

## CHAPTER 60C

### INSURANCE GUARANTY ASSOCIATION

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#### 60C.01 CITATION.

This chapter may be cited as the "Minnesota Insurance Guaranty Association Act."

**History:** *1971 c 145 s 1*

#### 60C.02 SCOPE, PURPOSES, AND CONSTRUCTION.

Subdivision 1. **Scope.** This chapter applies to all kinds of direct insurance, except:

- (1) life;
- (2) annuity;
- (3) title;
- (4) accident and sickness;
- (5) credit;
- (6) vendor's single interest or collateral protection or any similar insurance protecting the interests of a creditor arising out of a creditor debtor transaction;
- (7) mortgage guaranty;
- (8) financial guaranty or other forms of insurance offering protection against investment risks;
- (9) ocean marine;
- (10) a transaction or combination of transactions between a person, including affiliates of the person, and an insurer, including affiliates of the insurer, that involves the transfer of investment or credit risk unaccompanied by transfer of insurance risk;

(11) insurance provided by or guaranteed by government; or

(12) insurance of warranties or service contracts, including insurance that provides for the repair, replacement, or services of goods or property, or indemnification for repair, replacement or service, for the operation or structural failure of the goods or property due to a defect in materials, workmanship or normal wear and tear, or provides reimbursement for the liability insured by the user of agreement or service contracts that provide these benefits.

Subd. 2. **Purposes.** The purposes of this chapter are to provide a mechanism for the payment of covered claims under certain insurance policies and surety bonds, to the extent provided in this chapter, minimize excessive delay in payment and to avoid financial loss to claimants or policyholders because of the liquidation of an insurer, and to provide an association to assess the cost of the protection among insurers.

Subd. 3. **Construction.** This chapter shall be liberally construed to effect the purposes stated in subdivision 2.

**History:** 1971 c 145 s 2; 1975 c 359 s 23; 1976 c 185 s 1,2; 1982 c 424 s 12; 1988 c 541 s 1; 1991 c 325 art 6 s 2; 1994 c 426 s 10; 1997 c 52 s 1; 2003 c 74 s 1

### 60C.03 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of this chapter, the following terms have the meanings given in this section.

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

Subd. 3. **Association.** "Association" means the Minnesota Insurance Guaranty Association created under section 60C.04.

Subd. 4. **Net direct written premiums.** "Net direct written premiums" means direct gross premiums written in this state on surety bonds and insurance policies not excepted from the scope of this chapter by section 60C.02, less return premiums thereon and dividends paid or credited to policyholders on such direct business.

Subd. 5. **Person.** "Person" means any individual, corporation, partnership, association, or voluntary organization, and includes governmental entities.

Subd. 6. **Member insurer.** "Member insurer" means any person, including reciprocals or interinsurance exchanges operating under chapter 71A and township mutual fire insurance companies operating under sections 67A.01 to 67A.26, who (1) writes any kind of insurance not excepted from the scope of this chapter by section 60C.02, and (2) is licensed to transact insurance business in this state, except any nonprofit service plan incorporated or operating under sections 62C.01 to 62C.23 and any health plan incorporated under chapter 317A, and includes an insurer whose license or certificate of authority in this state may have been suspended, revoked, not renewed, or voluntarily withdrawn.

An insurer ceases to be a member insurer the day following the termination or expiration of its license to transact the kinds of insurance to which this chapter applies. The insurer remains liable as a member insurer for any and all obligations, including obligations for assessments levied before the termination or expiration with respect to an insurer that became an insolvent insurer before the termination or expiration of the insurer's license.

Subd. 7. **Resident.** "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 whose principal place of business is located in this state at the time of the insured event.

Subd. 8. **Insolvent insurer.** "Insolvent insurer" means an insurer licensed to transact insurance in this state, either at the time the policy was issued, or when the insured event occurred, and against whom a final order of liquidation has been entered after April 30, 1979, with a finding of insolvency by a court of competent jurisdiction in the insurer's state of domicile. An insurer placed under administrative supervision under sections 60G.01 to 60G.09 or determined to be in hazardous financial condition under sections 60G.20 to 60G.22 is not an insolvent insurer as a result of that placement or determination.

