

## CHAPTER 61B

## LIFE AND HEALTH GUARANTY ASSOCIATION

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**61B.01 CITATION.**

Sections 61B.01 to 61B.16 may be cited as the Minnesota life and health insurance guaranty association act.

**History:** 1977 c 273 s 1

**61B.02 SCOPE, PURPOSE AND CONSTRUCTION.**

Subdivision 1. **Scope.** Sections 61B.01 to 61B.16 apply to direct life insurance policies, health insurance policies including subscriber contracts issued by a nonprofit health service plan corporation operating under chapter 62C, annuity contracts, and contracts supplemental to life and health insurance policies or annuity contracts, issued by persons authorized at any time to transact insurance or business as a nonprofit health service plan corporation operating under chapter 62C in this state. Sections 61B.01 to 61B.16 do not apply to:

(a) any policy or contract or part thereof under which the risk is borne by the policyholder;

(b) any policy or contract or part thereof assumed by an impaired insurer under a contract of reinsurance other than reinsurance for which assumption certificates have been issued;

(c) any policy or contract issued by an assessment benefit association operating under chapter 63, or a fraternal benefit society operating under chapter 64B; or

(d) any health insurance policies issued by a person other than a person authorized to write life insurance in this state or other than a person whose corporate charter would permit the writing of life insurance but who is authorized to write only health insurance in this state.

Subd. 2. **Purpose.** The purpose of sections 61B.01 to 61B.16, is to protect policyowners, death benefit certificate holders, insureds, beneficiaries, annuitants, payees, and assignees of life insurance policies, health insurance policies, annuity contracts, and supplemental contracts, subject to certain limitations against failure in the performance of contractual obligations due to the impairment of the insurer issuing the policies or contracts. To provide this protection:

(a) An association of insurers is created to enable the guaranty of payment of benefits and of continuation of coverages;

(b) Members of the association are subject to assessment to provide funds to carry out the purpose of sections 61B.01 to 61B.16; and

(c) The association shall assist the commissioner, in the prescribed manner, in the detection and prevention of insurer impairments.

Subd. 3. **Construction.** Sections 61B.01 to 61B.16 shall be liberally construed to effect the purpose of sections 61B.01 to 61B.16. Subdivision 2 shall constitute an aid and guide to interpretation.

**History:** 1977 c 273 s 2; 1980 c 401 s 1; 1985 c 49 s 40; 1987 c 268 art 2 s 14

**61B.03 DEFINITIONS.**

Subdivision 1. **Scope.** For the purposes of sections 61B.01 to 61B.16, the terms defined in this section have the meanings given them.

Subd. 2. **Account.** "Account" means any of the three accounts created under section 61B.04, subdivision 1.

Subd. 3. **Annuity contracts.** "Annuity contracts" means contracts subject to chapter 61A wherein the policyowner agrees to make payments to the insurer at the beginning of the contract period and the insurer agrees to make payments thereafter to the insured for a specified period of time or until the insured's death.

Subd. 4. **Association.** "Association" means the Minnesota life and health insurance guaranty association created under section 61B.04. The association shall not be considered a state agency for purposes of chapter 16 or 43.

Subd. 5. **Contractual obligation.** (a) "Contractual obligation" means any obligation under covered policies, except as provided in paragraphs (c) and (d).

(b) For purposes of this chapter, contractual obligation includes an unallocated annuity contract which funds a qualified defined contribution pension plan pursuant to Internal Revenue Code of 1986, sections 401(k), 403(b), and 457.

(c) Notwithstanding the definition of contractual obligation contained in paragraphs (a) and (b), contractual obligation does not include any obligation to nonresident participants of a covered plan or to the plan sponsor, employer, trustee, or other party who owns the contract; in such cases, the association is obligated under this chapter only to participants in a covered plan who are residents of the state of Minnesota on the date of impairment.

(d) Except as provided in paragraphs (a) and (b), contractual obligation does not include an unallocated annuity contract issued in connection with a defined benefit plan protected by the federal Pension Benefit Guaranty Corporation, or a contract issued to, or purchased at the direction of, any governmental bonding authorities, such as a municipal guaranteed investment contract.

