

SENATE
STATE OF MINNESOTA
NINETY-FIRST SESSION

S.F. No. 4273

(SENATE AUTHORS: UTKE)

DATE
03/11/2020

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Introduction and first reading

OFFICIAL STATUS

Referred to Commerce and Consumer Protection Finance and Policy

- 1.1 A bill for an act
- 1.2 relating to insurance; modifying the Minnesota Life and Health Insurance Guaranty
- 1.3 Association Act; amending Minnesota Statutes 2018, sections 61B.19, subdivisions
- 1.4 1, 2, 3, 5, 7, by adding a subdivision; 61B.20, subdivisions 7, 11, 12, 13, 14, 15,
- 1.5 16, 17, 18, by adding subdivisions; 61B.21, subdivision 1; 61B.22, subdivision 1;
- 1.6 61B.23, subdivisions 1, 3, 4, 5, 6, 7, 8, 8a, 12, 13, 14; 61B.24, subdivisions 2, 3,
- 1.7 5, 7; 61B.25, subdivisions 1, 3; 61B.26; 61B.27; 61B.28, subdivisions 3, 5, 7;
- 1.8 61B.32; proposing coding for new law in Minnesota Statutes, chapter 61B;
- 1.9 repealing Minnesota Statutes 2018, sections 61B.19, subdivision 4; 61B.20,
- 1.10 subdivisions 3, 8, 10; 61B.23, subdivision 2.
- 1.11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.12 Section 1. Minnesota Statutes 2018, section 61B.19, subdivision 1, is amended to read:
- 1.13 Subdivision 1. **Purpose.** (a) The purpose of sections 61B.18 to 61B.32 is to protect,
- 1.14 subject to certain limitations, the persons specified in subdivision 2 against failure in the
- 1.15 performance of contractual obligations, under life ~~insurance policies~~, health ~~insurance~~
- 1.16 ~~policies~~, and annuity policies, plans, or contracts, ~~and supplemental contracts~~ specified in
- 1.17 subdivision 2, because of the impairment or insolvency of the member insurer that issued
- 1.18 the policies, plans, or contracts.
- 1.19 (b) To provide this protection, an association of member insurers ~~has been~~ is created
- 1.20 ~~and exists~~ to pay benefits and to continue coverages, as limited in sections 61B.18 to 61B.32.
- 1.21 Members of the association are subject to assessment to provide funds to carry out the
- 1.22 purpose of sections 61B.18 to 61B.32.

2.1 Sec. 2. Minnesota Statutes 2018, section 61B.19, subdivision 2, is amended to read:

2.2 Subd. 2. **Scope.** (a) Sections 61B.18 to 61B.32 provide coverage for the policies and
2.3 contracts specified in subdivision 3, paragraph (a), to:

2.4 (1) persons who are owners of or certificate holders or enrollees under ~~these~~ the policies
2.5 or contracts, ~~or, (i) in the case of, other than unallocated annuity contracts, to the persons~~
2.6 ~~who are participants in a covered retirement plan, or (ii) in the case of~~ and structured
2.7 settlement annuities, ~~to persons who are payees in respect of their liability claims (or~~
2.8 ~~beneficiaries of such payees who are deceased)~~ and in each case who:

2.9 (A) are residents; or

2.10 (B) are not residents, but only under all of the following conditions: ~~the insurers member~~
2.11 insurer that issued the policies or contracts ~~are~~ is domiciled in the state of Minnesota; ~~those~~
2.12 ~~insurers never held a license or certificate of authority in the states in which those persons~~
2.13 ~~reside; those~~ the states in which the persons reside have associations similar to the association
2.14 created by sections 61B.18 to 61B.32; and ~~those~~ the persons are not eligible for coverage
2.15 by ~~those associations~~ an association in any other state due to the fact that the insurer or
2.16 health maintenance organization was not licensed in the state at the time specified in the
2.17 state's guaranty association law; and

2.18 (2) persons who, regardless of where they reside, except for nonresident certificate
2.19 holders under group policies or contracts, are the beneficiaries, assignees, or payees, including
2.20 health care providers rendering services covered under health insurance policies or
2.21 certificates, of the persons covered under clause (1);

2.22 (3) for unallocated annuity contracts specified in paragraph (b), clauses (1) and (2), shall
2.23 not apply, and sections 61B.18 to 61B.32 shall, except as provided in clauses (5) and (6),
2.24 provide coverage to:

2.25 (A) persons who are the owners of the unallocated annuity contracts if the contracts are
2.26 issued to or in connection with a specific benefit plan whose plan sponsor has its principal
2.27 place of business in Minnesota; and

2.28 (B) persons who are owners of unallocated annuity contracts issued to or in connection
2.29 with government lotteries if the owners are residents;

2.30 (4) For structured settlement annuities specified in subdivision 3, paragraphs (a) and
2.31 (b), shall not apply, and sections 61B.18 to 61B.32 shall, except as provided in paragraphs
2.32 (b) and (c), provide coverage to a person who is a payee under a structured settlement annuity
2.33 (or beneficiary of a payee if the payee is deceased), if the payee:

3.1 (A) is a resident, regardless of where the contract owner resides; or

3.2 (B) is not a resident, but only under both of the following conditions:

3.3 (i) the contract owner of the structured settlement annuity is a resident, or the contract
3.4 owner of the structured settlement annuity is not a resident but the insurer that issued the
3.5 structured settlement annuity is domiciled in Minnesota and the state in which the contract
3.6 owner resides has an association similar to the association created by sections 61B.18 to
3.7 61B.32; and

3.8 (ii) neither the payee or beneficiary, nor the contract owner, is eligible for coverage by
3.9 the association of the state in which the payee or contract owner resides.

3.10 ~~(b) Sections 61B.18 to 61B.32 provide coverage to the persons specified in paragraph~~
3.11 ~~(a) for direct, nongroup life, health, annuity, and supplemental policies or contracts, for~~
3.12 ~~subscriber contracts issued by a nonprofit health service plan corporation operating under~~
3.13 ~~chapter 62C, for certificates under direct group policies and contracts, and for unallocated~~
3.14 ~~annuity contracts issued by member insurers, except as limited by sections 61B.18 to 61B.32.~~
3.15 ~~Except as expressly excluded under subdivision 3, annuity contracts and certificates under~~
3.16 ~~group annuity contracts include, but are not limited to, guaranteed investment contracts,~~
3.17 ~~deposit administration contracts, unallocated funding agreements, allocated funding~~
3.18 ~~agreements, structured settlement annuities, annuities issued to or in connection with~~
3.19 ~~government lotteries, and any immediate or deferred annuity contracts. Covered unallocated~~
3.20 ~~annuity contracts include those that fund a qualified defined contribution retirement plan~~
3.21 ~~under sections 401, 403(b), and 457 of the Internal Revenue Code of 1986, as amended~~
3.22 ~~through December 31, 1992.~~

3.23 (b) Sections 61B.18 to 61B.32 shall not provide coverage to:

3.24 (1) a person who is a payee or beneficiary of a contract owner resident of Minnesota, if
3.25 the payee or beneficiary is afforded any coverage by the association of another state;

3.26 (2) a person covered under paragraph (a), clause (3), if any coverage is provided by the
3.27 association of another state to the person; or

3.28 (3) a person who acquires rights to receive payments through a structured settlement
3.29 factoring transaction, as defined in United State Code, title 26, section 5891(c)(3)(A),
3.30 regardless of whether the transaction occurred before or after such section became effective.

3.31 (c) Sections 61B.18 to 61B.32 are intended to provide coverage to a person who is a
3.32 resident of Minnesota and, in special circumstances, to a nonresident. In order to avoid
3.33 duplicate coverage, if a person who would otherwise receive coverage under sections 61B.18

4.1 to 61B.32 is provided coverage under the laws of any other state, the person shall not be
 4.2 provided coverage under sections 61B.18 to 61B.32. In determining the application of the
 4.3 provisions of this paragraph in situations where a person could be covered by the association
 4.4 of more than one state, whether as an owner, payee, enrollee, beneficiary or assignee, sections
 4.5 61B.18 to 61B.32 shall be construed in conjunction with other state laws to result in coverage
 4.6 by only one association.

4.7 Sec. 3. Minnesota Statutes 2018, section 61B.19, subdivision 3, is amended to read:

4.8 Subd. 3. **Limitation of coverage.** (a) Sections 61B.18 to 61B.32 shall provide coverage
 4.9 to the persons specified in subdivision 2 for policies or contracts of direct, non-group life
 4.10 insurance, health insurance, which for the purposes of sections 61B.18 to 61B.32 includes
 4.11 health maintenance organization subscriber contracts and certificates, or annuities, and
 4.12 supplemental contracts to any of these, for certificates under direct group policies and
 4.13 contracts, and for unallocated annuity contracts issued by member insurers, except as limited
 4.14 by sections 61B.18 to 61B.32. Annuity contracts and certificates under group annuity
 4.15 contracts include but are not limited to guaranteed investment contracts, deposit
 4.16 administration contracts, unallocated funding agreements, allocated funding agreements,
 4.17 structured settlement annuities, annuities issued to or in connection with government lotteries
 4.18 and any immediate or deferred annuity contracts.

4.19 (b) Except as provided in paragraph (c), sections 61B.18 to 61B.32 do not provide
 4.20 coverage for:

4.21 (1) a portion of a policy or contract not guaranteed by the member insurer, or under
 4.22 which the ~~investment~~ risk is borne by the policy or contract holder;

4.23 (2) a policy or contract of reinsurance, unless assumption certificates have been issued
 4.24 ~~and the insured has consented to the assumption as provided under section 60A.09,~~
 4.25 ~~subdivision 4a~~ pursuant to the reinsurance policy or contract;

4.26 (3) ~~a policy or contract issued by an assessment benefit association operating under~~
 4.27 ~~section 61A.39, or a fraternal benefit society operating under chapter 64B;~~

4.28 (4) ~~any obligation to nonresident participants of a covered retirement plan or to the plan~~
 4.29 ~~sponsor, employer, trustee, or other party who owns the contract; in these cases, the~~
 4.30 ~~association is obligated under this chapter only to participants in a covered plan who are~~
 4.31 ~~residents of the state of Minnesota on the date of impairment or insolvency;~~

4.32 (5) ~~(3) a structured settlement annuity in situations where a liability insurer remains~~
 4.33 ~~liable to the~~ which a payee or beneficiary has transferred his or her rights in a structured

5.1 settlement factoring transaction, as defined in United States Code, title 26, section
 5.2 5891(c)(3)(A), regardless of whether the transaction occurred before or after such section
 5.3 became effective;

5.4 ~~(6)~~ (4) a portion of an unallocated annuity contract which is not issued to or in connection
 5.5 with a specific employee, union, or association of natural persons benefit plan or a
 5.6 governmental lottery, ~~including but not limited to, a contract issued to, or purchased at the~~
 5.7 ~~direction of, any governmental bonding authority, such as a municipal guaranteed investment~~
 5.8 ~~contract;~~

