

Presented to the governor April 22, 2003

Signed by the governor April 23, 2003, 3:30 p.m.

CHAPTER 21—H.F.No. 536

An act relating to insurance; regulating the joint underwriting association; modifying coverage; modifying the market assistance responsibilities of the association; amending Minnesota Statutes 2002, sections 62I.02, subdivisions 1, 3; 62I.03, by adding a subdivision; 62I.04; 62I.05; 62I.08; 62I.13, subdivisions 1, 2; 62I.14; 62I.16, subdivision 3; 62I.21; 62I.22, subdivision 1; repealing Minnesota Statutes 2002, sections 62I.09; 62I.10; 62I.11; 62I.13, subdivision 4.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2002, section 62I.02, subdivision 1, is amended to read:

Subdivision 1. **CREATION.** The Minnesota joint underwriting association is created to provide insurance coverage to any person or entity unable to obtain insurance through ordinary methods if the insurance is required by statute, ordinance, or otherwise required by law, or is necessary to earn a livelihood or conduct a business and serves a public purpose, including, but not limited to, liquor liability. Prudent business practice or mere desire to have insurance coverage is not a sufficient standard for the association to offer insurance coverage to a person or entity. For purposes of this subdivision, directors' and officers' liability insurance is considered to be a business necessity and not merely a prudent business practice. The association shall be specifically authorized to provide insurance coverage to day care providers, foster parents, foster homes, developmental achievement centers, group homes, and rehabilitation facilities for mentally, emotionally, or physically handicapped persons, and citizen participation groups established pursuant to the Housing and Community Redevelopment Act of 1974, Public Law Number 93-383. Because the activities of certain persons or entities present a risk that is so great, the association shall not offer insurance coverage to any person or entity the board of directors of the association determines is outside the intended scope and purpose of the association because of the gravity of the risk of offering insurance coverage. The association shall not offer environmental impairment pollution liability or product liability insurance, and completed operations insurance. The association shall not offer coverage for activities that are conducted substantially outside the state of Minnesota unless the insurance is required by statute, ordinance, or otherwise required by law. Every insurer authorized to write property and casualty insurance and personal injury liability insurance in this state shall be a member of the association as a condition to obtaining and retaining a license to write insurance in this state.

Sec. 2. Minnesota Statutes 2002, section 62I.02, subdivision 3, is amended to read:

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Subd. 3. **REAUTHORIZATION.** The authorization to issue insurance to day care providers, foster parents, foster homes, developmental activity centers, group homes, and rehabilitation facilities for mentally, emotionally, or physically handicapped persons, and ~~citizen participation groups established pursuant to the Housing and Community Redevelopment Act of 1974, Public Law Number 93-383,~~ is valid for a period of two years from the date it was made. The commissioner may reauthorize the issuance of insurance for these groups and other classes of business for additional two-year periods pursuant to sections 62I.21 and 62I.22. This subdivision is not a limitation on the number of times the commissioner may reauthorize the issuance of insurance.

Sec. 3. Minnesota Statutes 2002, section 62I.03, is amended by adding a subdivision to read:

Subd. 5a. MARKET ASSISTANCE COORDINATOR. "Market assistance coordinator" means an employee of the association, or a person under contract with the association, who assists a person or entity applying to the association for coverage to obtain coverage in the private market.

Sec. 4. Minnesota Statutes 2002, section 62I.04, is amended to read:

62I.04 POLICY ISSUANCE.

Any person or entity that is a resident of the state of Minnesota who has a current notice of refusal to insure from an insurer licensed to offer insurance in the state of Minnesota may make written application to the association for coverage. The applicable premium or required portion of it must be paid prior to coverage by the association.

~~The application shall be filed simultaneously with the association and the market assistance plan for the association.~~

The association is authorized to (1) issue or cause to be issued insurance policies to applicants subject to limits specified in the plan of operation; (2) underwrite the insurance and adjust and pay losses with respect to it, ~~or appoint service companies to perform these functions;~~ (3) conduct risk management and loss prevention services; (4) assume reinsurance from its members; and (4) (5) cede reinsurance; and (6) retain, hire, or appoint individuals or companies to perform any of these functions.

