

**CHAPTER 131—S.F.No. 1610**

*An act relating to insurance; regulating liquidations and investments of insurers; regulating consolidated or combined financial statements and annuities purchased to finance structured settlement agreements; authorizing domestic mutual life companies to be formed with or establish guaranty funds; regulating certain workers compensation rates and rating plans; amending Minnesota Statutes 2000, sections 60A.11, subdivision 10, by adding a subdivision; 60A.129, subdivision 5; 60B.44, subdivision 4; 60L.01, subdivision 14, by adding a subdivision; 60L.08, by adding a subdivision; 60L.10, subdivision 1; 61A.276, subdivision 2; 61A.28, subdivision 6, by adding a subdivision; 61A.29, subdivision 2; 79.56, subdivision 3; proposing coding for new law in Minnesota Statutes, chapters 60A; 61A.*

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

Section 1. Minnesota Statutes 2000, section 60A.11, subdivision 10, is amended to read:

Subd. 10. **DEFINITIONS.** The following terms have the meaning assigned in this subdivision for purposes of this section and section 60A.111:

(a) "Adequate evidence" means a written confirmation, advice, or other verification issued by a depository, issuer, or custodian bank which shows that the investment is held for the company;

(b) "Adequate security" means a letter of credit qualifying under subdivision 11, paragraph (f), cash, or the pledge of an investment authorized by any subdivision of this section;

(c) "Admitted assets," for purposes of computing percentage limitations on particular types of investments, means the assets as shown by the company's annual statement, required by section 60A.13, as of the December 31 immediately preceding the date the company acquires the investment;

(d) "Clearing corporation" means The Depository Trust Company or any other clearing agency registered with the securities and exchange commission pursuant to the Securities Exchange Act of 1934, section 17A, Euro-clear Clearance System Limited and CEDEL S.A., and, with the approval of the commissioner, any other clearing corporation as defined in section 336.8-102;

(e) "Control" has the meaning assigned to that term in, and must be determined in accordance with, section 60D.15, subdivision 4;

(f) "Custodian bank" means a bank or trust company or a branch of a bank or trust company that is acting as custodian and is supervised and examined by state or federal authority having supervision over the bank or trust company or with respect to a company's foreign investments only by the regulatory authority having supervision

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over banks or trust companies in the jurisdiction in which the bank, trust company, or branch is located, and any banking institutions qualifying as an "Eligible Foreign Custodian" under the Code of Federal Regulations, section 270.17f-5, adopted under section 17(f) of the Investment Company Act of 1940, and specifically including Euro-clear Clearance System Limited and CEDEL S.A., acting as custodians;

(g) "Evergreen clause" means a provision that automatically renews a letter of credit for a time certain if the issuer of the letter of credit fails to affirmatively signify its intention to nonrenew upon expiration;

(h) "Government obligations" means direct obligations for the payment of money, or obligations for the payment of money to the extent guaranteed as to the payment of principal and interest by any governmental issuer where the obligations are payable from ad valorem taxes or guaranteed by the full faith, credit, and taxing power of the issuer and are not secured solely by special assessments for local improvements;

(i) "Noninvestment grade obligations" means obligations which, at the time of acquisition, were rated below Baa/BBB or the equivalent by a securities rating agency or which, at the time of acquisition, were not in one of the two highest categories established by the securities valuation office of the National Association of Insurance Commissioners;

(j) "Issuer" means the corporation, business trust, governmental unit, partnership, association, individual, or other entity which issues or on behalf of which is issued any form of obligation;

(k) "Licensed real estate appraiser" means a person who develops and communicates real estate appraisals and who holds a current, valid license under chapter 82B or a substantially similar licensing requirement in another jurisdiction;

(l) "Member bank" means a national bank, state bank or trust company which is a member of the Federal Reserve System;

(m) "National securities exchange" means an exchange registered under section 6 of the Securities Exchange Act of 1934 or an exchange regulated under the laws of the Dominion of Canada;

(n) "NASDAQ" means the reporting system for securities meeting the definition of National Market System security as provided under Part I to Schedule D of the National Association of Securities Dealers Incorporated bylaws;

