

PROPERTY AND CASUALTY GUARANTY

ASSOCIATION ACT

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Gerry A. Adair

This act modifies the Utah Property and Casualty Guaranty Association Act. The act establishes a minimum amount for all claims. The act revises definitions, specifically the definition of a "covered claim." The act addresses net worth test for first-party claims. The act eliminates per diem but allows expenses for members of the board of directors. The act addresses the powers and duties of the board of directors. The act addresses termination of obligations on covered claims. The act allows payment of refunds directly to the State Tax Commission. The act grants exclusive jurisdiction over claims against the association to the Utah courts. The act eliminates classes of assessments. The act addresses the plan of operation of the association. The act clarifies that liability of the association commences with an order of liquidation. The act addresses the powers and duties of the commissioner. The act changes the date for submission of the annual report by the association. The act addresses stay of proceedings and makes technical changes.

§ The act provides a coordination clause. §

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

31A-28-202, as last amended by Chapter 97, Laws of Utah 1988

31A-28-203, as last amended by Chapter 211, Laws of Utah 1991

31A-28-205, as last amended by Chapter 97, Laws of Utah 1988

31A-28-206, as last amended by Chapter 10, Laws of Utah 1997

31A-28-207, as last amended by Chapter 261, Laws of Utah 1989

31A-28-208, as last amended by Chapter 211, Laws of Utah 1991

31A-28-209, as last amended by Chapter 204, Laws of Utah 1986

31A-28-210, as enacted by Chapter 242, Laws of Utah 1985



28 31A-28-213, as last amended by Chapter 204, Laws of Utah 1986

29 31A-28-214, as enacted by Chapter 242, Laws of Utah 1985

30 31A-28-218, as last amended by Chapter 95, Laws of Utah 1987

31 31A-28-220, as last amended by Chapter 204, Laws of Utah 1986

32 ENACTS:

33 31A-28-222, Utah Code Annotated 1953

34 REPEALS:

35 31A-28-201, as repealed and reenacted by Chapter 97, Laws of Utah 1988

36 31A-28-216, as enacted by Chapter 242, Laws of Utah 1985

37 31A-28-219, as last amended by Chapter 204, Laws of Utah 1986

38 31A-28-221, as enacted by Chapter 95, Laws of Utah 1987

39 *Be it enacted by the Legislature of the state of Utah:*

40 Section 1. Section 31A-28-202 is amended to read:

41 31A-28-202. **Scope.**

42 This part applies to protect resident policyowners and insureds under all types of direct
43 insurance, except [~~life, title, surety, disability, credit (including mortgage guarantee), ocean marine~~
44 ~~insurance, insurance of warranties or service contracts, financial guarantee, and all insurance~~
45 ~~coverages guaranteed by the United States Government.];~~

46 (1) life insurance;

47 (2) annuity;

48 (3) health insurance;

49 (4) disability insurance;

50 (5) mortgage guaranty insurance;

51 (6) financial guaranty, or other forms of insurance offering protection against investment
52 risks;

53 (7) fidelity or surety bonds, or any other bonding obligation;

54 (8) credit insurance;

55 (9) vendor's single interest insurance;

56 (10) collateral protection insurance, or any similar insurance protecting the interests of a
57 creditor in a creditor-debtor transaction;

58 (11) mechanical breakdown insurance, as defined in Section 31A-6a-101;

- 59 (12) insurance of a warranty or service contract as defined in Section 31A-6a-101;
 60 (13) title insurance;
 61 (14) ocean marine insurance;
 62 (15) any transaction between a person and an insurer, or an affiliate of a person or insurer,
 63 that involves the transfer of investment or credit risk unaccompanied by transfer of insurance risk;
 64 or
 65 (16) any insurance provided by or guaranteed by government.

