CHAPTER 62I

JOINT UNDERWRITING ASSOCIATION

62I.001 MS 2006 [Renumbered 15.001]

62I.01 CITATION.

Sections 62I.01 to 62I.22 may be cited as the "Minnesota Joint Underwriting Association Act."

History: *1986 c 455 s 20*

62I.02 MINNESOTA JOINT UNDERWRITING ASSOCIATION.

Subdivision 1. **Creation.** The Minnesota Joint Underwriting Association is created to provide insurance coverage to any person or entity unable to obtain insurance through ordinary methods if the insurance is required by statute, ordinance, or otherwise required by law, or is necessary to earn a livelihood or conduct a business and serves a public purpose. Prudent business practice or mere desire to have insurance coverage is not a sufficient standard for the association to offer insurance coverage to a person or entity. For purposes of this subdivision, directors' and officers' liability insurance is considered to be a business necessity and not merely a prudent business practice. The association shall be specifically authorized to provide insurance coverage to day care providers, foster parents, foster homes, developmental achievement centers, group homes, rehabilitation facilities for mentally, emotionally, or physically disabled persons, and for liquor liability. In addition, the association shall provide medical malpractice insurance coverage to a licensed health care provider unable to obtain this insurance through ordinary methods who practices or provides professional services within Minnesota and obtains at least 60 percent of gross revenues from patients who are residents of Minnesota. The association shall not offer environmental pollution liability, product liability insurance, and completed operations insurance. The association shall not offer coverage for activities that are conducted substantially outside the state of Minnesota unless the insurance is required by statute, ordinance, or otherwise required by Minnesota law. Every insurer licensed to write property and casualty insurance and personal injury liability insurance in this state shall be a member of the association as a condition to obtaining and retaining a license to write insurance in this state.

Subd. 2. **Board of directors.** The association shall have a board of directors composed of 15 persons chosen as follows: seven persons elected by members of the association, one of whom must be a representative of medical malpractice insurers, and one of whom must be a representative of personal injury liability insurers; four public members, as defined in section 214.02, appointed by the commissioner; and four members, appointed by the commissioner representing groups to whom coverage has been extended by the association, one of whom must be a licensed health care provider. If at any time no coverage is currently

extended by the association, then either additional public members may be appointed to fill these four positions or, at the option of the commissioner, representatives from groups who had previously been covered by the association may serve as directors. The terms of the members shall be four years. Terms may be staggered so that no more than six members are appointed or elected every two years. Members may serve until their successors are appointed or elected.

Subd. 3. **Reauthorization.** The authorization to issue insurance to day care providers, foster parents, foster homes, developmental activity centers, group homes, and rehabilitation facilities for mentally, emotionally, or physically disabled persons is valid for a period of two years from the date it was made. The issuance of insurance for these groups and other classes of business is reauthorized for additional two-year periods unless deactivated under the process pursuant to sections 62I.21 and 62I.22.

Subd. 4. **Liquor liability.** Policies and contracts of coverage issued under this section for the purposes of providing liquor liability insurance must contain the usual and customary provisions of liability insurance policies, and must contain at least the minimum coverage required by section 340A.409, subdivision 1, or the local governing unit.

Subd. 5. **Accounts.** For the purposes of administration and assessment, the association shall be divided into three separate accounts:

(1) the property and casualty insurance account;

(2) the personal injury liability insurance account-liquor; and

(3) the personal injury liability insurance account-medical malpractice.

Subd. 6. [Repealed by amendment, 2017 c 34 s 1]

History: *1986 c 455 s 21; 1Sp1986 c 3 art 2 s 43; 1987 c 337 s 77,78; 1988 c 689 art 2 s 268; 1989 c 260 s 7; 1994 c 485 s 45; 1996 c 446 art 1 s 45-47; 2003 c 21 s 1,2; 2005 c 56 s 1; 2017 c 34 s 1; 2018 c 182 art 1 s 5*

62I.03 DEFINITION.

Subdivision 1. **Scope.** As used in sections 62I.01 to 62I.22 the following terms have the meanings given them in this section.

