

CHAPTER 60C

MINNESOTA INSURANCE GUARANTY ASSOCIATION ACT

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60C.01 CITATION. Laws 1971, Chapter 145 may be cited as the Minnesota insurance guaranty association act.

[1971 c 145 s 1]

60C.02 SCOPE, PURPOSE AND CONSTRUCTION. Subdivision 1. **Scope.** Laws 1971, Chapter 145 applies to all kinds of direct insurance, except life, title, surety, accident and sickness written by life insurance companies, credit, mortgage guaranty, ocean marine and workmen's compensation insurance subject to the provisions of section 79.28.

Subd. 2. **Purposes.** The purposes of Laws 1971, Chapter 145 are to provide a mechanism for the payment of covered claims under certain insurance policies, to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the liquidation of an insurer, to assist in the detection and prevention of insurer insolvencies, and to provide an association to assess the cost of the protection among insurers.

Subd. 3. **Construction.** Laws 1971, Chapter 145 shall be liberally construed to effect the purposes stated in subdivision 2.

[1971 c 145 s 2]

60C.03 DEFINITIONS. Subdivision 1. For the purposes of Laws 1971, Chapter 145, the following terms have the meanings given in this section.

Subd. 2. "Account" means any of the three accounts created under section 60C.04.

Subd. 3. "Association" means the Minnesota insurance guaranty association created under section 60C.04.

Subd. 4. "Net direct written premiums" means direct gross premiums written in this state on insurance policies not excepted from the scope of Laws 1971, Chapter 145 by section 60C.02, less return premiums thereon and dividends paid or credited to policyholders on such direct business.

Subd. 5. "Person" means any individual, corporation, partnership, association or voluntary organization.

Subd. 6. "Member insurer" means any person, including reciprocals or inter-insurance exchanges operating under chapter 71A, township mutual fire insurance companies operating under sections 67A.01 to 67A.26, and farmers mutual fire insurance companies operating under sections 67A.27 to 67A.39, who (a) writes any kind of insurance not excepted from the scope of Laws 1971, Chapter 145 by section 60C.02, and (b) is licensed to transact insurance business in this state, except any nonprofit service plan incorporated or operating under sections 62C.01 to 62C.23 and any health plan incorporated under chapter 317.

Subd. 7. "Resident" means:

(a) An individual person who fixes his habitation in this state without any intention of removing therefrom and who, whenever absent therefrom, intends to return; or

(b) Any other person who maintains a place of business or a resident agent in this state.

[1971 c 145 s 3; 1973 c 35 s 20]

60C.04 CREATION. All insurers subject to the provisions of Laws 1971, Chapter 145 shall form an organization to be known as the Minnesota insurance guaranty association. All insurers defined as member insurers in section 60C.03, subdivision 6, are and shall remain members of the association as a condition of their authority to transact insurance business in this state. The association shall perform its functions under a plan of operation established and approved under section 60C.07 and shall exercise its powers through a board of directors established under section 60C.08. For purposes of administration and assessment the association shall be divided into three separate accounts: (1) the automobile insurance account, (2) the township mutuals account, and (3) the account for all other insurance to which Laws 1971, Chapter 145 applies.

[1971 c 145 s 4]

60C.05 POWERS AND DUTIES. Subdivision 1. The association shall:

(a) Be deemed the insurer to the extent of its obligation on the covered claims. The claims found by the board of directors to be covered shall be paid out of available funds after they have been approved or settled under sections 60B.45, subdivision 2, and 60B.58, subdivision 2, or the corresponding laws of another jurisdiction, subject to the board's power to reduce the amount of or reject the award under section 60C.10.

(b) Allocate claims paid and expenses incurred among the three accounts and assess member insurers separately for each account the amounts necessary to pay the obligations of the association under clause (a), the expenses of handling covered claims, the cost of examinations under section 60C.15 and other expenses authorized by Laws 1971, Chapter 145.