5.9 ~~(7)~~ (5) a portion of a policy or contract issued to a plan or program of an employer,
 5.10 association, or similar entity to provide life, health, or annuity benefits to its employees ~~or~~,
 5.11 members, or others to the extent that the plan or program is self-funded or uninsured,
 5.12 including benefits payable by an employer, association, or similar entity under:

5.13 (i) a multiple employer welfare arrangement as defined in ~~the Employee Retirement~~
 5.14 ~~Income Security Act of 1974, United States Code, title 29, section 1002(40)(A)~~ 1144, as
 5.15 amended;

5.16 (ii) a minimum premium group insurance plan;

5.17 (iii) a stop-loss group insurance plan; or

5.18 (iv) an administrative services only contract;

5.19 ~~(8)~~ (6) any policy or contract issued by ~~an~~ a member insurer at a time when it was not
 5.20 licensed or did not have a certificate of authority to issue the policy or contract in this state;

5.21 ~~(9)~~ (7) an unallocated annuity contract issued to or in connection with a benefit plan
 5.22 protected under the federal Pension Benefit Guaranty Corporation, regardless of whether
 5.23 the federal Pension Benefit Guaranty Corporation has yet become liable to make any
 5.24 payments with respect to the benefit plan;

5.25 ~~(10)~~ (8) a portion of a policy or contract to the extent that it provides for:

5.26 (i) dividends or experience rating credits ~~except to the extent the dividends or experience~~
 5.27 ~~rating credits have actually become due and payable or have been credited to the policy or~~
 5.28 ~~contract before the date of impairment or insolvency;~~

5.29 (ii) voting rights; or

5.30 (iii) payment of any fees or allowances to any person, including the policy or contract
 5.31 holder, in connection with the service to, or administration of, the policy or contract;

6.1 ~~(11)~~ (9) a contractual agreement that establishes the member insurer's obligations to
6.2 provide a book value accounting guaranty for defined contribution benefit plan participants
6.3 by reference to a portfolio of assets that is owned by the benefit plan or its trustee, which
6.4 in each case is not an affiliate of the member insurer;

6.5 ~~(12)~~ (10) a portion of a policy or contract to the extent that the rate of interest on which
6.6 it is based, or the interest rate, crediting rate, or similar factor determined by use of an index
6.7 or other external reference stated in the policy or contract, employed in calculating returns
6.8 or changes in value:

6.9 (i) averaged over the period of four years prior to the date on which the member insurer
6.10 becomes an impaired or insolvent insurer under sections 61B.18 to 61B.32, whichever is
6.11 earlier, exceeds the rate of interest determined by subtracting two percentage points from
6.12 Moody's Corporate Bond Yield Average averaged for that same four-year period or for the
6.13 lesser period if the policy or contract was issued less than four years before the member
6.14 insurer becomes an impaired or insolvent insurer under sections 61B.18 to 61B.32, whichever
6.15 is earlier; and

6.16 (ii) on and after the date on which the member insurer becomes an impaired or insolvent
6.17 insurer under this chapter, whichever is earlier, exceeds the rate of interest determined by
6.18 subtracting three percentage points from Moody's Corporate Bond Yield Average as most
6.19 recently available;

6.20 ~~(13)~~ (11) a portion of a policy or contract to the extent it provides for interest or other
6.21 changes in value to be determined by the use of an index or other external reference stated
6.22 in the policy or contract, but which have not been credited to the policy or contract, or as
6.23 to which the policy or contract owner's rights are subject to forfeiture, as of the date the
6.24 member insurer becomes an impaired or insolvent insurer under sections 61B.18 to 61B.32,
6.25 whichever is earlier. If a policy's or contract's interest or changes in value are credited less
6.26 frequently than annually, then for purposes of determining the values that have been credited
6.27 and not subject to forfeiture under this clause, the interest or changes in value determined
6.28 by using the procedures defined in the policy or contract will be credited as if the contractual
6.29 date of crediting interest or changing values was the date of impairment or insolvency,
6.30 whichever is earlier, and will not be subject to forfeiture;

6.31 ~~(14)~~ (12) a portion of a policy or contract to the extent that the assessments required by
6.32 section 61B.24 with respect to the policy or contract are preempted by federal or state law;
6.33 ~~and~~

7.1 ~~(15)~~(13) a policy or contract providing any hospital, medical, prescription drug, or other
 7.2 health care benefits pursuant to United States Code, title 42, chapter 7, subchapter XVIII,
 7.3 Part C or Part D, commonly known as Medicare Part C & D; United States Code, title 42,
 7.4 chapter 7, subchapter XIX, commonly known as Medicaid; or any regulations issued under
 7.5 those provisions; and

7.6 (14) an obligation that does not arise under the express written terms of the policy or
 7.7 contract issued by the member insurer to the enrollee, certificate holder, contract owner or
 7.8 policy owner, including without limitation:

7.9 (i) claims based on marketing materials;

7.10 (ii) claims based on side letters, riders, or other documents that were issued by the
 7.11 member insurer without meeting applicable policy or contract form filing or approval
 7.12 requirements;

7.13 (iii) misrepresentations of or regarding policy or contract benefits;

7.14 (iv) extra-contractual claims; or

7.15 (v) a claim for penalties or consequential or incidental damages.

7.16 (c) The exclusion from coverage referenced in paragraph (b), clause (10), shall not apply
 7.17 to any portion of a policy or contract, including a rider, that provides long-term care or any
 7.18 other health insurance benefits.

7.19 Sec. 4. Minnesota Statutes 2018, section 61B.19, is amended by adding a subdivision to
 7.20 read:

7.21 Subd. 4a. **Limitation of benefits.** (a) The benefits that the association may become
 7.22 obligated to cover shall in no event exceed the lesser of:

7.23 (1) the contractual obligations for which the member insurer is liable or would have
 7.24 been liable if it were not an impaired or insolvent insurer; or

7.25 (2) any of the following:

7.26 (i) with respect to one life, regardless of the number of policies or contracts:

7.27 (A) \$300,000 in life insurance death benefits, but not more than \$100,000 in net cash
 7.28 surrender and net cash withdrawal values for life insurance;

7.29 (B) for health insurance benefits: \$100,000 for coverages not defined as disability income
 7.30 insurance or health benefit plans or long-term care insurance as defined in sections 62A.011,
 7.31 subdivision 3, and 62S.01, subdivision 18, including any net cash surrender and net cash

8.1 withdrawal values; \$100,000 for coverages not defined as disability income insurance or
8.2 health benefit plans or long-term care insurance as defined in sections 62A.011, subdivision
8.3 3, and 62S.01, subdivision 18, including any net cash surrender and net cash withdrawal
8.4 values; and \$500,000 for health benefit plans; and

8.5 (C) \$250,000 in the present value of annuity benefits, including net cash surrender and
8.6 net cash withdrawal values;

8.7 (ii) with respect to each individual participating in a governmental retirement benefit
8.8 plan established under Section 401, 403(b), or 457 of the Internal Revenue Code covered
8.9 by an unallocated annuity contract or the beneficiaries of each such individual if deceased,
8.10 in the aggregate, \$250,000 in present value annuity benefits, including net cash surrender
8.11 and net cash withdrawal values;

8.12 (iii) with respect to each payee of a structured settlement annuity, or beneficiary or
8.13 beneficiaries of the payee if deceased, \$250,000 in present value annuity benefits, in the
8.14 aggregate, including net cash surrender and net cash withdrawal values, if any;

8.15 (iv) however, in no event shall the association be obligated to cover more than:

8.16 (A) an aggregate of \$300,000 in benefits with respect to any one life under items (i) to
8.17 (iii) except with respect to benefits for health benefit plans under item (i), subitem (B), in
8.18 which case the aggregate liability of the association shall not exceed \$500,000 with respect
8.19 to any one individual; or

8.20 (B) with respect to one owner of multiple non-group policies of life insurance, whether
8.21 the policy or contract owner is an individual, firm, corporation or other person, and whether
8.22 the persons insured are officers, managers, employees, or other persons, more than \$5,000,000
8.23 in benefits, regardless of the number of policies and contracts held by the owner;

8.24 (v) with respect to either:

8.25 (A) one contract owner provided coverage under subdivision 2, paragraph (a), clause
8.26 (3), subitem (B); or

8.27 (B) one plan sponsor whose plans own directly or in trust one or more unallocated annuity
8.28 contracts not included in item (ii), \$5,000,000 in benefits, irrespective of the number of
8.29 contracts with respect to the contract owner or plan sponsor.

8.30 However, in the case where one or more unallocated annuity contracts are covered contracts
8.31 under sections 61B.18 to 61B.32 and are owned by a trust or other entity for the benefit of
8.32 two or more plan sponsors, coverage shall be afforded by the association if the largest
8.33 interest in the trust or entity owning the contract or contracts is held by a plan sponsor whose

9.1 principal place of business is in Minnesota and in no event shall the association be obligated
9.2 to cover more than \$5,000,000 in benefits with respect to all these unallocated contracts;
9.3 and

9.4 (vi) the limitations set forth in this subdivision are limitations on the benefits for which
9.5 the association is obligated before taking into account either its subrogation and assignment
9.6 rights or the extent to which those benefits could be provided out of the assets of the impaired
9.7 or insolvent insurer attributable to covered policies. The costs of the association's obligations
9.8 under sections 61B.18 to 61B.32 may be met by the use of assets attributable to covered
9.9 policies or reimbursed to the association pursuant to its subrogation and assignment rights.

9.10 (b) For purposes of sections 61B.18 to 61B.32, benefits provided by a long-term care
9.11 rider to a life insurance policy or annuity contract shall be considered the same type of
9.12 benefits as the base life insurance policy or annuity contract to which it relates.

9.13 Sec. 5. Minnesota Statutes 2018, section 61B.19, subdivision 5, is amended to read:

9.14 ~~Subd. 5. **Limited liability.** The liability of the association is strictly limited by the express~~
9.15 ~~terms of the covered policies and contracts and by the provisions of sections 61B.18 to~~
9.16 ~~61B.32 and is not affected by the contents of any brochures, illustrations, advertisements,~~
9.17 ~~or oral statements by agents, brokers, or others used or made in connection with their sale.~~
9.18 ~~This limitation on liability does not prevent an insured from proving liability that is greater~~
9.19 ~~than the express terms of the covered policy or contract. The insured must bring an action~~
9.20 ~~to claim the greater liability no later than one year after entry of an order of rehabilitation,~~
9.21 ~~conservation, or liquidation. The association is not liable for any extra-contractual claims,~~
9.22 ~~such as claims relating to bad faith in payment of claims and claims relating to marketing~~
9.23 ~~practices, exemplary, or punitive damages. The association is not liable for attorney fees or~~
9.24 ~~interest other than as provided for by the terms of the policies or contracts, subject to the~~
9.25 ~~other limits of sections 61B.18 to 61B.32. In performing its obligations to provide coverage~~
9.26 ~~under section 61B.23, the association shall not be required to guarantee, assume, reinsure,~~
9.27 ~~reissue or perform, or cause to be guaranteed, assumed, reinsured, reissued or performed,~~
9.28 ~~the contractual obligations of the insolvent or impaired insurer under a covered policy or~~
9.29 ~~contract that do not materially affect the economic values or economic benefits of the covered~~
9.30 ~~policy or contract.~~

10.1 Sec. 6. Minnesota Statutes 2018, section 61B.19, subdivision 7, is amended to read:

10.2 Subd. 7. **Construction.** ~~(a) Sections 61B.18 to 61B.32 shall be liberally construed to~~
10.3 ~~effect the purpose of sections 61B.18 to 61B.32. Subdivision 1 is an aid and guide to~~
10.4 ~~interpretation.~~

10.5 ~~(b) Participants in an employer-sponsored plan, which is funded in whole or in part by~~
10.6 ~~a covered policy, as specified in subdivision 4, clause (3), shall only be required to verify~~
10.7 ~~their status as residents and the amount of money in the unallocated annuity that represents~~
10.8 ~~their funds. Both these matters may be verified by the employer sponsoring the plan from~~
10.9 ~~plan records. Payments made to a plan shall be deemed to be made on behalf of the resident~~
10.10 ~~participant and are not the funds of the plan, the plan trustee, or any nonresident plan~~
10.11 ~~participant, and to the extent of such payments, discharge the association's obligation.~~

10.12 Sec. 7. Minnesota Statutes 2018, section 61B.20, is amended by adding a subdivision to
10.13 read:

10.14 Subd. 4a. **Authorized assessment.** "Authorized assessment" or "authorized" when used
10.15 in the context of assessments means a resolution by the board of directors that has been
10.16 passed whereby an assessment will be called immediately or in the future from member
10.17 insurers for a specified amount. An assessment is authorized when the resolution is passed.

