

and the chancellor of the state community college system shall redeem all shares in the accounts of the Minnesota supplemental investment fund held on behalf of personnel in the supplemental plan who elect an investment option other than the supplemental investment fund, except that shares in the ~~guaranteed return~~ fixed interest account may not be redeemed until the expiration dates for the guaranteed investment contracts. The chancellors shall transfer the cash realized to the financial institutions selected by the state university board and the community college board under section 354B.05.

Sec. 17. **EFFECTIVE DATE.**

Sections 1 to 16 are effective July 1, 1992.

Presented to the governor April 17, 1992

Signed by the governor April 27, 1992, 1:57 p.m.

CHAPTER 540—S.F.No. 2463

An act relating to insurance; solvency; making various technical corrections; requiring notice; regulating business transacted with a producer controlled insurer; modifying various provisions relating to the guaranty association; amending Minnesota Statutes 1990, sections 45.025, subdivision 2, as amended; 60A.03, subdivision 6; 60A.10, subdivision 4; 61B.03, subdivision 5; 61B.06, subdivision 7; and 61B.12, by adding subdivisions; Minnesota Statutes 1991 Supplement, sections 60A.031, subdivision 1; 60A.092, subdivision 3; 60A.11, subdivisions 13 and 20; 60A.112; 60A.12, subdivision 10; 60A.124; 60D.17, subdivision 1; 61A.28, subdivision 1; and 61B.12, subdivision 6; Laws 1991, chapter 325, article 5, section 6; proposing coding for new law in Minnesota Statutes, chapters 60C; and 60J; repealing Minnesota Statutes 1991 Supplement, sections 60J.01; 60J.02; 60J.03; 60J.04; 60J.05; and 72A.206.

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

ARTICLE 1

**BUSINESS TRANSACTED WITH PRODUCER CONTROLLED
PROPERTY/CASUALTY INSURER ACT**

Section 1. **[60J.06] SHORT TITLE.**

Sections 1 to 6 may be cited as the "business transacted with producer controlled insurer act."

Sec. 2. **[60J.07] DEFINITIONS.**

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

Subdivision 1. APPLICATION. The definitions in this section apply to sections 1 to 6.

Subd. 2. ACCREDITED STATE. "Accredited state" means a state in which the insurance department or regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established from time to time by the National Association of Insurance Commissioners (NAIC).

Subd. 3. CAPTIVE INSURER. "Captive insurer" means an insurance company owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies or, in the case of groups and associations, an insurance organization owned by the insureds whose exclusive purpose is to insure risks to member organizations or group members and their affiliates.

Subd. 4. COMMISSIONER. "Commissioner" means the commissioner of commerce.

Subd. 5. CONTROL. "Control" or "controlled" has the meaning given in section 60D.15, subdivision 4.

Subd. 6. CONTROLLED INSURER. "Controlled insurer" means a licensed insurer which is controlled, directly or indirectly, by a producer.

Subd. 7. CONTROLLING PRODUCER. "Controlling producer" means a producer who, directly or indirectly, controls an insurer.

Subd. 8. LICENSED INSURER. "Licensed insurer" or "insurer" means any person, firm, association, or corporation licensed to transact a property/casualty insurance business in this state. The following entities are not licensed insurers for the purposes of sections 1 to 6:

(1) all risk retention groups as defined in the Superfund Amendments Reauthorization Act of 1986, Public Law Number 99-499, 100 Stat. 1613; the Risk Retention Act, 15 United States Code, section 3901, et seq.; and chapter 60;

(2) all residual market pools and joint underwriting authorities or associations; and

(3) all captive insurers.

Subd. 9. PRODUCER. "Producer" means an insurance broker or any other person, firm, association, or corporation, when, for any compensation, commission or other thing of value, the person, firm, association, or corporation acts or aids in any manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of an insured other than the person, firm, association, or corporation.

Sec. 3. [60J.08] APPLICATION.

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

Sections 1 to 6 apply to licensed insurers, either domiciled in this state or domiciled in a state that is not an accredited state having in effect a substantially similar law. All provisions of chapter 60D, to the extent they are not superseded by sections 1 to 6, apply to all parties within holding company systems subject to sections 1 to 6.

Sec. 4. [60J.09] MINIMUM STANDARDS.

Subdivision 1. APPLICATION. The provisions of this section apply if, in any calendar year, the aggregate amount of gross written premium on business placed with a controlled insurer by a controlling producer is equal to or greater than five percent of the admitted assets of the controlled insurer, as reported in the controlled insurer's quarterly statement filed as of September 30 of the prior year.

Subd. 2. EXEMPTION. Notwithstanding subdivision 1, this section does not apply under the following conditions:

(1) the controlling producer:

(i) places insurance only with the controlled insurer, or only with the controlled insurer and a member of the controlled insurer's holding company system, or the controlled insurer's parent, affiliate, or subsidiary and receives no compensation based upon the amount of premiums written in connection with the insurance; and

(ii) accepts insurance placements only from nonaffiliated subproducers and not directly from insureds; and

(2) the controlled insurer, except for insurance business written through a residual market facility, accepts insurance business only from a controlling producer, a producer controlled by the controlled insurer, or a producer that is a subsidiary of the controlled insurer.