(o) "Obligations" include bonds, notes, debentures, transportation equipment certificates, repurchase agreements, bank certificates of deposit, time deposits, bankers' acceptances, and other obligations for the payment of money not in default as to payments of principal and interest on the date of investment, whether constituting general obligations of the issuer or payable only out of certain revenues or certain funds pledged or otherwise dedicated for payment. Leases are considered obligations if the lease is assigned for the benefit of the company and is nonterminable by the lessee or lessees thereunder upon foreclosure of any lien upon the leased property, and rental payments are sufficient to amortize the investment over the primary lease term;

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(p) "Qualified assets" means the sum of (1) all investments qualified in accordance with this section other than investments in affiliates and subsidiaries, (2) investments in obligations of affiliates as defined in section 60D.15, subdivision 2, secured by real or personal property sufficient to qualify the investment under subdivision 19 or 23, (3) qualified investments in subsidiaries, as defined in section 60D.15, subdivision 9, on a consolidated basis with the insurance company without allowance for goodwill or other intangible value, and (4) cash on hand and on deposit, agent's balances or uncollected premiums not due more than 90 days, assets held pursuant to section 60A.12, subdivision 2, investment income due and accrued, funds due or on deposit or recoverable on loss payments under contracts of reinsurance entered into pursuant to section 60A.09, premium bills and notes receivable, federal income taxes recoverable, and equities and deposits in pools and associations;

(q) "Qualified net earnings" means that the net earnings of the issuer after elimination of extraordinary nonrecurring items of income and expense and before income taxes and fixed charges over the five immediately preceding completed fiscal years, or its period of existence if less than five years, has averaged not less than 1-1/4 times its average annual fixed charges applicable to the period;

(r) "Replicated investment position" means the statement value of the position reported under the heading "Replicated (Synthetic) Asset" on Schedule DB, Part F, of the annual statement of the insurer, or any successor provision;

(s) "Replication transaction" means a derivative transaction that is intended to replicate the performance of one or more assets that an insurer is authorized to acquire under this section. A derivative transaction that either is authorized by subdivision 18, clause (5), or by subdivision 24, or is entered into as a hedging transaction shall not be considered a replication transaction;

(t) "Required liabilities" means the sum of (1) total liabilities as required to be reported in the company's most recent annual report to the commissioner of commerce of this state, (2) for companies operating under the stock plan, the minimum paid-up capital and surplus required to be maintained pursuant to section 60A.07, subdivision 5a, (3) for companies operating under the mutual or reciprocal plan, the minimum amount of surplus required to be maintained pursuant to section 60A.07, subdivision 5b, and (4) the amount, if any, by which the company's loss and loss adjustment expense reserves exceed 350 percent of its surplus as it pertains to policyholders as of the same date. The commissioner may waive the requirement in clause (4) unless the company's written premiums exceed 300 percent of its surplus as it pertains to policyholders as of the same date. In addition to the required amounts pursuant to clauses (1) to (4), the commissioner may require that the amount of any apparent reserve deficiency that may be revealed by one to five year loss and loss adjustment expense development analysis for the five years reported in the company's most recent annual statement to the commissioner be added to required liabilities;

(u) "Revenue obligations" means obligations for the payment of money by a governmental issuer where the obligations are payable from revenues, earnings, or special assessments on properties benefited by local improvements of the issuer which are specifically pledged therefor;

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(v) "Security" has the meaning given in section 5 of the Security Act of 1933 and specifically includes, but is not limited to, stocks, stock equivalents, warrants, rights, options, obligations, American Depository Receipts (ADR's), repurchase agreements, and reverse repurchase agreements; and

(w) "Unrestricted surplus" means the amount by which qualified assets exceed 110 percent of required liabilities.

Sec. 2. Minnesota Statutes 2000, section 60A.11, is amended by adding a subdivision to read:

Subd. 25a. REPLICATION TRANSACTIONS. An insurer engaging in replication transactions shall include all replicated investment positions in calculating compliance with the limitations on investments applicable to the insurer. Replication transactions are permitted only under the authority of subdivision 25. An insurer may invest its unrestricted surplus in a replication transaction only to the extent that the replicated investment position does not cause the total positions represented by the unrestricted surplus to be greater than the total positions represented by the unrestricted surplus as would be permitted in the absence of the replicated investment position.

