

HOUSE BILL NO. HB0175

Wyoming insurance guaranty association-revisions.

Sponsored by: Representative(s) Eyre and Zwonitzer and
Senator(s) Case and Dockstader

A BILL

for

1 AN ACT relating to insurance; generally modifying provisions
2 of the Wyoming Life and Health Insurance Guaranty Association
3 Act; amending and creating definitions; ensuring consistent
4 usage of terms; amending provisions governing coverage
5 provided by the association, limitations to the coverage and
6 the association's maximum financial responsibilities;
7 amending the powers and duties of the association; amending
8 provisions governing association members' assessments;
9 specifying applicability; and providing for an effective
10 date.

11

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

13

14 **Section 1.** W.S. 26-42-102(a)(vii), (xi)(intro),
15 (xiii), (xv)(intro), (B), (xvii), (xviii), by creating new

1 paragraphs (xxii) and (xxiii) and by renumbering (xxii) as
2 (xxiv), 26-42-103(a)(i)(intro), (B)(I), (III), (ii), (iv),
3 (v), (b), (c)(iii)(intro), (x)(intro), (B), (C), (xiii), by
4 creating a new paragraph (xv), (d)(i), (ii)(B)(intro), (I),
5 (III), (E)(I), (II), by creating a new subparagraph (G) and
6 (g), 26-42-104(a)(intro) and (ii), 26-42-106(a)(i), (d)(i)
7 through (iii), by creating a new paragraph (iv), (e)(intro),
8 (i)(intro), (ii) through (iv), (v)(intro), (A), (C), (D),
9 (vi), (vii), (g), (m), (p), (q), (r)(iii), (vi), by creating
10 a new paragraph (ix), by renumbering (ix) as (x), (t) and
11 (z)(intro), 26-42-107(d), (g)(i), (ii) and (h) through (m),
12 26-42-109(a)(ii), (iii) and (b), 26-42-110(a)(intro),
13 (i)(C)(intro), (V), (b), (c) and (f), 26-42-111(b),
14 26-42-112(c) through (g) and (k), 26-42-116(a), (b) and
15 (c)(ii) through (iv), 26-42-117 and 26-42-118(b) and by
16 creating a new subsection (c) are amended to read:

17

18 **26-42-102. Definitions.**

19

20 (a) As used in this act:

21

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

4
5 (xi) "Member insurer" means any insurer or health
6 maintenance organization which is licensed or holds a
7 certificate of authority to transact in this state any kind
8 of insurance or health maintenance organization business for
9 which coverage is provided by W.S. 26-42-103 and includes any
10 insurer or health maintenance organization business whose
11 license or certificate of authority in this state may have
12 been suspended, revoked, not renewed or voluntarily
13 withdrawn, but does not include:

14
15 (xiii) "Owner" of a policy or contract, "contract
16 owner", "policyholder" and "policy owner" mean the person who
17 is identified as the legal owner under the terms of the policy
18 or contract or who is otherwise vested with legal title to
19 the policy or contract through a valid assignment completed
20 in accordance with the terms of the policy or contract and
21 properly recorded as the owner on the books of the member
22 insurer. The terms "owner", "contract owner", "policyholder"

1 and "policy owner" do not include persons with a mere
2 beneficial interest in a policy or contract;

3

4 (xv) "Premiums" means amounts received on covered
5 policies or contracts less premiums, considerations and
6 deposits returned thereon, and less dividends and experience
7 credits thereon, but does not include any amounts received
8 for any policies or contracts or for the portions of any
9 policies or contracts for which coverage is not provided by
10 W.S. 26-42-103(b) except that assessable premium shall not be
11 reduced due to W.S. 26-42-103(c)(iii) relating to interest
12 limitations and W.S. 26-42-103(d)(ii) relating to limitations
13 with respect to any one (1) individual, one (1) participant
14 and one (1) policy owner or contract owner. "Premiums" shall
15 not include:

16

17 (B) With respect to multiple ~~non-group~~
18 nongroup policies of life insurance owned by one (1) owner,
19 whether the policy owner or contract owner is an individual,
20 firm, corporation or other person, and whether the persons
21 insured are officers, managers, employees or other persons,
22 premiums in excess of five million dollars (\$5,000,000.00)

1 with respect to these policies or contracts, regardless of
2 the number of policies or contracts held by the owner.