Subd. 2. **Association.** "Association" means the Minnesota Joint Underwriting Association and incorporates the duties and responsibilities of the Medical Malpractice Joint Underwriting Association previously authorized by chapter 62F.

Subd. 3. **Commissioner.** "Commissioner" means the commissioner of commerce.

Subd. 4. **Direct written premiums.** "Direct written premiums" means that amount from the Statutory Annual Statement filed annually with the National Association of Insurance Commissioners (NAIC), at column (1) of the Exhibit of Premium and Losses (statutory page 14 data) for this state. Direct written premiums are further identified by kind of insurance as follows:

(1) **General** at column (1), lines 5, 8, 9, 17.1, 17.2, 21.2, 22, 23, 24, 26, and 27.

(2) **Liquor Liability** at column (1), lines 5.2, 17.1, and 17.2.

(3) **Medical Malpractice** at column (1), lines 5.2, 11, 17.1, 17.2, 19.1, and 19.3.

Subd. 5. **Deficit.** "Deficit" means, for a particular policy year, that amount by which total paid and outstanding losses and loss adjustment expenses and operating expenses exceed premium revenue.

Subd. 5a. **Market assistance coordinator.** "Market assistance coordinator" means an employee of the association, or a person under contract with the association, who assists a person or entity applying to the association for coverage to obtain coverage in the private market.

Subd. 6. [Repealed by amendment, 2017 c 34 s 2]

Subd. 6a. **Member.** "Member" means an insurer licensed to write either or both of the following in this state: (1) property and casualty insurance; (2) personal injury liability insurance.

Subd. 7. **Personal injury liability insurance.** "Personal injury liability insurance" means insurance described in section 60A.06, subdivision 1, clause (13).

Subd. 8. **Licensed health care provider professional services.** "Licensed health care provider professional services" means services performed by an individual licensed health care provider that are undertaken with the objective of providing prevention care, rehabilitative care, treatment of specific diseases, injuries, or conditions, or care rendered with the intent of stabilizing the patient's condition and preventing further deterioration or injury. Professional services do not include services provided by licensed health care providers who rely solely on spiritual or divine intervention as the only means of care or treatment.

History: *1986 c 455 s 22; 1987 c 337 s 79; 1994 c 485 s 46; 2003 c 21 s 3; 2017 c 34 s 2*

62I.04 POLICY ISSUANCE.

Any person or entity that is a resident of the state of Minnesota who has a current notice of refusal to insure from an insurer licensed to offer insurance in the state of Minnesota may make written application to the association for coverage. The applicable premium or required portion of it must be paid prior to coverage by the association.

The association is authorized to (1) issue or cause to be issued insurance policies to applicants subject to limits specified in the plan of operation; (2) underwrite the insurance and adjust and pay losses with respect to it; (3) conduct risk management and loss prevention services; (4) assume reinsurance from its members; (5) cede reinsurance; and (6) retain, hire, or appoint individuals or companies to perform any of these functions.

History: *1986 c 455 s 23; 1987 c 337 s 80; 2003 c 21 s 4*

62I.05 PLAN OF OPERATION.

The association shall have a plan of operation which shall be consistent with the provisions of this chapter and that provides for economic, fair, and nondiscriminatory administration and for the prompt, efficient provision of insurance coverage of the types provided by section 62I.02. It shall provide for an expedited review and determination by the board of any application for a type of coverage that has not been previously excluded or authorized, and other provisions necessary for the operation and management of the association.

The plan of operation is subject to approval by the commissioner. If the commissioner disapproves all or any part of the proposed plan of operation, the directors shall within 15 days submit for review an appropriate revised plan of operation. If a revised plan is not submitted within 15 days the commissioner shall promulgate a plan of operation. The plan of operation approved or promulgated by the commissioner is effective and operational upon the order of the commissioner.

Amendments to the plan of operation may be made by the directors of the association subject to approval by the commissioner.

History: *1986 c 455 s 24; 2003 c 21 s 5; 2017 c 34 s 3*

62I.06 POLICY FORMS; PREMIUM RATE.