66 Section 2. Section 31A-28-203 is amended to read:

67 **31A-28-203. Definitions.**

68 As used in this part:

- 69 (1) "Affiliate" is as defined in Section 31A-1-301.
 70 (2) (a) "Claimant" means:
 71 (i) an insured making a first-party claim; or
 72 (ii) a person instituting a liability claim.
 73 (b) A person who is an affiliate of the insolvent insurer may not be a claimant.
 74 [(+) (3) (a) "Covered claim" means an unpaid claim, [excluding] including an unpaid
 75 claim under a personal lines policy for unearned premiums submitted by a claimant, [that] if:
 76 (i) the claim arises out of [and] the coverage;
 77 (ii) the claim is within the coverage [and];
 78 (iii) the claim is not in excess of the applicable limits of an insurance policy to which this
 79 part applies[; where];
 80 (iv) the insurer who issued the policy becomes an insolvent insurer[;]; and [where]
 81 (v) (A) the claimant or insured is a resident of this state at the time of the insured event;
 82 or [the property from which the claim arises is permanently located in this state.]
 83 (B) the claim is a first-party claim for damage to property that is permanently located in
 84 this state.
 85 (b) "Covered claim" does not include:
 86 (i) any amount awarded as punitive or exemplary damages or any amount due any
 87 reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or
 88 otherwise, nor does it include any supplementary payment obligation, including adjustment fees
 89 and expenses, attorneys' fees and expenses, court costs, interest, and bond premiums, prior to the

90 appointment of a liquidator[-];

91 (ii) any amount sought as a return of premium under a retrospective rating plan;

92 (iii) any first-party claim by an insured if:

93 (A) the insured's net worth exceeds \$25,000,000 on December 31 of the year preceding
94 the date the insurer becomes an insolvent insurer; and

95 (B) the insured's net worth includes the aggregate net worth of the insured and all of its
96 subsidiaries as calculated on a consolidated basis; or

97 (iv) any first-party claims by an insured that is an affiliate of the insolvent insurer.

98 (4) "Insolvent insurer" means a member insurer that is placed under an order of liquidation
99 by a court of competent jurisdiction with a finding of insolvency.

100 (5) "Member insurer" means any person who:

101 (a) writes any kind of insurance to which this part applies under Section 31A-28-202,
102 including the exchange of reciprocal or inter-insurance contracts; and

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

104 ~~(2)~~ (6) (a) "Net direct written premiums" means direct gross premiums written in this
105 state on insurance policies that this part applies to, less return premiums and dividends paid or
106 credited to policyholders on the direct business.

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

109 ~~[(3) Other definitions applicable to this part are given under Section 31A-28-105.]~~

110 (7) "Personal lines policy" means an insurance policy issued to an individual that:

111 (a) insures a motor vehicle used for personal purposes and not used in trade or business;

112 or

113 (b) insures a residential dwelling.

114 (8) "Residence" means, for entities other than a natural person, the state where the
115 principal place of business of a claimant, insured, or policyholder is located at the time of the
116 insured event.

117 Section 3. Section **31A-28-205** is amended to read:

118 **31A-28-205. Creation of the association.**

119 (1) (a) The Utah Property and Casualty Insurance Guaranty Association shall continue as
120 a nonprofit legal entity.

121 (b) All member insurers of the association are, and remain, members of the association as
 122 a condition of their authority to transact insurance business in this state.

123 (c) The association shall:

124 (i) perform its functions under the plan of operation established and approved under
 125 Section 31A-28-209; and ~~shall~~

126 (ii) exercise its powers through a board of directors established under Section 31A-28-206.

127 (d) For the purposes of administration and assessment, the association shall maintain:

128 (i) a workers' compensation insurance account~~[-]~~;

129 (ii) an automobile insurance account~~[-]~~; and

130 (iii) a miscellaneous account for all other insurance to which this part applies.

131 (2) (a) An insurer shall cease to be a member insurer on the day following the termination
 132 or expiration of the insurer's license to transact the kinds of insurance to which this part applies.

133 (b) Notwithstanding Subsection (2)(a), the insurer shall remain liable as a member insurer
 134 for all obligations, including assessments levied:

135 (i) before the termination or expiration of the insurer's license; and

136 (ii) after the termination or expiration of the insurer's license but that relate to an insurer
 137 that became an insolvent insurer before the termination or expiration of the insurer's license.

138 ~~[(2)]~~ (3) Meetings or records of the association shall be open to the public upon a majority
 139 vote of the board of directors of the association.

140 ~~[(3)]~~ (4) The association is not an agency of the state.

141 Section 4. Section **31A-28-206** is amended to read:

142 **31A-28-206. Board of directors.**

143 (1) (a) The board of directors of the association consists of not less than five nor more than
 144 nine members, serving terms of four years each.

145 (b) The members of the board shall be selected by member insurers, subject to the
 146 commissioner's approval. When a vacancy occurs in the membership for any reason, the
 147 replacement shall be elected for the unexpired term by a majority vote of the remaining board
 148 members, subject to the commissioner's approval.

149 (c) In approving selections or in appointing members to the board, the commissioner shall
 150 consider whether all member insurers are fairly represented.

