

CHAPTER 26.1-42.1 INSURANCE GUARANTY ASSOCIATION

26.1-42.1-01. Scope. This chapter applies to every kind of direct insurance, except:

1. Life, annuity, health, or disability insurance;
2. Mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risks;
3. Fidelity or surety bonds or any other bonding obligations;
4. Credit insurance, vendors' single interest insurance, collateral protection insurance, or any similar insurance protecting the interests of a creditor arising out of a creditor-debtor transaction;
5. Insurance of warranties or service contracts, including insurance that provides for the repair, replacement, or service of goods or property; for indemnification for repair, replacement, or service; for the operational or structural failure of the goods or property due to a defect in materials, workmanship, or normal wear and tear; or for reimbursement for the liability incurred by the issuer of agreements or service contracts that provide these benefits;
6. Title insurance;
7. Ocean marine insurance;
8. Any transaction or combination of transactions between a person, including affiliates of such person, and an insurer, including affiliates of that insurer, which involves the transfer of investment or credit risk unaccompanied by transfer of insurance risk; or
9. Any insurance provided by or guaranteed by government.

26.1-42.1-02. Definitions. As used in this chapter:

1. "Affiliate" means a person who directly, or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with an insolvent insurer on December thirty-first of the year immediately following the date the insurer becomes an insolvent insurer.
2. "Association" means the North Dakota insurance guaranty association created under section 26.1-42.1-03.
3. "Claimant" means any insured making a first-party claim or any person instituting a liability claim, provided that no person who is an affiliate of the insolvent insurer may be a claimant.
4. "Control" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing at least ten percent of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact.

5. "Covered claim" means an unpaid claim, including an unpaid claim for unearned premiums, submitted by a claimant, that arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this chapter applies, issued by an insurer, if this insurer becomes an insolvent insurer after August 1, 1999, and the claimant or insured is a resident of this state at the time of the insured event; provided that for entities other than an individual, the residence of a claimant, insured, or policyholder is the state in which the entity's principal place of business is located at the time of the insured event; or the claim is a first-party claim for damage to property with a permanent location in this state. The term does not include:
 - a. Any amount awarded as punitive or exemplary damages;
 - b. Any amount sought as a return of premium under any retrospective rating plan;
 - c. Any amount due any reinsurer, insurer, insurance pool, or underwriting association as subrogation recoveries, as reinsurance recoveries, as contribution, as indemnification, or otherwise. A claim under this subdivision for any amount due any reinsurer, insurer, insurance pool, or underwriting association may not be asserted against a person insured under a policy issued by an insolvent insurer other than to the extent the claim exceeds the association obligation limitations set forth in section 26.1-42.1-05;
 - d. Workforce safety and insurance, including any contract indemnifying an employer who pays compensation directly to employees;
 - e. Any first-party claim by an insured whose net worth exceeds ten million dollars on December thirty-first of the year immediately following the date the insurer becomes an insolvent insurer; provided that an insured's net worth on that date is deemed to include the aggregate net worth of the insured and all of the insured's subsidiaries as calculated on a consolidated basis; and
 - f. Any first-party claim by an insured that is an affiliate of the insolvent insurer.
6. "Insolvent insurer" means an insurer licensed to transact insurance in this state at the time the policy was issued or when the insured event occurred, and against whom a final order of liquidation was entered after August 1, 1999, with a finding of insolvency by a court of competent jurisdiction in the insurer's state of domicile.
7. "Member insurer" means any person, except a county mutual insurance company, that writes any kind of insurance to which this chapter applies under section 26.1-42.1-01, including the exchange of reciprocal or interinsurance contracts and that is licensed to transact insurance in this state. An insurer shall cease to be a member insurer on the day following the termination or expiration of the insurer's license to transact the kinds of insurance to which this chapter applies, however the insurer remains liable as a member insurer for every obligation, including an obligation for assessments levied before the termination or expiration of the insurer's license and assessments levied after the termination or expiration, which relate to any insurer that became an insolvent insurer before the termination or expiration of that insurer's license.
8. "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this chapter applies, less return premiums on these policies and dividends paid or credited to policyholders on this direct business. The term does not include premiums on contracts between insurers or reinsurers.