3

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

8

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

22

1 (xxii) "Enrollee" means an individual who is
2 enrolled in a health maintenance organization;

3

4 (xxiii) "Health benefit plan" means any hospital
5 or medical expense policy or certificate, or health
6 maintenance organization subscriber contract or any other
7 similar health contract. "Health benefit plan" does not
8 include any of the following:

9

10 (A) Accident only insurance;

11

12 (B) Credit insurance;

13

14 (C) Dental only insurance;

15

16 (D) Vision only insurance;

17

18 (E) Medicare supplement insurance;

19

20 (F) Benefits for long term care, home health
21 care, community based care or any combination thereof;

22

23 (G) Disability income insurance;

1

2

(H) Coverage for on-site medical clinics;

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7

(J) Specified disease, hospital confinement indemnity or limited benefit health issuance if the types of coverage do not provide coordination of benefits and are provided under separate policies or certificates.

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~~(xxii)~~(xxiv) "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 or enrollees under the policies or contracts other than structured settlement annuities and in each case who:

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

1

2 (I) The member insurer that issued the
3 policies or contracts is domiciled in this state;

4

5 (III) The persons are not eligible for
6 coverage by an association in any other state due to the fact
7 that the insurer or health maintenance organization was not
8 licensed in the state at the time specified in the state's
9 guaranty association law.

10

11 (ii) To persons who are the beneficiaries,
12 assignees or payees of the persons described in paragraph
13 (a)(i) of this section, including health care providers
14 rendering services covered under health insurance policies or
15 certificates, regardless of where they reside except for
16 nonresident certificate holders under group policies or
17 contracts;

18

19 (iv) This act shall not provide coverage to:

20

21 (A) A person who is a payee or beneficiary of
22 a contract owner resident of this state, if the payee or

1 beneficiary is afforded any coverage by the association of
2 another state; or

3

4 (B) A person who acquires rights to receive
5 payments through a structured settlement factoring
6 transaction as defined in 26 U.S.C. § 5891(c)(3)(A),
7 regardless if the transaction occurred before or after 26
8 U.S.C. § 5891(c)(3)(A) became effective.

9

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

22

1 (b) This act shall provide coverage to persons
2 specified in subsection (a) of this section for policies or
3 contracts of direct, nongroup life insurance, health
4 insurance including health maintenance organization
5 subscriber contracts and certificates, ~~annuity annuities~~ and
6 supplemental ~~policies or~~ contracts to any of these policies
7 or contracts and for certificates under direct group policies
8 and contracts issued by member insurers except as limited by
9 this act. Annuity contracts and certificates under group
10 annuity contracts include allocated funding agreements,
11 structured settlement annuities and any immediate or deferred
12 annuity contracts.

13

14 (c) This act shall not provide coverage for:

15

16 (iii) Excluding any portion of a policy or
17 contract, including a rider, that provides long term care or
18 other health insurance benefits, any portion of a policy or
19 contract to the extent that the rate of interest on which it
20 is based:

21

22 (x) An obligation that does not arise under the
23 express written terms of the policy or contract issued by the

1 member insurer to the enrollee, certificate holder, contract
2 owner or policy owner, including without limitation:

3

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

8

9 (C) Misrepresentations of or regarding
10 policy or contract benefits;

11

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

19

20 (xv) Structured settlement annuity benefits to
21 which a payee or beneficiary has transferred his rights in a
22 structured settlement factoring transaction as defined in 26
23 U.S.C. § 5891(c)(3)(A), regardless if the transaction

1 occurred before or after 26 U.S.C. § 5891(c)(3)(A) became
2 effective.

3

4 (d) The benefits for which the association may be
5 liable shall in no event exceed the lesser of:

6

7 (i) The contractual obligations for which the
8 member insurer is liable or would have been liable if it was
9 not an impaired or insolvent insurer; or

10

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

13

14 (B) ~~In~~For health insurance benefits:

15

16 (I) One hundred thousand dollars
17 (\$100,000.00) for coverages not defined as disability
18 insurance, ~~or~~ disability income insurance, ~~or basic hospital,~~
19 ~~medical and surgical insurance or major medical insurance~~
20 health benefit plan or long term care insurance including any
21 net cash surrender and net cash withdrawal values;

22

1 (III) Three hundred thousand dollars
2 (\$300,000.00) for ~~basic hospital, medical and surgical~~
3 ~~insurance or major medical insurance~~ health benefit plans.

