document production by subpoena; and examine under oath any taxpayer about any relevant matter incident to this chapter. Gives witnesses the same fees as are paid in district court proceedings. Requires that fees be paid in the same manner as other expenses incident to enforcing state tax law.

Subd. 4. Third party subpoena of known taxpayer. Requires notice to a taxpayer if a subpoena is served on a third party record keeper requiring production of records. Makes this notice provision inapplicable if there is reasonable cause to believe that notice may lead to
concealment, destruction, or alternation of relevant records or assets; or to intimidation, bribery, collusion, or flight of persons to avoid testifying, production of documents, or prosecution.

**Subd. 5. Third party subpoena of unknown taxpayer.** Specifies that a subpoena may be served which does not identify the taxpayer being investigated only if:

1. the subpoena relates to investigation a particular person or ascertainable group or class;
2. there is a reasonable basis for believing the person or group/class may fail or have failed to comply with tax laws;
3. the information sought from the records and the identity of the person whose liability is under investigation is not readily available from other sources;
4. the subpoena is specific on the information sought; and
5. the information sought is limited solely to the scope of the investigation.

Allows a party served with such a subpoena to petition district court where the party is located within 20 days after service to determine whether the commissioner has complied with clauses (1) to (5). If the party does not petition district court within 20 days, the order has the force of a court order.

**Subd. 6. Request by taxpayer for subpoena.** Requires the commissioner to honor a reasonable request by a taxpayer for a subpoena on the taxpayer's behalf in connection with the investigation or audit, if the commissioner has the power to do so.

**Subd. 7. Application to court for subpoena enforcement.** Makes disobedience of a subpoena under this section punishable by the district court in the same manner as contempt of the district court.

**Subd. 8. Cost of production of records.** Requires the taxpayer to pay the costs of third party records production if (1) requested by the taxpayer or (2) if the taxpayer has the records but refused to provide them to the commissioner. In other cases the commissioner must pay the reasonable costs of records production and may later assess the costs against the taxpayer if the records contribute to determining a tax or surcharge against the taxpayer.

**Limitations of time for assessment of tax.** Requires the amount of assessable taxes or surcharges to be assessed within three and one half years after a return is filed, except that assessment may be made any time if a taxpayer fails to file or files a false or fraudulent return. To calculate this time period, a return is considered filed on the last day it could be filed.

**Limitation on claims for refund.** Sets limitation periods for filing a claim for refund of an overpayment.

**Civil penalties.**

**Subd. 1. Late filing penalty.** The penalty for late filing of the tax or surcharge owed is five percent of the amount owed.

**Subd. 2. Late payment penalty.** The penalty for late payment is five percent of the tax or surcharge not paid on or before the date due, if failure is not more than 30 days; an additional five percent is imposed during each additional 30 days or fraction thereof during which failure
continues, to a maximum 15 percent penalty.

**Subd. 3. Intent to evade.** A penalty equal to 50 percent of the tax or surcharge owed (less any amount paid on the basis of a false of fraudulent return) is imposed on a taxpayer who, with intent to evade a tax or surcharge, fails to file a return or files a false or fraudulent return. The penalty is due for the period to which the return related.

**Subd. 4. Negligence or intentional disregard; penalty.** A penalty equal to ten percent of an additional tax assessment is added to a tax or surcharge if an additional assessment is imposed because of negligence or intentional disregard of a statute or rule, but there is no intent to defraud.

**Subd. 5. Payment of penalties.** Penalties under this section are collected and paid the same way as taxes.

**Subd. 6. Penalties are additional.** Civil penalties are imposed in addition to any applicable criminal penalties.

**Subd. 7. Penalty for failure to pay by electronic funds transfer.** If the commissioner notifies a taxpayer to make payments by electronic funds transfer and payments are made by another means, a penalty is imposed in addition to any other applicable penalties under this section. The amount is five percent of what should have been paid electronically. The penalty may be abated under existing tax law abatement procedures if failure was due to reasonable cause.