151 (d) Notwithstanding ~~[the requirements of]~~ Subsection (1)(a), the commissioner shall, at

152 the time of election or reelection, adjust the length of terms to ensure that the terms of board
153 members are staggered so that approximately half of the board is selected every two years.

154 ~~[(2) (a) Members shall receive no compensation or benefits for their services, but may
155 receive per diem and expenses incurred in the performance of the member's official duties at the
156 rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107 from the
157 assets of the association.]~~

158 (2) A member of the board of directors may be reimbursed from the assets of the
159 association for expenses the member incurs as a member of the board of directors.

160 ~~[(b) Members may decline to receive per diem and expenses for their service.]~~

161 Section 5. Section **31A-28-207** is amended to read:

162 **31A-28-207. Powers and duties of the association.**

163 (1) (a) The association is obligated on the amount of the covered claims;

164 (i) existing prior to the [determination of insolvency] order of liquidation; and [rising]

165 (ii) arising;

166 (A) within 30 days after the [determination of insolvency;] order of liquidation; or

167 (B) (I) before the policy expiration date if it is less than 30 days after the [determination;]
168 order of liquidation; or

169 (II) before the insured replaces the policy or causes its cancellation, if [he] the insured does
170 so within 30 days of the [determination] order of liquidation.

171 (b) The obligation under Subsection (1)(a) includes only that amount of each covered
172 claim that is [in excess of \$100 and is] less than \$300,000. [However, the]

173 (c) A claim under a personal lines policy for unearned premiums shall include only those
174 claims that exceed \$100 in amount, subject to a maximum of \$10,000 per policy.

175 (d) The association shall pay the full amount of any covered claim arising out of a
176 [workmen's] workers' compensation policy. [In no event is the] The association is not obligated
177 to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer
178 under the policy from which the claim arises.

179 (e) Any obligation of the association to defend an insured on a covered claim shall cease:

180 (i) upon payment by the association, as part of a settlement releasing the insured; or

181 (ii) on a judgment, of the lesser of:

182 (A) the association's covered claim obligation limit; or

183 (B) the applicable policy limit.

184 [~~(b)~~] (f) The association;

185 (i) is considered as the insurer only to the extent of its obligation on the covered claims,
186 [and to that extent,] subject to the limitations provided in this part;

187 (ii) has all the rights, duties, and obligations of the insolvent insurer as if the insurer had
188 not yet become insolvent, including the right to pursue and retain salvage and subrogation
189 recoverable on paid covered claim obligations; and

190 (iii) may not be considered the insolvent insurer for any purpose relating to whether the
191 association is subject to personal jurisdiction in the courts of any state.

192 (g) (i) Notwithstanding any other provisions of this part, except in the case of a claim for
193 benefits under workers' compensation coverage, any obligation of the association to or on behalf
194 of a particular insured and its affiliates on covered claims shall cease when:

195 (A) a total amount of \$10,000,000 has been paid to or on behalf of the insured and its
196 affiliates on covered claims by the association or a similar association; and

197 (B) all payments on covered claims arise under one or more policies of a single insolvent
198 insurer.

199 (ii) The association may establish a plan to allocate the amounts payable by the association
200 in a manner the association considers equitable if the association determines that:

201 (A) there is more than one claimant asserting a covered claim against:

202 (I) the association;

203 (II) a similar association; or

204 (III) a property or casualty insurance security fund in another state; and

205 (B) all claims arise under the policy or policies of a single insolvent insurer.

206 [~~(c)~~] (h) The association shall allocate claims paid and expenses incurred among the
207 [three] accounts established under Section 31A-28-205 separately, and assess member insurers
208 separately for each account amounts necessary to pay:

209 (i) the obligations of the association under Subsection (1)(a), as limited by Subsections
210 (1)(e) through (g), subsequent to [an insolvency] the liquidation of an insolvent insurer;

211 (ii) the expenses of handling covered claims subsequent to [an insolvency] the liquidation
212 of an insolvent insurer;

213 (iii) the cost of examinations under Section 31A-28-214; and

214 (iv) other expenses authorized by this part.

