SENATE FILE NO. SF0016

Insurance-guaranty association model act.

Sponsored by: Joint Corporations, Elections and Political Subdivisions Interim Committee

A BILL

for

AN ACT relating to insurance; amending the life and health insurance guaranty association act; providing definitions; increasing coverage limits for long term care, disability and health insurance and annuity products; clarifying coverage of nonresidents; providing coverage for structured settlement annuity contracts; repealing distinction between domestic and foreign impaired insurers; providing authority for legal actions and subrogation claims; providing for authorizing, calling and protesting assessments; eliminating notification of noncoverage requirements; providing for applicability; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 26-42-102(a) by creating new paragraphs (iii) through (v), by renumbering (iii) as (vi),

by amending and renumbering (iv) as (vii), by creating a new paragraph (viii), by amending and renumbering (v) as (ix), by renumbering (vi) through (viii) as (x) through (xii), by creating new paragraphs (xiii) and (xiv), by amending and renumbering (ix) as (xv), by creating new paragraphs (xvi) and (xvii), by amending and renumbering (x) as (xviii), by creating a new paragraph (xix), by amending and renumbering (xi) as (xx), by creating a new paragraph (xxi) and by renumbering (xii) as (xxii), 26-42-103(a)(intro), (i)(intro), (B), by creating new paragraphs (iii) through (v), (b), (c)(ii), (iii)(A), (B), (iv)(intro), (A), (v), by creating new paragraphs (ix) through (xiv), (d)(intro), (ii) by creating new subparagraphs (D) through (F) and by creating a new subsection (g), 26-42-105(a), 26-42-106(a)(intro), (ii), (d)(intro), (i), (iii), (e)(intro), (i) through (iii), (v)(A), (vi), (vii), (f), (k)(intro), (ii), by creating a new subsection (m), by amending and renumbering (m) as (n), by renumbering (n) as (o), by amending and renumbering (o) through (q) as (p) through (r), by renumbering (r) as (s) and by creating new subsections (t) through (z), 26-42-107(b)(i), (ii), (c) through (g) and by creating new subsections (m) and (n), 26-42-109(c), 26-42-112(b) and by

creating a new subsection (k), 26-42-115 and 26-42-118 are amended to read:

26-42-102. Definitions.

(a) As used in this act:

(iii) "Authorized assessment" or the term "authorized" when used in the context of assessments means a resolution by the board of directors has been passed whereby an assessment will be called immediately or in the future from member insurers for a specified amount. An assessment is authorized when the resolution is passed;

(iv) "Benefit plan" means a specific employee, union or association of natural persons benefit plan;

(v) "Called assessment" or the term "called" when used in the context of assessments means that a notice has been issued by the association to member insurers requiring that an authorized assessment be paid within the time frame set forth within the notice. An authorized assessment becomes a called assessment when notice is mailed by the association to member insurers;

~~(iii)~~ (vi) "Contractual obligation" means any obligation under a policy or contract or certificate under a group policy or contract, or portion thereof for which coverage is provided under W.S. 26-42-103;

~~(iv)~~ (vii) "Covered policy" means any policy or contract or portion of a policy or contract for which coverage is provided by W.S. 26-42-103;

(viii) "Extra-contractual claims" shall include claims relating to bad faith in the payment of claims, punitive or exemplary damages or attorneys' fees and costs;

~~(v)~~ (ix) "Impaired insurer" means a member insurer which ~~after the effective date of this act,~~ is not an insolvent insurer and:

~~(A) Is deemed by the commissioner to be potentially unable to fulfill its contractual obligations; or~~

(B) Is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

~~(vi)~~ (x) "Insolvent insurer" means a member insurer which after the effective date of this act, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency;

~~(vii)~~ (xi) "Member insurer" means any insurer which is licensed or holds a certificate of authority to transact in this state any kind of insurance for which coverage is provided by W.S. 26-42-103 and includes any insurer whose license or certificate of authority in this state may have been suspended, revoked, not renewed or voluntarily withdrawn, but does not include:

(A) Repealed By Laws 1997, ch. 125, § 1.

(B) Repealed by Laws 1995, ch. 210, § 5.