Sec. 5. Minnesota Statutes 2002, section 62I.05, is amended to read:

62I.05 PLAN OF OPERATION.

Within 45 days after the appointment of the directors of the association, the directors shall submit to the commissioner for review, a proposed plan of operation, consistent with the provisions of this chapter.

The plan of operation shall provide economic, fair, and nondiscriminatory administration and for the prompt, efficient provision of insurance coverage of the types provided by section 62I.01. It shall provide for an expedited review and determination by the board of any application for a type of coverage that has not been

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previously excluded or authorized. The action of the board on the application shall be an amendment to the plan of operation and the type of coverage shall thereafter be specified in the plan as either excluded or authorized. It may contain other provisions necessary for the operation of the association, including but not limited to preliminary assessment of all members for initial expenses necessary to commence operations, establishment of necessary facilities, management of the association, assessment of members to defray losses and expenses, commission arrangements, reasonable and objective underwriting standards, acceptance and cessation of reinsurance, appointment of servicing carriers or other servicing arrangements and procedures for determining amounts of insurance to be provided by the association.

The plan of operation is subject to approval by the commissioner. If the commissioner disapproves all or any part of the proposed plan of operation, the directors shall within 15 days submit for review an appropriate revised plan of operation. If a revised plan is not submitted within 15 days the commissioner shall promulgate a plan of operation. The plan of operation approved or promulgated by the commissioner is effective and operational upon the order of the commissioner.

Amendments to the plan of operation may be made by the directors of the association subject to approval by the commissioner.

Sec. 6. Minnesota Statutes 2002, section 62I.08, is amended to read:

62I.08 APPLICATION PROCEDURE.

A person or entity that has been denied coverage or is unable to find an insurer willing to write coverage is eligible to make an application to the association. The application shall be on a form approved by the board of directors. To show eligibility to participate in the association the applicant shall certify that the applicant has been unable to find anyone to offer the coverage sought by the applicant. No further proof shall be required of the applicant, except that the application form approved by the board of directors may require the date and the name of the insurance company denying coverage and may require a copy of a written offer if the rate qualifies the applicant to apply under section 62I.13, subdivision 2. The application shall be filed simultaneously with the association and the market assistance plan of the association.

Sec. 7. Minnesota Statutes 2002, section 62I.13, subdivision 1, is amended to read:

Subdivision 1. **GENERALLY.** To be eligible to participate in the association, an applicant must apply for coverage through the market assistance program coordinator, as required by section 62I.08. ~~Except as provided by subdivision 4, the market assistance program has 30 days from the receipt of the application to secure an offer of coverage for the applicant. If the market assistance program is able to secure an offer of coverage for the applicant and if the offer of coverage would not be considered a refusal for purposes of the association, then coverage may not be extended by the association. Eligibility for coverage by the association is also subject to the terms and conditions of subdivisions 2 and 3.~~

Sec. 8. Minnesota Statutes 2002, section 62I.13, subdivision 2, is amended to read:

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Subd. 2. **MINIMUM OF QUALIFICATIONS.** Anyone who is unable to obtain insurance in the private market and who so certifies to the association in the application is eligible to make written application to the association for coverage. The application may require information as provided in section 62I.08. Payment of the applicable premium or required portion of it must be paid prior to coverage by the association. An offer of coverage at a rate in excess of the rate that would be charged by the association for similar coverage and risk shall be deemed to be a refusal of coverage for purposes of eligibility for participation in the association. It shall not be deemed to be a written notice of refusal if the rate for coverage offered is less than ten percent in excess of the joint underwriting association rates for similar coverage and risk or 20 percent in excess of the joint underwriting association rates for liquor liability coverages. However, the offered rate must also be the rate that the insurer has filed with the department of commerce if the insurer is required to file its rates with the department. If the insurer is not required to file its rates with the department, the offered rate must be the rate generally charged by the insurer for similar coverage and risk.

