

CHAPTER 60B

INSURERS REHABILITATION AND LIQUIDATION

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60B.21 LIQUIDATION ORDERS.

[For text of subd 1, see M.S.1998]

Subd. 2. **Fixing of rights.** Upon issuance of the order, the rights and liabilities of any such insurer and of its creditors, policyholders, shareholders, members, and all other persons interested in its estate are fixed as of the date of filing of the petition for liquidation, except as provided in sections 60B.22, 60B.25, clause (22), and 60B.39.

[For text of subs 3 and 4, see M.S.1998]

History: 1999 c 177 s 18

60B.25 POWERS OF LIQUIDATOR.

The liquidator shall report to the court monthly, or at other intervals specified by the court, on the progress of the liquidation in whatever detail the court orders. The liquidator shall coordinate activities with those of each guaranty association having an interest in the liquidation and shall submit a report detailing how coordination will be achieved to the court for its approval within 30 days following appointment, or within the time which the court, in its discretion, may establish. Subject to the court's control, the liquidator may:

(1) Appoint a special deputy to act under sections 60B.01 to 60B.61 and determine the deputy's compensation. The special deputy shall have all powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator.

(2) Appoint or engage employees and agents, actuaries, accountants, appraisers, consultants, and other personnel deemed necessary to assist in the liquidation without regard to chapter 14.

(3) Fix the compensation of persons under clause (2), subject to the control of the court.

(4) Defray all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer. If the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the liquidator may advance the costs so incurred out of the appropriation made to the department of commerce. Any amounts so paid shall be deemed expense of administration and shall be repaid for the credit of the department of commerce out of the first available money of the insurer.

(5) Hold hearings, subpoena witnesses and compel their attendance, administer oaths, examine any person under oath and compel any person to subscribe to testimony after it has been correctly reduced to writing, and in connection therewith require the production of any books, papers, records, or other documents which the liquidator deems relevant to the inquiry.

(6) Collect all debts and money due and claims belonging to the insurer, wherever located, and for this purpose institute timely action in other jurisdictions, in order to forestall garnishment and attachment proceedings against such debts; do such other acts as are necessary or expedient to collect, conserve, or protect its assets or property, including sell, compound, compromise, or assign for purposes of collection, upon such terms and conditions as the liquidator deems best, any bad or doubtful debts; and pursue any creditor's remedies available to enforce claims.

(7) Conduct public and private sales of the property of the insurer in a manner prescribed by the court.

- (8) Use assets of the estate to transfer coverage obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under section 60B.44.
- (9) Acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable, except that no transaction involving property the market value of which exceeds \$10,000 shall be concluded without express permission of the court. The liquidator may also execute, acknowledge, and deliver any deeds, assignments, releases, and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation. In cases where real property sold by the liquidator is located other than in the county where the liquidation is pending, the liquidator shall cause to be filed with the county recorder for the county in which the property is located a certified copy of the order of appointment.
- (10) Borrow money on the security of the insurer's assets or without security and execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation.
- (11) Enter into such contracts as are necessary to carry out the order to liquidate, and affirm or disavow any contracts to which the insurer is a party.
- (12) Continue to prosecute and institute in the name of the insurer or in the liquidator's own name any suits and other legal proceedings, in this state or elsewhere, and abandon the prosecution of claims the liquidator deems unprofitable to pursue further. If the insurer is dissolved under section 60B.23, the liquidator may apply to any court in this state or elsewhere for leave to be substituted for the insurer as plaintiff.
- (13) Prosecute any action which may exist in behalf of the creditors, members, policyholders, or shareholders of the insurer against any officer of the insurer, or any other person.
- (14) Remove any records and property of the insurer to the offices of the commissioner or to such other place as is convenient for the purposes of efficient and orderly execution of the liquidation.
- (15) Deposit in one or more banks in this state such sums as are required for meeting current administration expenses and dividend distributions.
- (16) Deposit with the state board of investment for investment pursuant to section 11A.24, all sums not currently needed, unless the court orders otherwise.
- (17) File any necessary documents for record in the office of any county recorder or record office in this state or elsewhere where property of the insurer is located.
- (18) Assert all defenses available to the insurer as against third persons, including statutes of limitations, statutes of frauds, and the defense of usury. A waiver of any defense by the insurer after a petition for liquidation has been filed shall not bind the liquidator.
- (19) Exercise and enforce all the rights, remedies, and powers of any creditor, shareholder, policyholder, or member, including any power to avoid any transfer or lien that may be given by law and that is not included within sections 60B.30 and 60B.32.
- (20) Intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and act as the receiver or trustee whenever the appointment is offered.
- (21) Enter into agreements with any receiver or commissioner of any other state relating to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing business in both states.
- (22) Collect from an insured any unpaid earned premium or retrospectively rated premium due the insurer based on the termination of coverage under section 60B.22. Premium on surety business is considered earned at inception if no policy term can be determined. All other premium will be considered earned and will be prorated over the determined policy term, regardless of any provision in the bond, guaranty, contract, or other agreement.
- (23) Exercise all powers now held or hereafter conferred upon receivers by the laws of this state not inconsistent with sections 60B.01 to 60B.61.
- (24) The enumeration in this section of the powers and authority of the liquidator is not a limitation, nor does it exclude the right to do such other acts not herein specifically enumer-

ated or otherwise provided for as are necessary or expedient for the accomplishment of or in aid of the purpose of liquidation.

