

ARTICLE 42
Life and Health Insurance Guaranty Fund

Section

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59A-42-1. Short title.

This article [59A-42-1 to 59A-42-16 NMSA 1978] may be cited as the "Life and Health Insurance Guaranty Law".

History: Laws 1984, ch. 127, § 750.

59A-42-2. Purpose.

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

History: Laws 1984, ch. 127, § 751.

59A-42-3. Scope of article.

A. Chapter 59A, Article 42 NMSA 1978 applies to direct life insurance policies, health insurance policies, annuity contracts and contracts supplemental to life and health insurance policies and annuity contracts, issued or assumed by an authorized insurer, or assumed by an unauthorized insurer directly or indirectly from an authorized insurer.

B. Chapter 59A, Article 42 NMSA 1978 shall not apply as to:

- (1) that portion or part of a variable life insurance or variable annuity contract not guaranteed by an insurer;
- (2) that portion or part of any policy or contract under which the risk is borne by the policyholder;
- (3) any policy or contract or part thereof assumed by the impaired or insolvent insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued to policyholders;
- (4) any such policy or contract issued or assumed by:

- (a) fraternal benefit societies;
 - (b) health care plans whether or not nonprofit;
 - (c) prepaid dental plans;
 - (d) health maintenance organizations; or
 - (e) any insurer which was insolvent or unable to fulfill its contractual obligations as of April 9, 1975; or
- (5) any policy or contract otherwise excluded under provisions of that article.

History: Laws 1984, ch. 127, § 752; 1993, ch. 320, § 98.

59A-42-4. Definitions.

As used in Chapter 59A, Article 42 NMSA 1978:

- A. "account" means any one of the three accounts created by Section 59A-42-5 NMSA 1978;
- B. "association" means the life insurance guaranty association;
- C. "covered policy" means any policy or contract within the scope of Chapter 59A, Article 42 NMSA 1978;
- D. "contractual obligation" means any obligation under covered policies;
- E. "insolvent insurer" means an insurer:
- (1) authorized to transact in this state insurance covered by Chapter 59A, Article 42 NMSA 1978 either at the time the policy was issued or when the insured event occurred; and
 - (2) against which an order of liquidation with a finding of insolvency has been entered after the effective date of the Insurance Code by a court of competent jurisdiction in the insurer's state of domicile, or of this state under the provisions of Section 59A-41-30 NMSA 1978, and which order of liquidation has not been stayed or been the subject of a writ of supersedeas or other comparable order;
- F. "member insurer" means any person who:
- (1) holds a certificate of authority to transact in this state any kind of insurance to which Chapter 59A, Article 42 NMSA 1978 applies, including any insurer whose certificate of authority in this state may have been suspended, revoked, not renewed or voluntarily withdrawn; or
 - (2) assumes directly or indirectly from an insurer described in Paragraph (1) of this subsection a contract or policy of insurance to which Chapter 59A, Article 42 NMSA 1978 applies, or issues an assumption certificate pertaining to such a contract or policy of insurance;
- G. "premiums" means direct gross insurance premiums and annuity considerations written on covered policies, less return premiums and considerations thereon and dividends paid or credited to policyholders on such direct business. "Premiums" does not include premiums and
- H. "person" means any individual, corporation, partnership, association or voluntary organization; and
- I. "resident" means any person who resides in this state at the time the insolvency is determined and to whom contractual obligations are owed.

History: Laws 1984, ch. 127, § 753; 1993, ch. 320, § 99.

59A-42-5. Organization of association; participation.

All insurers shall organize and remain members of the association as a condition of their authority to transact insurance business covered by Section 752 [59A-42-3 NMSA 1978] of this article. The association may take any appropriate form of legal entity available under the laws of this state and approved by the superintendent. The association shall perform its functions under the plan of operation established and approved pursuant to this article and shall exercise its powers through a board of directors. For purposes of assessment and administration the association shall maintain three (3) accounts:

- A. the health insurance account;
- B. the life insurance account; and
- C. the annuity account.

