

WYOMING

INSURANCE GUARANTY ASSOCIATION ACT

Sec.

- 26-31-101. Short title
- 26-31-102. Applicability
- 26-31-103. Definitions
- 26-31-104. Association created; members; operation and exercise of powers
- 26-31-105. Board of directors
- 26-31-106. Duties and powers of association
- 26-31-107. Member insurer assessments
- 26-31-108. Plan of operation
- 26-31-109. Duties and powers of commissioner; judicial review
- 26-31-110. Insured's rights and liabilities; settlements binding on receiver or liquidator; priority of claims; statements to be filed with receiver or liquidator
- 26-31-111. Exhaustion of remedies under policy; claims recoverable from more than one association; claim limitation
- 26-31-112. Aids in detection and prevention of insurer insolvencies
- 26-31-113. Examination and regulation of association by commissioner; annual financial report
- 26-31-114. Exemption from payment of fees and taxes
- 26-31-115. Rates and premiums to be sufficient to recoup assessments paid to association
- 26-31-116. No liability for lawful action
- 26-31-117. Stay of proceedings against insolvent insurer; setting aside judgment

§ 26-31-101. Short title

This chapter is known and may be cited as the "Wyoming Insurance Guaranty Association Act".

(Laws 1971, ch. 184, § 1; W.S. 1957, § 26.1-674; W.S. 1977, § 26-37-101; Laws 1983, ch. 190, § 1.)

§ 26-31-102. Applicability

This chapter applies to all kinds of direct insurance, except life, title, surety, disability, credit, mortgage guaranty and ocean marine insurance.

(Laws 1971, ch. 184, § 2; W.S. 1957, § 26.1-675; W.S. 1977, § 26-37-102; Laws 1983, ch. 190, § 1.)

§ 26-31-103. Definitions

(a) As used in this chapter:

- (i) "Association" means the Wyoming Insurance Guaranty Association created under W.S. 26-31-104;
- (ii) "Covered claim" means an unpaid claim which arises out of and is within the coverage and does not exceed the applicable limits of an insurance policy to which this chapter applies issued by an insurer, if the insurer is an insolvent insurer and the claimant or insured is a resident of this state at the time of the insured event or the property from which the claim arises is permanently located in this state, but

"covered claim" does not include:

- (A) Any amount due any reinsurer, insurer, insurance pool or underwriting association as subrogation recoveries or otherwise;
 - (B) Repealed by Laws 1990, ch. 96, § 3.
 - (C) Any amount exceeding the applicable limits of liability provided by an insurance policy to which this chapter applies; or
 - (D) Supplementary payment obligations, including but not limited to adjustment fees and expenses, attorney fees and expenses, court costs, interest and bond premiums;
 - (E) Any amount awarded as punitive or exemplary damages, unless those damages are specifically named as covered risks in the policy under which coverage is provided; or
 - (F) Any amount claimed for incurred but not reported damages.
- (iii) "Insolvent insurer" means an insurer:
- (A) Licensed to transact insurance in this state either at the time the policy is issued or when the insured event occurs;
 - (B) Against which a final order of liquidation, with a finding of insolvency, is entered by a court of competent jurisdiction in the insurer's state of domicile and;
 - (C) With respect to which no order, decree or finding relating to the insurer's solvency, has been issued by a court of competent jurisdiction or by the insurance commissioner, prior to February 27, 1971.
- (iv) "Member insurer" means any person who:
- (A) Writes any kind of insurance to which this chapter applies, including the exchange of reciprocal or interinsurance contracts; and
 - (B) Is licensed to transact insurance in this state.
- (v) "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this chapter applies, less return premiums thereon and dividends paid or credited to policyholders on that direct business but does not include premiums on contracts between insurers or reinsurers;
- (vi) "Person" means any individual, corporation, partnership, association or voluntary organization.

