**ARIZONA**

**PROPERTY AND CASUALTY INSURANCE**

**GUARANTY FUND ACT**

**Effective on and after July 1, 2015**

ARTICLE 6. ADMINISTRATION OF INSOLVENCY

**§ 20-661. Definitions**

In this article, unless the context otherwise requires:

1. "Account" means any one of the three accounts within the Arizona property and casualty insurance guaranty fund.

2. "Board" means the guaranty fund board.

3. "Covered claim" means an unpaid claim, including one for unearned premium, which arises out of and is within the coverage of an insurance policy to which this article applies issued by an insurer, if such insurer becomes an insolvent insurer after August 27, 1977 and the claimant or insured is a resident of this state at the time of the insured event or the property from which the claim arises is permanently located in this state. Covered claim does not include any amount due any reinsurer, insurer, insurance pool or underwriting association as subrogation recoveries or otherwise nor shall it include any obligations of the insolvent insurer arising out of any reinsurance contracts nor shall it include attorney fees or adjustment expenses incurred prior to the determination of insolvency.

4. "Fund" means the Arizona property and casualty insurance guaranty fund.

5. "Insolvent insurer" means an insurer that is 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 after September 19, 2007 by a court of competent jurisdiction in the insurer’s state of domicile or by this state pursuant to section 20-623, and the order of liquidation has not been stayed or been the subject of a writ of supersedeas or other comparable order. For purposes of the workers' compensation insurance account, “insolvent insurer” includes any insolvent insurer against which an order of liquidation with a finding of insolvency has been entered on, before or after the effective date of this section.

6. "Member insurer" means any person who writes any kind of insurance, unless such writing is restricted solely to life, title, surety, disability, credit, mortgage guaranty ocean-marine or surplus lines insurance, including the exchange of reciprocal or inter-insurance contracts, and is licensed to transact insurance in this state.

7. "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this article applies, less return premiums and dividends paid or credited to policyholders on such direct business. Net direct written premiums do not include premiums on contracts between insurers or reinsurers.

Added by Laws 1977, Ch. 130, § 2. Amended by Laws 1978, Ch. 194, § 2, eff. June 7, 1978, retroactively eff. to Aug. 27, 1977; Laws 1984, Ch. 188, § 13 Laws 2007, Ch. 115. § 1, [Laws 2014, Ch. 186, § 1, eff. July 1, 2015](http://web2.westlaw.com/find/default.wl?mt=WestlawGC&db=1077005&rs=WLW14.07&docname=UUID(I324FE850D8-1411E3BD77F-A17335EB5F3)&rp=%2ffind%2fdefault.wl&findtype=l&ordoc=505218&tc=-1&vr=2.0&fn=_top&sv=Split&tf=-1&pbc=74EC6292&utid=%7bBA8D8040-B026-4974-A7BB-C774FCF5ED54%7d); Laws 2016, Ch. 38, § 6.

**§ 20-662. Insurance guaranty fund**

A. The Arizona property and casualty insurance guaranty fund is established within the department.. The fund shall be deposited in a depository designated by the director and shall exercise its powers through a board established pursuant to § 20-663.

B. For the purpose of assessment, the fund shall be divided into three separate accounts:

1. The automobile insurance account.

2. The workers' compensation insurance account.

3. The account for all other insurance to which this article applies.

C. All costs, expenses and liabilities of the fund shall be paid by the fund and shall not be a general obligation of this state.

D. All monies placed in the accounts of the fund may be expended only for the purposes of this article and only for the purposes of the account into which the monies were placed. Monies placed in one of the three separate accounts established by this section may not be used directly or indirectly for any other purpose, including to satisfy an obligation attributable to another account.

Added by Laws 1977, Ch. 130, § 2. Amended by Laws 1978, Ch. 39, § 3, eff. May 16, 1978, [Laws 2014, Ch. 186, § 2, eff. July 1, 2015](http://web2.westlaw.com/find/default.wl?mt=WestlawGC&db=1077005&rs=WLW14.07&docname=UUID(I324FE850D8-1411E3BD77F-A17335EB5F3)&rp=%2ffind%2fdefault.wl&findtype=l&ordoc=505218&tc=-1&vr=2.0&fn=_top&sv=Split&tf=-1&pbc=74EC6292&utid=%7bBA8D8040-B026-4974-A7BB-C774FCF5ED54%7d).

