CHAPTER 275–S.F.No. 2825

An act relating to commerce; modifying continuing education provisions; amending insurance laws involving insurance company rehabilitation and liquidation, life insurance, the use of mortality tables, the Life and Health Insurance Guaranty Association, and mutual insurance companies; regulating fraternal benefit societies; amending Minnesota Statutes 2008, sections 60B.03, by adding subdivisions; 61A.09, by adding a subdivision; 61A.245, subdivision 3; 61A.257, subdivisions 2, 3; 61B.19, subdivision 3; 61B.28, subdivision 7; 64B.19, by adding a subdivision; 66A.40, subdivision 11; 66A.42; Minnesota Statutes 2009 Supplement, sections 45.31, subdivision 3; 60K.56, subdivision 6; 61B.19, subdivision 4; proposing coding for new law in Minnesota Statutes, chapters 60B; 64B.

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

ARTICLE 1

LIFE INSURANCE

Section 1. Minnesota Statutes 2009 Supplement, section 45.31, subdivision 3, is amended to read:

Subd. 3. **Responsibilities.** A coordinator is responsible for:

(1) assuring compliance with all laws and rules relating to educational offerings governed by the commissioner;

(2) assuring that students are provided with current and accurate information relating to the laws and rules governing their licensed activity;

(3) supervising and evaluating courses and instructors. Supervision includes assuring, especially when a course will be taught by more than one instructor, that all areas of the curriculum are addressed without redundancy and that continuity is present throughout the entire course;

(4) ensuring that instructors are qualified to teach the course offering;

(5) furnishing the commissioner, upon request, with copies of course and instructor evaluations and qualifications of instructors. Evaluations must be completed by students and coordinators;

(6) investigating complaints related to course offerings and instructors and forwarding a copy of the written complaints to the Department of Commerce;

(7) maintaining accurate records relating to course offerings, instructors, tests taken by students, and student attendance for a period of three years from the date on which the course was completed. These records must be made available to the commissioner upon request. In the event that an education provider ceases operation for any reason, the

coordinator is responsible for maintaining the records or providing a custodian for the records acceptable to the commissioner. The coordinator must notify the commissioner of the name and address of that person. In order to be acceptable to the commissioner, custodians must agree to make copies of acknowledgments available to students at a reasonable fee. Under no circumstances will the commissioner act as custodian of the records;

(8) ensuring that the coordinator is available to instructors and students throughout course offerings and providing to the students and instructor the name of the coordinator and a telephone number at which the coordinator can be reached;

(9) attending workshops or instructional programs as reasonably required by the commissioner;

(10) providing course completion certificates within ten days of, but not before, completion of the entire course. Course completion certificates must be completed in their entirety. It is not necessary to provide a written course completion certificate if the course completion certificate has been electronically delivered to the department or its designated licensing contractor. A coordinator may require payment of the course tuition as a condition for receiving the course completion certificate;

(11) notifying the commissioner immediately of any change in an application for the course, coordinator, or instructor approval application; and

(12) in conjunction with the instructor, assuring and certifying attendance of students enrolled in courses.

Sec. 2. Minnesota Statutes 2008, section 60B.03, is amended by adding a subdivision to read:

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

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

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

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

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 3. Minnesota Statutes 2008, section 60B.03, is amended by adding a subdivision to read:

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

(b) "Commodity contract" means:

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

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

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

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

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

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

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 4. **[60B.435] QUALIFIED FINANCIAL CONTRACTS.**

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

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

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

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

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

(3) subject to any provision of section 60B.34, any right to set off or net out any termination value, payment amount, or other transfer obligation arising under or in connection with one or more qualified financial contracts where the counterparty or

its guarantor is organized under the laws of the United States or a state or a foreign jurisdiction approved by the Securities Valuation Office (SVO) of the National Association of Insurance Commissioners as eligible for netting; or

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

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

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

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

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

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

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

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

which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

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

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

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

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

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

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

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

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

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 5. Minnesota Statutes 2009 Supplement, section 60K.56, subdivision 6, is amended to read:

Subd. 6. **Minimum education requirement.** Each person subject to this section shall complete a minimum of 24 credit hours of courses accredited by the commissioner during each licensing period. No more than one-half of the credit hours per licensing period required under this section may be credited to a person for attending courses either sponsored by, offered by, or affiliated with an insurance company or its agents. For the purposes of this subdivision, a course provided by a bona fide insurance trade association is not considered to be sponsored by, offered by, or affiliated with an insurance company or its agents regardless of the location of the course offering. A licensee must obtain three hours of the credit hours per licensing period from a class or classes in the area of ethics. Courses sponsored by, offered by, or affiliated with an insurance company or agent may restrict its students to agents of the company or agency.

