61B.19 PURPOSE; SCOPE; LIMITATION OF COVERAGE; LIMITATION OF BENEFITS; CONSTRUCTION.

Subdivision 1. **Purpose.** (a) The purpose of sections 61B.18 to 61B.32 is to protect, subject to certain limitations, the persons specified in subdivision 2 against failure in the performance of contractual obligations under life, health, and annuity policies or contracts, and the supplemental contracts specified in subdivision 2, because of the impairment or insolvency of the member insurer that issued the policies or contracts.

(b) To provide this protection, an association of member insurers has been created and exists to pay benefits and to continue coverages, as limited in sections 61B.18 to 61B.32. Members of the association are subject to assessment to provide funds to carry out the purpose of sections 61B.18 to 61B.32.

Subd. 2. **Scope.** (a) Sections 61B.18 to 61B.32 provide coverage for the policies and contracts specified in paragraph (b) to:

(1) persons who are owners, certificate holders, or enrollees under these policies or contracts, or, (i) in the case of unallocated annuity contracts, to the persons who are participants in a covered retirement plan, or (ii) in the case of structured settlement annuities, to persons who are payees in respect of their liability claims (or beneficiaries of such payees who are deceased) and who:

(A) are residents; or

(B) are not residents, but only under all of the following conditions: the member insurers that issued the policies or contracts are domiciled in the state of Minnesota; those insurers never held a license or certificate of authority in the states in which those persons reside; those states have associations similar to the association created by sections 61B.18 to 61B.32; and those persons are not eligible for coverage by those associations; and

(2) persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees, or payees of the persons covered under clause (1). This includes health care providers rendering services covered by a health insurance policy or contract.

(b) Sections 61B.18 to 61B.32 provide coverage to the persons specified in paragraph (a) for direct, nongroup life insurance, health insurance, annuity, and supplemental policies or contracts, for subscriber contracts issued by a nonprofit health service plan corporation operating under chapter 62C, for health maintenance contracts issued by a health maintenance organization under chapter 62D, for certificates under direct group policies and contracts, and for unallocated annuity contracts issued by member insurers, except as limited by sections 61B.18 to 61B.32. Except as expressly excluded under subdivision 3, annuity contracts and certificates under group annuity contracts include, but are not limited to, guaranteed investment contracts, deposit administration contracts, unallocated funding agreements, allocated funding agreements, structured settlement annuities, annuities issued to or in connection with government lotteries, and any immediate or deferred annuity contracts. Covered unallocated annuity contracts include those that fund a qualified defined contribution retirement plan under sections 401, 403(b), and 457 of the Internal Revenue Code of 1986, as amended through December 31, 1992.

Subd. 3. **Limitation of coverage.** Sections 61B.18 to 61B.32 do not provide coverage for:

(1) a portion of a policy or contract not guaranteed by the member insurer, or under which the investment risk is borne by the policy or contract holder;

(2) a policy or contract of reinsurance, unless assumption certificates have been issued and the insured has consented to the assumption as provided under section 60A.09, subdivision 4a;

(3) a policy or contract issued by an assessment benefit association operating under section 61A.39, or a fraternal benefit society operating under chapter 64B;

(4) any obligation to nonresident participants of a covered retirement plan or to the plan sponsor, employer, trustee, or other party who owns the contract; in these 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 or insolvency;

(5) a structured settlement annuity in situations where a liability insurer remains liable to the payee;

(6) a portion of an unallocated annuity contract which is not issued to or in connection with a specific employee, union, or association of natural persons benefit plan or a governmental lottery, including but not limited to, a contract issued to, or purchased at the direction of, any governmental bonding authority, such as a municipal guaranteed investment contract;

(7) a portion of a policy or contract issued to a plan or program of an employer, association, or similar entity to provide life, health, or annuity benefits to its employees or members to the extent that the plan or program is self-funded or uninsured, including benefits payable by an employer, association, or similar entity under:

(i) a multiple employer welfare arrangement as defined in the Employee Retirement Income Security Act of 1974, United States Code, title 29, section 1002(40)(A), as amended;

(ii) a minimum premium group insurance plan;

(iii) a stop-loss group insurance plan; or

(iv) an administrative services only contract;