Sec. 3. Minnesota Statutes 2000, section 60A.129, subdivision 5, is amended to read:

**Subd. 5. CONSOLIDATED FILING.** (a) The commissioner may allow an insurer to file a consolidated loss reserve certification required by subdivision 2, in lieu of separate loss certifications and may allow an insurer to file consolidated or combined audited financial statements required by subdivision 3, paragraph (a), in lieu of separate annual audited financial statements, where it can be demonstrated that an insurer is part of a group of insurance companies that has a pooling or 100 percent reinsurance agreement which substantially affects the solvency and integrity of the reserves of the insurer and the insurer cedes all of its direct and assumed business to the pool. An affiliated insurance company not meeting these requirements may be included in the consolidated or combined audited financial statements, if the company's total admitted assets are less than five percent of the consolidated group's total admitted assets. If these circumstances exist, then the company may file a written application to file a consolidated loss reserve certification and/or consolidated or combined audited financial statements. This application shall be for a specified period.

(b) Upon written application by a domestic insurer, the commissioner may authorize the domestic insurer to include additional affiliated insurance companies in the consolidated or combined audited financial statements. Foreign insurers must obtain the prior written authorization of the commissioner of their state of domicile in order to submit an application for authority to file consolidated or combined audited financial statements. This application shall be for a specified period.

(c) A consolidated annual audit filing shall include a columnar consolidated or combining worksheet. Amounts shown on the audited consolidated or combined financial statement shall be shown on the worksheet. Amounts for each insurer shall be stated separately. Noninsurance operations may be shown on the worksheet on a

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combined or individual basis. Explanations of consolidating or eliminating entries shall be shown on the worksheet. A reconciliation of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statement of the insurers shall be included on the worksheet.

**Sec. 4. [60A.975] DEFINITIONS.**

Subdivision 1. APPLICATION. For purposes of sections 60A.975 and 60A.976, the definitions in this section have the meanings given them.

Subd. 2. ANNUITY ISSUER. "Annuity issuer" means an insurer that issues an insurance contract used to fund periodic payments under a structured settlement agreement.

Subd. 3. STRUCTURED SETTLEMENT. "Structured settlement" means an arrangement for periodic payment of damages entered on behalf of a minor or incompetent person for personal injuries established by settlement or judgment.

Subd. 4. STRUCTURED SETTLEMENT AGREEMENT. "Structured settlement agreement" means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement.

**Sec. 5. [60A.976] ANNUITY ISSUERS FINANCIAL REQUIREMENTS.**

An annuity purchased to finance a structured settlement agreement may be purchased only from an annuity issuer with a financial rating equivalent to A.M. Best Company A+ Class 8 or better; or a Standard & Poor's AA or better.

Sec. 6. Minnesota Statutes 2000, section 60B.44, subdivision 4, is amended to read:

**Subd. 4. LOSS CLAIMS; INCLUDING CLAIMS NOT COVERED BY A GUARANTY ASSOCIATION.** All claims under policies or contracts of coverage for losses incurred including third party claims, and all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which are not under policies or contracts. All claims under life insurance and annuity policies, including funding agreements issued pursuant to section 61A.276, whether for death proceeds, annuity proceeds, or investment values, shall be treated as loss claims. That portion of any loss for which indemnification is provided by other benefits or advantages recovered or recoverable by the claimant shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment made by an employer to an employee shall be treated as a gratuity. Claims not covered by a guaranty association are loss claims.

Sec. 7. Minnesota Statutes 2000, section 60L.01, is amended by adding a subdivision to read:

Subd. 13a. REPLICATED INVESTMENT POSITION. "Replicated investment position" means the statement value of the position reported under the heading

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“Replicated (Synthetic) Asset” on Schedule DB, Part F, of the annual statement of the insurer, or any successor provision.