Subd. 9. **Affiliate.** "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 another person.

Subd. 10. **Financial guaranty insurance.** "Financial guaranty insurance" includes any insurance under which loss is payable upon proof of occurrence of any of the following events to the damage of an insured claimant or obligee:

(1) failure of any obligor or obligors on any debt instrument or other monetary obligation, including common or preferred stock, to pay when due the principal, interest, dividend or purchase price of such instrument or obligation, whether such failure is the result of a financial default or insolvency and whether or not such obligation is incurred directly or as guarantor by, or on behalf of, another obligor which has also defaulted;

(2) changes in the level of interest rates whether short term or long term, or in the difference between interest rates existing in various markets;

(3) changes in the rate of exchange or currency, or from the inconvertibility of one currency into another for any reason; and

(4) changes in the value of specific assets or commodities, or price levels in general.

Subd. 11. **Ocean marine insurance.** "Ocean marine insurance" means a form of insurance, regardless of the name, label, or marketing designation of the insurance policy, that insures against maritime perils or risks and other related perils or risks, that are usually insured against by traditional marine insurance, such as hull and machinery, marine builders risk, and marine protection and indemnity. Perils and risks insured against include without limitation loss, damage, expense, or legal liability of the insured for loss, damage, or expense arising out of or incident to ownership, operation, chartering, maintenance, use, repair, or construction of a vessel, craft, or instrumentality in use in ocean or inland waterways for commercial purposes, including liability of the insured for personal injury, illness, or death or for loss or damage to the property of the insured or another person.

**History:** 1971 c 145 s 3; 1973 c 35 s 20; 1976 c 185 s 3; 1981 c 260 s 1; 1982 c 555 s 1; 1982 c 589 s 1; 1986 c 444; 1988 c 541 s 2-4; 1989 c 304 s 137; 1991 c 325 art 6 s 3,4; art 21 s 2; 1993 c 299 s 8; 1997 c 52 s 2-4; 2003 c 74 s 2,3; 2011 c 61 s 3

**60C.04 CREATION.**

All insurers subject to the provisions of this chapter shall form an organization to be known as the Minnesota Insurance Guaranty Association. All insurers defined as member insurers in section 60C.03, subdivision 6, are and shall remain members of the association as a condition of their authority to transact insurance business or to execute surety bonds in this state. An insurer's membership obligations under this chapter shall survive any merger, consolidation, restructuring, incorporation, or reincorporation. The association shall perform its functions under a plan of operation established and approved under section 60C.07 and shall exercise its powers through a board of directors established under section 60C.08. For purposes of administration and assessment the association shall be divided into five separate accounts: (1) the automobile insurance account, (2) the township mutuals account, (3) the fidelity and surety bond account, (4) the account for all other insurance to which this chapter applies, and (5) the workers' compensation insurance account.

**History:** 1971 c 145 s 4; 1976 c 185 s 4; 1981 c 346 s 35; 1991 c 325 art 6 s 5

**60C.05 POWERS AND DUTIES.**

Subdivision 1. **Required duties.** The association shall:

(a) Be deemed the insurer to the extent of its obligation on the covered claims and have the right to pursue and retain salvage and subrogation recoverables on covered claim obligations to the extent paid or acknowledged in writing as an obligation by the association.

The association shall not be deemed the insolvent insurer for any purpose relating to the issue of whether the association is amenable to the personal jurisdiction of the courts of any state.

(b) Allocate claims paid and expenses incurred among the 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 claims, the cost of examinations under section 60C.15, and other expenses authorized by this chapter.

(c) Notify claimants in this state as considered necessary by the commissioner, to the extent records are available to the association. If sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation is sufficient.

(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 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.

(h) Have the right to appoint or substitute and to direct legal counsel retained under insurance policies for the defense of covered claims.

Subd. 2. **Authorized powers.** 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 this chapter, 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 this chapter.