Subd. 3. REQUIRED CONTRACT PROVISIONS. A controlled insurer shall not accept business from a controlling producer and a controlling producer shall not place business with a controlled insurer unless there is a written contract between the controlling producer and the insurer specifying the responsibilities of each party. The contract must be approved by the board of directors of the insurer and contain the following minimum provisions:

(1) the controlled insurer may terminate the contract for cause, upon written notice to the controlling producer. The controlled insurer shall suspend the authority of the controlling producer to write business during the pendency of any dispute regarding the cause for the termination;

(2) the controlling producer shall submit accounts to the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the controlling producer;

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(3) the controlling producer shall remit all funds due under the terms of the contract to the controlled insurer on at least a monthly basis. The due date must be fixed so that premiums or installments collected are remitted no later than 90 days after the effective date of any policy placed with the controlled insurer under this contract;

(4) all funds collected for the controlled insurer's account shall be held by the controlling producer in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the Federal Reserve System, in accordance with the provisions of the insurance law as applicable. Funds of a controlling producer not required to be licensed in this state must be maintained in compliance with the requirements of the controlling producer's domiciliary jurisdiction;

(5) the controlling producer shall maintain separately identifiable records of business written for the controlled insurer;

(6) the contract may not be assigned in whole or in part by the controlling producer;

(7) the controlled insurer shall provide the controlling producer with its underwriting standards, rules, and procedures, manuals specifying the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling producer shall adhere to the standards, rules, procedures, rates, and conditions. The standards, rules, procedures, rates, and conditions must be the same as those applicable to comparable business placed with the controlled insurer by a producer other than the controlling producer;

(8) the rates and terms of the controlling producer's commissions, charges, or other fees and the purposes for those charges or fees. The rates of the commissions, charges, and other fees may be no greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling producers. For purposes of this clause and clause (7), examples of "comparable business" include the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business;

(9) if the contract provides that the controlling producer, on insurance business placed with the insurer, is to be compensated contingent upon the insurer's profits on that business, then the compensation may not be determined and paid until at least five years after the premiums on liability insurance are earned and at least one year after the premiums are earned on any other insurance. In no event may the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified as provided under subdivision 5;

(10) a limit on the controlling producer's writings in relation to the controlled insurer's surplus and total writings. The insurer may establish a different limit for each line or subline of business. The controlled insurer shall notify the controlling producer when the applicable limit is approached and shall not

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accept business from the controlling producer if the limit is reached. The controlling producer shall not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached; and

(11) the controlling producer may negotiate but may not bind reinsurance on behalf of the controlled insurer on business the controlling producer places with the controlled insurer, except that the controlling producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which the automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and commission schedules.

Subd. 4. AUDIT COMMITTEE. A controlled insurer shall have an audit committee of the board of directors composed of independent directors. The audit committee shall annually meet with management, the insurer's independent certified public accountants, and an independent casualty actuary or other independent loss reserve specialist acceptable to the commissioner to review the adequacy of the insurer's loss reserves.

Subd. 5. REPORTING REQUIREMENTS. In addition to any other required loss reserve certification, the controlled insurer shall annually, on April 1 of each year, file with the commissioner an opinion of an independent casualty actuary, or other independent loss reserve specialist acceptable to the commissioner, reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year end, including incurred but not reported, on business placed by the producer. The controlled insurer shall annually report to the commissioner the amount of commissions paid to the producer, the percentage the amount represents of the net premiums written, and comparable amounts and percentage paid to noncontrolling producers for placements of the same kinds of insurance.

Sec. 5. [60J.10] DISCLOSURE.

The producer, prior to the effective date of the policy, shall deliver written notice to the prospective insured disclosing the relationship between the producer and the controlled insurer; except that, if the business is placed through a subproducer who is not a controlling producer, the controlling producer shall retain in the producer's records a signed commitment from the subproducer that the subproducer is aware of the relationship between the insurer and the producer and that the subproducer has or will notify the insured.

Sec. 6. [60J.11] PENALTIES.

Subdivision 1. CEASE AND DESIST ORDER. If the commissioner believes that the controlling producer or any other person has not materially complied with sections 1 to 6 or any rule or order, after notice and opportunity to be heard, the commissioner may order the controlling producer to cease placing business with the controlled insurer.

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Subd. 2. COMMISSIONER'S AUTHORITY. If the commissioner finds pursuant to the procedural requirements of section 45.027, that a person has violated a provision of this chapter, the commissioner may take any action authorized under that section.

Subd. 3. CIVIL ACTION BY COMMISSIONER. The commissioner may maintain a civil action or intervene in an action brought by or on behalf of the insurer or policyholder for recovery of compensatory damages for the benefit of the insurer or policyholder or other appropriate relief.

Subd. 4. CIVIL ACTION BY RECEIVER. If an order for liquidation or rehabilitation of the controlled insurer has been entered under chapter 60B and the receiver appointed under that order believes that the controlling producer or any other person has not materially complied with sections 1 to 6, or any rule or order, and the insurer suffered any loss or damage therefrom, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

Subd. 5. ADDITIONAL PENALTIES AND RIGHTS. Nothing contained in this section affects the right of the commissioner to impose any other penalties provided for in the insurance law. Nothing contained in this section is intended to or shall in any manner alter or affect the rights of policyholders, claimants, creditors, or other third parties.