Subd. 6. **Covered policy.** "Covered policy" means any policy or contract owned by a Minnesota resident to which sections 61B.01 to 61B.16 apply, as provided in section 61B.02.

Subd. 7. **Direct life insurance.** "Direct life insurance" means life insurance generally, except annuity contracts, regulated under chapter 61A or 64B, credit life insurance regulated under chapter 62B, and death benefit certificates regulated under chapter 64B.

Subd. 8. **Health insurance.** "Health insurance" means accident and health insurance regulated under chapter 62A and credit accident and health insurance regulated under chapter 62B and subscriber contracts issued by a nonprofit health service plan corporation operating under chapter 62C.

Subd. 9. **Impaired insurer.** "Impaired insurer" means:

(a) An insurer which, after May 27, 1977, becomes insolvent and is placed under an order of liquidation, rehabilitation, or conservation by a court of competent jurisdiction; or

(b) An insurer determined by the commissioner, after May 27, 1977, to have become unable or potentially unable to fulfill its contractual obligations.

Subd. 10. **Member insurer.** "Member insurer" means any person authorized to transact in this state any kind of insurance or business to which sections 61B.01 to 61B.16 apply under section 61B.02.

Subd. 11. **Premiums.** "Premiums" means direct gross insurance premiums and annuity considerations written on covered policies, less return premiums and considerations thereon and dividends paid or credited to policyholders on direct business. Premiums do not include premiums and considerations on contracts between insurers and reinsurers. For the purpose of section 61B.07, premiums are those for the calendar year preceding the determination of impairment.

Subd. 12. **Person.** "Person" means any individual, corporation, partnership, association or voluntary organization.

Subd. 13. **Resident.** "Resident" means any person who resides in this state at the time the impairment is determined and to whom contractual obligations are owed.

Subd. 14. **Commissioner.** "Commissioner" means the commissioner of commerce of the state of Minnesota and, in the commissioner's absence or disability, a deputy or other person duly designated to act in the commissioner's place.

**History:** 1977 c 273 s 3; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1985 c 49 s 41; 1986 c 444; 1987 c 268 art 2 s 15,16; 1989 c 330 s 7; 1992 c 540 art 2 s 14

#### 61B.04 CREATION OF ASSOCIATION.

Subdivision 1. **Nature of association.** There is created a nonprofit legal entity to be known as the Minnesota life and health insurance guaranty association. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under section 61B.08, and shall exercise its powers through a board of directors established under section 61B.05. For purposes of assessment, the association shall establish three accounts:

- (a) The health insurance account;
- (b) The life insurance account; and
- (c) The annuity account.

Subd. 2. **Supervision by commissioner of commerce.** The association shall be under the immediate supervision of the commissioner and shall be subject to the insurance laws of this state.

**History:** 1977 c 273 s 4; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92

#### 61B.05 BOARD OF DIRECTORS.

Subdivision 1. **Composition of board.** The board of directors of the association shall consist of nine members. The members of the board shall be selected by the 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 manner described in the plan of operation.

Subd. 2. **Representative selection.** In approving selections or in appointing members to the board, the commissioner shall consider, among other things, whether all member insurers are fairly represented.

Subd. 3. **Compensation.** Members of the board may be reimbursed from the assets of the association for reasonable and necessary expenses incurred by them as members of the board, but shall not otherwise be compensated by the association for their services.

Subd. 4. **Committees and meetings.** Except as otherwise prescribed in the plan of operation:

(a) The board of directors may, by unanimous affirmative action of the entire board, designate two or more of their number to constitute an executive committee, which, to the extent determined by unanimous affirmative action of the entire board, has and shall exercise the authority of the board in the management of the business of the association. This executive committee shall act only in the interval between meetings of the board, and is subject at all times to the control and direction of the board.

(b) The board of directors may, by unanimous affirmative action of the entire board, create additional committees, which have and shall exercise the specific authority and responsibility as determined by the unanimous affirmative action of the entire board.

(c) Any action which may be taken at a meeting of the board of directors or of a lawfully constituted executive committee thereof may be taken without a meeting if authorized by a writing or writings signed by all the directors or by all of the members

of the committee, as the case may be. This action is effective on the date on which the last signature is placed on the writing or writings, or an earlier effective date as set forth therein.