215 [~~(d)~~] (i) (i) The association shall;

216 (A) investigate claims brought against the association; and

217 (B) adjust, compromise, settle, and pay covered claims to the extent of the association's
218 obligation and deny all other claims [~~and may review settlements, releases, and judgments that the~~
219 ~~insolvent insurer or its insureds were parties to in determining if the settlements, releases, or~~
220 ~~judgments may be properly contested].~~

221 [~~(e) The association shall notify the persons the commissioner requests under Subsection~~
222 ~~31A-28-210 (2) (a).]~~

223 (ii) The association is not bound by a settlement, release, compromise, waiver, or judgment
224 executed or entered into by the insolvent insurer:

225 (A) less than 12 months before the entry of an order of liquidation; or

226 (B) more than 12 months before the entry of an order of liquidation if the settlement,
227 release, compromise, waiver, or judgment is:

228 (I) based on a claim that is not a covered claim; or

229 (II) the result of fraud, collusion, default, or failure to defend.

230 (iii) The association may assert all defenses available including defenses applicable to
231 determining and enforcing the association's statutory rights and obligations to a claim.

232 (iv) The association may appoint and direct legal counsel retained under a liability
233 insurance policy for the defense of a covered claim.

234 [~~(f)~~] (j) (i) The association shall handle claims through;

235 (A) its employees [~~or through~~];

236 (B) one or more insurers; or

237 (C) other persons designated as servicing facilities.

238 (ii) Designation of a servicing facility is subject to the approval of the commissioner, but
239 this designation may be declined by a member insurer.

240 [~~(g)~~] (k) The association shall;

241 (i) reimburse each servicing facility for;

242 (A) obligations of the association paid by the facility; and [~~for~~]

243 (B) expenses incurred by the facility while handling claims on behalf of the association;

244 and [~~shall~~]

245 (ii) pay the other expenses of the association as authorized by this title.

246 (2) The association may:

247 (a) employ or retain the persons, including private legal counsel, necessary to handle
248 claims and perform other duties of the association;

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

251 (c) sue or be sued;

252 (d) negotiate and become a party to the contracts necessary to carry out the purpose of this
253 part;

254 (e) perform any other acts necessary or proper to accomplish the purposes of this chapter;
255 or

256 (f) refund to the member insurers, in proportion to the contribution of each member insurer
257 to that account, the amount that the assets of the account exceed the liabilities, if, at the end of any
258 calendar year, the board of directors finds that:

259 (i) the assets of the association in any account exceed the liabilities of that account as
260 estimated by the board of directors for the coming year[-]; and

261 (ii) the excess assets are not needed for other purposes of this part.

262 (3) For a refund due to a member insurer for an assessment that has been offset against
263 premium taxes, the association may pay the amount of the refund directly to the State Tax
264 Commission.

265 (4) The courts of the state shall have exclusive jurisdiction over all actions brought against
266 the association that relate to or arise out of this part.

267 ~~(3)~~ (5) (a) Any person recovering under this part is considered to have assigned [~~his~~] that
268 person's rights under the policy to the association to the extent of [~~his~~] that person's recovery from
269 the association.

270 (b) Every insured or claimant seeking the protection of this chapter shall cooperate with
271 the association to the same extent the person would have been required to cooperate with the
272 insolvent insurer. [~~The~~]

273 (c) Except as provided in Subsection (5)(e), the association has no cause of action against
274 the insured of the insolvent insurer for any sums the association has paid out except those causes
275 of action the insolvent insurer would have had if the sums had been paid by the insolvent insurer.

276 (d) When an insolvent insurer operates on a plan with assessment liability, payments of
277 claims of the association do not reduce the liability for unpaid assessments of the insurer to:

278 (i) the receiver[;];

279 (ii) liquidator[;]; or

280 (iii) statutory successor [~~for unpaid assessments~~].

281 ~~(b)~~ (e) The association [~~shall have the right to~~] may recover from the following persons
282 the amount of any "covered claim" paid on behalf of [~~such~~] that person pursuant to [~~the act~~] this
283 part:

284 (i) any insured whose:

285 (A) net worth on December 31 of the year next preceding the date the insurer becomes
286 insolvent, exceeds [~~\$50,000,000;~~] \$25,000,000; and [~~whose~~]

287 (B) liability obligations to other persons are satisfied in whole or in part by payments made
288 under this [~~act~~] part; and

289 (ii) any person:

290 (A) who is an affiliate of the insolvent insurer; and

291 (B) whose liability obligations to other persons are satisfied in whole or in part by
292 payments made under this [~~action~~] part.

293 ~~(c)~~ (f) (i) The receiver, liquidator, or statutory successor of an insolvent insurer is bound
294 by [~~settlements~~];

295 (A) a determination of a covered claim eligibility under this part; and

296 (B) a settlement of a covered [~~claims~~] claim by the association or a similar organization
297 in another state.