Subdivision 1. **Requirement.** The policies and contracts of coverage issued pursuant to this chapter shall contain the usual and customary provisions of similar insurance policies issued by private insurance companies. If a standard form is used in the private marketplace for any type of coverage that is to be extended by the association, then the association shall use that form. If there are varying types of forms used in the marketplace the association may choose to use a standard policy form issued by a service organization or other entity who commonly prepares standardized types of forms. If the board determines that neither of these alternatives is appropriate, then it shall adopt a policy form based upon the terms and conditions of the policies used for this type of coverage that are the most commonly used in the private market. As far as practical the board shall attempt to adopt forms that are consistent with the practice in the private market. No policy forms shall be used by the association unless it has been filed with the commissioner, and the commissioner may disapprove the form within 30 days if the commissioner determines that it is misleading, it violates public policy, or for any reason that the commissioner would be empowered to reject a similar form filed by a private company.

Subd. 2. **Cancellation.** If the insured fails to pay a stabilization reserve fund charge the association may cancel the policy by mailing or delivering to the insured at the insured's address shown on the policy at least ten days' written notice stating the date that the cancellation is effective.

Subd. 3. **Rating plan.** The rating plan, rating classification, and territories applicable to insurance written by the association and related statistics are subject to chapter 70A. Rates shall be on an actuarially sound basis. The commissioner shall take all appropriate steps to make available, upon request of the association, loss and expense experience of insurers previously writing or currently writing insurance of any type the association offers or intends to offer.

Subd. 4. [Repealed by amendment, 2017 c 34 s 4]

Subd. 5. **Examinations.** The commissioner may examine the business of the association as often as is appropriate to insure that the association is operating in a manner consistent with this chapter or other Minnesota laws. If it is found that the operation is deficient or inconsistent with this chapter or other Minnesota laws the commissioner may order the association to take corrective action.

Subd. 6. **Deficit assessments.** The association shall certify to the commissioner the estimated amount of any deficit remaining after the stabilization reserve fund has been exhausted and any required deficit assessment. Within 60 days after the certification, the commissioner shall authorize the association to recover the members' respective shares of the deficit assessment by assessing all members an amount sufficient to fully fund the obligations of the association. The assessment of each member shall be determined in the manner provided in section 62I.07. An assessment made pursuant to this section shall be deductible by the member from premium taxes due the state as provided in section 297I.20, subdivision 2.

Subd. 7. **Amendments to rating plan.** In addition to the usual manner of amending the rating plan set forth in this section and section 62I.06, the following procedure may also be used:

(1) Any person may, by written petition served upon the commissioner of commerce request that a hearing be held to amend the rating plan, or any part of the rating plan.

(2) The commissioner shall forward a copy of the petition to the chief administrative law judge within three business days of its receipt. The chief administrative law judge shall, within three business days of receipt of the copy of the petition or a request for hearing by the commissioner, set a hearing date, assign an administrative law judge to hear the matter, and notify the commissioner of the hearing date and the administrative law judge assigned to hear the matter. The hearing date must be set not less than 60 days nor more than 90 days from the date of receipt of the petition by the commissioner or the date of the commissioner's request for hearing if the commissioner is the person requesting a hearing.

(3) The commissioner shall publish a notice of the hearing in the State Register at least 30 days before the hearing date. The notice should be similar to that used for rulemaking under the Administrative Procedure Act. Approval of the notice by the administrative law judge is not required.

(4) The hearing and all matters which occur after the hearing are a contested case under chapter 14. Within 45 days from the commencement of the hearing and within 15 days of the completion of the hearing the administrative law judge shall submit a report to the commissioner of commerce. The parties, or the administrative law judge, if the parties cannot agree, shall adjust all time requirements under the contested case procedure to conform with the 45-day requirement.

(5) The commissioner shall render a decision within ten business days of the receipt of the administrative law judge's report.

(6) If all parties to the proceeding agree, any of the previous requirements may be waived or modified.