(e) Perform other acts necessary or proper to effectuate the purpose of this chapter.

(f) Subject to section 60C.06, subdivision 6, 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.

**History:** 1971 c 145 s 5; 1976 c 185 s 5; 1985 c 255 s 6; 1988 c 541 s 5,6; 1997 c 52 s 5; 2003 c 74 s 4

#### 60C.06 ASSESSMENTS.

Subdivision 1. **Determination of amount.** The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year on the kinds of insurance in the account bear to the net direct written premiums of all member insurers for the preceding calendar year on the kinds of insurance in the account. No member insurer may be assessed in any year on any account in an amount greater than two percent of that member insurer's net direct written premiums for the preceding calendar year on the kinds of insurance in the account.

Subd. 2. **Insufficient amount.** If the maximum assessment, together with the other assets of the association in any account, does not provide in any one year in any account an amount sufficient to make all necessary payments from that account, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available.

Subd. 3. **Exemption or deferral.** The association shall exempt or defer, in whole or in part, the assessment of any member insurer, if the commissioner determines that the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance.

Subd. 4. **Set off.** Each member insurer may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of the claims by the member insurer if, in the absence of the payment, they would be chargeable to the account for which the assessment is made.

Subd. 5. [Repealed, 1988 c 541 s 14]

Subd. 6. [Repealed, 1997 c 52 s 15]

**History:** 1971 c 145 s 6; 1978 c 465 s 9; 1987 c 268 art 2 s 13; 1988 c 541 s 7; 1991 c 325 art 6 s 6

### **60C.07 PLAN OF OPERATION.**

Subdivision 1. **Required submission.** The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto become effective upon written approval from the commissioner. If the association fails to submit a suitable plan of operation within 90 days following July 1, 1971, or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate reasonable rules necessary to effectuate the provisions of this chapter. The rules continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

Subd. 2. **Contents.** The plan of operation shall:

(a) Establish the procedures whereby all the powers and duties of the association under section 60C.05 will be performed.

(b) Establish procedures for handling assets of the association.

(c) Establish the amount and method of reimbursement of members of the board of directors under section 60C.08, subdivision 3.

(d) Establish procedures by which claims may be filed with the association.

(e) Establish regular places and times for meetings for the board of directors.

(f) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors.

(g) Provide that any member insurer aggrieved by any final action or decision of the association may appeal to the commissioner within 30 days after the action or decision.

(h) Establish the procedures whereby selections for the board of directors will be submitted to the commissioner.

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

(j) Establish procedures for the disposition of liquidating dividends or other money received from the estate of insolvent insurers.

Subd. 3. **Delegation authority.** The plan of operation may provide that any or all powers and duties of the association, except those under section 60C.05, subdivisions 1, clause (b) and 2, clause (b), are delegated to a corporation, association or other organization which performs or will perform functions similar to those of this association, or its equivalent in two or more states. The corporation, association, or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation under this subdivision shall take effect only with the approval

of both the board of directors and the commissioner, and may be made only to a corporation, association or organization which extends protection not substantially less favorable and effective than that provided by this chapter.

**History:** 1971 c 145 s 7; 1997 c 52 s 6; 2003 c 74 s 5

#### **60C.08 BOARD OF DIRECTORS.**

Subdivision 1. **Composition.** The board of directors of the association shall consist of nine persons. Two of the directors shall be public members and seven shall be insurer members. The public members shall be appointed by the commissioner. Public members may include licensed insurance agents. The insurer members of the board shall be selected by association members subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term in the same manner as initial appointments. The term of appointment for all members is two years.

Subd. 2. **Commissioner's duty.** In approving selections to the board, the commissioner shall consider among other things whether member insurers are fairly represented.

Subd. 3. **Member reimbursement.** Members of the board may be reimbursed from the assets of the association for reasonable and necessary sums expended by them as members of the board of directors.

**History:** 1971 c 145 s 8; 1Sp1985 c 10 s 55; 1987 c 337 s 31

#### **60C.09 COVERED CLAIMS.**

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

(a) 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;

(b) arises out of a class of business which is not excepted from the scope of 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) an assignee of a person who except for the assignment might have claimed under item (i), (ii), or (iii).