Sec. 8. Minnesota Statutes 2000, section 60L.01, subdivision 14, is amended to read:

Subd. 14. **REPLICATION TRANSACTION.** “Replication” “Replication transaction” means a derivative transaction involving one or more derivative instruments being used to modify the cash flow characteristics of one or more investments held by an insurer in a manner so that the aggregate cash flows of the derivative instruments and investments reproduce the cash flows of another investment having a higher risk-based capital charge than the risk-based capital charge of the original investments or investments that is intended to replicate the performance of one or more assets that an insurer is authorized to acquire under sections 60L.01 to 60L.15. A derivative transaction that is entered into as a hedging transaction is not considered a replication transaction.

Sec. 9. Minnesota Statutes 2000, section 60L.08, is amended by adding a subdivision to read:

Subd. 7. **REPLICATION TRANSACTIONS.** (a) An insurer engaging in replication transactions shall include all replicated investment positions in calculating compliance with the limitations on investments contained in this section. So long as the insurer so complies with the limitations on investments contained in this section, then the insurer may count a replication transaction and any related investment of the insurer for the purposes specified in section 60L.11, to the extent the insurer has appropriately assigned the transaction or other investment to an investment class authorized in section 60L.07. An insurer shall not otherwise count replicated investment positions for the purposes specified in section 60L.11.

(b) If an investment position of the insurer includes a replicated investment position and exceeds an applicable limitation contained in this section, then the insurer may allocate part or all of the replicated investment position as follows for the purposes of calculating compliance with the limitations on investments and other requirements contained in sections 60L.01 to 60L.15: to the extent an insurer owns assets in excess of its minimum asset requirement, the insurer may deem a replicated investment position to be among such excess assets, but only to the extent that the replicated investment position does not cause the total positions represented by such excess assets to be greater than the total positions represented by such excess assets as would be permitted in the absence of the replicated investment position.

Sec. 10. Minnesota Statutes 2000, section 60L.10, subdivision 1, is amended to read:

Subdivision 1. **PROHIBITIONS.** An insurer may not invest in investments that are prohibited for an insurer by law. The use of a derivative instrument for replication, or for any purposes other than hedging or income generation, or replication is prohibited.

Sec. 11. Minnesota Statutes 2000, section 61A.276, subdivision 2, is amended to read:

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Subd. 2. **ISSUANCE.** The funding agreements may be issued to: (1) individuals; or (2) persons authorized by a state or foreign country to engage in an insurance business or subsidiaries or affiliates of these persons; or (3) entities other than individuals and other than persons authorized to engage in an insurance business, and subsidiaries and affiliates of these persons, for the following purposes: (i) to fund benefits under any employee benefit plan as defined in the Employee Retirement Income Security Act of 1974, as now or hereafter amended, maintained in the United States or in a foreign country; (ii) to fund the activities of any organization exempt from taxation under section 501(c) of the Internal Revenue Code of 1986, as amended through December 31, 1992, or of any similar organization in any foreign country; (iii) to fund any program of any state, foreign country or political subdivision thereof, or any agency or instrumentality thereof; (iv) to fund any agreement providing for periodic payments in satisfaction of a claim; or (v) to fund a program of a financial institution limited to banks, thrifts, credit unions, and investment companies registered under the Investment Company Act of 1940. No funding agreement shall be issued in an amount less than \$1,000,000 that has assets in excess of \$25,000,000. No funding agreement shall be issued in an amount less than \$1,000,000.

Sec. 12. Minnesota Statutes 2000, section 61A.28, subdivision 6, is amended to read:

Subd. 6. **STOCKS, OBLIGATIONS, AND OTHER INVESTMENTS.** (a) Common stocks, common stock equivalents, or securities convertible into common stock or common stock equivalents of a business entity organized under the laws of the United States or any state thereof, or the Dominion of Canada or any province thereof, if the net earnings of the business entity after the elimination of extraordinary nonrecurring items of income and expense and before income taxes and fixed charges over the five immediately preceding completed fiscal years, or its period of existence if less than five years, has averaged not less than 1-1/4 times its average annual fixed charges applicable to the period.