Sec. 7. REPEALER.

Minnesota Statutes 1991 Supplement, sections 60J.01; 60J.02; 60J.03; 60J.04; and 60J.05, are repealed.

ARTICLE 2

MISCELLANEOUS SOLVENCY PROVISIONS

Section 1. Minnesota Statutes 1990, section 60A.03, subdivision 6, is amended to read:

Subd. 6. EXAMINATION REVOLVING FUND. (1) **REVOLVING FUND CREATED.** There is hereby created the department of commerce examination revolving fund for the purpose of carrying on the examination of foreign and domestic insurance companies.

(2) **MONEY IN REVOLVING FUND.** Such fund shall consist of the \$7,500 appropriated therefor and the money transferred to it as herein provided, which are reappropriated to the commissioner of commerce for the purpose of this subdivision.

(3) **FUND TO BE KEPT IN STATE TREASURY.** Such fund shall be kept

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in the state treasury and shall be paid out in the manner prescribed by law for money therein.

(4) **PURPOSES FOR WHICH FUND MAY BE EXPENDED.** Such fund shall be used for the payment of per diem salaries and expenses of special examiners and appraisers, and the expenses of the commissioner of commerce, deputy commissioner of commerce, chief examiner, actuary other than a consulting actuary appointed under subdivision 3, clause (3) hereof, regular salaried examiners and other employees of the department of commerce when participating in examinations. Expenses include meals, lodging, laundry, transportation, and mileage. The salary of regular employees of the division of insurance shall not be paid out of this fund.

(5) **COLLECTIONS TO BE DEPOSITED IN FUND.** All moneys collected by the division of insurance from insurance companies for fees and expenses of examinations, shall be deposited in the insurance division examination revolving fund.

(6) **PAYMENTS FROM SUCH FUND.** Upon authorization by the commissioner of commerce, the moneys due each examiner or employee engaged in an examination shall be paid from the insurance division examination revolving fund in the manner prescribed by law.

(7) **EXCESS OVER ~~\$7,500~~ \$25,000 CANCELED INTO GENERAL FUND.** The balance in such fund on June 30 of each year in excess of ~~\$7,500~~ \$25,000 shall be forthwith canceled into the general fund.

Sec. 2. Minnesota Statutes 1991 Supplement, section 60A.031, subdivision 1, is amended to read:

Subdivision 1. **POWER TO EXAMINE.** (1) **INSURERS AND OTHER LICENSEES.** At any time and for any reason related to the enforcement of the insurance laws, or to ensure that companies are being operated in a safe and sound manner and to protect the public interest, the commissioner may examine the affairs and conditions of any foreign or domestic insurance or reinsurance company, including reciprocals and fraternal, licensee or applicant for a license under the insurance laws, or any other person or organization of persons doing or in the process of organizing to do any insurance business in this state, and of any licensed advisory organization serving any of the foregoing in this state.

The commissioner shall examine the affairs and conditions of every ~~domestic insurance company~~ at least insurer licensed in this state not less frequently than once every five years.

(2) **WHO MAY BE EXAMINED.** The commissioner in making any examination of an insurance company as authorized by this section may, if in the commissioner's discretion, there is cause to believe the commissioner is unable to obtain relevant information from such insurance company or that the examination or investigation is, in the discretion of the commissioner, necessary or

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material to the examination of the company, examine any person, association, or corporation:

(a) transacting, having transacted, or being organized to transact the business of insurance in this state;

(b) engaged in or proposing to be engaged in the organization, promotion, or solicitation of shares or capital contributions to or aiding in the formation of a domestic insurance company;

(c) holding shares of capital stock of an insurance company for the purpose of controlling the management thereof as voting trustee or otherwise;

(d) having a contract, written or oral, pertaining to the management or control of an insurance company as general agent, managing agent, attorney-in-fact, or otherwise;

(e) which has substantial control directly or indirectly over an insurance company whether by ownership of its stock or otherwise, or owning stock in any domestic insurance company, which stock constitutes a substantial proportion of either the stock of the domestic insurance company or of the assets of the owner thereof;

(f) which is a subsidiary or affiliate of an insurance company;

(g) which is a licensed agent or solicitor or has made application for the licenses;

(h) engaged in the business of adjusting losses or financing premiums.

Nothing contained in this clause (2) shall authorize the commissioner to examine any person, association, or corporation which is subject to regular examination by another division of the commerce department of this state. The commissioner shall notify the other division when an examination is deemed advisable.

Sec. 3. Minnesota Statutes 1991 Supplement, section 60A.092, subdivision 3, is amended to read:

Subd. 3. **ACCREDITED ASSUMING INSURER.** (a) Reinsurance is ceded to an assuming insurer if the assuming insurer is accredited as a reinsurer in this state. An accredited reinsurer is one which:

(1) files with the commissioner evidence of its submission to this state's jurisdiction;

(2) submits to this state's authority to examine its books and records;

(3) is licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer is entered through and licensed to transact insurance or reinsurance in at least one state;

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(4) files annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile ~~and~~, a copy of its most recent audited financial statement, and a filing fee of \$225; and

(5)(i) maintains a surplus as regards policyholders in an amount not less than \$20,000,000 and whose accreditation has not been denied by the commissioner within 90 days of its submission, or maintains a surplus as regards policyholders in an amount less than \$20,000,000 and whose accreditation has been approved by the commissioner; or

(ii) maintains a surplus as regards policyholders in an amount not less than \$50,000,000 for long-tail casualty reinsurers. For purposes of this section, "long-tail casualty reinsurance" means insurance for medical or legal malpractice, pollution liability, directors and officers liability, and products liability. The commissioner may determine that an assuming insurer that maintains a surplus as regards policyholders in an amount not less than \$20,000,000 is accredited as a reinsurer if there is no detriment to policyholders and the interest of the public, and to not allow accrediting would be a hardship or detriment to the reinsurer. The commissioner shall report to the legislature on any determination to allow accrediting to a long-term casualty reinsurer maintaining a surplus in an amount less than \$50,000,000.