(C) A fraternal benefit society;

(D) A mandatory state pooling plan;

(E) A stipulated premium insurance company;

(F) A local mutual burial association;

(G) A mutual assessment company or any entity that operates on an assessment basis;

(H) An insurance exchange; or

(J) Any entity similar to any of the above.

~~(viii)~~(xii) "Moody's Corporate Bond Yield Average" means the Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto;

(xiii) "Owner" of a policy or contract, "contract owner" and "policy owner" mean the person who is identified as the legal owner under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and properly recorded as the owner on the books of the insurer.

The terms "owner", "contract owner" and "policy owner" do not include persons with a mere beneficial interest in a policy or contract;

(xiv) "Plan sponsor" means:

(A) The employer in the case of a benefit plan established or maintained by a single employer;

(B) The employee organization in the case of a benefit plan established or maintained by an employee organization; or

(C) In a case of a benefit plan established or maintained by two (2) or more employers or jointly by one (1) or more employers and one (1) or more employee organizations, the association, committee, joint board of trustees or other similar group of representatives of the parties who establish or maintain the benefit plan.

~~(ix)~~ (xv) "Premiums" means amounts received on covered policies or contracts less premiums, considerations and deposits returned thereon, and less dividends and experience credits thereon, but does not include any

amounts received for any policies or contracts or for the portions of any policies or contracts for which coverage is not provided by W.S. 26-42-103(b) except that assessable premium shall not be reduced due to W.S. 26-42-103(c)(iii) relating to interest limitations and W.S. 26-42-103(d)(ii) relating to limitations with respect to any one (1) ~~life,~~ individual, one (1) participant and one (1) contract owner. "Premiums" shall not include:

(A) Premiums on an unallocated annuity contract; or

(B) With respect to multiple non-group policies of life insurance owned by one (1) owner, whether the policy owner is an individual, firm, corporation or other person, and whether the persons insured are officers, managers, employees or other persons, premiums in excess of five million dollars ($5,000,000.00) with respect to these policies or contracts, regardless of the number of policies or contracts held by the owner.

(xvi) "Principal place of business" of:

(A) A plan sponsor or a person other than a natural person means the single state in which the natural persons who establish policy for the direction, control and coordination of the operations of the entity as a whole primarily exercise that function, determined by the association in its reasonable judgment by considering the following factors:

(I) The state in which the primary executive and administrative headquarters of the entity is located;

(II) The state in which the principal office of the chief executive officer of the entity is located;

(III) The state in which the board of directors, or similar governing person or persons, of the entity conducts the majority of its meetings;

(IV) The state in which the executive or management committee of the board of directors, or similar governing person or persons, of the entity conducts the majority of its meetings;

(V) The state from which the management of the overall operations of the entity is directed; and

(VI) In the case of a benefit plan sponsored by affiliated companies comprising a consolidated corporation, the state in which the holding company or controlling affiliate has its principal place of business as determined using the above factors. However, in the case of a plan sponsor, if more than fifty percent (50%) of the participants in the benefit plan are employed in a single state, that state shall be deemed the principal place of business for the plan sponsor.

(B) A plan sponsor of a benefit plan shall be deemed to be the principal place of business of the association, committee, joint board of trustees or other similar group of representatives of the parties who establish or maintain the benefit plan that, in lieu of a specific or clear designation of a principal place of business, shall be deemed to be the principal place of business or the employer or employee organization that has the largest investment in the benefit plan in question.

(xvii) "Receivership court" means the court in the insolvent or impaired insurer's state having jurisdiction over the conservation, rehabilitation or liquidation of the insurer;

~~(x)~~ (xviii) "Resident" means ~~any person who resides in this state at the time a member insurer is determined to be an impaired or insolvent insurer and to whom a contractual obligation is owed~~ a person to whom a contractual obligation is owed and who resides in this state on the date of entry of a court order that determines a member insurer to be an impaired insurer or a court order that determines a member insurer to be an insolvent insurer. A person may be a resident of only one (1) state, which in the case of a person other than a natural person is its principal place of business. Citizens of the United States who are either residents of foreign countries or residents of United States possessions, territories or protectorates that do not have an association similar to the association created by this act, shall be deemed residents of the state of domicile of the insurer that issued the policies or contracts;

(xix) "Structured settlement annuity" means an annuity purchased in order to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant;

~~(xi)~~ (xx) "Supplemental contract" means ~~any~~ a written agreement entered into for the distribution of ~~policy or contract~~ proceeds under a life, health or annuity policy or life, health or annuity contract;

(xxi) "Unallocated annuity contract" means an annuity contract or group annuity certificate which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under the contract or certificate;

~~(xii)~~ (xxii) "This act" means W.S. 26-42-101 through 26-42-118.