4
5 (E) However, in no event shall the
6 association be obligated to cover more than:

7
8 (I) An aggregate of five hundred
9 thousand dollars (\$500,000.00) in benefits with respect to
10 any one (1) life under paragraphs (A) through (D) of this
11 subsection; or

12
13 (II) With respect to one (1) owner of
14 multiple nongroup policies of life insurance, whether the
15 policy owner or contract owner is an individual, firm,
16 corporation or other person, and whether the persons insured
17 are officers, managers, employees or other persons, more than
18 five million dollars (\$5,000,000.00) in benefits, regardless
19 of the number of policies and contracts held by the owner.

20
21 (G) For purposes of this act, benefits
22 provided by a long term care rider to a life insurance policy
23 or annuity contract shall be considered the same type of

1 benefits as the base life insurance policy or annuity contract
2 to which it relates.

3

4 (g) In performing its obligations to provide coverage
5 under W.S. 26-42-106, the association shall not be required
6 to guarantee, assume, reinsure, reissue or perform, or cause
7 to be guaranteed, assumed, reinsured, reissued or performed,
8 the contractual obligations of the insolvent or impaired
9 insurer under a covered policy or contract that do not
10 materially affect the economic values or economic benefits of
11 the covered policy or contract.

12

13 **26-42-104. Creation of the association.**

14

15 (a) There is created a nonprofit legal entity to be
16 known as the Wyoming life and health insurance guaranty
17 association. All member insurers are members of the
18 association as a condition of their authority to transact
19 insurance or health maintenance organization business in this
20 state. The association shall perform its functions under the
21 plan of operation established and approved under W.S.
22 26-42-108 and shall exercise its powers through a board of
23 directors provided by W.S. 26-42-105. For purposes of

1 administration and assessment the association shall maintain
2 the three (3) following accounts:

3

4 (ii) The health ~~insurance~~-account; and

5

6 **26-42-106. Powers and duties of the association.**

7

8 (a) If a member insurer is an impaired insurer, the
9 association may in its discretion and subject to any
10 conditions imposed by the association that do not impair the
11 contractual obligations of the impaired insurer, that are
12 approved by the commissioner:

13

14 (i) Guarantee, assume, reissue or reinsure or
15 cause to be guaranteed, assumed, reissued or reinsured any or
16 all of the policies or contracts of the impaired insurer;

17

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

21

22 (i) Guaranty, assume, reissue or reinsure or cause
23 to be guaranteed, assumed, reissued or reinsured, the

1 policies or contracts of the insolvent insurer and provide
2 monies, pledges, guarantees or other means as reasonably
3 necessary to discharge the duties;

4

5 (ii) Assure payment of the contractual obligations
6 of the insolvent insurer and provide monies, pledges,
7 guarantees or other means as reasonably necessary to
8 discharge the duties;~~or~~

9

10 (iii) With respect to life and health insurance
11 policies and annuities, provide benefits and coverages in
12 accordance with subsection (e) of this section;~~i-~~ or

13

14 (iv) With respect to health benefit plans that are
15 subject to state or federal guaranteed issue requirements,
16 terminate the policies no later than sixty (60) days after
17 the entry of an order of liquidation with the approval of the
18 commissioner.

19

20 (e) With respect to ~~life and health insurance~~ policies
21 and ~~annuities~~contracts and when proceeding under paragraph
22 (d)(iii) of this section, the association:

23

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

6
7 (ii) Shall make diligent efforts to provide all
8 known insureds, enrollees or annuitants for nongroup policies
9 and contracts, or group ~~policyholders~~ policy owners or
10 contracts owners with respect to group policies and
11 contracts, thirty (30) days notice of the termination of the
12 benefits provided;

13
14 (iii) For nongroup ~~life and health insurance~~
15 policies and ~~annuities~~ contracts covered by the association,
16 shall make available to each known insured, enrollee or
17 annuitant, or owner if other than the insured or annuitant
18 and with respect to an individual formerly an insured,
19 enrollee or ~~formerly an~~ annuitant under a group policy or
20 contract who is not eligible for replacement group coverage,
21 make available substitute coverage on an individual basis in
22 accordance with the provisions of paragraph (iv) of this
23 subsection, if the insureds, enrollees or annuitants had a

1 right under law or the terminated policy, contract or annuity
2 to convert coverage to individual coverage or to continue an
3 individual policy, contract or annuity in force until a
4 specified age or for a specified time during which the insurer
5 or health maintenance organization had no right unilaterally
6 to make changes in any provisions of the policy, contract or
7 annuity or had a right only to make changes in premium by
8 class;