**§20-663. Guaranty fund board; composition; compensation**

A. The guaranty fund board is established within the department of insurance and financial institutions consisting of eleven members who are appointed by the governor. Membership on the board shall be for a term of three years.

B. The members of the board shall be appointed from a list of persons submitted to the governor by the director of the department of insurance and financial institutions and shall be representative of a cross section of the industry that is authorized to transact property or casualty insurance within this state. The board shall be composed of:

1. Nine members, each representing a different insurer that is authorized to transact property or casualty insurance business in this state, including at least one member who represents a workers' compensation insurer that has been authorized to transact workers' compensation insurance business in this state for at least ten consecutive years.

2. One member who is a casualty insurance producer residing in this state.

3. One member who represents the general public.

C. The board shall conduct periodic meetings in Phoenix. Meetings shall be held on the call of the director or on the written request of any two members of the board.

D. Subject to the powers of the director, the board shall administer, operate and manage the fund pursuant to this article. The board shall advise and counsel the director on matters relating to the solvency of insurers.

E. Members of the board are not entitled to receive compensation and travel expenses as authorized by title 38, chapter 4, article 2,1 but are entitled to be reimbursed for expenses incurred by them as members of the board from the assets of the fund.

Laws 1977, ch 130, § 2; Laws 2002, ch. 71, § 6 Laws 2007, Ch. 115. § 2, Laws 2014, Ch. 186, § 3, eff. July 1, 2015.

1 Section 38-621 et seq.

**§ 20-664. Powers and duties of the board**

A. The board shall:

1. Investigate claims brought against the fund and adjust, compromise, settle and pay covered claims to the extent of the fund's obligation and deny all other claims. In regard to workers' compensation claims, the board shall adjust, compromise, settle and pay compensable claims, and deny all other claims, subject to the regulatory and adjudicatory authority of the industrial commission over workers' compensation claims pursuant to title 23, chapter 6.

2. Within six months after the determination of insolvency or six months after the fund discovers or should have discovered the settlement of a covered claim, whichever is later, deny and state the basis for the denial or pay any covered claim that was settled within four months before the determination of insolvency of the insolvent insurer. This paragraph does not apply to a settlement of a workers' compensation claim or commutation of permanent disability benefits approved by the industrial commission unless the industrial commission award approving the settlement or commutation of benefits has not become final.

3. Allocate claims paid and expenses incurred among the three accounts of the fund separately.

4. Assess member insurers separately for each account of the fund and expend amounts assessed only for the purposes of the account into which the amounts assessed were placed.

5. Notify such persons as the director directs pursuant to § 20-668, subsection B, paragraph 1.

6. Handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility shall be subject to the approval of the director. Designation may be declined by a member insurer.

7. Reimburse each servicing facility for obligations of the fund paid by the facility and for expenses incurred by the facility while handling the claims on behalf of the fund and pay the other expenses of the fund authorized pursuant to this article.

B. The board may:

1. Appear in, defend and appeal any action on a claim that is brought against the fund.

2. Employ or retain such persons as are necessary to handle claims and perform other duties of the fund.

3. Borrow funds necessary to carry out the intent of this article pursuant to the plan of operation.

4. Sue and be sued.

5. Negotiate and become a party to such contracts as are necessary to carry out the intent of this article.

6. Perform such other acts as are necessary or proper to carry out the intent of this article.

Added by Laws 1977, Ch. 130, § 2; Amended 1998, ch. 94, § 2, eff. 8-21-98, Laws 2014, Ch. 186, § 4, eff. July 1, 2015.

**§ 20-665. Plan of operation**

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

B. If the board fails to submit a suitable plan of operation or if at any time the board fails to submit suitable amendments to the plan, the director shall adopt any plan or amendment that is necessary or advisable to effectuate the provisions of this article and the plan or amendment shall continue in force until modified by the director or superseded by a plan submitted by the board and approved by the director. All member insurers shall comply with the plan of operation.

C. The plan of operation shall:

1. Establish the procedures for execution of all powers and duties of the board.

2. Establish procedures for handling assets of the fund.

3. Establish the amount and method of reimbursing members of the board pursuant to § 20-663.

4. Establish procedures by which claims may be filed with the fund and establish acceptable forms of proof of covered claims. Notice of claims to the receiver, conservator or liquidator of the insolvent insurer shall be deemed notice to the fund or its agents and a list of such claims shall be periodically submitted to the fund or similar organization in another state by the receiver or liquidator.