26-42-103. Coverage and limitations.

(a) This act shall provide coverage for the policies and contracts specified in subsection (b) of this section and provide coverage as follows:

(i) To persons who are owners or certificate holders under the policies or contracts ~~specified in subsection (b) of this section~~ other than structured settlement annuities and in each case who:

(B) Are not residents ~~and~~ but only under all of the following conditions:

(I) The ~~insurers which~~ insurer that issued the policies or contracts ~~are~~ is domiciled in this state; ~~and they did not at the time the policies or contracts were issued, hold a license or certificate of authority in the states in which the persons reside;~~

(II) The states in which the persons reside have associations similar to the association created by this act; ~~,~~ and

(III) The persons are not eligible for coverage by ~~the associations~~ an association in any other

state due to the fact that the insurer was not licensed in the state at the time specified in the state's guaranty association law.

(iii) For structured settlement annuities specified in subsection (b) of this section, paragraphs (i) and (ii) of this subsection shall not apply, and this act shall, except as provided in paragraphs (iv) and (v) of this subsection, provide coverage to a person who is a payee under a structured settlement annuity or beneficiary of a payee if the payee is deceased, if the payee:

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

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

(I) The contract owner of the structured settlement annuity is a resident, or the contract owner of the structured settlement annuity is not a resident, but the insurer that issued the structured settlement annuity is domiciled in this state and the state

in which the contract owner resides has an association similar to the association created by this act; and

(II) Neither the payee or beneficiary of the contract owner nor the contract owner is eligible for coverage by the association of the state in which the payee or contract owner resides.

(iv) This act shall not provide coverage to a person who is a payee or beneficiary of a contract owner resident of this state, if the payee or beneficiary is afforded any coverage by the association of another state;

(v) This act is intended to provide coverage to a person who is a resident of this state and, in special circumstances, to a nonresident. In order to avoid duplicate coverage, if a person who would otherwise receive coverage under this act is provided coverage under the laws of any other state, the person shall not be provided coverage under this act. In determining the application of the provisions of this paragraph in situations where a person could be covered by the association of more than one (1) state, whether as an owner, payee, beneficiary or assignee, this act shall be construed in conjunction with

other state laws to result in coverage by only one (1) association.

(b) This act shall provide coverage to persons specified in subsection (a) of this section for direct, nongroup life, health, annuity and supplemental policies or contracts and for certificates under direct group policies and contracts issued by member insurers except as limited by this act. Annuity contracts and certificates under group annuity contracts include allocated funding agreements, structured settlement annuities and any immediate or deferred annuity contracts.

(c) This act shall not provide coverage for:

(ii) Any policy or contract of reinsurance unless assumption certificates have been issued pursuant to the reinsurance policy or contract;

(iii) Any portion of a policy or contract to the extent that the rate of interest on which it is based:

(A) Averaged over the period of four (4) years prior to the date on which the ~~association becomes~~

~~obligated with respect to the policy or contract~~ member insurer becomes an impaired or insolvent insurer under this act, exceeds a rate of interest determined by subtracting two (2) percentage points from Moody's Corporate Bond Yield Average averaged for that same four (4) year period or for a lesser period if the policy or contract was issued less than four (4) years before the ~~association became obligated~~ member insurer becomes an impaired or insolvent insurer under this act; and

(B) On and after the date on which the ~~association becomes obligated with respect to the policy or contract~~ member insurer becomes an impaired or insolvent insurer under this act, exceeds the rate of interest determined by subtracting three (3) percentage points from the most recent and available Moody's Corporate Bond Yield Average.

