

CHAPTER 19

(HB 210)

AN ACT relating to the Kentucky Insurance Guaranty Association Act.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 304.36-030 is amended to read as follows:

(1) *As used in this section, "ocean marine insurance" includes:*

(a) *Any form of insurance, regardless of name, label, or marketing designation of the insurance policy, that insures against maritime perils or risks and other related perils or risks that are usually insured against by traditional marine insurance, such as hull and machinery, marine builders risk, and marine protection and indemnity. These perils and risks insured against include without limitation loss, damage, or expense or legal liability of the insured for loss, damage, or expense arising out of or incident to ownership, operation, chartering, maintenance, use, repair, or construction of any vessel, craft, or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness, or death or for loss or damage to the property of the insured or another person; and*

(b) *That coverage written in accordance with the following:*

1. *The Jones Act, 46 U.S.C. sec. 30104;*
2. *The Longshore and Harbor Workers' Compensation Act, 33 U.S.C. sec. 901 et seq.; and*
3. *Any other similar federal statutory enactment or endorsement or policy affording protection and indemnity coverage.*

(2) This subtitle shall apply to all kinds of direct insurance, except:

- (a) Life, annuity, health, or disability;
- (b) Mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risks;
- (c) Credit insurance, vendors' single interest insurance, or collateral protection insurance or any similar insurance protecting the interests of a creditor arising out of a creditor-debtor transaction;
- (d) Insurance of warranties or service contracts, including insurance that provides for the repair, replacement, or service of goods or property, 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 ~~that provides~~ reimbursement for the liability incurred by the issuer of agreements or service contracts that provide these benefits;
- (e) Title insurance;
- (f) Ocean marine insurance;
- (g) Any transaction or combination of transactions between a person, including affiliates of the person, and an insurer, including affiliates of the insurer, that involves the transfer of investment or credit risk and that is unaccompanied by transfer of insurance risk; or
- (h) Any insurance provided, written, reinsured, or guaranteed by any government or governmental agencies.

(3)~~(2)~~ Notwithstanding subsection (2)~~(1)~~ of this section, this subtitle shall apply to health insurance *written by an insolvent insurer if the insurer was not a member of the Kentucky Life and Health Insurance Guaranty Association created under KRS 304.42-060 or a successor association on the date of the order of liquidation*~~[where such insurance is written by a member of the Kentucky Insurance Guaranty Association].~~

➔Section 2. KRS 304.36-050 is amended to read as follows:

As used in this subtitle, unless the context otherwise requires:

- (1) "Affiliate" means a person who directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control with an insolvent insurer on December 31 of the year immediately preceding the date that the insurer becomes an insolvent insurer;
- (2) "Association" means the Kentucky Insurance Guaranty Association created under KRS 304.36-060;
- (3) "Claimant" means any insured making a first-party claim or any person instituting a liability claim, **except**~~provided~~ that no person who is an affiliate of the insolvent insurer may be a claimant;

~~(4) "Commissioner" means the commissioner of the Department of Insurance of Kentucky;~~

~~(4)~~~~(5)~~ (a) "Control" means the possession, direct or indirect, of power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a loan contract or 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.

(b) 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 any other person. This presumption may be rebutted by a showing that control does not exist in fact;

~~(5)~~~~(6)~~ (a) "Covered claim":

1. Means an unpaid claim, including **a claim**~~one~~ for unearned premiums, submitted by a claimant, which arises out,~~of and~~ is within the coverage, and is subject to the applicable limits of an insurance policy to which this subtitle applies issued by **a member**~~an~~ insurer, if the **member** insurer becomes an insolvent insurer after June 16, 1972, and:

~~a.~~~~1.~~ The claimant or insured is a resident of this state at the time of the insured event, **except**~~provided~~ that for entities other than an individual, the residence of a claimant, insured, or policyholder is the state in which its principal place of business is located at the time of the insured event; or

~~b.~~~~2.~~ The claim is a first-party claim for damage to property with a permanent location in this state; **and**

2. **Includes the obligations assumed by an assuming insurer from a ceding insurer when the assuming insurer subsequently becomes an insolvent insurer if:**

a. At the time of the assuming insurer's insolvency, the ceding insurer is no longer admitted to transact business in this state; and

b. Both the assuming insurer and the ceding insurer were member insurers at the time the assumption was made.