(c) Notify the persons as the commissioner directs under Laws 1971, Chapter 145.

(d) Handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but the designation may be declined.

(e) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by Laws 1971, Chapter 145.

(f) Notify each member insurer of its assessment not later than 30 days before it is due.

Subd. 2. The association may:

(a) Employ or retain the persons necessary to handle claims and perform other duties of the association.

(b) Borrow funds necessary to effect the purposes of Laws 1971, Chapter 145 in accord with the plan of operation.

(c) Sue or be sued.

(d) Negotiate and become a party to the contracts necessary to carry out the purpose of Laws 1971, Chapter 145.

(e) Perform other acts necessary or proper to effectuate the purpose of Laws 1971, Chapter 145.

(f) Refund to the member insurers in proportion to the contribution of each member insurer to that account the amount by which the assets of the account exceed the liabilities, if at the end of the calendar year the board of directors finds that the assets of the association in any account exceed the liabilities of that account as estimated by the board of directors for the coming year.

(g) Request the court to disapprove or modify any claim for which approval is sought under the provisions of sections 60B.45, subdivision 2 or 60B.58, subdivision 2.

[1971 c 145 s 5]

60C.06 ASSESSMENTS. Subdivision 1. **Determination of amount.** The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year on the kinds of insurance in the account bear to the net direct written premiums of all member insurers for the preceding calendar year on the kinds of insurance in the account. No member insurer may be assessed in any year on any account an amount greater than two percent of that member insurer's net direct written premiums for the preceding calendar year on the kinds of insurance in the account.

Subd. 2. **Insufficient amount.** If the maximum assessment, together with the other assets of the association in any account, does not provide in any one year in any account an amount sufficient to make all necessary payments from that account, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available.

Subd. 3. **Exemption or deferral.** The association shall exempt or defer, in whole or in part, the assessment of any member insurer, if the commissioner determines that the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance.

Subd. 4. **Set off.** Each member insurer may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of the claims by the member insurer if, in the absence of the payment, they would be chargeable to the account for which the assessment is made.

[1971 c 145 s 6]

60C.07 PLAN OF OPERATION. Subdivision 1. The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto become effective upon written approval from the commissioner. If the association fails to submit a suitable plan of operation within 90 days following July 1, 1971, or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate reasonable rules necessary to effectuate the provisions of Laws 1971, Chapter 145. The rules continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

Subd. 2. The plan of operation shall:

(a) Establish the procedures whereby all the powers and duties of the association under section 60C.05 will be performed.

(b) Establish procedures for handling assets of the association.

(c) Establish the amount and method of reimbursement of members of the board of directors under section 60C.08, subdivision 3.

(d) Establish procedures by which claims may be filed with the association.

(e) Establish regular places and times for meetings for the board of directors.

(f) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors.

(g) Provide that any member insurer aggrieved by any final action or decision of the association may appeal to the commissioner within 30 days after the action or decision.

(h) Establish the procedures whereby selections for the board of directors will be submitted to the commissioner.

(i) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

Subd. 3. The plan of operation may provide that any or all powers and duties of the association, except those under section 60C.05, subdivisions 1, clause (b) and 2, clause (b), are delegated to a corporation, association or other organization which performs or will perform functions similar to those of this association, or its equivalent in two or more states. The corporation, association, or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation under this subdivision shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association or organization which extends protection not substantially less favorable and effective than that provided by Laws 1971, Chapter 145.

[1971 c 145 s 7]

60C.08 BOARD OF DIRECTORS. Subdivision 1. The board of directors of the association shall consist of not less than five nor more than nine persons serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term in the same manner as initial appointments. If no members are selected within 60 days

after July 1, 1971, the commissioner may appoint the initial members of the board of directors. If vacancies are not filled within 60 days of the end of terms, the commissioner may appoint as in the case of initial vacancies.