For purposes of paragraph (c), item (ii), unit owners of units in a common interest community 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 a final 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 workers' compensation claims that have met the time limitations and other requirements of chapter 176.

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

(1) claims by an affiliate of the insurer;

(2) claims due a reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries, reinsurance recoveries, contribution, indemnification, 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; and

(3) any claims, resulting from insolvencies which occur after July 31, 1996, by an insured whose net worth exceeds \$25,000,000 on December 31 of the year prior to the year in which the insurer becomes an insolvent insurer; provided that an insured's net worth on that date shall be deemed to include the aggregate net worth of the insured and all of its subsidiaries and affiliates as calculated on a consolidated basis;

(4) any claims under a policy written by an insolvent insurer with a deductible or self-insured retention of \$300,000 or more, nor that portion of a claim that is within an insured's deductible or self-insured retention;

(5) claims that are a fine, penalty, interest, or punitive or exemplary damages.

Subd. 3. **Limitation of amount.** Payment of a covered claim, whether upon a single policy or multiple policies of insurance, is limited to no more 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 excluding retrospective or experience-rated insurance plans or premiums subject to adjustment after termination of the policy. 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.

Subd. 4. **Aggregate limitation.** Except in the case of a claim for benefits under workers' compensation coverage, any obligation of the association to or on behalf of an insured and its affiliates on covered claims ceases when \$10,000,000 has been paid in the aggregate by the association and any one or more associations similar to the association of any other state or states, to or on behalf of that insured, its affiliates, and additional insureds on covered claims or allowed claims arising under the policy or policies of any one insolvent insurer.

**History:** 1971 c 145 s 9; 1976 c 185 s 6; 1981 c 260 s 2; 1981 c 346 s 36; 1982 c 555 s 2; 1982 c 589 s 2; 1983 c 203 s 1; 1986 c 444; 1987 c 337 s 32; 1988 c 541 s 8; 1991 c 325 art 6 s 7; 1996 c 446 art 2 s 7; 1997 c 52 s 7; 1999 c 11 art 3 s 3; 2003 c 74 s 6



**60C.10 EVALUATION OF CLAIMS.**

Subdivision 1. **Board to determine.** The board shall determine whether claims submitted for payment are covered claims.

Subd. 2. [Repealed, 1981 c 260 s 4]

Subd. 3. **Claim denial; notification of appeal and review rights.** If the board finds that a claim for which the claimant has requested payment out of the fund is not a covered claim or the board reduces the amount of or rejects the claim, the board shall notify the claimant in writing of the rights the claimant has under section 60C.12.

**History:** 1971 c 145 s 10; 1981 c 260 s 3; 1986 c 444

**60C.11 EFFECT OF PAID CLAIMS.**

Subdivision 1. **Assignment upon recovery.** The rights under the policy of a person recovering under this chapter shall be deemed to have been assigned by the person to the association to the extent of the recovery.

Subd. 2. **Required cooperation.** Every insured or claimant seeking the protection of this chapter shall cooperate with the association to the same extent as the insured would have been required to cooperate with the insurer.

Subd. 3. **Limitation on action against insured.** The association has no cause of action against the insured of the insurer for any sums it has paid out except the causes of action the insurer would have had if the sums had been paid by the insurer.

Subd. 4. **Insurer operating on plan with assessment liability.** In the case of an insurer operating on a plan with assessment liability, payments of claims of the association do not operate to reduce the liability of insureds to the receiver, liquidator or statutory successor for unpaid assessments.

Subd. 5. **Priority of claims expenses in liquidation proceedings.** The expenses of the association or similar organization in handling claims are accorded the same priority as the liquidator's expenses. The association and a similar organization in another state must be recognized as claimants in the liquidation of an insolvent insurer for amounts paid by them on covered claims as determined under this chapter or similar laws in other states and must receive dividends and other distributions at the priority set forth in chapter 60B. The receiver, liquidator, or statutory successor of an insolvent insurer is bound by determinations of covered claim eligibility under this chapter and by settlements of claims made by the association or a similar organization in another state. The court having jurisdiction shall grant the claims priority equal to that which the claimant would have been entitled against the assets of the insolvent insurer in the absence of this chapter.

