

one-third of the members of the board may be so filled in any one year. The business of savings banks shall be managed by a board of at least seven trustees, residents of the county of its location this state, each of whom, before being authorized to act, shall file a written acceptance of the trust. A majority of the directors or trustees shall constitute a quorum for the transaction of business. Any action which might be taken at a meeting of the board of directors, trustees, or managers may be taken without a meeting if done in writing signed by all of the directors, trustees, or managers.

Sec. 16. Sections 1 through 6 are effective July 1, 1977. Sections 7, 9, 10, 11, 12 and 13 are effective the day following enactment. Section 8 is effective October 1, 1977. Sections 14 and 15 are effective January 1, 1979.

Approved May 26, 1977.

CHAPTER 273—H.F.No.296

[Coded in Part]

An act relating to insurance; providing for the establishment and operation of a Minnesota life and health insurance guaranty association; providing protection for policyowners, insureds, beneficiaries, and others against the failure of an insurer doing business in Minnesota; amending Minnesota Statutes 1976, Sections 60B.17, by adding a subdivision; 60B.25; 60B.26, Subdivision 2; 60B.30, by adding a subdivision; and 60B.46, Subdivision 1.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [61B.01] LIFE AND HEALTH GUARANTY ASSOCIATION; CITATION. Sections 1 to 16 may be cited as the Minnesota life and health insurance guaranty association act.

Sec. 2. [61B.02] SCOPE, PURPOSE AND CONSTRUCTION. Subdivision 1. SCOPE. Sections 1 to 16 apply to direct life insurance policies, health insurance policies, annuity contracts, and contracts supplemental to life and health insurance policies or annuity contracts, issued by persons authorized at any time to transact insurance in this state. Sections 1 to 16 do not apply to:

(a) Any policy or contract or part thereof under which the risk is borne by the policyholder;

(b) Any policy or contract or part thereof assumed by an impaired insurer under a contract of reinsurance other than reinsurance for which assumption certificates have been issued;

(c) Any policy or contract issued by an assessment benefit association operating under Minnesota Statutes, Chapter 63, or a fraternal beneficiary association operating under Minnesota Statutes, Chapter 64A; or

Changes or additions indicated by underline deletions by ~~strikeout~~

(d) Any subscriber contract issued by a nonprofit health service plan corporation operating under Minnesota Statutes, Chapter 62C.

Subd. 2. PURPOSE. The purpose of sections 1 to 16, is to protect policyowners, death benefit certificate holders, insureds, beneficiaries, annuitants, payees, and assignees of life insurance policies, health insurance policies, annuity contracts, and supplemental contracts, subject to certain limitations against failure in the performance of contractual obligations due to the impairment of the insurer issuing the policies or contracts. To provide this protection:

(a) An association of insurers is created to enable the guaranty of payment of benefits and of continuation of coverages;

(b) Members of the association are subject to assessment to provide funds to carry out the purpose of sections 1 to 16; and

(c) The association shall assist the commissioner, in the prescribed manner, in the detection and prevention of insurer impairments.

Subd. 3. CONSTRUCTION. Sections 1 to 16 shall be liberally construed to effect the purpose of sections 1 to 16. Subdivision 2 shall constitute an aid and guide to interpretation.

Sec. 3. [61B.03] DEFINITIONS. Subdivision 1. For the purposes of sections 1 to 16, the terms defined in this section have the meanings given them.

Subd. 2. "Account" means any of the three accounts created under section 4, subdivision 1.

Subd. 3. "Annuity contracts" means contracts subject to Minnesota Statutes, Chapter 61A wherein the policyowner agrees to make payments to the insurer at the beginning of the contract period and the insurer agrees to make payments thereafter to the insured for a specified period of time or until the insured's death.

Subd. 4. "Association" means the Minnesota life and health insurance guaranty association created under section 4. The association shall not be considered a state agency for purposes of Minnesota Statutes, Chapter 16 or 43.

Subd. 5. "Contractual obligation" means any obligation under covered policies.

Subd. 6. "Covered policy" means any policy or contract to which sections 1 to 16 apply, as provided in section 2.

Subd. 7. "Direct life insurance" means life insurance generally, except annuity contracts, regulated under Minnesota Statutes, Chapter 61A or 64A, credit life insurance regulated under Minnesota Statutes, Chapter 62B, and death benefit certificates regulated under Minnesota Statutes, Chapter 64A.