Subd. 2. In approving selections to the board, the commissioner shall consider among other things whether member insurers are fairly represented.

Subd. 3. Members of the board may be reimbursed from the assets of the association for reasonable and necessary sums expended by them as members of the board of directors.

[1971 c 145 s 8]

60C.09 COVERED CLAIMS. Subdivision 1. **Definition.** A covered claim is any unpaid claim, including one for unearned premium, which:

- (a) Arises out of an insurance policy issued by a member insurer;
- (b) Arises out of a class of business which is not excepted from the scope of Laws 1971, Chapter 145 by section 60C.02;
- (c) Has been approved in the liquidation of the insurer issuing the policy, carried out under chapter 60B or under similar laws of another state or country; and

(d) Is made by:

(i) A policyholder, or an insured beneficiary under a policy, who, at the time of the insured event, was a resident of this state; or

(ii) A person designated in the policy as having an insurable interest in or related to property situated in this state at the time of the insured event; or

(iii) A third party claimant under a liability policy, if: (a) the insured or the third party claimant was a resident of this state at the time of the insured event; (b) the claim is for bodily or personal injuries suffered in this state by a person who when he suffered the injuries was a resident of this state; or (c) the claim is for damages to real property situated in this state at the time of damage; or

(iv) A direct or indirect assignee of a person who except for the assignment might have claimed under (i) or (ii).

Subd. 2. **Limitation of amount.** Payment of a covered claim is limited to the amount by which the allowance on any claim exceeds \$100 and is less than \$300,000. In no event is the association obligated to the policyholder or claimant in an amount in excess of the obligation of the insurer under the policy from which the claim arises.

[1971 c 145 s 9]

60C.10 EVALUATION OF CLAIMS. Subdivision 1. The board shall determine whether claims submitted for payment are covered claims.

Subd. 2. If in the judgment of the board an improper award is made or an excessive amount is awarded in a liquidation under the laws of another jurisdiction, the board shall thereupon determine the amount to be paid.

Subd. 3. If the board finds that a claim for which the claimant has requested payment out of the fund is not a covered claim or the board reduces the amount of or rejects the award under subdivision 2, the board shall notify the claimant in writing of his rights under section 60C.12.

[1971 c 145 s 10]

60C.11 EFFECT OF PAID CLAIMS. Subdivision 1. Any person recovering under Laws 1971, Chapter 145 shall be deemed to have assigned his rights under the policy to the association to the extent of his recovery.

Subd. 2. Every insured or claimant seeking the protection of Laws 1971, Chapter 145 shall cooperate with the association to the same extent as the insured would have been required to cooperate with the insurer.

Subd. 3. The association has no cause of action against the insured of the insurer for any sums it has paid out except the causes of action the insurer would have had if the sums had been paid by the insurer.

Subd. 4. In the case of an insurer operating on a plan with assessment liability, payments of claims of the association do not operate to reduce the liability of insureds to the receiver, liquidator or statutory successor for unpaid assessments.

Subd. 5. The expenses of the association or similar organization in handling claims are accorded the same priority as the liquidator's expenses.

Subd. 6. The association shall periodically file with the receiver or liquidator of the insurer statements of the covered claims paid by the association and esti-

mates of anticipated claims against the association which shall preserve the rights of the association against the assets of the insurer.

[1971 c 145 s 11]

60C.12 APPEAL AND REVIEW. Subdivision 1. **Appeal.** A claimant whose claim has been declared to be not covered or reduced by the board under section 60C.10 may appeal to the board within 30 days after the claimant has been notified of the board's decision and of his rights under this section.

Subd. 2. **Review.** Decisions of the board under subdivision 1 are subject to judicial review.

[1971 c 145 s 12]

60C.13 NON-DUPLICATION OF RECOVERY. Subdivision 1. Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insurer in liquidation which is also a covered claim, is required to exhaust first his right under the other policy. Any amount payable on a covered claim under Laws 1971, Chapter 145 shall be reduced by the amount of any recovery under such insurance policy.