Subd. 6. **Statement of claims paid; periodic filing.** The association shall periodically file with the receiver or liquidator of the insurer statements of the covered claims paid by the association and estimates of anticipated claims against the association which shall preserve the rights of the association against the assets of the insurer.

Subd. 7. **Authorized recovery in certain insolvencies.** The association may recover the amount of any covered claim including claim handling expenses paid, resulting from insolvencies which occur after July 31, 1996, on behalf of an insured who has a net worth of \$25,000,000 as provided in section 60C.09, subdivision 2, clause (3), on December 31 of the year immediately preceding the date the insurer becomes

an insolvent insurer and whose liability obligations to other persons are satisfied in whole or in part by payments made under this chapter.

**History:** 1971 c 145 s 11; 1986 c 444; 1996 c 446 art 2 s 8; 1997 c 52 s 8; 2003 c 74 s 7

#### **60C.12 APPEAL AND REVIEW.**

Subdivision 1. **Appeal.** A claimant whose claim has been declared to be not covered or reduced by the board under section 60C.10 may appeal to the board within 30 days after the claimant has been notified of the board's decision and of the rights of the claimant under this section.

Subd. 2. **Review.** Decisions of the board under subdivision 1 are subject to appeal to the commissioner of commerce who may overturn, affirm, or modify the board's actions or take other action the commissioner considers appropriate.

The appeal to the commissioner must be in the manner provided in chapter 14.

Subd. 3. **Judicial review.** A final action or order of the commissioner under this subdivision is subject to judicial review in the manner provided by chapter 14. In lieu of the appeal to the commissioner under subdivision 2, a claimant may seek judicial review of the board's actions.

**History:** 1971 c 145 s 12; 1986 c 444; 1987 c 337 s 33

#### **60C.13 EXHAUSTION OF OTHER COVERAGE.**

Subdivision 1. **Other policy coverage.** Any person having a claim under another policy whether or not the policy is a policy of a member insurer, which claim arises out of the same facts which give rise to the covered claim, shall be first required to exhaust the person's right under the other policy. Any amount payable on a covered claim under this chapter shall be reduced by the amount of any recovery under such insurance policy. For purposes of this subdivision, another insurance policy does not include a workers' compensation policy.

Subd. 2. **Other guaranty association coverage.** 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 this chapter shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

**History:** 1971 c 145 s 13; 1986 c 444; 1988 c 541 s 9; 1991 c 325 art 6 s 8; 1997 c 52 s 9

#### **60C.14 DUTIES AND POWERS OF COMMISSIONER.**

Subdivision 1. **Mandatory powers and duties.** The commissioner shall:

(a) Notify the association of the issuance of any order of liquidation of a member insurer not later than three days after the commissioner has knowledge of the issuance of the order.

(b) Upon request of the board of directors provide the association with a statement of the net direct written premiums of each member insurer.

Subd. 2. **Optional powers and duties.** The commissioner may:

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

(b) Revoke the designation of any servicing facility if the commissioner finds claims are being handled unsatisfactorily.

(c) Disclose to the board of directors information regarding any member insurer, or any company seeking admission to transact insurance business in this state, whose financial condition may be hazardous to policyholders or to the public. This disclosure does not violate any data privacy requirement or any obligation to treat the information as privileged. This disclosure does not change the data privacy or privileged status of the information. Board members shall not disclose the information to anyone else or use the information for any purpose other than their duties as board members.

Subd. 3. **Judicial review.** Any final action or order of the commissioner under this chapter shall be subject to judicial review in a court of competent jurisdiction.