Changes or additions indicated by underline deletions by strikeout

Subd. 8. "Health insurance" means accident and health insurance regulated under Minnesota Statutes, Chapter 62A and credit accident and health insurance regulated under Minnesota Statutes, Chapter 62B.

Subd. 9. "Impaired insurer" means:

(a) An insurer which, after the effective date of this act, becomes insolvent and is placed under an order of liquidation, rehabilitation, or conservation by a court of competent jurisdiction; or

(b) An insurer determined by the commissioner, after the effective date of this act, to have become unable or potentially unable to fulfill its contractual obligations.

Subd. 10. "Member insurer" means any person authorized to transact in this state any kind of insurance to which sections 1 to 16 apply under section 2.

Subd. 11. "Premiums" means direct gross insurance premiums and annuity considerations written on covered policies, less return premiums and considerations thereon and dividends paid or credited to policyholders on direct business. Premiums do not include premiums and considerations on contracts between insurers and reinsurers. For the purpose of section 7, premiums are those for the calendar year preceding the determination of impairment.

Subd. 12. "Person" means any individual, corporation, partnership, association or voluntary organization.

Subd. 13. "Resident" means any person who resides in this state at the time the impairment is determined and to whom contractual obligations are owed.

Subd. 14. "Commissioner" means the commissioner of insurance of the state of Minnesota and, in his absence or disability, his deputy or other person duly designated to act in his place.

Sec. 4. [61B.04] CREATION OF ASSOCIATION. Subdivision 1. NATURE OF ASSOCIATION. There is created a nonprofit legal entity to be known as the Minnesota life and health insurance guaranty association. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under section 8, and shall exercise its powers through a board of directors established under section 5. For purposes of assessment, the association shall establish three accounts:

(a) The health insurance account;

(b) The life insurance account; and

(c) The annuity account.

Changes or additions indicated by underline deletions by strikeout

Subd. 2. SUPERVISION BY COMMISSIONER OF INSURANCE. The association shall be under the immediate supervision of the commissioner and shall be subject to the insurance laws of this state.

Sec. 5. [61B.05] BOARD OF DIRECTORS. Subdivision 1. COMPOSITION OF BOARD. The board of directors of the association shall consist of not less than five nor more than nine members serving terms as established in the plan of operation under section 8. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term in the manner described in the plan of operation. To select the initial board of directors, and initially organize the association, the commissioner shall give notice to all member insurers of the time and place of the organizational meeting. At the organizational meeting, each member insurer shall be entitled to one vote in person or by proxy. If the board of directors is not selected within 60 days after notice of the organizational meeting, the commissioner may appoint the initial members.

Subd. 2. REPRESENTATIVE SELECTION. In approving selections or in appointing members to the board, the commissioner shall consider, among other things, whether all member insurers are fairly represented.

Subd. 3. COMPENSATION. Members of the board may be reimbursed from the assets of the association for reasonable and necessary expenses incurred by them as members of the board, but shall not otherwise be compensated by the association for their services.

Sec. 6. [61B.06] POWERS AND DUTIES OF THE ASSOCIATION. Subdivision 1. IMPAIRED DOMESTIC INSURER. (a) If a domestic insurer is an impaired insurer, the association may, prior to an order of liquidation, conservation or rehabilitation, and subject to any conditions imposed by the association and approved by the impaired insurer and the commissioner, other than those which impair the contractual obligations of the impaired insurer, guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the covered policies of the impaired insurer, and shall make or cause to be made prompt payment of the contractual obligations of the impaired insurer which are due and owing.

(b) If a domestic insurer is an impaired insurer, the association shall, after entry of an order of liquidation, conservation or rehabilitation, subject to any conditions imposed by the association and approved by the commissioner, guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the covered policies of the impaired insurer, and shall make or cause to be made prompt payment of the contractual obligations of the impaired insurer which are due and owing.

Subd. 2. IMPAIRED FOREIGN OR ALIEN INSURER. If a foreign or alien insurer is an impaired insurer under an order of liquidation, rehabilitation, or conservation, the association shall, subject to any conditions imposed by the association and approved by the commissioner, guarantee, assume, or reinsure or cause to be guaranteed, assumed, or reinsured, the covered policies of residents, and shall make or cause to be made prompt payment of the impaired insurer's contractual obligations which

Changes or additions indicated by underline deletions by strikethrough

are due and owing to residents.