(d) Members of the board of directors or of a lawfully constituted executive committee thereof, may participate in a meeting of the board or committee by means of conference telephone or similar communications equipment through which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this clause constitutes presence in person at the meeting.

**History:** 1977 c 273 s 5; 1980 c 401 s 2; 1Sp1985 c 10 s 57

### 61B.06 POWERS AND DUTIES OF THE ASSOCIATION.

**Subdivision 1. Impaired domestic insurer.** (a) If a domestic insurer is an impaired insurer, the association may, prior to an order of liquidation, conservation or rehabilitation, and subject to any conditions imposed by the association and approved by the impaired insurer and the commissioner, other than those which impair the contractual obligations of the impaired insurer, guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the covered policies of the impaired insurer, and shall make or cause to be made prompt payment of the contractual obligations of the impaired insurer which are due and owing.

(b) If a domestic insurer is an impaired insurer, the association shall, after entry of an order of liquidation, conservation or rehabilitation, subject to any conditions imposed by the association and approved by the commissioner, guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the covered policies of the impaired insurer, and shall make or cause to be made prompt payment of the contractual obligations of the impaired insurer which are due and owing.

**Subd. 2. Impaired foreign or alien insurer.** If a foreign or alien insurer is an impaired insurer under an order of liquidation, rehabilitation, or conservation, the association shall, subject to any conditions imposed by the association and approved by the commissioner, guarantee, assume, or reinsure or cause to be guaranteed, assumed, or reinsured, the covered policies of residents, and shall make or cause to be made prompt payment of the impaired insurer's contractual obligations which are due and owing to residents.

**Subd. 3. Liens.** (a) In carrying out its duties under subdivision 1, clause (b), or 2, the association may request that there be imposed policy liens, contract liens, moratoriums on payments, or other similar means and the liens, moratoriums, or similar means may be imposed if the commissioner:

(1) Finds that the amounts which can be assessed under sections 61B.01 to 61B.16 are less than the amounts needed to assure full and prompt performance of the impaired insurer's contractual obligations, or that economic or financial conditions as they affect member insurers are sufficiently adverse to cause the imposition of policy or contract liens, moratoriums, or similar means to be in the public interest; and

(2) Approves the specific policy liens, contract liens, moratoriums, or similar means to be used.

(b) Before being obligated under subdivision 1, clause (b), or 2, the association may request that there be imposed temporary moratoriums or liens on payments of cash values and policy loans. The temporary moratoriums and liens may be imposed if approved by the commissioner.

**Subd. 4. Foreign jurisdiction coverage.** The association shall have no liability under this section for any covered policy of a foreign or alien insurer whose domiciliary jurisdiction or state of entry provides protection, by statutes or rule, for residents of this state, which protection is substantially similar to that provided by sections 61B.01 to 61B.16, for residents of other states and any recovery provided for under sections 61B.01 to 61B.16 shall be reduced by the amount of recovery under any such coverage provided by another state or jurisdiction.

**Subd. 5. Advisory function.** The association shall, upon the request of the commis-

sioner, render assistance and advice concerning rehabilitation, payment of claims, continuations of coverage, or the performance of other contractual obligations of any impaired insurer.

**Subd. 6. Standing.** The association shall have standing to appear before any court in this state with jurisdiction over an impaired insurer concerning which the association is or may become obligated under sections 61B.01 to 61B.16. Standing shall extend to all matters germane to the powers and duties of the association, including proposals for reinsuring or guaranteeing the covered policies of the impaired insurer and the determination of the covered policies and contractual obligations.

**Subd. 7. Assignment; subrogation.** (a) A person receiving benefits under sections 61B.01 to 61B.16 shall be considered to have assigned rights under, and any causes of action relating to, the covered policy or contract to the association to the extent of the benefits received because of sections 61B.01 to 61B.16, whether the benefits are payments of or on account of contractual obligations or continuation of coverage, or provision of substitute or alternative coverages. The association may require an assignment to it of those rights and causes of action by a payee, policy or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any rights or benefits conferred by sections 61B.01 to 61B.16 upon that person. The subrogation rights of the association include any rights that a person may have as a beneficiary of a plan covered under the Employee Retirement Income Security Act of 1974, United States Code, title 29, section 1003, as amended through December 31, 1991.