Sec. 6. Minnesota Statutes 2008, section 61A.09, is amended by adding a subdivision to read:

Subd. 4. **Limits of group life insurance.** Group life insurance offered to a resident of this state under a group life insurance policy issued to a group other than one described in section 60A.02, subdivision 28, shall be subject to the following requirements:

(1) no such group life insurance policy shall be delivered in this state unless the commissioner finds that:

(i) the issuance of the group policy is not contrary to the best interest of the public;

(ii) the issuance of the group policy would result in economies of acquisition or administration; and

(iii) the benefits are reasonable in relation to the premiums charged;

(2) no such group life insurance coverage may be offered in this state by an insurer under a policy issued in another state unless this state or another state having requirements substantially similar to those contained in clause (1) has made a determination that the requirements have been met;

(3) the premium for the policy must be paid either from the policyholder's funds or from funds contributed by the covered persons, or from both; and

(4) an insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 7. Minnesota Statutes 2008, section 61A.245, subdivision 3, is amended to read:

Subd. 3. **Required contract provisions.** (a) In the case of contracts issued on or after the operative date specified in subdivision 12, no contract of annuity, except as stated in subdivision 2, shall be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the contract holder, upon cessation of payment of considerations under the contract:

(1) that upon cessation of payment of considerations under a contract, or upon the written request of the contract owner, the company shall grant a paid-up annuity benefit on a plan stipulated in the contract of the value specified in subdivisions 5, 6, 7, 8 and 10;

(2) if a contract provides for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or prior to the commencement of any annuity payments, the company shall pay in lieu of any paid-up annuity benefit a cash surrender benefit of the amount specified in subdivisions 5, 6, 8 and 10. The company may reserve the right to defer the payment of the cash surrender benefit for a period not to exceed six months after demand therefor with surrender of the contract after making a written request and receiving written approval of the commissioner. The request must address the necessity and equitability to all contract holders of the deferral;

(3) a statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of the benefits; and

(4) a statement that any paid-up annuity, cash surrender or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which the benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract or any prior withdrawals from or partial surrenders of the contract.

(b) Notwithstanding the requirements of this subdivision, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid prior to that period would be less than $20 monthly, the company may at its option terminate the contract by payment in cash of the then present value of the portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by the payment shall be relieved of any further obligation under the contract.

(c) If a death benefit becomes payable as specified in the contract, the contract may not treat the payment of the death benefit as a surrender of the annuity contract or otherwise impose a surrender penalty.

EFFECTIVE DATE. This section is effective January 1, 2011, and applies to annuity contracts issued on or after that date.

Sec. 8. Minnesota Statutes 2008, section 61A.257, subdivision 2, is amended to read:

Subd. 2. **2001 CSO Preferred Class Structure Mortality Table.** At the election of the insurer, for each calendar year of issue, for any one or more specified plans of insurance and subject to satisfying the conditions stated in this section, the 2001 CSO

Preferred Class Structure Mortality Table may be substituted in place of the 2001 CSO Smoker or Nonsmoker Mortality Table as the minimum valuation standard under section 61A.25 for policies issued on or after January 1, 2007. For policies issued on or after January 1, 2004, and prior to January 1, 2007, these tables may be substituted with the written consent of the commissioner and subject to the conditions in subdivision 3. In determining such consent, the commissioner may rely on the consent of the commissioner of the company's state of domicile. No such election must be made until the insurer demonstrates at least 20 percent of the business to be valued on this table is in one or more of the preferred classes. A table from the 2001 CSO Preferred Class Structure Mortality Table used in place of a 2001 CSO Mortality Table, pursuant to the requirements of this section, will be treated as part of the 2001 CSO Mortality Table only for purposes of reserve valuation pursuant to section 61A.25 and Minnesota Rules, chapter 2748.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 9. Minnesota Statutes 2008, section 61A.257, subdivision 3, is amended to read:

Subd. 3. **Conditions.** (a) For each plan of insurance with separate rates for preferred and standard nonsmoker lives, an insurer may use the super preferred nonsmoker, preferred nonsmoker, and residual standard nonsmoker tables to substitute for the nonsmoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, except for business valued under the residual standard nonsmoker table, the appointed actuary shall certify that:

(1) the present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class; and

(2) the present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class.

(b) For each plan of insurance with separate rates for preferred and standard smoker lives, an insurer may use the preferred smoker and residual standard smoker tables to substitute for the smoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, for business valued under the preferred smoker table, the appointed actuary shall certify that:

(1) the present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the preferred smoker valuation basic table corresponding to the valuation table being used for that class; and

(2) the present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the preferred smoker valuation basic table corresponding to the valuation table being used for that class.