Subd. 3. LIENS. (a) In carrying out its duties under subdivision 1, clause (b), or subdivision 2, the association may request that there be imposed policy liens, contract liens, moratoriums on payments, or other similar means and the liens, moratoriums, or similar means may be imposed if the commissioner:

(1) Finds that the amounts which can be assessed under sections 1 to 16 are less than the amounts needed to assure full and prompt performance of the impaired insurer's contractual obligations, or that economic or financial conditions as they affect member insurers are sufficiently adverse to cause the imposition of policy or contract liens, moratoriums, or similar means to be in the public interest; and

(2) Approves the specific policy liens, contract liens, moratoriums, or similar means to be used.

(b) Before being obligated under subdivision 1, clause (b), or subdivision 2, the association may request that there be imposed temporary moratoriums or liens on payments of cash values and policy loans. The temporary moratoriums and liens may be imposed if approved by the commissioner.

Subd. 4. FOREIGN JURISDICTION COVERAGE. The association shall have no liability under this section for any covered policy of a foreign or alien insurer whose domiciliary jurisdiction or state of entry provides protection, by statutes or rule, for residents of this state, which protection is substantially similar to that provided by sections 1 to 16, for residents of other states and any recovery provided for under sections 1 to 16 shall be reduced by the amount of recovery under any such coverage provided by another state or jurisdiction.

Subd. 5. ADVISORY FUNCTION. The association shall, upon the request of the commissioner, render assistance and advice to him concerning rehabilitation, payment of claims, continuations of coverage, or the performance of other contractual obligations of any impaired insurer.

Subd. 6. STANDING. The association shall have standing to appear before any court in this state with jurisdiction over an impaired insurer concerning which the association is or may become obligated under sections 1 to 16. Standing shall extend to all matters germane to the powers and duties of the association, including proposals for reinsuring or guaranteeing the covered policies of the impaired insurer and the determination of the covered policies and contractual obligations.

Subd. 7. ASSIGNMENT; SUBROGATION. (a) Any person receiving benefits under sections 1 to 16 shall be deemed to have assigned his rights under the covered policy to the association to the extent of the benefits received, whether the benefits are payments of contractual obligations or continuation of coverage. The association may require an assignment to it of the rights by any payee, policy or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any rights or benefits conferred by sections 1 to 16 upon the person. The association shall be

Changes or additions indicated by underline deletions by strikeout

subrogated to these rights against the assets of any impaired insurer.

(b) The subrogation rights of the association under this subdivision shall have the same priority against the assets of the impaired insurer as that of the person entitled to receive benefits.

Subd. 8. EXTENT OF LIABILITY. The contractual obligations of the impaired insurer for which the association becomes liable shall be only as great as the contractual obligations of the impaired insurer would have been in the absence of an impairment, unless the obligations are reduced as permitted by subdivision 3, but the aggregate liability of the association shall not exceed \$100,000 in cash values, or \$300,000 for all benefits, including cash values, with respect to any one life.

Subd. 9. POWERS OF ASSOCIATION. The association may:

(a) Enter into contracts necessary or proper to carry out the provisions of sections 1 to 16 and their purpose;

(b) Sue or be sued, including the taking of legal actions necessary or proper for recovery of unpaid assessments under section 7;

(c) Borrow money to effect the purposes of sections 1 to 16. Any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets;

(d) Employ or retain persons necessary to handle the financial transactions of the association, and perform other necessary or proper functions;

(e) Negotiate and contract with any liquidator, rehabilitator, conservator, or ancillary receiver to carry out the powers and duties of the association;

(f) Take legal action as may be necessary to avoid payment of improper claims;

(g) Exercise, for the purposes of sections 1 to 16 and to the extent approved by the commissioner, the powers of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform the contractual obligations of an impaired insurer.

Sec. 7. [61B.07] ASSESSMENTS. Subdivision 1. ASSESSMENT BY BOARD. For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers separately for each account, at such times and for such amounts as the board finds necessary. The board shall collect the assessments after 30 days written notice to the member insurers that payment is due.

