MONTANA

INSURANCE GUARANTY ASSOCIATION ACT

33-10-101. Short title, purpose, scope, and construction.

(1) This part shall be known and may be cited as the "Montana Insurance Guaranty Association Act."

(2) The purpose of this part is to provide a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies, and to provide an association to assess the cost of such protection among insurers.

(3) This part shall apply to all kinds of direct insurance, except life, title, surety, disability, credit, mortgage guaranty, and ocean marine insurance.

(4) This part shall be liberally construed to effect the purpose under subsection (2) which shall constitute an aid and guide to interpretation.

History: En. §§ 1,2,3,4, Ch. 63, L. 1971; R.C.M. 1947, 40-5701, 40-5702, 40-5703, 40-5704; amd. § 3, Ch. 139, L. 1987.

33-10-102. Definitions.

As used in this part, the following definitions apply:

(1) "Association" means the Montana insurance guaranty association created under 33-10-103.

(2)(a)"Covered claim" means an unpaid claim, including one for unearned premiums, that arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this part applies issued by an insurer, if the insurer becomes an insolvent insurer after July 1, 1971 and:

(i) the claimant or insured is a resident of this state at the time of the insured event; or

(ii) the property from which the claim arises is permanently located in this state.

(b) Covered claim does not include any amount:

(i) awarded as punitive or exemplary damages;

(ii) sought as a return of premium under a retrospective rating plan; or

(iii) due a reinsurer, insurer, insurance pool, or underwriting association as subrogation recoveries, reinsurance recoveries, contribution, or indemnification. A reinsurer, insurer, insurance pool, or underwriting association may not assert a claim for any amount against the insured of the insolvent insurer other than to the extent that the claim exceeds the policy limits of the insolvent insurer’s policy.

(3) "Insolvent insurer" means an insurer:

(a) authorized to transact insurance in this state either at the time the policy was issued or when the insured event occurred; and

(b) against whom an order of liquidation has been entered with a finding of insolvency by a court of competent jurisdiction in the insurer’s state of domicile.

(4) "Member insurer" means a person who:

(a) writes any kind of insurance to which this part applies under 33-10-101 (3), including the exchange of reciprocal or interinsurance contracts; and

(b) is licensed to transact insurance in this state.

(5)(a)"Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this part applies, less return premiums on the policies and

dividends paid or credited to policyholders of policies to which this part applies.

(b) Net direct written premiums does not include premiums on contracts between insurers or reinsurers.

(6) "Person" means any individual, corporation partnership, association, or voluntary organization.

History: En. § 5, Ch. 63, L. 1971; R.C.M. 1947, 40-5705(1), (3) thru (7); amd. § 24, ch. 472, L. 1999; amd. § 35, Ch. 227, L. 2001; amd. § 17, Ch. 380 (H.B. 0145), L. 2003.

33-10-103. Creation of the association.

There is created a nonprofit unincorporated legal entity to be known as the Montana Insurance Guaranty Association. All insurers defined as member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under a plan of operation established and approved under section 33-10-106 and shall exercise its powers through a board of directors established under section 33-10-104.

History: En. § 6, Ch. 63, L. 1971; R.C.M. 1947, 40-5706.

33-10-104. Board of directors - commissioner approval - compensation.

(1) The board of directors of the association consists of not less than seven nor more than nine persons serving terms as established in the plan of operation. Two of the members must be appointed from the public at large by the commissioner. The other members of the board must be member insurers and must be selected by member insurers subject to the approval of the commissioner. Vacancies on the board must be filled for the remaining period of the term in the same manner as initial appointments.

(2) In approving selections to the board, the director shall consider among other things whether all member insurers are fairly represented.

(3) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors.

History: En. § 7, Ch. 63, L. 1971; R.C.M. 1947, 40-5707 (part); amd. § 1, ch. 65, L. 1995; Laws 2013, ch. 169, § 10, eff. April 9, 2013.

33-10-105. General powers and duties.

