

MISSISSIPPI

INSURANCE GUARANTY ASSOCIATION LAW

Sec.

83-23-101. Title.

83-23-103. Purpose.

83-23-105. Scope.

83-23-107. Construction.

83-23-109. Definitions.

83-23-111. Creation of the association.

83-23-113. Board of directors.

83-23-115. Powers and duties of the association.

83-23-117. Plan of operation.

83-23-119. Duties and powers of the commissioner.

83-23-121. Effect of paid claims.

83-23-123. Nonduplication of recovery.

83-23-125. Prevention of insolvencies.

83-23-127. Examination of the association.

83-23-129. Tax exemption.

83-23-131. Recognition of assessments in rates.

83-23-133. Immunity.

83-23-135. Stay of proceedings.

83-23-137. Proposal for disbursal of assets of insolvent insurer; application for approval.

§ 83-23-101. Title.

This article shall be known and may be cited as the Mississippi Insurance Guaranty Association Law.

Sources: Codes, 1942, § 5814-51; Laws, 1970, ch. 446, § 1, eff from and after passage (approved April 6, 1970).

§ 83-23-103. Purpose.

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

Sources: Codes 1942, § 5814-52; Laws, 1970, ch. 446, § 2, eff from and after passage (approved April 6, 1970).

§ 83-23-105. Scope

This article shall apply to all kinds of direct insurance except the following:

- (a) Life, annuity, health or disability insurance;
- (b) Mortgage guaranty, financial guaranty or other forms of insurance offering protection against insolvent risks;
- (c) Fidelity or surety bonds, or any other bonding obligations;
- (d) Credit insurance;
- (e) Insurance of warranties or service contracts;
- (f) Title insurance;
- (g) Ocean marine insurance;
- (h) Any transaction or combination of transactions between a person (including affiliates of such person) and an insurer (including affiliates of such insurer) which involves the transfer of investment or credit risk unaccompanied by transfer of insurance risk; and

(i) Any insurance provided by or guaranteed by government.

Sources: Codes, 1942, § 5814-53; Laws, 1970, ch. 446, § 3; Laws 1992, ch. 412, § 1, eff. from and after July 1, 1992.

§ 83-23-107. Construction.

This article shall be liberally construed to effect the purpose under section 83-23-103, which will constitute an aid and guide to interpretation.

Sources: Codes, 1942, § 5814-54; Laws, 1970, ch. 446, § 4 eff from and after passage (approved April 6, 1970).

§ 83-23-109 Definitions.

As used in this article:

(a) “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 31 of the year next preceding the date the insurer becomes an insolvent insurer.

(b) “Association” means the Mississippi Insurance Guaranty Association created under Section 83-23-111.

(c) “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.

(d) “Commissioner” means the Commissioner of Insurance.

(e) “Control” means the possession, direct or indirect, of the power to direct or cause 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 shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact.

(f) “Covered claim” means an unpaid claim, including one of unearned premiums, which arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this article applies issued by an insurer, if such insurer becomes an insolvent insurer and (1) 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 or insured is the state in which its principal place of business is located at the time of the insured event; or (2) the property from which the claim arises is permanently located in this state. “Covered claim” shall not include any amount awarded as punitive or exemplary damages; or sought as a return of premium under any retrospective rating plan; or due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise and shall preclude recovery thereof from the insured of any insolvent carrier to the extent of the policy limits.

(g) “Insolvent Insurer” means an insurer licensed to transact insurance in this state, either at the time the policy was issued or when the insured event occurred, and against whom an order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction, in the insurer’s state of domicile or of this state and the order of liquidation has not been stayed or been the subject of a writ of supersedeas or other comparable order.

(h) “Member Insurer” means any person who (1) writes any kind of insurance to which this article applies under Section 83-23-105, including the exchange of reciprocal or interinsurance contracts, and (2) is licensed to transact insurance in this state.

(i) “Net direct written premiums” means direct gross premiums written in this state on insurance policies to which this article applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. “Net direct written premiums” does not include premiums on contracts between insurers or reinsurers.