(b) **For purposes of paragraph (a) of this subsection, "issued by a member insurer" shall not include an insurance policy issued by a nonmember insurer and later allocated to, transferred to, assumed by, or otherwise made the sole responsibility of a member insurer under a state statute commonly known as a "Division" or an "Insurance Business Transfer" statute.**

(c) "Covered claim" shall not include the following:

1. Any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise;

2. Any amount sought as a return of premium under any retrospective rating plan or dividends plan;

3. Legal expenses for policyholders who were not Kentucky residents on the date of the insured event;

4. Legal expenses for policyholders who were Kentucky residents **on the date**~~at the time~~ of the insured event if the legal expenses exceed the association's statutory cap;

5. Any first-party claim by an insured whose net worth exceeds **ten**~~twenty-five~~ million dollars (**\$10,000,000**~~\$25,000,000~~) on December 31 of the year prior to the year in which the insurer becomes an insolvent insurer. ~~provided that~~ An **insured's**~~insurer's~~ net worth on that date shall be deemed to include the aggregate net worth of the insured and all of its subsidiaries as calculated on a consolidated basis;

6. Any first-party claim by an insured that is an affiliate of an insolvent insurer;~~or~~

7. Any amount awarded as punitive or exemplary damages;
 8. *An obligation incurred after the expiration date of the insurance policy;*
 9. *An obligation incurred after the insurance policy has been replaced by the insured, canceled at the insured's request, or canceled by the receiver or liquidator;*
 10. *An obligation to a state, other than Kentucky, or federal government; or*
 11. *Any claim for interest;*
- (6)(7) "Insolvent insurer" means:
- (a) ~~an insurer:~~
 - (a) *That was a member insurer* ~~[licensed to transact insurance in this state either] at the time the policy was issued [or when the insured event occurred]; and~~
 - (b) Against whom a final order of liquidation, with a finding of insolvency, has been entered by a court of competent jurisdiction in the *insurer's* ~~[company's]~~ state of domicile ~~[after June 16, 1972; and~~
 - (c) ~~With respect to which no order, decree, or finding relating to the solvency of the insurer, whether preliminary or temporary in nature or otherwise has been issued by a court of competent jurisdiction or by any insurance commissioner, insurance office, or department or similar official or body before June 16, 1972, or which was in fact insolvent before June 16, 1972, and the de facto insolvency was known by the chief insurance regulatory official of the state of its domicile];~~
- (7) *"Insured event," in an occurrence policy and claims-made policy, means the act that gave rise to the claim;*
- (8) (a) "Member insurer" means:
- (a) ~~any person who:~~
 1. Writes any kind of insurance to which this subtitle applies under KRS 304.36-030(2), including the exchange of reciprocal or inter-insurance contracts; and
 2. ~~(b) [Any person who]~~ Is licensed to transact insurance in this state.
- (b) *"Member insurer" shall not include a self-insurer.*
- (c) *As used in paragraph (b) of this subsection, "self-insurer":*
1. *Means a person that covers its liability through a qualified individual or group self-insurance program or any other formal program created for the specific purpose of covering liabilities typically covered by insurance; and*
 2. *Includes but is not limited to:*
 - a. *Liability self-insurance groups under Subtitle 48 of KRS Chapter 304;*
 - b. *Workers' compensation self-insured groups under Subtitle 50 of KRS Chapter 304; and*
 - c. *Self-insurers and self-insured groups under KRS Chapter 342.*
- (d) For purposes of determining a withdrawing member's assessment liability, an insurer shall cease to be a member insurer effective on the day following the termination or expiration of *its* ~~[his or her]~~ license to transact the kinds of insurance to which this subtitle applies, *except that* ~~[However,]~~ the insurer shall remain liable as a member insurer for any and all obligations, including obligations for assessments levied prior to the termination or expiration of the insurer's license and assessments levied after the termination or expiration, that relate to any insurer that became an insolvent insurer prior to the termination or expiration of the insurer's license; *and*
- (9) (a) "Net direct written premiums" means direct gross premiums written, or in the case of an insurer organized under KRS Chapter 299, assessments, membership fees, and policy fees levied and collected, in this state, less returns thereon and dividends paid or credited to policyholders on such direct business.
- (b) "Net direct written premiums" ~~shall~~ ~~does~~ not include premiums on contracts between insurers or reinsurers;