9

10 (iv) In providing the substitute coverage required
11 under paragraph (iii) of this subsection, may offer either to
12 reissue the terminated coverage or to issue an alternative
13 policy or contract at actuarially justified rates subject to
14 the prior approval of the commissioner. Alternative or
15 reissued policies or contracts shall be offered without
16 requiring evidence of insurability and shall not provide for
17 any waiting period or exclusion that would not have applied
18 under the terminated policy or contract. The association may
19 reinsure any alternative or reissued policy or contract;

20

21 (v) May adopt alternative policies or contracts of
22 various types for future issuance without regard to any

1 particular impairment or insolvency. The alternative
2 policies:

3

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

7

8 (C) Shall have premiums set by the
9 association in accordance with a table of rates which it
10 adopts and which reflect the amount of insurance to be
11 provided and the age and class of risk of each insured but do
12 not reflect any changes in the health of the insured after
13 the original policy or contract was last underwritten;

14

15 (D) Shall provide coverage of a type similar
16 to that of the policy or contract issued by the impaired or
17 insolvent insurer, as determined by the association.

18

19 (vi) If the association elects to reissue
20 terminated coverage at a premium rate different from that
21 charged under the terminated policy or contract, shall set
22 the premium at actuarially justified rates and in accordance
23 with the amount of insurance or coverage provided and the age

1 and class of risk, subject to prior approval of the
2 commissioner or a court of competent jurisdiction; and

3
4 (vii) With respect to coverage under any policy or
5 contract of the impaired or insolvent insurer or under any
6 reissued or alternative policy or contract, shall have its
7 obligations cease on the date coverage or the policy or
8 contract is replaced by another similar policy or contract by
9 the ~~policyholder~~policy owner or contract owner, the insured,
10 the enrollee or the association.

11
12 (g) Nonpayment of premiums within thirty-one (31) days
13 after the date required under the terms of any guaranteed,
14 assumed, alternative or reissued policy or contract or
15 substitute coverage shall terminate the association's
16 obligations under the policy, contract or coverage incurred
17 pursuant to this act, except with respect to any claims
18 incurred or any net cash surrender value which may be due in
19 accordance with the provisions of this act.

20
21 (m) A deposit in this state, held pursuant to law or
22 required by the commissioner for the benefit of creditors,
23 including policy owners or contract owners, not turned over

1 to the domiciliary liquidator upon the entry of a final order
2 of liquidation or order approving a rehabilitation plan of ~~an~~
3 a member insurer domiciled in this state or in a reciprocal
4 state shall be promptly paid to the association. The
5 association shall be entitled to retain a portion of any
6 amount so paid to it equal to the percentage determined by
7 dividing the aggregate amount of policy ~~owners—owners'~~ or
8 contract owners' claims related to that insolvency for which
9 the association has provided statutory benefits by the
10 aggregate amount of all policy owners' or contract owners'
11 claims in this state related to that insolvency and shall
12 remit to the domiciliary receiver the amount so paid to the
13 association less the amount retained pursuant to this
14 subsection. Any amount so paid to the association and retained
15 by it shall be treated as a distribution of estate assets
16 pursuant to applicable state receivership law dealing with
17 early access disbursements.

18

19 (p) The association shall have standing to appear
20 before any court or agency in this state with jurisdiction
21 over an impaired or insolvent insurer concerning which the
22 association is or may become obligated under this act or with
23 jurisdiction over any person or property against which the

1 association may have rights through subrogation or otherwise.
2 Standing shall extend to all matters germane to the powers
3 and duties of the association, including but not limited to,
4 proposals for reinsuring, reissuing, modifying or
5 guaranteeing the policies or contracts of the impaired or
6 insolvent insurer and the determination of the policies or
7 contracts and contractual obligations. The association shall
8 also have the right to appear or intervene before a court or
9 agency in any state with jurisdiction over an impaired or
10 insolvent insurer if the association is or may become
11 obligated or with jurisdiction over any person or property
12 against whom the association may have rights through
13 subrogation or otherwise.