298 (ii) The court having jurisdiction shall grant [~~these~~] settled claims a priority equal to that
299 which the claimant would have been entitled to in the absence of this [~~chapter~~] part, against the
300 assets of the insolvent insurer. [~~The expenses, including legal fees, of the association or similar~~
301 ~~organization in handling claims are given the same priority as the liquidator's expenses.~~]

302 (g) The association or any similar organization in another state shall:

303 (i) be recognized as a claimant in the liquidation of an insolvent insurer for any amounts
304 paid on a covered claim obligation as determined under this part or a similar law in another state;
305 and

306 (ii) receive dividends or distributions at the priority set forth in Section 31A-27-335.

307 ~~[(d)]~~ (h) (i) The association shall periodically file with the receiver or liquidator of the
 308 insolvent insurer~~;~~:

309 (A) statements of the covered claims paid by the association; and

310 (B) estimates of anticipated claims on the association. ~~[This]~~

311 (ii) The filing under this Subsection (5)(h) preserves the rights of the association for claims
 312 against the assets of the insolvent insurer.

313 ~~[(e)]~~ (i) The association need not pay any claim filed after the final date under Sections
 314 31A-27-315 and 31A-27-328, or similar statutes of other states, for filing the same type of claim
 315 with the liquidator of the insolvent insurer.

316 Section 6. Section **31A-28-208** is amended to read:

317 **31A-28-208. Assessments.**

318 ~~(1) [In order to]~~ (a) To provide the funds necessary to carry out the powers and duties of
 319 the association, the board of directors shall assess the member insurers, separately for each account
 320 established under Section 31A-28-205, at the time and in the amount the board finds necessary.

321 ~~[Assessments are]~~

322 (b) An assessment under this section:

323 (i) is due not less than 30 days after written notice to the member insurers; and ~~[accrue]~~

324 (ii) accrues interest to the extent unpaid after the due date at the greater of:

325 (A) 10% per annum~~;~~; or

326 (B) the then legal rate of interest provided in Section 15-1-1 ~~[, whichever is greater, to the~~
 327 ~~extent unpaid after the due date].~~

328 (c) The association shall allocate claims and incurred expenses among the accounts.

329 ~~[(2) There are two classes of assessments as follows:]~~

330 ~~[(a) Class A assessments are made to meet administrative costs and other general~~
 331 ~~expenses. Class A assessments may be made whether or not they are related to a particular~~
 332 ~~impaired or insolvent insurer.]~~

333 ~~[(b) Class B assessments]~~ (2) An assessment for each account ~~[are]~~ is to be made in the
 334 amount necessary to carry out the powers and duties of the association under Section ~~[31A-28-108]~~
 335 31A-28-207 for an ~~[impaired or]~~ insolvent ~~[member]~~ insurer.

336 ~~[(3) The amount of any Class A assessment is determined by the board. The assessment~~
 337 ~~may not exceed \$150 per member insurer in any one calendar year.]~~

338 ~~[(4) Class B assessments]~~ (3) An assessment against a member ~~[insurers]~~ insurer for each
339 account ~~[are]~~ is in the proportion that the direct written premiums of the member insurer for the
340 preceding calendar year on the kinds of insurance in the account bears to the net direct written
341 premiums of all member insurers for the preceding calendar year on all kinds of insurance in the
342 account.

343 ~~[(5) No]~~ (4) A member insurer may not be assessed in any year on any account for an
344 amount greater than 2% of that member insurer's net direct written premiums for the preceding
345 calendar year on the kinds of insurance in the account.

346 ~~[(6)]~~ (5) If the maximum assessment, together with the other assets of the association in
347 any account, do not provide in any one year in any account an amount sufficient to make all
348 necessary payments from that account, the funds available shall be prorated and the unpaid portion
349 shall be paid as soon as funds become available.

350 ~~[(7)]~~ (6) The association may exempt or defer, in whole or in part, the assessment of any
351 member insurer, if the assessment would cause the member insurer's financial statement to reflect
352 amounts of capital or surplus less than the minimum amounts required for a certificate of authority
353 by any jurisdiction in which the member insurer is authorized to transact insurance.

354 ~~[(8)]~~ (7) Each member insurer may set off against any assessment authorized payments
355 made on covered claims and expenses incurred in the payment of the claims by the member
356 insurer, if they are chargeable to the account for which the assessment is made.