(10) ~~"Ocean marine insurance" includes any form of insurance, regardless of name, label, or marketing designation of the insurance policy, that insures against maritime perils or risks and other related perils or risks, that are usually insured against by traditional marine insurance such as hull and machinery, marine builders risk, and marine protection and indemnity. These perils and risks insured against include without limitation loss, damage, or expense or legal liability of the insured for loss, damage, or expense arising out of or incident to ownership, operation, chartering, maintenance, use, repair, or construction of any vessel, craft, or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness, or death or for loss or damage to the property of the insured or another person. "Ocean marine insurance" includes that coverage written in accordance with the following:~~

- ~~(a) The Jones Act (46 U.S.C. sec. 688);~~
- ~~(b) The Longshore and Harbor Workers' Compensation Act D (33 U.S.C. secs. 901 et seq.); or~~
- ~~(c) Any other similar federal statutory enactment, or any endorsement or policy affording protection and indemnity coverage; and~~

(11) ~~"Insured event," in an occurrence policy and claims made policy, means the act that gave rise to the claim].~~

➔ Section 3. KRS 304.36-080 is amended to read as follows:

(1) The association shall:

- (a) *I.* Be obligated to the extent of the covered claims existing:
 - a.* Prior to the order of liquidation and arising within thirty (30) days after the order of liquidation;~~[-, or]~~
 - b.* Before the policy expiration date if less than thirty (30) days after the order of liquidation;~~[-]~~ or
 - c.* Before the insured replaces the policy or on request, effects cancellation, if the insured does so within thirty (30) days of the order of liquidation.
- 2.* The obligation shall be satisfied by paying to the claimant an amount as follows:
 - a.*~~[-]~~ The full amount of a covered claim for benefits arising from a workers' compensation insurance policy purchased to satisfy the requirements of KRS 342.340;
 - b.*~~[-]~~ An amount not exceeding ten thousand dollars (\$10,000) per policy for a covered claim for the return of unearned premium;
 - c.* ***An amount not exceeding five hundred thousand dollars (\$500,000) per insured event for all covered claims resulting from that event for benefits arising from a cybersecurity insurance policy; or***
 - d.*~~[-]~~ An amount not exceeding three hundred thousand dollars (\$300,000) per claimant for all other covered claims;
- (b) *1.* Not be obligated to pay a claimant an amount in excess of the obligation of the insolvent insurer under the policy or coverage from which the claim arises.
- 2.* Notwithstanding any other provisions of this subtitle, a covered claim shall not include:
 - a.* A claim filed with the association after the earlier of:
 - i.* Twelve (12) months after the date of the order of liquidation;~~[-]~~ or
 - ii.* The final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer; ~~or[-] and shall not include[-]~~
 - b.* Any claim filed with the association or a liquidator for protection afforded under the insured's policy for incurred but not reported losses.
- 3.* Any obligation of the association to defend an insured shall cease upon the association's payment or tender of an amount equal to the lesser of the association's covered claim obligation limit or the applicable policy limit.
- 4.* Notwithstanding any other provisions of this subtitle, except in the case of a claim for benefits under workers' compensation coverage, any obligation of the association to any and all persons

shall cease when ten million dollars (\$10,000,000) shall have been paid in the aggregate by the association and any one (1) or more associations similar to the association of any other state or states or any *property and casualty*~~[property/casualty]~~ security fund that obtains contributions from insurers on a preinsolvency basis to or on behalf of any insured and its affiliates on covered claims or allowed claims arising under the policy or policies of any one (1) insolvent insurer.

5. For purposes of this *paragraph*~~[section]~~, the term "*affiliates*~~[affiliate]~~" *means any*~~[shall mean a]~~ person who directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control with another person.
6. If the claimant has a covered claim or allowed claim against the association or any associations similar to the association or any property and casualty insurance security fund of another *state*~~[states]~~, under the policy or policies of any one (1) insolvent insurer, the association may establish a plan to allocate amounts payable by the association in a manner as the association in its discretion deems equitable;
 - (c) 1. Be deemed the insurer to the extent of its obligation on the covered claims and to that extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent, including, but not limited to, the right to pursue and retain salvage and subrogation recoverable on paid covered claim obligations.
 2. *In the case of a covered claim involving obligations assumed by an assuming insurer from a ceding insurer, the association shall:*
 - a. *Have the right to recover a deposit, bond, or other assets that may have been required to be posted by the ceding insurer to the extent of covered claim payments; and*
 - b. *Be subrogated to any rights the ceding insurer's policyholders may have against the ceding insurer;*
- (d) 1. Assess insurers amounts necessary to pay the obligations of the association under paragraph (a) of this subsection subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency,~~[and]~~ the cost of examinations under KRS 304.36-130, and other expenses authorized by this subtitle.
2. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the calendar year preceding the assessment bears to the net direct written premiums of all member insurers for the calendar year preceding the assessment.
3. Each member insurer shall be notified of the assessment not later than thirty (30) days before it is due.
4. No member insurer may be assessed in any year an amount greater than two percent (2%) of that member insurer's net direct written premiums for the calendar year preceding the assessment.
5. 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.
6. The association shall pay claims in any order which it may deem reasonable including the payment of claims as such are received from the claimants or in groups or categories of claims.
7. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if:
 - a. 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; *and*~~[provided, however, that]~~
 - b. During the period of deferment, no dividends *are*~~[shall be]~~ paid *by the member insurer* to shareholders or policyholders.
8. Deferred assessments shall be paid when *the payments*~~[such payment]~~ will not reduce capital and surplus below required minimums, *and the*~~[Such]~~ payments shall be refunded to those

ACTS OF THE GENERAL ASSEMBLY

companies receiving larger assessments by virtue of ~~the~~~~such~~ deferment~~,~~ or at the election of any such company, credited against future assessments.

9. 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 such member insurer;
 - (e) Investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims;
 - (f) Notify such persons as the commissioner directs under KRS 304.36-100(2)(a);
 - (g)
 1. Handle claims through its employees or through one (1) or more insurers or other persons designated as servicing facilities.
 2. Designation of a servicing facility is subject to the approval of the commissioner, but ~~the~~~~such~~ designation may be declined by a member insurer;~~and~~
 - (h) 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
 - (i) ~~Shall~~ Pay the other expenses of the association authorized by this subtitle.
- (2) The association may:
 - (a) Appear in, defend, and appeal any action on a claim brought against the association;
 - (b) Employ or retain such persons as are necessary to handle claims and perform other duties of the association;
 - (c) Borrow funds necessary to effect the purposes of this subtitle in accord with the plan of operation;
 - (d) Sue or be sued;
 - (e) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this subtitle;
 - (f) Perform such other acts as are necessary or proper to effectuate the purpose of this subtitle; and
 - (g) Refund to the member insurers in proportion to the contribution of each member insurer to the 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 the association as estimated by the board of directors for the coming year.

Signed by Governor March 17, 2023.