(j) “Person” means any individual, corporation, partnership, association or voluntary organization.

Sources: Codes, 1942, § 5814-55; Laws, 1970, ch. 446, § 5; Laws, 1992, ch.412, § 2, eff from and after July 1, 1992.

§ 83-23-111. Creation of the association.

There is created a nonprofit unincorporated legal entity to be known as the Mississippi Insurance Guaranty Association. All insurers defined as member insurers in section 83-23-109 shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under a plan of operation established and approved under section 83-23-117 and shall exercise its powers through a board of directors established under section 83-23-113.

Sources: Codes, 1942, § 5814-56; Laws, 1970, ch. 446, § 6, eff from and after passage (approved April 6, 1970).

§ 83-23-113 Board of directors.

(1) The board of directors of the association shall consist of not less than five (5) nor more than nine (9) 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 commissioner. 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 the approval of the commissioner. If no members are selected within 60 days after the effective date of this act the commissioner may appoint the initial members of the board of directors.

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

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

Sources: Codes, 1942, § 5814-57; Laws, 1970, ch. 446, § 7, eff from and after passage (approved April 6, 1970); Laws, 1992, ch 412, § 3, eff from and after July 1, 1992.

§ 83-23-115. Powers and duties of the association.

(1) The association shall:

(a) Be obligated to the extent of the covered claims existing prior to the determination of insolvency and arising within thirty (30) days after the determination of insolvency, or before the policy expiration date if less than 30 days after the determination, or before the insured replaces the policy or causes its cancellation, if he does so within 30 days of the determination. Such obligation shall be satisfied by paying the claimant an amount as follows:

(i) The full amount of a covered claim for benefits under a workers' compensation insurance coverage;

(ii) An amount in excess of Fifty Dollars (\$50.00) per policy for a covered claim for the return of unearned premium;

(iii) An amount in excess of Fifty Dollars (\$50.00) but not exceeding Three Hundred Thousand Dollars (\$300,000.00) per claimant for all other covered claims.

In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises.

(b) Be deemed the insurer to the extent of its obligation on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent.

(c) Assess insurers amounts necessary to pay the obligations of the association under paragraph (a) subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, and the cost of examinations under Section 83-23-125 and other expenses authorized by this article. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year bears to the net direct written premiums of all member insurers for the preceding calendar year. Each member insurer shall be notified of the assessment not later than thirty (30) days before it is due. No member insurer may be assessed in any year an amount greater than one percent (1%) of that member insurer's net direct written premiums for the preceding calendar year. If the maximum assessment, together with the other assets of the association, does not provide in any one (1) year an amount sufficient to make all necessary payments, the funds available shall be prorated

and the unpaid portion shall be paid as soon thereafter as funds become available. 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. Each member insurer may set off, against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer.

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

(e) Notify such persons as the commissioner directs under Section 83-23-119 (2) (a).

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

(g) 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 article.

(2) The association may:

(a) Employ or retain such persons as are necessary to handle claims and perform other duties of the association.

(b) Borrow funds necessary to effect the purposes of this article in accord with the plan of operation.

(c) Sue or be sued.

(d) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this article.

(e) Perform such other acts as are necessary or proper to effectuate the purpose of this article.

(f) Refund to the member insurers in proportion to the contribution of each member insurer to that association that amount by which the assets of the association exceed the liabilities if, at the end of any calendar year, the board of directors finds that the assets of the association exceed the liabilities of that association as estimated by the board of directors for the coming year.

Sources: Codes, 1942, § 5814-58; Laws, 1970, ch. 446, § 8; Laws, 1992, ch.412, § 4, eff from and after July 1, 1992.

§83-23-117. Plan of operation.

(1) (a) The association shall submit to the commissioner 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 commissioner.

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

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

(3) The plan of operation shall:

(a) Establish procedures whereby all the powers and duties of the association under section 83-23-115 will be performed.

(b) Establish procedures for handling assets of the association.