(7) A petition for a hearing to amend the rating plan or any part of the rating plan received by the commissioner within 180 days of the date of the commissioner's decision in a prior proceeding to amend the rating plan is invalid and requires no action provided the petition involves the same rates as the previous hearing. If the petition involves matters in addition to those dealt with in the previous hearing, then the additional matters shall be treated as a separate petition for hearing and a hearing may be held on those matters.

History: *1986 c 455 s 25; 2008 c 154 art 14 s 1; 2017 c 34 s 4*

62I.07 MEMBERSHIP ASSESSMENTS.

Subdivision 1. **Assessment.** Each member of the association shall participate in its losses and expenses in the proportion that the direct written premiums of the member on the kinds of insurance in that account bears to the total aggregate direct written premiums written in this state by all members on the kinds of insurance in that account. The members' participation in the association shall be determined annually on the direct written premiums written during the preceding calendar year as reported on the Statutory Annual Statements as filed by the member with the NAIC.

Subd. 2. [Repealed by amendment, 2017 c 34 s 5]

Subd. 3. [Repealed by amendment, 2017 c 34 s 5]

History: *1986 c 455 s 26; 1994 c 485 s 47; 1996 c 446 art 1 s 48; 1999 c 177 s 51; 2001 c 215 s 20; 2017 c 34 s 5*

62I.08 APPLICATION PROCEDURE.

A person or entity that has been denied coverage or is unable to find an insurer willing to write coverage is eligible to make an application to the association. To show eligibility to participate in the association the applicant shall certify that the applicant has been unable to find the coverage sought by the applicant. No

further proof shall be required of the applicant, except that the application form may require the date and the name of the insurance company denying coverage and may require a copy of a written offer if the rate qualifies the applicant to apply under section 62I.13, subdivision 2.

History: *1986 c 455 s 27; 1994 c 425 s 15; 2003 c 21 s 6; 2017 c 34 s 6*

62I.09 [Repealed, 2003 c 21 s 13]

62I.10 [Repealed, 2003 c 21 s 13]

62I.11 [Repealed, 2003 c 21 s 13]

62I.12 [Repealed, 1989 c 260 s 25]

62I.121 BENEFITS FOR EMPLOYEES.

At the option of the board, employees may participate in the state retirement plan and the state deferred compensation plan for employees in the unclassified service, and an insurance plan administered by the commissioner of management and budget under chapter 43A.

History: *1992 c 564 art 1 s 44; 2008 c 204 s 42; 2009 c 101 art 2 s 109*

62I.13 ACTION BY THE MINNESOTA JOINT UNDERWRITING ASSOCIATION UPON THE APPLICATION.

Subdivision 1. **Generally.** To be eligible to participate in the association, an applicant must apply for coverage as required by this section and section 62I.08.

Subd. 2. **Minimum of qualifications.** Anyone who is unable to obtain insurance in the private market and who so certifies to the association is eligible to apply to the association for coverage. The application may require information as provided in section 62I.08. Payment of the applicable premium or required portion of it must be paid prior to coverage by the association. An offer of coverage at a rate in excess of the rate that would be charged by the association for similar coverage and risk shall be deemed to be a refusal of coverage for purposes of eligibility for participation in the association. It shall not be deemed to be a written notice of refusal if the rate for coverage offered is less than ten percent in excess of the joint underwriting association rates for similar coverage and risk or 20 percent in excess of the Joint Underwriting Association rates for liquor liability coverages. However, the offered rate must be the rate generally charged by the insurer for similar coverage and risk.

Subd. 3. **Disqualifying factors.** For good cause, coverage may be denied or terminated by the association. Good cause may exist if the applicant or insured: (1) has an outstanding debt due or owing to the association at the time of application or renewal arising from a prior policy; (2) refuses to permit completion of an audit requested by the commissioner or the association; (3) submits misleading or erroneous information to the commissioner or the association; (4) disregards safety standards, laws, rules or ordinance pertaining to the risk being insured; (5) fails to supply information requested by the commissioner or the association; and (6) fails to comply with the terms of the policies or contracts for coverage issued by the association.