(b) The subrogation rights of the association under this subdivision shall have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under sections 61B.01 to 61B.16.

(c) In addition to paragraphs (a) and (b), the association has all common law rights of subrogation and other equitable or legal remedies that would have been available to the impaired or insolvent insurer or holder of a policy or contract with respect to that policy or contract.

**Subd. 8. Extent of liability.** The contractual obligations of the impaired insurer for which the association becomes liable shall be only as great as the contractual obligations of the impaired insurer would have been in the absence of an impairment, unless the obligations are reduced as permitted by subdivision 3, but the aggregate liability of the association shall not exceed \$100,000 in cash values, or \$300,000 for all benefits, including cash values, with respect to any one life.

**Subd. 8a. Adjustment of liability limits.** To the extent there are any limits for particular policies covered under this chapter, the dollar amounts stated in subdivision 8 shall be adjusted for inflation based upon the implicit price deflator for the gross national product compiled by the United States Department of Commerce and hereafter referred to as the index. The dollar amounts stated in subdivision 8 are based upon the value of the index for January 1990, which is the reference base index for purposes of this subdivision. The dollar amounts in subdivision 8 shall change on October 1 of each year after 1992, based upon the percentage difference between the index for January of the preceding year and the reference base index, calculated to the nearest whole percentage point. The commissioner shall announce and publish, on or before April 30 of each year, the changes in the dollar amounts required by this clause to take effect on October 1 of that year.

**Subd. 9. Powers of association.** (a) The association may:

(1) enter into contracts necessary or proper to carry out the provisions of sections 61B.01 to 61B.16 and their purpose;

(2) sue or be sued, including the taking of legal actions necessary or proper for recovery of unpaid assessments under section 61B.07;

(3) borrow money to effect the purposes of sections 61B.01 to 61B.16. Any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets;

(4) employ or retain persons necessary to handle the financial transactions of the association, and perform other necessary or proper functions;

(5) negotiate and contract with any liquidator, rehabilitator, conservator, or ancillary receiver to carry out the powers and duties of the association;

(6) take legal action as may be necessary to avoid payment of improper claims; and

(7) exercise, for the purposes of sections 61B.01 to 61B.16 and to the extent approved by the commissioner, the powers of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform the contractual obligations of an impaired insurer.

(b) The association must borrow any money necessary to effect the purposes of sections 61B.01 to 61B.16. Any notes or other evidence of indebtedness of the association not in default are legal investments for domestic insurers and may be carried as admitted assets.

**History:** 1977 c 273 s 6; 1986 c 444; 1991 c 325 art 5 s 2,3; 1992 c 540 art 2 s 15

**NOTE:** Subdivision 8a, as added by Laws 1991, chapter 325, article 5, section 2, is effective August 1, 1993. See Laws 1991, chapter 325, article 5, section 6, as amended by Laws 1992, chapter 540, article 20, section 20.

**NOTE:** Subdivision 9, as amended by Laws 1991, chapter 325, article 5, section 3, is effective August 1, 1993. See Laws 1991, chapter 325, article 5, section 6, as amended by Laws 1992, chapter 540, article 20, section 20.

### 61B.07 ASSESSMENTS.

**Subdivision 1. Assessment by board.** For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers separately for each account, at the times and for the amounts the board finds necessary. Assessments are due on the date specified by the board. This date shall not be less than 30 days after prior written notice thereof to the member insurers, and shall accrue interest at the rate of six percent a year on and after the due date.

**Subd. 2. Classes of assessments.** There shall be three classes of assessments, as follows:

(a) Class A assessments shall be made for the purpose of meeting administrative costs and other general expenses not related to a particular impaired insurer and conducting examinations under section 61B.10;

(b) Class B assessments shall be made to the extent necessary to carry out the powers and duties of the association under section 61B.06 with regard to impaired domestic insurers;

(c) Class C assessments shall be made to the extent necessary to carry out the powers and duties of the association under section 61B.06 with regard to impaired foreign or alien insurers.