5. Establish regular places and times for meetings of the board.

6. Establish procedures for records to be kept of all financial transactions of the fund, the board and its agents.

7. Provide that any member insurer aggrieved by any final action or decision of the fund may appeal to the director within thirty days after the action or decision.

8. Establish the procedures for recommendations to the director for selections to the board.

9. Contain additional provisions that are necessary or proper for the execution of the powers and duties of the board.

D. In regard to the prevention and detection of insolvencies the board shall:

1. Notify the director of any information indicating that any member insurer may be insolvent or in a financial condition that is hazardous to the policyholders or to the public.

2. Notify the director of any information indicating that a member insurer may be unable to fulfill its contractual obligations and request a meeting with the director.

3. Upon request of the director, attend hearings before the director and meet with and advise the director or the receiver, conservator or liquidator appointed by the director on matters relating to the affairs of an insolvent insurer and relating to action which may be taken by the director, receiver, conservator or liquidator to best protect the interests of persons holding covered claims against the insolvent insurer and relating to the amount and timing of partial assessments and the marshalling of assets and the processing and handling of covered claims.

4. At the conclusion of any insurer insolvency in which the fund was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based on the information available to the board and submit such report to the director.

E. In regard to the prevention and detection of insolvencies the board may, on majority vote:

1. Request that the director make available to the board any information in the director's possession relative to the financial condition of any member insurer, including the power to pursue officially any operational records or activity of the member insurer wherever deemed necessary.

2. Request that the director 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 to the public.

3. Make recommendations and reports to the director 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.

4. Make recommendations to the director for the detection and prevention of insurer insolvencies.

F. The plan of operation may provide that any or all powers and duties of the board, except those pursuant to § 20-664, subsection A, paragraphs 3 and 4 and subsection B, are delegated to a corporation, association or other organization which performs or will perform functions similar to those of this fund, or its equivalent, in two or more states. Such a corporation, association or organization shall be reimbursed as a servicing facility and shall be paid for its performance of any other function of the fund. A delegation pursuant to this subsection shall take effect only with the approval of both the board and the director 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.

Added by Laws 1977, Ch. 130, § 2; Amended 1998, ch. 94, § 3, eff. 8-21-98.

**§ 20-666. Assessments; notification; exemptions; setoffs; refunds**

A. The board shall assess each member insurer, as a condition of such insurer's authority to transact insurance in this state, in such amounts as are necessary to pay the obligations of the fund pursuant to § 20-667 subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examinations and other expenses authorized pursuant to this article.

B. The assessment of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year on the kinds of insurance in the account bears to the net direct written premiums of all member insurers for the preceding calendar year on the kinds of insurance in the account. The board shall notify each member insurer of the assessment not later than thirty days before it is due. No member insurer may be assessed in any year on any account an amount greater than one per cent of such member insurer's net direct written premiums for the preceding calendar year on the kinds of insurance in the account.

C. Except for the workers' compensation insurance account, if the maximum assessment, together with the other assets of the fund in any account, does not provide in any one year in any account an amount sufficient to make all necessary payments from such account, the funds available may be prorated and the unpaid portion shall be paid as soon as funds become available. The board shall pay claims in any order which it may deem reasonable, including the payment of claims as such claims are received from the claimants or in groups or categories of claims.

D. The board 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.

E. Each member insurer serving as a servicing facility 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 if they are chargeable to the account for which the assessment is made.

F. In addition to all other assessments, the board may assess each member insurer in an amount not to exceed two hundred dollars per year for the purpose of paying for operating expenses of the board and employees of the board.

G. If, at the end of any calendar year, the board finds that the assets of the fund in any account exceed the liabilities of such account as estimated by the board for the coming year, the board may refund to the member insurers in proportion to the contribution of each member insurer to such account the amount by which the assets of the account exceed the liabilities. All refunds will be contingent upon the return of a member insurer's certificate(s) of contribution and will be in an amount equal to the premium tax offset value of the relinquished certificate.

Added by Laws 1977, Ch. 130, § 2, Laws 2014, Ch. 186, § 5, eff. July 1, 2015.