10.18 Sec. 8. Minnesota Statutes 2018, section 61B.20, is amended by adding a subdivision to
10.19 read:

10.20 Subd. 4b. **Benefit plan.** "Benefit plan" means a specific employee, union, or association
10.21 of natural persons benefit plan.

10.22 Sec. 9. Minnesota Statutes 2018, section 61B.20, is amended by adding a subdivision to
10.23 read:

10.24 Subd. 4c. **Called assessment.** "Called assessment" or "called" when used in the context
10.25 of assessments means that a notice has been issued by the association to member insurers
10.26 requiring that an authorized assessment be paid within the time frame set forth within the
10.27 notice. An authorized assessment becomes a called assessment when the notice is mailed
10.28 by the association to member insurers.

11.1 Sec. 10. Minnesota Statutes 2018, section 61B.20, subdivision 7, is amended to read:

11.2 Subd. 7. **Covered policy contract.** "Covered contract" or "covered policy" means a
 11.3 policy or contract to, or a portion of a policy or contract, for which sections 61B.18 to
 11.4 61B.32 apply, as provided in coverage is provided under section 61B.19, subdivision 2.

11.5 Sec. 11. Minnesota Statutes 2018, section 61B.20, is amended by adding a subdivision to
 11.6 read:

11.7 Subd. 9a. **Extra-contractual claims.** "Extra-contractual claims" means, for example,
 11.8 claims relating to bad faith in the payment of claims, punitive or exemplary damages or
 11.9 attorney fees and costs.

11.10 Sec. 12. Minnesota Statutes 2018, section 61B.20, is amended by adding a subdivision to
 11.11 read:

11.12 Subd. 9b. **Health benefit plan.** "Health benefit plan" means any hospital or medical
 11.13 expense policy or certificate, or health maintenance organization subscriber contract or any
 11.14 other similar health contract. "Health benefit plan" does not include:

11.15 (1) accident only insurance;

11.16 (2) credit insurance;

11.17 (3) dental only insurance;

11.18 (4) vision only insurance;

11.19 (5) Medicare Supplement insurance;

11.20 (6) benefits for long-term care, home health care, community-based care, or any
 11.21 combination thereof;

11.22 (7) disability income insurance;

11.23 (8) coverage for on-site medical clinics; or

11.24 (9) specified disease, hospital confinement indemnity, or limited benefit health insurance
 11.25 if the types of coverage do not provide coordination of benefits and are provided under
 11.26 separate policies or certificates.

11.27 Sec. 13. Minnesota Statutes 2018, section 61B.20, subdivision 11, is amended to read:

11.28 Subd. 11. **Impaired insurer.** "Impaired insurer" means a member insurer that is not an
 11.29 insolvent insurer, and:

12.1 ~~(1)~~ is placed under an order of rehabilitation or conservation by a court of competent
 12.2 jurisdiction. ~~The order of rehabilitation or conservation referred to in this subdivision is the~~
 12.3 ~~initial order granting a petition, application, or other request to begin a rehabilitation or~~
 12.4 ~~conservatorship; or~~

12.5 ~~(2) is determined by the commissioner to be potentially unable to fulfill its contractual~~
 12.6 ~~obligations and the commissioner has notified the association of the determination.~~

12.7 Sec. 14. Minnesota Statutes 2018, section 61B.20, subdivision 12, is amended to read:

12.8 Subd. 12. **Insolvent insurer.** "Insolvent insurer" means a member insurer that is placed
 12.9 under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.
 12.10 ~~The order of liquidation referred to in this subdivision is the initial order granting a petition,~~
 12.11 ~~application, or other request to begin a liquidation.~~

12.12 Sec. 15. Minnesota Statutes 2018, section 61B.20, subdivision 13, is amended to read:

12.13 Subd. 13. **Member insurer.** "Member insurer" means an insurer or health maintenance
 12.14 organization licensed or holding a certificate of authority to transact in this state any kind
 12.15 of insurance or health maintenance organization business for which coverage is provided
 12.16 under section 61B.19, subdivision 2, and includes an insurer or health maintenance
 12.17 organization whose license or certificate of authority in this state may have been suspended,
 12.18 revoked, not renewed, or voluntarily withdrawn. The term does not include:

12.19 (1) a ~~nonprofit~~ hospital or medical service organization, ~~other than a~~ whether for-profit
 12.20 or nonprofit health service plan corporation that operates under chapter 62C;

12.21 ~~(2) a health maintenance organization;~~

12.22 ~~(3)~~ (2) a fraternal benefit society;

12.23 ~~(4)~~ (3) a mandatory state pooling plan;

12.24 ~~(5)~~ (4) a mutual assessment company or an entity that operates on an assessment basis;

12.25 ~~(6)~~ (5) an insurance exchange;

12.26 ~~(7)~~ (6) a community integrated service network; or

12.27 ~~(8)~~ (7) an entity similar to those listed in clauses (1) to ~~(7)~~ (6).

13.1 Sec. 16. Minnesota Statutes 2018, section 61B.20, is amended by adding a subdivision to
13.2 read:

13.3 Subd. 13b. **Owner.** "Owner" of a policy or contract and "policyholder," "policy owner"
13.4 and "contract owner" mean the person who is identified as the legal owner under the terms
13.5 of the policy or contract or who is otherwise vested with legal title to the policy or contract
13.6 through a valid assignment completed in accordance with the terms of the policy or contract
13.7 and properly recorded as the owner on the books of the member insurer. The terms owner,
13.8 contract owner, policyholder, and policy owner do not include persons with a mere beneficial
13.9 interest in a policy or contract.

13.10 Sec. 17. Minnesota Statutes 2018, section 61B.20, subdivision 14, is amended to read:

13.11 Subd. 14. **Person.** "Person" means an individual, corporation, partnership, ~~unincorporated~~
13.12 association, limited liability company, governmental body or entity, or voluntary organization.

13.13 Sec. 18. Minnesota Statutes 2018, section 61B.20, is amended by adding a subdivision to
13.14 read:

13.15 Subd. 14a. **Plan sponsor.** "Plan sponsor" means:

13.16 (1) the employer in the case of a benefit plan established or maintained by a single
13.17 employer;

13.18 (2) the employee organization in the case of a benefit plan established or maintained by
13.19 an employee organization; or

13.20 (3) in a case of a benefit plan established or maintained by two or more employers or
13.21 jointly by one or more employers and one or more employee organizations, the association,
13.22 committee, joint board of trustees, or other similar group of representatives of the parties
13.23 who establish or maintain the benefit plan.

13.24 Sec. 19. Minnesota Statutes 2018, section 61B.20, subdivision 15, is amended to read:

13.25 Subd. 15. **Premiums.** "Premiums" means amounts or considerations by whatever name
13.26 called received on covered policies or contracts less returned premiums, considerations,
13.27 and deposits ~~returned~~, and less dividends and experience credits ~~on those covered policies~~
13.28 ~~or contracts to the extent not guaranteed in advance.~~ The term Premiums does not include
13.29 amounts received for policies or contracts or for the portions of policies or contracts for
13.30 which coverage is not provided under section 61B.19, subdivision 3, except that assessable
13.31 premium shall not be reduced on account of section 61B.19, subdivision 4, relating to

14.1 limitations with respect to ~~any one life~~, any one individual, one participant and any one
 14.2 policy, or one contract holder owner. Premiums ~~subject to assessment under section 61B.24,~~
 14.3 ~~include all amounts received on any unallocated annuity contract issued to a contract holder~~
 14.4 ~~resident in this state if the contract is not otherwise excluded from coverage under section~~
 14.5 ~~61B.19, subdivision 3; provided that "premiums" shall not include any premiums in excess~~
 14.6 ~~of the liability limit on any unallocated annuity contract specified in section 61B.19,~~
 14.7 ~~subdivision 4.:~~

14.8 (1) premiums in excess of \$5,000,000 on an unallocated annuity contract not issued
 14.9 under a governmental retirement benefit plan or its trustee established under section 401,
 14.10 403(b), or 457 of the Internal Revenue Code; or

14.11 (2) with respect to multiple non-group policies of life insurance owned by one owner,
 14.12 whether the policy or contract owner is an individual, firm, corporation, or other person,
 14.13 and whether the persons insured are officers, managers, employees, or other persons,
 14.14 premiums in excess of \$5,000,000 with respect to these policies or contracts, regardless of
 14.15 the number of policies or contracts held by the owner.

14.16 Sec. 20. Minnesota Statutes 2018, section 61B.20, is amended by adding a subdivision to
 14.17 read:

14.18 Subd. 15a. **Principal place of business.** (a) "Principal place of business" of a plan
 14.19 sponsor or a person other than a natural person means the single state in which the natural
 14.20 persons who establish policy for the direction, control, and coordination of the operations
 14.21 of the entity as a whole primarily exercise that function, determined by the association in
 14.22 its reasonable judgment by considering the following factors:

14.23 (1) the state in which the primary executive and administrative headquarters of the entity
 14.24 is located;

14.25 (2) the state in which the principal office of the chief executive officer of the entity is
 14.26 located;

14.27 (3) the state in which the board of directors (or similar governing person or persons) of
 14.28 the entity conducts the majority of its meetings;

14.29 (4) the state in which the executive or management committee of the board of directors
 14.30 (or similar governing person or persons) of the entity conducts the majority of its meetings;

14.31 (5) the state from which the management of the overall operations of the entity is directed;
 14.32 and

15.1 (6) in the case of a benefit plan sponsored by affiliated companies comprising a
 15.2 consolidated corporation, the state in which the holding company or controlling affiliate
 15.3 has its principal place of business as determined using the above factors.