Subd. 2. CLASSES OF ASSESSMENTS. There shall be three classes of assessments, as follows:

Changes or additions indicated by underline deletions by strikeout

(a) Class A assessments shall be made for the purpose of meeting administrative costs and other general expenses not related to a particular impaired insurer;

(b) Class B assessments shall be made to the extent necessary to carry out the powers and duties of the association under section 6 with regard to impaired domestic insurers;

(c) Class C assessments shall be made to the extent necessary to carry out the powers and duties of the association under section 6 with regard to impaired foreign or alien insurers.

Subd. 3. FORMULA FOR DETERMINATION. (a) The amount of any class A assessment for each account shall be determined by the board. The amount of any class B or C assessment shall be divided among the accounts in the proportion that the premiums received by the impaired insurer on the policies covered by each account bear to the premiums received by the insurer on all covered policies.

(b) Class A and class C assessments against member insurers for each account shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies covered by each account bear to premiums received on business in this state by all assessed member insurers.

(c) Class B assessments for each account shall be made separately for each state in which the impaired domestic insurer was authorized to transact insurance at any time, in the proportion that the premiums received on business in the state by the impaired insurer on policies covered by the account bear to premiums received in all states by the impaired insurer. The assessments against member insurers shall be in the proportion that the premiums received on business in each state by each assessed member insurer on policies covered by each account bears to premiums received on business in the state by all assessed member insurers.

(d) Assessments for funds to meet the requirements of the association with respect to an impaired insurer shall not be made until necessary to implement the provisions of sections 1 to 16. Classification of assessments under subdivision 2, and computation of assessments under this subdivision shall be made with a reasonable degree of accuracy.

Subd. 4. ABATEMENT OR DEFERMENT. The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. The total of all assessments upon a member insurer for each account shall not, in any one calendar year, exceed two percent of the insurer's premiums in this state on the policies covered by the account.

Subd. 5. ADDITIONAL ASSESSMENT. In the event that an assessment against a member insurer is abated, or deferred, in whole or in part, because of the limitations set forth in subdivision 4, the amount by which the assessment is abated or deferred may be assessed against other member insurers in a manner consistent with the basis for assessments set forth in this section. If the maximum assessment, together with the other

Changes or additions indicated by underline deletions by strikeout

assets of the association, does not provide in any one year an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by sections 1 to 16.

Subd. 6. REFUND. The board may, by an equitable method as established in the plan of operation under section 8, refund to member insurers, in proportion to their contributions to particular accounts, the amount by which the assets of the account exceed the amount the board finds necessary to carry out during the coming year the obligations of the association with regard to that account, including assets accruing from net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses if refunds are impractical.

Subd. 7. CERTIFICATE OF CONTRIBUTION. The association shall issue to each insurer paying an assessment under sections 1 to 16, a certificate of contribution, in a form prescribed by the commissioner, for the amount paid. All outstanding certificates shall be of equal dignity and priority. A certificate of contribution may be shown by the insurer in its financial statement as an admitted asset in the form and for the amount and period of time as the commissioner may approve.

Sec. 8. [61B.08] PLAN OF OPERATION, Subdivision 1. ADOPTION AND AMENDMENT. (a) The association shall submit to the commissioner a plan of operation and amendments thereto, as necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and amendments thereto shall be effective upon approval in writing by the commissioner.

(b) If the association fails to submit a suitable plan of operation within 180 days after the effective date of this act or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate reasonable rules as necessary or advisable to effectuate the provisions of sections 1 to 16. The rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner. If the commissioner finds that the operation of the association will be unreasonably delayed or impaired by compliance with the rule making requirements of Minnesota Statutes, Section 15.0412, Subdivision 4, he may promulgate emergency rules in accordance with Minnesota Statutes, Section 15.0412, Subdivision 5.

Subd. 2. COMPLIANCE. All member insurers shall comply with the plan of operation.

Subd. 3. CONTENTS. The plan of operation shall:

(a) Establish procedures for handling the assets of the association;

(b) Establish the amount and method of reimbursing members of the board of directors;

(c) Establish regular places and times for meetings of the board of directors;

Changes or additions indicated by underline deletions by ~~strikeout~~

(d) Establish procedures for maintaining records of all financial transactions of the association, its agents, and the board of directors;

(e) Establish the procedures for making selections for the board of directors and submitting them to the commissioner;

(f) Establish additional procedures for assessments under section 7;

(g) Establish procedures for employing or retaining persons necessary to handle the financial transactions and other necessary and proper functions of the association; and

(h) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

Subd. 4. DELEGATION OF POWERS AND DUTIES. The plan of operation may provide that any or all powers and duties of the association, except those authorized under section 6, subdivision 9, clause (c), and section 7, are delegated to another organization which performs or will perform functions similar to those of the association in two or more states. The other organization shall be reimbursed for any payments made on behalf of the association and paid for its performance of any association function. A delegation shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to an organization which extends protection substantially as favorable and effective as that provided by sections 1 to 16.

