

## CHAPTER 60G

### ADMINISTRATIVE SUPERVISION

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#### ADMINISTRATIVE SUPERVISION MODEL ACT

##### 60G.01 DEFINITIONS.

Subdivision 1. **Application.** The definitions in this section apply to this chapter.

Subd. 2. **Commissioner.** "Commissioner" means the commissioner of commerce, except that "commissioner" means the commissioner of health for administrative supervision of health maintenance organizations.

Subd. 3. **Consent.** "Consent" means agreement to administrative supervision by the insurer.

Subd. 4. **Department.** "Department" means the Department of Commerce, except that "department" means the Department of Health for administrative supervision of health maintenance organizations.

Subd. 5. **Insurer.** "Insurer" means and includes every person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance or of annuities as limited to:

- (1) any insurer who is doing an insurer business, or has transacted insurance in this state, and against whom claims arising from that transaction may exist now or in the future;
- (2) any fraternal benefit society which is subject to chapter 64B;
- (3) nonprofit health service plan corporations subject to chapter 62C;
- (4) cooperative life and casualty companies subject to sections 61A.39 to 61A.52; and
- (5) health maintenance organizations regulated under chapter 62D.

**History:** 1991 c 325 art 2 s 1; 1992 c 464 art 1 s 9; 1995 c 234 art 1 s 3-5; 1997 c 225 art 2 s 62

##### 60G.02 NOTICE TO COMPLY WITH WRITTEN REQUIREMENTS OF COMMISSIONER; NONCOMPLIANCE; ADMINISTRATIVE SUPERVISION.

Subdivision 1. **Administrative supervision.** An insurer may be subject to administrative supervision by the commissioner if upon examination or at any other time it appears in the commissioner's discretion that:

- (1) the insurer's condition renders the continuance of its business hazardous to the public or to its insureds;

(2) the insurer has refused to permit examination of its books, papers, accounts, records, or affairs by the commissioner, the commissioner's deputies, employees, or duly commissioned examiners;

(3) a domestic insurer has unlawfully removed from this state books, papers, accounts, or records necessary for an examination of the insurer;

(4) the insurer has failed to promptly comply with the applicable financial reporting statutes or rules and departmental requests relating thereto;

(5) the insurer has neglected or refused to observe an order of the commissioner to make good, within the time prescribed by law, any prohibited deficiency in its capital, capital stock, or surplus;

(6) the insurer is continuing to transact insurance or write business after its license has been revoked or suspended by the commissioner;

(7) the insurer, by contract or otherwise, has unlawfully or has in violation of an order of the commissioner or has without first having obtained written approval of the commissioner if approval is required by law:

(i) totally reinsured its entire outstanding business, or

(ii) merged or consolidated substantially its entire property or business with another insurer;

(8) the insurer engaged in any transaction in which it is not authorized to engage under the laws of this state;

(9) the insurer refused to comply with a lawful order of the commissioner;

(10) the insurer has failed to comply with the applicable provisions of the laws of this state;

(11) the business of the insurer is being conducted fraudulently; or

(12) the insurer gives its consent.

Subd. 2. **Notification.** If the commissioner determines that at least one of the conditions specified in subdivision 1 exists and places the insurer under supervision, the commissioner may:

(1) notify the insurer of the commissioner's determination;

(2) furnish to the insurer a written list of the requirements to abate this determination; and

(3) notify the insurer that it is under the supervision of the commissioner and that the commissioner is applying and enforcing the provisions of this chapter. If placed under administrative supervision, an insurer may request review as provided under chapter 14.

Subd. 3. **Requirement compliance.** If placed under administrative supervision, the insurer shall have 60 days, or another period of time as designated by the commissioner, to comply with the requirements of the commissioner as provided under this chapter. If it is determined after notice and hearing that the insurer has not complied with the requirements of the commissioner at the end of the supervision period, the commissioner may extend the period. If the insurer complies with the requirements of the commissioner, the commissioner shall release the insurer from supervision.