**§ 20-667. Obligations of the fund**

A. The fund is obligated solely to the extent of the covered claims existing during any of the following periods:

1 Before the determination of insolvency and arising within thirty days after the determination of insolvency.

2. Before the policy expiration date if less than thirty days after the determination of insolvency.

3. Before the insured replaces the policy or on request effects cancellation, if the insured does so within thirty days of the determination of insolvency.

B. Except for obligations arising out of a covered workers' compensation claim for benefits under title 23, chapter 6, such obligation shall include only that amount of each covered claim that is more than one hundred dollars and that is less than three hundred thousand dollars or an amount of more than twenty-five dollars but not exceeding ten thousand dollars for a covered claim for the return of unearned premiums. In no event shall the fund be obligated to a policyholder or claimant in any amount in excess of the face amount of the policy from which the claim arises.

C. The fund is 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. Notwithstanding any other law, the fund is not obligated to pay any amount that does not constitute a payment of a covered claim, including taxable costs, attorney fees or interest that could be awarded or any additional liabilities or obligations that might otherwise exist or accrue against the insolvent insurer if the insurer had not become insolvent.

D. Any settlement of a covered claim that is entered into with any insured or claimant within four months before the determination of insolvency and that has not been paid is voidable by the fund for six months after the determination of the insolvency or six months after the fund discovers or should have discovered the settlement, whichever is later.

E. Notwithstanding subsection D of this section, a settlement or commutation of a workers' compensation claim approved by an award of the industrial commission that has become final pursuant to section 23–942 or 23–943 is not voidable.

F. The fund is not bound by any settlement that is more than the fund's limits of liability established by this article.

G. Beginning on the effective date of this amendment to this section, the fund shall assume all contractual rights and obligations of the industrial commission regarding the administration of workers' compensation insolvent carrier claims if the industrial commission has contracted with a third-party processor to administer claims.

Added by Laws 1977, Ch. 130, § 2; Amended 1998, ch. 94, § 4. Eff. 8-21-98 Laws 2007, Ch. 115. § 3, Laws 2014, Ch. 186, § 6, eff. July 1, 2015.

**§ 20-668. Powers and duties of the director**

A. The director shall:

1. Report to the board when the director has reasonable cause to believe that any member insurer examined or being examined at the request of the board may be insolvent or in a financial condition hazardous to the policyholders or to the public.

2. Notify the board of the existence of an insolvent insurer not later than three working days after the director receives notice of such insolvency.

3. Upon request of the board, provide the fund with a statement of the net direct written premiums of each member insurer.

4. Immediately make available to the fund for the purpose of making payment upon all covered claims such assets of the insolvent insurer which are not required for payment of any claim accorded a higher priority pursuant to section 20-629.

B. The director may:

1. Require that the fund notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights pursuant to this article. Such notification shall be by mail at their last known address, where available. If sufficient information for notification by mail is not available, notice shall be by publication in a newspaper of general circulation.

2. Suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the director may assess a civil penalty on any member insurer which fails to pay an assessment when due. The penalty shall not exceed five per cent of the unpaid assessment per month. No penalty shall be less than one hundred dollars per month, which amount shall be deposited, pursuant to §§ 35-146 and 35-147, in the state general fund.

3. Revoke the designation of any servicing facility if the director finds claims are being handled unsatisfactorily.

C. Any final action or order of the director pursuant to this article shall be subject to review pursuant to chapter 1, article 2 of this title.1

Added by Laws 1977, Ch. 130, § 2; Amended by Laws 1993, Ch. 17, §7; Amended by Laws 1996, Ch. 102, § 17; Laws 2000, Ch. 193, § 135.

1 Section 20-141 et seq.

**§ 20-669. Examination of member insurer; costs; release of report**

A. Within thirty days of receipt by the director of a request from the board to examine any member insurer, the director shall begin such examination. The director may conduct the examination in any manner deemed appropriate.

B. The cost of such examination shall be paid by the board and the examination report shall be treated as are other examination reports.

C. Such examination report may be released to the board prior to its release to the public. The director shall notify the board when the examination is completed. The request for an examination shall be kept on file by the director but it shall not be open to public inspection prior to the release of the examination report to the public.

Added by Laws 1977, Ch. 130, § 2.

**§ 20-670. Meetings; information; subpoena power; confidentiality**

A. Upon receipt of notification from the board that a member insurer may be unable to fulfill its contractual obligations, the director shall meet with the board.

B. At such meeting, the director may divulge to the board any information in his possession and any records of his office, including examination reports or preliminary reports from examiners relating to such insurer.

