ORIGINAL HOUSE
BILL NO. HB0175

ENROLLED ACT NO. 70, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
2019 GENERAL SESSION

AN ACT relating to insurance; generally modifying provisions of the Wyoming Life and Health Insurance Guaranty Association Act; amending and creating definitions; ensuring consistent usage of terms; amending provisions governing coverage provided by the association, limitations to the coverage and the association's maximum financial responsibilities; amending the powers and duties of the association; amending provisions governing association members' assessments; specifying 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)(vii), (xi)(intro), (xiii), (xv)(intro), (B), (xvii), (xviii), by creating new paragraphs (xxii) and (xxiii) and by renumbering (xxii) as (xxiv), 26-42-103(a)(i)(intro), (B)(I), (III), (ii), (iv), (v), (b), (c)(iii)(intro), (x)(intro), (B), (C), (xiii), by creating a new paragraph (xv), (d)(i), (ii)(B)(intro), (I), (III), (E)(I), (II), by creating a new subparagraph (G) and (g), 26-42-104(a)(intro) and (ii), 26-42-106(a)(i), (d)(i) through (iii), by creating a new paragraph (iv), (e)(intro), (i)(intro), (ii) through (iv), (v)(intro), (A), (C), (D), (vi), (vii), (g), (m), (p), (q), (r)(iii), (vi), by creating a new paragraph (ix), by renumbering (ix) as (x), (t) and (z)(intro), 26-42-107(d), (g)(i), (ii) and (h) through (m), 26-42-109(a)(ii), (iii) and (b), 26-42-110(a)(intro), (i)(C)(intro), (V), (b), (c) and (f), 26-42-111(b), 26-42-112(c) through (g) and (k), 26-42-116(a), (b) and (c)(ii) through (iv), 26-42-117 and 26-42-118(b) and by creating a new subsection (c) are amended to read:

26-42-102. Definitions.

(a) As used in this act:

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

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whose license or certificate of authority in this state may have been suspended, revoked, not renewed or voluntarily withdrawn, but does not include:

(xiii) "Owner" of a policy or contract, "contract owner", "policyholder" 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 member insurer. The terms "owner", "contract owner", "policyholder" and "policy owner" do not include persons with a mere beneficial interest in a policy or contract;

(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) individual, one (1) participant and one (1) policy owner or contract owner. "Premiums" shall not include:

(B) With respect to multiple ~~non-group~~ nongroup policies of life insurance owned by one (1) owner, whether the policy owner or contract 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.

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

(xviii) "Resident" means 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 member insurer that issued the policies or contracts;

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

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

(A) Accident only insurance;

(B) Credit insurance;

(C) Dental only insurance;

(D) Vision only insurance;

(E) Medicare supplement insurance;

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

(G) Disability income insurance;

(H) Coverage for on-site medical clinics;

(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.

~~(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:

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

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

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

(iv) This act shall not provide coverage to:

(A) 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; or

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

(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, enrollee, 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 policies or contracts of direct, nongroup life insurance, health insurance including health maintenance organization subscriber contracts and certificates, ~~annuity~~ annuities and supplemental ~~policies or~~ contracts to any of these 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:

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

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

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

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

(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 Subchapter XIX, Chapter 7 of Title 42 of the United States Code (commonly known as Medicaid) or any regulations issued pursuant thereto;

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

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

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

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

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

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

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

(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 paragraphs (A) through (D) of this subsection; or

(II) With respect to one (1) owner of multiple nongroup policies of life insurance, whether the policy owner or contract 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.

(G) For purposes of this act, benefits provided by a long term care rider to a life insurance policy or annuity contract shall be considered the same type of benefits as the base life insurance policy or annuity contract to which it relates.

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

26-42-104. Creation of the association.

(a) There is created a nonprofit legal entity to be known as the Wyoming life and health insurance guaranty association. All member insurers are members of the association as a condition of their authority to transact insurance or health maintenance organization business in this state. The association shall perform its functions under the plan of operation established and approved under W.S. 26-42-108 and shall exercise its powers through a board of directors provided by W.S. 26-42-105. For purposes of administration and assessment the association shall maintain the three (3) following accounts:

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

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

(a) If a member insurer is an impaired 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:

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

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

(i) Guaranty, assume, reissue or reinsure or cause to be guaranteed, assumed, reissued 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;

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

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

(iv) With respect to health benefit plans that are subject to state or federal guaranteed issue requirements, terminate the policies no later than sixty (60) days after

the entry of an order of liquidation with the approval of the commissioner.

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

(i) 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:

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

(iii) For nongroup ~~life and health insurance~~ policies and ~~annuities~~ contracts covered by the association, shall make available to each known insured, enrollee or annuitant, or owner if other than the insured or annuitant and with respect to an individual formerly an insured, enrollee or ~~formerly an~~ annuitant under a group policy or contract 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 insureds, enrollees or annuitants had a right under law or the terminated policy, contract or annuity to convert coverage to individual coverage or to continue an individual policy, contract or annuity in force until a specified age or for a specified time during which the insurer or health maintenance organization had no right unilaterally

to make changes in any provisions of the policy, contract or annuity or had a right only to make changes in premium by class;

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

(v) May adopt alternative policies or contracts 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;~~

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

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

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

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

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

(m) A deposit in this state, held pursuant to law or required by the commissioner for the benefit of creditors, including policy owners or contract 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~~ a member 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~~ owners' or

contract owners' claims related to that insolvency for which the association has provided statutory benefits by the aggregate amount of all policy owners' or contract 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.