**Subd. 3. Formula for determination.** (a) The amount of any class A assessment shall be determined by the board and may be made on a non-pro rata basis. The amount of any class B or C assessment shall be allocated for assessment purposes among the accounts in the proportion that the premiums received by the impaired insurer on the policies covered by each account bear to the premiums received by the impaired insurer on all covered policies.

(b) Class C assessments against member insurers for each account shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies covered by each account bear to premiums received on business in this state by all assessed member insurers. Notwithstanding the foregoing, the minimum class C assessment against a member insurer is \$10.

(c) Class B assessments for each account shall be made separately for each state in which the impaired domestic insurer was authorized to transact insurance at any time, in the proportion that the premiums received on business in the state by the impaired insurer on policies covered by the account bear to premiums received in all states by the impaired insurer. The assessments against member insurers shall be in the proportion that the premiums received on business in each state by each assessed member insurer on policies covered by each account bears to premiums received on business in the state by all assessed member insurers. Notwithstanding the foregoing, the minimum class B assessment against a member insurer is \$10.

(d) Assessments for funds to meet the requirements of the association with respect to an impaired insurer shall not be made until necessary to implement the provisions of sections 61B.01 to 61B.16. Classification of assessments under subdivision 2, and computation of assessments under this subdivision shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

**Subd. 4. Abatement or deferment.** The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. The total of all assessments upon a member insurer for each account shall not, in any one calendar year, exceed two percent of the insurer's premiums in this state on the policies covered by the account.

**Subd. 5. Additional assessment.** In the event that an assessment against a member insurer is abated, or deferred, in whole or in part, because of the limitations set forth in subdivision 4, the amount by which the assessment is abated or deferred may be assessed against other member insurers in a manner consistent with the basis for assessments set forth in this section. If the maximum assessment, together with the other assets of the association, does not provide in any one year an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by sections 61B.01 to 61B.16.

**Subd. 6. Refund.** The board may, by an equitable method as established in the plan of operation under section 61B.08, refund to member insurers, in proportion to their contributions to particular accounts, the amount by which the assets of the account exceed the amount the board finds necessary to carry out during the coming year the obligations of the association with regard to that account, including assets accruing from net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses if refunds are impractical.

**Subd. 7. Certificate of contribution.** The association shall issue to each insurer paying an assessment under sections 61B.01 to 61B.16, other than a class A assessment, a certificate of contribution, in a form prescribed by the commissioner, for the amount of the assessment paid. All outstanding certificates shall be of equal dignity and priority. A certificate of contribution may be shown by the insurer in its financial statement as an admitted asset in the form and for the amount and period of time as the commissioner may approve.

*History: 1977 c 273 s 7; 1980 c 401 s 3-6*

## **61B.08 PLAN OF OPERATION.**

**Subdivision 1. Adoption and amendment.** (a) The association shall submit to the commissioner a plan of operation and amendments thereto, as necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and amendments thereto shall be effective upon approval in writing by the commissioner.

(b) If the association fails to submit a suitable plan of operation within 180 days after May 27, 1977 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 as necessary or advisable to effectuate the provisions of sections 61B.01 to 61B.16. The rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner. If the commissioner finds that the operation of the association will be unreasonably delayed or impaired by compliance with the rule making requirements of section 14.14, subdivision 1, the commissioner may promulgate emergency rules in accordance with sections 14.29 to 14.36.

**Subd. 2. Compliance.** All member insurers shall comply with the plan of operation.

**Subd. 3. Contents.** The plan of operation shall:

(a) Establish procedures for handling the assets of the association;

- (b) Establish the amount and method of reimbursing members of the board of directors;
- (c) Establish regular places and times for meetings of the board of directors;
- (d) Establish procedures for maintaining records of all financial transactions of the association, its agents, and the board of directors;
- (e) Establish the procedures for making selections for the board of directors and submitting them to the commissioner;
- (f) Establish additional procedures for assessments under section 61B.07;
- (g) Establish procedures for employing or retaining persons necessary to handle the financial transactions and other necessary and proper functions of the association; and
- (h) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

**Subd. 4. Delegation of powers and duties.** The plan of operation may provide that any or all powers and duties of the association, except those authorized under sections 61B.06, subdivision 9, clause (c), and 61B.07, are delegated to another organization which performs or will perform functions similar to those of the association in two or more states. The other organization shall be reimbursed for any payments made on behalf of the association and paid for its performance of any association function. A delegation shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to an organization which extends protection substantially as favorable and effective as that provided by sections 61B.01 to 61B.16.