Sec. 9. [61B.09] DUTIES AND POWERS OF THE COMMISSIONER. (a) The commissioner shall:

(1) Notify the board of directors of the existence of an impaired insurer within three days after a determination of impairment is made or he receives notice of impairment;

(2) Upon request of the board of directors, provide the association with a statement of the premiums in the appropriate states for each member insurer; and

(3) When an impairment is declared and the amount determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time. Notice to the impaired insurer shall constitute notice to its shareholders. The failure of the insurer to promptly comply with the demand shall not excuse the association from performance under sections 1 to 16.

(b) The commissioner may, after notice and hearing, suspend or revoke the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or to comply with the plan of operation. As an alternative, the commissioner may levy a forfeiture on any member insurer which fails to pay an assessment when due. A forfeiture shall not exceed five percent of the unpaid assessment per month, but no forfeiture shall be less than \$100 per month.

(c) Any action of the board of directors or the association may be appealed to the
Changes or additions indicated by underline deletions by strikeout

commissioner by any member insurer within 30 days of the occurrence of the action. Any final action or order of the commissioner shall be subject to judicial review in a court of competent jurisdiction, in the manner provided by Minnesota Statutes, Chapter 15.

(d) The liquidator, rehabilitator, or conservator of any impaired insurer may notify all interested persons of the effect of sections 1 to 16.

Sec. 10. [61B.10] PREVENTION OF IMPAIRMENTS. To aid in the detection and prevention of insurer impairments:

(a) The board of directors may, upon majority vote, notify the commissioner of insurance indicating that a member insurer may be unable or potentially unable to fulfill its contractual obligations.

(b) The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board believes may be unable or potentially unable to fulfill its contractual obligations. The commissioner may conduct the examination. The examination may be conducted as a national association of insurance commissioners examination or by persons the commissioner designates. The cost of the examination shall be paid by the association and the examination report treated as are other examination reports. In no event shall the examination report be released to the board of directors of the association prior to its release to the public, but this shall not excuse the commissioner from his obligation to comply with clause (c). The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner, but shall not be open to public inspection prior to the release of the examination report to the public and shall be released at that time only if the examination discloses that the examined insurer is unable or potentially unable to meet its contractual obligations.

(c) The commissioner shall report to the board of directors when he has reasonable cause to believe that any member insurer examined at the request of the board of directors may be unable or potentially unable to fulfill its contractual obligations.

(d) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer. The reports and recommendations shall not be considered public documents.

(e) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer impairments.

(f) The board of directors may, at the conclusion of any insurer impairment in which the association carried out its duties or exercised powers under sections 1 to 16, prepare a report on the history and causes of the impairment, based on the information available to the association, and submit the report to the commissioner.

Sec. 11. [61B.11] DELEGATION BY COMMISSIONER. For the purposes of sections 1 to 16, the commissioner may delegate any of the powers conferred on him by

Changes or additions indicated by underline deletions by ~~strikeout~~

law.

Sec. 12. **[61B.12] MISCELLANEOUS PROVISIONS. Subdivision 1. CONSTRUCTION.** Nothing in sections 1 to 16 shall be construed to reduce the liability for unpaid assessments of the insureds of an impaired insurer operating under a plan with assessment liability.

Subd. 2. RECORDS. Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties under section 6. Records of negotiations or meetings shall be made public only upon termination of a liquidation, rehabilitation, or conservation proceeding involving an impaired insurer, termination of the impairment of the insurer, or order of a court of competent jurisdiction. Nothing in this subdivision shall limit the duty of the association to render a report of its activities under section 13.

Subd. 3. ASSOCIATION AS CREDITOR. For the purpose of carrying out its obligations under sections 1 to 16, the association shall be deemed to be a creditor of the impaired insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to section 6, subdivision 7. All assets of the impaired insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired insurer as required by sections 1 to 16. Assets attributable to covered policies, as used in this subdivision, means that proportion of the assets which the reserves that should have been established for the policies bear to the reserve that should have been established for all policies of insurance written by the impaired insurer.