(iv) Any portion of a policy or contract issued to a plan or program of an employer, association or ~~similar entity~~ other person to ~~that provides~~ provide life, health or annuity benefits to its employees, ~~or~~ members or others to the extent that the plan or program is self-funded or

uninsured, including but not limited to benefits payable by an employer, association or similar entity under:

(A) A multiple employer welfare arrangement as defined in Section 3(40) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § ~~1144~~ 1002(40);

(v) Any portion of a policy or contract to the extent it provides dividends or experience rating credits, voting rights or provides ~~that~~ payment of any fees or allowances ~~be paid~~ to any person, including the policyholder or contract holder, in connection with the service to or administration of the policy or contract;

(ix) A portion of a policy or contract to the extent that the assessments required by W.S. 26-42-107 with respect to the policy or contract are preempted or otherwise not permitted by federal or state law;

(x) An obligation that does not arise under the express written terms of the policy or contract issued by the insurer to the contract owner or policy owner, including without limitation:

(A) Claims based on marketing materials;

(B) Claims based on side letters, riders or other documents that were issued by the insurer without meeting applicable policy form filing or approval requirements;

(C) Misrepresentations of or regarding policy benefits;

(D) Extra-contractual claims; or

(E) A claim for penalties or consequential or incidental damages.

(xi) 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;

(xii) An unallocated annuity contract;

(xiii) A policy or contract providing any hospital, medical, prescription drug or other health care benefits pursuant to Part C or Part D of Subchapter XVIII, Chapter 7 of Title 42 of the United States Code (commonly known as Medicare Part C & D) or any regulations issued pursuant thereto;

(xiv) 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 this act, 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 are not subject to forfeiture under this provision, the interest or change 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.

(d) ~~Except as provided in subsection (f) of this section,~~ The benefits for which the association may be liable shall in no event exceed the lesser of:

(ii) With respect to any one (1) life, regardless of the number of policies or contracts:

(D) With respect to each payee of a structured settlement annuity or beneficiary or beneficiaries of the payee if deceased, two hundred fifty thousand dollars ($250,000.00) in present value annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values;

(E) However, in no event shall the association be obligated to cover more than:

(I) An aggregate of five hundred thousand dollars ($500,000.00) in benefits with respect to any one (1) life under this subsection; or

(II) With respect to one (1) owner of multiple nongroup policies of life insurance, whether the policy owner is an individual, firm, corporation or other person, and whether the persons insured are officers, managers, employees or other persons, more than five million dollars ($5,000,000.00) in benefits, regardless of the number of policies and contracts held by the owner.

(F) The limitations set forth in this subsection are limitations on the benefits for which the association is obligated before taking into account either its subrogation and assignment rights or the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to covered policies. The costs of the association's obligations under this act may be met by the use of assets attributable to covered policies or reimbursed to the association pursuant to its subrogation and assignment rights.

(g) In performing its obligations to provide coverage under W.S. 26-42-106, the association shall not be required to guarantee, assume, reinsure or perform, or cause to be guaranteed, assumed, reinsured or performed, the contractual obligations of the insolvent or impaired

insurer under a covered policy or contract that do not materially affect the economic values or economic benefits of the covered policy or contract.

26-42-105. Board of directors.

(a) The board of directors of the association consists of not less than five (5) nor more than nine (9) member insurers serving terms as established in the plan of operation provided by W.S. 26-42-108. The members of the board are selected by member insurers subject to the approval of the commissioner. Vacancies on the board are filled for the remaining period of the term by a majority vote of the remaining board members subject to the approval of the commissioner. ~~To select the initial board of directors and initially organize the association, the commissioner shall give notice to all member insurers of the time and place of the organizational meeting. In determining voting rights at the organizational meeting each member insurer is entitled to one (1) vote in person or by proxy. If the board of directors is not selected within sixty (60) days after notice of the organizational meeting, the commissioner shall appoint the initial members.~~

26-42-106. Powers and duties of the association.

(a) If a member insurer is an impaired ~~domestic~~ insurer, the association may in its discretion and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer, that are approved by the commissioner:~~, and that are except in cases of court ordered conservation or rehabilitation also approved by the impaired insurer:~~

(ii) Provide monies, pledges, loans, notes, guarantees, or other means proper to effectuate this subsection and assure payment of the contractual obligations of the impaired insurer pending action taken as authorized by this subsection.~~; or~~

(d) If a member insurer is an insolvent insurer, the association shall, in its discretion, do one (1) of the following:

(i) Guaranty, assume or reinsure or cause to be guaranteed, assumed or reinsured, the policies or contracts of the insolvent insurer and provide monies, pledges,

guarantees or other means as reasonably necessary to discharge the duties;

(iii) With respect ~~only~~ to life and health insurance policies and annuities, provide benefits and coverages in accordance with subsection (e) of this section.