(8) any policy or contract issued by an insurer at a time when it was not licensed or did not have a certificate of authority to issue the policy or contract in this state;

(9) an unallocated annuity contract issued to or in connection with a benefit plan protected under the federal Pension Benefit Guaranty Corporation, regardless of whether the federal Pension Benefit Guaranty Corporation has yet become liable to make any payments with respect to the benefit plan;

(10) a portion of a policy or contract to the extent that it provides for (i) dividends or experience rating credits except to the extent the dividends or experience rating credits have actually become due and payable or have been credited to the policy or contract before the date of impairment or insolvency, (ii) voting rights, or (iii) payment of any fees or allowances to any person, including the policy or contract holder, in connection with the service to, or administration of, the policy or contract;

(11) a contractual agreement that establishes the member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustee, which in each case is not an affiliate of the member insurer;

(12) a portion of a policy or contract to the extent that the rate of interest on which it is based, or the interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract, employed in calculating returns or changes in value:

(i) averaged over the period of four years prior to the date on which the member insurer becomes an impaired or insolvent insurer under sections 61B.18 to 61B.32, whichever is earlier, exceeds the rate of interest determined by subtracting two percentage points from Moody's Corporate Bond Yield Average

averaged for that same four-year period or for the lesser period if the policy or contract was issued less than four years before the member insurer becomes an impaired or insolvent insurer under sections 61B.18 to 61B.32, whichever is earlier; and

(ii) on and after the date on which the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier, exceeds the rate of interest determined by subtracting three percentage points from Moody's Corporate Bond Yield Average as most recently available;

(iii) however, this paragraph shall not apply to a contract, policy, or rider for long-term care or health insurance;

(13) a portion of a policy or contract to the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but which have not been credited to the policy or contract, or as to which the policy or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under sections 61B.18 to 61B.32, whichever is earlier. If a policy's or contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and not subject to forfeiture under this clause, the interest or changes in value determined by using the procedures defined in the policy or contract will be credited as if the contractual date of crediting interest or changing values was the date of impairment or insolvency, whichever is earlier, and will not be subject to forfeiture;

(14) a portion of a policy or contract to the extent that the assessments required by section 61B.24 with respect to the policy or contract are preempted by federal or state law;

(15) a policy or contract providing any hospital, medical, prescription drug, or other health care benefits pursuant to United States Code, title 42, chapter 7, subchapter XVIII, Part C or Part D, commonly known as Medicare Part C & D, or United States Code, title 42, chapter 7, subchapter XIX, commonly known as Medicaid, or any regulations issued under those provisions; and

(16) structured settlement annuity benefits to which a payee or beneficiary has transferred his or her rights in a structured settlement factoring transaction, as defined in United States Code, title 26, section 5891, regardless of whether the transaction occurred before or after the effective date of section 5891.

Subd. 4. **Limitation of benefits.** The benefits for which the association may become liable shall in no event exceed the lesser of:

(1) the contractual obligations for which the member insurer is liable or would have been liable if it were not an impaired or insolvent insurer; or

(2) subject to the limitation in clause (5), with respect to any one life, regardless of the number of policies or contracts:

(i) $500,000 in life insurance death benefits, but not more than $130,000 in net cash surrender and net cash withdrawal values for life insurance;

(ii) $500,000 in health insurance, long-term care, and disability income insurance benefits, including any net cash surrender and net cash withdrawal values;

(iii) $250,000 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values;

(iv) $410,000 in present value of annuity benefits for structured settlement annuities or for annuities in regard to which periodic annuity benefits, for a period of not less than the annuitant's lifetime or for a period

certain of not less than ten years, have begun to be paid, on or before the date of impairment or insolvency; or

(3) subject to the limitations in clauses (5) and (6), with respect to each individual resident participating in a retirement plan, except a defined benefit plan, established under section 401, 403(b), or 457 of the Internal Revenue Code of 1986, as amended through December 31, 1992, covered by an unallocated annuity contract, or the beneficiaries of each such individual if deceased, in the aggregate, $250,000 in net cash surrender and net cash withdrawal values;

(4) where no coverage limit has been specified for a covered policy or benefit, the coverage limit shall be $500,000 in present value;

