

61B.23 POWERS AND DUTIES OF ASSOCIATION.

Subdivision 1. **Impaired domestic insurer.** If a member insurer is an impaired domestic insurer, the association may, in its discretion, and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer and that are approved by the commissioner, and that are, except in cases of court ordered conservation or rehabilitation, also approved by the impaired insurer:

(1) guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the policies or contracts of the impaired insurer;

(2) provide money, pledges, notes, guarantees, or other means as are proper to exercise the power granted in clause (1) and assure payment of the contractual obligations of the impaired insurer pending action under clause (1); or

(3) loan money to the impaired insurer.

Subd. 2. **Impaired insurer not paying claims.** (a) If a member insurer is an impaired insurer, whether domestic, foreign, or alien, and the insurer is not paying claims in a timely manner as required under section 72A.201, based in whole or in part on the insurer's financial inability to pay claims then subject to the preconditions specified in paragraph (b), the association shall, in its discretion, either:

(1) take any of the actions specified in subdivision 1, subject to the conditions in that subdivision; or

(2) provide for prompt payment of current contractual obligations.

(b) The association is subject to the requirements of paragraph (a) only if the commissioner has begun a formal administrative or judicial proceeding which seeks to suspend the authority of the impaired insurer to write new business in this state and to require the impaired insurer to cooperate with the association in the administration of claims. The suspension of the impaired insurer's authority to write new business in this state shall continue until all payments of or on account of the impaired insurer's contractual obligations paid by the association, along with all expenses thereof and interest on these payments and expenses, shall have been repaid to the association or a plan of repayment of the payments, expenses, and interest by the impaired insurer shall have been approved by the association. If the commissioner ceases to seek an administrative or judicial order suspending the impaired insurer's authority to write new business in this state within 90 days, or is denied the order, the association shall not be required to proceed under this subdivision unless:

(1) the impaired insurer has been placed under an order of rehabilitation or conservation by a court of competent jurisdiction; and

(2) the court has approved and entered an order providing that the rehabilitation or conservation proceedings shall not be dismissed, and neither the impaired insurer nor its assets shall be returned to the control of its shareholders or private management, and the impaired insurer is prohibited from soliciting or accepting new business or having a suspended or revoked license restored until at least one of the following events has occurred:

(i) all payments of or on account of the impaired insurer's contractual obligations paid by all the affected guaranty associations, along with expenses thereof and interest on all of those payments and expenses incurred by those guaranty associations, have been repaid to them; or

(ii) a plan of repayment by the impaired insurer has been approved by all the affected guaranty associations.

(c) The association shall endeavor to obtain access to those records of the impaired insured as are needed for the association to discharge its obligations and, if requested by the association, the commissioner will assist the association in obtaining access to those records. If the association is not given access to the necessary records, the association shall be relieved of its responsibility to make benefit payments until the time it is given access to those records.

(d) If the impaired insurer is subsequently determined to be insolvent by a court of competent jurisdiction in its state of domicile and is placed in liquidation, the association shall then proceed as provided in subdivision 3.

Subd. 3. **Insolvent insurer.** If a member insurer is an insolvent insurer then, subject to any conditions imposed by the association and approved by the commissioner, the association shall, in its discretion:

(1) guaranty, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the policies or contracts of the insolvent insurer;

(2) assure payment of the contractual obligations of the insolvent insurer which are due and owing;

(3) provide money, pledges, guarantees, or other means as are reasonably necessary to discharge its duties; or

(4) provide benefits and coverages in accordance with subdivision 4.

Subd. 4. **Payments; alternative policies.** When proceeding under subdivision 2, paragraph (a), clause (2), or subdivision 3, clause (4), the association shall, with respect to life and health insurance policies and annuities:

(a) Assure payment of benefits for premiums identical to the premiums and benefits, except for terms of conversion and renewability, that would have been payable under the policies of the impaired or insolvent insurer, for claims incurred:

(1) with respect to group policies, not later than the earlier of the next renewal date under those policies or contracts or 45 days, but in no event less than 30 days, after the date on which the association becomes obligated with respect to those policies; or

(2) with respect to individual policies, not later than the earlier of the next renewal date, if any, under those policies or one year, but in no event less than 30 days, from the date on which the association becomes obligated with respect to those policies.