C. The director may subpoena officers, directors and employees of an insolvent or impaired insurer or of an insurer the director considers to be in danger of insolvency or impairment, to appear before the board for a conference or for taking of testimony.

D. The board shall not reveal information received in such meetings to anyone unless authorized by the director or when required as a witness in court.

Added by laws 1977, Ch. 130, § 2.

**§ 20-671. Special meetings closed**

Notwithstanding any law to the contrary, special meetings of the board in which the financial condition of any member insurer is discussed, shall not be open to the public and only members of the board, the director of the department of insurance and financial institutions and other persons specifically authorized by the board may attend such meetings.

Added by Laws 1977, Ch. 130, § 2.

**§ 20-672. Effect of paid claims**

A. Any person recovering pursuant to this article shall be deemed to have assigned his or her rights under the policy to the fund to the extent of his or her recovery from the fund. Every insured or claimant seeking the protection of this article shall cooperate with the fund to the same extent as such person would have been required to cooperate with the insolvent insurer. The fund shall have no cause of action against the insured of the insolvent insurer for any sums it has paid.

B. The receiver, conservator, liquidator or statutory successor of an insolvent insurer shall be bound by settlement of covered claims by the fund or similar organization in another state.

C. The board shall periodically file with the receiver, conservator, liquidator or statutory successor of the insolvent insurer statements of the covered claims paid by the fund and estimates of anticipated claims on the fund which shall preserve the rights of the fund against the assets of the insolvent insurer.

Added by Laws 1977, Ch. 130, § 2; Amended by Laws 1993, Ch. 17, §8.

**§ 20-673. Nonduplication of recovery; exhausting all other applicable coverages; rights of fund and member insurer; definition**

A. Any person having a claim against an insurer under any provision in an insurance policy that is also a covered claim shall be required to exhaust first all rights under that policy. Any amount payable on a covered claim pursuant to this article shall be reduced by the amount of the recovery under the claimant's insurance policy. Any recovery pursuant to this article shall be reduced by the amount of the recovery under the claimant's insurance policy. A member insurer or other insurer, which pays the insurer's own policy, shall have no right of subrogation or recovery against the insured of an insolvent insurer. A claimant for workers' compensation benefits shall have all rights and obligations conferred under title 23, chapter 6.

B. Any person having a claim that may be recovered under more than one insurance guaranty fund or its equivalent or who is insured under more than one policy shall first exhaust coverage from the fund of the place of residence of the insured or, if it is a first-party claim for damage to property with a permanent location, shall first exhaust coverage from the fund of the location of the property, or shall first exhaust coverage under the other policy, and if it is a workers' compensation claim, recovery shall be sought from the guaranty fund or its equivalent of the place of residence of the claimant. Any recovery pursuant to this article shall be reduced by the amount of the recovery from any other insurance guaranty fund or its equivalent or under another policy. Covered claims by subscribers of an insolvent reciprocal insurer shall not be paid until all subscribers have been assessed pursuant to § 20-791.

C. Where more than one policy may be applicable, a policy issued by the insolvent insurer shall be deemed to be excess coverage. The claimant shall be required to exhaust all rights under other applicable coverage or coverages. Any recovery pursuant to this article shall be reduced by the amount of the recovery under the claimant's insurance policy. Any amount payable on a covered claim shall be reduced by the amount of the recovery under other applicable insurance.

D. Except for workers' compensation claimants, if damages against uninsured motorists are recoverable by the claimant from the claimant's own insurer, the recoverable damages shall reduce the amount of any recovery pursuant to this article if the full amount of the uninsured motorist coverage has been exhausted. The claimant shall have no claim against the insured of the insolvent carrier or the fund if the full amount of uninsured motorist coverage was not recovered by the claimant. A member insurer shall have no right of subrogation against the insured of the insolvent carrier or against the fund for any amount paid by the insurer under uninsured motorist coverage. A member insurer may file a claim for subrogation payments under uninsured motorist coverage against the ancillary or domiciliary receiver of the insolvent insurer.

E. The fund shall receive the proceeds of any amounts recoverable on reinsurance contracts or treaties entered into by the insolvent insurer that cover any of the liabilities incurred by the insolvent insurer in the category or categories involved. The proceeds shall be limited to payments on or loss adjustment expenses or defense costs actually incurred by the fund on account of claims covered in the contracts or treaties. The director, as receiver or ancillary receiver, shall receive the proceeds of any reinsurance recoverable to the extent of payment on claims, loss adjustment expenses or defense costs made before the order of liquidation.