(Laws 1971, ch. 184, § 3; W.S. 1957, § 26.1-676; W.S. 1977, § 26-37-103; Laws 1983, ch. 190, § 1; 1990, ch 96, § 3; Laws 2013, ch. 108, § 1, eff. July 1, 2013.)

§ 26-31-104. Association created; members; operation and exercise of powers

- (a) There is created a nonprofit unincorporated legal entity to be known as the Wyoming Insurance Guaranty Association.
- (b) All member insurers as defined in this chapter are members of the association as a condition of their authority to transact insurance in this state.
- (c) The association shall:

- (i) Perform its functions under a plan of operation established and approved under W.S. 26-31-108; and
- (ii) Exercise its powers through a board of directors established under W.S. 26-31-105.

(Laws 1971, ch. 184, § 4; W.S. 1957, § 26.1-677; W.S. 1977, § 26-37-104; Laws 1983, ch. 190, § 1.)

§ 26-31-105. Board of directors

- (a) The board of directors of the association shall consist of not less than five (5) nor more than nine (9) persons serving terms as established in the plan of operation. The board members shall be selected by member insurers subject to the commissioner's approval. Vacancies on the board shall be filled for the remaining period of the term in the same manner as initial appointments.
- (b) In approving selections to the board, the commissioner shall consider among other things whether all member insurers are fairly represented.
- (c) Board members may be reimbursed from the association's assets for expenses they incur as board members.

(Laws 1971, ch. 184, § 5; W.S. 1957, § 26.1-678; W.S. 1977, § 26-37-105; Laws 1983, ch. 190, § 1.)

§ 26-31-106. Duties and powers of association

- (a) Except as provided in subsection (c) of this section, the association shall:
 - (i) Be obligated to pay covered claims:
 - (A) Existing prior to the determination of insolvency and arising within thirty (30) days after the determination of insolvency; or
 - (B) Arising before the policy expiration date if the claims arise:
 - (I) Less than thirty (30) days after the determination of insolvency; or
 - (II) Before the insured replaces the policy or causes its cancellation, which replacement or cancellation occurs within thirty (30) days of the determination of insolvency.
 - (ii) Be deemed the insurer to the extent of its obligation of the covered claims and to that extent has all rights, duties and obligations of the insolvent insurer as if the insurer were not insolvent;
 - (iii) As provided in W.S. 26-31-107 assess insurers amounts necessary to pay the association's obligations under paragraph (i) of this subsection and subsection (c) of this section subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examinations under W.S. 26-31-112 and any other expenses authorized by this chapter;
 - (iv) Investigate claims brought against the association and adjust, compromise, settle and pay covered claims to the extent of the association's obligation and deny all other claims;
 - (v) Notify any persons as the commissioner directs under W.S.26-31-109(a)(iii);

- (vi) Handle claims through its employees or through one (1) or more insurers or other persons designated as servicing facilities, whose voluntary accepted designation is subject to the commissioner's approval;
 - (vii) Reimburse each servicing facility for association obligations it pays and for expenses incurred while handling association claims; and
 - (viii) Pay any other association expenses authorized by this chapter.
- (b) The association may:
- (i) Appear in, defend and appeal any action on a covered claim or on a claim brought against the association;
 - (ii) Employ or retain any persons necessary to handle claims and perform other association duties;
 - (iii) Borrow funds necessary to effect the purposes of this chapter in accord with the plan of operation;
 - (iv) Sue or be sued;
 - (v) Negotiate and become a party to contracts necessary to carry out the purpose of this chapter;
 - (vi) Review settlements, releases and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which the settlements, releases and judgments may be properly contested;
 - (vii) Refund to the member insurers in proportion to the contribution of each member insurer, that amount by which the association's assets exceed its liabilities as the board of directors determines;
 - (viii) Perform any other acts necessary to carry out the purpose of this chapter.
- (c) Notwithstanding subsection (a) of this section, the association:
- (i) Shall pay the full amount of a covered claim for benefits under worker's compensation coverage;
 - (ii) Shall pay not more than seven thousand five hundred dollars (\$7,500.00) per policy for a covered claim for return of each unearned premium;
 - (iii) Shall pay not more than three hundred thousand dollars (\$300,000) for each covered claim, other than worker's compensation and return of unearned premium claims;
 - (iv) Is not obligated to pay a claimant an amount in excess of the obligation of the insolvent insurer under the policy or coverage from which the claim arises.
- (d) Payment of covered claims by the association pursuant to this chapter shall be made to the claimant or insured and not to the insurer or an agent of the insurer on behalf of the insured.