(1) Subject to subsection (2), the association:

(a)(i) is obligated to the extent of the covered claims existing prior to the determination of insolvency and arising within 30 days after the determination of insolvency or before the policy expiration date if less than 30 days after the determination or before the insured replaces the policy or causes its cancellation if the insured does so within thirty (30) days of the determination;

(ii) is obligated under subsection (1)(a)(i) only for that amount of each covered claim that does not exceed $300,000, except that:

(A) the association shall pay an amount not exceeding $10,000 for each policy for a covered claim for the return of unearned premium; and

(B) the association shall pay the full amount of any covered claim arising out of a workers' compensation or excess workers' compensation policy; and

(iii) is not obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises;

(b) is considered the insurer to the extent of its obligation on the covered claims and to that extent has all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent;

(c) shall investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims and may review settlements, releases and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which the settlements, releases and judgments may be properly contested;

(d) shall notify persons as the commissioner directs under 33-10-109 (2)(a), including the department of labor and industry for workers' compensation claims;

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

(f) shall reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this part.

(2)(a) Except as provided in subsection (2) (b), a covered claim may not include a claim filed with the association or a liquidator for protection under the insured's policy for losses incurred but not reported and may not include a claim filed with the association after the earlier of:

(i) 36 months after the date of the order of liquidation, or

(ii) the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer.

(b)(i) If the claimant learns that the claimant's condition resulted from an occupational disease compensable under Title 39, chapter 71, within 36 months of the order of liquidation or the final date set by the court for the filing of claims against the liquidator, the claimant shall file a claim, which must be paid under the terms of subsection (1) (a). If the claimant does not learn of a compensable condition under Title 39, chapter 71, until after the time specified in either subsection (2) (a) (i) or (2) (a) (ii) has expired, the claimant shall file a claim with the association within 1 year from the date the claimant knew or should have known that the claimant's condition resulted from an occupational disease.

(ii) Notice by a claimant or insurer to the department of labor and industry of a workers' compensation claim or an occupational disease claim pursuant to Title 39, chapter 71, constitutes notice to the liquidator for the purposes of workers' compensation or occupational disease claims.

(3) The association may:

(a) employ or retain persons necessary to handle claims and perform other duties of the association;

(b) borrow funds necessary to effect the purposes of this part in accord with the plan of operation;

(c) sue or be sued;

(d) negotiate and become a party to contracts necessary to carry out the purpose of this part;
(e) perform other acts necessary or proper to effectuate the purpose of this part;
(f) refund to the member insurers in proportion to the contribution of each member insurer to the association that amount by which the assets of the association exceed the liabilities if, at the end of any calendar year, the board of directors finds that the assets of the association exceed the liabilities of the association as estimated by the board of directors for the coming year.

History: En. § 8, Ch. 63, L. 1971; R.C.M. 1947, 40-5708 (part); amd. § 53, ch. 596, L. 1993; amd. § 1, Ch. 29 (H.B. 168), L. 2005, eff. 3-18-05; amd. § 1, Ch. 195 (H.B. 653), L. 2005 and applies to all liquidations commenced on or after the effective date of this act; § 41, Ch. 416, L. 2005; amended by Laws 2015, ch. 63, § 13, eff. Feb. 27, 2015.

33-10-106. Plan of operation -- delegation to other organization.

(1)(a) The association shall submit to the commissioner a plan of operation and any amendments to the plan of operation that are necessary or suitable to ensure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments to the plan become effective upon approval in writing by the commissioner.

(b) If at any time the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate reasonable rules as are necessary or advisable to effectuate the provisions of this part. The rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation must:

(a) establish the procedures under which all the powers and duties of the association under 33-10-105 and 33-10-116 will be performed;
(b) establish procedures for handling assets of the association;
(c) establish the amount and method of reimbursing members of the board of directors under 33-10-104;
(d) establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims;
(e) establish regular places and times for meetings of the board of directors;
(f) establish procedures for records to be kept of all financial transactions of the association, its insurance producers, and the board of directors;
(g) provide that any member insurer aggrieved by any final action or decision of the association may appeal to the commissioner within 30 days after the action or decision;
(h) establish the procedures under which selections for the board of directors will be submitted to the commissioner;
(i) contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under 33-10-105(3)(b) and 33-10-116, are delegated to a corporation, association or other organization that performs or will perform functions similar to those

of the association or its equivalent in two or more states. A corporation, association, or organization must be reimbursed as a servicing facility would be reimbursed and must be paid for its performance of any other functions of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this part.