15.4 However, in the case of a plan sponsor, if more than 50 percent of the participants in the
 15.5 benefit plan are employed in a single state, that state shall be deemed to be the principal
 15.6 place of business of the plan sponsor.

15.7 (b) The principal place of business of a plan sponsor of a benefit plan described in
 15.8 subdivision 14a shall be deemed to be the principal place of business of the association,
 15.9 committee, joint board of trustees, or other similar group of representatives of the parties
 15.10 who establish or maintain the benefit plan that, in lieu of a specific or clear designation of
 15.11 a principal place of business, shall be deemed to be the principal place of business of the
 15.12 employer or employee organization that has the largest investment in the benefit plan in
 15.13 question.

15.14 Sec. 21. Minnesota Statutes 2018, section 61B.20, is amended by adding a subdivision to
 15.15 read:

15.16 Subd. 15b. **Receivership court.** "Receivership court" means the court in the insolvent
 15.17 or impaired insurer's state having jurisdiction over the conservation, rehabilitation, or
 15.18 liquidation of the member insurer.

15.19 Sec. 22. Minnesota Statutes 2018, section 61B.20, subdivision 16, is amended to read:

15.20 Subd. 16. **Resident.** "Resident" means a person to whom a contractual obligation is
 15.21 owed and who resides in Minnesota at the time a member insurer is initially determined by
 15.22 the commissioner or a court to be an impaired or insolvent insurer and to whom a contractual
 15.23 obligation is owed on the date of entry of a court order that determines a member insurer
 15.24 to be an impaired insurer or a court order that determines a member insurer to be an insolvent
 15.25 insurer, whichever occurs first. A person may be a resident of only one state, which in the
 15.26 case of a person other than a natural person is its principal place of business, and which, in
 15.27 the case of a trust, is the principal place of business of the settlor or entity which established
 15.28 the trust. Citizens of the United States who are either (i) residents of foreign countries, or
 15.29 (ii) residents of United States possessions, territories, or protectorates that do not have an
 15.30 association similar to the association created by sections 61B.19 to 61B.32, are considered
 15.31 residents of this the state if of domicile of the member insurer that issued the covered policies
 15.32 or contracts was domiciled in this state.

16.1 Sec. 23. Minnesota Statutes 2018, section 61B.20, subdivision 17, is amended to read:

16.2 Subd. 17. **Supplemental contract.** "Supplemental contract" means a written agreement
 16.3 entered into for the distribution of ~~policy or contract~~ proceeds under a life, health, or annuity
 16.4 policy or contract.

16.5 Sec. 24. Minnesota Statutes 2018, section 61B.20, subdivision 18, is amended to read:

16.6 Subd. 18. **Unallocated annuity contract.** "Unallocated annuity contract" means an
 16.7 annuity contract, ~~funding agreement~~, or group annuity certificate that is not issued to and
 16.8 owned by an individual, except to the extent of annuity benefits guaranteed to an individual
 16.9 by an insurer under the contract or certificate.

16.10 Sec. 25. Minnesota Statutes 2018, section 61B.21, subdivision 1, is amended to read:

16.11 Subdivision 1. **Functions.** There is created a nonprofit legal entity known as the
 16.12 Minnesota Life and Health Insurance Guaranty Association. All member insurers shall be
 16.13 and remain members of the association as a condition of being granted authority to transact
 16.14 insurance or a health maintenance organization business in Minnesota. The association shall
 16.15 perform its functions under the plan of operation established and approved under section
 16.16 61B.25, and shall exercise its powers through a board of directors established under section
 16.17 61B.22. The association is not a state agency for purposes of chapter 16A, 16B, 16C, or
 16.18 43A. For purposes of administration and assessment, the association shall establish and
 16.19 maintain two accounts:

16.20 (1) the life insurance and annuity account which includes the following subaccounts:

16.21 (i) the life insurance account;

16.22 (ii) the annuity account, which shall include annuity contracts owned by a governmental
 16.23 retirement plan or its trustee established under section 401, 403(b), or 457 of the Internal
 16.24 Revenue Code, but shall otherwise exclude unallocated annuities; and

16.25 (iii) the unallocated annuity account, which shall exclude contracts owned by a
 16.26 governmental retirement benefit plan or its trustee established under section 401, 403(b),
 16.27 or 457 of the Internal Revenue Code; and

16.28 (2) the health ~~insurance~~ account.

16.29 Sec. 26. Minnesota Statutes 2018, section 61B.22, subdivision 1, is amended to read:

16.30 Subdivision 1. **Members.** (a) The board of directors of the association consists of ~~nine~~
 16.31 members not less than seven nor more than 11 member insurers serving terms as established

17.1 in the plan of operation under section 61B.25. The insurer members of the board must be
 17.2 electd by member insurers, subject to the approval of the commissioner, for the terms of
 17.3 office specified in their nominations. In addition, two persons who must be public
 17.4 representatives shall be appointed by the commissioner to the board of directors. A public
 17.5 representative may not be an officer, director, or employee of an insurance company or a
 17.6 health maintenance organization or any person engaged in the business of insurance.

17.7 (b) Vacancies on the board shall be filled for the remaining period of the term by a
 17.8 majority vote of the remaining board members, for member insurers subject to approval of
 17.9 the commissioner, and by the commissioner for public representatives. To select the initial
 17.10 board of directors, and initially organize the association, the commissioner shall give notice
 17.11 to all member insurers of the time and place of the organizational meeting. In determining
 17.12 voting rights at the organizational meeting each member insurer shall be entitled to one vote
 17.13 in person or by proxy. If the board of directors is not selected within 60 days after notice
 17.14 of the organizational meeting, the commissioner may appoint the initial insurer members
 17.15 in addition to the public representatives.

17.16 (c) In approving selections or in appointing members to the board, the commissioner
 17.17 shall consider whether all member insurers are fairly represented.

17.18 Sec. 27. Minnesota Statutes 2018, section 61B.23, subdivision 1, is amended to read:

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

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

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

17.29 ~~(3) loan money to the impaired insurer.~~

18.1 Sec. 28. Minnesota Statutes 2018, section 61B.23, subdivision 3, is amended to read:

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

18.5 (1) both:

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

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

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

18.12 ~~(4)~~ (2) provide benefits and coverages in accordance with subdivision 4.

18.13 Sec. 29. Minnesota Statutes 2018, section 61B.23, subdivision 4, is amended to read:

18.14 Subd. 4. **Payments; alternative policies.** When proceeding under ~~subdivision 2,~~
 18.15 ~~paragraph (a), clause (2), or subdivision 3, clause (4) (2),~~ the association shall, ~~with respect~~
 18.16 ~~to life and health insurance policies and annuities~~ provide the following benefits and
 18.17 coverages:

18.18 (a) with respect to policies and contracts, assure payment of benefits ~~for premiums~~
 18.19 ~~identical to the premiums and benefits, except for terms of conversion and renewability,~~
 18.20 that would have been payable under the policies of the impaired or insolvent insurer, for
 18.21 claims incurred:

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

18.26 (2) with respect to ~~individual~~ non-group policies, contracts, and annuities, not later than
 18.27 the earlier of the next renewal date, if any, under those policies or contracts or one year, but
 18.28 in no event less than 30 days, from the date on which the association becomes obligated
 18.29 with respect to those policies.

18.30 (b) The association shall make diligent efforts to provide all known insureds, enrollees,
 18.31 or annuitants for ~~individual~~ non-group policies or contracts, or group policy or contract

19.1 owners with respect to group policies and contracts, 30 days' notice of the termination
19.2 pursuant to paragraph (a) of the benefits provided.

19.3 (c) With respect to ~~individual~~ non-group policies and contracts covered by the association,
19.4 the association shall make available to each known insured, enrollee, or annuitant, or owner
19.5 if other than the insured or annuitant, and with respect to an individual formerly an insured,
19.6 enrollee, or ~~formerly an~~ annuitant under a group policy or contract who is not eligible for
19.7 replacement group coverage, make available substitute coverage on an individual basis in
19.8 accordance with paragraph (d), if the insureds, enrollees, or annuitants had a right under
19.9 law or the terminated policy, contract, or annuity to convert coverage to individual coverage
19.10 or to continue an individual policy, contract, or annuity in force until a specified age or for
19.11 a specified time, during which the insurer or health maintenance organization had no right
19.12 unilaterally to make changes in any provision of the policy, contract, or annuity or had a
19.13 right only to make changes in premium by class.

19.14 (d)(1) In providing the substitute coverage required under paragraph (c), the association
19.15 may offer either to reissue the terminated coverage or to issue an alternative policy or
19.16 contract at actuarially justified rates.

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

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

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

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

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

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

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

20.11 (h) When proceeding under this subdivision with respect to any policy or contract carrying
 20.12 guaranteed minimum interest rates, the association shall assure the payment or crediting of
 20.13 a rate of interest consistent with section 61B.19, subdivision 3, paragraph (b), clause (12)
 20.14 (10).

20.15 Sec. 30. Minnesota Statutes 2018, section 61B.23, subdivision 5, is amended to read:

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

20.24 Sec. 31. Minnesota Statutes 2018, section 61B.23, subdivision 6, is amended to read:

20.25 Subd. 6. **Postliquidation premiums.** Premiums due for coverage after entry of any order
 20.26 of liquidation of an insolvent insurer belong to and are payable at the direction of the
 20.27 association, ~~and~~ if the liquidator of an insolvent insurer requests, the association shall
 20.28 provide a report to the liquidator regarding such premium collected by the association. The
 20.29 association is liable for unearned premiums due to policy or contract owners arising after
 20.30 the entry of the order.