(c) Unless exempted by the commissioner, every authorized insurer using the 2001 CSO Preferred Class Structure Mortality Table shall annually file with the commissioner, the NAIC, or a statistical agent designated by the NAIC and acceptable to the commissioner, statistical reports showing mortality and such other information as the commissioner may deem necessary or expedient for the administration of the provisions of this section. The form of the reports shall be established by the commissioner or the commissioner may require the use of a form established by the NAIC or by a statistical agent designated by the NAIC and acceptable to the commissioner.

(d) The use of the 2001 CSO Preferred Class Structure Mortality Table for the valuation of policies issued prior to January 1, 2007, shall not be permitted in any statutory financial statement in which a company reports, with respect to any policy or portion of a policy coinsured, either of the following:

(1) in cases where the mode of payment of the reinsurance premium is less frequent than the mode of payment of the policy premium, a reserve credit that exceeds, by more than the amount specified in this paragraph as Y, the gross reserve calculated before reinsurance. Y is the amount of the gross reinsurance premium that (i) provides coverage for the period from the next policy premium due date to the earlier of the end of the policy year and the next reinsurance premium due date, and (ii) would be refunded to the ceding entity upon the termination of the policy; or

(2) in cases where the mode of payment of the reinsurance premium is more frequent than the mode of payment of the policy premium, a reserve credit that is less than the gross reserve, calculated before reinsurance, by an amount that is less than the amount specified in this paragraph as Z. Z is the amount of the gross reinsurance premium that the ceding entity would need to pay the assuming company to provide reinsurance coverage from the period of the next reinsurance premium due date to the next policy premium due date minus any liability established for the proportionate amount not remitted to the reinsurer.

(e) For purposes of paragraph (d), the reserve (1) for the mean reserve method shall be defined as the mean reserve minus the deferred premium asset, and (2) for the midterminal reserve method shall include the unearned premium reserve. A company may estimate and adjust its accounting on an aggregate basis in order to meet the conditions to use the 2001 CSO Preferred Class Structure Mortality Table.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 10. Minnesota Statutes 2008, section 61B.19, subdivision 3, is amended to read:

Subd. 3. **Limitation of coverage.** Sections 61B.18 to 61B.32 do not provide coverage for:

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

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

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

(4) any obligation to nonresident participants of a covered retirement plan or to the plan sponsor, employer, trustee, or other party who owns the contract; in these cases, the

association is obligated under this chapter only to participants in a covered plan who are residents of the state of Minnesota on the date of impairment or insolvency;

(5) a structured settlement annuity in situations where a liability insurer remains liable to the payee;

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

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

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

(ii) a minimum premium group insurance plan;

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

(iv) an administrative services only contract;

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

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

(10) a portion of a policy or contract to the extent that it provides for (i) dividends or experience rating credits except to the extent the dividends or experience rating credits have actually become due and payable or have been credited to the policy or contract before the date of impairment or insolvency, (ii) voting rights, or (iii) payment of any fees or allowances to any person, including the policy or contract holder, in connection with the service to, or administration of, the policy or contract;

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

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

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

before the member insurer becomes an impaired or insolvent insurer under sections 61B.18 to 61B.32, whichever is earlier; and

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

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

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

(15) a policy or contract providing any hospital, medical, prescription drug, or other health care benefits pursuant to United States Code, title 42, chapter 7, subchapter XVIII, Part C or Part D, commonly known as Medicare Part C & D, or any regulations issued under those provisions.

Sec. 11. Minnesota Statutes 2009 Supplement, section 61B.19, subdivision 4, is amended to read:

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 ~~annuity net cash surrender and net cash withdrawal values~~ 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:

~~$ 50,000~~
$100,000

	Estate	Guaranty Association
0% recovery from estate	$ 0	~~$ 50,000~~ $100,000
25% recovery from estate	~~$ 12,500~~ 25,000	~~$ 37,500~~ $75,000

50% recovery from estate	~~$ 25,000~~ $50,000		~~$ 25,000~~ $50,000
75% recovery from estate	~~$ 37,500~~ $75,000		~~$ 12,500~~ $25,000
		~~$ 100,000~~ $250,000	

	Estate		Guaranty Association
0% recovery from estate	$ 0		~~$ 100,000~~ $250,000
25% recovery from estate	~~$ 25,000~~ $62,500		~~$ 75,000~~ $187,500
50% recovery from estate	~~$ 50,000~~ $125,000		~~$ 50,000~~ $125,000
75% recovery from estate	~~$ 75,000~~ $187,500		~~$ 25,000~~ $62,500
		~~$ 200,000~~ $300,000	

	Estate		Guaranty Association
0% recovery from estate	$ 0		~~$ 100,000~~ $250,000
25% recovery from estate	~~$ 50,000~~ $75,000		~~$ 75,000~~ $187,500
50% recovery from estate	~~$ 100,000~~ $150,000		~~$ 50,000~~ $125,000
75% recovery from estate	~~$ 150,000~~ $225,000		~~$ 25,000~~ $62,500