**History:** 1991 c 325 art 2 s 2

**60G.03 CONFIDENTIALITY OF CERTAIN PROCEEDINGS AND RECORDS.**

Subdivision 1. **Confidentiality.** Notwithstanding any other provision of law and except as provided in this section, proceedings, hearings, notices, correspondence, reports, records, and other information in the possession of the commissioner or the department relating to the supervision of any insurer are confidential.

Subd. 2. **Access.** The personnel of the department shall have access to these proceedings, hearings, notices, correspondence, reports, records, or information as permitted by the commissioner.

Subd. 3. **Open hearings; disclosure.** The commissioner may open the proceedings or hearings or disclose the notices, correspondence, reports, records, or information to a department, agency, or instrumentality of this or another state or the United States if the commissioner determines that the disclosure is necessary or proper for the enforcement of the laws of this or another state or the United States.

Subd. 4. **Public disclosure.** The commissioner may open the proceedings or hearings or make public the notices, correspondence, reports, records, or other information if the commissioner determines that it is in the best interest of the public or in the best interest of the insurer, its insureds, creditors, or the general public.

Subd. 5. **Exemption.** This section does not apply to hearings, notices, correspondence, reports, records, or other information obtained upon the appointment of a receiver for the insurer by a court of competent jurisdiction.

**History:** 1991 c 325 art 2 s 3

**60G.04 PROHIBITED ACTS DURING PERIOD OF SUPERVISION.**

During the period of supervision, the commissioner shall serve as the administrative supervisor. The commissioner may require that the insurer shall not do any of the following things during the period of supervision without the prior approval of the commissioner:

- (1) dispose of, convey, or encumber its assets or its business in force;
- (2) withdraw funds from its bank accounts;
- (3) lend its funds;
- (4) invest its funds;
- (5) transfer its property;
- (6) incur debt, obligation, or liability;
- (7) merge or consolidate with another company;
- (8) approve new premiums or renew policies;
- (9) enter into a new reinsurance contract or treaty;
- (10) terminate, surrender, forfeit, convert, or lapse an insurance policy, certificate, or contract, except for nonpayment of premiums due;
- (11) release, pay, or refund premium deposits, accrued cash or loan values, unearned premiums, or other reserves on an insurance policy, certificate, or contract;

(12) make a material change in management; or

(13) increase salaries and benefits of officers or directors or make preferential payment of bonuses, dividends, or other payments determined preferential by the commissioner.

**History:** 1991 c 325 art 2 s 4

#### **60G.05 REVIEW AND STAY OF ACTION.**

During the period of supervision, the insurer may contest an action taken or proposed to be taken by the commissioner as provided under chapter 14. The insurer must show that the action being complained of is detrimental to the condition of the insurer.

**History:** 1991 c 325 art 2 s 5

#### **60G.06 ADMINISTRATIVE ELECTION OF PROCEEDINGS.**

Nothing contained in this chapter precludes the commissioner from initiating judicial proceedings to place an insurer in rehabilitation or liquidation proceedings under the laws of this state, regardless of whether the commissioner has previously initiated administrative supervision proceedings under this chapter against the insurer.

**History:** 1991 c 325 art 2 s 6

#### **60G.07 RULES.**

The commissioner may adopt rules necessary for the implementation of this chapter.

**History:** 1991 c 325 art 2 s 7

#### **60G.08 IMMUNITY.**

There shall be no liability on the part of, and no cause of action may be brought against the commissioner or the department or its employees or agents for any action taken by them in the performance of their powers and duties under this chapter.

**History:** 1991 c 325 art 2 s 8

#### **60G.09 APPLICATION.**

Sections 60G.01 to 60G.08 apply to domestic insurers and any other insurer doing business in this state whose state of domicile has requested the commissioner of commerce to apply sections 60G.01 to 60G.08.