14

15 (q) Any person receiving benefits under this act shall
16 be deemed to have assigned the rights under and any causes of
17 action against any person for losses arising under, resulting
18 from or otherwise relating to the covered policy or contract
19 to the association to the extent of the benefits received
20 because of this act, whether the benefits are payments of or
21 on account of contractual obligations, continuation of
22 coverage or provision of substitute or alternative policies,
23 contracts or coverages. The association may require an

1 assignment to it of the rights and cause of action by any
2 enrollee, payee, policy or contract owner, beneficiary,
3 insured or annuitant as a condition precedent to the receipt
4 of any right or benefits conferred by this act upon the
5 person. The subrogation rights of the association under this
6 subsection shall have the same priority against the assets of
7 the impaired or insolvent insurer as that possessed by the
8 person entitled to receive benefits under this act. In
9 addition, the association shall have all common law rights of
10 subrogation and any other equitable or legal remedy ~~which~~
11 that would have been available to the impaired or insolvent
12 insurer or owner, beneficiary, enrollee or payee of a policy
13 or contract with respect to the policy or contracts and shall
14 include, in the case of a structured settlement annuity, any
15 rights of the owner, beneficiary or payee of the annuity, to
16 the extent of benefits received pursuant to this act, against
17 a person originally or by succession responsible for the
18 losses arising from the personal injury relating to the
19 annuity or payment therefor, excluding any person responsible
20 solely by reason of serving as an assignee in respect to a
21 qualified assignment under section 130 of the Internal
22 Revenue Code. If the provisions of this subsection are invalid
23 or ineffective with respect to any person or claim for any

1 reason, the amount payable by the association with respect to
2 the related covered obligations shall be reduced by the amount
3 realized by any other person with respect to the person or
4 claim that is attributable to the policies or portion thereof
5 covered by the association. If the association has provided
6 benefits with respect to a covered obligation and a person
7 recovers amounts as to which the association has rights as
8 described in this subsection, the person shall pay to the
9 association the portion of the recovery attributable to the
10 policies or portion thereof covered by the association.

11

12 (r) The association may:

13

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

18

19 (vi) Exercise, for the purposes of this act and to
20 the extent approved by the commissioner, the powers of a
21 domestic life insurer, health maintenance organization or
22 health insurer. The association shall not issue insurance

1 policies or ~~annuity~~ contracts other than those issued to
2 perform its obligations under this act;

3

4 (ix) Unless prohibited by law, in accordance with
5 the terms and conditions of the policy or contract, file for
6 actuarially justified rate or premium increases for any
7 policy or contract for which it provides coverage under this
8 act;

9

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

13

14 (t) With respect to covered policies or contracts for
15 which the association becomes obligated after an entry of an
16 order of liquidation or rehabilitation, the association may
17 elect to succeed to the rights of the insolvent insurer
18 arising after the date of the order of liquidation or
19 rehabilitation under any contract of reinsurance to which the
20 insolvent insurer was a party, to the extent that the contract
21 provides coverage for losses occurring after the date of the
22 order of liquidation or rehabilitation. As a condition to
23 making this election, the association shall pay all unpaid

1 premiums due under the contract for coverage relating to
2 periods before and after the date of the order of liquidation
3 or rehabilitation.

4

5 (z) In carrying out its duties in connection with
6 guaranteeing, assuming, reissuing or reinsuring policies or
7 contracts under subsection (a) or (d) of this section, the
8 association may, subject to approval of the receivership
9 court-commissioner, issue substitute coverage for a policy or
10 contract that provides an interest rate, crediting rate or
11 similar factor determined by use of an index or other external
12 reference stated in the policy or contract employed in
13 calculating returns or changes in value by issuing an
14 alternative policy or contract in accordance with the
15 following provisions:

16

17 **26-42-107. Assessments.**

18

19 (d) Class B assessments against member insurers for
20 each account shall be in the proportion that the premiums
21 received on business in this state by each assessed member
22 insurer or policies or contracts covered by each account for
23 the three (3) most recent calendar years for which information

1 is available preceding the year in which the insurer became
2 insolvent, or in the case of an assessment with respect to an
3 impaired insurer, the three (3) most recent calendar years
4 for which information is available preceding the year in which
5 the insurer became impaired, bears to the premiums received
6 on business in this state for the calendar years by all
7 assessed member insurers. The amount of the Class B assessment
8 for long term care insurance written by the impaired or
9 insolvent insurer shall be allocated according to a
10 methodology included in the plan of operation and approved by
11 the commissioner. The methodology shall provide for fifty
12 percent (50%) of the assessment to be allocated to accident
13 and health member insurers and fifty percent (50%) to be
14 allocated to life and annuity member insurers.