(e) With respect to ~~only~~ life and health insurance policies and annuities and when proceeding under paragraph ~~(b)(ii) or~~ (d)(iii) of this section, the association:

(i) ~~Except for the terms of conversion and renewability,~~ Shall assure payment of benefits for premiums identical to the premiums and benefits, except for terms of conversion and renewability, that would have been payable under the policies or contracts of the insolvent insurer for claims incurred:

(A) For group policies and contracts, not later than the earlier of the next renewal date under the policies or contracts or forty-five (45) days and not less than thirty (30) days after the date on which the association is obligated under the policies and contracts;

(B) For ~~individual~~ nongroup policies, contracts and annuities, not later than the earlier of the next renewal date, if any, under the policies or one (1) year and not less than thirty (30) days from the date on which the association is obligated under the policies and contracts.

(ii) ~~For group policies,~~ Shall make diligent efforts to provide all known insureds or annuitants for nongroup policies and contracts, or group policyholders with respect to group policies and contracts, thirty (30) days notice of the termination of the benefits provided;

(iii) For ~~individual~~ nongroup life and health insurance policies and annuities covered by the association, shall make available to each known insured or annuitant, or owner if other than the insured or annuitant and with respect to an individual formerly insured or formerly an annuitant under a group policy who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of paragraph (iv) of this subsection, if the ~~insured~~ insureds or annuitants had a right under law

or the terminated policy or annuity to convert coverage to individual coverage or to continue an individual policy or annuity in force until a specified age or for a specified time during which the insurer had no right unilaterally to make changes in any provisions of the policy or annuity or had a right only to make changes in premium by class;

(v) May adopt alternative policies of various types for future issuance without regard to any particular impairment or insolvency. The alternative policies:

(A) Are subject to the approval of the domiciliary insurance commissioner and the receivership court;

(vi) If ~~it~~ the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, shall set the premium in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the commissioner or a court of competent jurisdiction; and

(vii) With respect to coverage under any policy of the impaired or insolvent insurer or under any reissued

or alternative policy, shall have its obligations ~~terminated~~ cease on the date coverage or the policy is replaced by another similar policy by the policyholder, the insured or the association.

(f) When proceeding under ~~paragraph (b)(ii) or~~ subsection (d) of this section with respect to any policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with W.S. 26-42-103(c)(iii).

(k) In carrying out its duties under ~~subsections (b), (c) and~~ subsection (d) of this section the association may, subject to approval by ~~the~~ a court of competent jurisdiction:

(ii) Impose temporary moratoriums or liens on payments of cash values and policy loans or any other right to withdraw funds held in conjunction with policies or contracts in addition to any contractual provisions for deferral of cash or policy loan value. In addition, in the event of a temporary moratorium or moratorium charge imposed by the receivership court on payment of cash values or policy loans, or on any other right to withdraw funds

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

(m) A deposit in this state, held pursuant to law or required by the commissioner for the benefit of creditors, including policy owners, not turned over to the domiciliary liquidator upon the entry of a final order of liquidation or order approving a rehabilitation plan of an insurer domiciled in this state or in a reciprocal state shall be promptly paid to the association. The association shall be entitled to retain a portion of any amount so paid to it equal to the percentage determined by dividing the aggregate amount of policy owners claims related to that insolvency for which the association has provided statutory benefits by the aggregate amount of all policy owners' claims in this state related to that insolvency and shall remit to the domiciliary receiver the amount so paid to the

association less the amount retained pursuant to this subsection. Any amount so paid to the association and retained by it shall be treated as a distribution of estate assets pursuant to applicable state receivership law dealing with early access disbursements.

~~(m)~~(n) If the association fails to act within a reasonable period of time as provided in ~~paragraph (b)(ii) and~~ subsections (d) and (e) of this section, the commissioner shall have the powers and duties of the association under this act with respect to ~~impaired or~~ insolvent insurers.