357 Section 7. Section **31A-28-209** is amended to read:

358 **31A-28-209. Plan of operation.**

359 (1) (a) The association shall submit to the commissioner a plan of operation and any
360 amendments necessary or suitable to assure the fair, reasonable, and equitable administration of
361 the association.

362 (b) The plan of operation and amendments described in Subsection (1)(a) are effective
363 upon approval in writing by the commissioner.

364 (c) Any amendments made under this section after July 1, 1986, shall be made within 180
365 days of the changed circumstance.

366 (2) The plan of operation shall continue in force until:

367 (a) modified by the commissioner; or

368 (b) superseded by a plan;

369 (i) submitted by the association; and

370 (ii) approved by the commissioner.

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

372 (4) The plan of operation shall, in addition to requirements enumerated elsewhere in this

373 [~~chapter~~] part:

374 (a) establish procedures for handling the assets of the association;

375 (b) establish the amount and method of reimbursing members of the board of directors

376 under Section 31A-28-206;

377 (c) establish regular places and times for meetings of the board of directors;

378 (d) establish procedures for records to be kept of all financial transactions of the

379 association, [~~its~~] the association's agents, and the board of directors;

380 (e) establish the procedures on how selections for the board of directors shall be made and

381 submitted to the commissioner;

382 (f) establish a procedure for the disposition of dividends or distributions from the estate

383 of the insolvent insurer;

384 [~~(f)~~] (g) establish any additional procedures for assessments under Section 31A-28-208;

385 and

386 [~~(g)~~] (h) contain any additional provisions [~~which~~] that are necessary or proper for the

387 execution of the powers and duties of the association.

388 (5) (a) The plan of operation may provide that any or all of the powers and duties of the

389 association, except those under Sections 31A-28-207 and 31A-28-208, are delegated to [~~a~~] one of

390 the following that performs functions similar to the association:

391 (i) a corporation[;];

392 (ii) an association[;]; or [~~other~~]

393 (iii) organization other than one described in Subsections (5)(a)(i) and (ii). [~~This~~]

394 (b) A corporation, association, or organization described in Subsection (5)(a) shall:

395 (i) be reimbursed for any payments made on behalf of the association; and [~~shall~~]

396 (ii) be paid for its performance of any function of the association.

397 (c) A delegation under this Subsection (5) takes effect only with the approval of [~~both~~];

398 (i) the board of directors; and

399 (ii) the commissioner.

400 Section 8. Section **31A-28-210** is amended to read:

401 **31A-28-210. Duties and powers of the commissioner.**

402 (1) In addition to the duties and powers enumerated elsewhere in this part, the
403 commissioner shall:

404 (a) notify the association of the existence of an insolvent insurer not later than three days
405 after ~~he~~ the commissioner receives notice of the ~~[determination of the insolvency;]~~ order of
406 liquidation; and

407 (b) upon request of the board of directors, provide the association with a statement of the
408 premiums in this state for each member insurer.

409 ~~[(2) (a) The commissioner may require that the association notify the insureds of the~~
410 ~~insolvent insurer and any other interested parties of the determination of insolvency and of their~~
411 ~~rights under this part. This notification shall be by mail at their last known address, where~~
412 ~~available, but if sufficient information for notification by mail is not available, notice by~~
413 ~~publication in a newspaper of general circulation is sufficient.]~~

414 ~~[(b)]~~ (2) (a) The commissioner may suspend or revoke, after notice and hearing, the
415 certificate of authority to transact insurance in this state of any member insurer that fails:

416 (i) to pay an assessment when due; or ~~[fails]~~

417 (ii) to comply with the plan of operation or the rules adopted under this part.

418 (b) (i) As an alternative to an action described in Subsection (2)(a), the commissioner may
419 levy a fine on any member insurer that fails to pay an assessment when due. ~~[This]~~

420 (ii) The fine [shall] permitted under this Subsection (2)(b) may not:

421 (A) exceed 5% of the unpaid assessment per month~~[-except that no fine may]; or~~

422 (B) be less than \$100 per month.

423 (c) The commissioner may revoke the designation of any servicing facility if ~~he~~ the
424 commissioner finds claims are being handled unsatisfactorily.

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

427 Section 9. Section **31A-28-213** is amended to read:

428 **31A-28-213. Miscellaneous provisions.**

429 (1) (a) Any person who has a claim against an insurer, whether or not the insurer is a
430 member insurer, under any provision in an insurance policy, other than a policy of an insolvent

431 insurer that is also a covered claim, is required to first exhaust ~~[his]~~ that person's right under ~~[his]~~
 432 that person's policy.