**History:** 1977 c 273 s 8; 1982 c 424 s 130; 1986 c 444

#### **61B.09 DUTIES AND POWERS OF THE COMMISSIONER.**

Subdivision 1. The commissioner shall:

- (1) Notify the board of directors of the existence of an impaired insurer within three days after a determination of impairment is made or the commissioner receives notice of impairment;
- (2) Upon request of the board of directors, provide the association with a statement of the premiums in the appropriate states for each member insurer; and
- (3) When an impairment is declared and the amount determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time. Notice to the impaired insurer shall constitute notice to its shareholders. The failure of the insurer to promptly comply with the demand shall not excuse the association from performance under sections 61B.01 to 61B.16.

**Subd. 2.** The commissioner may, after notice and hearing, suspend or revoke the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or to comply with the plan of operation. As an alternative, the commissioner may levy a forfeiture on any member insurer which fails to pay an assessment when due. A forfeiture shall not exceed five percent of the unpaid assessment per month, but no forfeiture shall be less than \$100 per month.

**Subd. 3.** Any action of the board of directors or the association may be appealed to the commissioner within 30 days of the notice of the action. Any final action or order of the commissioner shall be subject to judicial review in a court of competent jurisdiction, in the manner provided by chapter 14. In lieu of the appeal to the commissioner under this subdivision, a claimant may seek judicial review of the board's actions.

**Subd. 4.** The liquidator, rehabilitator, or conservator of any impaired insurer may notify all interested persons of the effect of sections 61B.01 to 61B.16.

**History:** 1977 c 273 s 9; 1982 c 424 s 130; 1986 c 444; 1987 c 337 s 44

#### **61B.10 PREVENTION OF IMPAIRMENTS.**

To aid in the detection and prevention of insurer impairments:



(a) The board of directors may, upon majority vote, notify the commissioner of commerce indicating that a member insurer may be unable or potentially unable to fulfill its contractual obligations.

(b) The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board believes may be unable or potentially unable to fulfill its contractual obligations. The commissioner may conduct the examination. The examination may be conducted as a national association of insurance commissioners examination or by persons the commissioner designates. The cost of the examination shall be paid by the association and the examination report treated as are other examination reports. In no event shall the examination report be released to the board of directors of the association prior to its release to the public, but this shall not excuse the commissioner from the obligation to comply with clause

(c). 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 shall not be open to public inspection prior to the release of the examination report to the public and shall be released at that time only if the examination discloses that the examined insurer is unable or potentially unable to meet its contractual obligations.

(c) The commissioner shall report to the board of directors when the commissioner has reasonable cause to believe that any member insurer examined at the request of the board of directors may be unable or potentially unable to fulfill its contractual obligations.

(d) 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.

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

(f) The board of directors may, at the conclusion of any insurer impairment in which the association carried out its duties or exercised powers under sections 61B.01 to 61B.16, prepare a report on the history and causes of the impairment, based on the information available to the association, and submit the report to the commissioner.

**History:** 1977 c 273 s 10; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444

#### **61B.11 DELEGATION BY COMMISSIONER.**

For the purposes of sections 61B.01 to 61B.16, the commissioner may delegate any of the powers conferred by law.

**History:** 1977 c 273 s 11; 1986 c 444

#### **61B.12 MISCELLANEOUS PROVISIONS.**

Subdivision 1. **Construction.** Nothing in sections 61B.01 to 61B.16 shall be construed to reduce the liability for unpaid assessments of the insureds of an impaired insurer operating under a plan with assessment liability.