(p) The association shall have standing to appear before any court or agency in this state with jurisdiction over an impaired or insolvent insurer 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, reissuing, 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 any person or property against whom the association may have rights through subrogation or otherwise.

(q) Any person receiving benefits under this act 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 policies, contracts or coverages. The association may require an assignment to it of the rights and cause of action by any enrollee, 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~~ that would have been available to the impaired or insolvent insurer or owner, beneficiary, enrollee or payee of a policy or contract with respect to the policy or contracts and shall include, in the case of a structured settlement annuity, any rights of the owner, beneficiary or payee of the annuity, to the extent of benefits received pursuant to this act, against a person originally or by succession responsible for the losses arising from the personal injury relating to the annuity or payment therefor, excluding any person responsible solely by reason of serving as an assignee in respect to a qualified assignment under section 130 of the Internal Revenue Code. 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.

(r) The association may:

(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 member insurers and may be carried as admitted assets;

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

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

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

(t) With respect to covered policies or contracts 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.

(z) In carrying out its duties in connection with guaranteeing, assuming, reissuing or reinsuring policies or contracts under subsection (a) or (d) of this section, the association may, subject to approval of the ~~receivership court~~ commissioner, 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:

26-42-107. Assessments.

(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 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. The amount of the Class B assessment for long term care insurance written by the impaired or insolvent insurer shall be allocated according to a methodology included in the plan of operation and approved by

the commissioner. The methodology shall provide for fifty percent (50%) of the assessment to be allocated to accident and health member insurers and fifty percent (50%) to be allocated to life and annuity member insurers.

(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 member insurer became an impaired or insolvent insurer;

(ii) If two (2) or more assessments are authorized in one (1) calendar year with respect to member 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;

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

insurer to the account. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses.

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

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

(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~~ insurer. Interest on a refund due a protesting member insurer shall be paid at the rate actually earned by the association.

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

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

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

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

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

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

26-42-110. Prevention of insolvencies.

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

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

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

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

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

(c) The board of directors may by majority vote make reports and recommendations to the commissioner upon any

matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer or germane to the solvency of any ~~company~~ insurers or health maintenance organizations seeking to do any ~~insurance~~ business in this state. The reports and recommendations are confidential and shall not be considered public documents.

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

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

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

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

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

policies or contracts" means that proportion of the assets which the reserves that should have been established for such policies or contracts bear to the reserves that should have been established for all policies or contracts of insurance or health benefits plans written by the impaired or insolvent insurer.

(d) Prior to the termination of any liquidation, rehabilitation or conservation proceeding the court may consider the contributions of the respective parties including the association, the shareholders, contract owners, certificate holders, enrollees and policy owners of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of the insolvent insurer. In such a determination consideration shall be given to the welfare of the ~~policyholders~~ owners, contract owners, certificate holders and enrollees of the continuing or successor insurer. No distribution to stockholders, if any, of an impaired or insolvent insurer shall be made until and unless the total amount of valid claims and interest on the claims of the association for funds expended in carrying out its powers and duties under W.S. 26-42-106 with respect to the member insurer have been fully recovered by the association.

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

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

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

(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~~ a member 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.

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

ENROLLED ACT NO. 70, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
2019 GENERAL SESSION

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

(b) Within one hundred eighty (180) days of the effective date of this act, the association shall prepare a summary document describing the general purposes and current limitations of the act and complying with subsection (c) of this section and submit it to the commissioner for approval. Sixty (60) days after receiving approval, no member insurer may deliver a policy or contract described in W.S. 26-42-103(b) to a ~~policyholder or~~ policy owner, contract owner, certificate holder or enrollee unless the document provided in subsections (b) and (c) of this section is delivered to the ~~policyholder or~~ policy owner, contract owner, certificate holder or enrollee prior to or at the time of delivery of the policy or contract except if subsection (d) of this section applies. The document shall be available upon request by a ~~policyholder~~ policy owner, contract owner, certificate holder or enrollee. The distribution, delivery or contents or interpretation of the document shall not mean that either the policy or the contract or the ~~policyholder or~~

policy owner, contract owner, certificate holder or enrollee would be covered in the event of impairment or insolvency of a member insurer. The description document shall be revised by the association as required by this act. Failure to receive the document does not give the ~~policyholder, contract holder,~~ policy owner, contract owner, certificate holder or ~~insured~~ enrollee any greater rights than those stated in this act.

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

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

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

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

26-42-117. Immunity.

ENROLLED ACT NO. 70, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
2019 GENERAL SESSION

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

26-42-118. Prospective application.

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

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

ORIGINAL HOUSE
BILL NO. HB0175

ENROLLED ACT NO. 70, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
2019 GENERAL SESSION

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

(END)

_____ _____
Speaker of the House President of the Senate

_____
Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

_____
Chief Clerk