

CHAPTER 60C

INSURANCE GUARANTY ASSOCIATION

<p>60C.02 Scope, purpose and construction. 60C.03 Definitions. 60C.05 Powers and duties. 60C.06 Assessments. 60C.07 Plan of operation. 60C.09 Covered claims. 60C.11 Effect of paid claims. 60C.13 Exhaustion of other coverage.</p>	<p>60C.14 Duties and powers of the commissioner. 60C.15 Prevention of insolvencies. 60C.19 Immunity. 60C.195 Stay of proceedings. 60C.21 Insolvency; notice of guaranty fund protection.</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

60C.02 SCOPE, PURPOSE AND CONSTRUCTION.

Subdivision 1. **Scope.** This chapter applies to all kinds of direct insurance, except:

- (1) life;
- (2) annuity;
- (3) title;
- (4) accident and sickness;
- (5) credit;
- (6) vendor's single interest or collateral protection or any similar insurance protecting the interests of a creditor arising out of a creditor debtor transaction;
- (7) mortgage guaranty;
- (8) financial guaranty or other forms of insurance offering protection against investment risks;
- (9) ocean marine;
- (10) a transaction or combination of transactions between a person, including affiliates of the person, and an insurer, including affiliates of the insurer, that involves the transfer of investment or credit risk unaccompanied by transfer or insurance risk; or
- (11) insurance provided by or guaranteed by government.

Subd. 2. **Purposes.** The purposes of this chapter are to provide a mechanism for the payment of covered claims under certain insurance policies and surety bonds, to the extent provided in this chapter, minimize excessive delay in payment and to avoid financial loss to claimants or policyholders because of the liquidation of an insurer, and to provide an association to assess the cost of the protection among insurers.

Subd. 3. **Construction.** This chapter shall be liberally construed to effect the purposes stated in subdivision 2.

History: 1997 c 52 s 1

60C.03 DEFINITIONS.

[For text of subs 1 to 5, see M.S.1996]

Subd. 6. **Member insurer.** "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, and includes an insurer whose license or certificate of authority in this state may have been suspended, revoked, not renewed, or voluntarily withdrawn.

An insurer ceases to be a member insurer the day following the termination or expiration of its license to transact the kinds of insurance to which this chapter applies. The insurer remains liable as a member insurer for any and all obligations, including obligations for assessments levied before the termination or expiration with respect to an insurer that became an insolvent insurer before the termination or expiration of the insurer's license.

[For text of subd 7, see M.S.1996]

Subd. 8. **Insolvent insurer.** "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 a final order of liquidation has been entered after April 30, 1979, with a finding of insolvency by a court of competent jurisdiction in the insurer's state of domicile. An insurer placed under administrative supervision under sections 60G.01 to 60G.09 or determined to be in hazardous financial condition under sections 60G.20 to 60G.22 is not an insolvent insurer as a result of that placement or determination.

[For text of subs 9 and 10, see M.S.1996]

Subd. 11. **Ocean marine insurance.** "Ocean marine insurance" means a form of insurance, regardless of the name, label, or marketing designation of the insurance policy, that insures against maritime perils or risks and other related perils or risks, that are usually insured against by traditional marine insurance, such as hull and machinery, marine builders risk, and marine protection and indemnity. Perils and risks insured against include without limitation loss, damage, expense, or legal liability of the insured for loss, damage, or expense arising out of or incident to ownership, operation, chartering, maintenance, use, repair, or construction of a vessel, craft, or instrumentality in use in ocean or inland waterways for commercial purposes, including liability of the insured for personal injury, illness, or death or for loss or damage to the property of the insured or another person.

History: 1997 c 52 s 2-4

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 and have the right to pursue and retain salvage and subrogation recoverables on covered claim obligations to the extent paid or acknowledged in writing as an obligation by the association. 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 claimants in this state as considered necessary by the commissioner, to the extent records are available to the association. If sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation is sufficient.

(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.

(h) Have the right to appoint or substitute and to direct legal counsel retained under liability insurance policies for the defense of covered claims.

[For text of subd 2, see M.S.1996]

History: 1997 c 52 s 5

60C.06 ASSESSMENTS.*[For text of subs 1 to 4, see M.S.1996]*

Subd. 6. [Repealed, 1997 c 52 s 15]

60C.07 PLAN OF OPERATION.*[For text of subd 1, see M.S.1996]*

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.

(j) Establish procedures for the disposition of liquidating dividends or other money received from the estate of the insolvent insurer.

*[For text of subd 3, see M.S.1996]***History:** 1997 c 52 s 6**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 a final 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 workers' compensation claims that have met the time limitations and other requirements of chapter 176 and 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;

(2) claims due a reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries, reinsurance recoveries, contribution, indemnification, 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; and

(3) any first-party claims, resulting from insolvencies which occur after July 31, 1996, by an insured whose net worth exceeds \$25,000,000 on December 31 of the year prior to the year in which the insurer becomes an insolvent insurer; provided that an insured's net worth on that date shall be deemed to include the aggregate net worth of the insured and all of its subsidiaries as calculated on a consolidated basis.

Subd. 3. Limitation of amount. Payment of a covered claim, whether upon a single policy or multiple policies of insurance, is limited to no more 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: 1997 c 52 s 7

60C.11 EFFECT OF PAID CLAIMS.