F. If a covered claim arises out of two or more policies to which this article applies, a recovery under one policy reduces the amount that is payable under the other policy. The fund is not liable for the payment of more than one policy on a covered claim.

G. For the purposes of this article, "exhaustion of all rights under any other policy of insurance" means the payment of the applicable policy limits or an adjudication by a court of record that no benefits are owed.

Added by Laws 1977, Ch. 130, § 2; Amended 1998, ch. 94, § 5, eff. 8-21-98, Laws 2014, Ch. 186, § 7, eff. July 1, 2015.

**§ 20-674. Premium tax offset**

A. The fund shall issue to each insurer paying an assessment pursuant to this article a certificate of contribution, in a form prescribed by the director for the amount paid. All outstanding certificates shall be of equal priority without reference to amounts or dates of issue.

B. Except for premium taxes and assessments collected pursuant to title 23, chapter 6, a certificate of contribution issued to a member insurer may be offset against the insurer's premium tax liability to this state in the amount of twenty per cent of the assessment for the year of assessment and twenty per cent of the assessment per year for each of the succeeding four years. A member shall at its option have the right to show a certificate of contribution as an asset in the form approved by the director at percentages of the original face amount approved by the director, for calendar years as follows:

1. One hundred per cent for the calendar year of issuance.

2. Eighty per cent for the first calendar year after the year of issuance.

3. Sixty per cent for the second calendar year after the year of issuance.

4. Forty per cent for the third calendar year after the year of issuance.

5. Twenty per cent for the fourth calendar year after the year of issuance.

C. Any sums available for refund, pursuant to § 20-666, from the fund that have been written off by contributing insurers and offset against premium taxes shall be paid to the director and shall be deposited, pursuant to §§ 35-146 and 35-147, in the state general fund.

D. Notwithstanding subsection B of this section, the total amount a member insurer, as defined in § 20-661, may offset against its premium tax liability pursuant to a certificate of contribution that is issued from 1987 through 1994 shall not exceed the following percentage amounts for each certificate of contribution, except that in no event may the total amount of the offset exceed one hundred per cent of each assessment:

1. For 1992, thirteen per cent.

2. For 1993, eleven per cent.

3. For 1994, thirteen per cent.

E. No insurer may offset its premium tax liability by any amount unless the assessment for which the first year credit is claimed was collected by the guaranty fund in the calendar year for which the insurer seeks to offset its taxes.

F. Beginning in 1995, the total amount that a member insurer may offset against its premium tax liability pursuant to a certificate of contribution shall be as provided in subsection B of this section, except that in no event may the total amount of the offset exceed one hundred per cent of the assessment.

Added by Laws 1977, Ch. 130, §2; Amended by Laws 1992, Ch. 290, § 1; Laws 2000, Ch. 193, § 136, Laws 2014, Ch. 186, § 8, eff. July 1, 2015.

**§ 20-675. Immunity and indemnification**

A. There shall be no liability on the part of, and no cause of action shall rise against, the fund, any member insurer, the board or its agents or employees, the director or representatives of the director for any action taken in the performance of their powers and duties pursuant to this article.

B. The board and its agents or employees shall be indemnified by the fund against all expenses incurred in the defense of any action, suit or proceeding brought against such person on account of any action taken in the performance of the powers and duties of such person pursuant to this article, unless such person is finally adjudged to have committed a breach of duty involving gross negligence, bad faith, dishonesty, wilful malfeasance or reckless disregard of the responsibilities of his or her office. In the event of settlement before the final adjudication, such indemnity shall be provided only if the board is advised by independent counsel selected by the board that such person did not, in the counsel's opinion, commit such a breach of duty.

C. The fund's reimbursement of such expenses of indemnification shall be prorated and paid for by the member insurers in the proportion that the net direct written premiums of each member insurer for the calendar year preceding the commencement of such action, suit or proceeding bears to the net direct written premiums of all member insurers for the preceding calendar year.

Added by Laws 1977, Ch. 130, § 2; Amended 1998, ch. 94, § 6, eff. 8-2-98.