(b) Preferred stock of, or common or preferred stock guaranteed as to dividends by a business entity organized under the laws of the United States or any state thereof, or the Dominion of Canada or any province thereof, under the following conditions: (1) No investment may be made under this paragraph in a stock upon which any dividend, current or cumulative, is in arrears; (2) the company may not invest in stocks under this paragraph and in common stocks under paragraph (a) if the investment causes the company's aggregate investments in the common or preferred stocks to exceed 25 percent of the company's total admitted assets, provided that no more than 20 percent of the company's admitted assets may be invested in common stocks under paragraph (a); and (3) the company may not invest in any preferred stock or common stock guaranteed as to dividends, which is rated in the four lowest categories established by the securities valuation office of the National Association of Insurance Commissioners, if the investment causes the company's aggregate investment in the lower rated preferred or common stock guaranteed as to dividends to exceed five percent of its total admitted assets.

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(c) Warrants, options, and rights to purchase stock if the stock, at the time of the acquisition of the warrant, option, or right to purchase, would qualify as an investment under paragraph (a) or (b), whichever is applicable. A company shall not invest in a warrant, option, or right to purchase stock if, upon purchase and immediate exercise thereof, the acquisition of the stock violates any of the concentration limitations contained in paragraphs (a) and (b).

(d) In addition to amounts that may be invested under subdivision 8 and without regard to the percentage limitation applicable to stocks, warrants, options, and rights to purchase, the securities of any face amount certificate company, unit investment trust, or management type investment company, registered or in the process of registration under the Investment Company Act of 1940 as from time to time amended. In addition, the company may transfer assets into one or more of its separate accounts for the purpose of establishing, or supporting its contractual obligations under, the accounts in accordance with the provisions of sections 61A.13 to 61A.21. A company may not invest in a security authorized under this paragraph if the investment causes the company's aggregate investments in the securities to exceed five ten percent of its total admitted assets, except that for a health service plan corporation operating under chapter 62C, and for a health maintenance organization operating under chapter 62D, the company's aggregate investments may not exceed 20 percent of its total admitted assets. No more than five percent of the allowed investment by health service plan corporations or health maintenance organizations may be invested in funds that invest in assets not backed by the federal government. When investing in money market mutual funds, nonprofit health service plans regulated under chapter 62C, and health maintenance organizations regulated under chapter 62D, shall establish a trustee custodial account for the transfer of cash into the money market mutual fund.

(e) Investment grade obligations that are:

(1) bonds, obligations, notes, debentures, repurchase agreements, or other evidences of indebtedness of a business entity, organized under the laws of the United States or any state thereof, or the Dominion of Canada or any province thereof; and

(2) rated in one of the four highest rating categories by at least one nationally recognized statistical rating organization, or are rated in one of the two highest categories established by the securities valuation office of the National Association of Insurance Commissioners.

(f) Noninvestment grade obligations: A company may acquire noninvestment grade obligations as defined in subclause (i) (hereinafter noninvestment grade obligations) which meet the earnings test set forth in subclause (ii). A company may not acquire a noninvestment grade obligation if the acquisition will cause the company to exceed the limitations set forth in subclause (iii).

(i) A noninvestment grade obligation is an obligation of a business entity, organized under the laws of the United States or any state thereof, or the Dominion of Canada or any province thereof, that is not rated in one of the four highest rating categories by at least one nationally recognized statistical rating organization, or is not rated in one of the two highest categories established by the securities valuation office

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of the National Association of Insurance Commissioners.

(ii) Noninvestment grade obligations authorized by this subdivision may be acquired by a company if the business entity issuing or assuming the obligation, or the business entity securing or guaranteeing the obligation, has had net earnings after the elimination of extraordinary nonrecurring items of income and expense and before income taxes and fixed charges over the five immediately preceding completed fiscal years, or its period of existence of less than five years, has averaged not less than 1-1/4 times its average annual fixed charges applicable to the period; provided, however, that if a business entity issuing or assuming the obligation, or the business entity securing or guaranteeing the obligation, has undergone an acquisition, recapitalization, or reorganization within the immediately preceding 12 months, or will use the proceeds of the obligation for an acquisition, recapitalization, or reorganization, then such business entity shall also have, on a pro forma basis, for the next succeeding 12 months, net earnings averaging 1-1/4 times its average annual fixed charges applicable to such period after elimination of extraordinary nonrecurring items of income and expense and before taxes and fixed charges; no investment may be made under this section upon which any interest obligation is in default.