Subd. 4. DISTRIBUTION TO STOCKHOLDERS. No distribution to stockholders of an impaired insurer shall be made until the total amount of assessments levied by the association with respect to the insurer have been fully recovered by the association.

Subd. 5. PROHIBITED SALES PRACTICE. No person shall make use of the protection afforded by sections 1 to 16 in the sale of insurance. Any person violating this section shall be guilty of a misdemeanor.

Sec. 13. **[61B.13] EXAMINATION OF THE ASSOCIATION; ANNUAL REPORT.** The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner, before May 1 each year, a financial report for the preceding calendar year in a form approved by the commissioner and a report of its activities during the preceding calendar year.

Sec. 14. **[61B.14] TAX EXEMPTIONS. Subdivision 1. STATE FEES AND TAXES.** The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions, except taxes levied on real property.

Subd. 2. FEDERAL AND FOREIGN STATE TAXES. The association may seek exemption from payment of all fees and taxes levied by the federal or any other state government or any subdivisions thereof.

Changes or additions indicated by underline deletions by ~~strikeout~~

Sec. 15. **[61B.15] BOARD OF DIRECTORS; INDEMNIFICATION.** The association shall provide insurance coverage indemnifying members of the board of directors for any personal liability arising out of any action, excluding intentional misconduct, taken by them in performance of their powers and duties under sections 1 to 16.

Sec. 16. **[61B.16] STAY OF PROCEEDINGS; REOPENING DEFAULT JUDGMENTS.** All proceedings in which the impaired insurer is a party in a court in this state shall be stayed 60 days from the date that a final order of liquidation, rehabilitation or conservation is entered as to the impaired insurer, to permit legal action by the association on any matters germane to its powers or duties. The association may, at any time when an insurer is an impaired insurer, apply to have a judgment under a decision, order, verdict, or finding based on default of the impaired insurer set aside by the court that made the judgment and shall be permitted to defend against the suit on the merits.

Sec. 17. Minnesota Statutes 1976, Section 60B.17, is amended by adding a subdivision to read:

Subd. 7. COORDINATION OF ACTIVITIES WITH GUARANTY ASSOCIATIONS. The rehabilitator shall coordinate his activities with those of each guaranty association having an interest in the rehabilitation and shall submit a report detailing how coordination will be achieved to the court for its approval within 30 days following his appointment, or within the time the court, in its discretion, may establish. . .

Sec. 18. Minnesota Statutes 1976, Section 60B.25, is amended to read:

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 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 his appointment, or within the time which the court, in its discretion, may establish. Subject to the court's control, he may:

(1) Appoint a special deputy to act for him under sections 60B.01 to 60B.61 and determine his 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 he deems necessary to assist in the liquidation without regard to chapter 15.

(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

Changes or additions indicated by underline deletions by strikeout

to the insurance division. Any amounts so paid shall be deemed expense of administration and shall be repaid for the credit of the insurance division out of the first available moneys 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 his 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 he deems relevant to the inquiry.

(6) Collect all debts and moneys 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 he deems best, any bad or doubtful debts; and pursue any creditor's remedies available to enforce his 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. He 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 appointing him.

(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 his own name any suits and other legal proceedings, in this state or elsewhere, and abandon the prosecution of claims he deems unprofitable to pursue further. If the insurer is dissolved under section 60B.23, he may apply to any court in this state or elsewhere for leave to substitute himself for the insurer as plaintiff.

Changes or additions indicated by underline deletions by ~~strikeout~~

(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 chapter 11, 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) 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.

(23) The enumeration in this section of the powers and authority of the liquidator is not a limitation upon him, nor does it exclude his right to do such other acts not herein specifically enumerated or otherwise provided for as are necessary or expedient for the accomplishment of or in aid of the purpose of liquidation.