15

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

18

19 (i) Subject to paragraph (ii) of this subsection,
20 the total of all assessments authorized by the association
21 with respect to a member insurer for each account shall not
22 in any one (1) calendar year exceed two percent (2%) of the
23 insurer's average premiums received in this state on the

1 policies and contracts covered by the account during the three
2 (3) calendar years preceding the year in which the member
3 insurer became an impaired or insolvent insurer;

4

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

14

15 (h) The board may refund to member insurers the amount
16 by which the assets of the account exceed the amount the board
17 finds is necessary to carry out during the coming year the
18 obligations of the association with regard to the account,
19 including assets accruing from assignment, subrogation, net
20 realized gains and income from investments. The board shall
21 use an equitable method to make the refunds and the refunds
22 shall be in proportion to the contribution of each member
23 insurer to the account. A reasonable amount may be retained

1 in any account to provide funds for the continuing expenses
2 of the association and for future losses.

3

4 (j) Any member insurer may, in determining its premium
5 rates and policy owner dividends as to any kind of insurance
6 or health maintenance organization business within the scope
7 of this act, consider the amount reasonably necessary to meet
8 its assessment obligations under this act.

9

10 (k) The association shall issue to each member insurer
11 paying an assessment under this act, other than a Class A
12 assessment, a certificate of contribution in a form
13 prescribed by the commissioner for the amount of the
14 assessment paid. All outstanding certificates shall be of
15 equal dignity and priority without reference to amounts or
16 dates of issue. A certificate of contribution may be shown by
17 the member insurer in its financial statement as an asset in
18 a form and for an amount, if any, and a period of time as
19 approved by the commissioner.

20

21 (m) A member insurer that wishes to protest all or part
22 of an assessment shall pay when due the full amount of the
23 assessment as set forth in the notice provided by the

1 association. The payment shall be available to meet
2 association obligations during the pendency of the protest or
3 any subsequent appeal. Payment shall be accompanied by a
4 statement in writing that the payment is made under protest
5 and setting forth a brief statement of the grounds for the
6 protest. Within sixty (60) days following the payment of an
7 assessment under protest by a member insurer, the association
8 shall notify the member insurer in writing of its
9 determination with respect to the protest unless the
10 association notifies the member insurer that additional time
11 is required to resolve the issues raised by the protest.
12 Within thirty (30) days after a final decision has been made,
13 the association shall notify the protesting member insurer in
14 writing of that final decision. Within sixty (60) days of
15 receipt of notice of the final decision, the protesting member
16 insurer may appeal that final action to the commissioner. In
17 the alternative to rendering a final decision with respect to
18 a protest based on a question regarding the assessment base,
19 the association may refer protests to the commissioner for a
20 final decision, with or without a recommendation from the
21 association. If the protest or appeal on the assessment is
22 upheld, the amount paid in error or excess shall be returned
23 to the member ~~company~~insurer. Interest on a refund due a

1 protesting member insurer shall be paid at the rate actually
2 earned by the association.

3

4 **26-42-109. Duties and powers of the commissioner.**

5

6 (a) In addition to the duties and powers enumerated in
7 other provisions of this act, the commissioner shall:

8

9 (ii) When an impairment is declared and the amount
10 of the impairment is determined, serve a demand upon the
11 impaired insurer to eliminate the impairment within a
12 reasonable time. Notice to the impaired insurer shall
13 constitute notice to its shareholders, if any. The failure of
14 the impaired insurer to promptly comply with the demand shall
15 not excuse the association from the performance of its powers
16 and duties under this act;

17

18 (iii) In any liquidation or rehabilitation
19 proceeding involving a domestic insurer, be appointed as the
20 liquidator, ~~or~~ rehabilitator or conservator.

21

22 (b) The commissioner may suspend or revoke after notice
23 and hearing the certificate of authority to transact

1 ~~insurance~~business in this state of any member insurer which
2 fails to pay an assessment when due or fails to comply with
3 the plan of operation. As an alternative the commissioner may
4 levy a forfeiture on any member insurer which fails to pay an
5 assessment when due. Such forfeiture shall not exceed five
6 percent (5%) of the unpaid assessment per month, but no
7 forfeiture shall be less than one hundred dollars (\$100.00)
8 per month.