21.1 Sec. 32. Minnesota Statutes 2018, section 61B.23, subdivision 7, is amended to read:

21.2 Subd. 7. **Coverage by another state.** ~~The association has no liability under this section~~
 21.3 ~~for a covered policy of a foreign or alien insurer whose domiciliary jurisdiction or state of~~
 21.4 ~~entry provides protection, by statute or rule, for residents of this state, which protection is~~
 21.5 ~~substantially similar to that provided by sections 61B.18 to 61B.32, for residents of other~~
 21.6 ~~states. Recovery provided for under sections 61B.18 to 61B.32 is reduced by the amount~~
 21.7 ~~of recovery under the coverage provided by another state or jurisdiction. If another state or~~
 21.8 ~~jurisdiction providing substantially similar coverage as provided by sections 61B.18 to~~
 21.9 ~~61B.32 denies coverage, the association shall provide coverage if the policyholder or contract~~
 21.10 ~~holder is otherwise eligible, and the association is then subrogated to the rights of the person~~
 21.11 ~~receiving benefits with respect to the other state or jurisdiction. If a person receiving benefits~~
 21.12 ~~from the association has a claim remaining against another state or jurisdiction, whether or~~
 21.13 ~~not such state or jurisdiction provides substantially similar protection within the meaning~~
 21.14 ~~of this section, then such person's remaining claim has priority over any subrogation rights~~
 21.15 ~~of the association with respect to that other state or jurisdiction. The protection provided~~
 21.16 ~~by sections 61B.18 to 61B.32 shall not apply where any guaranty protection is provided to~~
 21.17 ~~residents of Minnesota by the laws of the domiciliary state or jurisdiction of the impaired~~
 21.18 ~~or insolvent insurer other than Minnesota.~~

21.19 Sec. 33. Minnesota Statutes 2018, section 61B.23, subdivision 8, is amended to read:

21.20 Subd. 8. **Liens and moratoriums.** ~~(a) In carrying out its duties under subdivision 2 or~~
 21.21 ~~3, the association may request that there be imposed policy liens, contract liens, moratoriums~~
 21.22 ~~on payments, or other similar means. The liens, moratoriums, or similar means may be~~
 21.23 ~~imposed if the commissioner:~~

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

22.1 ~~policyholders of impaired or insolvent insurers protected by the guaranty association; (v)~~
 22.2 ~~that the imposition of policy or contract liens, moratoriums, or similar means is necessary~~
 22.3 ~~and appropriate to encourage recovery of the maximum possible amount from the remaining~~
 22.4 ~~assets of the impaired or insolvent insurer's estate; or (vi) that the imposition of policy or~~
 22.5 ~~contract liens, moratoriums, or similar means is necessary and appropriate in order for the~~
 22.6 ~~association to participate in any multistate plan of rehabilitation, conservation, or liquidation~~
 22.7 ~~of the impaired or insolvent insurer, and the commissioner considers the plan to be in the~~
 22.8 ~~best interests of the impaired or insolvent insurer's policyholders or the association's member~~
 22.9 ~~insurers;~~

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

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

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

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

22.23 (1) subject to approval by a court in Minnesota, impose permanent policy or contract
 22.24 liens in connection with a guarantee, assumption, or reinsurance agreement, if the association
 22.25 finds that the amounts which can be assessed under sections 61B.18 to 61B.32 are less than
 22.26 the amounts needed to assure full and prompt performance of the association's duties under
 22.27 sections 61B.18 to 61B.32, or that the economic or financial conditions as they affect member
 22.28 insurers are sufficiently adverse to render the imposition of such permanent policy or contract
 22.29 liens to be in the public interest; or

22.30 (2) subject to approval by a court in Minnesota, impose temporary moratoriums or liens
 22.31 on payments of cash values and policy loans, or any other right to withdraw funds held in
 22.32 conjunction with policies or contracts, in addition to any contractual provisions for deferral
 22.33 of cash or policy loan value. In addition, in the event of a temporary moratorium or
 22.34 moratorium charge imposed by the receivership court on payment of cash values or policy

23.1 loans, or on any other right to withdraw funds held in conjunction with policies or contracts,
 23.2 out of the assets of the impaired or insolvent insurer, the association may defer the payment
 23.3 of cash values, policy loans, or other rights for the period of the moratorium or moratorium
 23.4 charge imposed by the receivership court, except for claims covered by the association to
 23.5 be paid in accordance with a hardship procedure established by the liquidator or rehabilitator
 23.6 and approved by the receivership court.

23.7 Sec. 34. Minnesota Statutes 2018, section 61B.23, subdivision 8a, is amended to read:

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

23.21 Sec. 35. Minnesota Statutes 2018, section 61B.23, subdivision 12, is amended to read:

23.22 Subd. 12. **Assignments; subrogation rights.** (a) A person receiving benefits under
 23.23 sections 61B.18 to 61B.32 shall be considered to have assigned the rights under, and any
 23.24 causes of action against any person for losses arising under, resulting from or otherwise
 23.25 relating to, the covered policy or contract to the association to the extent of the benefits
 23.26 received because of sections 61B.18 to 61B.32, whether the benefits are payments of or on
 23.27 account of contractual obligations, continuation of coverage, or provision of substitute or
 23.28 alternative coverages. The association may require an assignment to it of those rights and
 23.29 causes of action by a payee, policy or contract owner, beneficiary, insured, or annuitant as
 23.30 a condition precedent to the receipt of rights or benefits conferred by sections 61B.18 to
 23.31 61B.32 upon that person. ~~The assignment and subrogation rights of the association include~~
 23.32 ~~any rights that a person may have as a beneficiary of a plan covered under the Employee~~
 23.33 ~~Retirement Income Security Act of 1974, United States Code, title 29, section 1003, as~~
 23.34 ~~amended.~~

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

24.4 (c) In addition to paragraphs (a) and (b), the association has all common law rights of
24.5 subrogation and other equitable or legal remedies that would have been available to the
24.6 impaired or insolvent insurer or person receiving benefits under sections 61B.18 to 61B.32
24.7 including without limitation, in the case of a structured settlement annuity, any rights of the
24.8 owner, beneficiary or payee of the annuity, to the extent of benefits received pursuant to
24.9 sections 61B.18 to 61B.32, against a person originally or by succession responsible for the
24.10 losses arising from the personal injury relating to the annuity or payment thereof, excepting
24.11 any such person responsible solely by reason of serving as an assignee in respect of a
24.12 qualified assignment under section 130 of the Internal Revenue Code of 1986, as amended.

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

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

24.22 Sec. 36. Minnesota Statutes 2018, section 61B.23, subdivision 13, is amended to read:

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

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

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

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

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

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

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

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

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

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

25.15 (8) organize itself as a corporation or in other legal form permitted by the laws of
25.16 Minnesota;

25.17 ~~(10) (9)~~ request information from a person seeking coverage from the association in
25.18 order to aid the association in determining its obligations under sections 61B.18 to 61B.32
25.19 with respect to the person, and the person shall promptly comply with the request.;

25.20 (10) unless prohibited by law, in accordance with the terms and conditions of the policy
25.21 or contract, file for actuarially justified rate or premium increases for any policy or contract
25.22 for which it provides coverage under sections 61B.18 to 61B.32; and

25.23 (11) take other necessary or appropriate action to discharge its duties and obligations
25.24 under sections 61B.18 to 61B.32 or to exercise its powers under sections 61B.18 to 61B.32.

25.25 Sec. 37. Minnesota Statutes 2018, section 61B.23, subdivision 14, is amended to read:

25.26 Subd. 14. **Association election to succeed to rights of insolvent or impaired insurer**
25.27 **under indemnity reinsurance contracts.** (a) At any time within ~~one year~~ 180 days after
25.28 the date ~~on which the association becomes responsible for the obligations of a member~~
25.29 ~~insurer the coverage date~~ of the order of liquidation, the association may elect to succeed
25.30 to the rights and obligations of the ceding member insurer, that accrue on or after the coverage
25.31 date and that relate to contracts covered in whole or in part by the association, ~~under any~~
25.32 ~~one or more indemnity reinsurance agreements entered into by the member insurer as a~~

26.1 ~~ceding insurer and selected by the association. However, the association may not exercise~~
 26.2 ~~an election with respect to a reinsurance agreement if the receiver, rehabilitator, or liquidator~~
 26.3 ~~of the member insurer has previously and expressly disaffirmed the reinsurance agreement~~
 26.4 in each case under any one or more reinsurance contracts entered into by the insolvent
 26.5 insurer and its reinsurers and selected by the association. Any such assumption shall be
 26.6 effective as of the date of the order of liquidation. The election shall be effected by a ~~notice~~
 26.7 ~~to the receiver, rehabilitator, or liquidator, and~~ the association or the National Organization
 26.8 of Life and Health Insurance Guaranty Associations (NOLHGA) on its behalf sending
 26.9 written notice, return receipt requested, to the affected reinsurers.

26.10 (b) To facilitate the earliest practicable decision about whether to assume any of the
 26.11 contracts of reinsurance, and in order to protect the financial position of the estate, the
 26.12 receiver and each reinsurer of the ceding member insurer shall make available upon request
 26.13 to the association or to NOLHGA on its behalf as soon as possible after commencement of
 26.14 formal delinquency proceedings:

26.15 (i) copies of in-force contracts of reinsurance and all related files and records relevant
 26.16 to the determination of whether such contracts should be assumed; and

26.17 (ii) notices of any defaults under the reinsurance contracts or any known event or condition
 26.18 which with the passage of time could become a default under the reinsurance contracts.

26.19 (c) If the association makes an election, clauses (1) through (4) apply with respect to
 26.20 the agreements selected by the association:

26.21 (1) the association is responsible for all unpaid premiums due under the ~~agreements~~
 26.22 reinsurance contracts for periods both before and after the ~~coverage~~ date of the order of
 26.23 liquidation, and is responsible for the performance of all other obligations to be performed
 26.24 after the ~~coverage~~ date of the order of liquidation, in each case that relates to the policies,
 26.25 contracts, or annuities covered in whole or in part by the association and the association
 26.26 may charge the policies, contracts, or annuities covered in part by the association, through
 26.27 reasonable allocation methods, the costs for reinsurance in excess of the obligations of the
 26.28 association and shall provide notice and an accounting of these charges to the liquidator;

26.29 (2) the association is entitled to any amounts payable by the reinsurer under the
 26.30 ~~agreements~~ reinsurance contracts with respect to losses or events that occur in periods after
 26.31 the ~~coverage~~ date of the order of liquidation and that relate to policies, contracts, or annuities
 26.32 covered by the association in whole or in part, provided that, upon receipt of any such
 26.33 amounts, the association is obliged to pay to the beneficiary under the policy ~~or~~ contract,

27.1 or annuity on account of which the amounts were paid a portion of the amount equal to the
 27.2 ~~excess~~ lesser of:

27.3 (i) the amount received by the association, ~~over~~; and

27.4 (ii) the excess of the amount received by the association over the amount equal to the
 27.5 benefits paid by the association on account of the policy or, contract, or annuity less the
 27.6 retention of the impaired or insolvent member insurer applicable to the loss or event;

27.7 (3) within 30 days following the association's election, the association and each indemnity
 27.8 reinsurer under contracts assumed by the association shall calculate the net balance due to
 27.9 or from the association under each reinsurance agreement as of the date of the association's
 27.10 election, with respect to policies, contracts, or annuities covered in whole or in part by the
 27.11 association, giving full credit to all items paid by either the member insurer or its receiver,
 27.12 ~~rehabilitator, or liquidator or the indemnity reinsurer during the period between the coverage~~
 27.13 ~~date and~~ prior to the date of the association's election. The reinsurer shall pay the receiver
 27.14 any amounts due for losses or events prior to the date of the order of liquidation, subject to
 27.15 any set-off for premiums unpaid for periods prior to the date, and (i) either the association
 27.16 or indemnity reinsurer shall pay the net balance due the other within five days of the
 27.17 completion of the aforementioned calculation ~~and (ii)~~. Any disputes over the amounts due
 27.18 to either the association or the reinsurer shall be resolved by arbitration pursuant to the terms
 27.19 of the affected reinsurance contracts or, if the contract contains no arbitration clause, as
 27.20 otherwise provided by law. If the receiver, ~~rehabilitator, or liquidator~~ has received any
 27.21 amounts due the association pursuant to paragraph (a), the receiver, ~~rehabilitator, or liquidator~~
 27.22 shall remit the same to the association as promptly as practicable; and

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

27.29 (d) During the period from the date of the order of liquidation until the election date, or,
 27.30 if the election date does not occur, until 180 days after the date of the order of liquidation:

27.31 (1) neither the association nor the reinsurer shall have any rights or obligations under
 27.32 reinsurance contracts that the association has the right to assume under paragraph (a),
 27.33 whether for periods prior to or after the date of the order of liquidation, and the reinsurer,

28.1 the receiver, and the association shall, to the extent practicable, provide each other data and
28.2 records reasonably requested; and

28.3 (2) provided that once the association has elected to assume a reinsurance contract, the
28.4 parties' rights and obligations shall be governed by paragraph (a).