(c) Establish the amount and method of reimbursing members of the board of directors under section 83-23-113.

(d) Establish procedures by which claims may be filed with the association, and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent and a list of such claims shall be periodically submitted to the association or similar

organization in another state by the receiver or liquidator.

(e) Establish regular places and times for meetings of the board of directors.

(f) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors.

(g) Provide that any member insurer aggrieved by any final action or decision of the association may appeal to the commissioner within 30 days after the action or decision.

(h) Establish the procedures whereby selections for the board of directors will be submitted to the commissioner.

(i) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(j) The plan of operation may provide that any or all powers and duties of the association, except those under section 83-23-115 (1)(c) and 83-23-115(2)(b), 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 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 commissioner, and may be made only to a corporation, association or organization which extends protection not substantially less favorable and effective than that provided by this article.

Sources: Codes, 1942, § 5814-59; Laws, 1970, ch. 446, § 9, eff from and after passage (approved April 6, 1970).

§ 83-23-119. Duties and powers of the commissioner.

(1) The commissioner shall:

(a) Notify the association of the existence of an insolvent insurer not later than three days after he receives notice of determination of the insolvency.

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

(2) The commissioner may:

(a) Require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this article. Such 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.

(b) 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 commissioner 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 \$100.00 per month.

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

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

Sources: Codes, 1942, § 5814-60; Laws, 1970, ch. 446, § 10, eff from and after passage (approved April 6, 1970).

§ 83-23-121. Effect of paid claims.

(1) Any person recovering under this article shall be deemed to have assigned his rights under the policy to the association to the extent of his recovery from the association. Every insured or claimant seeking the protection of this article shall cooperate with the association to the same extent as such person would have been required to cooperate with the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out except such causes of action as the insolvent insurer would have had if such 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 shall not operate to reduce the liability of insureds to the receiver, liquidator, or statutory successor for unpaid assessments.

(2) (a) The association shall have the right to recover from the following persons the amount of any “covered claim” paid on behalf of such person pursuant to this article; and

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

(3) The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority equal to that which the claimant would have been entitled in the absence of this article against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the liquidator’s expenses.

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

Sources: Codes, 1942, § 5814-61; Laws, 1970, ch. 446, § 11; Laws, 1992, ch.412, § 5, eff from and after July 1, 1992.

§83-23-123. Nonduplication of recovery.

(1) Any person having a claim against an insurer under any provision in an insurance policy other than policy of an insolvent insurer, which is also a covered claim, shall be required to exhaust first his rights under such policy. Any amount payable on a covered claim under this article shall be reduced by the amount of any recovery under such insurance policy.

(2) Any person having a claim which may be recovered under more than one (1) insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured, except that if it is a first party claim for damage to property with a permanent location, he shall seek recovery first from the association of the location of the property, and if it is a workmen’s compensation claim, he shall seek recovery first from the association of the residence of the claimant. Any recovery under this article shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

Sources: Codes, 1942, § 5814-62; Laws, 1970, ch. 446, § 12, eff from and after passage (approved April 6, 1970).

§ 83-23-125. Prevention of insolvencies.

To aid in the detection and prevention of insurer insolvencies:

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

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

(c) It shall be the duty of the commissioner to 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 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 commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer. Such reports and recommendations shall not be considered public documents.

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

(f) The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based on the information available to the association and submit such report to the commissioner.

Sources: Codes, 1942, § 5814-63; Laws, 1970, ch. 446, § 13, eff from and after passage (approved April 6, 1970).

§ 83-23-127. Examination of the association.

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

Sources: Codes, 1942, § 5814-64; Laws, 1970, ch. 446, § 14, eff from and after passage (approved April 6, 1970).

§ 83-23-129. Tax exemption.

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

Sources: Codes, 1942, § 5814-65; Laws, 1970, ch. 446, § 15, eff from and after passage (approved April 6, 1970).

§ 83-23-131. Recognition of assessments in rates.

The rates and premiums charged for insurance policies to which this article applies may 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. Such rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer.