History: Laws 1984, ch. 127, § 754.

59A-42-6. Board of directors.

A. The board of directors of the association shall consist of not less than five nor more than nine persons serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the superintendent. Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members, subject to approval of the superintendent.

B. In approving selections the superintendent shall consider among other things whether all member insurers are fairly represented.

C. Members of the board may be reimbursed from the assets of the association for any reasonable and necessary expenses incurred by them as members of the board of directors, but the amount of such reimbursement shall not exceed the guidelines provided by the approved plan of operation.

History: Laws 1984, ch. 127, § 755; 1993, ch. 320, § 100.

59A-42-7. Powers and duties of association.

A. If a member insurer is insolvent, the association, with respect to domestic insurers or covered policies of residents issued by foreign or alien insurers, shall, subject to any conditions imposed by the association other than those which impair the contractual obligations of the insolvent insurer and subject to approval of the superintendent:

- (1) guarantee or reinsure or cause to be guaranteed or reinsured, all the covered policies of the insolvent insurer;
- (2) provide money, pledges, notes, guarantees or other means to assure payment of the contractual obligations of the insolvent insurer, or
- (3) loan money to the insolvent insurer.

If the association fails to act within a reasonable time, the superintendent shall assume the powers and duties of the association and cause it to act.

B. The association may take action as provided in Subsection A of this section prior to a member insurer being declared insolvent by a court where the insurer may be potentially unable to fulfill its contractual obligations and the superintendent has so reported that status under Section 760 [59A-42-11 NMSA 1978] of this article.

C. The association shall have no liability under this section for any covered policy of a foreign or alien insurer whose domiciliary jurisdiction or state of entry provides, by statute or regulation,

for residents of this state protection substantially similar to that provided by this article for residents of other states.

D. The association may:

- (1) employ or retain persons or designate servicing facilities necessary to handle claims and perform other duties of the association;
- (2) borrow funds necessary to effect the purposes of this article in accord with the plan of operation;
- (3) sue or be sued and intervene in any court having jurisdiction over an insolvent insurer;
- (4) negotiate and become a party to contracts necessary to carry out the purpose of this article;
- (5) perform other acts necessary or proper to effectuate the purpose of this article; and
- (6) refund to the member insurers in proportion to the contribution of each member insurer to that account that amount by which the assets of the account exceed the liabilities if, at the end of any calendar year, the board of directors finds that the assets of the association in any account exceed the liabilities of that account as estimated by the board of directors for the coming year.

E. Any person receiving benefits under this article shall be deemed to have assigned his rights under the covered policy to the association to the extent of the benefits received whether the benefits are payments of contractual obligations or continuation of coverage. The association may require an assignment to it of such rights by any payee, beneficiary, insured or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this article. The association shall be subrogated to these rights against the assets of any insolvent insurer. The subrogation rights shall have the same priority against the assets of the insolvent insurer as that possessed by the person entitled to receive benefits under this article.

F. The contractual obligations of the insolvent insurer for which the association becomes or may become liable shall be as great as but no greater than the contractual obligations would have been in the absence of insolvency, but the aggregate liability of the association shall not exceed one hundred thousand dollars (\$100,000) in cash or cash surrender value, or three hundred thousand dollars (\$300,000) for all benefits, including cash or cash surrender values, with respect to any one life or such higher amounts as the superintendent may set by regulation.

History: Laws 1984, ch. 127, § 756.

59A-42-8. Assessments.

A. For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such times and for such amounts as the board finds necessary. The board shall collect the assessments after thirty (30) days' written notice to the member insurers before payment is due.

B. There are three (3) classes of assessments:

- (1) class A assessments shall be made for the purpose of meeting administrative costs and other general expenses not related to a particular insolvent insurer;
- (2) class B assessments shall be made to the extent necessary to carry out the powers and duties of the association with regard to domestic insurers; and
- (3) class C assessments shall be made to the extent necessary to carry out the powers and duties of the association with regard to foreign and alien insurers.