Subd. 2. **Records.** Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties under section 61B.06. Records of negotiations or meetings shall be made public only upon termination of a liquidation, rehabilitation, or conservation proceeding involving an impaired insurer, termination of the impairment of the insurer, or order of a court of competent jurisdiction. Nothing in this subdivision shall limit the duty of the association to render a report of its activities under section 61B.13.

Subd. 3. **Association as creditor.** For the purpose of carrying out its obligations under sections 61B.01 to 61B.16, the association shall be deemed to be a creditor of the impaired insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to section 61B.06, subdivision 7. All assets of the impaired insurer attributable to covered policies

shall be used to continue all covered policies and pay all contractual obligations of the impaired insurer as required by sections 61B.01 to 61B.16. Assets attributable to covered policies, as used in this subdivision, means that proportion of the assets which the reserves that should have been established for the policies bear to the reserve that should have been established for all policies of insurance written by the impaired insurer.

**Subd. 4. Distribution to stockholders.** No distribution to stockholders of an impaired insurer shall be made until the total amount of assessments levied by the association with respect to the insurer have been fully recovered by the association.

**Subd. 5. Prohibited sales practice.** No person shall make use of the protection afforded by sections 61B.01 to 61B.16 in the sale of insurance. Any person violating this section shall be guilty of a misdemeanor.

**Subd. 6. Notice concerning limitations and exclusions.** No person, including an insurer, agent, or affiliate of an insurer or agent, shall offer for sale in this state a covered life insurance, annuity, or health insurance policy or contract without delivering at the time of application for that policy or contract a notice in the form specified in subdivision 8, relating to coverage provided by the Minnesota Life and Health Insurance Guaranty Association. The notice may be part of the application. A copy of the notice must be given to the applicant. The notice must be delivered to the applicant at the time of application for the policy or contract, except that if the application is not taken from the applicant in person, the notice must be sent to the applicant within 72 hours after the application is taken. The person offering the policy or contract shall document the fact that the notice was given at the time of application or was sent within the specified time and shall include a copy of the notice with the policy or contract when delivered to the applicant.

**Subd. 7. Effect of notice.** The distribution, delivery, or contents or interpretation of the notice described in subdivision 6 shall not mean that either the policy or contract, or the owner or holder thereof, would be covered in the event of the impairment of a member insurer if coverage is not otherwise provided by this chapter. Failure to receive the notice does not give the policyholder, contract holder, certificate holder, insured, owner, beneficiaries, assignees, or payees any greater rights than those provided by this chapter.

**Subd. 8. Form.** The notice required under subdivision 6 must be in the following form:

**“NOTICE CONCERNING POLICYHOLDER RIGHTS IN AN  
INSOLVENCY UNDER THE MINNESOTA LIFE AND HEALTH  
INSURANCE GUARANTY ASSOCIATION LAW**

If the insurer who issued your life, annuity, or health insurance policy becomes impaired or insolvent, you are entitled to compensation for your policy from the assets of that insurer. The amount you recover will depend on the financial condition of the insurer.

In addition, residents of Minnesota who purchase life insurance, annuities, or health insurance from insurance companies authorized to do business in Minnesota are protected, **SUBJECT TO LIMITS AND EXCLUSIONS**, in the event the insurer becomes financially impaired or insolvent. This protection is provided by the Minnesota Life and Health Insurance Guaranty Association.

Minnesota Life & Health Insurance Guaranty Association  
(insert current address and telephone number)

The maximum amount the guaranty association will pay for all policies issued on one life by the same insurer is limited to \$300,000. Subject to this \$300,000 limit, the guaranty association will pay up to \$100,000 in life insurance cash surrender values,

\$300,000 in life insurance death benefits, or up to \$300,000 for other types of benefits. These are the maximum claim amounts. Coverage by the guaranty association is also subject to other substantial limitations and exclusions and requires continued residency in Minnesota. If your claim exceeds the guaranty association's limits, you may still recover a part or all of that amount from the proceeds of the liquidation of the insolvent insurer, if any exist. Funds to pay claims may not be immediately available. The guaranty association assesses insurers licensed to sell life and health insurance in Minnesota after the insolvency occurs. Claims are paid from this assessment.