Sources: Codes, 1942, § 5814-66; Laws, 1970, ch. 446, § 16, eff from and after passage (approved April 6, 1970).

§ 83-23-133. Immunity.

There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the association, its agents or employees, the board of directors, or the commissioner or his representatives for any action taken or any failure to act by them in the performance of their powers and duties under this article.

Sources: Codes, 1942, § 5814-67; Laws, 1970, ch. 446, § 17, eff from and after passage (approved April 6, 1970); Laws, 1992, ch. 412, § 6, eff from and after July 1, 1992.

§ 83-23-135. 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 shall be stayed for six (6) months and for such additional time thereafter 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 its failure to defend an insured. The association, either on its own behalf or on behalf of such insured, may apply to have such judgment, order, decision, verdict or finding set aside by the same court or administrator that made such judgment, order, decision, verdict or finding, and shall be permitted to defend against such claim on the merits.

The liquidator, receiver, or statutory successor of an insolvent insurer covered by this article shall permit access by the board or its authorized representative to the insolvent insurer's records which are necessary for the board in carrying out its functions under this article with regard to covered claims. In addition, the liquidator, receiver, or statutory successor shall provide the board or its representative with copies of such records upon the request by the board and at the expense of the board.

Sources: Codes, 1942, § 5814-68; Laws, 1970, ch. 446, § 18, eff from and after passage (approved April 6, 1970); Amended by Bill 2372, 1992; Laws 1992, ch. 412, § 7, eff from and after July 1, 1992.

§ 83-23-137. Proposal for disbursal of assets of insolvent insurer; application for approval.

(1) Within one hundred twenty (120) days of a final determination of insolvency of an insurer by a court of competent jurisdiction, the receiver, liquidator or statutory successor shall make application to the court for approval of a proposal to disburse assets out of such insurer's marshalled assets, from time to time as such assets become available to each association entitled thereto. For the purposes of this section, the term "association" includes the Mississippi Insurance Guaranty Association and any entity or person performing a function in another state similar to that performed in this state by the Mississippi Insurance Guaranty Association, provided the Mississippi Insurance Guaranty Association is entitled to like payment under the laws of the other's state of domicile with respect to insolvent companies doing business in that state.

(2) Such proposal shall at least include provisions for:

(a) Reserving amount for the payment of expenses of administration, the payment of claims of secured creditors to the extent of the value of the security held, and the payment of claims falling within the priorities established in this part.

(b) Disbursement of the assets marshalled to date and subsequent disbursement of assets as they become available.

(c) Equitable allocation of disbursements of each association entitled thereto.

(d) The securing by the receiver from each of the associations entitled to disbursements pursuant to this section, of an agreement to return to it such assets previously disbursed as may be required to pay claims of secured creditors and claims falling with the priorities established in this part, in accordance with such priorities; however, no bond shall be required of any such association.

(e) A full report to be made by each association to the receiver, liquidator or statutory successor, which report shall account for all assets so disbursed to the association, all disbursements made therefrom, any interest earned by the association on such assets, and any other matter as the court may direct.

(3) The proposal of the receiver, liquidator or statutory successor shall provide for disbursements to each association in amounts at least equal to the claim payments made, and estimated to be made, by such association for which such association could assert a claim against the receiver, and shall provide that if the assets available for disbursement from time to time do not equal or exceed the amount of such claim payments made, or to be made, by each such association, then disbursements shall be in the amount of available assets.

(4) Notice of such application shall be given by the receiver, liquidator or statutory successor to the associations in, and to the commissioners of insurance of, each of the states to which disbursement may be made. Such notice shall be made by certified mail, first class postage prepaid, at least thirty (30) days prior to submission of such application to the court. Such notice shall be deemed to have been made when deposited in the mail.

(5) Action on the application may be taken by court if notice has been given pursuant to subsection (4) of this section and the proposal of the receiver, liquidator or statutory successor complies with subsection (2) of this section.

Sources: Laws, 1981, ch. 346, § 1, eff from and after passage (approved March 18, 1981).