26.1-42.1-03. Creation of the association. A nonprofit unincorporated legal entity known as the North Dakota insurance guaranty association is created. Every insurer defined as a member insurer in section 26.1-42.1-02 shall be and remain a member of the association as a condition of that insurer's authority to transact insurance in this state. The association shall

perform association functions under a plan of operation established and approved under section 26.1-42.1-05 and shall exercise association powers through a board of directors established under section 26.1-42.1-04.

26.1-42.1-04. Board of directors.

1. The board of directors of the association consists of a minimum of five and a maximum of nine persons serving terms as established in the plan of operation. The members of the board must be selected by member insurers, subject to the approval of the commissioner. A vacancy on the board must be filled for the remaining period of the unexpired term by a majority vote of the remaining board members, subject to the approval of the commissioner. If the initial board members are not selected within sixty days after August 1, 1999, the commissioner may appoint the initial members of the board.
2. In approving selections to the board, the commissioner shall consider at least whether all member insurers are fairly represented.
3. Every member of the board may be reimbursed from the assets of the association for expenses incurred by the member in the course of the member's official duties.

26.1-42.1-05. Powers and duties of the association.

1. The association:
 - a. Shall pay covered claims existing before the order of liquidation and arising within thirty days after the order of liquidation or before the policy expiration date if less than thirty days after the order of liquidation, or before the insured replaces the policy or causes the policy's cancellation, if the insured does so within thirty days of the order of liquidation. The obligation must be satisfied by paying to the claimant an amount as follows:
 - (1) An amount not exceeding ten thousand dollars per policy for a covered claim for the return of unearned premium.
 - (2) An amount not exceeding three hundred thousand dollars per claim for all other covered claims.
 - b. Is not obligated to pay a claimant an amount in excess of the obligation of the insolvent insurer under the policy or coverage from which the claim arises. Notwithstanding any other provision of this chapter, a covered claim does not include a claim filed with the association after the earlier of eighteen months after the date of the order of liquidation or the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer and a claim does not include any claim filed with the association or a liquidator for protection afforded under the insured's policy for incurred, but not reported, losses.

Any obligation of the association to defend an insured on a covered claim ceases upon the association's payment, by settlement releasing the insured or on a judgment, of an amount equal to the lesser of the association's covered claim obligation limit or the applicable policy limit or upon the association's tender of that amount.

Notwithstanding any other provision of this chapter, an obligation of the association to any person ceases when ten million dollars is paid in the aggregate by the association and any one or more associations similar to the association of any other state or states or any property and casualty security fund that obtains contributions from insurers on a preinsolvency basis, to or on

behalf of any insured and the insured's affiliates on covered claims or allowed claims arising under the policy or policies of any one insolvent insurer. For purposes of this section, the term "affiliate" means a person who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person. If the association determines that there may be more than one claimant having a covered claim or allowed claim against the association or any associations similar to the association or any property and casualty insurance security fund in other states, under the policy or policies of any one insolvent insurer, the association may establish a plan to allocate amounts payable by the association in any manner the association deems equitable.

- c. Is deemed the insurer only to the extent of the association's obligation on the covered claims and to that extent, subject to the limitations provided in this chapter, has all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent, including the right to pursue and retain salvage and subrogation recoverable on paid covered claim obligations. The association may not be deemed the insolvent insurer for any purpose relating to the issue of whether the association is amenable to the personal jurisdiction of the courts of any state.
- d. Shall assess member insurer's amounts necessary to pay the obligations of the association under subdivision a following an insolvency, the expenses of handling covered claims following an insolvency and other expenses authorized by this chapter. The assessments of each member insurer must be in the proportion that the net direct written premiums of the member insurer for the calendar year preceding the assessment bears to the net direct written premiums of all member insurers for the calendar year preceding the assessment. Each member insurer must be notified of the assessment at least thirty days before the assessment is due. A member insurer may not be assessed in any one year an amount greater than two percent of that member insurer's net direct written premiums for the calendar year preceding the assessment. 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 must be prorated and the unpaid portion must be paid as soon as funds become available. The association shall pay claims in any order the association determines reasonable, including the payment of claims as the claims are received from the claimants or in groups or categories of claims. 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; provided, however, that during the period of deferment, dividends may not be paid to shareholders or policyholders. Deferred assessments must be paid when payment will not reduce capital or surplus below required minimums. Deferred assessment payments must be refunded to those companies receiving larger assessments by virtue of this deferment, or at the election of any such company, credited against future assessments. Each member insurer may set off against any assessment authorized payments made on covered claims and expenses incurred in the payment of these claims by the member insurer.
- e. 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. The association may review settlements, releases, and judgments to which the insolvent insurer or the insolvent insurer's insureds were parties to determine the extent to which these settlements, releases, and judgments may be properly contested. The association may

appoint and direct legal counsel retained under liability insurance policies for the defense of covered claims.