28.5 (e) If the association does not elect to assume a reinsurance contract by the election date
28.6 pursuant to paragraph (a), the association shall have no rights or obligations, in each case
28.7 for periods both before and after the date of the order of liquidation, with respect to the
28.8 reinsurance contract.

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

28.14 (1) ~~the indemnity unless the reinsurer and the assuming insurer agree otherwise, the~~
28.15 ~~reinsurance agreements shall automatically terminate for new reinsurance unless the~~
28.16 ~~indemnity reinsurer and the other insurer agree to the contrary not cover any new policies~~
28.17 ~~of insurance, contracts, or annuities in addition to those transferred;~~

28.18 (2) the obligations described in the proviso to paragraph ~~(a)~~ (c), clause (2), shall no
28.19 longer apply ~~on and after the date the indemnity reinsurance agreement is transferred to the~~
28.20 ~~third-party insurer~~ with respect to matters arising after the effective date of the transfer; and

28.21 (3) ~~paragraph (b) does not apply if the association has previously expressly determined~~
28.22 ~~in writing that it will not exercise the election referred to in paragraph (a) notice shall be~~
28.23 ~~given in writing, return receipt requested, by the transferring party to the affected reinsurer~~
28.24 ~~not less than 30 days prior to the effective date of the transfer.~~

28.25 ~~(e)~~ (g) The provisions of this subdivision shall supersede the provisions of any law of
28.26 ~~this state~~ Minnesota or of any affected reinsurance agreement that provides for or requires
28.27 any payment of reinsurance proceeds, on account of losses or events that occur in periods
28.28 after the ~~coverage~~ date of the order of liquidation, to the receiver, ~~liquidator, or rehabilitator~~
28.29 ~~of the insolvent member insurer or any other person.~~ The receiver, ~~rehabilitator, or liquidator~~
28.30 shall remain entitled to any amounts payable by the reinsurer under the reinsurance agreement
28.31 with respect to losses or events that occur in periods prior to the ~~coverage~~ date of the order
28.32 of liquidation, subject to applicable setoff provisions.

29.1 ~~(d)~~ (h) Except as otherwise expressly provided in this subdivision, nothing in this
 29.2 subdivision alters or modifies the terms and conditions of the ~~indemnity~~ reinsurance
 29.3 agreements ~~of the insolvent member insurer~~. Nothing in this subdivision abrogates or limits
 29.4 any rights of any reinsurer to claim that it is entitled to rescind a reinsurance agreement.
 29.5 Nothing in this subdivision gives a policy owner, contract owner, enrollee, certificate holder,
 29.6 or beneficiary an independent cause of action against an indemnity reinsurer that is not
 29.7 otherwise set forth in the indemnity reinsurance agreement. Nothing in this subdivision
 29.8 limits or affects the association's rights as a creditor of the estate against the assets of the
 29.9 estate. Nothing in this subdivision applies to reinsurance agreements covering property or
 29.10 casualty risks.

29.11 Sec. 38. Minnesota Statutes 2018, section 61B.24, subdivision 2, is amended to read:

29.12 Subd. 2. **Classes of assessments.** There are two classes of assessments, as follows:

29.13 (1) class A assessments must be ~~made~~ authorized and called for the purpose of meeting
 29.14 administrative and legal costs and other expenses ~~and examinations~~ conducted under the
 29.15 authority of section 61B.27. Class A assessments may be ~~made~~ authorized and called whether
 29.16 or not related to a particular impaired or insolvent insurer; and

29.17 (2) class B assessments must be ~~made~~ authorized and called to the extent necessary to
 29.18 carry out the powers and duties of the association under section 61B.23 with regard to an
 29.19 impaired or an insolvent insurer.

29.20 Sec. 39. Minnesota Statutes 2018, section 61B.24, subdivision 3, is amended to read:

29.21 Subd. 3. **Formula for determination.** (a) The amount of a class A assessment shall be
 29.22 determined by the board and may be ~~made~~ authorized and called on a pro rata or nonpro
 29.23 rata basis. If pro rata, the board may provide that it be credited against future class B
 29.24 assessments. ~~A nonpro rata assessment shall not exceed \$500 per member insurer in any~~
 29.25 ~~one calendar year.~~

29.26 (b) The amount of ~~any~~ a class B assessment, except for assessments related to long-term
 29.27 care insurance, must be allocated for assessment purposes among the accounts or subaccounts
 29.28 pursuant to an allocation formula which may be based on the premiums or reserves of the
 29.29 impaired or insolvent insurer or any other standard considered by the board in its sole
 29.30 discretion as being fair and reasonable under the circumstances.

29.31 (c) The amount of the class B assessment for long-term care insurance written by the
 29.32 impaired or insolvent insurer shall be allocated according to a methodology included in the

30.1 Plan of Operation and approved by the Commissioner. The methodology shall provide for
 30.2 50 percent of the assessment to be allocated to accident and health member insurers and 50
 30.3 percent to be allocated to life and annuity member insurers.

30.4 ~~(e)~~ (d) Class B assessments against member insurers for each subaccount or account
 30.5 must be in the proportion that the average annual premiums received on business in ~~this~~
 30.6 ~~state~~ Minnesota by each assessed member insurer on policies or contracts covered by each
 30.7 subaccount or account for the three most recent calendar years for which information is
 30.8 available preceding the calendar year in which the insurer became impaired or insolvent,
 30.9 as the case may be, bears to the ~~average annual~~ premiums received on business in ~~this state~~
 30.10 Minnesota by all assessed member insurers on policies or contracts covered by that
 30.11 subaccount or account for those same calendar years. ~~If the impaired insurer becomes~~
 30.12 ~~insolvent, the date of impairment must be used to determine the assessment. Premiums for~~
 30.13 ~~purposes of calculating average annual premium for calendar years prior to 1993 shall be~~
 30.14 ~~determined in accordance with Minnesota Statutes 1992, sections 61B.01 to 61B.16.~~

30.15 ~~(d)~~ (e) Assessments for funds to meet the requirements of the association with respect
 30.16 to an impaired or insolvent insurer must not be ~~made~~ authorized or called until necessary
 30.17 to implement the purposes of sections 61B.18 to 61B.32. Classification of assessments
 30.18 under subdivision 2 and computation of assessments under this subdivision must be made
 30.19 with a reasonable degree of accuracy, recognizing that exact determinations may not always
 30.20 be possible. The association shall notify each member insurer of its anticipated pro rata
 30.21 share of an authorized assessment not yet called within 180 days after the assessment is
 30.22 authorized.

30.23 Sec. 40. Minnesota Statutes 2018, section 61B.24, subdivision 5, is amended to read:

30.24 Subd. 5. **Maximum assessment.** (a) The total of all assessments upon a member insurer
 30.25 for each subaccount of the life and annuity account and for the health account shall not in
 30.26 any one calendar year exceed two percent of that member insurer's average annual premiums
 30.27 as calculated in subdivision 3, paragraph ~~(e)~~ (d), received in Minnesota on policies or
 30.28 contracts covered by that account or subaccount during the three calendar years preceding
 30.29 the year in which the member insurer became an impaired or insolvent insurer. If two or
 30.30 more assessments are ~~made~~ authorized or called with respect to insurers that become impaired
 30.31 or insolvent in different calendar years, average annual premiums for purposes of the
 30.32 aggregate assessment percentage limitation are based upon shall be equal and limited to the
 30.33 higher of the three-year averages calculated under subdivision 3, paragraph (e) (d). ~~If an~~
 30.34 ~~impaired insurer becomes insolvent, the date of impairment must be used to determine the~~

31.1 ~~assessment.~~ If the maximum assessment for any subaccount of the life and annuity account
 31.2 in any one calendar year will not provide an amount sufficient to carry out the responsibilities
 31.3 of the association, then pursuant to subdivision 3, the board of directors shall assess based
 31.4 on the other subaccounts of the life and annuity account for the necessary additional amount,
 31.5 subject to the maximum of two percent stated above for each subaccount.

31.6 (b) If the maximum assessment for an account, together with the other assets of the
 31.7 association in that account, does not provide in any one calendar year in that account an
 31.8 amount sufficient to carry out the responsibilities of the association, the necessary additional
 31.9 funds must be assessed as soon as permitted by sections 61B.18 to 61B.32.

31.10 (c) The board may adopt general principles in the plan of operation for allocating funds
 31.11 among claims, whether relating to one or more impaired or insolvent insurers, when the
 31.12 maximum assessment will be insufficient to cover anticipated claims.

31.13 ~~(d) If assessments under this section are inadequate to pay all obligations of the impaired~~
 31.14 ~~insurer that are or become due and owing, then the association shall prepare a plan approved~~
 31.15 ~~by the commissioner for prioritization of payments. If the association adopts general~~
 31.16 ~~principles in the plan of operations, the association shall use the general principles in~~
 31.17 ~~preparing the plan required under this paragraph. No formerly impaired or insolvent insurer~~
 31.18 ~~may be reinstated until all payments of or on account of the insurer's contractual obligations~~
 31.19 ~~by the guaranty association, along with all expenses thereof and interest on all such payments~~
 31.20 ~~and expenses, shall have been repaid to the guaranty association or a plan of repayment by~~
 31.21 ~~the insurer shall have been approved by the commissioner.~~

31.22 Sec. 41. Minnesota Statutes 2018, section 61B.24, subdivision 7, is amended to read:

31.23 Subd. 7. **Premium rates and dividends.** A member insurer may, in determining its
 31.24 premium rates and policy owner dividends as to any kind of insurance or health maintenance
 31.25 organization business within the scope of sections 61B.18 to 61B.32, consider the amount
 31.26 reasonably necessary to meet its assessment obligations under sections 61B.18 to 61B.32.

31.27 Sec. 42. Minnesota Statutes 2018, section 61B.25, subdivision 1, is amended to read:

31.28 Subdivision 1. **Adoption and amendment.** (a) The purpose of the association shall
 31.29 submit to the commissioner a plan of operation is and any amendments to the plan necessary
 31.30 or suitable to assure the fair, reasonable, and equitable administration of the association
 31.31 under sections 61B.18 to 61B.32. The plan of operation and any amendments to the plan
 31.32 of operation must be submitted to the commissioner and become effective upon the

32.1 commissioner's written approval or 30 days after submission if the commissioner has not
32.2 disapproved.

32.3 (b) If the association fails to submit a suitable plan or if the association fails to submit
32.4 suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt
32.5 reasonable rules necessary or advisable to implement sections 61B.18 to 61B.32. The rules
32.6 shall continue in force until modified by the commissioner or superseded by amendments
32.7 submitted by the association and approved by the commissioner.

