CHAPTER 60B

REHABILITATION AND LIQUIDATION

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60B.01 TITLE, CONSTRUCTION, AND PURPOSE.

Subdivision 1. **Short title.** Sections 60B.01 to 60B.61 may be cited as the "Insurers Rehabilitation and Liquidation Act" and shall appear in the next edition of Minnesota Statutes as chapter 60B but subject to the provisions of section 3C.10, subdivision 1.

Subd. 2. **Construction; no limitation of powers.** Sections 60B.01 to 60B.61 shall not be interpreted to limit the powers granted the commissioner by other provisions of the law.

Subd. 3. **Liberal construction.** Sections 60B.01 to 60B.61 shall be liberally construed to effect the purpose stated in subdivision 4.

Subd. 4. **Purpose.** The purpose of sections 60B.01 to 60B.61 is the protection of the interests of insureds, creditors, and the public generally, with minimum interference with the normal prerogatives of proprietors, through:

(a) early detection of any potentially dangerous condition in an insurer, and prompt application of appropriate corrective measures, neither unduly harsh nor subject to the kind of publicity that would needlessly damage or destroy the insurer;

(b) improved methods for rehabilitating insurers, by enlisting the advice and management expertise of the insurance industry;

(c) enhanced efficiency and economy of liquidation, through clarification and specification of the law, to minimize legal uncertainty and litigation;

(d) equitable apportionment of any unavoidable loss;

(e) lessening the problems of interstate rehabilitation and liquidation by facilitating cooperation between states in the liquidation process, and by extension of the scope of personal jurisdiction over debtors of the insurer outside this state; and

(f) regulation of the insurance business by the impact of the law relating to delinquency procedures and substantive rules on the entire insurance business.

History: *1969 c 708 s 1; 1984 c 480 s 16; 1984 c 655 art 2 s 19 subd 4*

60B.02 PERSONS COVERED.

The proceedings authorized by sections 60B.01 to 60B.61 may be applied to:

(1) all insurers who are doing, or have done, an insurance business in this state, and against whom claims arising from that business may exist now or in the future;

(2) all insurers who purport to do an insurance business in this state;

(3) all insurers who have insureds resident in this state;

(4) all other persons organized or in the process of organizing with the intent to do an insurance business in this state; and

(5) all nonprofit service plan corporations incorporated or operating under the Nonprofit Health Service Plan Corporation Act, all health maintenance organizations operating under chapter 62D, any health plan incorporated under chapter 317A, all fraternal benefit societies operating under chapter 64B, except those associations enumerated in section 64B.38, all township mutual or other companies operating under chapter 67A, and all reciprocals or interinsurance exchanges operating under chapter 71A.

History: *1969 c 708 s 2; 1971 c 568 s 24; 1985 c 49 s 41; 1989 c 304 s 137; 1992 c 564 art 1 s 54; 1995 c 186 s 16; 1995 c 234 art 1 s 1; 1997 c 225 art 2 s 62; 2020 c 80 art 2 s 1*

60B.03 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 60B.01 to 60B.61, the following terms have the meanings given in this section.

Subd. 2. **Commissioner.** "Commissioner" means the commissioner of commerce of the state of Minnesota and, in that commissioner's absence or disability, a deputy or other person duly designated to act in that commissioner's place. In the context of rehabilitation or liquidation of a health maintenance organization, "commissioner" means the commissioner of health of the state of Minnesota and, in that commissioner's absence or disability, a deputy or other person duly designated to act in that commissioner's place.

Subd. 3. **Receiver.** "Receiver" means receiver, liquidator, rehabilitator, or conservator, as the context requires.

Subd. 4. **Insurer.** "Insurer" means any person who is doing, has done, purports to do or is licensed to do an insurance business and is or has been subject to the authority of, or to liquidation, rehabilitation, reorganization, or conservation by, a commissioner. For purposes of sections 60B.01 to 60B.61, all other persons included under section 60B.02 shall be deemed to be insurers.

Subd. 5. **Delinquency proceeding.** "Delinquency proceeding" means any proceeding commenced under sections 60B.01 to 60B.61 against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving such insurer, and any summary proceeding under sections 60B.11 to 60B.14.

Subd. 6. **State.** "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other possession of the United States.

Subd. 7. **Foreign country.** "Foreign country" means territory not in any state.

Subd. 8. **Domiciliary state.** "Domiciliary state" or "state of domicile" means the state in which an insurer is incorporated or organized or, in the case of an alien insurer, the state in which the insurer has, at the commencement of delinquency proceedings, the largest amount of its assets held in trust and on deposit for the benefit of policyholders and creditors in the United States.

Subd. 9. **Ancillary state.** "Ancillary state" means any state other than a domiciliary state.

Subd. 10. **Reciprocal state.** "Reciprocal state" means any state other than this state in which in substance and effect sections 60B.21, subdivision 1; 60B.54, subdivisions 1 and 3; 60B.55; and 60B.57 to 60B.60; are in force, and in which provisions are in force requiring that the commissioner be the receiver of a delinquent insurer, and in which some provision exists for the avoidance of fraudulent conveyances and preferential transfers.

Subd. 11. **General assets.** "General assets" means all property, real, personal, or otherwise, not specifically mortgaged, pledged, deposited, or held in a separate account in connection with contracts on a variable basis, or otherwise encumbered for the security or benefit of specified persons or limited classes of persons, and as to specifically encumbered property the term includes all such property or its proceeds in excess of the amount necessary to discharge the sums secured thereby. Assets held in trust and on deposit for the security or benefit of all policyholders or all policyholders and creditors, in more than a single state, shall be treated as general assets.

Subd. 12. **Preferred claim.** "Preferred claim" means any claim with respect to which the law accords priority of payment from the general assets of the insurer.

Subd. 13. **Special deposit claim.** "Special deposit claim" means any claim secured by a deposit made pursuant to law for the security or benefit of one or more limited classes of persons, but not including any claim secured by general assets.

Subd. 14. **Secured claim.** "Secured claim" means any claim secured by mortgage, trust deed, pledge, deposit as security, escrow, or otherwise, and any claims against a separate account in connection with a contract on a variable basis, but not including special deposit claims, or claims against general assets. The term also includes claims which have become liens upon specific assets by reason of judicial process, except where they have been invalidated.

Subd. 15. **Insolvency or insolvent.** "Insolvency" or "insolvent" means:

(a) For an insurer organized under sections 67A.01 to 67A.26, the inability to pay any uncontested debt as it becomes due.

(b) For purposes of a liquidation under section 64B.43, subdivision 4, a fraternal authorized control level event under circumstances the commissioner determines will not be promptly remedied pursuant to the plan submitted under section 64B.43, subdivision 3, a society's inability to pay its debts or meet its obligations as they mature, or that a society's assets do not exceed its liabilities plus the greater of any surplus required by law to be constantly maintained.

(c) For any other insurer, that it is unable to pay its debts or meet its obligations as they mature or that its assets do not exceed its liabilities plus the greater of (1) any capital and surplus required by law to be constantly maintained, or (2) its authorized and issued capital stock. For purposes of this subdivision, "assets" includes one-half of the maximum total assessment liability of the policyholders of the insurer, and "liabilities" includes reserves required by law. For policies issued on the basis of unlimited assessment liability, the maximum total liability, for purposes of determining solvency only, shall be deemed to be that amount that could be obtained if there were 100 percent collection of an assessment at the rate of ten mills per dollar of insurance written by it and in force.

Subd. 16. **Fair consideration.** "Fair consideration" is given for property or an obligation:

(a) when in exchange for such property or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or services are rendered or obligation is incurred or an antecedent debt is satisfied; or

(b) when such property or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared to the value of the property or obligation obtained.

Subd. 17. **Creditor.** "Creditor" is a person having any claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed or contingent.

Subd. 18. **Transfer.** "Transfer" includes the sale and every other method, direct or indirect, of disposing of or of parting with property or with an interest therein or with the possession thereof or of fixing a lien upon property or upon an interest therein, absolutely or conditionally, voluntarily or involuntarily, by or without judicial proceedings. The retention of a security title to property delivered to a debtor shall be deemed a transfer suffered by the debtor.

Subd. 19. **Alien insurer.** "Alien insurer" means an insurer incorporated or organized in a foreign country.

Subd. 20. **Affiliate or affiliated.** An "affiliate" of, or a person "affiliated" with, a specific person is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

Subd. 21. **Netting agreement.** "Netting agreement" means:

(1) a contract or agreement, including terms and conditions incorporated by reference in it, including a master agreement, which master agreement, together with all schedules, confirmations, definitions, and addenda to it and transactions under any of them, shall be treated as one netting agreement, that documents one or more transactions between the parties to the agreement for or involving one or more qualified financial contracts and that provides for the netting, liquidation, setoff, termination, acceleration, or close-out, under or in connection with one or more qualified financial contracts or present or future payment or delivery obligations or payment or delivery entitlements under it, including liquidation or close-out values relating to those obligations or entitlements, among the parties to the netting agreement;

(2) any master agreement or bridge agreement for one or more master agreements described in clause (1); or

(3) any security agreement or arrangement or other credit enhancement or guarantee or reimbursement obligation related to any contract or agreement described in clause (1) or (2); provided that any contract or agreement described in clause (1) or (2) relating to agreements or transactions that are not qualified financial contracts shall be deemed to be a netting agreement only with respect to those agreements or transactions that are qualified financial contracts.

Subd. 22. **Qualified financial contract.** (a) "Qualified financial contract" means any commodity contract, forward contract, repurchase agreement, securities contract, swap agreement, and any similar agreement that the commissioner determines to be a qualified financial contract for the purposes of this chapter.

(b) "Commodity contract" means:

(1) a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a board of trade or contract market under the Commodity Exchange Act, United States Code, title 7, section 1, et seq., or a board of trade outside the United States;

(2) an agreement that is subject to regulation under Section 19 of the Commodity Exchange Act, United States Code, title 7, section 1, et seq., and that is commonly known to the commodities trade as a margin account, margin contract, leverage account, or leverage contract;

(3) an agreement or transaction that is subject to regulation under Section 4c(b) of the Commodity Exchange Act, United States Code, title 7, section 1, et seq., and that is commonly known to the commodities trade as a commodity option;

(4) any combination of the agreements or transactions referred to in this paragraph; or

(5) any option to enter into an agreement or transaction referred to in this paragraph.

(c) "Forward contract," "repurchase agreement," "securities contract," and "swap agreement" shall have the meanings set forth in the Federal Deposit Insurance Act, United States Code, title 12, section 1821(e)(8)(D), as amended from time to time.

History: *1969 c 708 s 3; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444; 1990 c 538 s 1; 1992 c 564 art 1 s 24; 1995 c 234 art 1 s 2; 1997 c 225 art 2 s 62; 2001 c 7 s 13; 2009 c 37 art 3 s 12; 2010 c 275 art 1 s 2,3; 2018 c 175 s 1*

60B.04 JURISDICTION AND VENUE.

Subdivision 1. **Actions by commissioner.** Except as provided in subdivision 2, no delinquency proceeding shall be commenced under sections 60B.01 to 60B.61 by anyone other than the commissioner, including an acting commissioner, of this state and no court shall have jurisdiction to entertain, hear, or determine any proceeding under sections 60B.01 to 60B.61 commenced by any other person.

Subd. 2. **Actions by judgment creditors.** (a) The judgment creditors of three or more unrelated judgments may commence proceedings under the conditions and in the manner prescribed in this subdivision by serving notice upon the commissioner and the insurer of intention to file a petition for liquidation under section 60B.20 or 60B.53. Each of the judgments must:

(1) have been rendered against the insurer by a court in this state having jurisdiction over the subject matter and the insurer;

(2) have been entered more than 60 days before the service of notice;

(3) not have been paid in full;

(4) not be the subject of a valid contract between the insurer and any judgment creditor for payment of the judgment, unless the contract has been breached by the insurer; and

(5) not be a judgment on which an appeal or review is pending.

(b) If any one of the judgments in favor of a petitioning creditor remains unpaid for 30 days after service of the notice, and the commissioner has not then filed a petition for liquidation, the creditor may file in the name of the commissioner a verified petition for liquidation of the insurer under section 60B.20 or 60B.53 alleging the conditions stated in this subdivision. The commissioner shall be served and joined in the action.

Subd. 3. **Exclusiveness of proceedings.** No court of this state shall have jurisdiction to entertain, hear, or determine any complaint praying for the dissolution, liquidation, rehabilitation, sequestration, conservation, or receivership of any insurer, or praying for an injunction or restraining order or other relief preliminary to, incidental to, or relating to such proceedings other than in accordance with sections 60B.01 to 60B.61, except that the voluntary dissolution or liquidation of a solvent insurer may occur as otherwise permitted by law, and any court of this state shall have jurisdiction to entertain, hear and determine a petition for voluntary dissolution or liquidation where otherwise permitted by law upon it being established to the satisfaction of the court, after notice to the commissioner, that the insurer is solvent.

Subd. 4. **Change of venue.** Venue for proceedings arising under sections 60B.01 to 60B.61 shall be laid initially as specified in the sections providing for such proceedings. All other actions and proceedings initiated by the receiver may be commenced and tried where the delinquency proceedings are then pending, or where venue would be laid by other applicable law. All other actions and proceedings against the receiver shall be commenced and tried in the county where the delinquency proceedings are pending. At any time upon motion of any party, venue may be changed by order of the court or the presiding judge thereof to any other district court in this state, as the convenience of the parties and witnesses and the ends of justice may require. This subdivision relates only to venue and is not jurisdictional.

Subd. 5. **Personal jurisdiction, grounds.** In addition to other grounds for jurisdiction provided by the law of this state, a court of this state having jurisdiction of the subject matter has jurisdiction over a person served pursuant to rule 4 of Minnesota Rules of Civil Procedure in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in this state:

(a) if the person served is obligated to the insurer in any way as an incident to an agency or brokerage arrangement that may exist or has existed between the insurer and the agent or broker, in any action on or incident to the obligation;

(b) if the person served is a reinsurer who has at any time written a policy of reinsurance for an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced, or is an agent or broker of or for the reinsurer, in any action on or incident to the reinsurance contract; or

(c) if the person served is or has been an officer, manager, trustee, organizer, promoter, or person in a position of comparable authority or influence in an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced, in any action resulting from the relationship with the insurer.

Subd. 6. **Forum non conveniens.** If the court on motion of any party finds that any action commenced under subdivision 5 should as a matter of substantial justice be tried in a forum outside this state, the court may enter an order to stay further proceedings on the action in this state.

History: *1969 c 708 s 4; 1994 c 465 art 2 s 5*

60B.05 INJUNCTIONS AND ORDERS.

Subdivision 1. **Injunctions in this state.** Any receiver appointed in a proceeding under sections 60B.01 to 60B.61 may at any time apply for and any court of general jurisdiction in this state may grant, under the relevant sections of rules of Minnesota Rules of Civil Procedure, such restraining orders, temporary and permanent injunctions, and other orders as are deemed necessary and proper to prevent:

(a) the transaction of further business;

(b) the transfer of property;

(c) interference with the receiver or with the proceedings;

(d) waste of the insurer's assets;

(e) dissipation and transfer of bank accounts;

(f) the institution or further prosecution of any actions or proceedings;

(g) the obtaining of preferences, judgments, attachments, garnishments, or liens against the insurer or its assets;

(h) the levying of execution against the insurer or its assets;

(i) the making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the insurer;

(j) the withholding from the receiver of books, accounts, documents, or other records relating to the business of the insurer; or

(k) any other threatened or contemplated action that might lessen the value of the insurer's assets or prejudice the rights of policyholders, creditors, or shareholders or the administration of the proceeding.