~~For purposes of this subdivision, the commissioner shall determine the discount rate to be used in determining the present value of annuity benefits.~~

Sec. 12. Minnesota Statutes 2008, section 61B.28, subdivision 7, is amended to read:

Subd. 7. **Notice concerning limitations and exclusions.** (a) No person, including an insurer, agent, or affiliate of an insurer or agent, shall offer for sale in this state a covered life insurance, annuity, or health insurance policy or contract without delivering, either at the time of application for that policy or contract or at the time of delivery of the policy or contract, a notice in the form specified in subdivision 8, or in a form approved by the commissioner under paragraph (b), relating to coverage provided by the Minnesota Life and Health Insurance Guaranty Association. The notice may be part of the application. A copy of the notice must be given to the applicant or the policyholder. ~~The notice must be delivered to the applicant at the time of application for the policy or contract, except that if the application is not taken from the applicant in person, the notice must be sent to the applicant within 72 hours after the application is taken.~~ The person

offering the policy or contract shall document the fact that the notice was given at the time of application or ~~was sent within the specified time~~ the fact that the notice was delivered at the time the policy or contract was delivered. This does not require that the receipt of the notice be acknowledged by the applicant.

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

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

(2) prominently warn the policy or contract holder that the Minnesota Life and Health Insurance Guaranty Association may not cover the policy or, if coverage is available, it will be subject to substantial limitations and exclusions and conditioned on continued residence in the state;

(3) state that the insurer and its agents are prohibited by law from using the existence of the Minnesota Life and Health Insurance Guaranty Association for the purpose of sales, solicitation, or inducement to purchase any form of insurance;

(4) emphasize that the policy or contract holder should not rely on coverage under the Minnesota Life and Health Insurance Guaranty Association when selecting an insurer;

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

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

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

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

Sec. 13. Minnesota Statutes 2008, section 66A.40, subdivision 11, is amended to read:

Subd. 11. **Sale of stock and payment of dividends.** (a) A reorganized insurance company and an intermediate stock holding company may issue subscription rights and may issue or grant any other securities, rights, options, and similar items to the same extent as any business corporation organized under chapter 302A. However, except as provided in paragraphs (b) to (d), no sale of ~~securities~~ common or preferred stock of the reorganized insurance company, or of an intermediate stock holding company that directly or indirectly controls a majority of voting shares of the reorganized insurance company, may be made without the commissioner's prior written approval.

(b) A registration statement covering securities that has been approved by the commissioner and filed with and declared effective by the Securities and Exchange Commission under the Securities Act of 1933 pursuant to any provision of that statute or

rule that allows registration of securities to be sold on a delayed or continuous basis may be sold without further approval.

(c) Unless the commissioner has granted the mutual insurance holding company a written exemption from the requirements of this paragraph, any securities which are regularly traded on the New York Stock Exchange, the American Stock Exchange, or another exchange approved by the commissioner, or designated on the National Association of Securities Dealers automated quotations (NASDAQ) national market system, shall be sold according to the procedure in this paragraph. If the mutual insurance holding company, an intermediate holding company, or a reorganized insurance company intends to offer securities that are governed by this paragraph, that entity shall deliver to the commissioner, not less than ten days before the offering, a notice of the planned offering and information regarding: (1) the approximate number of shares intended to be offered; (2) the target date of sale; (3) evidence the security is regularly traded on one of the public exchanges noted above; and (4) the recent history of the trading price and trading volume of the security. The commissioner is considered to have approved the sale unless within ten days following receipt of the notice, the commissioner issues an objection to the sale. If the commissioner issues an objection to the sale, the security may not be sold until the commissioner issues an order approving the sale.

(d) A reorganized insurance company or intermediate holding company that has issued securities that are regularly traded on one of the exchanges or markets described in paragraph (c), may establish stock option, incentive, and share ownership plans customary for publicly traded companies in the same or similar industries. If the reorganized insurance company or intermediate holding company intends to establish a stock option, incentive or share ownership plan, that entity shall deliver to the commissioner, not less than 30 days before the establishment of the plan, a notice of the proposed plan along with any information about the proposed plan the commissioner requires. The commissioner is considered to have approved the plan unless within 30 days following receipt of the notice, the commissioner issues an objection to the proposed plan. If the commissioner issues an objection to the proposed plan, the plan may not be established until the commissioner issues an order approving the plan. If the commissioner approves the establishment of the stock option, incentive, or share ownership plan, the reorganized insurance company or the intermediate holding company that obtained the approval may sell or issue securities according to the approved plan without further approval.

