

CHAPTER 60C

INSURANCE GUARANTY ASSOCIATION

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60C.01 CITATION.

Laws 1971, chapter 145 may be cited as the Minnesota insurance guaranty association act.

History: 1971 c 145 s 1

60C.02 SCOPE, PURPOSE AND CONSTRUCTION.

Subdivision 1. **Scope.** This chapter applies to all kinds of direct insurance, except life, title, accident and sickness written by life insurance companies, credit, mortgage guaranty, and ocean marine.

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 and surety bonds, 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.

History: 1971 c 145 s 2; 1975 c 359 s 23; 1976 c 185 s 1,2; 1982 c 424 s 12; 1988 c 541 s 1

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 five 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 surety bonds and 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 interinsurance 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 317A.

Subd. 7. "Resident" means:

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

(b) Any other person whose principal place of business is located in this state at the time of the insured event; or

(c) A person whose principal place of business is in Wisconsin, Iowa, North Dakota, or South Dakota, but who maintains substantial business in Minnesota.

Subd. 8. "Insolvent insurer" means an insurer licensed to transact insurance in this state, either at the time the policy was issued, or when the insured event occurred, and against whom an order of liquidation with a finding of insolvency has been entered after April 30, 1979 by a court of competent jurisdiction, in the insurer's state of domicile or of this state, under the provisions of chapter 60B, and which order of liquidation has not been stayed or been the subject of a writ of supersedeas or other comparable order.

Subd. 9. "Affiliate" means a person other than a natural person who directly, or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with an insolvent insurer on December 31 of the year preceding the date the insurer becomes an insolvent insurer.

History: 1971 c 145 s 3; 1973 c 35 s 20; 1976 c 185 s 3; 1981 c 260 s 1; 1982 c 555 s 1; 1982 c 589 s 1; 1986 c 444; 1988 c 541 s 2-4; 1989 c 304 s 137

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 or to execute surety bonds 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 five separate accounts: (1) the automobile insurance account, (2) the township mutuals account, (3) the fidelity and surety bond account, (4) the account for all other insurance to which Laws 1971, chapter 145 applies, and (5) the workers' compensation insurance account.

History: 1971 c 145 s 4; 1976 c 185 s 4; 1981 c 346 s 35

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 five 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 claims, the cost of examinations under section 60C.15, and other expenses authorized by this chapter.

(c) Notify the persons as the commissioner directs under this chapter.

(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 this chapter.

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

(g) Issue to each insurer paying an assessment under this chapter a certificate of contribution, in a form prescribed by the commissioner, for the amount so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in the form and for the amount, if any, and period of time the commissioner approves.

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) Subject to section 60C.06, subdivision 6, 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 section 60B.45, subdivision 2, or 60B.58, subdivision 2.

History: 1971 c 145 s 5; 1976 c 185 s 5; 1985 c 255 s 6; 1988 c 541 s 5,6

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 in 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. All member insurers licensed to transact insurance business in this state on the date an insurer is placed in liquidation may be assessed as provided by section 60C.06 for necessary payments from 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.

Subd. 5. [Repealed, 1988 c 541 s 14]

Subd. 6. **Refunds retained.** All money which the association receives from the estate of an insolvent insurer or an insurer that is the subject of delinquency proceedings shall not be refunded to members but must be credited to the account from which the claims were paid that resulted in the payment from the estate. If that cannot be determined, the money shall be credited to the account which the board determines is most likely to have been the source of the paid claims. The money shall be used to pay future claims.

History: 1971 c 145 s 6; 1978 c 465 s 9; 1987 c 268 art 2 s 13; 1988 c 541 s 7

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.

History: 1971 c 145 s 7

60C.08 BOARD OF DIRECTORS.

Subdivision 1. The board of directors of the association shall consist of nine persons. Two of the directors shall be public members and seven shall be insurer members. The public members shall be appointed by the commissioner. Public members may

include licensed insurance agents. The insurer members of the board shall be selected by association members 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. The term of appointment for all members is two years.

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.

History: 1971 c 145 s 8; 1Sp1985 c 10 s 55; 1987 c 337 s 31

60C.09 COVERED CLAIMS.

Subdivision 1. **Definition.** A covered claim is any unpaid claim, including one for unearned premium, which:

(a)(1) Arises out of and is within the coverage of an insurance policy issued by a member insurer if the insurer becomes an insolvent insurer after April 30, 1979; or

(2) Would be within the coverage of an extended reporting endorsement to a claims-made insurance policy if insolvency had not prevented the member insurer from fulfilling its obligation to issue the endorsement, if:

(i) the claims-made policy contained a provision affording the insured the right to purchase a reporting endorsement;

(ii) coverage will be no greater than if a reporting endorsement had been issued;

(iii) the insured has not purchased other insurance which applies to the claim; and

(iv) the insured's deductible under the policy is increased by an amount equal to the premium for the reporting endorsement, as provided in the insured's claims-made policy, or if not so provided, then as established by a rate service organization.

(b) Arises out of a class of business which is not excepted from the scope of this chapter by section 60C.02; and

(c) 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) An obligee or creditor under any surety bond, who, at the time of default by the principal debtor or obligor, was a resident of this state; or

(iv) A third party claimant under a liability policy or surety bond, 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 injured 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

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

For purposes of paragraph (c), item (ii), unit owners of condominiums, townhouses, or cooperatives are considered as having an insurable interest.