C. Computations of assessments are as follows:

(1) the amount of any class A assessment for each account shall be determined by the board. The amount of any class B or C assessment shall be divided among the accounts in the proportion that the premiums received by the insolvent insurer on the policies covered by each account bear to the premiums received by such insurer on all covered policies;

(2) class C 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 on policies covered by each account bear to such premiums received on business in this state by all assessed member insurers;

(3) class B assessments for each account shall be made separately for each state in which the insolvent domestic insurer was authorized to transact insurance at any time, in the proportion that the premiums received on business in that state by the insolvent insurer on policies covered by such account bear to such premiums received in all the states. The assessments against member insurers shall be in the proportion that the premiums received on business in each state by each assessed member insurer on policies covered by each account bear to such premiums received on business in each state by all assessed member insurers;

(4) assessments for funds to meet the requirements of the association with respect to an insolvent insurer shall not be made until necessary to implement the purposes of this article. Classification of assessments under Subsection B of this section and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

D. The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. The total of all assessments upon a member insurer for each account shall not in any one calendar year exceed two percent of the member insurer's premiums in this state on the policies covered by the account.

E. In the event an assessment against a member insurer is abated or deferred in whole or in part because of the limitations set forth in Subsection D of this section, the amount by which the assessment is abated or deferred shall be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. If the maximum assessment, together with the other assets of the association in any account, does not provide in any one year in any account an amount sufficient to carry out the responsibilities of the association [association], the necessary additional funds shall be assessed as soon thereafter as permitted by this article.

F. The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each member insurer to that account, 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, including assets accruing from net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses.

G. The association shall issue to each insurer paying an assessment under this article a certificate of contribution in a form prescribed by the superintendent for the amount paid. All outstanding certificates are of equal dignity and priority without reference to amounts or dates of issue.

H. The accumulation of class A assessments beyond the amount necessary to meet current obligations under this article shall be maintained as trust funds deposited in one or more federally insured financial institutions. These funds may be securely invested so as to generate income. The superintendent shall be a party to the deposit, and no withdrawal shall be made without his authorization, either specifically or on a standing basis pursuant to a written plan.

I. As used in this section, "premiums" means those for the calendar year preceding the determination of impairment.

History: Laws 1984, ch. 127, § 757.

59A-42-9. Plan of operation.

A. The association shall submit to the superintendent a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the superintendent.

B. If the association at any time fails to submit suitable amendments to the plan, the superintendent shall, after notice and hearing, adopt and promulgate reasonable rules necessary or advisable to effectuate the provisions of this article. The rules shall continue in force until modified by the superintendent or superseded by amendments submitted by the association and approved by the superintendent.

C. All member insurers shall comply with the plan of operation.

D. The plan of operation, among other things, shall establish all procedures for conducting the business of the association, for handling its assets, for the receiving of claims, for the keeping of records and for the conduct of other activities necessary for the execution of the powers and duties of the association.

E. The plan of operation may provide that any or all powers and duties of the association, except those under Subsections A and B of Section 756 [59A-42-7 NMSA 1978] of this article, are delegated to a corporation, association or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two (2) or more states. Such a corporation, association or organization shall be reimbursed as a servicing facility would be reimbursed and shall 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 superintendent, 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 article.

History: Laws 1984, ch. 127, § 758.

59A-42-10. Duties and powers of the superintendent.

A. The superintendent shall:

(1) notify the association of the existence of an insolvent insurer not later than three (3) days after he receives notice of the determination of the insolvency; and

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

B. The superintendent may:

(1) 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 article. The notification shall be by mail at their last known address, where available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation shall be sufficient;

(2) suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the superintendent may levy a fine on any member insurer which fails to pay an assessment when due. Such fine shall not exceed five percent of the unpaid assessment per month, except that no fine shall be less than one hundred dollars (\$100) a month; and

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

History: Laws 1984, ch. 127, § 759.

59A-42-11. Prevention of insolvencies.