(e) The total number of shares of capital stock issued by the reorganized insurance company or an intermediate holding company that may be held by directors and officers of the mutual insurance holding company, any intermediate holding company, and of any reorganized insurance company, and acquired according to subscription rights or stock option, incentive, and share ownership plans, may not exceed the percentage limits set forth in section 66A.41, subdivision 11, paragraph (b). Subject to the requirements of subdivision 1, paragraph (c), nothing in this section prohibits the acquisition of any securities of a reorganized insurance company or intermediate stock holding company through a licensed securities broker-dealer by any officer or director of the reorganized company, an intermediate stock holding company, or the mutual insurance holding company.

(f) Dividends and other distributions to the shareholders of the reorganized stock insurance company or of an intermediate stock holding company must comply with section 60D.20. Any dividends and other distributions to the members of the mutual insurance

holding company must comply with section 60D.20 and any other approval requirements contained in the mutual insurance holding company's articles of incorporation.

(g) Unless previously approved as part of the plan of reorganization, the initial offering of any voting shares to the public by a reorganized company, a stock insurance company subsidiary, or an intermediate holding company which holds a majority of the voting shares of a reorganized insurance company or stock insurance company subsidiary, must be approved by a majority of votes cast at a regular or special meeting of the members of the mutual insurance holding company. Any issuer repurchase program, plan of exchange, recapitalization, or offering of capital securities to the public, shall, in addition to any other approvals required by law or by the issuer's articles of incorporation, be approved by a majority of the board of directors of the mutual insurance holding company and by a majority of the disinterested members of the board of directors of the mutual insurance holding company.

Sec. 14. Minnesota Statutes 2008, section 66A.42, is amended to read:

66A.42 DOMESTIC INSURANCE CORPORATIONS MAY BECOME MUTUAL CORPORATIONS.

Any domestic insurance corporation heretofore or hereafter incorporated for the transaction of the kinds of business authorized and permitted by section 60A.06, subdivision 1, ~~clause (4),~~ and having capital stock may become a mutual corporation and to that end may formulate and carry out a plan for the acquisition by it of its outstanding capital stock, and for the mutualization of such corporation, as follows:

(a) Such plan shall have been adopted by vote of a majority of the directors of such company.

(b) Such plan shall have been submitted to the commissioner of commerce and shall have been approved as conforming to the requirements of this section and section 66A.43 and as not prejudicial to the policyholders of such company or to the insuring public.

(c) Such plan shall have been approved by a vote of stockholders representing a majority of the outstanding capital stock at a meeting of stockholders called for that purpose. Stockholders may vote in person or by proxy filed with the company at least five days before the meeting at which it is to be used. Notice of such meeting shall be given by mailing such notice from the home office of such company at least 30 days prior to such meeting in a sealed envelope, postage prepaid, directed to each stockholder at the address shown on the stock records of the company.

(d) Such plan shall have been approved by a majority of the votes cast by policyholders (whether or not members) who vote at a meeting called for that purpose. Eligibility of policyholders, whether or not members of the company, and the number of votes to which each is entitled, shall be determined by the laws of Minnesota relating to the rights of members of domestic mutual ~~life~~ insurance companies to vote at company meetings. Policyholders may vote in person or by proxy filed with the company at least five days before the meeting at which it is to be used. Notice of such meeting shall be given by mailing such notice from the home office of such company at least 30 days prior to such meeting in a sealed envelope, postage prepaid, directed to each policyholder at the address shown on the policy records of the company. Such meeting shall be conducted in such manner as may be provided for in such plan, with the approval of the commissioner. The commissioner shall supervise and direct the methods and procedure of said meeting

and appoint an adequate number of inspectors to conduct the voting at said meeting, who shall have power to determine all questions concerning the verification of the ballots, the ascertaining of the validity thereof, the qualifications of the voters and the canvass of the vote. Such inspectors, or any one thereof designated by the commissioner, shall certify to the commissioner and to such company the result of such vote, and with respect thereto shall act under such rules as shall be prescribed by the commissioner. All necessary expenses incurred by the commissioner, or incurred with the commissioner's approval by the inspectors appointed, shall be paid by such company upon the certificate of the commissioner.

(e) Approval of the plan by stockholders and policyholders as above provided may be given at a joint meeting thereof.

(f) Such plan may specify the purchase price to be paid by such company for shares of its capital stock, and in such case the price so specified shall be adhered to. If such plan does not specify the price to be paid for such shares, such company shall first obtain the approval of the commissioner for every payment made for the acquisition of any shares of its capital stock.