32.8 Sec. 43. Minnesota Statutes 2018, section 61B.25, subdivision 3, is amended to read:

32.9 Subd. 3. **Contents.** The plan of operation must, in addition to requirements specified in
32.10 sections 61B.18 to 61B.32:

32.11 (1) establish procedures for handling the assets of the association;

32.12 (2) establish the amount and method of reimbursing members of the board of directors
32.13 under section 61B.22;

32.14 (3) establish regular places and times for meetings including telephone conference calls
32.15 of the board of directors or of the executive committee;

32.16 (4) establish procedures for records to be kept of all financial transactions of the
32.17 association, its agents, and the board of directors;

32.18 (5) establish procedures for selecting the board of directors;

32.19 (6) establish any additional procedures for assessments under section 61B.24; ~~and~~

32.20 (7) contain additional provisions necessary or proper for the execution of the powers
32.21 and duties of the association;

32.22 (8) establish procedures whereby a director may be removed for cause, including in the
32.23 case where a member insurer director becomes an impaired or insolvent insurer; and

32.24 (9) require the board of directors to establish a policy and procedures for addressing
32.25 conflicts of interests.

32.26 Sec. 44. Minnesota Statutes 2018, section 61B.26, is amended to read:

32.27 **61B.26 DUTIES AND POWERS OF COMMISSIONER.**

32.28 (a) In addition to other duties and powers in sections 61B.18 to 61B.32, the commissioner
32.29 shall:

33.1 ~~(1) notify the board of directors of the existence of an impaired or insolvent insurer~~
 33.2 ~~within three days after a determination of impairment or insolvency is made or the~~
 33.3 ~~commissioner receives notice of impairment or insolvency;~~

33.4 ~~(2)~~ (1) upon request of the board of directors, provide the association with a statement
 33.5 of the premiums in this and any other appropriate states for each member insurer; and

33.6 ~~(3)~~ (2) when an impairment is declared and the amount of the impairment is determined,
 33.7 serve a demand upon the impaired insurer to make good the impairment within a reasonable
 33.8 time; notice to the impaired insurer shall constitute notice to its shareholders, if any; the
 33.9 failure of the insurer to promptly comply with the commissioner's demand shall not excuse
 33.10 the association from the performance of its powers and duties under sections 61B.18 to
 33.11 61B.32; and.

33.12 ~~(4) in a liquidation, conservation, or rehabilitation proceeding involving a domestic~~
 33.13 ~~insurer, be appointed as the liquidator, conservator, or rehabilitator.~~

33.14 (b) The commissioner may suspend or revoke, after notice and hearing, the certificate
 33.15 of authority to transact insurance in ~~this state~~ Minnesota of any member insurer which fails
 33.16 to pay an assessment when due or fails to comply with the plan of operation. As an
 33.17 alternative, the commissioner may levy a forfeiture on any member insurer which fails to
 33.18 pay an assessment when due. A forfeiture shall not exceed five percent of the unpaid
 33.19 assessment per month, but no forfeiture shall be less than \$100 per month.

33.20 (c) A final action of the board of directors or the association may be appealed to the
 33.21 commissioner if the appeal is taken within 60 days of the aggrieved party's receipt of notice
 33.22 of the final action being appealed. Any final action or order of the commissioner is subject
 33.23 to judicial review in a court of competent jurisdiction, in the manner provided by chapter
 33.24 14. A determination or decision by the commissioner under sections 61B.18 to 61B.32 is
 33.25 not subject to the contested case or rulemaking provisions of chapter 14.

33.26 (d) The liquidator, rehabilitator, or conservator of an impaired insurer may notify all
 33.27 interested persons of the effect of sections 61B.18 to 61B.32.

33.28 ~~(e) For the purposes of sections 61B.18 to 61B.32, the commissioner may delegate any~~
 33.29 ~~of the powers conferred by law.~~

33.30 ~~(f) Nonperformance of any of the acts specified in this section or failure to meet the~~
 33.31 ~~specific time limits does not affect the association, its members, or any other person as to~~
 33.32 ~~the person's duties and obligations.~~

34.1 **Sec. 45. [61B.265] CREDITS FOR ASSESSMENTS PAID.**

34.2 (a) A member insurer may offset against its premium, franchise or income tax liability
 34.3 to Minnesota an assessment described in section 61B.24, subdivision 8, to the extent of 20
 34.4 percent of the amount of the assessment for each of the five calendar years following the
 34.5 year in which the assessment was paid. In the event a member insurer should cease doing
 34.6 business, all uncredited assessments may be credited against its premium, franchise, or
 34.7 income tax liability for the year it ceases doing business.

34.8 (b) A member insurer that is exempt from taxes referenced in paragraph (a) may recoup
 34.9 its assessments by a surcharge on its premiums in a sum reasonably calculated to recoup
 34.10 the assessments over a reasonable period of time, as approved by the commissioner. Amounts
 34.11 recouped shall not be considered premiums for any other purpose, including the computation
 34.12 of gross premium tax, the medical loss ratio, or agent commission. If a member insurer
 34.13 collects excess surcharges, the insurer shall remit the excess amount to the association, and
 34.14 the excess amount shall be applied to reduce future assessments in the appropriate account.

34.15 (c) Any sums that are acquired by refund, pursuant to section 61B.24, subdivision 6,
 34.16 from the association by member insurers, and that have been offset against premium,
 34.17 franchise, or income taxes as provided in paragraph (a), shall be paid by the member insurers
 34.18 to Minnesota in such manner as the tax authorities may require. The association shall notify
 34.19 the commissioner that refunds have been made.

34.20 Sec. 46. Minnesota Statutes 2018, section 61B.27, is amended to read:

34.21 **61B.27 PREVENTION OF INSOLVENCIES.**

34.22 (a) To aid in the detection and prevention of insurer insolvencies or impairments the
 34.23 commissioner shall notify the commissioners of insurance of all the other states, territories
 34.24 of the United States, and the District of Columbia when the commissioner takes one of the
 34.25 following actions against a member insurer:

34.26 (i) revocation of license; ~~or~~

34.27 (ii) suspension of license; or

34.28 (iii) makes a formal order that the member insurer restrict its premium writing, obtain
 34.29 additional contributions to surplus, withdraw from Minnesota, reinsure all or any part of its
 34.30 business, or increase capital, surplus, or any other account for the security of policy owners,
 34.31 contract owners, certificate holders, or creditors.

34.32 The notice must be mailed to all commissioners within 30 days following the action.

35.1 (b) ~~If The commissioner deems it appropriate, the commissioner may~~ shall also:

35.2 (1) report to the board of directors when the commissioner has taken any of the actions
35.3 specified in paragraph (a) or has received a report from another commissioner indicating
35.4 that an action specified in paragraph (a) has been taken in another state. The report to the
35.5 board of directors must contain all significant details of the action taken or the report received
35.6 from another commissioner;

35.7 (2) report to the board of directors when the commissioner has reasonable cause to
35.8 believe from an examination, whether completed or in process, of a member ~~company~~
35.9 insurer that the ~~company~~ member insurer may be an impaired or insolvent insurer; and

35.10 (3) furnish to the board of directors the National Association of Insurance Commissioners
35.11 insurance regulatory information system ratios and listings of companies not included in
35.12 the ratios developed by the National Association of Insurance Commissioners, and the board
35.13 may use the information in carrying out its duties and responsibilities under this section.
35.14 The report and the information contained in it must be kept confidential by the board of
35.15 directors until it has been made public by the commissioner or other lawful authority.
35.16 Nothing in this provision supersedes other requirements of law.

35.17 ~~(4) Notify the board if the commissioner makes a formal order requiring the company~~
35.18 ~~to restrict its premium writing, obtain additional contributions to surplus, withdraw from~~
35.19 ~~this state, reinsure all or any part of its business, or increase capital, surplus, or any other~~
35.20 ~~account for the security of policyholders or creditors.~~

35.21 (c) The commissioner may seek the advice and recommendations of the board of directors
35.22 concerning any matter affecting the commissioner's duties and responsibilities regarding
35.23 the financial condition of member insurers and of ~~companies~~ insurers or health maintenance
35.24 organizations seeking admission to transact insurance business in ~~this state~~ Minnesota.

35.25 (d) The board of directors may, upon majority vote, make reports and recommendations
35.26 to the commissioner upon matters germane to the solvency, liquidation, rehabilitation, or
35.27 conservation of any member insurer or germane to the solvency of a ~~company~~ health
35.28 maintenance organization seeking to do an insurance business in ~~this state~~ Minnesota. Those
35.29 reports and recommendations shall not be considered public documents.

35.30 (e) The board of directors, upon majority vote, may notify the commissioner of
35.31 information indicating that a member insurer may be an impaired or insolvent insurer.

35.32 (f) The board of directors may, upon majority vote, make recommendations to the
35.33 commissioner for the detection and prevention of insurer insolvencies.

36.1 ~~(g) The board of directors may, at the conclusion of an insurer insolvency in which the~~
 36.2 ~~association was obligated to pay covered claims, prepare a report to the commissioner~~
 36.3 ~~containing the information it may have in its possession bearing on the history and causes~~
 36.4 ~~of the insolvency. The board shall cooperate with the boards of directors of guaranty~~
 36.5 ~~associations in other states in preparing a report on the history and causes of insolvency of~~
 36.6 ~~a particular insurer, and may adopt by reference any report prepared by those other~~
 36.7 ~~associations.~~

36.8 ~~(h) Nonperformance by the commissioner of any of the acts specified in this section or~~
 36.9 ~~failure to meet the specified time limits does not affect the association, its members, or any~~
 36.10 ~~other person as to the person's duties and obligations.~~

36.11 ~~Nothing in this section supersedes other requirements of law.~~

36.12 Sec. 47. Minnesota Statutes 2018, section 61B.28, subdivision 3, is amended to read:

36.13 Subd. 3. **Association as creditor.** For the purpose of carrying out its obligations under
 36.14 sections 61B.18 to 61B.32, the association is considered to be a creditor of the impaired or
 36.15 insolvent insurer to the extent of assets attributable to covered policies, reduced by amounts
 36.16 which the association recovers from the assets of the impaired or insolvent insurer as subrogee
 36.17 under section 61B.23, subdivision 12. ~~Recoveries by the association as subrogee under~~
 36.18 ~~section 61B.23, subdivision 12, from assets other than from assets of the impaired or insolvent~~
 36.19 ~~insurer shall not reduce or act as an offset to the association's claim as creditor of the impaired~~
 36.20 ~~or insolvent insurer.~~ Assets of the impaired or insolvent insurer attributable to covered
 36.21 policies must be used to continue all covered policies and pay all contractual obligations of
 36.22 the impaired or insolvent insurer as required by sections 61B.18 to 61B.32. Assets attributable
 36.23 to covered policies or contracts, as used in this subdivision, are that proportion of the assets
 36.24 which the reserves that should have been established for those policies or contracts bear to
 36.25 the reserves that should have been established for all policies of insurance written by the
 36.26 impaired or insolvent insurer.