[For text of subs 1 to 4, see M.S.1996]

Subd. 5. The expenses of the association or similar organization in handling claims are accorded the same priority as the liquidator's expenses. The association and a similar organization in another state must be recognized as claimants in the liquidation of an insolvent insurer for amounts paid by them on covered claims as determined under this chapter or similar laws in other states and must receive dividends and other distributions at the priority set forth in chapter 60B. The receiver, liquidator, or statutory successor of an insolvent insurer is bound by determinations of covered claim eligibility under this chapter and by settlements of claims made by the association or a similar organization in another state. The court having jurisdiction shall grant the claims priority equal to that which the claimant would have been entitled against the assets of the insolvent insurer in the absence of this chapter.

[For text of subds 6 and 7, see M.S.1996]

History: 1997 c 52 s 8

60C.13 EXHAUSTION OF OTHER COVERAGE.

Subdivision 1. Any person having a claim under another policy whether or not the policy is a policy of a member insurer, which claim arises out of the same facts which give rise to the covered claim, shall be first required to exhaust the person's right under the other policy. Any amount payable on a covered claim under this chapter shall be reduced by the amount of any recovery under such insurance policy. For purposes of this subdivision, another insurance policy does not include a workers' compensation policy.

[For text of subd 2, see M.S.1996]

History: 1997 c 52 s 9

60C.14 DUTIES AND POWERS OF THE COMMISSIONER.

[For text of subd 1, see M.S.1996]

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

(a) 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.

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

(c) Disclose to the board of directors information regarding any member insurer, or any company seeking admission to transact insurance business in this state, whose financial condition may be hazardous to policyholders or to the public. This disclosure does not violate any data privacy requirement or any obligation to treat the information as privileged. This disclosure does not change the data privacy or privileged status of the information. Board members shall not disclose the information to anyone else or use the information for any purpose other than their duties as board members.

[For text of subd 3, see M.S.1996]

History: 1997 c 52 s 10

60C.15 PREVENTION OF INSOLVENCIES.

To aid in the detection and prevention of insurer insolvencies:

(1) The board of directors may upon majority vote make recommendations to the commissioner on matters generally related to improving or enhancing regulation for solvency.

(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: 1997 c 52 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 a person serving as an alternative or substitute representative of a director, or the commissioner, or the commissioner's representatives for action taken or a failure to act by them in the performance of their powers and duties under this chapter.

History: 1997 c 52 s 12

60C.195 STAY OF PROCEEDINGS.

All proceedings in which the insolvent insurer is a party or is obligated to defend a party in a court in this state shall, subject to waiver by the association in specific cases involving covered claims, be stayed for six months and additional time that may be determined by the court. The stay must run from the date of the final order of liquidation with a finding of insolvency is entered or an ancillary proceeding is instituted in the state, whichever is later. The proceedings are stayed to permit proper defense by the association of all pending causes of action. As to covered claims arising from a judgment under decision, verdict, or finding based on the default of the insolvent insurer or its failure to defend an insured, the association, either on its own behalf or on behalf of an insured, may apply to have the judgment, order, decision, verdict, or finding set aside by the same court or administrator that made the judgment, order, decision, verdict, or finding and must be permitted to defend the claim on the merits.

The liquidator, receiver, or statutory successor of an insolvent insurer covered by this chapter must permit access by the board or its authorized representative to the insolvent insurer's records that are necessary for the board in carrying out its functions under this chapter with regard to covered claims. In addition, the liquidator, receiver, or statutory successor must provide the board or its representative with copies of those records upon request by the board and at the expense of the board.

History: 1997 c 52 s 13

60C.21 INSOLVENCY; NOTICE OF GUARANTY FUND PROTECTION.

[For text of subd 1, see M.S.1996]

Subd. 2. **Form.** The notice required under subdivision 1 must be in the following form:

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

The financial strength of your insurer is one of the most important things for you to consider when determining from whom to purchase a property or liability insurance policy. It is your best assurance that you will receive the protection for which you purchased the policy. If your insurer becomes insolvent, you may have protection from the Minnesota Insurance Guaranty Association as described below but to the extent that your policy is not protected by the Minnesota Insurance Guaranty Association or if it exceeds the guaranty association's limits, you will only have the assets, if any, of the insolvent insurer to satisfy your claim.

Residents of Minnesota who purchase property and casualty or liability insurance from insurance companies licensed to do business in Minnesota are protected, **SUBJECT TO LIMITS AND EXCLUSIONS**, in the event the insurer becomes insolvent. This protection is provided by the Minnesota Insurance Guaranty Association.

Minnesota Insurance Guaranty Association
(insert current address)

The maximum amount that the Minnesota Insurance Guaranty Association will pay in regard to a claim under all policies issued by the same insurer is limited to \$300,000. This limit does not apply to workers' compensation insurance. Protection by the guaranty association is subject to other substantial limitations and exclusions. If your claim exceeds the guaranty association's limits, you may still recover a part or all of that amount from the proceeds from 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 property and casualty or liability insurance in Minnesota after the insolvency occurs. Claims are paid from the assessment.

THE PROTECTION 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 PROTECTION BY THE GUARANTY ASSOCIATION.

THIS NOTICE IS REQUIRED BY MINNESOTA STATE LAW TO ADVISE POLICYHOLDERS OF PROPERTY AND CASUALTY INSURANCE POLICIES OF THEIR RIGHTS IN THE EVENT THEIR INSURANCE CARRIER BECOMES INSOLVENT. THIS NOTICE IN NO WAY IMPLIES THAT THE COMPANY CURRENTLY HAS ANY TYPE OF FINANCIAL PROBLEMS. ALL PROPERTY AND CASUALTY 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.

[For text of subs 3 and 4, see M.S.1996]

History: 1997 c 52 s 14