Subd. 2. **Injunctions elsewhere.** The receiver may apply to any court outside of this state for the relief described in subdivision 1.

History: *1969 c 708 s 5*

60B.06 COSTS AND EXPENSES OF LITIGATION.

In any proceeding under sections 60B.01 to 60B.61, the court may award such costs and other expenses of litigation as justice requires, without regard to the limitations otherwise prescribed by law. If costs and expenses are taxed against the commissioner, they shall be paid from funds appropriated to the Department of Commerce.

History: *1969 c 708 s 6; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92*

60B.07 COOPERATION OF OFFICERS AND EMPLOYEES.

Subdivision 1. **Duty to cooperate.** Any officer, manager, trustee, agent or general agent of any insurer and any other person with executive authority over or in charge of any segment of the insurer's affairs having notice of the proceedings shall cooperate with the commissioner in any proceeding under sections 60B.01 to 60B.61 or any investigation preliminary or incidental to the proceeding. "To cooperate" includes, but is not limited to, the following:

(a) to reply promptly in writing to any inquiry from the commissioner requesting such a reply; and

(b) to make available and deliver to the commissioner any books, accounts, documents, or other records, or information or property of or pertaining to the insurer and in that person's possession, custody, or control.

Subd. 2. **Duty not to obstruct.** No person shall obstruct or interfere with the commissioner in the conduct of any delinquency proceeding or any investigation preliminary or incidental thereto.

Subd. 3. **Right to defend.** This section shall not render it illegal to resist by legal proceedings the petition for liquidation or other delinquency proceedings, other orders or the request or demand for cooperation under subdivision 1.

Subd. 4. **Sanction.** Any person included within subdivision 1 who fails to cooperate with the commissioner, or any person who obstructs or interferes with the commissioner in the conduct of any delinquency proceeding or any investigation preliminary or incidental thereto, may be fined not more than $10,000 or imprisoned in the county jail not more than 364 days or both.

History: *1969 c 708 s 7; 1984 c 628 art 3 s 11; 1986 c 444; 2023 c 52 art 6 s 16*

60B.08 [Repealed, 1991 c 326 s 27]

60B.09 COMMISSIONER'S REPORTS.

Subdivision 1. **General report of proceedings.** The commissioner shall include in a biennial report:

(a) the names of the insurers proceeded against under sections 60B.15, 60B.20, 60B.52, 60B.53, and 60B.55, and such other facts as indicate in reasonable detail formal proceedings under sections 60B.01 to 60B.61; and

(b) such facts as generally indicate the utilization and effectiveness of proceedings under sections 60B.11, 60B.12, and 60B.13.

Subd. 2. **Special reports.** (a) The commissioner shall include in the biennial report, not later than the second biennial report following the initiation of any formal proceedings under sections 60B.01 to 60B.61, a detailed analysis of the basic causes and the contributing factors making the initiation of formal proceedings necessary, and shall make recommendations for remedial legislation if any. For this purpose the commissioner

may appoint and determine the compensation of a special assistant who shall be in the unclassified service, qualified to conduct the study and prepare the analysis.

(b) The commissioner shall include in the biennial report, not later than the biennial report following discharge of the receiver, a detailed study of the delinquency proceeding for each insurer subjected to a formal proceeding, with an analysis of the problems faced and their solutions. The commissioner shall also suggest alternative solutions, as well as other material of interest, for the purpose of assisting and guiding liquidators or rehabilitators in the future.

Subd. 3. **Reports on insurers subject to proceedings.** The commissioner as receiver shall make and file annual reports and any other required reports for the companies proceeded against under sections 60B.15, 60B.20, 60B.52, 60B.53, and 60B.55 in the manner and form and within the time required by law of insurers authorized to do business in this state, and under the same penalties for failure to do so.

History: *1969 c 708 s 9; 1982 c 560 s 40; 1986 c 444; 1994 c 465 art 2 s 6,7*

60B.10 CONTINUATION OF DELINQUENCY PROCEEDINGS.

Every proceeding commenced before May 25, 1969 is deemed to have commenced under sections 60B.01 to 60B.61 for the purpose of conducting the proceeding thereafter, except that in the discretion of the commissioner the proceeding may be continued, in whole or in part, as it would have been continued had sections 60B.01 to 60B.61 not been enacted.

History: *1969 c 708 s 10*

60B.11 COMMISSIONER'S SUMMARY ORDERS.

Subdivision 1. **Summary order after hearing.** Whenever the commissioner has reasonable cause to believe, and determines, after a hearing held as prescribed in subdivision 3, that any insurer has committed or engaged in, or is committing or engaging in or is about to commit or engage in any act, practice, or transaction that would subject it to formal delinquency proceedings under sections 60B.01 to 60B.61, the commissioner may make and serve upon the insurer and any other persons involved such orders other than seizure orders under sections 60B.12 and 60B.13 as are reasonably necessary to correct, eliminate, or remedy such conduct, condition, or ground.

Subd. 2. **Summary order before hearing.** If the conditions of subdivision 1 are satisfied, and if it appears to the commissioner that irreparable harm to the property or business of the insurer or to the interests of its policyholders, creditors, or the public may occur unless the commissioner issues with immediate effect the orders described in subdivision 1, the commissioner may make and serve such orders without notice and before hearing, simultaneously serving upon the insurer notice of the hearing upon such order.

Subd. 3. **Service, notice, hearing.** The notice of hearing under subdivision 1 or 2 and the summary order issued under subdivision 1 or 2 shall be served personally or by sending a copy of such notice of order by prepaid certified mail. The notice of hearing under subdivision 1 shall state the time and place of hearing, and the conduct, condition, or ground upon which the commissioner would base an order; the notice of hearing under subdivision 2 shall state the time and place of hearing. Unless mutually agreed between the commissioner and the insurer, the hearing shall occur not less than ten days nor more than 30 days after notice is served and shall be either in Ramsey County or in some other place convenient to the parties to be designated by the commissioner.

Subd. 4. **Judicial relief.** If the commissioner issues a summary order before hearing under subdivision 2, the insurer may at any time waive the commissioner's hearing and the summary decision shall be treated

as a final decision in a contested case under chapter 14, and the insurer may apply for immediate judicial relief by means of any remedy afforded by law without first exhausting administrative remedies. Subsequent to a hearing the insurer or any person whose interests are substantially affected shall be entitled to judicial review in accordance with chapter 14 of any order issued by the commissioner.

Subd. 5. **Sanction.** If any person has violated any order issued under this section which as to that person was then still in effect, that person shall be liable to forfeit a sum not to exceed $10,000. The penalty shall be imposed and collected in an action brought by the attorney general and shall be paid into the state treasury to the credit of the general fund.

Subd. 6. **Enforcement by injunction.** The commissioner may apply for and any court of general jurisdiction may grant, under the relevant sections of Minnesota Rules of Civil Procedure, such restraining orders, temporary and permanent injunctions, and other orders as are deemed necessary to enforce a summary order.

History: *1969 c 399 s 1; 1969 c 708 s 11; 1978 c 674 s 60; 1982 c 424 s 130; 1986 c 444*

60B.12 COURT'S SEIZURE ORDER.

Subdivision 1. **Issuance.** Upon the filing by the commissioner in any district court in this state of a verified petition establishing to the satisfaction of the court that sufficient grounds exist for a formal delinquency proceeding against an insurer under sections 60B.01 to 60B.61 and that the interests of policyholders, creditors, or the public will be endangered by delay, and setting out the order deemed necessary by the commissioner, the court shall issue forthwith, ex parte and without a hearing, an order which may (a) authorize the commissioner to take possession and control of all or a part of the property, books, accounts, documents, and other records of an insurer and of the premises occupied by it for the transaction of its business, and (b) until further order of the court, enjoin the insurer and its officers, managers, agents, and employees from disposition of its property and from transaction of its business except with the written consent of the commissioner, and (c) provide such other terms as the court deems appropriate for the protection of the insurer, its policyholders, its creditors, and the public during the duration of the order. The order shall also direct the service of a copy of the order forthwith upon the insurer and all persons in possession of any property seized under the order.

Subd. 2. **Duration.** The court shall specify in the order what its duration shall be and order the insurer to appear at a specified time within the duration of the order and show cause why the order should not be continued in effect. The duration of the order may be such time as the court deems necessary for the commissioner to ascertain the condition of the insurer. On motion of either party or on its own motion, the court may hold such hearings as it deems desirable after such notice as it deems appropriate, and may set aside, extend, shorten, or modify the terms of the seizure order. The court shall vacate the seizure order if the commissioner fails to commence a formal proceeding under sections 60B.01 to 60B.61 after having had a reasonable opportunity to do so. The issuance of an order of the court pursuant to a formal proceeding under sections 60B.01 to 60B.61 vacates the seizure order.

Subd. 3. **Anticipatory breach.** Entry of a seizure order under this section shall not constitute an anticipatory breach of any contract of the insurer.

History: *1969 c 708 s 12*

60B.13 COMMISSIONER'S SEIZURE ORDER.

Subdivision 1. **Issuance.** If it appears to the commissioner that an emergency exists whereby the interests of the creditors, policyholders, or the public will be endangered by the delay incident to applying for a court

seizure order, then on any ground that would justify a court seizure order under section 60B.12, without notice and without applying to the court, the commissioner may issue a seizure order which must contain a verified statement of the grounds of action. As directed by the seizure order, the commissioner or any representatives of the commissioner shall forthwith take possession and control of all or any part of the property, books, accounts, documents, and other records of the insurer, and of the premises occupied by the insurer for the transaction of its business. The commissioner shall retain possession and control until the order is vacated by the commissioner, is set aside by order of court, is replaced by an order of the court pursuant to a proceeding commenced under subdivision 2, a formal proceeding under sections 60B.01 to 60B.61, or until the expiration of ten days without a filing by the commissioner of a petition for a court order as required by subdivision 2.

Subd. 2. **Judicial review.** Within ten days after the issuance of a seizure order under subdivision 1, the commissioner shall file with a district court a petition under section 60B.12, subdivision 1, for a court order of seizure, with written or oral notice of such petition to the insurer to the extent feasible; otherwise, the commissioner shall state to the court in writing the efforts made to give notice or the reasons why notice is not feasible. Thereafter, the matter shall proceed as provided in section 60B.12, except that the commissioner's seizure order shall remain in effect as provided in subdivision 1.

Subd. 3. **Duty to assist commissioner.** Every law enforcement officer shall assist the commissioner in making and enforcing any such seizure, and every sheriff and police department shall furnish such deputies, patrol officers, or officers as are necessary to assist the commissioner.

Subd. 4. **Anticipatory breach.** Entry of a seizure order under this section shall not constitute an anticipatory breach of any contract of the insurer.

History: *1969 c 708 s 13; 1986 c 444*

60B.14 CONDUCT OF HEARINGS IN SUMMARY PROCEEDINGS.

Subdivision 1. **Confidentiality of commissioner's hearings.** The commissioner shall hold all hearings in summary proceedings privately unless the insurer requests a public hearing, in which case the hearing shall be public.

Subd. 2. **Confidentiality of court hearings.** The court may hold all hearings in summary proceedings and judicial reviews thereof privately in chambers, and shall do so on request of the insurer proceeded against.

Subd. 3. **Records.** In all summary proceedings and judicial reviews thereof, all records of the company, other documents, and all Department of Commerce files and court records and papers, so far as they pertain to or are a part of the record of the summary proceedings, shall be and remain confidential except as is necessary to obtain compliance therewith, unless the court, after hearing arguments from the parties in chambers, shall order otherwise, or unless the insurer requests that the matter be made public. Until such court order, all papers filed with the court administrator shall be held in a confidential file.

Subd. 4. **Parties.** If at any time it appears to the court that any person whose interest is or will be substantially affected by an order did not appear at the hearing and has not been served, the court may order that notice be given and the proceedings be adjourned to give that person opportunity to appear on such terms as may be just.

Subd. 5. **Sanctions.** Any person having possession or custody of and refusing to deliver any of the property, books, accounts, documents, or other records of an insurer against which a seizure order or a

summary order has been issued by the commissioner or by the court, may be fined not more than $20,000 or imprisoned in the county jail for not more than 364 days or both.

History: *1969 c 708 s 14; 1983 c 289 s 114 subd 1; 1984 c 628 art 3 s 11; 1984 c 655 art 1 s 92; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 2023 c 52 art 6 s 16*

60B.15 GROUNDS FOR REHABILITATION.

The commissioner may apply by verified petition to the District Court for Ramsey County or for the county in which the principal office of the insurer is located for an order directing the commissioner to rehabilitate a domestic insurer or an alien insurer domiciled in this state on any one or more of the following grounds:

(1) any ground on which the commissioner may apply for an order of liquidation under section 60B.20, whenever the commissioner believes that the insurer may be successfully rehabilitated without substantial increase in the risk of loss to creditors of the insurer, its policyholders or to the public;

(2) that the commissioner has reasonable cause to believe that there has been theft from the insurer, wrongful sequestration or diversion of the insurer's assets, forgery or fraud affecting the insurer or other illegal conduct in, by or with respect to the insurer, which endanger assets in an amount threatening insolvency of the insurer;

(3) that substantial and unexplained discrepancies exist between the insurer's records and the most recent annual report or other official company reports;

(4) that the insurer, after written demand by the commissioner, has failed to remove any person who in fact has executive authority in the insurer, whether an officer, manager, general agent, employee, or other person, if the person has been found by the commissioner after notice and hearing to be dishonest or untrustworthy in a way affecting the insurer's business such as is the basis for action under section 60A.052;

(5) that control of the insurer, whether by stock ownership or otherwise, and whether direct or indirect, is in one or more persons found by the commissioner after notice and hearing to be dishonest or untrustworthy such as is the basis for action under section 60A.052;

(6) that the insurer, after written demand by the commissioner, has failed within a reasonable period of time to terminate the employment and status and all influences on management of any person who in fact has executive authority in the insurer, whether an officer, manager, general agent, employee or other person if the person has refused to submit to lawful examination under oath by the commissioner concerning the affairs of the insurer, whether in this state or elsewhere;

(7) that after lawful written demand by the commissioner the insurer has failed to submit promptly any of its own property, books, accounts, documents, or other records, or those of any subsidiary or related company within the control of the insurer, or those of any person having executive authority in the insurer so far as they pertain to the insurer, to reasonable inspection or examination by the commissioner or an authorized representative. If the insurer is unable to submit the property, books, accounts, documents, or other records of a person having executive authority in the insurer, it shall be excused from doing so if it promptly and effectively terminates the relationship of the person to the insurer;

(8) that without first obtaining the written consent of the commissioner, or if required by law, the written consent of the attorney general, the insurer has transferred, or attempted to transfer, substantially its entire property or business, or has entered into any transaction the effect of which is to merge, consolidate, or reinsure substantially its entire property or business of any other person;

(9) that the insurer or its property has been or is the subject of an application for the appointment of a receiver, trustee, custodian, conservator or sequestrator or similar fiduciary of the insurer or its property otherwise than as authorized under sections 60B.01 to 60B.61, and that such appointment has been made or is imminent, and that such appointment might divest the courts of this state of jurisdiction or prejudice orderly delinquency proceedings under sections 60B.01 to 60B.61;

(10) that within the previous year the insurer has willfully violated its charter or articles of incorporation or its bylaws or any applicable insurance law or regulation of any state, or of the federal government, or any valid order of the commissioner under section 60B.11 in any manner or as to any matter which threatens substantial injury to the insurer, its creditors, its policyholders or the public, or having become aware within the previous year of an unintentional or willful violation has failed to take all reasonable steps to remedy the situation resulting from the violation and to prevent the same violations in the future;

(11) that the directors of the insurer are deadlocked in the management of the insurer's affairs and that the members or shareholders are unable to break the deadlock and that irreparable injury to the insurer, its creditors, its policyholders, or the public is threatened by reason thereof;

(12) that the insurer has failed to pay for 60 days after due date any obligation to this state or any political subdivision thereof or any judgment entered in this state, except that such nonpayment shall not be a ground until 60 days after any good faith effort by the insurer to contest the obligation or judgment has been terminated, whether it is before the commissioner or in the courts;

(13) that the insurer has failed to file its annual report or other report within the time allowed by law, and after written demand by the commissioner has failed to give an adequate explanation immediately;

(14) that two-thirds of the board of directors, or the holders of a majority of the shares entitled to vote, or a majority of members or policyholders of an insurer subject to control by its members or policyholders, consent to rehabilitation under sections 60B.01 to 60B.61;

(15) that the insurer is engaging in a systematic practice of reaching settlements with and obtaining releases from policyholders or third-party claimants and then unreasonably delaying payment of or failing to pay the agreed-upon settlements;

(16) that the insurer is in such condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, or the public;

(17) that within the previous 12 months the insurer has systematically attempted to compromise with its creditors on the ground that it is financially unable to pay its claims in full;

(18) in the context of a health maintenance organization, "insurer" when used in clauses (1) to (17) means "health maintenance organization." In addition to the grounds in clauses (1) to (17), any one of the following constitutes grounds for rehabilitation of a health maintenance organization:

(a) the health maintenance organization is unable or is expected to be unable to meet its debts as they become due;

(b) grounds exist under section 62D.042, subdivision 7;

(c) the health maintenance organization's liabilities exceed the current value of its assets, exclusive of intangibles and, where the guaranteeing organization's financial condition no longer meets the requirements of sections 62D.041 and 62D.042, exclusive of any deposits, letters of credit, or guarantees provided by any guaranteeing organization under chapter 62D;

(d) in addition to grounds under clause (16), within the last year the health maintenance organization has failed, and the commissioner of health expects such failure to continue in the future, to make comprehensive medical care adequately available and accessible to its enrollees and the health maintenance organization has not successfully implemented a plan of corrective action pursuant to section 62D.121, subdivision 7; and

(e) in addition to grounds under clause (16), within the last year the directors or officers of the health maintenance organization willfully violated the requirements of section 317A.251, or having become aware within the previous year of an unintentional or willful violation of section 317A.251, have failed to take all reasonable steps to remedy the situation resulting from the violation and to prevent the same violation in the future;

(19) an affiliate of the insurer has been placed in conservatorship, rehabilitation, liquidation, or other court supervision such that the insurer's financial condition may be jeopardized.

History: *1969 c 708 s 15; 1971 c 568 s 25; 1986 c 444; 1990 c 538 s 2; 1992 c 564 art 1 s 25; 1993 c 13 art 2 s 1*

60B.16 REHABILITATION ORDERS.

Subdivision 1. **Appointment of rehabilitator.** An order to rehabilitate the business of a domestic insurer, or an alien insurer domiciled in this state, shall appoint the commissioner and successors in office rehabilitator and shall direct the rehabilitator forthwith to take possession of the assets of the insurer and to administer them under the orders of the court. The recording of the order with any county recorder in the state imparts the same notice as a deed, bill of sale, or other evidence of title duly recorded with that county recorder.

Subd. 2. **Anticipatory breach.** Entry of an order of rehabilitation shall not constitute an anticipatory breach of any contracts of the insurer.

History: *1969 c 708 s 16; 1976 c 181 s 2; 1986 c 444; 2005 c 4 s 6*

60B.17 POWERS AND DUTIES OF REHABILITATOR.

Subdivision 1. **Special deputy commissioner.** The commissioner as rehabilitator shall employ a special deputy commissioner to rehabilitate the insurer. The special deputy shall have all of the powers of the rehabilitator granted under this section. Subject to court approval, the commissioner shall make arrangements for compensation as are necessary to obtain a special deputy of proven ability. The special deputy shall serve at the pleasure of the commissioner.

Subd. 2. **General power.** Subject to court approval, the rehabilitator may take such action as that person deems necessary or expedient to reform and revitalize the insurer. The rehabilitator shall have all the powers of the officers and managers, whose authority shall be suspended, except as they are redelegated by the rehabilitator and shall have full power to direct and manage, to hire and discharge employees subject to any contract rights they may have, and to deal with the property and business of the insurer.

The power of the rehabilitator of a health maintenance organization includes the power to transfer coverage obligations to a solvent and voluntary health maintenance organization, insurer, or nonprofit health service plan, and to assign provider contracts of the insolvent health maintenance organization to an assuming health maintenance organization, insurer, or nonprofit health service plan permitted to enter into such agreements. The rehabilitator shall not be required to meet the notice requirements of section 62D.121. Transferees of coverage obligations or provider contracts shall have no liability to creditors or obligees of the health maintenance organization except those liabilities expressly assumed.

Subd. 3. **Advice from experts.** The rehabilitator may consult with and obtain formal or informal advice and aid of insurance experts.

Subd. 4. **Pursuit of insurer's claims against insiders.** If the rehabilitator finds that there has been criminal or tortious conduct or breach of any contractual or fiduciary obligation detrimental to the insurer by any officer, manager, agent, broker, employee, or other person, the rehabilitator may pursue all appropriate legal remedies on behalf of the insurer.

Subd. 5. **Reorganization plan.** The rehabilitator may prepare a plan for the reorganization, consolidation, conversion, reinsurance, merger, or other transformation of the insurer. Upon application of the rehabilitator for approval of the plan, and after such notice and hearing as the court prescribes, the court may either approve or disapprove the plan proposed, or may modify it and approve it as modified. If it is approved, the rehabilitator shall carry out the plan. In the case of a life insurer, the plan proposed may include the imposition of liens upon the equities of policyholders of the company, if all rights of shareholders are first relinquished. A plan for a life insurer may also propose imposition of a moratorium upon loan and cash surrender rights under policies, for such period and to such an extent as are necessary.

Subd. 6. **Fraudulent transfers.** The rehabilitator shall have the power to avoid fraudulent transfers under sections 60B.30 and 60B.31.

Subd. 7. **Coordination of activities with guaranty associations.** The rehabilitator shall coordinate activities with those of each guaranty association having an interest in the rehabilitation and shall submit a report detailing how coordination will be achieved to the court for its approval within 30 days following appointment, or within the time the court, in its discretion, may establish.

Subd. 8. **Plan of rehabilitation for a health maintenance organization.** (a) The rehabilitator of a health maintenance organization, after consultation with the board of directors of the health maintenance organization, has the sole authority to propose a plan of rehabilitation.

(b) The court shall approve a plan of rehabilitation of a health maintenance organization if it meets the following criteria:

(1) the plan provides for payments to lien claimants equal to the value of each lien claim on the date of approval of the plan and may provide for payment of lien claims beyond the effective date of the plan and beyond the original repayment period for the obligation underlying the claim where the plan provides sufficient protection for the lien claim during the period for such claim under the rehabilitation plan;

(2) the plan provides for payment in full of each prior class of claims before payment of the next class;

(3) the plan provides for payment in full of all claims for taxes of the United States government, except for claims for interest accruing during the rehabilitation or claims for penalties. The plan may provide for payment of the claims over any period of time up to ten years after the effective date of the plan; and

(4) the plan is fair and equitable as to each class of claims for which the plan does not provide full payment. In determining whether the plan is fair and equitable to these claimants, the court shall consider the feasibility of the plan, the health maintenance organization's ability to generate a significant surplus, the health maintenance organization's need to expend money to change or expand its business, and the injury to enrollees through loss of coverage if such a plan is not approved.

(c) The plan may provide for transfer of the health maintenance contracts and liquidation of the health maintenance organization.

(d) The court's approval of a plan of rehabilitation discharges the health maintenance organization from all claims except to the extent provided in the plan.

History: *1969 c 708 s 17; 1977 c 273 s 17; 1986 c 444; 1990 c 538 s 3,4; 1992 c 564 art 1 s 26*

60B.171 USE, SALE, OR TRANSFER OF ASSETS DURING REHABILITATION.

Subdivision 1. **Rehabilitator authority to use, sell, or transfer assets.** In addition to the powers of the rehabilitator provided in this chapter, during rehabilitation of a health maintenance organization, the rehabilitator may use, sell, or transfer assets as provided in this section.

Subd. 2. **Ordinary course of business.** (a) The rehabilitator may use, sell, or transfer assets in which a person has a lien, which are not cash or cash equivalents, in the ordinary course of business without approval of the court, except that the rehabilitator must provide sufficient protection for that lien unless the lienholder consents.

(b) The rehabilitator may use, sell, or transfer cash or cash equivalents in which any person has a lien in the ordinary course of business only if:

(1) each person who has a lien in the assets consents; or

(2) after notice and a hearing, the court finds that the rehabilitator has or will provide the person who has a lien with sufficient protection for that lien.

Subd. 3. **Out of the ordinary course of business.** (a) The rehabilitator may use, sell, or transfer assets in which any person has a lien out of the ordinary course of business with court approval where:

(1) the person that has a lien consents; or

(2) the rehabilitator provides sufficient protection for that lien. Sufficient protection includes, but is not limited to, equivalent substitute collateral or payments in the amount approximately equal to decrease in value or amount of collateral.

(b) Any sale or transfer shall be free and clear of all lien interests if:

(1) all persons with liens in the assets to be sold or transferred consent to the sale or transfer;

(2) the consideration for the sale or transfer exceeds the total amount of all liens in the assets to be transferred;

(3) the rehabilitator provides sufficient protection for all lien claims in the assets; or

(4) other law permits a sale or transfer free and clear of any lien.

History: *1990 c 538 s 5*

60B.18 ACTIONS BY AND AGAINST REHABILITATOR.

Subdivision 1. **Stays in pending litigation.** On request of the rehabilitator, any court in this state before which any action or proceeding by or against an insurer is pending when a rehabilitation order against the insurer is entered shall stay the action or proceeding for such time as is necessary for the rehabilitator to obtain proper representation and prepare for further proceedings. The court that entered the rehabilitation order shall order the rehabilitator to take such action respecting the pending litigation as the court deems necessary in the interests of justice and for the protection of creditors, policyholders, and the public. The

rehabilitator shall immediately consider all litigation pending outside this state and shall petition the courts having jurisdiction over that litigation for stays whenever necessary to protect the estate of the insurer.

Subd. 2. **Statute of limitations on claims by insurer.** The time between the filing of a petition for rehabilitation against an insurer and denial of the petition or an order of rehabilitation shall not be considered to be a part of the time within which any action may be commenced by the insurer. Any action by the insurer that might have been commenced when the petition was filed may be commenced for at least 60 days after the order of rehabilitation is entered.

Subd. 3. **Statute of limitations on claims against insurer.** The time between the filing of a petition for rehabilitation against an insurer and the denial of the petition or an order of rehabilitation shall not be considered to be a part of the time within which any action may be commenced against the insurer. Any action against the insurer that might have been commenced when the petition was filed may be commenced for at least 60 days after the order of rehabilitation is entered or the petition is denied.

History: *1969 c 708 s 18*

60B.181 NOTICE REGARDING REHABILITATION OR LIQUIDATION PROCEEDING.

In an insolvency proceeding against a health maintenance organization, at the time the rehabilitator or liquidator gives notice to creditors and enrollees according to section 60B.26, the rehabilitator or liquidator shall also give notice that any interested party may request in writing notice of subsequent actions or hearings in the proceeding. After the initial notice, the rehabilitator or liquidator may give notice only to those with a direct stake in any action or hearing and to those who have requested notice in writing. However, the rehabilitator or liquidator must give all claimants who timely file proofs of claims notice of any plan of rehabilitation or liquidation.

History: *1990 c 538 s 6*

60B.19 TERMINATION OF REHABILITATION.

Subdivision 1. **Transformation to liquidation.** Whenever the rehabilitator believes that further attempts to rehabilitate an insurer would substantially increase the risk of loss to creditors, policyholders, or the public, or would be futile, the rehabilitator may petition the court for an order of liquidation. A petition under this subdivision shall have the same effect as a petition under section 60B.20. The court shall permit the directors to defend against the petition and shall order payment from the estate of the insurer of such costs and other expenses of defense as justice requires.

Subd. 2. **Order to return to company.** The rehabilitator may at any time petition the court for an order terminating rehabilitation of an insurer. If the court finds that rehabilitation has been accomplished and that grounds for rehabilitation under section 60B.15 no longer exist, it shall order that the insurer be restored to possession of its property and the control of its business. The court may also make that finding and issue that order at any time upon its own motion.

History: *1969 c 708 s 19; 1986 c 444*

60B.191 CLAIMS REGARDING REHABILITATION AND LIQUIDATION OF HEALTH MAINTENANCE ORGANIZATIONS.

Subdivision 1. **Priority of claims.** The rehabilitator or liquidator of a health maintenance organization shall, in lieu of the classification otherwise provided in this chapter, classify all approved claims into the following classes:

(1) claims for ordinary and necessary expenses of operating and administering the health maintenance organization during rehabilitation or liquidation proceeding. Administrative expenses of a rehabilitation proceeding shall constitute administrative expenses of the liquidation proceeding;

(2) claims of the United States government for unpaid taxes;

(3) claims by persons employed by the health maintenance organization for services rendered within the four months before the initiation of any insolvency proceeding, up to $1,000. Employee claimants shall not be entitled to any lien claim or other claim under chapter 514;

(4) claims by all providers for health care goods and services to the extent covered under a health maintenance contract between enrollees and the health maintenance organization, and claims by enrollees for coverage under a health maintenance contract with the health maintenance organization;

(5) claims which are not secured by any perfected lien or security interest in assets of the health maintenance organization and which are not otherwise classified; or

(6) claims subordinated under this chapter, chapter 62D, or by agreement with the health maintenance organization or the commissioner of health.

Subd. 2. **Claims for malpractice.** As to a health maintenance organization, a claim shall be classified as an unsecured claim if it is made by an enrollee, a parent or guardian of an enrollee, or a person seeking contribution based on injuries to an enrollee, for damages of any type related to death or bodily illness or injury based on improper provisions or failure to provide health care goods or services by a health maintenance organization and its employees, or a provider and its employees to an enrollee of the health maintenance organization. However, a claimant who has secured a judgment or settlement shall receive any insurance proceeds received by the health maintenance organization based on the claims or the medical care provided to the enrollee, other than reinsurance payable because the aggregate value of services to an enrollee exceeds a certain amount, less any expenses, including reasonable attorneys' fees the health maintenance organization incurred in defending the claim or prosecuting its claim against the insurer. This section does not expand the liability of health maintenance organizations on bodily injury to enrollees.

History: *1990 c 538 s 7*

60B.193 LIABILITY OF ENROLLEES.

Upon any Minnesota state district court's order of rehabilitation or liquidation of a health maintenance organization under this chapter, all providers of health care goods or services to enrollees of the health maintenance organization, regardless of whether they have a written contract with the health maintenance organization, are prohibited from attempting to collect or collecting payment for authorized referrals from any enrollee of the health maintenance organization for goods or services to the extent the health maintenance organization is obligated to cover the goods and services under a health maintenance contract with the enrollee. A provider's only recourse is to file a claim against the health maintenance organization in the insolvency proceeding and to receive payment in the proceeding.

History: *1990 c 538 s 8*

60B.20 GROUNDS FOR LIQUIDATION.

The commissioner may apply by verified petition to the District Court for Ramsey County or for the county in which the principal office of the insurer is located for an order to liquidate a domestic insurer or an alien insurer domiciled in this state on any one or more of the following grounds:

(1) any ground on which the commissioner may apply for an order of rehabilitation under section 60B.15, whenever the commissioner believes that attempts to rehabilitate the insurer would substantially increase the risk of loss to its creditors, its policyholders, or the public, or would be futile, or that rehabilitation would serve no useful purpose;

(2) that the insurer is or is about to become insolvent;

(3) that the insurer has not transacted the business for which it was organized or incorporated during the previous 12 months or has transacted only a token such business during that period, although authorized to do so throughout that period, or that more than 12 months after incorporation it has failed to become authorized to do the business for which it was organized or incorporated;

(4) that the insurer has commenced, or within the previous year has attempted to commence, voluntary dissolution or liquidation otherwise than as provided in section 60B.04, subdivision 3 in the case of a solvent insurer;

(5) that the insurer has concealed records or assets from the commissioner or improperly removed them from the jurisdiction, or the commissioner believes that the insurer is about to do so;

(6) that the insurer does not satisfy the requirements that would be applicable if it were seeking initial authorization in this state to do the business for which it was organized or incorporated, except for:

(i) requirements that are intended to apply only at the time the initial authorization to do business is obtained, and not thereafter; and

(ii) requirements that are expressly made inapplicable by the laws establishing the requirements;

(7) that the holders of two-thirds of the shares entitled to vote, or two-thirds of the members or policyholders entitled to vote in an insurer controlled by its members or policyholders, have consented to a petition;

(8) in the context of a health maintenance organization, "insurer" when used in clauses (1) to (7) means "health maintenance organization." In addition to the grounds in clauses (1) to (7), any one of the following constitutes grounds for liquidation of a health maintenance organization:

(i) the health maintenance organization is unable or is expected to be unable to meet its debts as they become due;

(ii) grounds exist under section 62D.042, subdivision 7;

(iii) the health maintenance organization's liabilities exceed the current value of its assets, exclusive of intangibles and, where the guaranteeing organization's financial condition no longer meets the requirements of sections 62D.041 and 62D.042, exclusive of any deposits, letters of credit, or guarantees provided by any guaranteeing organization under chapter 62D;

(iv) within the last year the health maintenance organization has failed, and the commissioner of health expects failure to continue in the future, to make comprehensive medical care adequately available and accessible to its enrollees and the health maintenance organization has not successfully implemented a plan of corrective action pursuant to section 62D.121, subdivision 7; and

(v) within the last year the directors or officers of the health maintenance organization willfully violated the requirements of section 317A.251, or having become aware within the previous year of an unintentional

or willful violation of section 317A.251, have failed to take all reasonable steps to remedy the situation resulting from the violation and to prevent the same violation in the future.

History: *1969 c 708 s 20; 1986 c 444; 1990 c 538 s 9*

60B.21 LIQUIDATION ORDERS.

Subdivision 1. **Order to liquidate.** An order to liquidate the business of a domestic insurer shall appoint the commissioner and successors in office liquidator and shall direct the liquidator forthwith to take possession of the assets of the insurer and to administer them under the orders of the court. The liquidator shall be vested by operation of law with the title to all of the property, contracts, and rights of action and all of the books and records of the insurer ordered liquidated, wherever located, as of the date of the filing of the petition for liquidation. The commissioner may recover and reduce the same to possession except that ancillary receivers in reciprocal states shall have, as to assets located in their respective states, the rights and powers which are prescribed in section 60B.55, subdivision 3, for ancillary receivers appointed in this state as to assets located in this state. The recording of the order with any county recorder in this state imparts the same notice as a deed, bill of sale, or other evidence of title duly recorded with that county recorder.

Subd. 2. **Fixing of rights.** Upon issuance of the order, the rights and liabilities of any such insurer and of its creditors, policyholders, shareholders, members, and all other persons interested in its estate are fixed as of the date of filing of the petition for liquidation, except as provided in sections 60B.22, 60B.25, clause (22), and 60B.39.

Subd. 3. **Alien insurer.** An order to liquidate the business of an alien insurer domiciled in this state shall be in the same terms and have the same legal effect as an order to liquidate a domestic insurer, except that the assets and the business in the United States shall be the only assets and business included under the order.

Subd. 4. **Declaration of insolvency.** At the time of petitioning for an order of liquidation, or at any time thereafter, the commissioner may petition the court to declare the insurer insolvent, and after such notice and hearing as it deems proper, the court may make the declaration.

History: *1969 c 708 s 21; 1976 c 181 s 2; 1986 c 444; 1999 c 177 s 18; 2005 c 4 s 7*

60B.22 CONTINUANCE OF COVERAGE.

Subdivision 1. **Length of continued coverage.** All insurance policies or similar contracts of coverage issued by the insurer shall continue in force:

(a) for a period of 30 days from the date of entry of the liquidation order;

(b) until the normal expiration of the policy or contract coverage;

(c) until the insured has replaced the coverage with equivalent coverage in another insurer; or

(d) until the liquidator has effected a transfer of the policy or contract obligation pursuant to section 60B.25, clause (8), whichever time is less.

Subd. 2. **Legal status of continued coverage.** If the coverage continued under this section is replaced by coverage that is not equivalent, the coverage continued under this section shall be excess coverage over the replacement coverage to the extent of the deficiency. Claims arising during the continuation of coverage shall be treated as if they arose immediately before the petition for liquidation. Coverage under this subdivision

shall not satisfy any legal obligation of the insured to carry insurance protection or other coverage, whether the obligation is created by law or by contract.

History: *1969 c 708 s 22; 1993 c 299 s 7*

60B.23 DISSOLUTION OF INSURER.

The commissioner may petition for an order dissolving the corporate existence of a domestic insurer or the United States branch of an alien insurer domiciled in this state at the time the commissioner applies for a liquidation order. If the court issues a liquidation order, it also shall order dissolution if the commissioner has petitioned for it. The court shall order dissolution of the corporation upon petition by the commissioner at any time after a liquidation order has been granted. If the dissolution has not previously occurred, it shall be effected by operation of law upon the discharge of the liquidator. The commissioner shall file a dissolution with the secretary of state pursuant to section 302A.711, subdivision 2, paragraphs (a), clauses (1), (2), and (5), and (b); and subdivisions 3 and 4.

History: *1969 c 708 s 23; 1986 c 444; 2005 c 69 art 2 s 9*

60B.24 [Repealed, 1993 c 299 s 33]

60B.25 POWERS OF LIQUIDATOR.

The liquidator shall report to the court monthly, or at other intervals specified by the court, on the progress of the liquidation in whatever detail the court orders. The liquidator shall coordinate activities with those of each guaranty association having an interest in the liquidation and shall submit a report detailing how coordination will be achieved to the court for its approval within 30 days following appointment, or within the time which the court, in its discretion, may establish. Subject to the court's control, the liquidator may:

(1) Appoint a special deputy to act under sections 60B.01 to 60B.61 and determine the deputy's compensation. The special deputy shall have all powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator.

(2) Appoint or engage employees and agents, actuaries, accountants, appraisers, consultants, and other personnel deemed necessary to assist in the liquidation without regard to chapter 14.

(3) Fix the compensation of persons under clause (2), subject to the control of the court.

(4) Defray all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer. If the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the liquidator may advance the costs so incurred out of the appropriation made to the Department of Commerce. Any amounts so paid shall be deemed expense of administration and shall be repaid for the credit of the Department of Commerce out of the first available money of the insurer.

(5) Hold hearings, subpoena witnesses and compel their attendance, administer oaths, examine any person under oath and compel any person to subscribe to testimony after it has been correctly reduced to writing, and in connection therewith require the production of any books, papers, records, or other documents which the liquidator deems relevant to the inquiry.

(6) Collect all debts and money due and claims belonging to the insurer, wherever located, and for this purpose institute timely action in other jurisdictions, in order to forestall garnishment and attachment proceedings against such debts; do such other acts as are necessary or expedient to collect, conserve, or

protect its assets or property, including sell, compound, compromise, or assign for purposes of collection, upon such terms and conditions as the liquidator deems best, any bad or doubtful debts; and pursue any creditor's remedies available to enforce claims.

(7) Conduct public and private sales of the property of the insurer in a manner prescribed by the court.

(8) Use assets of the estate to transfer coverage obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under section 60B.44.

(9) Acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable, except that no transaction involving property the market value of which exceeds $10,000 shall be concluded without express permission of the court. The liquidator may also execute, acknowledge, and deliver any deeds, assignments, releases, and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation. In cases where real property sold by the liquidator is located other than in the county where the liquidation is pending, the liquidator shall cause to be recorded with the county recorder for the county in which the property is located a certified copy of the order of appointment.

(10) Borrow money on the security of the insurer's assets or without security and execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation.

(11) Enter into such contracts as are necessary to carry out the order to liquidate, and affirm or disavow any contracts to which the insurer is a party.

(12) Continue to prosecute and institute in the name of the insurer or in the liquidator's own name any suits and other legal proceedings, in this state or elsewhere, and abandon the prosecution of claims the liquidator deems unprofitable to pursue further. If the insurer is dissolved under section 60B.23, the liquidator may apply to any court in this state or elsewhere for leave to be substituted for the insurer as plaintiff.

(13) Prosecute any action which may exist in behalf of the creditors, members, policyholders, or shareholders of the insurer against any officer of the insurer, or any other person.

(14) Remove any records and property of the insurer to the offices of the commissioner or to such other place as is convenient for the purposes of efficient and orderly execution of the liquidation.

(15) Deposit in one or more banks in this state such sums as are required for meeting current administration expenses and dividend distributions.

(16) Deposit with the State Board of Investment for investment pursuant to section 11A.24, all sums not currently needed, unless the court orders otherwise.

(17) Record or file any necessary documents for record in the office of any county recorder or record office in this state or elsewhere where property of the insurer is located.

(18) Assert all defenses available to the insurer as against third persons, including statutes of limitations, statutes of frauds, and the defense of usury. A waiver of any defense by the insurer after a petition for liquidation has been filed shall not bind the liquidator.

(19) Exercise and enforce all the rights, remedies, and powers of any creditor, shareholder, policyholder, or member, including any power to avoid any transfer or lien that may be given by law and that is not included within sections 60B.30 and 60B.32.

(20) Intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and act as the receiver or trustee whenever the appointment is offered.

(21) Enter into agreements with any receiver or commissioner of any other state relating to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing business in both states.

(22) Collect from an insured any unpaid earned premium or retrospectively rated premium due the insurer based on the termination of coverage under section 60B.22. Premium on surety business is considered earned at inception if no policy term can be determined. All other premium will be considered earned and will be prorated over the determined policy term, regardless of any provision in the bond, guaranty, contract, or other agreement.

(23) Exercise all powers now held or hereafter conferred upon receivers by the laws of this state not inconsistent with sections 60B.01 to 60B.61.

(24) The enumeration in this section of the powers and authority of the liquidator is not a limitation, nor does it exclude the right to do such other acts not herein specifically enumerated or otherwise provided for as are necessary or expedient for the accomplishment of or in aid of the purpose of liquidation.

(25) The power of the liquidator of a health maintenance organization includes the power to transfer coverage obligations to a solvent and voluntary health maintenance organization, insurer, or nonprofit health service plan, and to assign provider contracts of the insolvent health maintenance organization to an assuming health maintenance organization, insurer, or nonprofit health service plan permitted to enter into such agreements. The liquidator is not required to meet the notice requirements of section 62D.121. Transferees of coverage obligations or provider contracts shall have no liability to creditors or obligees of the health maintenance organization except those liabilities expressly assumed.

History: *1969 c 708 s 25; 1976 c 181 s 2; 1977 c 273 s 18; 1980 c 607 art 14 s 46; 1982 c 424 s 130; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444; 1990 c 538 s 10; 1991 c 199 art 1 s 10; 1991 c 325 art 5 s 1; 1999 c 177 s 19; 2005 c 4 s 8*

60B.26 NOTICE TO CREDITORS AND OTHERS.

Subdivision 1. **Notice required.** (a) The liquidator shall give notice of the liquidation order as soon as possible by first class mail and either by telegram or telephone to the commissioner of commerce of each jurisdiction in which the insurer is licensed to do business, by first class mail and by telephone to the Department of Labor and Industry of this state if the insurer is or has been an insurer of workers' compensation, by first class mail within this state and by airmail outside this state to all agents of the insurer having a duty under this chapter, by first class mail, if the insurer is a surety company to every district court judge exercising probate jurisdiction and the court administrator of all courts of record in this state and upon receipt of such notice it shall be the duty of those judges and court administrators to notify and require every executor, administrator, guardian, trustee, or other fiduciary having filed a bond on which such company is surety, to forthwith file a new bond with new sureties, and by first class mail within this state and by airmail outside this state at the last known address to all persons known or reasonably expected to have claims against the insurer, including all policyholders. The liquidator also shall publish a notice three consecutive times in a newspaper of general circulation in the county in which the liquidation is pending or in Ramsey County, the last publication to be not less than three months before the earliest deadline specified in the notice under subdivision 2.

(b) Notice to agents shall inform them of their duties under this chapter and inform them what information they must communicate to policyholders. Notice to policyholders shall include notice of impairment and

termination of coverage under section 60B.22. When it is applicable, notice to policyholders shall include (1) notice of withdrawal of the insurer from the defense of any case in which the policyholder is interested, and (2) notice of the right to file a claim under section 60B.40, subdivision 2.

(c) Within 15 days of the date of entry of the order, the liquidator shall report to the court what notice has been given. The court may order such additional notice as it deems appropriate.

Subd. 2. **Notice respecting claim filing.** Notice to potential claimants under subdivision 1 shall require claimants to file with the court their claims together with proper proofs thereof under section 60B.38, on or before a date the liquidator specifies in the notice, which shall be no less than six months nor more than one year after entry of the order, except that the liquidator need not require persons claiming unearned premiums or subscription rates and persons claiming cash surrender values or other investment values in life insurance and annuities to file a claim. The liquidator may specify different dates for the filing of different kinds of claims. Notice to potential claimants shall include notice of the existence of any guaranty association charged by statute with the guaranty of the obligations of the insurer. Where procedures have been established by the association for the filing of claims this notice shall include an explanation of those procedures.

Subd. 3. **Notice conclusive.** If notice is given in accordance with this section, the distribution of the assets of the insurer under sections 60B.01 to 60B.61 shall be conclusive with respect to all claimants, whether or not they received notice.

History: *Ex1967 c 1 s 6; 1969 c 708 s 26; 1975 c 359 s 23; 1977 c 273 s 21; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1995 c 189 s 8; 1996 c 277 s 1; 1999 c 177 s 20*

60B.27 [Repealed, 1996 c 446 art 1 s 72; 1998 c 339 s 72]

60B.28 ACTIONS BY AND AGAINST LIQUIDATOR.

Subdivision 1. **Termination of actions against insurer by order appointing liquidator.** Upon issuance of any order appointing the commissioner liquidator of a domestic insurer or of an alien insurer domiciled in this state, all actions and all proceedings against the insurer whether in this state or elsewhere shall be abated and the liquidator shall not intervene in them, except as provided in this section. Whenever in the liquidator's judgment an action in this state has proceeded to a point where fairness or convenience would be served by its continuation to judgment, the liquidator may apply to the court for leave to defend or to be substituted for the insurer, and if the court gives leave, the action shall not be abated. Whenever in the liquidator's judgment, protection of the estate of the insurer necessitates intervention in an action against the insurer that is pending outside this state, with approval of the court the liquidator may intervene in the action. The liquidator may defend any action in which the liquidator intervenes under this section at the expense of the estate of the insurer.

Subd. 2. **Statutes of limitations on claims by insurer.** The liquidator may, within two years subsequent to the entry of an order for liquidation or within such further time as applicable law permits, institute an action or proceeding on behalf of the estate of the insurer upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which such order is entered. Where, by any agreement, a period of limitation is fixed for instituting a suit or proceeding upon any claim or for filing any claim, proof of claim, proof of loss, demand, notice or the like, or where in any proceeding, judicial or otherwise, a period of limitation is fixed, either in the proceeding or by applicable law, for taking any action, filing any claim or pleading, or doing any act, and where in any such case the period had not expired at the date of the filing of the petition, the liquidator may, for the benefit of the estate, take any such action or do any such act, required of or permitted to the insurer, within a period of 60 days subsequent to the entry of an order for liquidation, or within such further period as is permitted

by the agreement, or in the proceeding or by applicable law, or within such further period as is shown to the satisfaction of the court not to be unfairly prejudicial to the other party.

Subd. 3. **Statutes of limitations on claims against insurer.** The time between the filing of a petition for liquidation against an insurer and the denial of the petition shall not be considered to be a part of the time within which any action may be commenced against the insurer. Any action against the insurer that might have been commenced when the petition was filed may be commenced for at least 60 days after the petition is denied.

History: *1969 c 708 s 28; 1986 c 444*

60B.29 COLLECTION AND LIST OF ASSETS.

Subdivision 1. **List of assets required.** As soon as practicable after the liquidation order, the liquidator shall prepare in duplicate a list of the insurer's assets. The list shall be amended or supplemented as the court requires. One copy shall be filed in the office of the court administrator of the court having jurisdiction over the liquidation proceedings and one copy shall be retained for the liquidator's files. All amendments and supplements shall be similarly filed.

Subd. 2. **Liquidation of assets.** The liquidator shall reduce the assets to a degree of liquidity that is consistent with the effective execution of the liquidation as rapidly and economically as the liquidator can.

History: *1969 c 708 s 29; 1986 c 444; 1Sp1986 c 3 art 1 s 82*

60B.30 FRAUDULENT TRANSFERS PRIOR TO PETITION.

Subdivision 1. **Definition and effect.** Every transfer made or suffered and every obligation incurred by an insurer within one year prior to the filing of a successful petition for rehabilitation or liquidation under sections 60B.01 to 60B.61 is fraudulent as to then existing and future creditors if made or incurred without fair consideration, or with actual intent to hinder, delay, or defraud either existing or future creditors. A transfer made or an obligation incurred by an insurer ordered to be rehabilitated or liquidated under sections 60B.01 to 60B.61, which is fraudulent under this section, may be avoided by the receiver, except as to a person who in good faith is a purchaser, lienor or obligee for a present fair equivalent value, and except that any purchaser, lienor or obligee, who in good faith has given a consideration less than fair for such transfer, lien, or obligation, may retain the property, lien, or obligation as security for repayment. The court may, on due notice, order any such transfer or obligation to be preserved for the benefit of the estate, and in that event the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

Subd. 2. **Perfection of transfers.** (a) A transfer of property other than real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee under section 60B.32, subdivision 3.

(b) A transfer of real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.

(c) A transfer which creates an equitable lien shall not be deemed to be perfected if there are available means by which a legal lien could be created.

(d) Any transfer not perfected prior to the filing of a petition for liquidation shall be deemed to be made immediately before the filing of the successful petition.

(e) This subdivision applies whether or not there are or were creditors who might have obtained any liens or persons who might have become bona fide purchasers.

Subd. 3. **Fraudulent reinsurance transactions.** Any transaction of the insurer with a reinsurer shall be deemed fraudulent and may be avoided by the receiver under subdivision 1 if:

(a) the transaction consists of the termination, adjustment, or settlement of a reinsurance contract in which the reinsurer is released from any part of its duty to pay the originally specified share of losses that had occurred prior to the time of the transaction, unless the reinsurer gives a present fair equivalent value for the release; and

(b) any part of the transaction took place within one year prior to the date of filing of the petition through which the receivership was commenced.

Subd. 4. **Fraudulent transfers to affiliates.** Any distribution, other than stock dividends paid by the insurer on its capital stock, made by the insurer to an affiliate owning more than 50 percent of the voting stock of the insurer during the five years preceding the filing of a successful petition for rehabilitation or liquidation under sections 60B.01 to 60B.61 shall be deemed fraudulent and may be avoided by the receiver; except that:

(a) no distribution shall be recoverable if the insurer shows that when paid, it was lawful, reasonable, and that the insurer did not know, and could not reasonably have known, that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations;

(b) any person who was an affiliate owning more than 50 percent of the voting stock of the insurer at the time the distributions were paid shall be liable only up to the amount of distributions received. Any person who was an affiliate that controlled the insurer at the time the distributions were declared shall be liable up to the amount of distributions that person would have received if they had been paid immediately. If two persons are liable with respect to the same distribution, they shall be jointly and severally liable;

(c) the maximum amount recoverable under this subdivision shall be the amount needed in addition to all other available assets of the insurer to pay its contractual obligations;

(d) if any person liable under clause (b) is insolvent, all its affiliates that controlled it at the time the distribution was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

History: *1969 c 708 s 30; 1977 c 273 s 19; 1986 c 444*

60B.31 FRAUDULENT TRANSFERS AFTER PETITION.

Subdivision 1. **Effect of petition; real property.** After a petition for rehabilitation or liquidation, a transfer of any of the real property of the insurer made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred. The recording of a copy of the petition for or order of rehabilitation or liquidation with the county recorder in the county where any real property in question is located is constructive notice of the commencement of a proceeding in rehabilitation or liquidation. The exercise by a court of the United States or any state of jurisdiction to authorize or effect a judicial sale of real property of the insurer within any county in any state shall not be impaired by the pendency of such a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.

Subd. 2. **Effect of petition; personal property.** After a petition for rehabilitation or liquidation and before either the receiver takes possession of the property of the insurer or an order of rehabilitation or liquidation is granted:

(a) A transfer of any of the property of the insurer, other than real property, made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred.

(b) A person indebted to the insurer or holding property of the insurer may, if acting in good faith, pay the indebtedness or deliver the property or any part thereof to the insurer or upon the insurer's order, with the same effect as if the petition were not pending.

(c) A person having actual knowledge of the pending rehabilitation or liquidation shall be deemed not to act in good faith unless that person has reasonable cause to believe that the petition is not well founded.

(d) A person asserting the validity of a transfer under this section shall have the burden of proof. Except as elsewhere provided in this section, no transfer by or in behalf of the insurer after the date of the petition for liquidation by any person other than the liquidator shall be valid against the liquidator.

Subd. 3. **Negotiability.** Nothing in sections 60B.01 to 60B.61 shall impair the negotiability of currency or negotiable instruments.

History: *1969 c 708 s 31; 1976 c 181 s 2; 1986 c 444*

60B.32 VOIDABLE PREFERENCES AND LIENS.

Subdivision 1. **Preferences.** (a) A preference is a transfer of any of the property of an insurer to or for the benefit of a creditor, for or on account of an antecedent debt, made or suffered by the insurer within one year before the filing of a successful petition for liquidation under sections 60B.01 to 60B.61 the effect of which transfer may be to enable the creditor to obtain a greater percentage of debt than another creditor of the same class would receive. If a liquidation order is entered while the insurer is already subject to a rehabilitation order, transfers otherwise qualifying shall be deemed preferences if made or suffered within one year before the filing of the successful petition for rehabilitation or within two years before the filing of the successful petition for liquidation, whichever time is shorter.

(b) Any preference may be avoided by the liquidator, if (1) the insurer was insolvent at the time of the transfer, or (2) the transfer was made within four months before the filing of the petition, or (3) the creditor receiving it or to be benefited thereby or an agent of the creditor acting with reference thereto had reasonable cause to believe at the time when the transfer was made that the insurer was insolvent or was about to become insolvent, or (4) the creditor receiving it was an officer, employee, attorney, or other person who was in fact in a position of comparable influence in the insurer to an officer whether or not the creditor held such position, or any shareholder holding directly or indirectly more than five percent of any class of any equity security issued by the insurer, or any other person with whom the insurer did not deal at arm's length. Where the preference is voidable, the liquidator may recover the property or, if it has been converted, its value from any person who has received or converted the property, except a bona fide purchaser from or lienor of the debtor's transferee for a present fair equivalent value. Where the bona fide purchaser or lienor has given less than fair equivalent value, that person shall have a lien upon the property to the extent of the consideration actually given. Where a preference by way of lien or security title is voidable, the court may on due notice order the lien or title to be preserved for the benefit of the estate, in which event the lien or title shall pass to the liquidator.

Subd. 2. **Perfection of transfers.** (a) A transfer of property other than real property is deemed to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee.

(b) A transfer of real property is deemed to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.

(c) A transfer which creates an equitable lien is not deemed to be perfected if there are available means by which a legal lien could be created.

(d) A transfer not perfected prior to the filing of a petition for liquidation shall be deemed to be made immediately before the filing of the successful petition.

(e) This subdivision applies whether or not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.

Subd. 3. **Liens by legal or equitable proceedings.** (a) A lien obtainable by legal or equitable proceedings upon a simple contract is one arising in the ordinary course of such proceedings upon the entry or docketing of a judgment or decree, or upon attachment, garnishment, execution or like process, whether before, upon, or after judgment or decree and whether before or upon levy. It does not include liens which under applicable law are given a special priority over other liens which are prior in time.

(b) A lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee, or a purchaser could obtain rights superior to the rights of a transferee within the meaning of subdivision 2, if such consequences would follow only from the lien or purchase itself, or from the lien or purchase followed by any step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials. Such a lien could not, however, become superior and such a purchase could not create superior rights for the purpose of subdivision 2 through any acts subsequent to the obtaining of such a lien or subsequent to such a purchase which require the agreement or concurrence of any third party or which require any further judicial action, or ruling.

Subd. 4. **Twenty-one days rule.** A transfer of property for or on account of a new and contemporaneous consideration which is deemed under subdivision 2 to be made or suffered after the transfer because of delay in perfecting it does not thereby become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed in order to perfect the transfer as against liens or bona fide purchasers' rights are performed within 21 days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if such a loan is actually made, or a transfer which becomes security for a future loan shall have the same effect as a transfer for or on account of a new and contemporaneous consideration.

Subd. 5. **Indemnifying transfers also voidable.** If any lien deemed voidable under subdivision 1, paragraph (b), has been dissolved by the furnishing of a bond or other obligation, the surety on which has been indemnified directly or indirectly by the transfer of or the creation of a lien upon any property of an insurer before the filing of a petition under sections 60B.01 to 60B.61 which results in a liquidation order, the indemnifying transfer or lien shall also be deemed voidable.

Subd. 6. **Avoidance of lien.** The property affected by any lien deemed voidable under subdivisions 1, paragraph (b), and 5 is discharged from the lien, and that property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the liquidator, except that the court may on due notice order the lien to be preserved for the benefit of the estate and the court may direct that a conveyance be executed which is adequate to evidence the title of the liquidator.

Subd. 7. **Hearings to determine rights.** The court shall have summary jurisdiction of any proceeding by the liquidator to hear and determine the rights of any parties under this section. Reasonable notice of any hearing in the proceeding shall be given to all parties in interest, including the obligee of a releasing bond or other like obligation. Where an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, the court, upon application of any party in interest, shall in the same proceeding ascertain the value of the property or lien, and if the value is less than the amount for which the property is indemnity or than the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon payment of its value, as ascertained by the court, to the liquidator within such reasonable times as the court fixes.

Subd. 8. **Surety's liability discharged.** The liability of a surety under a releasing bond or other like obligation shall be discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided or, where the property is retained under subdivision 7 to the extent of the amount paid to the liquidator.

Subd. 9. **Setoff of new advances.** If a creditor has been preferred and afterward in good faith gives the insurer further credit without security of any kind for property which becomes a part of the insurer's estate, the amount of the new credit remaining unpaid at the time of the petition may be set off against the preference which would otherwise be recoverable from the creditor.

Subd. 10. **Reexamination of attorney's fees.** If an insurer, directly or indirectly, within four months before the filing of a successful petition for liquidation under sections 60B.01 to 60B.61 or at any time in contemplation of a proceeding to liquidate it, pays money or transfers property to an attorney at law for services rendered or to be rendered, the transaction may be examined by the court on its own motion or shall be examined by the court on petition of the liquidator and shall be held valid only to the extent of a reasonable amount to be determined by the court, and the excess may be recovered by the liquidator for the benefit of the estate.

Subd. 11. **Personal liability.** (a) Every officer, manager, employee, shareholder, member, subscriber, attorney, or any other person acting on behalf of the insurer who knowingly participates in giving any preference when that person has reasonable cause to believe the insurer to be or about to become insolvent at the time of the preference shall be personally liable to the liquidator for the amount of the preference. It is permissible to infer that there is reasonable cause to so believe if the transfer was made within four months before the date of filing of the successful petition for liquidation.

(b) Every person receiving any property from the insurer or the benefit thereof as a preference voidable under subdivision 1, paragraph (b), shall be personally liable therefor and shall be bound to account to the liquidator.

(c) Nothing in this subdivision shall prejudice any other claim by the liquidator against any person.

History: *1969 c 708 s 32; 1986 c 444; 2020 c 83 art 1 s 6*

60B.33 CLAIMS OF HOLDERS OF VOID OR VOIDABLE RIGHTS.

Subdivision 1. **Disallowance for failure to surrender property.** No claims of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment, or encumbrance, voidable under sections 60B.01 to 60B.61, shall be allowed unless the creditor surrenders the preference, lien, conveyance, transfer, assignment, or encumbrance. If the avoidance is effected by a proceeding in which a final judgment has been entered, the claim shall not be allowed unless the money is paid or the property is delivered to the liquidator within 30 days from the date of the entering of the final judgment, except that the court having

jurisdiction over the liquidation may allow further time if there is an appeal or other continuation of the proceeding.

Subd. 2. **Time for filing.** A claim allowable under subdivision 1 by reason of the avoidance, whether voluntary or involuntary, of a preference, lien, conveyance, transfer, assignment, or encumbrance may be filed as an excused late filing under section 60B.37 if filed within 30 days from the date of the avoidance or within the further time allowed by the court under subdivision 1.

History: *1969 c 708 s 33; 1986 c 444*

60B.335 FEDERAL HOME LOAN BANK RIGHTS; COLLATERAL PLEDGED BY INSURER-MEMBERS.

Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms have the meanings given.

(b) "Federal home loan bank" means a federal home loan bank established under the federal Home Loan Bank Act, United States Code, title 12, section 1421 et seq.

(c) "Insurer-member" means an insurer that is a member of a federal home loan bank.

Subd. 2. **Certain rights provided.** (a) Notwithstanding any law to the contrary, after the seventh day following the filing of a delinquency proceeding, a federal home loan bank must not be stayed or prohibited from exercising the federal home loan bank's rights regarding collateral pledged by an insurer-member.

(b) If a federal home loan bank exercises rights regarding collateral pledged by an insurer-member subject to a delinquency proceeding, the federal home loan bank must repurchase any outstanding capital stock that is in excess of the amount of federal home loan bank stock that the insurer-member is required to hold as a minimum investment, to the extent the federal home loan bank determines in good faith that the repurchase is: (1) permissible under applicable laws, regulations, regulatory obligations, and the federal home loan bank's capital plan; and (2) consistent with the federal home loan bank's current capital stock practices applicable to the federal home loan bank's entire membership.

Subd. 3. **Process and timeline required.** Following the appointment of a receiver for an insurer-member, the federal home loan bank must, within ten business days after the date a request is received from the receiver, provide a process and establish a timeline for:

(1) release of collateral that exceeds the amount required to support secured obligations remaining after any repayment of loans, as determined in accordance with the applicable agreements between the federal home loan bank and the insurer-member;

(2) release of any of the insurer-member's collateral remaining in the federal home loan bank's possession following repayment in full of the insurer-member's outstanding secured obligations;

(3) payment of fees owed by the insurer-member and the operation of the insurer-member's deposits and other accounts with the federal home loan bank; and

(4) possible redemption or repurchase of federal home loan bank stock or excess stock of any class that an insurer-member is required to own.

Subd. 4. **Options; renew or restructure.** Upon request from a receiver, the federal home loan bank must provide the options available for an insurer-member subject to a delinquency proceeding to renew or restructure a loan to defer associated prepayment fees, subject to: (1) market conditions; (2) the terms of

any loans outstanding to the insurer-member; (3) the federal home loan bank's applicable policies; and (4) the federal home loan bank's compliance with federal laws and regulations.

Subd. 5. **Void transfers prohibited.** (a) Notwithstanding any law to the contrary, the receiver for an insurer-member is prohibited from voiding any transfer of, or any obligation to transfer, money or any other property arising under or in connection with: (1) any federal home loan bank security agreement; (2) any pledge, security, collateral, or guarantee agreement; or (3) any other similar arrangement or credit enhancement relating to a federal home loan bank security agreement made in the ordinary course of business and in compliance with the applicable federal home loan bank agreement.

(b) A transfer may be voided under this section if the transfer was made with intent to hinder, delay, or defraud the insurer-member, the receiver for the insurer-member, or existing or future creditors.

(c) This section does not affect a receiver's rights regarding advances to an insurer-member in delinquency proceedings pursuant to Code of Federal Regulations, title 12, part 1266.4.

History: *2022 c 93 art 2 s 26*

60B.34 SETOFFS AND COUNTERCLAIMS.

Subdivision 1. **Setoffs allowed in general.** Mutual debts or mutual credits between the insurer and another person in connection with any action or proceeding under sections 60B.01 to 60B.61 shall be set off and the balance only shall be allowed or paid, except as provided in subdivision 2.

Subd. 2. **Exceptions.** No setoff or counterclaim shall be allowed in favor of any person where:

(a) the obligation of the insurer to the person would not at the date of the filing of a petition for liquidation entitle that person to share as a claimant in the assets of the insurer;

(b) the obligation of the insurer to the person was purchased by or transferred to the person with a view to its being used as a setoff;

(c) the obligation of the person is to pay an assessment levied against the members or subscribers of the insurer, or is to pay a balance upon a subscription to the capital stock of the insurer, or is in any other way in the nature of a capital contribution; or

(d) the obligation of the person is to pay premiums, whether earned or unearned, to the insurer.

History: *1969 c 708 s 34; 1986 c 444*

60B.35 ASSESSMENTS.

Subdivision 1. **Report to court.** As soon as practicable but not more than two years from the date of an order of liquidation under section 60B.21 of an insurer issuing assessable policies, the liquidator shall make a report to the court setting forth:

(a) the reasonable value of the assets of the insurer;

(b) the insurer's probable total liabilities; and

(c) the probable aggregate amount of the assessment necessary to pay all claims of creditors and expenses in full, including expenses of administration and costs of collecting the assessment.

Subd. 2. **Levy of assessment.** (a) Upon the basis of the report provided in subdivision 1, including any supplements and amendments thereto, the court may levy ex parte one or more assessments against all members of the insurer who are subject to assessment.

(b) Subject to any applicable legal limits on assessability, the aggregate assessment shall be for the amount that the sum of the probable liabilities, the expenses of administration, and the estimated cost of collection of the assessment exceeds the value of existing assets, with due regard being given to assessments that cannot be collected economically.

Subd. 3. **Order to show cause.** After levy of assessment under subdivision 2, the court shall issue an order directing each member who has not paid the assessment pursuant to the order to show cause why the liquidator shall not have a judgment therefor. If a member of the insurer also appears to be indebted to the insurer apart from the assessment, the court, upon application of the liquidator, may also direct the member to show cause why the member should not pay the other indebtedness. Liability for such indebtedness shall be determined in the same manner and at the same time as the liability to pay the assessment.

Subd. 4. **Notice.** The liquidator shall give notice of the order to show cause by publication if so directed by the court and by first class mail to each member liable thereunder mailed at least 20 days before the return day of the order to show cause to the last known address as it appears on the records of the insurer.

Subd. 5. **Orders and hearings.** (a) If a member does not appear and serve duly verified objections upon the liquidator upon the return day of the order to show cause under subdivision 3, the court shall make an order adjudging the member liable for the amount of the assessment against the member and other indebtedness, pursuant to subdivision 3, together with costs, and the liquidator shall have a judgment against the member therefor.

(b) If on such return day, the member appears and serves duly verified objections upon the liquidator, the court may hear and determine the matter or may appoint a referee to hear it and make such order as the facts warrant. Any order made by a referee under this clause shall have the same force and effect as if it were a judgment of the court, subject to review by the court upon application within 30 days.

Subd. 6. **Collection.** The liquidator may enforce any order or collect any judgment under subdivision 5 by any lawful means.

History: *1969 c 708 s 35; 1986 c 444*

60B.36 [Repealed, 1999 c 177 s 88]

60B.365 REINSURER'S LIABILITY.

Subdivision 1. **Generally.** The amount recoverable by the liquidator from reinsurers must not be reduced as a result of the delinquency proceedings, regardless of any provision in the reinsurance contract or other agreement, except as provided in subdivision 2.

Subd. 2. **Payments.** Payments by the reinsurer must be made directly to the ceding insurer or its receiver, except where the contract of insurance or reinsurance specifically provides for another payee for the reinsurance in the event of insolvency of the ceding insurer according to the applicable requirements of statutes, rules, or orders of the domiciliary state of the ceding insurer. The receiver and reinsurer are entitled to recover from a person who unsuccessfully makes a claim directly against the reinsurer the receiver's attorneys' fees and expenses incurred in preventing any collection by the person.

History: *1999 c 177 s 21*

60B.37 FILING OF CLAIMS.

Subdivision 1. **Deadline for filing.** Proof of all claims must be filed with the court in the form required by section 60B.38 on or before the last day for filing specified in the notice required under section 60B.26, except that proof of preferred ownership claims and proprietary claims under section 60B.44, subdivisions 10 and 11, need not be filed at all, and proof of claims for unearned premiums or subscription rates and claims for cash surrender values or other investment values in life insurance and annuities need not be filed unless the liquidator expressly so requires.

Subd. 2. **Excused late filings.** For a good cause shown, the liquidator shall recommend and the court shall permit a claimant making a late filing to share in dividends, whether past or future, as if the claimant were not late, to the extent that any such payment will not prejudice the orderly administration of the liquidation. Good cause includes but is not limited to the following:

(a) that existence of a claim was not known to the claimant and that the claimant filed within 30 days after learning of it;

(b) that a claim for unearned premiums or for cash surrender values or other investment values in life insurance or annuities which was not required to be filed was omitted from the liquidator's recommendations to the court under section 60B.45, and that it was filed within 30 days after the claimant learned of the omission;

(c) that a transfer to a creditor was avoided under sections 60B.30 to 60B.32 or was voluntarily surrendered under section 60B.33, and that the filing satisfies the conditions of section 60B.33;

(d) that valuation under section 60B.43 of security held by a secured creditor shows a deficiency, which is filed within 30 days after the valuation;

(e) that a claim was contingent and became absolute, and was filed within 30 days after it became absolute; and

(f) that the claim is for workers' compensation benefits and the time limitations and other requirements of chapter 176 have been met.

Subd. 3. **Unexcused late filings.** The liquidator may consider any claim filed late which is not covered by subdivision 2, and permit it to receive dividends, other than the first dividend, which are subsequently declared on any claims of the same or lower priority if the payment does not prejudice the orderly administration of the liquidation. The late filing claimant shall receive, at each distribution, the same percentage of the amount allowed on the claim as is then being paid to other claimants of the same priority plus the same percentage of the amount allowed on the claim as is then being paid to claimants of any lower priority. This shall continue until the claim has been paid in full.

History: *1969 c 708 s 37; 1986 c 444; 1991 c 325 art 6 s 1*

60B.38 PROOF OF CLAIM.

Subdivision 1. **Contents of proof of claim.** (a) Proof of claim shall consist of a verified statement that includes all of the following that are applicable:

(1) The particulars of the claim, including the consideration given for it.

(2) The identity and amount of the security on the claim.

(3) The payments made on the debt, if any.

(4) That the sum claimed is justly owing and that there is no setoff, counterclaim, or defense to the claim.

(5) Any right of priority of payment or other specific right asserted by the claimant.

(6) A copy of any written instrument which is the foundation of the claim.

(7) In the case of any third-party claim based on a liability policy issued by the insurer, a conditional release of the insured pursuant to section 60B.40, subdivision 1.

(8) The name and address of the claimant and the claimant's attorney, if any.

(b) No claim need be considered or allowed if it does not contain all the information under paragraph (a) which may be applicable. The liquidator may require that a prescribed form be used and may require that other information and documents be included.

Subd. 2. **Supplementary information.** At any time the liquidator may request the claimant to present information or evidence supplementary to that required under subdivision 1, and may take testimony under oath, require production of affidavits or depositions or otherwise obtain additional information or evidence.

Subd. 3. **Conclusiveness of judgments.** No judgment or order against an insured or the insurer entered after the filing of a successful petition for liquidation and no judgment or order against an insured or the insurer entered at any time by default or by collusion need be considered as evidence of liability or of quantum of damages. No judgment or order against an insured or the insurer entered within four months before the filing of the petition need be considered as evidence of liability or of the quantum of damages.

History: *1969 c 708 s 38; 1986 c 444; 2020 c 83 art 1 s 7*

60B.39 SPECIAL CLAIMS.

Subdivision 1. **Claims contingent on judgments.** The claim of a third party which is contingent only on that person first obtaining a judgment against the insured shall be considered and may be allowed as if there were no such contingency.

Subd. 2. **Claims under terminated policies.** Any claim that would have become absolute if there had been no termination of coverage under section 60B.22, and which was not covered by insurance acquired to replace the terminated coverage, shall be allowed as if the coverage had remained in effect, unless at least ten days before the insured event occurred either the claimant had actual notice of the termination or notice was mailed to the claimant as prescribed by section 60B.26, subdivision 1, or this chapter. If allowed the claim shall share in distributions under section 60B.44, subdivision 9.

Subd. 3. **Other contingent claims.** A claim may be allowed even if contingent, if it is filed in accordance with section 60B.37, subdivision 2. It may be allowed and may participate in all dividends declared after it is filed, to the extent that it does not prejudice the orderly administration of the liquidation.

Subd. 4. **Immature claims.** Claims that are due except for the passage of time shall be treated as absolute claims are treated, except that where justice requires the court may order them discounted at the legal rate of interest.

Subd. 5. **Claim by rating bureau.** The rating bureau in carrying out its responsibilities may file a claim with the liquidator for all sums paid or to be paid by it.

Subd. 6. **Claims under the Insurance Guaranty Association Act.** The board of directors of the Insurance Guaranty Association may file a claim with the liquidator for all claims to which the association has been subrogated under section 60C.11, subdivision 1.

History: *1969 c 708 s 39; 1971 c 145 s 22; 1986 c 444; 1996 c 305 art 1 s 16; 1999 c 177 s 22*

60B.40 SPECIAL PROVISIONS FOR THIRD-PARTY CLAIMS.

Subdivision 1. **Third-party's claim.** Whenever any third party asserts a cause of action against an insured of an insurer in liquidation, the third party may file a claim with the liquidator. The filing of the claim shall release the insured's liability to the third party on that cause of action in the amount of the applicable policy or contract limit, but the liquidator shall also insert in any form used for the filing of third-party claims appropriate language to constitute such a release. The release shall be void if the coverage is avoided by the liquidator.

Subd. 2. **Insured's claim.** Whether or not the third party files a claim, the insured may file a claim on the insured's own behalf in the liquidation. If the insured fails to file a claim by the date for filing claims specified in the order of liquidation or within 60 days after mailing of the notice required by section 60B.26, subdivision 1, paragraph (b), whichever is later, the insured is an unexcused late filer.

Subd. 3. **Procedure for insured's claim.** The liquidator shall make recommendations to the court under section 60B.45 for the allowance of an insured's claim under subdivision 2 after consideration of the probable outcome of any pending action against the insured on which the claim is based, the probable damages recoverable in the action, and the probable costs and expenses of defense. After allowance by the court, the liquidator shall withhold any dividends payable on the claim, pending the outcome of litigation and negotiation with the insured. Whenever it seems appropriate, the liquidator shall reconsider the claim on the basis of additional information and amend the recommendations to the court. The insured shall be afforded the same notice and opportunity to be heard on all changes in the recommendation as in its initial determination. The court may amend its allowance as it thinks appropriate. As claims against the insured are settled or barred, the insured shall be paid from the amount withheld the same percentage dividend as was paid on other claims of like priority, based on the lesser of (a) the amount actually recovered from the insured by action or paid by agreement plus the reasonable costs and expenses of defense, or (b) the amount allowed on the claims by the court. After all claims are settled or barred, any sum remaining from the amount withheld shall revert to the undistributed assets of the insurer. Delay in final payment under this subdivision shall not be a reason for unreasonable delay of final distribution and discharge of the liquidator.

Subd. 4. **Multiple claims.** If several claims founded upon one policy or contract of coverage are filed, whether by third parties or as claims by the insured under this section, and the aggregate allowed amount of the claims to which the same limit of liability in the policy or contract is applicable exceeds that limit, each claim as allowed shall be reduced in the same proportion so that the total equals the policy or contract limit. Claims by the insured shall be evaluated as in subdivision 3. If any insured's claim is subsequently reduced under subdivision 3, the amount thus freed shall be apportioned ratably among the claims which have been reduced under this subdivision.

History: *1969 c 708 s 40; 1986 c 444; 2020 c 83 art 1 s 8*

60B.41 DISPUTED CLAIMS.

Subdivision 1. **Notice of rejection and request for hearing.** When a claim is denied in whole or in part by the liquidator, written notice of the determination shall be given to the claimant and the claimant's attorney by first class mail at the address shown in the proof of claim. Within 60 days from the mailing of the notice,

the claimant may file objections with the court. If no such filing is made, the claimant may not further object to the determination.

Subd. 2. **Notice of hearing.** Whenever objections are filed with the court, the liquidator shall ask the court for a hearing as soon as practicable and give notice of the hearing by first class mail to the claimant or the claimant's attorney and to any other persons directly affected, not less than ten nor more than 20 days before the date of the hearing. The matter may be heard by the court or by a court appointed referee.

History: *1969 c 708 s 41; 1986 c 444*

60B.42 CLAIMS OF SURETY.

Whenever a creditor whose claim against an insurer is secured in whole or in part by the undertaking of another person fails to prove and file that claim, the other person may do so in the creditor's name, and shall be subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by the other person in the creditor's name, to the extent that the person discharges the undertaking. In the absence of an agreement with the creditor to the contrary, the other person shall not be entitled to any dividend until the amount paid to the creditor on the undertaking plus the dividends paid on the claim from the insurer's estate to the creditor equals the amount of the entire claim of the creditor. Any excess received by the creditor shall be held in trust for such other person.

History: *1969 c 708 s 42; 1986 c 444*

60B.43 SECURED CREDITORS' CLAIMS.

Subdivision 1. **Determining value of security.** The value of any security held by a secured creditor shall be determined in one of the following ways, as the court directs:

(a) by converting the same into money according to the terms of the agreement pursuant to which the security was delivered to such creditor; or

(b) by agreement, arbitration, compromise, or litigation between the creditor and the liquidator; or

(c) as to separate account assets, by converting the same into money and allocating the converted assets among the holders of contracts on a variable basis in accordance with the terms of said contracts.

Subd. 2. **Treatment of claims.** The determination shall be under the supervision and control of the court. The amount so determined shall be credited upon the secured claim, and any deficiency shall be treated as an unsecured claim. If the claimant surrenders the security to the liquidator, the entire claim shall be allowed as if unsecured.

History: *1969 c 708 s 43; 1986 c 444*

60B.435 QUALIFIED FINANCIAL CONTRACTS.

Subdivision 1. **Exercise of contractual rights.** Notwithstanding any other provision of this chapter, including any other provision of this chapter permitting the modification of contracts, or other law of a state, no person shall be stayed or prohibited from exercising:

(1) a contractual right to cause the termination, liquidation, acceleration, or close-out of obligations under or in connection with any netting agreement or qualified financial contract with an insurer because of:

(i) the insolvency, financial condition, or default of the insurer at any time, provided that the right is enforceable under applicable law other than this chapter; or

(ii) the commencement of a formal delinquency proceeding under this chapter;

(2) any right under a pledge, security, collateral, reimbursement or guarantee agreement or arrangement or any other similar security arrangement, or arrangement or other credit enhancement relating to one or more netting agreements or qualified financial contracts;

(3) subject to any provision of section 60B.34, any right to set off or net out any termination value, payment amount, or other transfer obligation arising under or in connection with one or more qualified financial contracts where the counterparty or its guarantor is organized under the laws of the United States or a state or a foreign jurisdiction approved by the Securities Valuation Office (SVO) of the National Association of Insurance Commissioners as eligible for netting; or

(4) if a counterparty to a master netting agreement or a qualified financial contract with an insurer subject to a proceeding under this chapter terminates, liquidates, closes out, or accelerates the agreement or contract, damages shall be measured as of the date or dates of termination, liquidation, close-out, or acceleration. The amount of a claim for damages shall be actual direct compensatory damages calculated in accordance with subdivision 6.

Subd. 2. **Termination of agreement; transfer to insurer's receiver.** Upon termination of a netting agreement or qualified financial contract, the net or settlement amount, if any, owed by a nondefaulting party to an insurer against which an application or petition has been filed under this chapter shall be transferred to or on the order of the receiver for the insurer, even if the insurer is the defaulting party, notwithstanding any walkaway clause in the netting agreement or qualified financial contract. For purposes of this subdivision, the term "walkaway clause" means a provision in a netting agreement or a qualified financial contract that, after calculation of a value of a party's position or an amount due to or from one of the parties in accordance with its terms upon termination, liquidation, or acceleration of the netting agreement or qualified financial contract, either does not create a payment obligation of a party or extinguishes a payment obligation of a party in whole or in part solely because of the party's status as a nondefaulting party. Any limited two-way payment or first method provision in a netting agreement or qualified financial contract with an insurer that has defaulted shall be deemed to be a full two-way payment or second method provision as against the defaulting insurer. Any such property or amount shall, except to the extent it is subject to one or more secondary liens or encumbrances, or rights of netting or setoff, be a general asset of the insurer.

Subd. 3. **Transfer by receiver.** In making any transfer of a netting agreement or qualified financial contract of an insurer subject to a proceeding under this chapter, the receiver shall either:

(1) transfer to one party, other than an insurer subject to a proceeding under this chapter, all netting agreements and qualified financial contracts between a counterparty or any affiliate of the counterparty and the insurer that is the subject of the proceeding, including:

(i) all rights and obligations of each party under each netting agreement and qualified financial contract; and

(ii) all property, including any guarantees or other credit enhancement, securing any claims of each party under each netting agreement and qualified financial contract; or

(2) transfer none of the netting agreements, qualified financial contracts, rights, obligations, or property referred to in clause (1), with respect to the counterparty and any affiliate of the counterparty.

Subd. 4. **Transfer by receiver; obligation to notify certain parties.** If a receiver for an insurer makes a transfer of one or more netting agreements or qualified financial contracts, then the receiver shall use its best efforts to notify any person who is party to the netting agreements or qualified financial contracts of the transfer by 12:00 noon, the receiver's local time, on the business day following the transfer. For purposes of this subdivision, "business day" means a day other than a Saturday, Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

Subd. 5. **Avoidance of transfer by receiver.** Notwithstanding any other provision of this chapter, a receiver may not avoid a transfer of money or other property arising under or in connection with a netting agreement or qualified financial contract, or any pledge, security, collateral, or guarantee agreement or any other similar security arrangement or credit support document relating to a netting agreement or qualified financial contract, that is made before the commencement of a formal delinquency proceeding under this chapter. However, a transfer may be avoided under section 60B.32 if the transfer was made with actual intent to hinder, delay, or defraud the insurer, a receiver appointed for the insurer, or existing or future creditors.

Subd. 6. **Disaffirmance or repudiation by receiver; damages.** (a) In exercising the receiver's rights of disaffirmance or repudiation with respect to any netting agreement or qualified financial contract to which an insurer is a party, the receiver for the insurer shall either:

(1) disaffirm or repudiate all netting agreements and qualified financial contracts between a counterparty or any affiliate of the counterparty and the insurer that is the subject of the proceeding; or

(2) disaffirm or repudiate none of the netting agreements and qualified financial contracts referred to in clause (1), with respect to the person or any affiliate of the person.

(b) Notwithstanding any other provision of this chapter, any claim of a counterparty against the estate arising from the receiver's disaffirmance or repudiation of a netting agreement or qualified financial contract that has not been previously affirmed in the liquidation or immediately preceding conservation or rehabilitation case shall be determined and shall be allowed or disallowed as if the claim had arisen before the date of the filing of the petition for liquidation or, if a conservation or rehabilitation proceeding is converted to a liquidation proceeding, as if the claim had arisen before the date of the filing of the petition for conservation or rehabilitation. The amount of the claim shall be the actual direct compensatory damages determined as of the date of the disaffirmance or repudiation of the netting agreement or qualified financial contract. The term "actual direct compensatory damages" does not include punitive or exemplary damages, damages for lost profit or lost opportunity, or damages for pain and suffering, but does include normal and reasonable costs of cover or other reasonable measures of damages utilized in the derivatives, securities, or other market for the contract and agreement claims.

Subd. 7. **Sources of contractual right.** The term "contractual right" as used in this section includes any right set forth in a rule or bylaw of a derivatives clearing organization as defined in the Commodity Exchange Act, a multilateral clearing organization as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991, a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodities Exchange Act, or a board of trade as defined in the Commodity Exchange Act, or in a resolution of the governing board thereof and any right, whether or not evidenced in writing, arising under statutory or common law, or under law merchant, or by reason of normal business practice.

Subd. 8. **Affiliates of insurer; nonapplication.** The provisions of this section shall not apply to persons who are affiliates of the insurer that is the subject of the proceeding.

Subd. 9. **Allocating among accounts.** All rights of counterparties under this chapter shall apply to netting agreements and qualified financial contracts entered into on behalf of the general account or separate accounts if the assets of each separate account are available only to counterparties to netting agreements and qualified financial contracts and entered into on behalf of that separate account.

History: *2010 c 275 art 1 s 4*

60B.44 ORDER OF DISTRIBUTION.

Subdivision 1. **Deductible provision.** The distribution of claims from the insurer's estate shall be in the order stated in this section with a descending degree of preference for each subdivision. Every claim in each class shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment. No subclasses shall be established within any class.

Subd. 2. **Administration costs.** The costs and expenses of administration, including but not limited to the following: The actual and necessary costs of preserving or recovering the assets of the insurer; compensation for all services rendered in the liquidation; any necessary filing fees; the fees and mileage payable to witnesses; and reasonable attorney's fees.

Subd. 3. [Repealed, 1999 c 177 s 88]

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.

Subd. 4a. **Unearned premiums.** Claims under nonassessable policies or contracts of coverage for unearned premiums or subscription rates or other refunds.

Subd. 4b. **Federal government.** Claims of the federal government.

Subd. 4c. **Wages.** (a) Debts due to employees for services performed, not to exceed $1,000 to each employee, that have been earned within one year before the filing of the petition for liquidation, subject to payment of applicable federal, state, or local government taxes required by law to be withheld from the debts. Officers are not entitled to the benefit of this priority. In cases where there are no claims and no potential claims of the federal government in the estate, these claims will have priority over claims in subdivision 4.

(b) The priority in paragraph (a) is in lieu of other similar priority authorized by law as to wages or compensation of employees.

Subd. 5. [Repealed, 1999 c 177 s 88]

Subd. 6. **Residual classification.** All other claims including claims of any state or local government, not falling within other classes under this section. Claims, including those of any governmental body for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from

the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to the class of claims under subdivision 9.

Subd. 7. **Judgments.** Claims based solely on judgments. If a claimant files a claim and bases it both on the judgment and on the underlying facts, the claim shall be considered first by the liquidator on the basis of the underlying facts, giving the judgment such weight as the liquidator deems appropriate. The claim as allowed on the underlying facts shall receive the priority it would receive in the absence of the judgment. If the judgment is larger than the allowance on the underlying claim, the remaining portion of the judgment shall be treated as if it were a claim based solely on a judgment.

Subd. 8. **Interest on claims already paid.** Interest at the legal rate compounded annually on all claims in the classes under subdivisions 2 to 7 from the date of the petition for liquidation or the date on which the claim becomes due, whichever is later, until the date on which the dividend is declared. The liquidator, with the approval of the court, may make reasonable classifications of claims for purposes of computing interest, may make approximate computations, and may ignore certain classifications and time periods as de minimis.

Subd. 9. **Miscellaneous subordinated claims.** The remaining claims or portions of claims not already paid, with interest as in subdivision 8.

(a) claims under section 60B.39, subdivision 2;

(b) claims subordinated by section 60B.61;

(c) except to the extent excused or otherwise permitted pursuant to section 60B.37, claims filed late;

(d) portions of claims subordinated under subdivision 6; and

(e) claims or portions of claims payment of which is provided by other benefits or advantages recovered or recoverable by the claimant.

Subd. 10. **Preferred ownership claims.** Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies shall be limited to the amount set forth in section 60B.46, subdivision 2, paragraph (b). Interest at the legal rate shall be added to each claim, as in subdivisions 8 and 9.

Subd. 11. **Proprietary claims.** The claims of shareholders or other owners.

History: *1969 c 708 s 44; 1985 c 255 s 1; 1986 c 444; 1987 c 337 s 27-30; 1999 c 177 s 23-27; 2001 c 131 s 6*

60B.45 LIQUIDATOR'S RECOMMENDATIONS TO THE COURT.

Subdivision 1. **Recommended claims.** The liquidator shall review all claims duly filed in the liquidation and shall make such further investigation as the liquidator deems necessary. The liquidator may compound, compromise, or in any other manner negotiate the amount for which claims will be recommended to the court. Unresolved disputes shall be determined under section 60B.41. As often as practicable, the liquidator shall present to the court reports of claims against the insurer with recommendations. The reports shall include the name and address of each claimant, the particulars of the claim and the amount of the claim finally recommended, if any. As soon as reasonably possible after the last day for filing claims, the liquidator shall present a list of all claims not already reported. If the insurer has issued annuities or life insurance policies, the liquidator shall report the persons to whom, according to the records of the insurer, amounts are owed as cash surrender values or other investment values and the amounts owed. If the insurer has issued

policies or contracts of coverage on the advance premium plan, the liquidator shall report the persons to whom, according to the records of insurer, unearned premiums or subscription rates are owed and the amounts owed.

Subd. 2. **Allowance of claims.** The court may approve, disapprove, or modify any report on claims by the liquidator, except that the liquidator's agreements with other parties shall be final and binding on the court on claims settled for $500 or less. No claim under a policy of insurance shall be allowed for an amount in excess of the applicable policy limits.

History: *1969 c 708 s 45; 1986 c 444*

60B.46 DISTRIBUTION OF ASSETS.

Subdivision 1. **Payments to creditors.** Under the direction of the court, the liquidator shall pay dividends in a manner that will assure the proper recognition of priorities and reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third-party claims. Distribution of assets in kind may be made at valuations set by agreement between the liquidator and the creditor and approved by the court. The court may take into consideration the contributions of the respective parties, including guaranty associations, shareholders, and policy owners, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of the insurer. No distribution to stockholders of the insurer shall be permitted by the court unless the total amount of assessments levied by guaranty associations with respect to the insurer have been repaid.

Subd. 2. **Excess assets.** (a) Upon liquidation of a domestic mutual insurance company, any assets held in excess of its liabilities and the amounts which may be paid to its members as provided under paragraph (b) shall be paid into the state treasury to the credit of the general fund.

(b) The maximum amount payable upon liquidation to any member for and on account of membership in a domestic mutual insurance company, in addition to the insurance benefits promised in the policy, shall be the total of all premium payments made by the member with interest at the legal rate compounded annually.

Subd. 3. **Payments to guaranty associations.** Within 120 days of a final determination of insolvency of a company by a court of competent jurisdiction of this state or as soon thereafter as is practical, the liquidator shall make application to the court for approval of a proposal to disburse assets out of the company's marshalled assets, from time to time as the assets become available, to the Minnesota Insurance Guaranty Association, to the Minnesota Life and Health Insurance Guaranty Association, and to any entity or person performing a similar function in another state.

Subd. 4. **Contents of proposal.** The proposal shall at least include provisions for:

(1) reserving amounts for the payment of expenses of administration, the payment of claims of secured creditors to the extent of the value of their security, and the payment of claims having a higher priority than those of the guaranty associations;

(2) disbursements of the assets marshalled to date and subsequent disbursements of assets as they become available;

(3) equitable allocation of disbursements to each of the guaranty associations entitled thereto;

(4) the securing by the liquidator from each of the guaranty associations entitled to disbursements pursuant to this section of an agreement to return to the liquidator the assets previously disbursed to them

as may be required to pay claims of secured creditors and those claims having a higher priority than those of the guaranty association. No bond shall be required of a guaranty association; and

(5) a full report to be made by the guaranty association to the liquidator accounting for all assets so disbursed to the association, all disbursements made therefrom, any interest earned by the guaranty association on the assets, and any other matter as the court may direct.

Subd. 5. **Disbursements.** (a) The proposal shall provide for disbursements to the guaranty associations in amounts estimated to be at least equal to the claim payments made or to be made thereby for which the guaranty association could assess a claim against the liquidator. The proposal shall further provide that if the assets available for distribution from time to time do not equal or exceed the amount of such claim payments made or to be made by the guaranty association, then disbursements shall be in the amount of the available assets.

(b) The liquidator's proposal shall, with respect to an insolvent insurer writing life or health insurance or annuities, provide for disbursements of assets to any guaranty association or any foreign guaranty association covering life or health insurance or annuities or to any other entity or organization reinsuring, assuming, or guaranteeing policies or contracts of insurance under the acts creating these associations.

Subd. 6. **Notice of application.** Notice of the application shall be given to the guaranty associations in, and to the commissioners of insurance of, each of the states. The notice shall be deemed to have been given when deposited in the United States mail, certified first class postage prepaid, at least 30 days prior to submission of the application to the court. Action on the application may be taken by the court provided the above required notice has been given and provided further that the liquidator's proposal complies with subdivision 4, clauses (1) and (2).

History: *1969 c 399 s 1; 1969 c 708 s 46; 1977 c 273 s 20; 1985 c 255 s 2-5; 1986 c 444; 2020 c 83 art 1 s 9*

60B.47 UNCLAIMED AND WITHHELD FUNDS.

Subdivision 1. **Unclaimed funds.** All unclaimed funds subject to distribution remaining in the liquidator's hands when the liquidator is ready to apply to the court for discharge, including the amount distributable to any creditor, shareholder, member, or other person who is unknown or cannot be found or who is under disability with no person legally competent to receive that person's distributive share, shall be deposited with the commissioner of management and budget to the credit of the general fund, and shall be paid over without interest except in accordance with section 60B.44 to the person entitled thereto or a legal representative upon proof satisfactory to the commissioner of management and budget of a right thereto. Any amount on deposit not claimed within six years from the discharge of the liquidator is deemed abandoned and shall become the property of the state. The commissioner of management and budget shall at the end of each fiscal year transfer these amounts to the general fund.

Subd. 2. **Withheld funds.** All funds withheld under section 60B.40 and not distributed shall upon discharge of the liquidator be deposited with the commissioner of management and budget and paid in accordance with section 60B.40. Any sums remaining which under section 60B.40 would revert to the undistributed assets of the insurer shall be transferred to the commissioner of management and budget and become the property of the state under subdivision 1, unless the commissioner petitions the court to reopen the liquidation under section 60B.49.

History: *1969 c 399 s 1; 1969 c 708 s 47; 1986 c 444; 2003 c 112 art 2 s 50; 2009 c 101 art 2 s 109*

60B.48 TERMINATION OF PROCEEDINGS.

Subdivision 1. **Liquidator's application.** When all assets justifying the expense of collection and distribution have been collected and distributed under sections 60B.01 to 60B.61, the liquidator shall apply to the court for discharge. The court may grant the discharge and make any other orders deemed appropriate, including an order to transfer to the state treasury to the credit of the general fund any remaining funds that are uneconomic to distribute.

Subd. 2. **Application by others.** Any other person may apply to the court at any time for an order under subdivision 1. If the application is denied, the applicant shall pay the costs and expenses of the liquidator in resisting the application, including a reasonable attorney's fee.

History: *1969 c 399 s 1; 1969 c 708 s 48*

60B.49 REOPENING LIQUIDATION.

After the liquidation proceeding has been terminated and the liquidator discharged, the commissioner or other interested party may at any time petition the court to reopen the proceedings for good cause, including the discovery of additional assets. If the court is satisfied that there is justification for reopening, it shall so order.

History: *1969 c 708 s 49*

60B.50 DISPOSITION OF RECORDS DURING AND AFTER TERMINATION OF LIQUIDATION.

Whenever it appears to the commissioner that the records of an insurer in process of liquidation or completely liquidated are no longer useful, the commissioner may recommend to the court what records should be retained for future reference and what should be disposed of. The court shall enter an order thereon. The commissioner shall immediately submit to the state Historical Society a copy of the court order, and on written application of the Historical Society within three months after receipt from the commissioner of the copy of the court order, the commissioner shall deliver to the society such records which are to be disposed of as the society deems of historical significance and shall destroy the remainder, whether or not the records have been photographed or otherwise reproduced. Until further order of the court, the commissioner shall keep all records the court orders preserved.

History: *1969 c 708 s 50; 1986 c 444*

60B.51 EXTERNAL AUDIT OF RECEIVER'S BOOKS.

The court in which the proceeding is pending may, as it deems desirable, cause audits to be made of the books of the commissioner relating to any receivership established under sections 60B.01 to 60B.61, and a report of each audit shall be filed with the commissioner and with the court. The books, records, and other documents of the receivership shall be made available to the auditor at any time without notice. The expense of each audit shall be considered a cost of administration of the receivership.

History: *1969 c 708 s 51*

60B.52 CONSERVATION OF PROPERTY OF FOREIGN OR ALIEN INSURERS FOUND IN THIS STATE.

Subdivision 1. **Grounds for petition.** If a domiciliary liquidator has not been appointed, the commissioner may apply to the District Court for Ramsey County by verified petition for an order directing the commissioner

to conserve the property of an alien insurer not domiciled in this state or a foreign insurer on any one or more of the following grounds:

(a) any of the grounds in section 60B.15;

(b) any of the grounds in section 60B.20;

(c) that any of its property has been sequestered by official action in its domiciliary state, or in any other state;

(d) that enough of its property has been sequestered in a foreign country to give reasonable cause to fear that the insurer is or may become insolvent;

(e) that its certificate of authority to do business in this state has been revoked or that none was ever issued, and there are residents of this state with outstanding claims or outstanding policies.

Subd. 2. **Terms of order.** The court may issue the order in whatever terms it deems appropriate. The recording of the order with any county recorder in this state imparts the same notice as a deed, bill of sale, or other evidence of title duly recorded with that county recorder.

Subd. 3. **Transformation to liquidation or ancillary receivership.** The conservator may at any time petition for and the court may grant an order under section 60B.53 to liquidate the assets of a foreign or alien insurer under conservation or, if appropriate, for an order under section 60B.55 to be appointed ancillary receiver.

Subd. 4. **Order to return to company.** The conservator may at any time petition the court for an order terminating conservation of an insurer. If the court finds that the conservation is no longer necessary, it shall order that the insurer be restored to possession of its property and the control of its business. The court may also make such finding and issue such order at any time upon its own motion.

History: *1969 c 708 s 52; 1976 c 181 s 2; 1986 c 444; 2005 c 4 s 9*

60B.53 LIQUIDATION OF PROPERTY OF FOREIGN OR ALIEN INSURERS FOUND IN THIS STATE.

Subdivision 1. **Grounds for petition.** If no domiciliary receiver has been appointed, the commissioner may apply to the District Court for Ramsey County by verified petition for an order directing the commissioner to liquidate the assets found in this state of a foreign insurer or an alien insurer not domiciled in this state, on any of the following grounds:

(a) Any of the grounds in section 60B.15.

(b) Any of the grounds in section 60B.20.

(c) Any of the grounds in section 60B.52.

Subd. 2. **Terms of order.** If it appears to the court that the best interests of creditors, policyholders, and the public so require, the court may issue an order to liquidate in whatever terms it deems appropriate. The recording of the order with any county recorder in this state imparts the same notice as a deed, bill of sale, or other evidence of title duly recorded with that county recorder.

Subd. 3. **Conversion to ancillary proceedings.** If a domiciliary liquidator is appointed in a reciprocal state while a liquidation is proceeding under this section, the liquidator under this section shall thereafter act as ancillary receiver under section 60B.55. If a domiciliary liquidator is appointed in a nonreciprocal

state while a liquidation is proceeding under this section, the liquidator under this section may petition the court for permission to act as ancillary receiver under section 60B.55.

Subd. 4. **Federal receivership.** On the same grounds as are specified in subdivision 1, the commissioner may petition any appropriate federal district court to be appointed receiver to liquidate that portion of the insurer's assets and business over which the court will exercise jurisdiction, or any lesser part thereof that the commissioner deems desirable for the protection of the policyholders and creditors in this state. The commissioner may accept appointment as federal receiver if another person files a petition.

History: *1969 c 708 s 53; 1976 c 181 s 2; 1986 c 444; 2005 c 4 s 10*

60B.54 FOREIGN DOMICILIARY RECEIVERS IN OTHER STATES.

Subdivision 1. **Property rights and title; reciprocal state.** The domiciliary liquidator of an insurer domiciled in a reciprocal state shall be vested by operation of law with the title to all of the property, contracts, and rights of action, and all of the books, accounts, and other records of the insurer located in this state. The date of vesting shall be the date of the filing of the petition, if that date is specified by the domiciliary law for the vesting of property in the domiciliary state; otherwise, the date of vesting shall be the date of entry of the order directing possession to be taken. The domiciliary liquidator shall have the immediate right to recover balances due from agents and to obtain possession of the books, accounts, and other records of the insurer located in this state. The domiciliary liquidator also shall have the right to recover the other assets of the insurer located in this state, subject to section 60B.55, subdivision 2.

Subd. 2. **Property rights and title; state not a reciprocal state.** If a domiciliary liquidator is appointed for an insurer not domiciled in a reciprocal state, the commissioner of this state shall be vested by operation of law with the title to all of the property, contracts, and rights of action, and all of the books, accounts, and other records of the insurer located in this state, at the same time that the domiciliary liquidator is vested with title in the domicile. The commissioner of this state may petition for a conservation or liquidation order under section 60B.52 or 60B.53, or for an ancillary receivership under section 60B.55, or after approval by the District Court for Ramsey County may transfer title to the domiciliary liquidator, as the interests of justice and the equitable distribution of the assets require.

Subd. 3. **Filing claims.** Claimants residing in this state may file claims with the liquidator or ancillary receiver, if any, in this state or with the domiciliary liquidator, if the domiciliary law permits. The claims must be filed on or before the last date fixed for the filing of claims in the domiciliary liquidation proceedings.

History: *1969 c 708 s 54; 1986 c 444*

60B.55 ANCILLARY FORMAL PROCEEDINGS.

Subdivision 1. **Appointment of ancillary receiver in this state.** If a domiciliary liquidator has been appointed for an insurer not domiciled in this state, the commissioner shall file a petition with the District Court for Ramsey County requesting appointment as ancillary receiver in this state:

(a) if the commissioner finds that there are sufficient assets of the insurer located in this state to justify the appointment of an ancillary receiver;

(b) if ten or more persons resident in this state having claims against the insurer file a petition with the commissioner requesting appointment of an ancillary receiver; or

(c) if the protection of creditors or policyholders in this state so requires.

Subd. 2. **Terms of order.** The court may issue an order appointing an ancillary receiver in whatever terms it deems appropriate. The recording of the order with any county recorder in this state imparts the same notice as a deed, bill of sale, or other evidence of title duly recorded with that county recorder.

Subd. 3. **Property rights and title; ancillary receivers in this state.** When a domiciliary liquidator has been appointed in a reciprocal state, the ancillary receiver appointed in this state under subdivision 1 shall have the sole right to recover all the assets of the insurer in this state not already recovered by the domiciliary liquidator, except that the domiciliary liquidator shall be entitled to and have the sole right to recover balances due from agents and the books, accounts, and other records of the insurer. The ancillary receiver shall have the right to recover balances due from agents and books, accounts, and other records of the insurer, if such action is necessary to protect the assets because of inaction by the domiciliary liquidator. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state, and shall pay the necessary expenses of the proceedings. The ancillary receiver shall promptly transfer all remaining assets to the domiciliary liquidator. Subject to this section, the ancillary receiver and deputies shall have the same powers and be subject to the same duties with respect to the administration of assets as a liquidator of an insurer domiciled in this state.

Subd. 4. **Property rights and title; foreign ancillary receivers.** When a domiciliary liquidator has been appointed in this state, ancillary receivers appointed in reciprocal states shall have, as to assets and books, accounts, and other records located in their respective states, corresponding rights and powers to those prescribed in subdivision 3 for ancillary receivers appointed in this state.

History: *1969 c 708 s 55; 1976 c 181 s 2; 1986 c 444; 2005 c 4 s 11*

60B.56 ANCILLARY SUMMARY PROCEEDINGS.

The commissioner has the sole discretionary authority to institute proceedings under sections 60B.11 to 60B.13 at the request of the commissioner or other appropriate official of the domiciliary state of any foreign or alien insurer having property located in this state.

History: *1969 c 708 s 56; 1986 c 444*

60B.57 CLAIMS OF NONRESIDENTS AGAINST INSURERS DOMICILED IN THIS STATE.

Subdivision 1. **Filing claims.** In a liquidation proceeding begun in this state against an insurer domiciled in this state, claimants residing in foreign countries or in states not reciprocal states must file claims in this state, and claimants residing in reciprocal states may file claims either with the ancillary receivers, if any, in their respective states, or with the domiciliary liquidator. Claims must be filed on or before the last dates fixed for the filing of claims in the domiciliary liquidation proceeding.

Subd. 2. **Proving claims.** Claims belonging to claimants residing in reciprocal states may be proved either in the liquidation proceeding in this state as provided in sections 60B.01 to 60B.61, or in ancillary proceedings, if any, in the reciprocal states. If notice of the claim and opportunity to appear and be heard is afforded the domiciliary liquidator of this state as provided in section 60B.58 with respect to ancillary proceedings in this state, the final allowance of claims by the courts in ancillary proceedings in reciprocal states shall be conclusive as to amount and as to priority against special deposits or other security located in the ancillary states, but shall not be conclusive with respect to priorities against general assets under section 60B.44.

History: *1969 c 708 s 57*

60B.58 CLAIMS OF RESIDENTS AGAINST INSURERS DOMICILED IN RECIPROCAL STATES.

Subdivision 1. **Filing claims.** In a liquidation proceeding in a reciprocal state against an insurer domiciled in that state, claimants against the insurer who reside within this state may file claims either with the ancillary receiver, if any, in this state, or with the domiciliary liquidator. Claims must be filed on or before the last dates fixed for the filing of claims in the domiciliary liquidation proceeding.

Subd. 2. **Proving claims.** Claims belonging to claimants residing in this state may be proved either in the domiciliary state under the law of that state or in ancillary proceedings, if any, in this state. If a claimant who elects to prove a claim in this state shall file the claim with the court in the manner provided in sections 60B.37 and 60B.38. The ancillary receiver shall make recommendation to the court as under section 60B.45. The ancillary receiver also shall arrange a date for hearing if necessary under section 60B.41 and shall give notice to the liquidator in the domiciliary state, either by certified mail or by personal service at least 40 days prior to the date set for hearing. If a domiciliary liquidator, within 30 days after the giving of such notice, gives notice in writing to the ancillary receiver and to the claimant, either by certified mail or by personal service, of intention to contest the claim, the domiciliary liquidator shall be entitled to appear or to be represented in any proceeding in this state involving the adjudication of the claim. The final allowance of the claim by the courts of this state shall be accepted as conclusive as to amount and as to priority against special deposits or other security located in this state.

History: *1969 c 708 s 58; 1978 c 674 s 60; 1986 c 444*

60B.59 ATTACHMENT, GARNISHMENT AND LEVY OF EXECUTION.

During the pendency in this or any other state of a liquidation proceeding, whether or not called by that name, no action or proceeding in the nature of an attachment, garnishment, or levy of execution shall be commenced or maintained in this state or elsewhere against the delinquent insurer or its assets.

History: *1969 c 708 s 59*

60B.60 INTERSTATE PRIORITIES.

Subdivision 1. **Priorities.** In a liquidation proceeding in this state involving one or more reciprocal states, the order of distribution of the domiciliary state shall control as to all claims of residents of this and reciprocal states. All claims of residents of reciprocal states shall be given equal priority of payment from general assets regardless of where such assets are located.

Subd. 2. **Priority of special deposit claims.** The owners of special deposit claims against an insurer for which a liquidator is appointed in this or any other state shall be given priority against the special deposits in accordance with the statutes governing the creation and maintenance of the deposits. If there is a deficiency in any deposit so that the claims secured by it are not fully discharged from it, the claimants may claim against a security fund share in the general assets, but the sharing shall be deferred until general creditors having the same priority, and also claimants against other special deposits having the same priority who have received smaller percentages from their respective special deposits, have been paid percentages of their claims equal to the percentage paid from the special deposit.

Subd. 3. **Priority of secured claims.** The owner of a secured claim against an insurer for which a liquidator has been appointed in this or any other state may surrender the security and file a claim as a general creditor, or the claim may be discharged by resort to the security in accordance with section 60B.43, in

which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors having the same priority.

History: *1969 c 708 s 60; 1986 c 444; 1994 c 425 s 6,7*

60B.61 SUBORDINATION OF CLAIMS FOR NONCOOPERATION.

If an ancillary receiver in another state or foreign country, whether or not called by that name, fails to transfer to the domiciliary liquidator in this state any assets within the receiver's control other than special deposits, diminished only by the expenses of the ancillary receivership, if any, the claims filed in the ancillary receivership, other than special deposit claims or secured claims, shall be placed in the class of claims under section 60B.44, subdivision 9.

History: *1969 c 708 s 61; 1986 c 444*