(b) Make diligent efforts to provide all known insureds or annuitants for individual policies or group policy owners with respect to group policies 30 days' notice of the termination pursuant to paragraph (a) of the benefits provided.

(c) With respect to individual policies, make available to each known insured or annuitant, or owner if other than the insured or annuitant, and with respect to an individual formerly insured or formerly an annuitant under a group policy who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with paragraph (d), if the insureds or annuitants had a right under law or the terminated policy or annuity to convert coverage to individual coverage or to continue an individual policy or annuity in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy or annuity or had a right only to make changes in premium by class.

(d)(1) In providing the substitute coverage required under paragraph (c), the association may offer either to reissue the terminated coverage or to issue an alternative policy.

(2) Alternative or reissued policies must be offered without requiring evidence of insurability, and must not provide for any waiting period or exclusion that would not have applied under the terminated policy.

(3) The association may reinsure any alternative or reissued policy.

(e)(1) Alternative policies adopted by the association are subject to the approval of the commissioner. The association may adopt alternative policies of various types for future issuance without regard to any particular impairment or insolvency.

(2) Alternative policies must contain at least the minimum statutory provisions required in this state and provide benefits that are not unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates which it shall adopt. The premium must reflect the amount of insurance to be provided and the age and class of risk of each insured, but must not reflect any changes in the health of the insured after the original policy was last underwritten.

(3) Any alternative policy issued by the association must provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association.

(f) If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, the premium must be set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the commissioner or by a court of competent jurisdiction.

(g) The association's obligations with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued or alternative policy ceases on the date the coverage or policy is replaced by another similar policy by the policyholder, the insurer, or the association and the preexisting condition limitations have been satisfied.

(h) When proceeding under this subdivision with respect to any policy carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with section 61B.19, subdivision 3, clause (12).

Subd. 4a. **Board discretion.** The board of directors of the association has discretion and may exercise reasonable business judgment to determine the means by which the association is to provide the benefits of sections 61B.18 to 61B.32 in an economical and efficient manner.

Subd. 4b. **Benefits provided under a plan.** Where the association has arranged or offered to provide the benefits of sections 61B.18 to 61B.32 to a covered person under a plan or arrangement that fulfills the association's obligations under sections 61B.18 to 61B.32, the person is not entitled to benefits from the association in addition to or other than those provided under the plan or arrangement.

Subd. 4c. **Coverage of policies with indexed interest or similar provisions.** In carrying out its duties in connection with guaranteeing, assuming, or reinsuring policies or contracts under sections 61B.18 to 61B.32, the association may, subject to approval of the receivership court, issue substitute coverage for a policy or contract that provides an interest rate, crediting rate, or similar factor determined by use of an index, or other external reference stated in the policy or contract employed in calculating returns or changes in value by issuing an alternative policy or contract in accordance with the following provisions:

(1) in lieu of the index or other external reference provided for in the original policy or contract, the alternative policy or contract provides for (i) a fixed interest rate or (ii) payment of dividends with minimum guarantees or (iii) a different method for calculating interest or changes in value;

(2) there is no requirement for evidence of insurability, waiting period or other exclusion that would not have applied under the replaced policy or contract; and

(3) the alternative policy or contract is substantially similar to the replaced policy or contract in all other material terms.

Subd. 5. Obligations terminated. Nonpayment of all unpaid premiums within 31 days after the date required under the terms of a guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage terminates the association's obligations under the policy, contract, or coverage under sections 61B.18 to 61B.32 with respect to the policy, contract, or coverage, except with respect to claims incurred or net cash surrender value that may be due in accordance with sections 61B.18 to 61B.32. The association will not terminate the policy or contract for nonpayment of premium until 31 days after the association sends a written cancellation notice by first class mail to the insured's last known address.

Subd. 6. Postliquidation premiums. Premiums due for coverage after entry of any order of liquidation of an insolvent insurer belong to and are payable at the direction of the association, and the association is liable for unearned premiums due policy or contract owners arising after the entry of the order.