36.27 Sec. 48. Minnesota Statutes 2018, section 61B.28, subdivision 5, is amended to read:

36.28 Subd. 5. **Distribution to stockholders.** (a) Prior to the termination of any liquidation,
 36.29 rehabilitation, or conservation proceeding, the court may take into consideration the
 36.30 contributions of the respective parties, including the association, the shareholders, contract
 36.31 owners, certificate holders, enrollees and policy owners of the insolvent insurer, and any
 36.32 other party with a bona fide interest, in making an equitable distribution of the ownership
 36.33 rights of the insolvent insurer. In such a determination, consideration shall be given to the

37.1 welfare of the policy owners, contract owners, certificate holders, and enrollees of the
37.2 continuing or successor member insurer.

37.3 (b) No distribution to stockholders of an impaired domiciliary insurer shall be made
37.4 until the total amount of assessments levied by the association with interest thereon for
37.5 funds expended in carrying out its powers and duties under section 61B.23 with respect to
37.6 the insurer have been fully recovered by the association.

37.7 Sec. 49. Minnesota Statutes 2018, section 61B.28, subdivision 7, is amended to read:

37.8 Subd. 7. **Notice concerning limitations and exclusions.** (a) No person, including an
37.9 insurer, agent, or affiliate of an insurer or agent, shall offer for sale in ~~this state~~ Minnesota
37.10 a covered life insurance, annuity, or health insurance policy or contract without delivering,
37.11 either at the time of application for that policy or contract or at the time of delivery of the
37.12 policy or contract, a notice in the form specified in subdivision 8, or in a form approved by
37.13 the commissioner under paragraph (b), relating to coverage provided by the Minnesota Life
37.14 and Health Insurance Guaranty Association. The notice may be part of the application. A
37.15 copy of the notice must be given to the applicant or the policyholder. The document shall
37.16 also be available upon request by a policy owner, contract owner, certificate holder, or
37.17 enrollee. The person offering the policy or contract shall document the fact that the notice
37.18 was given at the time of application or the fact that the notice was delivered at the time the
37.19 policy or contract was delivered. This does not require that the receipt of the notice be
37.20 acknowledged by the applicant. The distribution, delivery, or contents or interpretation of
37.21 this document does not guarantee that either the policy or the contract or the policy owner,
37.22 contract owner, certificate holder, or enrollee is covered in the event of the impairment or
37.23 insolvency of a member insurer. The description document shall be revised by the association
37.24 as amendments to sections 61B.18 to 61B.32 may require. Failure to receive this document
37.25 does not give the policy owner, contract owner, certificate holder, enrollee, or insured any
37.26 greater rights than those stated in sections 61B.18 to 61B.32.

37.27 (b) The association may prepare, and file with the commissioner for approval, a form
37.28 of notice as an alternative to the form of notice specified in subdivision 8 describing the
37.29 general purposes and limitations of this chapter. The form of notice shall:

37.30 (1) state the name, address, and telephone number of the Minnesota Life and Health
37.31 Insurance Guaranty Association;

37.32 (2) prominently warn the policy or contract holder that the Minnesota Life and Health
37.33 Insurance Guaranty Association may not cover the policy or, if coverage is available, it will

38.1 be subject to substantial limitations and exclusions and conditioned on continued residence
38.2 in the state;

38.3 (3) state the types of policies or contracts for which guaranty funds will provide coverage;

38.4 ~~(3)~~ (4) state that the insurer and its agents are prohibited by law from using the existence
38.5 of the Minnesota Life and Health Insurance Guaranty Association for the purpose of sales,
38.6 solicitation, or inducement to purchase any form of insurance or health maintenance
38.7 organization coverage;

38.8 ~~(4)~~ (5) emphasize that the policy or contract holder should not rely on coverage under
38.9 the Minnesota Life and Health Insurance Guaranty Association when selecting an insurer
38.10 or health maintenance organization;

38.11 (6) explain rights available and procedures for filing a complaint to allege a violation
38.12 of any provisions of sections 61B.18 to 61B.32; and

38.13 ~~(5)~~ (7) provide other information as directed by the commissioner. The commissioner
38.14 may approve any form of notice proposed by the association and, as to the approved form
38.15 of notice, the association may notify all member insurers by mail that the form of notice is
38.16 available as an alternative to the notice specified in subdivision 8.

38.17 (c) A policy or contract not covered by the Minnesota Life and Health Insurance Guaranty
38.18 Association or the Minnesota Insurance Guaranty Association must contain the following
38.19 notice in ten-point type, stamped in red ink or contrasting type on the policy or contract and
38.20 the application:

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

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

38.28 Sec. 50. Minnesota Statutes 2018, section 61B.32, is amended to read:

38.29 **61B.32 STAY OF PROCEEDINGS; REOPENING DEFAULT JUDGMENTS.**

38.30 All proceedings in which the insolvent insurer is a party in a court in this state must be
38.31 stayed ~~60~~ 180 days from the date an order of liquidation, rehabilitation, or conservation is
38.32 final to permit proper legal action by the association on matters germane to its powers or

39.1 duties. As to judgment under a decision, order, verdict, or finding based on default, the
39.2 association may apply to have the judgment set aside by the same court that made the
39.3 judgment and may defend against the suit on the merits.

39.4 Sec. 51. [61B.33] PROSPECTIVE APPLICATION.

39.5 Sections 61B.18 to 61B.32 shall not apply to any member insurer that is insolvent or
39.6 unable to fulfill its contractual obligations on the effective date of sections 61B.18 to 61B.32.

39.7 Sec. 52. REPEALER.

39.8 Minnesota Statutes 2018, sections 61B.19, subdivision 4; 61B.20, subdivisions 3, 8, and
39.9 10; and 61B.23, subdivision 2, are repealed.

61B.19 PURPOSE; SCOPE; LIMITATION OF COVERAGE; LIMITATION OF BENEFITS; CONSTRUCTION.

Subd. 4. **Limitation of benefits.** The benefits for which the association may become liable shall in no event exceed the lesser of:

(1) the contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer; or

(2) subject to the limitation in clause (5), with respect to any one life, regardless of the number of policies or contracts:

(i) \$500,000 in life insurance death benefits, but not more than \$130,000 in net cash surrender and net cash withdrawal values for life insurance;

(ii) \$500,000 in health insurance benefits, including any net cash surrender and net cash withdrawal values;

(iii) \$250,000 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values;

(iv) \$410,000 in present value of annuity benefits for structured settlement annuities or for annuities in regard to which periodic annuity benefits, for a period of not less than the annuitant's lifetime or for a period certain of not less than ten years, have begun to be paid, on or before the date of impairment or insolvency; or

(3) subject to the limitations in clauses (5) and (6), with respect to each individual resident participating in a retirement plan, except a defined benefit plan, established under section 401, 403(b), or 457 of the Internal Revenue Code of 1986, as amended through December 31, 1992, covered by an unallocated annuity contract, or the beneficiaries of each such individual if deceased, in the aggregate, \$250,000 in net cash surrender and net cash withdrawal values;

(4) where no coverage limit has been specified for a covered policy or benefit, the coverage limit shall be \$500,000 in present value;

(5) in no event shall the association be liable to expend more than \$500,000 in the aggregate with respect to any one life under clause (2), items (i), (ii), (iii), (iv), and clause (4), and any one individual under clause (3);

(6) in no event shall the association be liable to expend more than \$10,000,000 with respect to all unallocated annuities of a retirement plan, except a defined benefit plan, established under section 401, 403(b), or 457 of the Internal Revenue Code of 1986, as amended through December 31, 1992. If total claims from a plan exceed \$10,000,000, the \$10,000,000 shall be prorated among the claimants;

(7) for purposes of applying clause (2)(ii) and clause (5), with respect only to health insurance benefits, the term "any one life" applies to each individual covered by a health insurance policy;

(8) where covered contractual obligations are equal to or less than the limits stated in this subdivision, the association will pay the difference between the covered contractual obligations and the amount credited by the estate of the insolvent or impaired insurer, if that amount has been determined or, if it has not, the covered contractual limit, subject to the association's right of subrogation;

(9) where covered contractual obligations exceed the limits stated in this subdivision, the amount payable by the association will be determined as though the covered contractual obligations were equal to those limits. In making the determination, the estate shall be deemed to have credited the covered person the same amount as the estate would credit a covered person with contractual obligations equal to those limits; or

(10) the following illustrates how the principles stated in clauses (8) and (9) apply. The example illustrated concerns hypothetical claims subject to the limit stated in clause (2)(iii). The principles stated in clauses (8) and (9), and illustrated in this clause, apply to claims subject to any limits stated in this subdivision.

CONTRACTUAL OBLIGATIONS OF:

\$100,000

Estate

Guaranty Association

APPENDIX
Repealed Minnesota Statutes: 20-5726

0% recovery from estate	\$ 0	\$100,000
25% recovery from estate	\$25,000	\$75,000
50% recovery from estate	\$50,000	\$50,000
75% recovery from estate	\$75,000	\$25,000
	\$250,000	

	Estate	Guaranty Association
0% recovery from estate	\$ 0	\$250,000
25% recovery from estate	\$62,500	\$187,500
50% recovery from estate	\$125,000	\$125,000
75% recovery from estate	\$187,500	\$62,500
		\$300,000

	Estate	Guaranty Association
0% recovery from estate	\$ 0	\$250,000
25% recovery from estate	\$75,000	\$187,500
50% recovery from estate	\$150,000	\$125,000
75% recovery from estate	\$225,000	\$62,500

61B.20 DEFINITIONS.

Subd. 3. **Annuity contracts.** "Annuity contracts" means annuity contracts as described in section 60A.06, subdivision 1, clause (4).

Subd. 8. **Current contractual obligation.** "Current contractual obligation" means a contractual obligation which has become due and owing for: (1) death benefits; (2) health insurance benefits; (3) periodic annuity benefit or supplemental contract payments, provided the annuitant or payee elected the commencement of the periodic annuity benefit or supplemental contract payments before the date of impairment or insolvency, or if the annuitant or payee elected the commencement of the periodic annuity benefit or supplemental contract payments after the date of impairment or insolvency, (i) the election was made pursuant to a written plan, such as a retirement plan, which existed before the impairment or insolvency, or (ii) commencement of the periodic annuity benefit or supplemental contract payments was elected at or after the annuitant's attainment of age 65 and, in either case, was for a payment period of not less than the annuitant's lifetime or a period certain of not less than ten years; or (4) cash surrender or loan values or endowment proceeds or any portion thereof, but only if, and to the extent that, an emergency or hardship such as, but not limited to, the funds being reasonably necessary to pay education, medical, home purchase, or essential living expenses, is established in accordance with standards proposed by the association and approved by the commissioner. The hardship standards must also provide for an individual appeal to the board of directors in those circumstances which, while not meeting the standards approved by the commissioner, may truly be a hardship.

Subd. 10. **Health insurance.** "Health insurance" means accident and health insurance as described in section 60A.06, subdivision 1, clause (5)(a), long-term care insurance, credit accident and health

insurance regulated under chapter 62B, and subscriber contracts issued by a nonprofit health service plan corporation operating under chapter 62C.

61B.23 POWERS AND DUTIES OF ASSOCIATION.

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

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

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

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

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

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

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

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

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

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