(5) in no event shall the association be liable to cover more than $500,000 in benefits in the aggregate with respect to any one life under clause (2), items (i), (ii), (iii), (iv), and clause (4), and any one individual under clause (3);

(6) in no event shall the association be liable to cover more than $10,000,000 in benefits with respect to all unallocated annuities of a retirement plan, except a defined benefit plan, established under section 401, 403(b), or 457 of the Internal Revenue Code of 1986, as amended through December 31, 1992. If total claims from a plan exceed $10,000,000, the $10,000,000 shall be prorated among the claimants;

(7) for purposes of applying clause (2)(ii) and clause (5), with respect only to health insurance benefits, the term "any one life" applies to each individual covered by a health insurance policy or contract;

(8) where covered contractual obligations are equal to or less than the limits stated in this subdivision, the association will pay the difference between the covered contractual obligations and the amount credited by the estate of the insolvent or impaired insurer, if that amount has been determined or, if it has not, the covered contractual limit, subject to the association's right of subrogation;

(9) where covered contractual obligations exceed the limits stated in this subdivision, the amount payable by the association will be determined as though the covered contractual obligations were equal to those limits. In making the determination, the estate shall be deemed to have credited the covered person the same amount as the estate would credit a covered person with contractual obligations equal to those limits; or

(10) the following illustrates how the principles stated in clauses (8) and (9) apply. The example illustrated concerns hypothetical claims subject to the limit stated in clause (2)(iii). The principles stated in clauses (8) and (9), and illustrated in this clause, apply to claims subject to any limits stated in this subdivision.

CONTRACTUAL OBLIGATIONS OF:

$100,000

Estate	Guaranty Association
0% recovery from estate	$ 0	$100,000
25% recovery from estate	$25,000	$75,000
50% recovery from estate	$50,000	$50,000
75% recovery from estate	$75,000	$25,000

$250,000

	Estate	Guaranty Association
0% recovery from estate	$ 0	$250,000
25% recovery from estate	$62,500	$187,500
50% recovery from estate	$125,000	$125,000
75% recovery from estate	$187,500	$62,500

$300,000

	Estate	Guaranty Association
0% recovery from estate	$ 0	$250,000
25% recovery from estate	$75,000	$187,500
50% recovery from estate	$150,000	$125,000
75% recovery from estate	$225,000	$62,500

Subd. 5. **Limited liability.** The liability of the association is strictly limited by the express terms of the covered policies and contracts and by the provisions of sections 61B.18 to 61B.32 and is not affected by the contents of any brochures, illustrations, advertisements, or oral statements by agents, brokers, or others used or made in connection with their sale. This limitation on liability does not prevent an insured from proving liability that is greater than the express terms of the covered policy or contract. The insured must bring an action to claim the greater liability no later than one year after entry of an order of rehabilitation, conservation, or liquidation. The association is not liable for any extra-contractual claims, such as claims relating to bad faith in payment of claims and claims relating to marketing practices, exemplary, or punitive damages. The association is not liable for attorney fees or interest other than as provided for by the terms of the policies or contracts, subject to the other limits of sections 61B.18 to 61B.32.

Subd. 6. [Repealed, 2009 c 37 art 3 s 25]

Subd. 7. **Construction.** (a) Sections 61B.18 to 61B.32 shall be liberally construed to effect the purpose of sections 61B.18 to 61B.32. Subdivision 1 is an aid and guide to interpretation.

(b) Participants in an employer-sponsored plan, which is funded in whole or in part by a covered policy, as specified in subdivision 4, clause (3), shall only be required to verify their status as residents and the amount of money in the unallocated annuity that represents their funds. Both these matters may be verified by the employer sponsoring the plan from plan records. Payments made to a plan shall be deemed to be made on behalf of the resident participant and are not the funds of the plan, the plan trustee, or any nonresident plan participant, and to the extent of such payments, discharge the association's obligation.

History: *1993 c 319 s 4; 1994 c 426 s 11; 1999 c 177 s 36; 2001 c 142 s 1-4; 2009 c 37 art 3 s 15; 2010 c 275 art 1 s 10,11; 2020 c 80 art 2 s 2-5*