(Laws 1971, ch. 184, § 6; W.S. 1957, § 26.1-679; W.S. 1977, § 26-37-106; Laws 1983, ch.190, § 1; 1990, ch. 96, § 1; Laws 2013, ch. 108, § 1, eff. July 1, 2013.)

§ 26-31-107. Member insurer assessments

- (a) The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year bears 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 (30) days before it is due. No member insurer shall be assessed in any year an amount greater than one percent (1%) of that member insurer's net direct written premiums for the preceding calendar year. If the maximum assessment, together with the other association assets, do not provide in any one (1) year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portions shall be paid as soon thereafter as funds become available.

- (b) 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. During the period of deferment, no dividends shall be paid to shareholders or policyholders. Deferred assessments shall be paid when the payment will not reduce capital or surplus below required minimums. The payments shall be refunded to those companies receiving larger assessments because of the deferment, or, if the company elects, credited against future assessments.

(Laws 1971, ch. 184, § 6; W.S. 1957, § 26.1-679; W.S. 1977, § 26-37-106; Laws 1983, ch. 190, § 1.)

§ 26-31-108. Plan of operation

- (a) The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the association's fair, reasonable and equitable administration. The plan of operation and any amendments thereto are effective upon the commissioner's written approval.
- (b) If the association fails to submit a suitable plan of operation or if at any time the association fails to submit suitable amendments to the plan, the commissioner, after notice and hearing, shall promulgate any reasonable rules necessary or advisable to carry out the provisions of this chapter. The rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.
- (c) All member insurers shall comply with the plan of operation.
- (d) The plan of operation shall:
 - (i) Establish procedures for:
 - (A) The association to perform its powers and duties;
 - (B) Handling association assets;
 - (C) The amount and method of reimbursing members of the board of directors;
 - (D) Filing claims with the association and determining acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent and a list of claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator;
 - (E) Records to be kept of all financial transactions of the association, its agents and the board of directors;

- (F) Any member insurer aggrieved by any final association action or decision to appeal to the commissioner within thirty (30) days after the action or decision;
 - (G) Submitting selections for the board of directors to the commissioner.
 - (ii) Establish regular places and times for meetings of the board of directors;
 - (iii) Contain additional provisions necessary or proper for executing the association's powers and duties.
- (e) The plan of operation may provide for the delegation of any association powers and duties, except those under W.S. 26-31-106(a)(iii) and (b)(iii), to a corporation, association or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two (2) or more states. The corporation, association or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other association functions. A delegation under this subsection is effective only with the approval of both the board of directors and the commissioner and may be made only to a corporation, association or organization which extends protection not substantially less favorable and effective than that provided by this chapter.
- (Laws 1971, ch. 184, § 7; W.S. 1957, § 26.1-680; W.S. 1977, § 26-37-107; Laws 1983, ch. 190, § 1.)