433 (b) Any amount payable on a covered claim under this part under an insurance policy is
 434 reduced by the amount of any recovery under ~~[that]~~ the insurance policy described in Subsection
 435 (1)(a).

436 ~~[(b) Any]~~ (c) (i) Except as provided in Subsection (1)(c)(ii), a person having a claim that
 437 may be recovered under more than one insurance guaranty association or its equivalent shall first
 438 seek recovery from the association of the place of residence of the insured. ~~[However, if this]~~

439 (ii) If the person's claim is:

440 (A) a first-party claim for damage to property with a permanent location, ~~[he]~~ the person
 441 shall seek recovery first from the association of the location of the property~~;~~; and ~~[if this claim~~
 442 ~~is a workmen's]~~

443 (B) a workers' compensation claim, ~~[he]~~ the person shall seek recovery first from the
 444 association of the residence of the claimant.

445 (iii) Any recovery under this part shall be reduced by the amount of recovery from any
 446 other insurance guaranty association or its equivalent.

447 (2) ~~[Nothing in this]~~ This part ~~[shall]~~ may not be construed to reduce the liability for
 448 unpaid assessments of the insureds of an impaired or insolvent insurer operating under a plan with
 449 assessment liability.

450 (3) (a) Records shall be kept of all negotiations and meetings in which the association or
 451 its representatives are involved to discuss the activities of the association in carrying out ~~[its]~~ the
 452 association's powers and duties under Section 31A-28-207. Records of these negotiations or
 453 meetings shall be made public only:

454 (i) upon the termination of a liquidation, rehabilitation, or conservation proceeding
 455 involving the ~~[impaired or]~~ insolvent insurer~~;~~; ~~[upon]~~;

456 (ii) the termination of the ~~[impairment or]~~ insolvency of the insurer~~;~~; or ~~[upon]~~

457 (iii) the order of a court of competent jurisdiction.

458 (b) This Subsection (3) does not limit the duty of the association to render a report of its
 459 activities under Section 31A-28-214.

460 (4) For the purpose of carrying out its obligations under this part, the association is
 461 considered to be a creditor of the ~~[impaired or]~~ insolvent insurer, except to the extent of any

462 amounts the association is entitled as subrogee under Section 31A-28-207.

463 (5) (a) [~~Prior to~~] Before the termination of any liquidation, rehabilitation, or conservation
464 proceeding, the court may take into consideration the contributions of the respective parties,
465 including:

466 (i) the association[;];

467 (ii) the shareholders[~~, and~~];

468 (iii) the policyowners of the insolvent insurer[;]; and

469 (iv) any other party with a bona fide interest, in making an equitable distribution of the
470 ownership rights of the insolvent insurer.

471 (b) In making [~~this~~] the determination described in Subsection (5)(a), [~~consideration~~] the
472 court shall [~~be given to~~] consider the welfare of the policyholders of the continuing or successor
473 insurer.

474 [~~(b) No~~] (c) A distribution to stockholders, if any, of an [~~impaired or~~] insolvent insurer
475 may not be made until the total amount of valid claims of the association with interest on those
476 claims for funds expended in carrying out its powers and duties under Section 31A-28-207
477 regarding this insurer have been fully recovered by the association.

478 (6) A rehabilitator, liquidator, or conservator appointed under any section of this [~~code~~]
479 part may recover on behalf of the insurer for excessive distributions paid to affiliates, pursuant to
480 Section 31A-27-322.

481 Section 10. Section **31A-28-214** is amended to read:

482 **31A-28-214. Examination of the association -- Annual report.**

483 (1) The association is subject to examination and regulation by the commissioner.

484 (2) The board of directors shall submit, [~~not~~] to the commission by no later than [~~March~~]
485 April 30 of each year[;];

486 (a) a financial report for the preceding calendar year in a form approved by the
487 commissioner [~~together with~~]; and

488 (b) a report of [~~its~~] the association's activities during the preceding calendar year.