Subd. 2. Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the state of residence of the insured except that if the claim is a first party claim for damage to property with a permanent location, he shall seek recovery first from the association of the state in which the property is located. Any recovery under Laws 1971, Chapter 145 shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

[1971 c 145 s 13]

60C.14 DUTIES AND POWERS OF THE COMMISSIONER. Subdivision 1. **Mandatory powers and duties.** The commissioner shall:

(a) Notify the association of the issuance of any order of liquidation of a member insurer not later than three days after he has knowledge of the issuance of the order.

(b) Upon request of the board of directors provide the association with a statement of the net direct written premiums of each member insurer.

Subd. 2. **Optional powers and duties.** The commissioner may:

(a) Require the association to notify the insureds of any insurer undergoing liquidation and any other interested parties of their possible rights under Laws 1971, Chapter 145. Notification shall be by mail at their last known address, where available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation shall be sufficient.

(b) Suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a fine on any member insurer which fails to pay an assessment when due. The fine shall not exceed five percent of the unpaid assessment per month, except that no fine shall be less than \$100 per month.

(c) Revoke the designation of any servicing facility if he finds claims are being handled unsatisfactorily.

Subd. 3. **Judicial review.** Any final action or order of the commissioner under Laws 1971, Chapter 145 shall be subject to judicial review in a court of competent jurisdiction.

[1971 c 145 s 14]

60C.15 PREVENTION OF INSOLVENCIES. To aid in the detection and prevention of insurer insolvencies:

(1) It is the duty of each member insurer to notify the commissioner of any established facts indicating any other member insurer may be insolvent or in a financial condition hazardous to its policyholders or the public.

(2) The board of directors shall request that the commissioner order an examination of any member insurer which the board in good faith believes may be in a financial condition hazardous to its policyholders or the public. Within 30 days of the receipt of the request, the commissioner shall begin the examination. The examination may be conducted as a national association of insurance commissioners examination or may be conducted by persons designated by the commissioner. The cost of the examination shall be paid by the association and

the examination report shall be treated as are other examination reports. In no event shall the examination report be released to the board of directors prior to its release to the public, but this shall not preclude the commissioner from complying with paragraph (3). The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner, but it shall not be open to public inspection unless the report finds the company to be insolvent.

(3) It shall be the duty of the commissioner to report to the board of directors when he has reasonable cause to believe that any member insurer examined or being examined at the request of the board of directors may be insolvent or in a financial condition hazardous to the policyholders or the public.

(4) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer. The reports and recommendations shall not be considered public documents.

(5) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

[1971 c 145 s 15]

60C.16 EXAMINATION OF THE ASSOCIATION. The association is subject to examination and regulation by the commissioner. The board of directors shall submit, not later than March 30 of each year, a financial report for the preceding calendar year in a form approved by the commissioner.

[1971 c 145 s 16]

60C.17 TAX EXEMPTION. The association is exempt from payment of all fees and all taxes levied by this state or any of its subdivisions except taxes levied on real or personal property.

[1971 c 145 s 17]

60C.18 RECOGNITION OF ASSESSMENTS IN RATES. The rates and premiums charged for insurance policies to which Laws 1971, Chapter 145 applies may include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member insurer less any amounts returned to the member insurer by the association. The rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer.

[1971 c 145 s 18]

60C.19 IMMUNITY. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the association or its agents or employees, the board of directors, or the commissioner, or his representatives for action by them in the ordinary performance of their powers and duties under Laws 1971, Chapter 145.

[1971 c 145 s 19]

60C.20 UNFAIR TRADE PRACTICES. It is an unfair trade practice, subject to regulation under sections 72A.17 through 72A.32, for any insurer or agent to make use in any manner of the protection given policyholders by Laws 1971, Chapter 145 as a reason for buying insurance.

[1971 c 145 s 20]