

Sec. 2. EFFECTIVE DATE.

Section 1 is effective the day following final enactment and applies to certificates issued in anticipation of taxes levied in 1987 and 1988.

Approved April 18, 1988

CHAPTER 541—H.F.No. 1897

An act relating to insurance; regulating the Minnesota Insurance Guaranty Association; excluding investment risks insurance from coverage; modifying the definitions of "resident" and "covered claim"; regulating claims; preventing insolvencies; making certain technical changes; amending Minnesota Statutes 1986, sections 60C.02, subdivision 1; 60C.03, subdivisions 2, 7, and by adding a subdivision; 60C.05, subdivisions 1 and 2; 60C.06, by adding a subdivision; 60C.13, subdivision 2; 60C.15; and 60C.18; Minnesota Statutes 1987 Supplement, section 60C.09; repealing Minnesota Statutes 1987 Supplement, section 60C.06, subdivision 5.

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

Section 1. Minnesota Statutes 1986, section 60C.02, subdivision 1, is amended to read:

Subdivision 1. **SCOPE.** ~~Laws 1971, chapter 145~~ This chapter applies to all kinds of direct insurance, except life, title, accident and sickness written by life insurance companies, credit, mortgage guaranty, and ocean marine.

Sec. 2. Minnesota Statutes 1986, section 60C.03, subdivision 2, is amended to read:

Subd. 2. "Account" means any of the ~~three~~ five accounts created under section 60C.04.

Sec. 3. Minnesota Statutes 1986, section 60C.03, subdivision 7, is amended to read:

Subd. 7. "Resident" means:

(a) An individual person who fixes habitation in this state without any intention of removing therefrom and who, whenever absent therefrom, intends to return; ~~or~~

(b) Any other person ~~who maintains a place of business or a resident agent in this state whose principal place of business is located in this state at the time of the insured event; or~~

(c) A person whose principal place of business is in Wisconsin, Iowa, North Dakota or South Dakota, but who maintains substantial business in Minnesota.

New language is indicated by underline, deletions by ~~strikeout~~.

Sec. 4. Minnesota Statutes 1986, section 60C.03, is amended by adding a subdivision to read:

Subd. 9. "Affiliate" means a person other than a natural person who directly, or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with an insolvent insurer on December 31 of the year preceding the date the insurer becomes an insolvent insurer.

Sec. 5. Minnesota Statutes 1986, section 60C.05, subdivision 1, is amended to read:

Subdivision 1. The association shall:

(a) Be deemed the insurer to the extent of its obligation on the covered claims. The claims found by the board of directors to be covered shall be paid out of available funds after they have been approved or settled under sections 60B.45, subdivision 2, and 60B.58, subdivision 2, or the corresponding laws of another jurisdiction, subject to the board's power to reduce the amount of or reject the award under section 60C.10.

(b) Allocate claims paid and expenses incurred among the ~~four~~ five accounts and assess member insurers separately for each account the amounts necessary to pay the obligations of the association under clause (a), the expenses of handling ~~covered~~ claims, the cost of examinations under section 60C.15 and other expenses authorized by ~~Laws 1971, chapter 145~~ this chapter.

(c) Notify the persons as the commissioner directs under ~~Laws 1971, chapter 145~~ this chapter.

(d) Handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but the designation may be declined.

(e) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by ~~Laws 1971, chapter 145~~ this chapter.

(f) Notify each member insurer of its assessment not later than 30 days before it is due.

(g) Issue to each insurer paying an assessment under this chapter a certificate of contribution, in a form prescribed by the commissioner, for the amount so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in the form and for the amount, if any, and period of time the commissioner approves.

Sec. 6. Minnesota Statutes 1986, section 60C.05, subdivision 2, is amended to read:

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Subd. 2. The association may:

(a) Employ or retain the persons necessary to handle claims and perform other duties of the association.

(b) Borrow funds necessary to effect the purposes of Laws 1971, chapter 145 in accord with the plan of operation.

(c) Sue or be sued.

(d) Negotiate and become a party to the contracts necessary to carry out the purpose of Laws 1971, chapter 145.

(e) Perform other acts necessary or proper to effectuate the purpose of Laws 1971, chapter 145.

(f) Subject to section 7, refund to the member insurers in proportion to the contribution of each member insurer to that account the amount by which the assets of the account exceed the liabilities, if at the end of the calendar year the board of directors finds that the assets of the association in any account exceed the liabilities of that account as estimated by the board of directors for the coming year.