~~(n)~~(o) The association may render assistance and advice to the commissioner upon his request concerning rehabilitation, payment of claims, continuance of coverage or the performance of other contractual obligations of any impaired or insolvent insurer.

~~(o)~~(p) The association shall have standing to appear before any court or agency in this state with jurisdiction over an impaired or insolvent insurer ~~if the association is or may become obligated under this act~~ concerning which the association is or may become obligated under this act or

with jurisdiction over any person or property against which the association may have rights through subrogation or otherwise. Standing shall extend to all matters germane to the powers and duties of the association, including but not limited to, proposals for reinsuring, modifying or guaranteeing the policies or contracts of the impaired or insolvent insurer and the determination of the policies or contracts and contractual obligations. The association shall also have the right to appear or intervene before a court or agency in any state with jurisdiction over an impaired or insolvent insurer if the association is or may become obligated or with jurisdiction over ~~a third party~~ any person or property against whom the association may have rights through subrogation ~~of the insurer's policyholders~~ or otherwise.

~~(p)~~ (q) Any person receiving benefits under this act ~~is~~ shall be deemed to have assigned the rights under and any causes of action against any person for losses arising under, resulting from or otherwise relating to the covered policy or contract to the association to the extent of the benefits received because of this act, whether the benefits are payments of or on account of contractual obligations, continuation of coverage or provision of substitute or

alternative coverages. The association may require an assignment to it of the rights and cause of action by any payee, policy or contract owner, beneficiary, insured or annuitant as a condition precedent to the receipt of any right or benefits conferred by this act upon the person. The subrogation rights of the association under this subsection shall have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under this act. In addition, the association shall have all common law rights of subrogation and any other equitable or legal remedy which would have been available to the impaired or insolvent insurer or ~~holder of a policy or contract under the policy or contracts~~ owner, beneficiary or payee of a policy or contract with respect to the policy or contracts. If the provisions of this subsection are invalid or ineffective with respect to any person or claim for any reason, the amount payable by the association with respect to the related covered obligations shall be reduced by the amount realized by any other person with respect to the person or claim that is attributable to the policies or portion thereof covered by the association. If the association has provided benefits with respect to a covered obligation and a person recovers amounts as to which the

association has rights as described in this subsection, the person shall pay to the association the portion of the recovery attributable to the policies or portion thereof covered by the association.

~~(q)~~ (r) The association may:

(i) Enter into contracts as necessary or proper to carry out the provisions and purposes of this act;

(ii) Sue or be sued including taking any legal actions necessary or proper to recover any unpaid assessments under W.S. 26-42-107 and to settle claims or potential claims against it;

(iii) Borrow money to effect the purposes of this act. Any notes or other evidence of indebtedness of the association not in default are legal investments for domestic insurers and may be carried as admitted assets;

(iv) Employ or retain persons as necessary to handle the financial transactions of the association and to perform other functions as necessary or proper under this act;

(v) Take legal action as necessary or appropriate to avoid or recover payment of improper claims;

(vi) Exercise, for the purposes of this act and to the extent approved by the commissioner, the powers of a domestic life or health insurer. The association shall not issue insurance policies or annuity contracts other than those issued to perform its obligations under this act;.

(vii) Organize itself as a corporation or in other legal form permitted by the laws of the state;

(viii) Request information from a person seeking coverage from the association in order to aid the association in determining its obligations under this act with respect to the person, and the person shall promptly comply with the request;

(ix) Take other necessary or appropriate action to discharge its duties and obligations under this act or to exercise its powers under this act.

~~(r)~~ (s) The association may join an organization of one (1) or more other state associations of similar purposes to further the purposes and administer the powers and duties of the association.

(t) With respect to covered policies for which the association becomes obligated after an entry of an order of liquidation or rehabilitation, the association may elect to succeed to the rights of the insolvent insurer arising after the date of the order of liquidation or rehabilitation under any contract of reinsurance to which the insolvent insurer was a party, to the extent that the contract provides coverage for losses occurring after the date of the order of liquidation or rehabilitation. As a condition to making this election, the association shall pay all unpaid premiums due under the contract for coverage relating to periods before and after the date of the order of liquidation or rehabilitation.