**History:** 1971 c 145 s 14; 1976 c 185 s 7; 1986 c 444; 1991 c 325 art 21 s 3; 1997 c 52 s 10

#### **60C.15 PREVENTION OF INSOLVENCIES.**

To aid in the detection and prevention of insurer insolvencies:

(1) The board of directors may upon majority vote make recommendations to the commissioner on matters generally related to improving or enhancing regulation for solvency.

(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.

**History:** 1971 c 145 s 15; 1986 c 444; 1988 c 541 s 10; 1997 c 52 s 11

#### **60C.16 EXAMINATION OF ASSOCIATION.**

The association is subject to examination and regulation by the commissioner. The board of directors shall submit each year a financial report for the preceding calendar year in a form approved by the commissioner.

**History:** 1971 c 145 s 16; 2003 c 74 s 8

#### **60C.17 TAX EXEMPTION.**

The association is exempt from payment of all taxes imposed under chapter 297I and all fees and all other taxes levied by this state or any of its subdivisions except taxes levied on real or personal property.

**History:** 1971 c 145 s 17; 2000 c 394 art 2 s 9

**60C.18 RECOGNITION OF ASSESSMENTS IN RATES.**

Subdivision 1. **Recognition required.** The rates and premiums charged for insurance policies and fidelity and surety bonds to which this chapter applies may 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.

Subd. 2. [Repealed, 2003 c 74 s 11]

**History:** 1971 c 145 s 18; 1976 c 185 s 8; 1988 c 541 s 11; 2003 c 74 s 9

**60C.19 IMMUNITY.**

There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the association or its agents or employees, the board of directors, or a person serving as an alternative or substitute representative of a director, or the commissioner, or the commissioner's representatives for action taken or a failure to act by them in the performance of their powers and duties under this chapter.

**History:** 1971 c 145 s 19; 1986 c 444; 1997 c 52 s 12

**60C.195 STAY OF PROCEEDINGS.**

All proceedings in which the insolvent insurer is a party or is obligated to defend a party in a court in this state shall, subject to waiver by the association in specific cases involving covered claims, be stayed for six months and additional time that may be determined by the court. The stay must run from the date of the final order of liquidation with a finding of insolvency is entered or an ancillary proceeding is instituted in the state, whichever is later. The proceedings are stayed to permit proper defense by the association of all pending causes of action. As to covered claims arising from a judgment under decision, verdict, or finding based on the default of the insolvent insurer or its failure to defend an insured, the association, either on its own behalf or on behalf of an insured, may apply to have the judgment, order, decision, verdict, or finding set aside by the same court or administrator that made the judgment, order, decision, verdict, or finding and must be permitted to defend the claim on the merits.

The liquidator, receiver, or statutory successor of an insolvent insurer covered by this chapter must permit access by the board or its authorized representative to the insolvent insurer's records that are necessary for the board in carrying out its functions under this chapter with regard to covered claims. In addition, the liquidator, receiver, or statutory successor must provide the board or its representative with copies of those records upon request by the board and at the expense of the board.

**History:** 1997 c 52 s 13

**60C.20 UNFAIR TRADE PRACTICES.**

It is an unfair trade practice, subject to regulation under sections 72A.17 through 72A.32, for any insurer or agent to make use in any manner of the protection given policyholders by this chapter as a reason for buying insurance.

**History:** 1971 c 145 s 20

**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 given or obtained with or as a part of the application for that policy.

For telephonic sales, the notice may be given or obtained either with or as part of the application for, or at the time of delivery of, that policy, and the person offering the policy shall document the fact that the notice was given. This section does not apply to renewals, unless the renewal increases the dollar amount of a coverage by more than 100 percent. The notice must be given or obtained in writing or in the same medium as the application for insurance.

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

"NOTICE CONCERNING POLICYHOLDER RIGHTS IN AN

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.

Minnesota Insurance Guaranty Association

(insert current address)

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.

**History:** 1992 c 540 art 2 s 10; 1997 c 52 s 14; 2011 c 52 s 1; 2012 c 185 s 1

#### **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:

"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."

This section does not apply to fraternal benefit societies regulated under chapter 64B.

**History:** 1992 c 540 art 2 s 11; 1993 c 248 s 1