Subd. 7. Coverage by another state. The association has no liability under this section for a covered policy of a foreign or alien insurer whose domiciliary jurisdiction or state of entry provides protection, by statutes or rule, for residents of this state, which protection is substantially similar to that provided by sections 61B.18 to 61B.32, for residents of other states. Recovery provided for under sections 61B.18 to 61B.32 is reduced by the amount of recovery under the coverage provided by another state or jurisdiction. If another state or jurisdiction providing substantially similar coverage as provided by sections 61B.18 to 61B.32 denies coverage, the association shall provide coverage if the policyholder or contract holder is otherwise eligible, and the association is then subrogated to the rights of the person receiving benefits with respect to the other state or jurisdiction. If a person receiving benefits from the association has a claim remaining against another state or jurisdiction, whether or not such state or jurisdiction provides substantially similar protection within the meaning of this section, then such person's remaining claim has priority over any subrogation rights of the association with respect to that other state or jurisdiction.

Subd. 8. Liens and moratoriums. (a) In carrying out its duties under subdivision 2 or 3, the association may request that there be imposed policy liens, contract liens, moratoriums on payments, or other similar means. The liens, moratoriums, or similar means may be imposed if the commissioner:

(1) finds: (i) that the amounts that can be assessed under sections 61B.18 to 61B.32 are less than the amounts necessary to assure full and prompt performance of the impaired insurer's contractual obligations; (ii) that economic or financial conditions as they affect member insurers are sufficiently adverse to cause the imposition of policy or contract liens, moratoriums, or similar means to be in the public interest; (iii) that there is a reasonable likelihood that a plan of rehabilitation will be developed or other appropriate arrangements made for the orderly provision for covered contractual obligations of the impaired or insolvent insurer, and that the imposition of policy or contract liens, moratoriums, or similar means is necessary and appropriate to support the development of the plan of rehabilitation or other appropriate arrangements; (iv) that the imposition of policy or contract liens, moratoriums, or similar means is necessary and appropriate to ensure the equitable treatment of all policyholders of impaired or insolvent insurers protected by the guaranty association; (v) that the imposition of policy or contract liens, moratoriums, or similar means is

necessary and appropriate to encourage recovery of the maximum possible amount from the remaining assets of the impaired or insolvent insurer's estate; or (vi) that the imposition of policy or contract liens, moratoriums, or similar means is necessary and appropriate in order for the association to participate in any multistate plan of rehabilitation, conservation, or liquidation of the impaired or insolvent insurer, and the commissioner considers the plan to be in the best interests of the impaired or insolvent insurer's policyholders or the association's member insurers;

(2) finds, in the case of a moratorium, that current contractual obligations are being, and will continue to be, promptly paid; and

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

(b) Before being obligated under subdivision 2 or 3, the association may request that there be imposed temporary moratoriums or liens on payments of cash values and policy loans. The temporary moratoriums and liens may be imposed if approved by the commissioner.

(c) A moratorium, lien, or other means imposed pursuant to this subdivision may be for: (i) a specific term; or (ii) an indefinite term which shall continue in effect until the commissioner, at the request of the association or, on the commissioner's own motion after notice to the association, finds that the reason or reasons for the moratorium, lien, or other means no longer exists.

Subd. 8a. Deposits in this state for insolvent or impaired insurer. A deposit in this state, held pursuant to law or required by the commissioner for the benefit of creditors, including policy owners, not turned over to the domiciliary liquidator upon the entry of a final order of liquidation or order approving a rehabilitation plan of an insurer domiciled in this state or in a reciprocal state, pursuant to section 60B.54, shall be promptly paid to the association. The association is entitled to retain a portion of any amount so paid to it equal to the percentage determined by dividing the aggregate amount of policy owners claims related to that insolvency for which the association has provided statutory benefits by the aggregate amount of all policy owners' claims in this state related to that insolvency. The association shall remit to the domiciliary receiver the amount so paid to the association and not retained pursuant to this subdivision. Any amount retained by the association shall be treated as a distribution of estate assets pursuant to section 60B.46 or similar provision of the state of domicile of the impaired or insolvent insurer.

Subd. 9. Failure to act. If the association fails to act within a reasonable period of time as provided in subdivision 2, paragraph (a), clause (2); 3; or 4, the commissioner has the powers and duties of the association with respect to impaired or insolvent insurers including, but not limited to, the power to make assessments.

Subd. 10. Assistance to commissioner. The association may give assistance and advice to the commissioner, upon request, concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of an impaired or insolvent insurer.

Subd. 11. Standing in court. The association has standing to appear or intervene before any court or agency in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under sections 61B.18 to 61B.32 or with jurisdiction over any person or property against whom the association may have rights through subrogation or otherwise. This standing extends to all matters germane to the powers and duties of the association, including proposals for reinsuring, modifying, or guaranteeing the policies or contracts of the impaired or insolvent insurer and the determination of the policies or contracts and contractual obligations. The association may appear or intervene before a court or agency in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over any person or property against whom the association may have rights through subrogation or otherwise, provided, however, in the case of any such appearance or

intervention, the association shall not submit for adjudication its obligations to provide coverage under the Minnesota Life and Health Insurance Guaranty Association Act without the prior approval of the commissioner.

Subd. 12. **Assignments; subrogation rights.** (a) A person receiving benefits under sections 61B.18 to 61B.32 shall be considered to have assigned the rights under, and any causes of action against any person for losses arising under, resulting from or otherwise relating to, the covered policy or contract to the association to the extent of the benefits received because of sections 61B.18 to 61B.32, whether the benefits are payments of or on account of contractual obligations, continuation of coverage, or provision of substitute or alternative coverages. The association may require an assignment to it of those rights and causes of action by a payee, policy or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of rights or benefits conferred by sections 61B.18 to 61B.32 upon that person. The assignment and 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.

(b) The subrogation rights of the association under this subdivision against the assets of the impaired or insolvent insurer have the same priority as those of a person entitled to receive benefits under sections 61B.18 to 61B.32.

(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 person receiving benefits under sections 61B.18 to 61B.32 including without limitation, in the case of a structured settlement annuity, any rights of the owner, beneficiary or payee of the annuity, to the extent of benefits received pursuant to sections 61B.18 to 61B.32, against a person originally or by succession responsible for the losses arising from the personal injury relating to the annuity or payment thereof, excepting any such person responsible solely by reason of serving as an assignee in respect of a qualified assignment under section 130 of the Internal Revenue Code of 1986, as amended.

(d) If the preceding provisions of this subdivision are invalid or ineffective with respect to any person or claim for any reason, the amount payable by the association with respect to the related covered obligations shall be reduced by the amount realized by any other person with respect to the person or claim that is attributable to the policies or portion thereof covered by the association.

(e) If the association has provided benefits with respect to a covered obligation and a person recovers amounts as to which the association has rights as described in the preceding paragraphs of this subdivision, the person shall pay to the association the portion of the recovery attributable to the policies or portion thereof covered by the association.

Subd. 13. **Permissive powers.** The association may:

(1) enter into contracts as are necessary or proper to carry out the provisions and purposes of sections 61B.18 to 61B.32;

(2) sue or be sued, including taking any legal actions necessary or proper to recover any unpaid assessments under section 61B.26 to settle claims or potential claims against it;

(3) borrow money to effect the purposes of sections 61B.18 to 61B.32 and any notes or other evidence of indebtedness of the association not in default are legal investments for domestic insurers and may be carried as admitted assets;

(4) employ or retain persons as are necessary or appropriate to handle the financial transactions of the association, and to perform other functions as the association considers necessary or proper under sections 61B.18 to 61B.32;

(5) enter into arbitration or take legal action as may be necessary or appropriate to avoid or recover payment of improper claims;

(6) exercise, for the purposes of sections 61B.18 to 61B.32 and to the extent approved by the commissioner, the powers of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform its obligations under sections 61B.18 to 61B.32;

(7) join an organization of one or more other state associations of similar purposes, to further the purposes and administer the powers and duties of the association;

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

(9) participate in the organization of and/or own stock in an entity which exists or was formed for the purpose of assuming liability for contracts or policies issued by impaired or insolvent insurers; and

(10) request information from a person seeking coverage from the association in order to aid the association in determining its obligations under sections 61B.18 to 61B.32 with respect to the person, and the person shall promptly comply with the request.

Subd. 14. Association election to succeed to rights of insolvent or impaired insurer under indemnity reinsurance contracts. (a) At any time within one year after the date on which the association becomes responsible for the obligations of a member insurer the coverage date, the association may elect to succeed to the rights and obligations of the member insurer, that accrue on or after the coverage date and that relate to contracts covered in whole or in part by the association, under any one or more indemnity reinsurance agreements entered into by the member insurer as a ceding insurer and selected by the association. However, the association may not exercise an election with respect to a reinsurance agreement if the receiver, rehabilitator, or liquidator of the member insurer has previously and expressly disaffirmed the reinsurance agreement. The election shall be effected by a notice to the receiver, rehabilitator, or liquidator, and to the affected reinsurers. If the association makes an election, clauses (1) through (4) apply with respect to the agreements selected by the association:

(1) the association is responsible for all unpaid premiums due under the agreements for periods both before and after the coverage date, and is responsible for the performance of all other obligations to be performed after the coverage date, in each case that relates to contracts covered in whole or in part by the association and the association may charge contracts covered in part by the association, through reasonable allocation methods, the costs for reinsurance in excess of the obligations of the association;

(2) the association is entitled to any amounts payable by the reinsurer under the agreements with respect to losses or events that occur in periods after the coverage date and that relate to contracts covered by the association in whole or in part, provided that, upon receipt of any such amounts, the association is obliged to pay to the beneficiary under the policy or contract on account of which the amounts were paid a portion of the amount equal to the excess of:

(i) the amount received by the association, over

(ii) the benefits paid by the association on account of the policy or contract less the retention of the impaired or insolvent member insurer applicable to the loss or event;

(3) within 30 days following the association's election, the association and each indemnity reinsurer shall calculate the net balance due to or from the association under each reinsurance agreement as of the date of the association's election, giving full credit to all items paid by either the member insurer or its receiver, rehabilitator, or liquidator or the indemnity reinsurer during the period between the coverage date and the date of the association's election and (i) either the association or indemnity reinsurer shall pay the net balance due the other within five days of the completion of the aforementioned calculation and (ii) if the receiver, rehabilitator, or liquidator has received any amounts due the association pursuant to paragraph (a), the receiver, rehabilitator, or liquidator shall remit the same to the association as promptly as practicable; and

(4) if the association, within 60 days of the election, pays the premiums due for periods both before and after the coverage date that relate to contracts covered by the association in whole or in part, the reinsurer shall not be entitled to terminate the reinsurance agreements insofar as the agreements relate to contracts covered by the association in whole or in part and shall not be entitled to set off any unpaid premium due for periods prior to the coverage date against amounts due the association.

(b) In the event the association transfers its obligations to another insurer, and if the association and the other insurer agree, the other insurer shall succeed to the rights and obligations of the association under paragraph (a) effective as of the date agreed upon by the association and the other insurer and regardless of whether the association has made the election referred to in paragraph (a) provided that:

(1) the indemnity reinsurance agreements shall automatically terminate for new reinsurance unless the indemnity reinsurer and the other insurer agree to the contrary;

(2) the obligations described in the proviso to paragraph (a), clause (2), shall no longer apply on and after the date the indemnity reinsurance agreement is transferred to the third-party insurer; and

(3) paragraph (b) does not apply if the association has previously expressly determined in writing that it will not exercise the election referred to in paragraph (a).

(c) The provisions of this subdivision shall supersede the provisions of any law of this state or of any affected reinsurance agreement that provides for or requires any payment of reinsurance proceeds, on account of losses or events that occur in periods after the coverage date, to the receiver, liquidator, or rehabilitator of the insolvent member insurer. The receiver, rehabilitator, or liquidator shall remain entitled to any amounts payable by the reinsurer under the reinsurance agreement with respect to losses or events that occur in periods prior to the coverage date subject to applicable setoff provisions.

(d) Except as otherwise expressly provided in this subdivision, nothing in this subdivision alters or modifies the terms and conditions of the indemnity reinsurance agreements of the insolvent member insurer. Nothing in this subdivision abrogates or limits any rights of any reinsurer to claim that it is entitled to rescind a reinsurance agreement. Nothing in this subdivision gives a policy owner or beneficiary an independent cause of action against an indemnity reinsurer that is not otherwise set forth in the indemnity reinsurance agreement.

Subd. 15. **Venue; appeal bond.** Except as otherwise provided in section 61B.24, subdivision 10, or 61B.26, paragraph (c), venue in a suit against the association arising under sections 61B.18 to 61B.32 shall

be in Ramsey County. The association shall not be required to give an appeal bond in an appeal that relates to a cause of action arising under sections 61B.18 to 61B.32.

History: *1993 c 319 s 8; 2001 c 142 s 15-25; 2002 c 379 art 1 s 27*