§ 26-31-109. Duties and powers of commissioner; judicial review

- (a) The commissioner shall:
- (i) Notify the association of an insolvent insurer's existence not later than three (3) days after he receives notice of the insolvency determination;
 - (ii) Upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer;
 - (iii) Require that the association notify the insolvent insurer's insureds and any other interested parties of the insolvency determination and of their rights under this chapter. The notification shall be by mail at their last known address, if available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation is sufficient.
- (b) The commissioner may:
- (i) After notice and hearing:
 - (A) Suspend or revoke the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation; or
 - (B) Levy a fine on any member insurer which fails to pay an assessment when due, which fine shall not exceed five percent (5%) of the unpaid assessment per month, except that no fine shall be less than one hundred dollars (\$100.00) per month.
 - (ii) Revoke the designation of any servicing facility if he finds claims are being handled unsatisfactorily;
 - (iii) Require each agent of the insolvent insurer to give prompt written notice by first

class mail, at the insured's last known address, to each insured of the insolvent insurer for whom he was agent of record.

- (c) Any final action or order of the commissioner under this chapter is subject to review in accordance with W.S. 26-2-129.

(Laws 1971, ch. 184, § 8; W.S. 1957, § 26.1-681; W.S. 1977, § 26-37-108; Laws 1983, ch. 190, § 1.)

§ 26-31-110. Insured's rights and liabilities; settlements binding on receiver or liquidator; priority of claims; statements to be filed with receiver or liquidator

- (a) Any person recovering under this chapter assigns his rights under the policy to the association to the extent of his recovery from the association. Any insured or claimant seeking the protection of this chapter shall cooperate with the association to the same extent as that person would have been required to cooperate with the insolvent insurer. The association has no cause of action against the insolvent insurer's insured for any sums it has paid out except the causes of action as the insolvent insurer would have had if it had paid those sums. If an insolvent insurer is operating on a plan with assessment liability, payments of association claims do not reduce the insureds' liability to the receiver, liquidator or statutory successor for unpaid assessments.
- (b) The receiver, liquidator or statutory successor of an insolvent insurer is bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant those claims priority equal to that which the claimant would have been entitled in the absence of this chapter against the insolvent insurer's assets. The expense of the association or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.
- (c) The association shall periodically file with the insolvent insurer's receiver or liquidator:
- (i) Statements of covered claims the association pays; and
 - (ii) Estimates of anticipated claims on the association which preserve the association's rights against the insolvent insurer's assets.

(Laws 1971, ch. 184, § 9; W.S. 1957, § 26.1-682; W.S. 1977, § 26-37-109; Laws 1983, ch. 190, § 1.)

§ 26-31-111. Exhaustion of remedies under policy; claims recoverable from more than one association; claim limitation

- (a) Any person having a claim against an insurer under an insurance policy other than a policy of an insolvent insurer which is also a covered claim, shall first exhaust his right under the policy. Any amount payable on a covered claim under this chapter shall be reduced by the amount of any recovery under the insurance policy.
- (b) Any person having a claim which may be recovered under more than one (1) insurance guaranty association or its equivalent shall seek recovery first from the association of the insured's place of residence, except that if it is a first party claim for damage to property with a permanent location, he shall seek recovery first from the association of the location of the property. If it is a worker's compensation claim, he shall seek recovery first from the association of the claimant's residence. Any recovery under this chapter

shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

- (c) Notwithstanding any provision in this chapter, a covered claim shall not include any claim filed with the association after the earlier of:
 - (i) The final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer; or
 - (ii) Twenty-five (25) months after the date of the order of liquidation.

(Laws 1971, ch. 184, § 10; W.S. 1957, § 26.1-683; W.S. 1977, § 26-37-110; Laws 1983, ch. 190, § 1; 1990, ch. 96, §1; Laws 2013, ch. 108, § 1, eff. July 1, 2013.)