Clause (5) does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

(b) No credit shall be allowed or continue to be allowed a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the commissioner after receipt of a cease and desist order pursuant to section 45.027, subdivision 5.

Sec. 4. Minnesota Statutes 1990, section 60A.10, subdivision 4, is amended to read:

Subd. 4. **SAFEKEEPING OF SECURITIES ON DEPOSIT.** No later than July 1, 1975, all securities held on deposit with the commissioner pursuant to the laws of this state, or in accordance with an order of the commissioner, shall be deposited for the account of the commissioner in such state or national bank in this state as the depositing insurer may designate and the commissioner may approve. Said deposits shall be made and maintained in accordance with a custodial agreement between the bank and the depositing insurer in a form approved by the commissioner which shall provide as a minimum that (1) the fees of the custodian are to be the obligation of the depositing insurer, and (2) there shall be no exchange, release or transfer of any deposited security unless the commissioner has assented thereto in writing. Securities evidenced by the Federal Reserve book entry system may or held in a clearing corporation, as that term is defined in section 60A.11, subdivision 10, must be deposited in the name of through an approved custodian or the commissioner of commerce for the account of the commissioner of commerce for the benefit of all policyholders of the depositor.

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Sec. 5. Minnesota Statutes 1991 Supplement, section 60A.11, subdivision 13, is amended to read:

Subd. 13. **UNITED STATES GOVERNMENT OBLIGATIONS.** (a) Obligations issued or guaranteed by the United States of America or any agency or instrumentality of the United States of America backed by the full faith and credit of the issuer, including rights to purchase or sell these obligations if those rights are traded upon a contract market designated and regulated by a federal agency. Pursuant to section 106 of title I of the Secondary Mortgage Market Enhancement Act of 1984, United States Code, title 15, section 77r-1, included under this paragraph are obligations issued or guaranteed by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association.

(b) Obligations issued or guaranteed by an agency or instrumentality of the United States of America other than those backed by the full faith and credit thereof, including rights to purchase or sell these obligations if those rights are traded upon a contract market designated and regulated by a federal agency. The securities of a single issuer under this paragraph shall comprise no more than 20 percent of the company's admitted assets.

Sec. 6. Minnesota Statutes 1991 Supplement, section 60A.11, subdivision 20, is amended to read:

Subd. 20. **REAL ESTATE.** (a) Except as provided in paragraphs (b) to (d), a company may only acquire, hold, and convey real estate which:

(1) has been mortgaged to it in good faith by way of security for loans previously contracted, or for money due;

(2) has been conveyed to it in satisfaction of debts previously contracted in the course of its dealings;

(3) has been purchased at sales on judgments, decrees or mortgages obtained or made for the debts; and

(4) is subject to a contract for deed under which the company holds the vendor's interest to secure the payments the vendee is required to make thereunder.

All the real estate specified in clauses (1) to (3) must be sold and disposed of within five years after the company has acquired title to it, or within five years after it has ceased to be necessary for the accommodation of the company's business, and the company must not hold this property for a longer period unless the company elects to hold the real estate under another section, or unless it procures a certificate from the commissioner of commerce that its interest will suffer materially by the forced sale thereof, in which event the time for the sale may be extended to the time the commissioner directs in the certificate. The market value of real estate specified in clauses (1) to (3) must be established by the written certification of a licensed real estate appraiser. The appraisal is required at the time the company elects to hold the real estate under ~~this subdivision~~ clauses (1) to (3).

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(b) A company may acquire and hold real estate for the convenient accommodation of its business.

(c) A company may acquire real estate or any interest in real estate, including oil and gas and other mineral interests, as an investment for the production of income, and may hold, improve or otherwise develop, subdivide, lease, sell and convey real estate so acquired directly or as a joint venture or through a limited or general partnership in which the company is a partner.

(d) A company may also hold real estate (1) if the purpose of the acquisition is to enhance the sale value of real estate previously acquired and held by the company under this section, and (2) if the company expects the real estate so acquired to qualify under paragraph (b) or (c) above within five years after acquisition.

(e) A company may, after securing the approval of the commissioner, acquire and hold real estate for the purpose of providing necessary living quarters for its employees. The company must dispose of the real estate within five years after it has ceased to be necessary for that purpose unless the commissioner agrees to extend the holding period upon application by the company.

(f) A company may not invest more than 25 percent of its total admitted assets in real estate. The cost of any parcel of real estate held for both the accommodation of business and for the production of income must be allocated between the two uses annually. No more than ten percent of a company's total admitted assets may be invested in real estate held under paragraph (b). No more than 15 percent of a company's total admitted assets may be invested in real estate held under paragraph (c). No more than three percent of its total admitted assets may be invested in real estate held under paragraph (e). Upon application by a company, the commissioner of commerce may increase any of these limits up to an additional five percent.

Sec. 7. Minnesota Statutes 1991 Supplement, section 60A.112, is amended to read:

60A.112 INVESTMENT POLICY REQUIRED.

Each domestic company must have a written investment policy, designed to provide guidance for investment decisions by management. The policy must be approved by its board of directors. The policy must be reviewed by the company's board of directors and reapproved no less often than once every 12 months. The investment policy must address asset type diversification, diversification within asset types, concentration risks, interest rate risk, liquidity, foreign investments, loans secured by real estate, and investment real estate. The policy must set forth, in detail, company practices relating to internal controls regarding the delegation of investment authority within the company.

The board of directors must also determine at least annually the extent to which the company has complied with its investment policy within the preceding 12 months and shall adopt a written determination.

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The company must file, as an attachment to its annual statement, a certification that:

(1) the company has a written investment policy meeting the requirements of this section;

(2) the company's board of directors has reviewed and approved or reapproved the policy within the period covered by the annual statement; and

(3) the company's board of directors performed the compliance review and made the written determination required by this section ~~within~~ for the period covered by the annual statement.

A company's failure to meet the requirements of this section does not affect its ability to enforce its legal or equitable rights with respect to its investments.

Sec. 8. Minnesota Statutes 1991 Supplement, section 60A.12, subdivision 10, is amended to read:

Subd. 10. **LOSS RESERVE CERTIFICATION.** Each domestic company engaged in providing the types of coverage described in section 60A.06, subdivision 1, clause (1), (2), (3), (5)(b), (6), (8), (9), (10), (11), (12), (13), or (14), must have its loss reserves certified to annually by a qualified actuary. The company must file the certification with the commissioner within 30 days of completion of the certification but no later than June 1. The actuary providing the certification must not be an employee of the company. This subdivision does not apply to township mutual companies, or to other domestic insurers having less than \$100,000 of premiums written in any year and fewer than 500 policyholders. The commissioner may allow an exception to the stand alone certification where it can be demonstrated that a company in a group has a pooling or 100 percent reinsurance agreement used in a group which substantially affects the solvency and integrity of the reserves of the company, or where it is only the parent company of a group which is licensed to do business in Minnesota. If these circumstances exist, the company may file a written request with the commissioner for an exception.

Sec. 9. Minnesota Statutes 1991 Supplement, section 60A.124, is amended to read:

60A.124 INDEPENDENT AUDIT.

The audit report of the independent certified public accountant which prepares the audit of an insurer's annual statement as required under section 60A.13, subdivision 3, paragraph (a), must contain findings by the auditor that:

(1) the insurer has adopted valuation procedures meeting the minimum standards required in section 60A.123;

(2) the procedures adopted by the board of directors have been uniformly applied by the insurer in conformance with this section; and

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(3) ~~the management of the insurer has an adequate system of internal controls.~~

The audit report of the independent certified public accountant that performs the audit of an insurer's annual statement as required under section 60A.13, subdivision 3a, should contain a statement as to whether anything, in connection with their audit, came to their attention that caused them to believe that the insurer failed to adopt and consistently apply the valuation procedure as required by sections 60A.122 and 60A.123.

Sec. 10. [60C.21] INSOLVENCY; NOTICE OF GUARANTY FUND PROTECTION.

Subdivision 1. NOTICE REQUIRED. No person, including an insurer, agent, or affiliate of an insurer or agent shall sell, or offer for sale, a covered property and casualty insurance policy, unless the notice, in the form specified in subdivision 2, is delivered with or as a part of the application for that policy. A copy of the notice must be given to the applicant. If the application is not taken from the applicant in person, the notice must be sent to the applicant within 72 hours after the application is taken. The person offering the policy or contract shall document the fact that the notice was given at the time of application or was sent within the specified time and shall include a copy of the notice with the policy or contract when delivered to the applicant. This section does not apply to renewals, unless the renewal increases the dollar amount of a coverage by more than 100 percent.

Subd. 2. FORM. The notice required under subdivision 1 must be in the following form:

“NOTICE CONCERNING POLICYHOLDER RIGHTS IN AN
INSOLVENCY UNDER THE MINNESOTA INSURANCE
GUARANTY ASSOCIATION LAW

The financial strength of your insurer is one of the most important things for you to consider when determining from whom to purchase a property or liability insurance policy. It is your best assurance that you will receive the protection for which you purchased the policy. If your insurer becomes insolvent, you may have protection from the Minnesota Insurance Guaranty Association as described below but to the extent that your policy is not protected by the Minnesota Insurance Guaranty Association or if it exceeds the guaranty association's limits, you will only have the assets, if any, of the insolvent insurer to satisfy your claim.

Residents of Minnesota who purchase property and casualty or liability insurance from insurance companies licensed to do business in Minnesota are protected, SUBJECT TO LIMITS AND EXCLUSIONS, in the event the insurer becomes insolvent. This protection is provided by the Minnesota Insurance Guaranty Association.

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Minnesota Insurance Guaranty Association(insert current address and telephone number)

The maximum amount that the Minnesota Insurance Guaranty Association will pay in regard to a claim under all policies issued by the same insurer is limited to \$300,000. This limit does not apply to workers' compensation insurance. Protection by the guaranty association is subject to other substantial limitations and exclusions. If your claim exceeds the guaranty association's limits, you may still recover a part or all of that amount from the proceeds from the liquidation of the insolvent insurer, if any exist. Funds to pay claims may not be immediately available. The guaranty association assesses insurers licensed to sell property and casualty or liability insurance in Minnesota after the insolvency occurs. Claims are paid from the assessment.

THE PROTECTION PROVIDED BY THE GUARANTY ASSOCIATION IS NOT A SUBSTITUTE FOR USING CARE IN SELECTING INSURANCE COMPANIES THAT ARE WELL MANAGED AND FINANCIALLY STABLE. IN SELECTING AN INSURANCE COMPANY OR POLICY, YOU SHOULD NOT RELY ON PROTECTION BY THE GUARANTY ASSOCIATION.

THIS NOTICE IS REQUIRED BY MINNESOTA STATE LAW TO ADVISE POLICYHOLDERS OF PROPERTY AND CASUALTY INSURANCE POLICIES OF THEIR RIGHTS IN THE EVENT THEIR INSURANCE CARRIER BECOMES INSOLVENT. THIS NOTICE IN NO WAY IMPLIES THAT THE COMPANY CURRENTLY HAS ANY TYPE OF FINANCIAL PROBLEMS. ALL PROPERTY AND CASUALTY INSURANCE POLICIES ARE REQUIRED TO PROVIDE THIS NOTICE."

Additional language may be added to the notice if approved by the commissioner prior to its use in the form.

Subd. 3. EFFECT OF NOTICE. The distribution, delivery, contents, or interpretation of the notice required by this section shall not mean that the policy would be covered in the event of the insolvency of a member insurer if coverage is not otherwise provided by this chapter. Failure to receive the notice does not give the policyholder, certificate holder, or any other interested party any greater rights than those provided by this chapter.

Subd. 4. EXEMPTION. This section does not apply to fraternal benefit societies regulated under chapter 64B or to fidelity or surety bonds, policies, or contracts.

Sec. 11. [60C.22] NOTICE FOR POLICY OR CONTRACT NOT COVERED.

A policy or contract not covered by the Minnesota Life and Health Insurance Guaranty Association or the Minnesota Insurance Guaranty Association must contain the following notice in 10 point type, stamped in red ink on the policy or contract and the application:

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

“THIS POLICY OR CONTRACT IS NOT PROTECTED BY THE MINNESOTA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION OR THE MINNESOTA INSURANCE GUARANTY ASSOCIATION. IN THE CASE OF INSOLVENCY, PAYMENT OF CLAIMS IS NOT GUARANTEED. ONLY THE ASSETS OF THIS INSURER WILL BE AVAILABLE TO PAY YOUR CLAIM.”

Sec. 12. Minnesota Statutes 1991 Supplement, section 60D.17, subdivision 1, is amended to read:

Subdivision 1. **FILING REQUIREMENTS.** No person other than the issuer shall; (1) make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities or, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, the person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of the insurer; ~~No person shall;~~ or (2) enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time the offer, request, or invitation is made or the agreement is entered into, or before the acquisition of the securities if no offer or agreement is involved, the person has filed with the commissioner and has sent to the insurer, a statement containing the information required by this section and the offer, request, invitation, agreement, or acquisition has been approved by the commissioner in the manner prescribed in this section.

For purposes of this section, a domestic insurer includes a person controlling a domestic insurer unless the person as determined by the commissioner is either directly or through its affiliates primarily engaged in business other than the business of insurance. However, the person shall file a preacquisition notification with the commissioner containing the information set forth in section 60D.18, subdivision 3, paragraph (b), 30 days before the proposed effective date of the acquisition. Failure to file is subject to section 60D.18, subdivision 5. For the purposes of this section, “person” does not include any securities broker holding, in the usual and customary brokers function, less than 20 percent of the voting securities of an insurance company or of any person that controls an insurance company.

Sec. 13. Minnesota Statutes 1991 Supplement, section 61A.28, subdivision 1, is amended to read:

Subdivision 1. **INVESTMENT GUIDELINES AND PROCEDURES.** Each domestic life insurance company must comply with section 60A.112.

No investment or loan, except policy loans, shall be made by a domestic life insurance company unless authorized or approved by the board of directors or by a committee of directors, officers, or employees of the company designated by the board and charged with the duty of supervising the investment or loan. Accurate records of all authorizations and approvals must be maintained.

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

The capital, surplus and other funds of every domestic life insurance company, whether incorporated by special act or under the general law (in addition to investments in real estate as otherwise permitted by law) may be invested only in one or more of the following kinds of securities or property. An investment may not be made under this section if the required interest obligation is in default.

Investments must be valued in accordance with the valuation procedures established by the National Association of Insurance Commissioners, unless the commissioner requires or finds another method of valuation reasonable under the circumstances. Other invested assets must be valued according to the procedures promulgated by the National Association of Insurance Commissioners, if not addressed in another section, unless the commissioner requires or finds another method of valuation reasonable under the circumstances.