History: En. § 9, Ch. 63, L. 1971; R.C.M. 1947, 40-5709 (part); amd. § 1, Ch. 713, L. 1989; amd. Sec. 35, Ch. 44, L. 2007.

33-10-107 Tax exemption.

The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions except taxes levied on real or personal property.

History: En. § 15, Ch. 63, L. 1971; R.C.M. 1947, 40-5715.

33-10-108 Prevention of insolvencies - directors' and commissioner's action.

(1) It is the duty of the board of directors, upon majority vote, to notify the commissioner of any information indicating that any member insurer may be insolvent or in a financial condition hazardous to the policyholders or the public.

(2) The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer that the board in good faith believes may be in a financial condition hazardous to the policyholders or the public. Within 30 days of the receipt of the request, the commissioner shall begin the examination. The examination may be conducted as a national association of insurance commissioners examination or may be conducted by persons that the commissioner designates. The cost of the examination must be paid by the association, and the examination report must be treated as are other examination reports. The examination report may not be released to the board of directors prior to its release to the public, but this does not preclude the commissioner from complying with subsection (3). The commissioner shall notify the board of directors when the examination is completed. The request for an examination must be kept on file by the commissioner, but it may not be open to public inspection prior to the release of the examination report to the public.

(3) It is the duty of the commissioner to report to the board of directors when the commissioner has reasonable cause to believe that any member insurer examined or being examined at the request of the board of directors may be insolvent or in a financial condition hazardous to the policyholders or the public.

(4) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or supervision of any member insurer. The reports and recommendations may not be considered public documents.

(5) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

(6) The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and

causes of the insolvency, based on the information available to the association, and submit the report to the commissioner.

History: En. § 13, Ch. 63, L. 1971; R.C.M. 1947, 40-5713; amd. § 140, Ch. 575, L. 1981; amended by Laws 2009, ch. 56, § 1177, eff. Oct. 1, 2009.

33-10-109. Notice of insolvencies - suspension - other powers and duties of commissioner.

(1) The commissioner shall:

(a) notify the association of the existence of an insolvent insurer not later than 3 days after the commissioner receives notice of the determination of the insolvency.

(b) upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer.

(2) The commissioner may:

(a) require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this part. The notification must be by mail at their last-known addresses, where available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation is sufficient.

(b) suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer that fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a fine on any member insurer that fails to pay an assessment when due. The fine may not exceed five per cent (5%) of the unpaid assessment a month, except that a fine amy not be less than one hundred dollars ($100) a month.

(c) revoke the designation of any servicing facility if the commissioner finds claims are being handled unsatisfactorily.

(3) Any final action or order of the commissioner under this part must be subject to judicial review in a court of competent jurisdiction.

History: En. § 10, Ch. 63, L. 1971; R.C.M. 1947, 40-5710; amended by Laws 2009, ch. 56, § 1178, eff. Oct. 1, 2009.

33-10-110 Immunity.

There is not any liability on the part of and a cause of action of any nature may not be brought against any member insurer or its agents or employees, the association or the association's agents or employees, the board of directors, or the commissioner or the commissioner's representatives for any action taken by them in the performance of their powers and duties under this part.

History: En. § 17, Ch. 63, L. 1971; R.C.M. 1947, 40-5717, amd § 1, Ch. 713, L. 1989; amd. § 2, Ch. 29 (H.B. 168), L. 2005, eff. 3-18-2005.

33-10-111 Stay of proceedings - reopening of default judgments.

(1) All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in this state must be stayed for 6 months from the date the insolvency is determined or an ancillary proceeding is instituted in the state, whichever is later, or must be stayed for any additional time as may be determined by the court in order to

permit proper defense by the association of all pending causes of action.

(2) As to any covered claims arising from a judgment under any decision, verdict, or finding based on the default of the insolvent insurer or its failure to defend an insured, the association either on its own behalf or on behalf of the insured may apply to have the judgment, order, decision, verdict, or finding set aside by the same court or administrator that made the judgment, order, decision, verdict, or finding and must be permitted to defend against the claim on the merits.