9

10 **26-42-110. Prevention of insolvencies.**

11

12 (a) To aid in the detection and prevention of member
13 insurer insolvencies or impairments, the commissioner shall:

14

15 (i) Notify the commissioners of all the other
16 states, territories of the United States and the District of
17 Columbia by mail within thirty (30) days of any of the
18 following actions taken against a member insurer:

19

20 (C) Issuance of any formal order requiring
21 the ~~company~~member insurer to:

22

1 (V) Increase capital, surplus or any
2 other account for the security of ~~policyholders~~policy
3 owners, contract owners, certificate holders or creditors.
4

5 (b) The commissioner may seek the advice and
6 recommendations of the board of directors concerning any
7 matter affecting his duties and responsibilities regarding
8 the financial condition of member insurers and ~~companies~~
9 insurers or health maintenance organizations seeking
10 admission to transact ~~insurance~~-business in this state.
11

12 (c) The board of directors may by majority vote make
13 reports and recommendations to the commissioner upon any
14 matter germane to the solvency, liquidation, rehabilitation
15 or conservation of any member insurer or germane to the
16 solvency of any ~~company~~insurers or health maintenance
17 organizations seeking to do any ~~insurance~~-business in this
18 state. The reports and recommendations are confidential and
19 shall not be considered public documents.
20

21 (f) The board of directors may by majority vote make
22 recommendations to the commissioner for the detection and
23 prevention of member insurer insolvencies.

1

2 **26-42-111. Credits for assessments paid; tax offsets.**

3

4 (b) Any sums which are acquired by refund pursuant to
5 W.S. 26-42-107(h) from the association by member insurers and
6 which have been offset against premium taxes as provided in
7 subsection (a) of this section, shall be paid by the member
8 insurers to this state as required by the commissioner. The
9 association shall notify the commissioner that the refunds
10 have been made.

11

12 **26-42-112. Assessment liability; records; assets;**
13 **proceedings against impaired or insolvent insurer.**

14

15 (c) For the purpose of carrying out its obligations
16 under this act, the association is deemed to be a creditor of
17 the impaired or insolvent insurer to the extent of assets
18 attributable to covered policies or contracts reduced by any
19 amounts to which the association is entitled as assignee or
20 subrogee pursuant to W.S. ~~26-42-106(p)~~ 26-42-106(q). Assets
21 of the impaired or insolvent insurer attributable to covered
22 policies or contracts shall be used to continue all covered
23 policies or contracts and pay all contractual obligations of

1 the impaired or insolvent insurer as required by this act. As
2 used in this subsection, "assets attributable to covered
3 policies or contracts" means that proportion of the assets
4 which the reserves that should have been established for such
5 policies or contracts bear to the reserves that should have
6 been established for all policies or contracts of insurance
7 or health benefits plans written by the impaired or insolvent
8 insurer.

9

10 (d) Prior to the termination of any liquidation,
11 rehabilitation or conservation proceeding the court may
12 consider the contributions of the respective parties
13 including the association, the shareholders, contract owners,
14 certificate holders, enrollees and policy owners of the
15 insolvent insurer, and any other party with a bona fide
16 interest, in making an equitable distribution of the
17 ownership rights of the insolvent insurer. In such a
18 determination consideration shall be given to the welfare of
19 the ~~policyholders—~~owners, contract owners, certificate
20 holders and enrollees of the continuing or successor insurer.
21 No distribution to stockholders, if any, of an impaired or
22 insolvent insurer shall be made until and unless the total
23 amount of valid claims and interest on the claims of the

1 association for funds expended in carrying out its powers and
2 duties under W.S. 26-42-106 with respect to the member insurer
3 have been fully recovered by the association.

4
5 (e) If an order for liquidation or rehabilitation of an
6 a member insurer domiciled in this state is entered, the
7 receiver appointed under the order shall have a right to
8 recover on behalf of the member insurer from any affiliate
9 that controlled it, the amount of distributions other than
10 stock dividends paid by the member insurer on its capital
11 stock, made at any time during the five (5) years preceding
12 the petition for liquidation or rehabilitation subject to the
13 limitations of subsections (f), (g) and (h) of this section.

14
15 (f) No distribution pursuant to subsection (e) of this
16 section is recoverable if the member insurer shows that when
17 paid the distribution was lawful and reasonable and that the
18 member insurer did not know and could not reasonably have
19 known the distribution might adversely affect the ability of
20 the member insurer to fulfill its contractual obligations.

21
22 (g) Any person who was an affiliate that controlled the
23 member insurer at the time the distributions were paid is

1 liable up to the amount of distributions he received. Any
2 person who was an affiliate that controlled the member insurer
3 at the time the distributions were declared is liable up to
4 the amount of distributions he would have received if they
5 had been paid immediately. If two (2) or more persons are
6 liable with respect to the same distributions they are jointly
7 and severally liable.