Sec. 9. Minnesota Statutes 2002, section 62I.14, is amended to read:

62I.14 ASSESSMENTS.

In the event the commissioner deems it necessary to make an assessment, an assessed insurer must pay the assessment within 30 days of receipt of notice of the assessment. The commissioner may suspend or revoke an insurer's certificate of authority and impose a civil penalty in an amount not to exceed \$5,000 \$10,000 for an insurer's failure to pay the assessment within the 30-day period.

Sec. 10. Minnesota Statutes 2002, section 62I.16, subdivision 3, is amended to read:

Subd. 3. **SUPERVISION.** All money paid into the fund shall be held ~~in eserow~~ by the eserow administrator selected separately accounted for by the board of directors. The eserow administrator may invest the money held in eserow ~~subject to the approval of the board~~ the fund may be invested. All investment income shall be credited to the fund. All expenses of the administration of the fund shall be charged against the fund. The money held in eserow ~~the fund~~ shall be used solely for the purpose of discharging when due any retrospective premium charges payable by policyholders and any retrospective premium refunds payable to policyholders under the group retrospective rating plan. Payment of retrospective premium charges shall be made upon certification of the amount due. If all money accruing to the fund is exhausted in payment of retrospective premium charges, all liability and obligations of the association's policyholders with respect to the payment of retrospective premium charges shall terminate and shall be conclusively presumed to have been discharged. Any stabilization reserve fund charges from a particular policy year not used to pay retrospective premiums must be returned to policyholders after all claims and expense obligations from that particular policy year are satisfied.

Sec. 11. Minnesota Statutes 2002, section 62I.21, is amended to read:

62I.21 ACTIVATION OF MARKET ASSISTANCE PLAN AND JOINT UNDERWRITING ASSOCIATION.

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Upon submission of an application for placement of general liability insurance coverage under section 62I.13 in a class of business for which the market assistance plan and the joint underwriting association are is not then activated, where the applicant has been refused coverage within the meaning of section 62I.13, subdivision 2, the commissioner may by notice in the State Register activate the market assistance plan and the joint underwriting association on Minnesota risks for the class of business. The plan and association are is activated for a period of 180 days from publication of the notice. At the same time the notice is published, the commissioner shall prepare a written petition requesting that a hearing be held to determine whether activation of the market assistance plan and the joint underwriting association is necessary beyond the 180-day period. The hearing must be held in accordance with section 62I.22. The commissioner by order shall deactivate a market assistance program and the joint underwriting association at any time the commissioner finds that the market assistance program and the joint underwriting association are is not necessary.

Sec. 12. Minnesota Statutes 2002, section 62I.22, subdivision 1, is amended to read:

Subdivision 1. **ADMINISTRATIVE LAW JUDGE.** The commissioner shall forward a copy of the petition to activate the market assistance plan and the joint underwriting association with respect to a class of business to the chief administrative law judge. The chief administrative law judge shall, within three business days of receipt of the copy of the petition, set a hearing date, assign an administrative law judge to hear the matter, and notify the commissioner of the hearing date and the administrative law judge assigned to hear the matter. The hearing date must be no less than 60 days nor more than 90 days from the date of receipt of the petition by the chief administrative law judge.

Sec. 13. **REPEALER.**

Minnesota Statutes 2002, sections 62I.09; 62I.10; 62I.11; and 62I.13, subdivision 4, are repealed.

Presented to the governor April 25, 2003

Signed by the governor April 28, 2003, 12:45 p.m.

CHAPTER 22—S.F.No. 578

An act relating to civil commitment; clarifying qualifications of persons making certain decisions regarding civil commitments and emergency holds; amending Minnesota Statutes 2002, section 253B.02, subdivisions 7, 9.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2002, section 253B.02, subdivision 7, is amended to read:

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