(g) Such plan may authorize the board of directors of the company to provide for participation in the surplus of the company by holders of policies which do not by their terms provide for such participation or which provide for a limited participation only, and may include appropriate proceedings to confer upon policyholders the right to vote at meetings of the company. Policyholders upon whom the right to vote is so conferred shall have the same voting rights and shall be entitled to the same notice of annual meeting as members of domestic mutual ~~life~~ insurance companies.

(h) Before approving any such plan or any such payment, the commissioner shall be satisfied, by making investigation or such evidence as the commissioner may require, that such company, after deducting the aggregate sum appropriated by such plan for the acquisition of any part or all of its capital stock, and in the case of any payment not fixed by such plan and subject to approval as aforesaid, after deducting also the amount of such payment, will be possessed of admitted assets in an amount equal to the sum of (1) and (2) as follows:

(1) Its entire liabilities, including the net value of its outstanding contracts computed as provided by law, and (2) the contingency reserve deemed by the commissioner necessary to protect its policyholders and the insuring public, in view of the past experience of such company, the character of its assets, its present management and its probable future earnings.

The commissioner's action in refusing to give any approval required by this section shall be subject to review by any court of competent jurisdiction.

Such plan may be amended by vote of stockholders representing a majority of the outstanding capital stock and by a majority of the votes cast by policyholders who vote at the meeting, but in such case the plan shall not become effective until approved, as amended, by vote of a majority of the directors of such company and by the commissioner.

ARTICLE 2

FRATERNAL BENEFIT SOCIETIES

Section 1. Minnesota Statutes 2008, section 64B.19, is amended by adding a subdivision to read:

Subd. 4a. **Notice of extra assessments.** In the event that a society intends to make extra assessments, as provided in subdivision 4, it shall provide notice of the assessments it plans to make to the commissioner, and to the commissioner of its state of domicile if it is a foreign society, at least 90 days before the effective date of the assessments.

Sec. 2. **[64B.40] DEFINITIONS.**

Subdivision 1. **Scope.** For the purposes of sections 64B.40 to 64B.48, the terms defined in this section have the meanings given them.

Subd. 2. **Adjusted risk-based capital report.** "Adjusted risk-based capital report" means a risk-based capital report that has been adjusted by the commissioner according to section 64B.41, subdivision 3.

Subd. 3. **Corrective order.** "Corrective order" means an order issued by the commissioner specifying corrective actions that the commissioner has determined are required.

Subd. 4. **NAIC.** "NAIC" means the National Association of Insurance Commissioners.

Subd. 5. **Negative trend.** "Negative trend" means, with respect to a society, negative trend over a period of time, as determined according to the "trend test calculation" included in the risk-based capital instructions.

Subd. 6. **Risk-based capital instructions.** "Risk-based capital instructions" means the risk-based capital report including risk-based capital instructions adopted by the NAIC, as those risk-based instructions may be amended by the NAIC from time to time according to the procedures adopted by the NAIC.

Subd. 7. **Risk-based capital level.** "Risk-based capital level" means a fraternal action level risk-based capital or fraternal authorized control level risk-based capital where:

(1) "fraternal action level risk-based capital" means the product of 2.0 and its authorized control level risk-based capital; and

(2) "fraternal authorized control level risk-based capital" means the number determined under the risk-based capital formula according to the risk-based capital instructions.

Subd. 8. **Risk-based capital plan.** "Risk-based capital plan" means a comprehensive financial plan containing the elements specified in section 64B.42. If the commissioner rejects the risk-based capital plan, and it is revised by the society, with or without the commissioner's recommendation, the plan must be called the "revised risk-based capital plan."

Subd. 9. **Risk-based capital report.** "Risk-based capital report" means the report required in section 64B.41.

Subd. 10. **Society.** "Society" means a fraternal benefit society that is admitted to do business in this state under this chapter.

Subd. 11. **Total adjusted capital.** "Total adjusted capital" means the sum of:

(1) a society's statutory capital and surplus as determined in accordance with statutory accounting applicable to the annual statement required to be filed under section 60A.13; and

(2) other items, if any, as the risk-based capital instructions may provide.

Sec. 3. **[64B.41] RISK-BASED CAPITAL REPORTS.**

Subdivision 1. **General requirements.** Every society shall, on or before each March 1, prepare and submit to the commissioner a report of its risk-based capital levels as of the end of the calendar year just ended, in a form and containing the information required by the risk-based capital instructions. In addition, every society shall file its risk-based capital report with the NAIC according to the risk-based capital instructions.

Subd. 2. **Specific requirements.** A society's risk-based capital must be determined according to the formula set forth in the risk-based capital instructions. The formula must take into account, and may adjust for the covariance between:

(1) the risk with respect to the society's assets;

(2) the risk of adverse insurance experience with respect to the society's liabilities and obligations;

(3) the interest rate risk with respect to the society's business; and

(4) all other business risks and other relevant risks set forth in the risk-based capital instructions;

determined in each case by applying the factors in the manner set forth in the risk-based capital instructions.