- f. Shall handle claims through the association's 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 this designation may be declined by a member insurer.
 - g. 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 chapter.
2. 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 chapter in accordance with the plan of operation;
 - c. Sue or be sued, and this power to sue includes the power and right to intervene as a party before any court in this state which has jurisdiction over an insolvent insurer;
 - d. Negotiate and become a party to contracts that are necessary to carry out the purposes of this chapter;
 - e. Perform acts that are necessary or proper to effectuate the purposes of this chapter; and
 - f. Refund to the member insurers in proportion to the contribution of each member insurer 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 for the coming year as estimated by the board.
3. Except for actions by member insurers aggrieved by final actions or decisions by the association pursuant to subdivision h of subsection 3 of section 26.1-42.1-06, all claims for relief relating to this chapter against the association must be brought in the courts of this state. These courts have exclusive jurisdiction over all actions relating to this chapter against the association. Exclusive venue in any action by or against the association is in the district courts of this state. The association, at its option, may waive this exclusive venue as to specific actions.

26.1-42.1-06. Plan of operation.

1. The association shall submit to the commissioner a plan of operation and any amendments to this plan necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments become effective upon written approval by the commissioner. If the association fails to submit a suitable plan of operation within ninety days following August 1, 1999, or if at any time after August 1, 1999, the association fails to submit suitable amendments to the plan, the commissioner, after notice and hearing, shall adopt rules as necessary or advisable to implement this chapter. These rules 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 procedures by which all the powers and duties of the association under section 26.1-42.1-05 will be performed.
 - b. Establish procedures for handling assets of the association.
 - c. Establish procedures for the disposition of liquidating dividends or other moneys received from the estate of the insolvent insurer.
 - d. Establish the amount and method of reimbursing members of the board of directors under section 26.1-42.1-04.
 - e. Establish procedures by which claims may be filed with the association, if necessary, and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer are deemed notice to the association or the association's agent and periodically a list of claims must be submitted to the association or similar organization in another state by the receiver or liquidator.
 - f. Establish regular places and times for meetings of the board of directors.
 - g. Establish procedures for records to be kept of all financial transactions of the association, the association's agents, and the board of directors.
 - h. Provide that any member insurer aggrieved by any final action or decision of the association may appeal to the commissioner within thirty days after the action or decision.
 - i. Establish procedures by which selections for the board of directors will be submitted to the commissioner.
 - j. Contain provisions necessary or proper for the execution of the powers and duties of the association.
4. The plan of operation may provide that powers and duties of the association, except those under subdivision d of subsection 1 of section 26.1-42.1-05 and subdivision b of subsection 2 of section 26.1-42.1-05, are delegated to a corporation, association, or other organization that performs or will perform functions similar to those of this association or this association's equivalent in two or more states. This corporation, association, or organization must be reimbursed as a servicing facility would be reimbursed and must be paid for performance of any other functions of the association. A delegation under this subsection takes effect only with the approval of the board of directors and the commissioner, and may be made only to a corporation, association, or organization that extends protection not substantially less favorable and less effective than that provided by this chapter.

26.1-42.1-07. Duties and powers of the commissioner.

1. The commissioner shall:
 - a. Notify the association of the existence of an insolvent insurer within three days after the commissioner receives notice of the determination of the insolvency. The association is entitled to a copy of any complaint seeking an order of liquidation with a finding of insolvency against a member company at the same time that this complaint is filed with a court of competent jurisdiction.
 - 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. 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. In the alternative, the commissioner may levy a fine on any member insurer that fails to pay an assessment when due. A fine under this subdivision may not exceed five percent of the unpaid assessment per month, except that a fine may not be less than one hundred dollars per month.
 - b. Revoke the designation of any servicing facility if the commissioner finds claims are being handled unsatisfactorily.

26.1-42.1-08. Effect of paid claims.