Sec. 14. Minnesota Statutes 1990, section 61B.03, subdivision 5, is amended to read:

Subd. 5. **CONTRACTUAL OBLIGATION.** (a) "Contractual obligation" means any obligation under covered policies, except as provided in paragraphs (c) and (d) of this subdivision.

(b) For purposes of this chapter, contractual obligation includes an unallocated annuity contract which funds a qualified defined contribution pension plan pursuant to Internal Revenue Code of 1986, sections 401(k), 403(b), and 457.

(c) Notwithstanding the definition of contractual obligation contained in paragraphs (a) and (b), contractual obligation does not include any obligation to nonresident participants of a covered plan or to the plan sponsor, employer, trustee, or other party who owns the contract; in such cases, the association is obligated under this chapter only to participants in a covered plan who are residents of the state of Minnesota on the date of impairment.

(d) Except as provided in paragraphs (a) and (b), contractual obligation does not include an unallocated annuity contract issued in connection with a defined benefit plan protected by the federal Pension Benefit Guaranty Corporation, or a contract issued to, or purchased at the direction of, any governmental bonding authorities, such as a municipal guaranteed investment contract.

Sec. 15. Minnesota Statutes 1990, section 61B.06, subdivision 7, is amended to read:

Subd. 7. **ASSIGNMENT; SUBROGATION.** (a) ~~Any~~ A person receiving benefits under sections 61B.01 to 61B.16 shall be ~~deemed~~ considered to have assigned rights under, and any causes of action relating to, the covered policy or contract to the association to the extent of the benefits received because of sections 61B.01 to 61B.16, whether the benefits are payments of or on account of contractual obligations or continuation of coverage, or provision of substitute or alternative coverages. The association may require an assignment to it of ~~the~~

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

those rights and causes of action by any a payee, policy or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any rights or benefits conferred by sections 61B.01 to 61B.16 upon the that person. The association shall be subrogated to these rights against the assets of any impaired insurer. The subrogation rights of the association include any rights that a person may have as a beneficiary of a plan covered under the Employee Retirement Income Security Act of 1974, United States Code, title 29, section 1003, as amended through December 31, 1991.

(b) The subrogation rights of the association under this subdivision shall have the same priority against the assets of the impaired or insolvent insurer as that of possessed by the person entitled to receive benefits under sections 61B.01 to 61B.16.

(c) In addition to paragraphs (a) and (b), the association has all common law rights of subrogation and other equitable or legal remedies that would have been available to the impaired or insolvent insurer or holder of a policy or contract with respect to that policy or contract.

Sec. 16. Minnesota Statutes 1991 Supplement, section 61B.12, subdivision 6, is amended to read:

Subd. 6. NOTICE CONCERNING LIMITATIONS AND EXCLUSIONS. ~~On and after January 1, 1992;~~ No person, including an insurer, agent, or affiliate of an insurer or agent, shall offer for sale in this state a covered life insurance, annuity, or health insurance policy or contract without delivering at the time of application for that policy or contract a ~~separate~~ notice in the form ~~the commissioner from time to time may approve for use in this state~~ specified in subdivision 8, relating to coverage provided by the Minnesota Life and Health Insurance Guaranty Association. The notice ~~must be signed by the applicant and kept on file by the person offering the policy or contract for sale. A copy of the signed notice must be given to the applicant may be part of the application. A copy of the notice must be given to the applicant. The notice must be delivered to the applicant at the time of application for the policy or contract, except that if the application is not taken from the applicant in person, the notice must be sent to the applicant within 72 hours after the application is taken. The person offering the policy or contract shall document the fact that the notice was given at the time of application or was sent within the specified time and shall include a copy of the notice with the policy or contract when delivered to the applicant.~~

Sec. 17. Minnesota Statutes 1990, section 61B.12, is amended by adding a subdivision to read:

Subd. 8. FORM. The notice required under subdivision 6 must be in the following form:

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

“NOTICE CONCERNING POLICYHOLDER RIGHTS IN AN
INSOLVENCY UNDER THE MINNESOTA LIFE AND HEALTH
INSURANCE GUARANTY ASSOCIATION LAW

If the insurer who issued your life, annuity, or health insurance policy becomes impaired or insolvent, you are entitled to compensation for your policy from the assets of that insurer. The amount you recover will depend on the financial condition of the insurer.

In addition, residents of Minnesota who purchase life insurance, annuities, or health insurance from insurance companies authorized to do business in Minnesota are protected, SUBJECT TO LIMITS AND EXCLUSIONS, in the event the insurer becomes financially impaired or insolvent. This protection is provided by the Minnesota Life and Health Insurance Guaranty Association.

Minnesota Life & Health Insurance Guaranty Association

(insert current address and telephone number)

The maximum amount the guaranty association will pay for all policies issued on one life by the same insurer is limited to \$300,000. Subject to this \$300,000 limit, the guaranty association will pay up to \$100,000 in life insurance cash surrender values, \$300,000 in life insurance death benefits, or up to \$300,000 for other types of benefits. These are the maximum claim amounts. Coverage by the guaranty association is also subject to other substantial limitations and exclusions and requires continued residency in Minnesota. If your claim exceeds the guaranty association's limits, you may still recover a part or all of that amount from the proceeds of the liquidation of the insolvent insurer, if any exist. Funds to pay claims may not be immediately available. The guaranty association assesses insurers licensed to sell life and health insurance in Minnesota after the insolvency occurs. Claims are paid from this assessment.