(25) The power of the liquidator of a health maintenance organization includes the power to transfer coverage obligations to a solvent and voluntary health maintenance organization, insurer, or nonprofit health service plan, and to assign provider contracts of the insolvent health maintenance organization to an assuming health maintenance organization, insurer, or nonprofit health service plan permitted to enter into such agreements. The liquidator is not required to meet the notice requirements of section 62D.121. Transferees of coverage obligations or provider contracts shall have no liability to creditors or obligees of the health maintenance organization except those liabilities expressly assumed.

History: 1999 c 177 s 19

60B.26 NOTICE TO CREDITORS AND OTHERS.

Subdivision 1. **Notice required.** (a) The liquidator shall give notice of the liquidation order as soon as possible by first class mail and either by telegram or telephone to the commissioner of commerce of each jurisdiction in which the insurer is licensed to do business, by first class mail and by telephone to the department of labor and industry of this state if the insurer is or has been an insurer of workers' compensation, by first class mail within this state and by airmail outside this state to all agents of the insurer having a duty under this chapter, by first class mail, if the insurer is a surety company to every district court judge exercising probate jurisdiction and the court administrator of all courts of record in this state and upon receipt of such notice it shall be the duty of those judges and court administrators to notify and require every executor, administrator, guardian, trustee, or other fiduciary having filed a bond on which such company is surety, to forthwith file a new bond with new sureties, and by first class mail within this state and by airmail outside this state at the last known address to all persons known or reasonably expected to have claims against the insurer, including all policyholders. The liquidator also shall publish a notice three consecutive times in a newspaper of general circulation in the county in which the liquidation is pending or in Ramsey county, the last publication to be not less than three months before the earliest deadline specified in the notice under subdivision 2.

(b) Notice to agents shall inform them of their duties under this chapter and inform them what information they must communicate to policyholders. Notice to policyholders shall include notice of impairment and termination of coverage under section 60B.22. When it is applicable, notice to policyholders shall include (1) notice of withdrawal of the insurer from the defense of any case in which the policyholder is interested, and (2) notice of the right to file a claim under section 60B.40, subdivision 2.

(c) Within 15 days of the date of entry of the order, the liquidator shall report to the court what notice has been given. The court may order such additional notice as it deems appropriate.

[For text of subs 2 and 3, see M.S.1998]

History: 1999 c 177 s 20

60B.36 [Repealed, 1999 c 177 s 88]

60B.365 REINSURER'S LIABILITY.

Subdivision 1. **Generally.** The amount recoverable by the liquidator from reinsurers must not be reduced as a result of the delinquency proceedings, regardless of any provision in the reinsurance contract or other agreement, except as provided in subdivision 2.

Subd. 2. **Payments.** Payments by the reinsurer must be made directly to the ceding insurer or its receiver, except where the contract of insurance or reinsurance specifically provides for another payee for the reinsurance in the event of insolvency of the ceding insurer according to the applicable requirements of statutes, rules, or orders of the domiciliary state of the ceding insurer. The receiver and reinsurer are entitled to recover from a person who unsuccessfully makes a claim directly against the reinsurer the receiver's attorneys' fees and expenses incurred in preventing any collection by the person.

History: 1999 c 177 s 21

60B.39 SPECIAL CLAIMS.

[For text of subd 1, see M.S.1998]

Subd. 2. **Claims under terminated policies.** Any claim that would have become absolute if there had been no termination of coverage under section 60B.22, and which was not covered by insurance acquired to replace the terminated coverage, shall be allowed as if the coverage had remained in effect, unless at least ten days before the insured event occurred either the claimant had actual notice of the termination or notice was mailed to the claimant as prescribed by section 60B.26, subdivision 1, or this chapter. If allowed the claim shall share in distributions under section 60B.44, subdivision 9.

[For text of subds 3 to 6, see M.S.1998]

History: 1999 c 177 s 22

60B.44 ORDER OF DISTRIBUTION.

[For text of subds 1 and 2, see M.S.1998]

Subd. 3. [Repealed, 1999 c 177 s 88]

Subd. 4. **Loss claims; including claims not covered by a guaranty association.** All claims under policies or contracts of coverage for losses incurred including third party claims, and all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which are not under policies or contracts. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values, shall be treated as loss claims. That portion of any loss for which indemnification is provided by other benefits or advantages recovered or recoverable by the claimant shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment made by an employer to an employee shall be treated as a gratuity. Claims not covered by a guaranty association are loss claims.

Subd. 4a. **Unearned premiums.** Claims under nonassessable policies or contracts of coverage for unearned premiums or subscription rates or other refunds.

Subd. 4b. **Federal government.** Claims of the federal government.

Subd. 4c. **Wages.** (a) Debts due to employees for services performed, not to exceed \$1,000 to each employee, that have been earned within one year before the filing of the petition for liquidation, subject to payment of applicable federal, state, or local government taxes required by law to be withheld from the debts. Officers are not entitled to the benefit of this priority. In cases where there are no claims and no potential claims of the federal government in the estate, these claims will have priority over claims in subdivision 4.

(b) The priority in paragraph (a) is in lieu of other similar priority authorized by law as to wages or compensation of employees.

Subd. 5. [Repealed, 1999 c 177 s 88]

Subd. 6. **Residual classification.** All other claims including claims of any state or local government, not falling within other classes under this section. Claims, including those of any governmental body for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to the class of claims under subdivision 9.

[For text of subds 7 to 11, see M.S.1998]

History: 1999 c 177 s 23-27