(g) Request the court to disapprove or modify any claim for which approval is sought under the provisions of section 60B.45, subdivision 2 or 60B.58, subdivision 2.

Sec. 7. Minnesota Statutes 1986, section 60C.06, is amended by adding a subdivision to read:

Subd. 6. REFUNDS RETAINED. All money which the association receives from the estate of an insolvent insurer or an insurer that is the subject of delinquency proceedings shall not be refunded to members but must be credited to the account from which the claims were paid that resulted in the payment from the estate. If that cannot be determined, the money shall be credited to the account which the board determines is most likely to have been the source of the paid claims. The money shall be used to pay future claims.

Sec. 8. Minnesota Statutes 1987 Supplement, section 60C.09, is amended to read:

60C.09 COVERED CLAIMS.

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

(1) Arises out of and is within the coverage of an insurance policy issued by a member insurer if the insurer becomes an insolvent insurer after April 30, 1979; or

(2) Would be within the coverage of an extended reporting endorsement to

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a claims-made insurance policy if insolvency had not prevented the member insurer from fulfilling its obligation to issue the endorsement, if:

(i) the claims-made policy contained a provision affording the insured the right to purchase a reporting endorsement;

(ii) coverage will be no greater than if a reporting endorsement had been issued;

(iii) the insured has not purchased other insurance which applies to the claim; and

(iv) the insured's deductible under the policy is increased by an amount equal to the premium for the reporting endorsement, as provided in the insured's claims-made policy, or if not so provided, then as established by a rate service organization.

(b) Arises out of a class of business which is not excepted from the scope of ~~Laws 1971, chapter 445, this chapter~~ by section 60C.02; and

(c) Is made by:

(i) A policyholder, or an insured beneficiary under a policy, who, at the time of the insured event, was a resident of this state; or

(ii) A person designated in the policy as having an insurable interest in or related to property situated in this state at the time of the insured event; or

(iii) An obligee or creditor under any surety bond, who, at the time of default by the principal debtor or obligor, was a resident of this state; or

(iv) A third party claimant under a liability policy or surety bond, if: (a) the insured or the third party claimant was a resident of this state at the time of the insured event; (b) the claim is for bodily or personal injuries suffered in this state by a person who when injured was a resident of this state; or (c) the claim is for damages to real property situated in this state at the time of damage; or

(v) A direct or indirect assignee of a person who except for the assignment might have claimed under (i), (ii) or (iii).

For purposes of paragraph (c), item ~~(i)~~ (ii), unit owners of condominiums, townhouses, or cooperatives are considered as having an insurable interest.

A covered claim also includes any unpaid claim which arises or exists within 30 days after the time of entry of an order of liquidation with a finding of insolvency by a court of competent jurisdiction unless prior thereto the insured replaces the policy or causes its cancellation or the policy expires on its expiration date. A covered claim does not include claims filed with the guaranty fund after the final date set by the court for the filing of claims except for excused late filings permitted under section 60B.37.

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Subd. 2. **FURTHER DEFINITION.** In addition to subdivision 1, a covered claim does not include:

(1) claims by an affiliate of the insurer; and

(2) claims due a reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise. This clause does not prevent a person from presenting the excluded claim to the insolvent insurer or its liquidator, but the claims shall not be asserted against another person, including the person to whom the benefits were paid or the insured of the insolvent insurer, except to the extent that the claim is outside the coverage of the policy issued by the insolvent insurer.

Subd. 3. LIMITATION OF AMOUNT. Payment of a covered claim, except a claim for unearned premium by any single claimant, whether upon a single policy or multiple policies of insurance, is limited to the amount by which the allowance on any claim exceeds \$100 and is less than \$300,000. In the case of claim for unearned premium by a single claimant, the entire claim up to \$300,000 shall be allowed. The limitation on the amount of payment for a covered claim does not apply to claims for workers' compensation insurance. In no event is the association obligated to the policyholder or claimant in an amount in excess of the obligation of the insurer under the policy from which the claim arises. For insolvencies occurring on or after October 1, 1985, no deductible applies to claims eligible for payment under the assigned claims plan under sections 65B.63 to 65B.65.