(u) The board of directors of the association shall have discretion and may exercise reasonable business judgment to determine the means by which the association is to provide the benefits of this act in an economical and efficient manner.

(w) Where the association has arranged or offered to provide the benefits of this act to a covered person under a plan or arrangement that fulfills the association's obligations under this act, the person shall not be entitled to benefits from the association in addition to or other than those provided under the plan or arrangement.

(y) The association shall not be required to give an appeal bond in an appeal that relates to a cause of action arising under this act.

(z) In carrying out its duties in connection with guaranteeing, assuming or reinsuring policies or contracts under subsection (a) or (d) of this section, the association may, subject to approval of the receivership court, issue substitute coverage for a policy or contract that provides an 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 by issuing an alternative policy or contract in accordance with the following provisions:

(i) In lieu of the index or other external reference provided for in the original policy or contract, the alternative policy or contract provides for a fixed interest rate, payment of dividends with minimum guarantees or a different method for calculating interest or changes in value;

(ii) There is no requirement for evidence of insurability, waiting period or other exclusion that would not have applied under the replaced policy or contract; and

(iii) The alternative policy or contract is substantially similar to the replaced policy or contract in all other material terms.

26-42-107. Assessments.

(b) There shall be two (2) assessments as follows:

(i) Class A assessments shall be ~~made~~ authorized and called to pay administrative and legal costs and other expenses and examinations conducted under the authority of W.S. 26-42-110(e). Class A assessments may be ~~made~~

authorized and called whether or not related to a particular impaired or insolvent insurer;

(ii) Class B assessments shall be ~~made~~ authorized and called as necessary to carry out the powers and duties of the association under W.S. 26-42-106 with regard to an impaired or an insolvent insurer.

(c) The amount of any Class A assessment shall be determined ~~by~~ at the discretion of the board of directors and ~~may be made~~ those assessments may be authorized and called on a non pro rata ~~or other~~ basis. ~~If made on a pro rata basis, the board may provide that the Class A assessment be credited against future Class B assessments. An assessment made other than on a pro rata basis shall not exceed one hundred fifty dollars ($150.00) per member insurer in any one (1) calendar year.~~ The amount of any Class B assessment shall be allocated for assessment purposes among the accounts pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard deemed by the board in its sole discretion as fair and reasonable under the circumstances.

(d) Class B assessments against member insurers for each account shall be in the proportion that the premiums received on business in this state by each assessed member insurer or policies or contracts covered by each account for the three (3) most recent calendar years for which information is available preceding the year in which the insurer became ~~impaired or~~ insolvent, or in the case of an assessment with respect to an impaired insurer, the three (3) most recent calendar years for which information is available preceding the year in which the insurer became impaired, bears to the premiums received on business in this state for the calendar years by all assessed member insurers.

(e) Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer shall not be made until necessary to implement the purposes of this act. Classification of assessments under subsection (b) of this section and computation of assessments under subsections (c) and (d) of this section shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible. The association shall notify each member insurer of its anticipated pro-rata share of an authorized

assessment not yet called within one hundred eighty (180) days after the assessment is authorized.

(f) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated or deferred in whole or in part, the amount by which the assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. Once the conditions that caused a deferral have been removed or rectified, the member insurer shall pay all assessments that were deferred pursuant to a repayment plan approved by the association.

(g) The total of all assessments imposed upon a member insurer for each account are subject to the following:

(i) Subject to paragraph (ii) of this subsection, the total of all assessments authorized by the association with respect to a member insurer for each

account shall not in any one (1) calendar year exceed two percent (2%) of the insurer's average premiums received in this state on the policies and contracts covered by the account during the three (3) calendar years preceding the year in which the insurer became an impaired or insolvent insurer;.

(ii) If two (2) or more assessments are authorized in one (1) calendar year with respect to insurers that become impaired or insolvent in different calendar years, the average annual premiums for purposes of the aggregate assessment percentage limitation referenced in paragraph (i) of this subsection shall be equal and limited to the higher of the three (3) year average annual premiums for the applicable subaccount or account as calculated pursuant to this subsection;

(iii) If the maximum assessment including the other assets of the association in any account does not provide in any one (1) year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by this act;.