Subd. 4. [Repealed, 2003 c 21 s 13]

Subd. 5. **Notice.** An application for coverage by the association must be granted or denied within ten days after receipt of a properly completed application and any supplemental information requested. Anyone covered by the association must be given at least 30 days' notice of nonrenewal or cancellation of coverage.

Subd. 6. [Repealed by amendment, 2017 c 34 s 7]

History: *1986 c 455 s 32; 1987 c 337 s 82; 1994 c 425 s 16; 1994 c 485 s 48,49; 2003 c 21 s 7,8; 2005 c 10 art 1 s 14; 2017 c 34 s 7*

62I.14 ASSESSMENTS.

In the event the commissioner orders an assessment, an assessed insurer must pay the assessment within 30 days of receipt of notice of the assessment. The commissioner may suspend or revoke an insurer's certificate of authority and impose a civil penalty in an amount not to exceed $10,000 for an insurer's failure to pay the assessment within the 30-day period.

History: *1986 c 455 s 33; 2003 c 21 s 9; 2017 c 34 s 8*

62I.15 EXTENSION OF COVERAGE.

If the association determines that the applicant meets the underwriting standards of the association as described in the plan of operation and section 62I.13, the association upon receipt of the premium or portion of it as described in the plan of operation shall issue a policy of insurance to the applicant.

History: *1986 c 455 s 34; 2017 c 34 s 9*

62I.16 STABILIZATION RESERVE FUND.

Subdivision 1. **Creation.** There is created a stabilization reserve fund. Each policyholder shall pay to the association a stabilization reserve fund charge of 33 percent of each premium payment due for insurance through the association. This charge shall be separately stated in the policy. The association shall cancel the policy of any policyholder who fails to pay the stabilization reserve fund charge.

Subd. 2. **Payment.** The association shall promptly pay into the stabilization reserve fund all fund charges it collects from its policyholders.

Subd. 3. **Supervision.** All money paid into the fund shall be separately accounted for by the board of directors. The money held in the fund may be invested. All investment income shall be credited to the fund. All expenses of the administration of the fund shall be charged against the fund. Any stabilization reserve fund charges from a particular policy year must be returned to policyholders after all claims and expense obligations from that particular policy year are satisfied.

Subd. 4. **Exemption.** The board of directors may, upon their own motion or upon application of any applicant or insured, exempt any group from the payment of the stabilization reserve charge. The exemption shall be granted only to those groups who are unable to obtain insurance coverage in the private market as a result of the private market's refusal to write coverage for that group rather than because of loss experiences or risks posed by the applicant or insured as an individual. It shall be presumed that a group is qualified for this exemption if more than 20 percent of the members of that group are unable to obtain the insurance coverage that they seek. The board of directors shall also consider granting exemption if any members of the same group are unable to obtain coverage in the private market even though no claims have been made against them or payments made on their behalf by any insurer within the last three years.

Subd. 5. **Surcharge.** In addition to determining the basic rate for coverages to be offered, the association shall also develop a surcharge plan or similar method for adjusting the rate to be charged to those persons who have had claims made against them. The surcharge plan shall take into effect the risk posed to the

association by the applicant or the insured. The surcharge plan shall be sufficient to provide for the sound financial operation of the plan based upon commonly agreed-upon actuarial principles.

History: *1986 c 455 s 35; 1987 c 337 s 83; 1989 c 260 s 8; 2003 c 21 s 10; 2017 c 34 s 10*

62I.17 IMMUNITY FROM LIABILITY.

No cause of action of any nature shall arise against the association, the members of its board of directors, its employees or authorized agents, the commissioner or the commissioner's authorized representatives, or any other person or organization, for any action or omission made in good faith by them concerning any matters within the scope of this chapter or any related proceedings. The association, board members, employees, and authorized agents shall also be entitled to indemnification provided in section 317A.521 as if the association were a corporation within the meaning of that section. At its discretion, the association may obtain insurance coverage for matters addressed by this section.

History: *1986 c 455 s 36; 2017 c 34 s 11*

62I.18 RIGHT OF APPEAL.