**§ 20-676. Stay of proceedings**

A. All proceedings in which the insolvent insurer or the insolvent insurer's insured is a party in any court of this state shall be stayed for six months from the date the insolvency is determined or an ancillary proceeding is instituted in this state, whichever is later, to permit proper defense by the fund of all pending causes of action as to any covered claim. At the request of any party and on a showing of good cause, the court may shorten or lengthen the stay prescribed in this section. This subsection does not apply to proceedings in which the insolvent insurer is a party to a proceeding before the industrial commission regarding an employee's entitlement to benefits under title 23, chapter 6, except that, on a showing of good cause, the industrial commission shall grant up to a ninety-day continuance of any scheduled hearing to allow the fund to assume the defense and investigate the claim.

B. On application of the fund, either on the fund's own behalf or on the insured's behalf, the court may set aside any judgment, order, decision, verdict, finding or award arising from the default of the insolvent insurer or the insurer's failure to defend the insured and the fund shall be allowed to defend the claim on the merits.

**C**. Notwithstanding any other provision of this chapter, a federal home loan bank may not be stayed, enjoined or prohibited from exercising or enforcing any right or cause of action against collateral pledged by an insurer member under any federal home loan bank security agreement or any pledge, security, collateral or guarantee agreement or other similar arrangement or credit enhancement relating to a security agreement to which that federal home loan bank is a party.

Added by Laws 1977, Ch. 130, § 2. Amended by Laws 1978, Ch. 39, § 4, eff. May 16, 1978; Amended 1998, ch. 94, § 7, eff. 8-21-98, Laws 2014, Ch. 186, § 9, eff. July 1, 2015; [Laws 2021, Ch. 5, § 14.](http://www.westlaw.com/Link/Document/FullText?findType=l&pubNum=1077005&cite=UUID(IDBF66D906D-7A11EBB804C-446EE2B48FA)&originatingDoc=N942C83F0DA7B11EBA61B83D71EE93136&refType=SL&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink))

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**§ 20-677. Interest**

All interest earned on monies held and invested by the fund shall be credited to the account from which the funds were obtained. Investments by the board shall be restricted to those investments which are permitted by insurers for statutory deposits pursuant to § 20-583.

Added by Laws 1977, ch. 130, § 2.

**§ 20-678. Examination of the fund; annual report**

The fund is subject to examination by the director. The fund shall annually report its financial condition for the preceding year, to the legislature, member insurers and the director. At the conclusion of the fund's handling of each insolvency, an audit of the financial transactions relating to such insolvency shall be made by the director or an independent accounting firm.

Added by laws 1977, Ch. 130, § 2.

**§ 20-679. Limitation on filing of creditor's claims**

1. Notwithstanding any other provision of this article, a covered claim shall not include a claim filed with the fund after the earlier of:
2. Eighteen months after the date of the order of liquidation.
3. The final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer.
4. Notwithstanding subsection A of this section, a covered claim for workers' compensation shall include claims filed that meet the requirements of section 20–667, subsection A and the statutory filing requirements of section 23–1061.

Added by Laws 2014, Ch. 186, § 11, eff. July 1, 2015

**§ 20-680. Exempt types of insurance**

A.This article applies to all kinds of insurance except:

(1) Life.

(2) Title.

(3) Surety.

(4) Disability.

(5) Credit.

(6) Mortgage guarantee.

(7) Ocean marine insurance.

(8) Insurance of warranties or service contracts, including insurance that provides for the repair, replacement or service of goods or property, or 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 reimbursement for the liability incurred by the issuer of agreements or service contracts that provide these benefits.

(9) Any kind of surplus lines insurance.

(10) Any policy of insurance issued to an industrial insured pursuant to §20-400.10.

(11) Any new types of coverages approved or permitted after August 27, 1977.

B. The exemptions prescribed in this section do not restrict any of the fund's rights or defenses permitted under this article, including the application of any credit or offset prescribed in Section 20-673 for payments made under any policy of insurance, including any policy of insurance that is exempt from this article.

Added by Laws 1977, Ch. 130, § 2. Amended by Laws 1978, Ch. 194, § 3, eff. June 7, 1978, retroactively eff. to Aug. 27, 1977; Laws 1984, Ch. 188, § 14; Amended 1998, ch. 94, § 8, eff. 8-21-98; Laws 2000, Ch. 137 § 9 Laws 2007, Ch. 115. § 4, Laws 2014, Ch. 186, § 12, eff. July 1, 2015.