1. Any person recovering under this chapter is deemed to have assigned that person's rights under the policy to the association to the extent of recovery from the association. Every insured or claimant seeking the protection of this chapter shall cooperate with the association to the same extent as that insured or claimant would have been required to cooperate with the insolvent insurer. The association does not have a claim for relief against the insured of the insolvent insurer for any sums the association paid out except for claims for relief the insolvent insurer would have had if the sums had been paid by the insolvent insurer and except as provided in subsection 2. In the case of an insolvent insurer operating on a plan with assessment liability, payments of claims of the association do not reduce the liability of the insureds to the receiver, liquidator, or statutory successor for unpaid assessments.
2. The association may recover from the following persons the amount of any covered claim paid on behalf of that person pursuant to this chapter:
 - a. Any insured whose net worth on December thirty-first of the year immediately preceding the date the insurer becomes an insolvent insurer exceeds twenty-five million dollars and whose liability obligations to other persons are satisfied in whole or in part by payments made under this chapter;
 - 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 chapter; and
 - c. Any insured who is not a resident of this state at the time of the insured event, except for first-party covered claims for property damage to an insured's property that is permanently located in this state.
3. The association and any similar organization in another state are recognized as claimants in the liquidation of an insolvent insurer for any amounts paid by the association or similar organization on covered claims obligations as determined under this chapter or similar laws in other states and receive dividends and any other distributions at the priority set forth in section 26.1-06.1-41. The receiver, liquidator, or statutory successor of an insolvent insurer is bound by determinations of covered claim eligibility under this chapter and by settlements of claims made by the association or a similar organization in another state. The court with jurisdiction shall grant these claims priority equal to that which the claimant would have been entitled in the absence of this chapter against the assets of the insolvent insurer.
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 preserve the rights of the association against the assets of the insolvent insurer.

26.1-42.1-09. Exhaustion of other coverage.

1. Any person with a claim against an insurer, regardless of whether that insurer is a member insurer under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim, is required to exhaust first that person's right under that policy. Any amount payable on a covered claim under this chapter must be reduced by the amount of any recovery under the insurance policy.
2. Any person with a claim that may be recovered under more than one insurance guaranty association or equivalent shall seek recovery first from the association of the place of residence of the insured except that if the claim 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. Any recovery under this chapter must be reduced by the amount of recovery from any other insurance guaranty association or equivalent.

26.1-42.1-10. Prevention of insolvencies. To aid in the detection and prevention of insurer insolvencies:

1. The board of directors, upon majority vote, may make recommendations to the commissioner for the detection and prevention of insurer insolvencies.
2. The board of directors, upon majority vote, may make recommendations to the commissioner on matters generally related to improving or enhancing regulation for solvency.
3. The board of directors, at the conclusion of any domestic insurer insolvency in which the association was obligated to pay covered claims, may prepare a report on the history and causes of the insolvency, based on the information available to the association and submit this report to the commissioner.

26.1-42.1-11. Examination of the association. The association is subject to examination and regulation by the commissioner. The board of directors shall submit, by March thirty-first of each year, a financial report for the preceding calendar year in a form approved by the commissioner.

26.1-42.1-12. Tax exemption. The association is exempt from payment of all fees and all taxes levied by this state or any political subdivision except taxes levied on property.

26.1-42.1-13. Recognition of assessments in rates. The rate and premiums charged for insurance policies to which this chapter applies must 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. These rates may not be determined to be excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer.

26.1-42.1-14. Immunity. There is no liability on the part of and no claim for relief may arise against any member insurer, the association or the association's agents or employees, the board of directors, or any person serving as a representative of any director, or the commissioner or the commissioner's representatives for any action taken or any failure to act by these entities in the performance of their powers and duties under this chapter.

26.1-42.1-15. Stay of proceedings. All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in this state, subject to waiver by the association in specific cases involving covered claims, must be stayed until the last day fixed by the court for the filing of claims and additional time after this as may be determined by the court from the date the insolvency is determined or an ancillary proceeding is instituted in the state, whichever is later, to permit proper defense by the association of all pending causes of action. As to any covered claims arising from a judgment under any decision, verdict, or finding based

on the default of the insolvent insurer or the insolvent insurer's failure to defend an insured, the association on its own behalf or on behalf of such 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 may defend the claim on the merits. The liquidator, receiver, or statutory successor of an insolvent insurer covered by this chapter shall permit access by the board or the board's authorized representative to the insolvent insurer's records that are necessary for the board in carrying out the board's functions under this chapter with regard to covered claims. In addition, the liquidator, receiver, or statutory successor shall provide the board or the board's representative with copies of these records upon the request by the board and at the expense of the board.