(iv) The board may provide in the plan of operation provided by W.S. 26-42-108 a method of allocating funds among claims, whether relating to one (1) or more impaired or insolvent insurers when the maximum assessment will be insufficient to cover anticipated claims.

(m) A member insurer that wishes to protest all or part of an assessment shall pay when due the full amount of the assessment as set forth in the notice provided by the association. The payment shall be available to meet association obligations during the pendency of the protest or any subsequent appeal. Payment shall be accompanied by a statement in writing that the payment is made under protest and setting forth a brief statement of the grounds for the protest. Within sixty (60) days following the payment of an assessment under protest by a member insurer, the association shall notify the member insurer in writing of its determination with respect to the protest unless the association notifies the member insurer that additional time is required to resolve the issues raised by the protest. Within thirty (30) days after a final decision has been made, the association shall notify the protesting member insurer in writing of that final decision. Within sixty (60) days of receipt of notice of the final decision,

the protesting member insurer may appeal that final action to the commissioner. In the alternative to rendering a final decision with respect to a protest based on a question regarding the assessment base, the association may refer protests to the commissioner for a final decision, with or without a recommendation from the association. If the protest or appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the member company. Interest on a refund due a protesting member shall be paid at the rate actually earned by the association.

(n) The association may request information of member insurers in order to aid in the exercise of its power under this section and member insurers shall promptly comply with a request.

26-42-109. Duties and powers of the commissioner.

(c) Any action of the board of directors or the association may be appealed to the commissioner by any member insurer if an appeal is taken within sixty (60) days of the final action being appealed. ~~If a member company appeals an assessment, the amount assessed shall be paid to~~

~~the association and available to meet association obligations pending an appeal. If the appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the member company.~~ Any final action or order of the commissioner is subject to judicial review in a court of competent jurisdiction.

26-42-112. Assessment liability; records; assets; proceedings against impaired or insolvent insurer.

(b) Records shall be kept of all ~~negotiations and~~ meetings in which the ~~association or its representatives~~ board of directors discuss the activities of the association in carrying out its powers and duties under W.S. 26-42-106. ~~Records of negotiations or meetings shall be made public only upon~~ The records of the association with respect to an impaired or insolvent insurer shall not be disclosed prior to the termination of a liquidation, rehabilitation or conservation proceeding involving the impaired or insolvent insurer~~,~~ except upon the termination of the impairment or insolvency of the insurer~~,~~ or upon the order of a court of competent jurisdiction. Nothing in this subsection shall limit the duty of the association to render a report of its activities under W.S. 26-42-113.

(k) As a creditor of the impaired or insolvent insurer as established in subsection (c) of this section, the association and other similar associations shall be entitled to receive a disbursement of assets out of the marshaled assets, from time to time as the assets become available to reimburse it, as a credit against contractual obligations under this act. If the liquidator has not, within one hundred twenty (120) days of a final determination of insolvency of an insurer by the receivership court, made an application to the court for the approval of a proposal to disburse assets out of marshaled assets to guaranty associations having obligations because of the insolvency, then the association shall be entitled to make application to the receivership court for approval of its own proposal to disburse these assets.

26-42-115. Stay of proceedings; reopening default judgments.

All proceedings in which the insolvent insurer is a party in any court in this state shall be stayed ~~sixty (60)~~ one hundred eighty (180) days from the date an order of

liquidation, rehabilitation or conservation is final to permit proper legal action by the association on any matters germane to its powers or duties. As to judgment under any decision, order, verdict or finding based on default the association may apply to have the judgment set aside by the same court that made the judgment and shall be permitted to defend against the suit on the merits.

26-42-118. Prospective application.

(a) Except as provided in subsection (b) of this section, this act shall ~~not~~ apply to any member insurer which is ~~insolvent or unable to fulfill its contractual obligations on the effective date of this act~~ placed under an order of liquidation with a finding of insolvency on or after July 1, 2014.

(b) The amendments provided in the 2014 amendments to W.S. 26-24-103(a) and (d) shall not apply to any insurer placed under an order of liquidation with a finding of insolvency prior to July 1, 2014.

Section 2. W.S. 26-42-103(f), 26-42-106(a)(iii), (b) and (c) and 26-42-116(e) are repealed.

Section 3. This act is effective July 1, 2014.

(END)