489 Section 11. Section **31A-28-218** is amended to read:

490 **31A-28-218. Stay of proceedings -- Reopening default judgments.**

491 [~~All~~] (1) Except for specific cases involving covered claims that are subject to waiver by
492 the association, all proceedings in which the insolvent insurer is a party or is obligated to defend

493 a party in any court in this state shall be stayed [~~for a period not less than 60 days nor more than~~
 494 ~~six months from the date the insolvency is determined~~] until the last day fixed by the court for the
 495 filing of claims to permit proper defense by the association of all pending causes of action. [~~As~~
 496 ~~to~~]

497 (2) For any covered [~~claims~~] claim arising from a judgment under any decision, order,
 498 verdict, or finding based on the default of the insolvent insurer or its failure to defend an insured,
 499 the association either on its own behalf or on behalf of the insured;

500 (a) may apply to have the judgment[~~, order, decision, verdict, or findings~~] set aside by the
 501 [~~same~~] issuing court or administrator [~~that made the judgment, order, decision, verdict, or finding~~];
 502 and

503 (b) shall be permitted to defend against the claim on the merits.

504 Section 12. Section **31A-28-220** is amended to read:

505 **31A-28-220. Termination of association's operation.**

506 (1) The commissioner shall by order terminate the operation of the [~~Utah Property and~~
 507 ~~Casualty Insurance Guaranty Fund~~] association for any kind of insurance covered under this part
 508 when [~~he~~] the commissioner finds that there is in effect a statutory or voluntary plan that:

509 (a) is a permanent plan that is adequately funded or where adequate funding is provided;
 510 or

511 (b) extends, or will extend to residents and policyholders, protection and benefits regarding
 512 insolvent insurers [~~which~~] that are not substantially less favorable and effective to residents and
 513 policyholders than the protection and benefits provided regarding the kinds of insurance covered
 514 under this part.

515 (2) (a) The commissioner shall, by the order under Subsection (1), authorize
 516 discontinuance of future payments by insurers to the [~~Utah Property and Casualty Insurance~~
 517 ~~Guaranty Fund~~] association regarding the kinds of insurance that are the subject of the order.
 518 [~~However, the~~]

519 (b) Notwithstanding Subsection (2)(a), the assessments and payments shall continue, as
 520 necessary, to liquidate covered claims of insurers who are adjudged insolvent prior to the order and
 521 to pay the related expenses not covered by any other plan.

522 (3) (a) If the operation of the [~~insurance guaranty~~] association is terminated under
 523 Subsection (1), the association shall, as soon as possible, distribute the balance of monies and

524 assets remaining, after discharging the functions of the association as to prior insurer insolvencies
 525 [~~which~~] that were not covered by any other plan, together with related expenses, to the insurers that
 526 are then writing in this state policies of the kinds of insurance covered by this part, and that had
 527 made payments to the association. [~~This~~]

528 (b) The reimbursement described in Subsection (3)(a) shall be:

529 (i) pro rata[;]; and

530 (ii) based upon the aggregate of the payments made by the respective insurers during the
 531 period of five years next preceding the date of the order.

532 (c) For a reimbursement of an assessment that has been offset against premium taxes, the
 533 association may pay the amount of the reimbursement directly to the State Tax Commission.

534 (d) Upon completion of the distribution regarding all of the kinds of insurance covered by
 535 this part, this part shall terminate.

536 Section 13. Section **31A-28-222** is enacted to read:

537 **31A-28-222. Application of amendments.**

538 (1) The amendments in this act shall become effective on April 30, 2001 and apply to the
 539 association's obligations under policies of insolvent insurers as they exist on or after April 20,
 540 2001.

541 (2) Notwithstanding Subsection (1), the amendments to Subsections 31A-28-203(3) and
 542 31A-28-207(1)(a) that add coverage for unearned premium claims shall apply only to insurers that
 543 become insolvent after the effective date.

544 Section 14. **Repealer.**

545 This act repeals:

546 Section **31A-28-201, Purpose.**

547 Section **31A-28-216, Assessment inclusion in premiums.**

548 Section **31A-28-219, Prospective application.**

549 Section **31A-28-221, Insolvencies -- Recommendations and reports of board of**
 550 **directors.**

550a **§ Section 15. Coordination clause.**

550b **IF THIS BILL AND S.B. 100, INSURANCE LAW AMENDMENTS, BOTH PASS, IT IS THE INTENT**
 550c **OF THE LEGISLATURE THAT IN PREPARING THE UTAH CODE DATABASE FOR PUBLICATION, THE**
 550d **OFFICE OF LEGISLATIVE RESEARCH AND GENERAL COUNSEL SHALL CONSIDER THAT THE**
 550e **AMENDMENTS IN SECTION 31A-28-202 IN THIS BILL SUPERSEDE THE AMENDMENTS TO SECTION**
 550f **31A-28-202 IN S.B. 100. §**

Legislative Review Note
as of 1-12-01 1:46 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel