515B.5 Duties and powers of the association.

1. The association shall:

a. Be obligated to pay covered claims existing prior to the final order of liquidation and arising within thirty days after the final order of liquidation, or before the policy expiration date if less than thirty days after the final order of liquidation, or before the insured replaces the policy or causes its cancellation, if the insured does so within thirty days of the final order of liquidation. Such obligation shall be satisfied by paying to the claimant an amount as follows:

(1) The full amount of a covered claim for benefits under a workers' compensation insurance coverage.

(2) An amount in excess of one hundred dollars but not exceeding ten thousand dollars per policy for a covered claim for the return of unearned premium.

(3) An amount not exceeding the lesser of the policy limits or five hundred thousand dollars per claim for all covered claims for all damages arising out of any one or series of accidents, occurrences, or incidents, regardless of the number of persons making claims or the number of applicable policies.

b. Be obligated to pay covered claims subject to a limitation as established by the rights, duties, and obligations under the policy of the insolvent insurer. However, the association is not obligated to pay a claimant an amount in excess of the obligation under the policy of the insolvent insurer, regardless of whether such claim is based on contract or tort.

c. (1) Assess member insurers amounts necessary to pay the obligations of the association under paragraph *"a"* of this subsection subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examinations under section 515B.10, and other expenses authorized by this chapter. The assessment of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year bear to the net direct written premiums of all member insurers for the preceding calendar year. Each member insurer shall be notified of the assessment not later than thirty days before it is due. No member insurer may be assessed in any year an amount greater than two percent of that member insurer's net direct written premiums for the preceding calendar year. If the maximum assessment, together with the other assets of the association, does not provide in any one year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon as funds become available. The association may exempt or defer, in whole or in part, the assessment of any member insurer if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. Each member insurer serving as a servicing facility pursuant to this section may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer. In addition, the association shall have the authority to levy an administrative assessment of not more than fifty dollars per year per member insurer on a non pro rata basis, which assessment shall be credited against any future insolvency assessment. Such assessment shall be used to pay authorized expenses not directly attributable to any particular insolvency or insolvent insurer. All overdue and unpaid assessments shall draw interest at the rate of seven percent per annum.

(2) The association shall also have the right to pursue and retain for its own account salvage and subrogation recoverable on paid covered claim obligations. An obligation of the association to defend an insured shall cease upon the association's payment or tender to an excess insurer of an amount equal to the lesser of the association's covered claim obligation or the applicable policy limits.

d. Investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligations on covered claims and deny all other claims. The association may review settlements, releases, and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which settlements, releases, and judgments may properly be contested, and, to that end, any uncontested or default judgment against the insolvent insurer or its insured shall not be

binding on the association. The association shall have the right to appoint or substitute legal counsel retained to defend insureds on covered claims.

e. Notify such persons as the commissioner directs under section 515B.7, subsection 2, paragraph *"a"*.

f. Process claims through its employees or through one or more member insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but such designation may be declined by a member insurer.

g. Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association, and pay the other expenses of the association authorized by this chapter.

2. The association may:

a. Appear in, defend, and appeal any action on a claim brought against the association.

b. Employ or retain persons necessary to handle claims and perform other duties of the association.

c. Borrow funds necessary to effect the purposes of this chapter in accord with the plan of operation.

d. Sue or be sued.

e. Negotiate and become a party to contracts necessary to carry out the purpose of this chapter.

f. Perform such other acts necessary or proper to effectuate the purposes of this chapter.

g. The board of directors, in its discretion, may from time to time refund excess amounts to member insurers that are not needed for current or projected liabilities of a particular insolvency. The amount of each refund is equal to the net direct written premiums of the member insurer for the preceding calendar year divided by the net written premiums of all member insurers for the preceding calendar year, multiplied by the total amount to be refunded to all members. Any assessments or refunds of any member insurer in amounts not to exceed twenty-five dollars may, at the discretion of the board of directors, be waived.

h. Request that all future payments of workers' compensation weekly benefits, medical expenses, or other payments under chapter 85, 85A, 85B, 86, or 87 be commuted to a present lump sum and upon the payment of which, either to the claimant or to a licensed insurer for purchase of an annuity or other periodic payment plan for the benefit of the claimant, the employer and the association shall be discharged from all further liability for the workers' compensation claim. Notwithstanding the provisions of section 85.45, any future payment of medical expenses, weekly compensation benefits, or other payment by the association under this chapter pursuant to chapter 85, 85A, 85B, 86, or 87, is deemed an undue expense, hardship, or inconvenience upon the employer for purposes of a full commutation pursuant to section 85.45, subsection 1, paragraph *"b"*, and the workers' compensation commissioner shall fix the lump sum of the probable future medical expenses and weekly compensation benefits capitalized at their present value upon the basis of interest at the rate provided in section 535.3 for court judgments and decrees.

[C71, 73, 75, 77, 79, 81, §515B.5; 82 Acts, ch 1051, §2]

86 Acts, ch 1184, §6; 88 Acts, ch 1112, §507; 91 Acts, ch 26, §44; 92 Acts, ch 1162, §40, 41; 97 Acts, ch 186, §15, 16; 98 Acts, ch 1061, §11; 2001 Acts, ch 69, §32; 2002 Acts, ch 1111, §20, 21; 2008 Acts, ch 1032, §200; 2010 Acts, ch 1063, §26; 2012 Acts, ch 1023, §157

Referred to in §515B.6, 515B.9

[T] Code editor directive applied