Subd. 3. **Adjusted risk-based capital report.** If a society files a risk-based capital report that in the judgment of the commissioner is inaccurate, then the commissioner shall adjust the risk-based capital report to correct the inaccuracy and shall notify the society of the adjustment. The notice must contain a statement of the reason for the adjustment. A risk-based capital report as so adjusted is referred to as an "adjusted risk-based capital report."

Sec. 4. **[64B.42] FRATERNAL ACTION LEVEL EVENT.**

Subdivision 1. **Definition.** "Fraternal action level event" means, with respect to a society, any of the following events:

(1) the filing of a risk-based capital report by the society that indicates that:

(i) the society's total adjusted capital is greater than or equal to its fraternal authorized control level risk-based capital but less than its fraternal action level risk-based capital; or

(ii) the society's total adjusted capital is greater than or equal to its fraternal action level risk-based capital but less than the product of its fraternal authorized control level risk-based capital and 2.5 and has a negative trend;

(2) the notification by the commissioner to a society of an adjusted risk-based capital report that indicates an event in clause (1), provided the society does not challenge the adjusted risk-based capital report under section 64B.44;

(3) if, pursuant to section 64B.44, the society challenges an adjusted risk-based capital report that indicates an event in clause (1), the notification by the commissioner to the society that the commissioner has, after a hearing, rejected the society's challenge; or

(4) the failure of the society to file a risk-based capital report by March 1, unless the society has provided an explanation for the failure that is satisfactory to the commissioner and has cured the failure within ten days after March 1.

Subd. 2. **Commissioner's duties.** In the event of a fraternal action level event, the commissioner shall:

(1) require the society to prepare and submit a risk-based capital plan, or, if applicable, a revised risk-based capital plan that:

(i) identifies the conditions that contribute to the fraternal action level event;

(ii) contains proposals of corrective actions that the society intends to take and would be expected to result in the elimination of the fraternal action level event;

(iii) provides projections of the society's financial results in the current year and at least the four succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projected statutory balance sheets, income statements, and cash flow statements. The projections for both new and renewal business might include separate projections for each major line of business and separately identify each significant income, expense, and benefit component;

(iv) identifies the key assumptions impacting the society's projections and the sensitivity of the projections to the assumptions; and

(v) identifies the quality of, and problems associated with, the society's business, including, but not limited to, its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance, if any, in each case;

(2) examine or analyze as the commissioner considers necessary the assets, liabilities, and operations of the society including reviewing its risk-based capital plan or revised risk-based capital plan; and

(3) subsequent to the examination or analysis, issue a corrective order specifying the corrective actions the commissioner determines are required.

Subd. 3. **Corrective action.** In determining corrective actions, the commissioner may take into account factors considered relevant with respect to the society based upon the commissioner's examination or analysis of the assets, liabilities, and operations of the society, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the risk-based capital instructions. The risk-based capital plan or revised risk-based capital plan must be submitted:

(1) within 45 days after the occurrence of the fraternal action level event;

(2) if the society challenges an adjusted risk-based capital report pursuant to section 64B.44 and the challenge is not frivolous in the judgment of the commissioner, within

45 days after the notification to the society that the commissioner has, after a hearing, rejected the society's challenge; or

(3) if the society challenges a revised risk-based capital plan pursuant to section 64B.44 and the challenge is not frivolous in the judgment of the commissioner, within 45 days after the notification to the society that the commissioner has, after a hearing, rejected the society's challenge.

Subd. 4. **Examination and review.** The commissioner may retain actuaries and investment experts and other consultants as may be necessary in the judgment of the commissioner to review the society's risk-based capital plan or revised risk-based capital plan; examine or analyze the assets, liabilities, and operations of the society; and formulate the corrective order with respect to the society. The fees, costs, and expenses relating to consultants must be borne by the affected society or other party as directed by the commissioner.

Sec. 5. **[64B.43] FRATERNAL AUTHORIZED CONTROL LEVEL EVENT.**

Subdivision 1. **Definition.** "Fraternal authorized control level event" means any of the following events:

(1) the filing of a risk-based capital report by the society that indicates that the society's total adjusted capital is less than its fraternal authorized control level risk-based capital;

(2) the notification by the commissioner to the society of an adjusted risk-based capital report that indicates the event in clause (1), provided the society does not challenge the adjusted risk-based capital report under section 64B.44;

(3) if, pursuant to section 64B.44, the society challenges an adjusted risk-based capital report that indicates the event in clause (1), notification by the commissioner to the society that the commissioner has, after a hearing, rejected the society's challenge;

(4) the failure of the society to respond, in a manner satisfactory to the commissioner, to a corrective order, provided the society has not challenged the corrective order under section 64B.44;

(5) if the society has challenged a corrective order under section 64B.44 and the commissioner has, after a hearing, rejected the challenge or modified the corrective order, the failure of the society to respond, in a manner satisfactory to the commissioner, to the corrective order subsequent to rejection or modification by the commissioner;

(6) the failure of the society to submit a risk-based capital plan to the commissioner within the time period in section 64B.42;

(7) notification by the commissioner to the society that:

(i) the risk-based capital plan or revised risk-based capital plan submitted by the society is, in the judgment of the commissioner, unsatisfactory; and

(ii) the society has not challenged the determination under section 64B.44;

(8) if, pursuant to section 64B.44, the society challenges a determination by the commissioner under the notification by the commissioner to the society that the commissioner has, after a hearing, rejected the challenge;

(9) notification by the commissioner to the society that the society has failed to adhere to its risk-based capital plan or revised risk-based capital plan, but only if the failure has a substantial adverse effect on the ability of the society to eliminate the fraternal action level event according to its risk-based capital plan or revised risk-based capital plan and the commissioner has so stated in the notification, provided the society has not challenged the determination under section 64B.44; or

(10) if, pursuant to section 64B.44, the society challenges a determination by the commissioner under clause (9), the notification by the commissioner to the society that the commissioner has, after a hearing, rejected the challenge.

Subd. 2. **Commissioner's duties.** In the event of a fraternal authorized control level event with respect to a society, the commissioner shall:

(1) take the actions required under section 64B.42 regarding a society with respect to which a fraternal action level event has occurred; or

(2) if the commissioner considers it to be in the best interests of the certificate holders of the society, require the society to take one or more of the following actions:

(i) merge or otherwise consolidate with another willing authorized society;

(ii) cede any individual risk or risks, in whole or in part, to a willing society or life insurer;

(iii) suspend the issuance of new business; and

(iv) discontinue its insurance operations; or

(3) take the actions necessary to cause the society to be placed under regulatory control under chapter 60B. In the event the commissioner takes these actions, the fraternal authorized control level event is considered sufficient grounds for the commissioner to take action under chapter 60B, and the commissioner has the rights, powers, and duties with respect to the society set forth in chapter 60B. In the event the commissioner takes actions under this clause pursuant to an adjusted risk-based capital report, the society is entitled to the protections afforded to societies under section 60B.11 pertaining to summary proceedings.

Sec. 6. **[64B.44] HEARINGS.**

Upon notification to a society by the commissioner:

(1) that the risk-based capital report is being adjusted by the commissioner;

(2) that the society's risk-based capital plan or revised risk-based capital plan is unsatisfactory, and that the notification constitutes a fraternal action level event or fraternal authorized control level event with respect to the society;

(3) that the society has failed to adhere to its risk-based capital plan or revised risk-based capital plan and that the failure has substantial adverse effect on the ability of the society to eliminate the fraternal action level event with respect to the society according to its risk-based capital plan or revised risk-based capital plan; or

(4) that a corrective order will be issued with respect to the society;

the society has the right to a contested case hearing conducted in accordance with chapter 14, on a record, at which the society may challenge a determination or action by the commissioner. The society shall notify the commissioner of its request for a hearing

within five days after the notification by the commissioner under clause (1), (2), (3), or (4). Upon receipt of the society's request for a hearing, the commissioner shall set a date for the hearing no less than ten nor more than 30 days after the date of the society's request.

Sec. 7. **[64B.45] PROHIBITION ON ANNOUNCEMENTS.**

Except as otherwise required under sections 64B.40 to 64B.48, the making, publishing, dissemination, circulating, or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the risk-based capital levels of a society, or of any component derived in the calculation, by a society, agent, broker, or other person engaged in any manner in the insurance business would be misleading and is prohibited.

Sec. 8. **[64B.46] SUPPLEMENTAL PROVISIONS.**

Sections 64B.40 to 64B.48 are supplemental to other laws of this state and do not preclude or limit other powers or duties of the commissioner under those laws, including, but not limited to, chapters 60B and 60G.

Sec. 9. **[64B.47] IMMUNITY.**

There is no liability on the part of, and no cause of action arises against, the commissioner or the Department of Commerce or its employees or agents for an action taken by them in the performance of their powers and duties under sections 64B.40 to 64B.48.

Sec. 10. **[64B.48] NOTICES.**

All notices by the commissioner to a society that may result in regulatory action under sections 64B.40 to 64B.48 are effective upon dispatch if transmitted by registered or certified mail, or, in the case of other transmission, are effective upon the society's receipt of the notice.

Presented to the governor April 22, 2010

Signed by the governor April 26, 2010, 5:09 p.m.