Sec. 19. Minnesota Statutes 1976, Section 60B.30, is amended by adding a subdivision to read:

Subd. 4. FRAUDULENT TRANSFERS TO AFFILIATES. Any distribution, other than stock dividends paid by the insurer on its capital stock, made by the insurer to an affiliate owning more than 50 percent of the voting stock of the insurer during the five

Changes or additions indicated by underline deletions by ~~strikeout~~

years preceding the filing of a successful petition for rehabilitation or liquidation under sections 60B.01 to 60B.61 shall be deemed fraudulent and may be avoided by the receiver; except that:

(a) No distribution shall be recoverable if the insurer shows that when paid, it was lawful, reasonable, and that the insurer did not know, and could not reasonably have known, that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations;

(b) Any person who was an affiliate owning more than 50 percent of the voting stock of the insurer at the time the distributions were paid shall be liable only up to the amount of distributions he received. Any person who was an affiliate that controlled the insurer at the time the distributions were declared shall be liable up to the amount of distributions he would have received if they had been paid immediately. If two persons are liable with respect to the same distribution, they shall be jointly and severally liable;

(c) The maximum amount recoverable under this subdivision shall be the amount needed in addition to all other available assets of the insurer to pay its contractual obligations;

(d) If any person liable under clause (b) is insolvent, all its affiliates that controlled it at the time the distribution was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

Sec. 20. Minnesota Statutes 1976, Section 60B.46, Subdivision 1, is amended to read:

60B.46 DISTRIBUTION OF ASSETS. Subdivision 1. **PAYMENTS TO CREDITORS.** Under the direction of the court, the liquidator shall pay dividends in a manner that will assure the proper recognition of priorities and reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third party claims. Distribution of assets in kind may be made at valuations set by agreement between the liquidator and the creditor and approved by the court. The court may take into consideration the contributions of the respective parties, including guaranty associations, shareholders, and policyowners, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of the insurer. No distribution to stockholders of the insurer shall be permitted by the court unless the total amount of assessments levied by guaranty associations with respect to the insurer have been repaid.

Sec. 21. Minnesota Statutes 1976, Section 60B.26, Subdivision 2, is amended to read:

Subd. 2. **NOTICE RESPECTING CLAIM FILING.** Notice to potential claimants under subdivision 1 shall require claimants to file with the court their claims together with proper proofs thereof under section 60B.38, on or before a date the liquidator specifies in the notice, which shall be no less than six months nor more than one year after entry of the order, except that the liquidator need not require persons claiming unearned

Changes or additions indicated by underline deletions by ~~strikeout~~

premiums or subscription rates and persons claiming cash surrender values or other investment values in life insurance and annuities to file a claim. The liquidator may specify different dates for the filing of different kinds of claims. Notice to potential claimants shall include notice of the existence of any guaranty association charged by statute with the guaranty of the obligations of the insurer. Where procedures have been established by the association for the filing of claims this notice shall include an explanation of those procedures.

Sec. 22. **EFFECTIVE DATE.** This act is effective on the day following its final enactment.

Approved May 26, 1977.

CHAPTER 274—H.F.No.460

An act relating to retirement; adjustment in annuities through the adjustable fixed benefit fund; amending Minnesota Statutes 1976, Section 11.25, Subdivisions 3, 12 and 13.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1976, Section 11.25, Subdivision 3, is amended to read:

Subd. 3. MINNESOTA ADJUSTABLE FIXED BENEFIT FUND; ANNUITIES.

Any public retirement organization authorized to participate in the Minnesota adjustable fixed benefit fund may own an undivided participation in all the assets of the fund. The extent of annual participation shall be determined by the ratio of each organization's contribution to the total contributions of all participating organizations. Such ratio shall be determined monthly. Contributions and withdrawals may be certified at any time, but notification of contributions must reach the state board of investment by the twenty-fifth day of any month in order for such contributions to be included in calculations determining the monthly ratio. At the end of each fiscal year, the 12 ratios for such year, beginning with that of the previous ~~June 30~~ July 31, shall be averaged. The average ratio shall determine the distribution of the difference between the admitted value and the balances of contributions of the respective organizations at year end to determine the respective amounts of participation. The interpretation and administration of all calculations affecting the fund shall be made in a manner to achieve the most uniform and equitable treatment possible for all participating organizations.

Sec. 2. Minnesota Statutes 1976, Section 11.25, Subdivision 12, is amended to read:

Subd. 12. ADJUSTMENT IN ANNUITY PAYMENTS. Annually as of July 1 of each fiscal year the annuity payments made from each retirement fund or organization participating in the Minnesota adjustable fixed benefit fund during the next calendar year shall be determined in accordance with the following procedures. Any adjustment in the amount of annuity payments shall become effective with the first payment falling due

Changes or additions indicated by underline deletions by ~~strikeout~~ -