§ 26-31-112. Aids in detection and prevention of insurer insolvencies

- (a) To aid in the detection and prevention of insurer insolvencies:
 - (i) The board of directors shall:
 - (A) Upon majority vote, notify the commissioner of any information indicating any member insurer may be insolvent or in a financial condition hazardous to the policyholders or the public;
 - (B) At the conclusion of any insurer insolvency in which the association is obligated to pay covered claims, prepare and submit to the commissioner, a report on the history and causes of the insolvency as determined by the available information.
 - (ii) The board of directors, upon majority vote, may:
 - (A) Request that the commissioner order an examination, as specified in subsection (b) of this section of any member insurer which the board in good faith believes may be in a financial condition hazardous to the policyholders or the public;
 - (B) Make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer, and the reports and recommendations are not public documents;
 - (C) Make recommendations to the commissioner for the detection and prevention of insurer insolvencies.
 - (iii) It is the commissioner's duty to report to the board of directors when he has reasonable cause to believe that any member insurer examined or being examined at the board of directors' request may be insolvent or in a financial condition hazardous to the policyholders or the public.
- (b) Within thirty (30) days from the date of receipt of a request for examination as specified in subparagraph (a)(ii)(A) of this section, the commissioner shall begin the examination. The examination may be conducted as a National Association of Insurance Commissioners' examination or may be conducted by any qualified persons the commissioner designates. The cost of the examination shall be paid by the association, and the examination report shall be treated as are other examination reports. The examination report shall not be released to the board of directors prior to its release to

the public, but this does not preclude the commissioner from complying with paragraph (a)(iii) of this section. The commissioner shall notify the board of directions when the examination is completed. The request for an examination shall be kept on file by the commissioner but it shall not be open to public inspection prior to the release of the examination report to the public.

(Laws 1971, ch. 184, § 11; W.S. 1957, § 26.1-684; W.S. 1977, § 26-37-111; Laws 1983, ch. 190, § 1.)

§ 26-31-113. Examination and regulation of association by commissioner; annual financial report

The association is subject to the commissioner's examination and regulation. Not later than March 31 of each year, the board of directors shall submit a financial report for the preceding calendar year in a form the commissioner approves.

(Laws 1971, ch. 184, § 12; W.S. 1957, § 26.1-685; W.S. 1977, § 26-37-112; Laws 1983, ch. 190, § 1.)

§ 26-31-114. Exemption from payment of fees and taxes

The association is exempt from payment of all fees and all taxes levied by this state or any of its subdivisions, except taxes levied on property.

(Laws 1971, ch. 184, § 13; W.S. 1957, § 26.1-686; W.S. 1977, § 26-37-113; Laws 1983, ch. 190, § 1.)

§ 26-31-115. Rates and premiums to be sufficient to recoup assessments paid to association

The rates and premiums charged for insurance policies to which this chapter applies shall include amounts sufficient to recoup a sum equal to the amounts the member insurer pays to the association less any amounts the association returns to the member insurer. Rates containing an amount reasonably calculated to recoup assessments the member insurer pays are not excessive.

(Laws 1971, ch. 184, § 14; W.S. 1957, § 26.1-687; W.S. 1977, § 26-37-114; Laws 1983, ch. 190, § 1.)

§ 26-31-116. No liability for lawful action

There is no liability on the part of and no cause of action of any nature shall arise against any member insurer, the association or its agents or employees, the board of directors or the commissioner or his representatives for any lawful action they take in the performance of their powers and duties under this chapter.

(Laws 1971, ch. 184, § 15; W.S. 1957, § 26.1-688; W.S. 1977, § 26-37-115; Laws 1983, ch. 190, § 1.)

§ 26-31-117. Stay of proceedings against insolvent insurer; setting aside judgment

All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in this state shall be stayed for sixty (60) days from the date the insolvency is determined to permit proper defense by the association of all pending causes of action. As to any covered claims arising from a judgment under any decision, verdict or finding based on the default of the insolvent insurer or its failure to defend an insured, the association either on its own behalf or on behalf of the insured may apply to have the judgment, order, decision, verdict or finding set aside by the same court or administrator making the judgment, order, decision, verdict or finding and may defend against the claim on the merits.

(Laws 1971, ch. 184, § 16; W.S. 1957, § 26.1-689; W.S. 1977, § 26-37-116; Laws 1983, ch. 190, § 1.)