**History:** 1991 c 325 art 2 s 9

### **STANDARDS FOR COMPANIES IN HAZARDOUS FINANCIAL CONDITION**

#### **60G.20 STANDARDS.**

Subdivision 1. **Hazardous consideration.** The following standards, either singly or a combination of two or more, may be considered by the commissioner to determine whether the continued operation of any insurer, whether domestic, foreign, or alien, transacting an insurance business in this state may be considered hazardous to the policyholders, creditors or the general public. The commissioner may consider:

- (1) an adverse finding reported in financial condition and market conduct examination reports;
- (2) the National Association of Insurance Commissioners insurance regulatory information system and its related reports;
- (3) the ratios of commission expense, general insurance expense, policy benefits, and reserve increases as to annual premium and net investment income which may lead to an impairment of capital and surplus;
- (4) whether the insurer's asset portfolio when viewed in light of current economic conditions is not of sufficient value, liquidity, or diversity to assure the company's ability to meet its outstanding obligations as they mature;
- (5) the ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the company's remaining surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;
- (6) whether the insurer's operating loss in the last 12-month period or any shorter period of time, including, but not limited to, net capital gain or loss, change in nonadmitted assets, and cash dividends paid to shareholders, is greater than 50 percent of the insurer's remaining surplus as regards policyholders in excess of the minimum required;
- (7) whether any affiliate, subsidiary, or reinsurer is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligations;
- (8) contingent liabilities, pledges, or guaranties which either individually or collectively involve a total amount which in the opinion of the commissioner may affect the solvency of the insurer;
- (9) whether any "controlling person" of an insurer is delinquent in the transmitting to, or payment of, net premiums to the insurer;
- (10) the age and collectibility of receivables;
- (11) whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of the insurer, fails to possess and demonstrate the competence, fitness, and reputation necessary to serve the insurer in the position;
- (12) whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry;
- (13) whether management of an insurer either has filed a false or misleading sworn financial statement, or has released a false or misleading financial statement to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer;
- (14) whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner; or
- (15) whether the company has experienced or will experience in the foreseeable future cash flow or liquidity problems.

Subd. 2. **Commissioner's authority.** For the purposes of making a determination of an insurer's financial condition under subdivision 1, the commissioner may:

- (1) disregard any credit or amount receivable resulting from transactions with a reinsurer which is insolvent, impaired, or otherwise subject to a delinquency proceeding;

(2) make appropriate adjustments to asset values attributable to investments in or transactions with the corporation's parents, subsidiaries, or affiliates;

(3) refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; or

(4) increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next 12-month period.

**History:** 1991 c 325 art 3 s 1

#### **60G.21 COMMISSIONER'S ORDER.**

Subdivision 1. **Authorization.** If the commissioner determines that the continued operation of the insurer licensed to transact business in this state may be hazardous to the policyholders or the general public, then the commissioner may, upon the commissioner's determination, issue an order requiring the insurer to:

(1) reduce the total amount of present and potential liability for policy benefits by reinsurance;

(2) reduce, suspend, or limit the volume of business being accepted or renewed;

(3) reduce general insurance and commission expenses by methods specified by the commissioner;

(4) increase the insurer's capital and surplus;

(5) suspend or limit the declaration and payment of dividend by an insurer to its stockholders or to its policyholders;

(6) file reports in a form acceptable to the commissioner concerning the market value of an insurer's assets;

(7) limit or withdraw from certain investments or discontinue certain investment practices to the extent the commissioner considers necessary;

(8) document the adequacy of premium rates in relation to the risks insured; or

(9) file, in addition to regular annual statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners or in the format adopted by the commissioner.

Subd. 2. **Review.** An insurer subject to an order under subdivision 1 may request, within 30 days of issuance of the order, a hearing as provided under chapter 14 to review that order. All hearings conducted under this section are closed and private.

**History:** 1991 c 325 art 3 s 2

#### **60G.22 JUDICIAL REVIEW.**

Any order or decision of the commissioner is subject to review as provided under chapter 14 at the request of a party whose interests are substantially affected by the order or decision.

**History:** 1991 c 325 art 3 s 3