History: En. § 18, Ch. 63, L. 1971; R.C.M. 1947, 40-5718; amd. § 54, ch. 596, L. 1993:

33-10-112 Examination of association.

The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit, not later than March 30 of each year, a financial report for the preceding calendar year in a form approved by the commissioner.

History: En. § 14, Ch. 63, L. 1971; R.C.M. 1947, 40-5714.

33-10-113 Claims - notice.

Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its insurance producer, and a list of such claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator.

History: En. § 9, Ch. 63, L. 1971; R.C.M. 1947, 40-5709 (part); amd. § 1, Ch. 713, L. 1989.

33-10-114 Claims - effect as to insured and receiver.

(1) Any person recovering under this part is considered to have assigned the person's rights under the policy to the association to the extent of the person's recovery from the association. Every insured or claimant seeking the protection of this part shall cooperate with the association to the same extent that the person would have been required to cooperate with the insolvent insurer. The association does not have a cause of action against the insured of the insolvent insurer for any sums it has paid out except causes of action that the insolvent insurer would have had if the sums had been paid by the insolvent insurer. In the case of an insolvent insurer operating on a plan with assessment liability, payments of claims of the association may not operate to reduce the liability of insureds to the receiver, liquidator, or statutory successor for unpaid assessments.

(2) The association has the right to recover from the following persons the amount of any "covered claim" paid on behalf of the person pursuant to this part:

(a) any insured whose net worth, on December 31 of the year preceding the date the insurer becomes an insolvent insurer, exceeds $50 million and whose liability obligations to other persons are satisfied in whole or in part by payments made under this part; and

(b) any person who is an affiliate of the insolvent insurer and whose liability obligations to other persons are satisfied in whole or in part by payments made under this part.

(3) The receiver, liquidator, or statutory successor of an insolvent insurer is bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant the claims priority equal to that which the claimant would have been entitled in the absence of this part against the assets of the

insolvent insurer. The expenses of the association or similar organization in handling claims must be accorded the same priority as the liquidator's expenses.

(4) The association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association which shall preserve the rights of the association against the assets of the insolvent insurer.

History: En. § 11, Ch. 63, L. 1971; R.C.M. 1947, 40-5711; amd. § 55, ch 596, L. 1993.

33-10-115 Recovery - sequence - nonduplication.

(1) Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer that is also a covered claim must be required to exhaust the person's right under the policy. Any amount payable on a covered claim under this part must be reduced by the amount of any recovery under the insurance policy.

(2) Any person having a claim that may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured, except that if it is a first party claim for damage to property with a permanent location, the person shall seek recovery first from the association of the location of the property, and if it is a workers' compensation claim, the person shall seek recovery first from the association of the residence of the claimant. Any recovery under this part must be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

History: En. § 12, Ch. 63, L. 1971; R.C.M. 1947, 40-5712; amended by Laws 2009, ch. 56, § 1179, eff. Oct. 1, 2009.

33-10-116 Assessment.

(1) The association shall assess insurers amounts necessary to pay the obligations of the association under 33-10-105(1)(a) subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examination under 33-10-108, and other expenses authorized by this part.

(2) The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year bear to the net direct written premiums of all member insurers for the preceding calendar year. Each member insurer shall be notified of the assessment not later than 30 days before it is due. No member insurer may be assessed in any year an amount greater then 2% of that member insurer's net direct written premiums for the preceding calendar year.

(3) If the maximum assessment together with the other assets of the association does not provide in any one year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available.

(4) The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact

insurance.

(5) Each member insurer may set off against any assessment authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer.

History: En. § 8, Ch. 63, L. 1971; R.C.M. 1947, 40-5708(1)(c).

33-10-117. Recognition of assessments in rates.

The rates and premiums charged for insurance policies to which this part applies shall include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member insurer less any amounts returned to the member insurer by the association, and such rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer.

History: En. § 16, Ch. 63, L. 1971; R.C.M. 1947, 40-5716