8
9 (k) As a creditor of the impaired or insolvent insurer
10 as established in subsection (c) of this section, the
11 association and other similar associations shall be entitled
12 to receive a disbursement of assets out of the marshaled
13 assets, from time to time as the assets become available to
14 reimburse it, as a credit against contractual obligations
15 under this act. If the liquidator has not, within one hundred
16 twenty (120) days of a final determination of insolvency of
17 ~~an~~ a member insurer by the receivership court, made an
18 application to the court for the approval of a proposal to
19 disburse assets out of marshaled assets to guaranty
20 associations having obligations because of the insolvency,
21 then the association shall be entitled to make application to
22 the receivership court for approval of its own proposal to
23 disburse these assets.

1

2 **26-42-116. Prohibited advertisement of association**
3 **chapter in insurance sales; notice.**

4

5 (a) No person including ~~an~~a member insurer, agent or
6 affiliate of an insurer shall make, publish, disseminate,
7 circulate or place before the public, or cause directly or
8 indirectly to be made, published, disseminated, circulated or
9 placed before the public in any newspaper, magazine or other
10 publication, in the form of a notice, circular, pamphlet,
11 letter or poster, over any radio station or television
12 station, or in any other way, any advertisement, announcement
13 or written or oral statement which uses the existence of the
14 association of this state for the purpose of sales,
15 solicitation or inducement to purchase any form of insurance
16 or other coverage covered by this act. This subsection shall
17 not apply to the association or any other entity which does
18 not sell or solicit insurance or health maintenance
19 organization coverage.

20

21 (b) Within one hundred eighty (180) days of the
22 effective date of this act, the association shall prepare a
23 summary document describing the general purposes and current

1 limitations of the act and complying with subsection (c) of
2 this section and submit it to the commissioner for approval.
3 Sixty (60) days after receiving approval, no member insurer
4 may deliver a policy or contract described in W.S.
5 26-42-103(b) to a ~~policyholder or~~ policy owner, contract
6 owner, certificate holder or enrollee unless the document
7 provided in subsections (b) and (c) of this section is
8 delivered to the ~~policyholder or~~ policy owner, contract
9 owner, certificate holder or enrollee prior to or at the time
10 of delivery of the policy or contract except if subsection
11 (d) of this section applies. The document shall be available
12 upon request by a ~~policyholder~~ policy owner, contract owner,
13 certificate holder or enrollee. The distribution, delivery or
14 contents or interpretation of the document shall not mean
15 that either the policy or the contract or the ~~policyholder or~~
16 policy owner, contract owner, certificate holder or enrollee
17 would be covered in the event of impairment or insolvency of
18 a member insurer. The description document shall be revised
19 by the association as required by this act. Failure to receive
20 the document does not give the ~~policyholder, contract holder,~~
21 policy owner, contract owner, certificate holder or ~~insured~~
22 enrollee any greater rights than those stated in this act.

23

1 (c) The document prepared under subsection (b) of this
2 section shall contain a clear and conspicuous disclaimer on
3 its face. The commissioner shall promulgate a rule
4 establishing the form and content of the disclaimer. The
5 disclaimer shall:

6
7 (ii) Prominently warn the ~~policyholder or policy~~
8 owner, contract owner, certificate holder or enrollee that
9 the association may not cover the policy or contract or if
10 coverage is available, it will be subject to substantial
11 limitations and exclusions and conditioned on continued
12 residence in the state;

13
14 (iii) State that the member insurer and its agents
15 are prohibited by law from using the existence of the
16 association for the purpose of sales, solicitation or
17 inducement to purchase any form of insurance or health
18 maintenance organization coverage;

19
20 (iv) Emphasize that the ~~policyholder or policy~~
21 owner, contract owner, certificate holder or enrollee should
22 not rely on coverage under the association when selecting an
23 insurer or health maintenance organization;

1

2 **26-42-117. Immunity.**

3

4 Except as provided by W.S. ~~26-42-106(q)(ii)~~26-42-106(r)(ii),
5 26-42-109(b) and 26-42-112, there shall be no liability on
6 the part of and no cause of action of any nature shall arise
7 against any member insurer or its agents or employees, the
8 association or its agents or employees, members of the board
9 of directors or the commissioner or his representatives, for
10 any action or omission by them in the performance of their
11 powers and duties under this act. Immunity shall extend to
12 the participation in any organization of one (1) or more other
13 state associations of similar purposes and to any such
14 organization and its agents or employees.

15

16 **26-42-118. Prospective application.**

17

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

22

1 (c) The amendments provided in the 2019 amendments to
2 this act shall not apply to any member insurer placed under
3 an order of liquidation with a finding of insolvency prior to
4 July 1, 2019.

5

6 **Section 2.** This act is effective July 1, 2019.

7

8

(END)