THE COVERAGE PROVIDED BY THE GUARANTY ASSOCIATION IS NOT A SUBSTITUTE FOR USING CARE IN SELECTING INSURANCE COMPANIES THAT ARE WELL MANAGED AND FINANCIALLY STABLE. IN SELECTING AN INSURANCE COMPANY OR POLICY, YOU SHOULD NOT RELY ON COVERAGE BY THE GUARANTY ASSOCIATION.

THIS NOTICE IS REQUIRED BY MINNESOTA STATE LAW TO ADVISE POLICYHOLDERS OF LIFE, ANNUITY, OR HEALTH INSURANCE POLICIES OF THEIR RIGHTS IN THE EVENT THEIR INSURANCE CARRIER BECOMES FINANCIALLY INSOLVENT. THIS NOTICE IN NO WAY IMPLIES THAT THE COMPANY CURRENTLY HAS ANY TYPE OF FINANCIAL PROBLEMS. ALL LIFE, ANNUITY, AND HEALTH INSURANCE POLICIES ARE REQUIRED TO PROVIDE THIS NOTICE.”

Additional language may be added to the notice if approved by the commissioner prior to its use in the form. This section does not apply to fraternal benefit societies regulated under chapter 64B.

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

Sec. 18. Minnesota Statutes 1990, section 61B.12, is amended by adding a subdivision to read:

Subd. 9. NOTICE FOR POLICY OR CONTRACT NOT COVERED. A policy or contract not covered by the Minnesota Life and Health Insurance Guaranty Association or the Minnesota Insurance Guaranty Association must contain the following notice in 10 point type, stamped in red ink on the policy or contract and the application:

"THIS POLICY OR CONTRACT IS NOT PROTECTED BY THE MINNESOTA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION OR THE MINNESOTA INSURANCE GUARANTY ASSOCIATION. IN THE CASE OF INSOLVENCY, PAYMENT OF CLAIMS IS NOT GUARANTEED. ONLY THE ASSETS OF THIS INSURER WILL BE AVAILABLE TO PAY YOUR CLAIM."

Sec. 19. Minnesota Statutes 1990, section 61B.12, is amended by adding a subdivision to read:

Subd. 10. COMBINATION FIXED-VARIABLE POLICY. The notice required in subdivision 8 must clearly describe what portions of a combination fixed-variable policy are not covered by the Minnesota Life and Health Insurance Guaranty Association. The notice requirements specified in subdivision 9 do not apply to a combination fixed-variable policy.

Sec. 20. Laws 1991, chapter 325, article 5, section 6, is amended to read:

Sec. 6. **EFFECTIVE DATE.**

Sections 2 and 3 are effective August 1, ~~1992~~ 1993.

Sec. 21. **ACTUARY.**

Minnesota Statutes, section 43A.17, subdivision 1, does not apply to the salary of the actuary authorized under Laws 1991, chapter 325, article 7, section 7.

Sec. 22. **REPEALER.**

Minnesota Statutes 1991 Supplement, section 72A.206, is repealed.

Sec. 23. **EFFECTIVE DATE.**

Sections 1 to 9, 12 to 15, 20, 21, and 22 are effective the day after final enactment. Sections 14 and 15 are intended to clarify existing law and apply to all covered policies or contracts issued or renewed by insurers which become insolvent after May 27, 1977.

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

ARTICLE 3

INTEREST RATE ADVERTISING

Section 1. Minnesota Statutes 1990, section 45.025, subdivision 2, as amended by Laws 1992, chapter 427, section 2, is amended to read:

Subd. 2. **GENERAL RESTRICTION.** A person may not advertise the interest rate of an investment product unless: ~~(1) the effective net annual yield, or the yield to maturity if the investment product is a note, bond, or debenture that bears interest at a fixed rate and has a stated maturity; or (2) the effective net annual yield if the investment product does not bear interest at a fixed rate or has an indefinite life,~~ is disclosed in an equally prominent manner.

The name and address of the issuer, or a person from whom the name and address of the issuer may be obtained, and any prepayment expense, surrender charge, or withdrawal penalty charged by the issuer must also be disclosed in a prominent manner. If the expense, charge, or penalty varies according to the length of time the product is held, the advertisement must disclose the expense, fee, or penalty imposed if surrendered or terminated within one year.

Presented to the governor April 17, 1992

Signed by the governor April 27, 1992, 1:57 p.m.

CHAPTER 541—S.F.No. 2781

An act relating to claims against the state; providing for payment of various claims; appropriating money.

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

Section 1. DEPARTMENT OF CORRECTIONS.

The sums set forth in this section are appropriated from the general fund to the commissioner of corrections for payment to the persons named in this section in full and final payment of claims against the state. These appropriations are available until June 30, 1993.

To reimburse New Ulm Clinic (\$1,108.80) and Sioux Valley Hospital (\$1,631.67) for medical services provided to Sue Ann Brandt to diagnose and repair a hernia condition sustained while performing sentencing to service work.....\$2,740.47.

To reimburse Minnesota department of human services for services provided to Dennis Busse sustained while performing sentencing to service work.....\$7,955.95.

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