Any applicant to the association, any person insured pursuant to this chapter or their representatives, any affected insurer, or any person who has applied for coverage pursuant to this chapter may appeal to the commissioner within 30 days after any ruling, action, or decision by or on behalf of the association with respect to those items that the plan of operation defines as appealable matters.

History: *1986 c 455 s 37*

62I.19 ANNUAL STATEMENTS.

Annually, the association shall file with the commissioner a report of its transactions, financial conditions, and operations during the preceding year. The report shall be in a format approved by the commissioner. The commissioner may at any time require the association to furnish additional information to assist in evaluating the scope, operation, and experience of the association.

History: *1986 c 455 s 38; 2017 c 34 s 12*

62I.20 [Repealed, 1996 c 446 art 1 s 72; 1998 c 339 s 72]

62I.21 ACTIVATION OF JOINT UNDERWRITING ASSOCIATION.

Upon submission of an application for placement of general liability insurance coverage under section 62I.13 in a class of business for which the Joint Underwriting Association is not then activated, where the applicant has been refused coverage within the meaning of section 62I.13, subdivision 2, the commissioner may by notice in the State Register activate the Joint Underwriting Association on Minnesota risks for the class of business. The association is activated for a period of 180 days from publication of the notice. At the same time the notice is published, the commissioner shall prepare a written petition requesting that a hearing be held to determine whether activation of the Joint Underwriting Association is necessary beyond the 180-day period. The hearing must be held in accordance with section 62I.22. The commissioner by order shall deactivate the Joint Underwriting Association or a class of business at any time the commissioner finds that the Joint Underwriting Association or the class of business is not necessary.

History: *1986 c 455 s 40; 1994 c 425 s 17; 2003 c 21 s 11; 2017 c 34 s 13*

62I.22 HEARING.

Subdivision 1. **Administrative law judge.** The commissioner shall forward a copy of the petition to activate the Joint Underwriting Association with respect to a class of business to the chief administrative law judge. The chief administrative law judge shall, within three business days of receipt of the copy of the petition, set a hearing date, assign an administrative law judge to hear the matter, and notify the commissioner of the hearing date and the administrative law judge assigned to hear the matter. The hearing date must be no less than 60 days nor more than 90 days from the date of receipt of the petition by the chief administrative law judge.

Subd. 2. **Notice.** The commissioner of commerce shall publish notice of the hearing in the State Register at least 30 days before the hearing date. The notice should be that used for rulemaking under chapter 14. Approval by the administrative law judge of the notice prior to publication is not required. The notice must contain a statement that anyone wishing to oppose activation beyond 180 days for any particular class, must file a petition to intervene with the administrative law judge at least ten days before the hearing date. If no notice to intervene is filed for a class, then the class is activated beyond the 180-day period without further action.

Subd. 3. **Contested case; report.** The hearing and all matters after the hearing are a contested case under chapter 14. Within 45 days from the commencement of the hearing and within 15 days of the completion of the hearing the administrative law judge shall submit a report to the commissioner of commerce. The parties, or the administrative law judge, if the parties cannot agree, shall adjust all time requirements under the contested case procedure to conform with the 45-day requirement.

Subd. 4. **Decision.** The commissioner shall make a decision within ten days of the receipt of the administrative law judge's report.

Subd. 5. **Waiver or modification.** If all parties to the proceeding agree, any of the requirements of this section may be waived or modified.

Subd. 6. **Case presentation.** The Department of Commerce, upon request by small businesses, shall assist small businesses in any specific class requesting continuation of coverage beyond the 180-day period, in coordinating the class and presenting the case in the contested hearing.

For purposes of this subdivision, "small business" means a business entity, including farming and other agricultural operations and its affiliates, that (1) is independently owned and operated; (2) is not dominant in its field; and (3) employs fewer than 50 full-time employees or has gross annual sales of less than $4,000,000.

History: *1986 c 455 s 41; 1987 c 337 s 84,85; 1996 c 305 art 1 s 22; 2003 c 21 s 12*