**THE COVERAGE PROVIDED BY THE GUARANTY ASSOCIATION IS NOT A SUBSTITUTE FOR USING CARE IN SELECTING INSURANCE COMPANIES THAT ARE WELL MANAGED AND FINANCIALLY STABLE. IN SELECTING AN INSURANCE COMPANY OR POLICY, YOU SHOULD NOT RELY ON COVERAGE BY THE GUARANTY ASSOCIATION.**

**THIS NOTICE IS REQUIRED BY MINNESOTA STATE LAW TO ADVISE POLICYHOLDERS OF LIFE, ANNUITY, OR HEALTH INSURANCE POLICIES OF THEIR RIGHTS IN THE EVENT THEIR INSURANCE CARRIER BECOMES FINANCIALLY INSOLVENT. THIS NOTICE IN NO WAY IMPLIES THAT THE COMPANY CURRENTLY HAS ANY TYPE OF FINANCIAL PROBLEMS. ALL LIFE, ANNUITY, AND HEALTH INSURANCE POLICIES ARE REQUIRED TO PROVIDE THIS NOTICE."**

Additional language may be added to the notice if approved by the commissioner prior to its use in the form. This section does not apply to fraternal benefit societies regulated under chapter 64B.

**Subd. 9. Notice for policy or contract not covered.** A policy or contract not covered by the Minnesota Life and Health Insurance Guaranty Association or the Minnesota Insurance Guaranty Association must contain the following notice in 10-point type, stamped in red ink on the policy or contract and the application:

**"THIS POLICY OR CONTRACT IS NOT PROTECTED BY THE MINNESOTA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION OR THE MINNESOTA INSURANCE GUARANTY ASSOCIATION. IN THE CASE OF INSOLVENCY, PAYMENT OF CLAIMS IS NOT GUARANTEED. ONLY THE ASSETS OF THIS INSURER WILL BE AVAILABLE TO PAY YOUR CLAIM."**

**Subd. 10. Combination fixed-variable policy.** The notice required in subdivision 8 must clearly describe what portions of a combination fixed-variable policy are not covered by the Minnesota Life and Health Insurance Guaranty Association. The notice requirements specified in subdivision 9 do not apply to a combination fixed-variable policy.

**History:** 1977 c 273 s 12; 1991 c 325 art 5 s 4,5; 1992 c 540 art 2 s 16-19

### **61B.13 EXAMINATION OF THE ASSOCIATION; ANNUAL REPORT.**

The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner, before May 1 each year, a financial report for the preceding calendar year in a form approved by the commissioner and a report of its activities during the preceding calendar year.

**History:** 1977 c 273 s 13

### **61B.14 TAX EXEMPTIONS.**

**Subdivision 1. State fees and taxes.** The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions, except taxes levied on real property.

**Subd. 2. Federal and foreign state taxes.** The association may seek exemption from payment of all fees and taxes levied by the federal or any other state government or any subdivisions thereof.

**History:** 1977 c 273 s 14

## 61B.15 INDEMNIFICATION.

The association has authority to indemnify certain persons against certain expenses and liabilities as provided in section 300.083 including the power to purchase and maintain insurance on behalf of these persons as provided by section 300.083, subdivision 7. In applying section 300.083 for this purpose, the term "member insurers" shall be substituted for the terms "shareholders" and "stockholders" and the term "association" shall be substituted for the term "corporation."

**History:** 1977 c 273 s 15; 1980 c 401 s 7; 1987 c 384 art 2 s 1

## 61B.16 STAY OF PROCEEDINGS; REOPENING DEFAULT JUDGMENTS.

All proceedings in which the impaired insurer is a party in a court in this state shall be stayed 60 days from the date that a final order of liquidation, rehabilitation or conservation is entered as to the impaired insurer, to permit legal action by the association on any matters germane to its powers or duties. The association may, at any time when an insurer is an impaired insurer, apply to have a judgment under a decision, order, verdict, or finding based on default of the impaired insurer set aside by the court that made the judgment and shall be permitted to defend against the suit on the merits.

**History:** 1977 c 273 s 16