(iii) Limitation on aggregate interest in noninvestment grade obligations. A company may not invest in a noninvestment grade obligation if the investment will cause the company's aggregate investments in noninvestment grade obligations to exceed the applicable percentage of admitted assets set forth in the following table:

Effective Date	Percentage of Admitted Assets
January 1, 1992	20
January 1, 1993	17.5
January 1, 1994	15

Nothing in this paragraph limits the ability of a company to invest in noninvestment grade obligations as provided under subdivision 12.

(g) Obligations for the payment of money under the following conditions: (1) The obligation must be secured, either solely or in conjunction with other security, by an assignment of a lease or leases on property, real or personal; (2) the lease or leases must be nonterminable by the lessee or lessees upon foreclosure of any lien upon the leased property; (3) the rents payable under the lease or leases must be sufficient to amortize at least 90 percent of the obligation during the primary term of the lease; and (4) the lessee or lessees under the lease or leases, or a governmental entity or business entity, organized under the laws of the United States or any state thereof, or the Dominion of Canada, or any province thereof, that has assumed or guaranteed any lessee's performance thereunder, must be a governmental entity or business entity whose obligations would qualify as an investment under subdivision 2 or paragraph (e) or (f). A company may acquire leases assumed or guaranteed by a noninvestment grade lessee unless the value of the lease, when added to the other noninvestment grade obligations owned by the company, exceeds 15 percent of the company's admitted assets.

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(h) A company may sell call options against stocks or other securities owned by the company and may purchase call options in a closing transaction against a call option previously written by the company. In addition to the authority granted by paragraph (c), to the extent and on the terms and conditions the commissioner determines to be consistent with the purposes of this chapter, a company may purchase or sell other exchange-traded call options, and may sell or purchase exchange-traded put options.

(i) A company may not invest in a security or other obligation authorized under this subdivision if the investment, valued at cost at the date of purchase, causes the company's aggregate investment in any one business entity to exceed two percent of the company's admitted assets.

(j) For nonprofit health service plan corporations regulated under chapter 62C, and for health maintenance organizations regulated under chapter 62D, a company may invest in commercial paper rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization, or rated in one of the two highest categories established by the securities valuation office of the National Association of Insurance Commissioners, if the investment, valued at cost at the date of purchase, does not cause the company's aggregate investment in any one business entity to exceed six percent of the company's admitted assets.

Sec. 13. Minnesota Statutes 2000, section 61A.28, is amended by adding a subdivision to read:

Subd. 14. REPLICATION TRANSACTIONS. An insurer engaging in replication transactions shall include all replicated investment positions in calculating compliance with the limitations on investments applicable to the insurer. Replication transactions are permitted only under the authority of subdivision 12. For these purposes, "replication transaction" means a derivative transaction that is intended to replicate the performance of one or more assets that an insurer is authorized to acquire under applicable law. A derivative transaction that either is authorized by subdivision 6, 8, or 9a or section 61A.29, subdivision 2, paragraph (d), or is entered into as a hedging transaction shall not be considered a replication transaction. "Replicated investment position" means the statement value of the position reported under the heading "Replicated (Synthetic) Asset" on Schedule DB, Part F, of the annual statement of the insurer, or any successor provision.

Sec. 14. Minnesota Statutes 2000, section 61A.29, subdivision 2, is amended to read:

**Subd. 2. AUTHORIZED INVESTMENTS.** A company may invest in (i) foreign assets denominated in United States dollars; (ii) foreign assets denominated in foreign currency; and (iii) United States assets denominated in foreign currency. The investments may be made in any combination of the following:

(a) Obligations of sovereign governments and political subdivisions thereof and obligations issued or fully guaranteed by a supranational bank or organization, other than those described in section 61A.28, subdivision 2, paragraph (e), provided that the

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obligations are rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization in the United States. For purposes of this section, "supranational bank" means a bank owned by a number of sovereign nations and engaging in international borrowing and lending.

(b) Obligations of a foreign business entity, provided that the obligation (i) is rated in one of the four highest rating categories by at least one nationally recognized statistical rating organization in the United States or by a similarly recognized statistical rating organization, as approved by the commissioner, in the country where the investment is made; or (ii) is rated in one of the two highest categories established by the securities valuation office of the National Association of Insurance Commissioners.

