

CHAPTER 60C

INSURANCE GUARANTY ASSOCIATION

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60C.02 SCOPE, PURPOSES, 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 of insurance risk;
- (11) insurance provided by or guaranteed by government; or
- (12) insurance of warranties or service contracts, including insurance that provides for the repair, replacement, or services of goods or property, or indemnification for repair, replacement or service, for the operation or structural failure of the goods or property due to a defect in materials, workmanship or normal wear and tear, or provides reimbursement for the liability insured by the user of agreement or service contracts that provide these benefits.

[For text of subds 2 and 3, see M.S.2002]

History: 2003 c 74 s 1

60C.03 DEFINITIONS.

[For text of subds 1 to 4, see M.S.2002]

Subd. 5. **Person.** "Person" means any individual, corporation, partnership, association, or voluntary organization, and includes governmental entities.

[For text of subds 6 to 8, see M.S.2002]

Subd. 9. **Affiliate.** "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 another person.

[For text of subds 10 and 11, see M.S.2002]

History: 2003 c 74 s 2,3

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 association shall not be deemed the insolvent insurer for any purpose relating to the issue of whether the association is amenable to the personal jurisdiction of the courts of any state.

(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 insurance policies for the defense of covered claims.

[For text of subd 2, see M.S.2002]

History: 2003 c 74 s 4

60C.07 PLAN OF OPERATION.

[For text of subd 1, see M.S.2002]

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 insolvent insurers.

[For text of subd 3, see M.S.2002]

History: 2003 c 74 s 5

60C.09 COVERED CLAIMS.

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

(a) 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;

(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) an 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 units in a common interest community 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.

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 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 and affiliates as calculated on a consolidated basis;

(4) any claims under a policy written by an insolvent insurer with a deductible or self-insured retention of \$300,000 or more, nor that portion of a claim that is within an insured's deductible or self-insured retention;

(5) claims that are a fine, penalty, interest, or punitive or exemplary damages.

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 excluding retrospective or experience-rated insurance plans or premiums subject to adjustment after termination of the policy. 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.

Subd. 4. **Aggregate limitation.** Except in the case of a claim for benefits under workers' compensation coverage, any obligation of the association to or on behalf of an insured and its affiliates on covered claims ceases when \$10,000,000 has been paid in the aggregate by the association and any one or more associations similar to the association of any other state or states, to or on behalf of that insured, its affiliates, and additional insureds on covered claims or allowed claims arising under the policy or policies of any one insolvent insurer.

History: 2003 c 74 s 6

60C.11 EFFECT OF PAID CLAIMS.

[For text of subs 1 to 6, see M.S.2002]

Subd. 7. The association may recover the amount of any covered claim including claim handling expenses paid, resulting from insolvencies which occur after July 31, 1996, on behalf of an insured who has a net worth of \$25,000,000 as provided in section 60C.09, subdivision 2, clause (3), on December 31 of the year immediately preceding the date the insurer becomes an insolvent insurer and whose liability obligations to other persons are satisfied in whole or in part by payments made under this chapter.

History: 2003 c 74 s 7

60C.16 EXAMINATION OF ASSOCIATION.

The association is subject to examination and regulation by the commissioner. The board of directors shall submit each year a financial report for the preceding calendar year in a form approved by the commissioner.

History: 2003 c 74 s 8

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 may include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member insurer less any amounts returned to the member insurer by the association. The rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer.

Subd. 2. [Repealed, 2003 c 74 s 11]

History: 2003 c 74 s 9