Sec. 9. Minnesota Statutes 1986, section 60C.13, subdivision 2, is amended to read:

Subd. 2. Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the state of residence of the insured except that if the claim is a first party claim for damage to property with a permanent location, that person shall seek recovery first from the association of the state in which the property is located, and if it is a workers' compensation claim, that person shall seek recovery first from the association of the residence of the claimant. Any recovery under ~~Laws 1971, chapter 145~~ this chapter shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

Sec. 10. Minnesota Statutes 1986, section 60C.15, is amended to read:

60C.15 PREVENTION OF INSOLVENCIES.

To aid in the detection and prevention of insurer insolvencies:

(1) It is the duty of each member insurer to notify the commissioner of any established facts indicating any other member insurer may be insolvent or in a financial condition hazardous to its policyholders or the public.

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(2) The board of directors shall request that the commissioner order an examination of any member insurer which the board in good faith believes may be in a financial condition hazardous to its policyholders or the public. Within 30 days of the receipt of the request, the commissioner shall begin the examination. The examination may be conducted as a national association of insurance commissioners examination or may be conducted by persons designated by the commissioner. The cost of the examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall the examination report be released to the board of directors prior to its release to the public, but this shall not preclude the commissioner from complying with paragraph (3). 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 it shall not be open to public inspection unless the report finds the company to be insolvent.

(3) It shall be the duty of the commissioner to report to the board of directors when the commissioner has reasonable cause to believe that any member insurer examined or being examined at the request of the board of directors may be insolvent or in a financial condition hazardous to the policyholders or the public.

(4) 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.

(5) (1) The board of directors: (a) may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies; and (b) shall respond to requests by the commissioner to discuss and make recommendations regarding the status of any member insurer whose financial condition may be hazardous to policyholders or the public. These recommendations are classified as nonpublic data under section 13.02.

(2) The board of directors may, at the conclusion of any domestic insurer insolvency in which the association was obligated to pay covered claims, prepare and submit to the commissioner a report on the history and causes of the insolvency, based on the information available to the association.

Sec. 11. Minnesota Statutes 1986, section 60C.18, is amended to read:

60C.18 RECOGNITION OF ASSESSMENTS IN RATES.

Subdivision 1. The rates and premiums charged for insurance policies and fidelity and surety bonds to which this chapter applies ~~may~~ must include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member insurer less any amounts returned to the member insurer by the association. The rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer.

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Subd. 2. Beginning with assessments payable by member insurers in 1988, each member insurer must separately state on either a billing notice or policy declaration sent to an insured, the percentage, dollar amount, or both, of the amount contained in the premium to recoup assessments paid by the member insurer in Minnesota.

Sec. 12. AUTHORIZATION FOR STAGGERED TERMS FOR BOARD MEMBERS.

Notwithstanding section 60C.08, subdivision 1, four board members may be appointed for one-year terms beginning on August 1, 1987, to achieve staggered terms under the plan of operation.

Sec. 13. EFFECTIVE DATE CLARIFICATION.

Laws 1987, chapter 337, sections 27, 28, 29, and 30, effective August 1, 1987, apply to delinquency proceedings commencing on or after August 1, 1987.

Sec. 14. REPEALER.

Minnesota Statutes 1987 Supplement, section 60C.06, subdivision 5, is repealed.

Sec. 15. EFFECTIVE DATE.

(a) Sections 1 to 5 and 8 to 10 are effective the day following final enactment and apply to all unsettled current or existing and future claims paid after that date arising out of any past or future member insolvency.

(b) Sections 11, 13, and 14 are effective the day following final enactment.

Approved April 18, 1988

CHAPTER 542—H.F.No. 2063

An act relating to housing; providing a definition; authorizing certain refinancing; providing for grants for housing for low-income persons; providing for reservation of low-income housing credits; amending Minnesota Statutes 1986, sections 462A.03, by adding a subdivision; 462A.05, by adding a subdivision; and 462A.07, subdivisions 14 and 15; Minnesota Statutes 1987 Supplement, sections 462A.05, subdivision 28; and 462A.222, subdivision 2; proposing coding for new law in Minnesota Statutes, chapter 469.

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

Section 1. Minnesota Statutes 1986, section 462A.03, is amended by adding a subdivision to read:

Subd. 20. "American Indian" means a person who is a member of an Indian tribe, as the terms "Indian," "Indian tribe," and "tribal organization" are defined in United States Code, title 25, section 450b.

New language is indicated by underline, deletions by ~~strikeout~~.