(c) Stock or stock equivalents issued by a foreign entity if the stock or stock equivalents are regularly traded on the Frankfurt, London, Paris, or Tokyo stock exchange or any similar securities exchange as may be approved from time to time by the commissioner and subject to oversight by the government of the country in which the exchange is located regular trading occurs.

(d) Financial transactions for the sole purpose of managing the foreign currency risk of investments made under this subdivision, provided that the financial transactions are entered into under a detailed plan maintained by the company. For purposes of this paragraph, "financial transactions" include, but are not limited to, the purchase or sale of currency swaps, forward agreements, and currency futures.

#### Sec. 15. [61A.321] GUARANTY FUNDS.

(a) A domestic mutual life insurance company may be formed with, or an existing domestic mutual life insurance company may establish, a guaranty fund divided into certificates of \$10 each, or multiples thereof, and this guaranty fund shall be invested in the same manner as is provided for the investment of capital stock of insurance companies.

(b) The certificate holders of the guaranty fund are entitled to an annual dividend of not more than ten percent on their respective certificates, if the net profits or unused premiums left after all losses, expenses, or liabilities then incurred, with reserves for reinsurance, are provided for, are sufficient to pay the annual dividend. If the dividends in any one year are less than ten percent, the difference may be made up in any subsequent year or years from the net profits. Approval of the commissioner must be obtained before accrual for or payment of the dividend, or any repayment of principal.

(c) The guaranty fund must be applied to the payment of losses and expenses when necessary, and, if the guaranty fund is impaired, the directors may make good the whole or any part of the impairment from future profits of the company, but no dividend shall be paid on guaranty fund certificates while the guaranty fund is impaired. The holder of the guaranty fund certificate is not liable for any more than the amount of the certificate which has not been paid in, and this amount must be plainly and legibly stated on the face of the certificate.

(d) Notwithstanding any other provision of law, each certificate holder of record is entitled to one vote in person or by proxy in any meeting of the members of the

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company for each \$10 investment in guaranty fund certificates.

(e) The guaranty fund may be reduced or retired by vote of the policyholders of the company and the assent of the commissioner, if the net assets of the company above its reinsurance reserve and all other claims and obligations and the amount of its guaranty fund certificates and interest on the certificates for two years last preceding and including the date of its last annual statement are not less than 50 percent of the premiums in force. Due notice of this proposed action on the part of the company shall be mailed to each policyholder of the company not less than 30 days before the meeting when the action may be taken.

(f) In domestic mutual life insurance companies with a guaranty fund, the certificate holders shall be entitled to choose and elect from among their own number or from among the policyholders at least one-half or more of the total number of directors.

(g) If any domestic mutual life insurance company with a guaranty fund ceases to do business, it shall not divide among its certificate holders any part of its assets or guaranty fund until all its debts and obligations have been paid or canceled.

(h) Foreign mutual life insurance companies having a guaranty fund shall not be required to make their certificate of guaranty fund conform to the provisions of this section, but when the certificates do not conform with this section, the amount of the guaranty fund shall be charged as a liability.

Sec. 16. Minnesota Statutes 2000, section 79.56, subdivision 3, is amended to read:

Subd. 3. **PENALTIES.** (a) Any insurer using a rate or a rating plan which has not been filed shall be subject to a fine of up to \$100 for each day the failure to file continues. The commissioner may, after a hearing on the record, find that the failure is willful. A willful failure to meet filing requirements shall be punishable by a fine of up to \$500 for each day during which a willful failure continues. These penalties shall be in addition to any other penalties provided by law.

(b) Notwithstanding this subdivision, an employer that generates \$500,000 \$250,000 in annual written workers' compensation premium under the rates and rating plan of an insurer before the application of any large deductible rating plans, may be written by that insurer using rates or rating plans that are not subject to disapproval but which have been filed. ~~The \$500,000 threshold shall be increased on January 1, 1996, and on each January 1 thereafter by the percentage increase in the statewide average weekly wage, to the nearest \$1,000. The commissioner shall advise insurers licensed to write workers' compensation insurance in this state of the annual threshold adjustment.~~

Presented to the governor May 17, 2001

Signed by the governor May 21, 2001, 10:40 a.m.

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