To aid in the detection and prevention of insurance insolvencies:

A. the board of directors shall, upon majority vote, notify the superintendent of any information indicating any member insurer may be insolvent or in a financial condition where it will be unable to fulfill its contractual obligations and hazardous to the policyholders or the public;

B. the board of directors may, upon majority vote, request that the superintendent order an examination of any member insurer which the board in good faith believes may be in such financial condition. Within thirty (30) days of the receipt of the request, the superintendent shall begin the examination. The examination may be conducted as a National Association of Insurance Commissioners examination or may be conducted by persons the superintendent designates. The cost of examination shall be paid by the association and the examination report shall be treated as other examination reports. In no event shall the examination report be released to the board of directors prior to its release to the public, but this shall not preclude the superintendent from complying with Subsection C of this section. The superintendent shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the superintendent but it shall not be open to public inspection prior to the release of the examination report to the public;

C. the superintendent shall report to the board of directors when he has reasonable cause to believe that any member insurer examined or being examined at the request of the board of directors may be insolvent, potentially insolvent or in a financial condition hazardous to the policyholders or the public;

D. the board of directors may, upon majority vote, make reports and recommendations to the superintendent upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer. The reports and recommendations shall not be considered public documents;

E. the board of directors may, upon majority vote, make recommendations to the superintendent for the detection and prevention of insurers' insolvencies; and

F. the board of directors shall, at the conclusion of any insurance insolvency in which the association was obligated to pay covered contractual obligations or claims, prepare a report on the history and causes of the insolvency based on information available to the association and submit the report to the superintendent.

History: Laws 1984, ch. 127, § 760.

59A-42-12. Appeals.

A. A member insurer may appeal to the superintendent from an action of the board of directors of the association by filing with the superintendent a notice of appeal within thirty days after the action appealed from.

B. A final order of the superintendent on appeal is subject to judicial review by an action in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: Laws 1984, ch. 127, § 761; 1998, ch. 55, § 66; 1999, ch. 265, § 69.

59A-42-13. Miscellaneous provisions.

A. Nothing in this article shall be construed to reduce the liability for unpaid assessments of the insureds of an insolvent insurer operating under a plan with assessment liability.

B. Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties. Records of the negotiations or meetings shall be made public only upon the termination of a liquidation, rehabilitation or conservation proceeding involving the insolvent insurer, upon the termination of the insolvency of the insurer or upon the order of a court of competent jurisdiction. Nothing in this subsection limits the duty of the association to render a report of its activities under Section 763 [59A-42-14 NMSA 1978] of this article.

C. Prior to the termination of any liquidation, rehabilitation or conservation proceeding the court may take into consideration the contributions of the respective parties, including the association, the shareholders and policyowners 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 the welfare of the policyholders of the continuing or successor insurer.

D. No distribution to stockholders, if any, of an insolvent insurer shall be made until the total amount of assessments levied by the association with respect to the insurer has been fully recovered by the association.

E. It is a prohibited unfair trade practice for any person to make use in any manner of the protection afforded by this article in the sale of insurance.

History: Laws 1984, ch. 127, § 762.

59A-42-14. Examination of association; annual report.

The association is subject to examination and regulation by the superintendent. The board of directors shall submit to the superintendent, not later than May 1 each year, a financial report for the preceding calendar year in form approved by the superintendent and a report of its activities during the preceding calendar year.

History: Laws 1984, ch. 127, § 763.

59A-42-15. Immunity.

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 superintendent or his representatives for any action taken by them in the performance of their powers and duties under this article.

History: Laws 1984, ch. 127, § 764.

59A-42-16. Stay of proceedings; reopening default judgments.

All proceedings in which the insolvent insurer is a party in any court in this state shall be stayed sixty (60) days from the date an order of liquidation, rehabilitation or conservation is final to permit proper legal action by the association on any matters germane to its powers or duties. As to a judgment under any decision, order, verdict or finding based on the default, the association may apply to have the judgment set aside by the same court that made the judgment and shall be permitted to defend against the suit on the merits.

History: Laws 1984, ch. 127, § 765.