A covered claim also includes any unpaid claim which arises or exists within 30 days after the time of entry of an order of liquidation with a finding of insolvency by a court of competent jurisdiction unless prior thereto the insured replaces the policy or causes its cancellation or the policy expires on its expiration date. A covered claim does not include claims filed with the guaranty fund after the final date set by the court for the filing of claims except for excused late filings permitted under section 60B.37.

Subd. 2. **Further definition.** In addition to subdivision 1, a covered claim does not include:

(1) claims by an affiliate of the insurer; and

(2) claims due a reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise. This clause does not prevent a person from presenting the excluded claim to the insolvent insurer or its liquidator, but the claims shall not be asserted against another person, including the person to whom the benefits were paid or the insured of the insolvent insurer, except to the extent that the claim is outside the coverage of the policy issued by the insolvent insurer.

Subd. 3. **Limitation of amount.** Payment of a covered claim, whether upon a single policy or multiple policies of insurance, is limited to the amount by which the allowance on any claim exceeds \$100 and is less than \$300,000. In the case of claim for unearned premium by a single claimant, the entire claim up to \$300,000 shall be allowed. The limitation on the amount of payment for a covered claim does not apply to claims for workers' compensation insurance. 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. For insolvencies occurring on or after October 1, 1985, no deductible applies to claims eligible for payment under the assigned claims plan under sections 65B.63 to 65B.65.

History: 1971 c 145 s 9; 1976 c 185 s 6; 1981 c 260 s 2; 1981 c 346 s 36; 1982 c 555 s 2; 1982 c 589 s 2; 1983 c 203 s 1; 1986 c 444; 1987 c 337 s 32; 1988 c 541 s 8

60C.10 EVALUATION OF CLAIMS.

Subdivision 1. The board shall determine whether claims submitted for payment are covered claims.

Subd. 2. [Repealed, 1981 c 260 s 4]

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 claim, the board shall notify the claimant in writing of the rights the claimant has under section 60C.12.

History: 1971 c 145 s 10; 1981 c 260 s 3; 1986 c 444

60C.11 EFFECT OF PAID CLAIMS.

Subdivision 1. The rights under the policy of a person recovering under Laws 1971, chapter 145 shall be deemed to have been assigned by the person to the association to the extent of the 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 estimates of anticipated claims against the association which shall preserve the rights of the association against the assets of the insurer.

History: 1971 c 145 s 11; 1986 c 444

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 the rights of the claimant under this section.

Subd. 2. **Review.** Decisions of the board under subdivision 1 are subject to appeal to the commissioner of commerce who may overturn, affirm, or modify the board's actions or take other action the commissioner considers appropriate.

The appeal to the commissioner must be in the manner provided in chapter 14.

Subd. 3. **Judicial review.** A final action or order of the commissioner under this subdivision is subject to judicial review in the manner provided by chapter 14. In lieu of the appeal to the commissioner under subdivision 2, a claimant may seek judicial review of the board's actions.

History: 1971 c 145 s 12; 1986 c 444; 1987 c 337 s 33

60C.13 NONDUPLICATION 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 any rights 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, that person shall seek recovery first from the association of the state in which the property is located, and if it is a workers' compensation claim, that person shall seek recovery first from the association of the residence of the claimant. Any recovery under this chapter shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

History: 1971 c 145 s 13; 1986 c 444; 1988 c 541 s 9

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 the commissioner 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 or to execute surety bonds 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 the commissioner 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.

History: 1971 c 145 s 14; 1976 c 185 s 7; 1986 c 444

60C.15 PREVENTION OF INSOLVENCIES.

To aid in the detection and prevention of insurer insolvencies:

(1) The board of directors: (a) may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies; and (b) shall respond to requests by the commissioner to discuss and make recommendations regarding the status of any member insurer whose financial condition may be hazardous to policyholders or the public. These recommendations are classified as nonpublic data under section 13.02.

(2) The board of directors may, at the conclusion of any domestic insurer insolvency in which the association was obligated to pay covered claims, prepare and submit to the commissioner a report on the history and causes of the insolvency, based on the information available to the association.

History: 1971 c 145 s 15; 1986 c 444; 1988 c 541 s 10

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.

History: 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.

History: 1971 c 145 s 17

60C.18 RECOGNITION OF ASSESSMENTS IN RATES.

Subdivision 1. The rates and premiums charged for insurance policies and fidelity and surety bonds to which this chapter applies must 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.

Subd. 2. Beginning with assessments payable by member insurers in 1988, each member insurer must separately state on either a billing notice or policy declaration sent to an insured, the percentage, dollar amount, or both, of the amount contained in the premium to recoup assessments paid by the member insurer in Minnesota.

History: 1971 c 145 s 18; 1976 c 185 s 8; 1988 c 541 s 11

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 the commissioner's representatives for action by them in the ordinary performance of their powers and duties under Laws 1971, chapter 145.

History: 1971 c 145 s 19; 1986 c 444

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.

History: 1971 c 145 s 20