

Amendment No. 10

Assembly Amendment to Assembly Bill No. 4	(BDR 57-314)
Proposed by: Assembly Committee on Commerce and Labor	
Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: No	

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

DP/WLK



Date: 4/5/2021

A.B. No. 4—Revises provisions relating to the Nevada Insurance Guaranty Association. (BDR 57-314)



ASSEMBLY BILL NO. 4—COMMITTEE
ON COMMERCE AND LABOR

(ON BEHALF OF THE DIVISION OF INSURANCE OF THE
DEPARTMENT OF BUSINESS AND INDUSTRY)

PREFILED NOVEMBER 18, 2020

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to the Nevada Insurance Guaranty Association. (BDR 57-314)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to insurance; revising provisions governing the authority and duties of the Nevada Insurance Guaranty Association, the Board of Directors of the Association and the Commissioner of Insurance; revising provisions governing claims against, and actions and proceedings involving, insolvent insurers and the Association; revising provisions governing the plan of operation of the Association and subrogation and recovery by the Association; revising the immunity from liability for certain persons with regard to activities relating to the Association and insolvent insurers; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the Commissioner of Insurance to regulate insurance in this State. (NRS 679B.120) Existing law also creates the Nevada Insurance Guaranty Association, a nonprofit unincorporated legal entity headed by a board of directors appointed by the Commissioner. (NRS 687A.040, 687A.050) The Association receives and addresses claims of insurance policyholders and beneficiaries of policies issued by an insurer who has become insolvent and is no longer able to meet its obligations. (Chapter 687A of NRS) The Association and the insurance guaranty associations established in other states together comprise the National Conference of Insurance Guaranty Funds. This bill revises existing law governing the operation of the Association and claims relating to insolvent insurers to align with model language provided by the National Conference of Insurance Guaranty Funds.

Sections 3 and 4 of this bill define the terms “person” and “self-insurer” which are specific to the law governing the operation of the Association and claims relating to insolvent insurers. **Section 7** of this bill indicates the placement of the new definitions within existing law. (NRS 687A.030)

Section 5 of this bill limits the claims which may be asserted against a person insured by a policy issued by an insolvent insurer. The provisions of **section 5** operate in conjunction with **section 8** of this bill. **Section 8** changes which claims are considered to be covered

claims, which in turn affects whether those claims may become obligations to be paid by the Association. (NRS 687A.033, 687A.060)

Section 6 of this bill revises the applicability of the law governing the operation of the Association and claims relating to insolvent insurers. (NRS 687A.020) **Section 9** of this bill revises the duties and authority of the Association, and sets forth requirements for actions involving the Association. (NRS 687A.060) **Section 10** of this bill revises the requirements governing the plan of operation of the Association. (NRS 687A.070) **Section 11** of this bill revises the duties of the Commissioner with regard to the Association. (NRS 687A.080) **Section 12** of this bill revises the provisions governing subrogation and recovery by the Association. (NRS 687A.090)

Section 13 of this bill changes which claims may be filed directly with the receiver of an insolvent insurer. (NRS 687A.095) **Section 14** of this bill revises the requirements for exhaustion of other coverage by a claimant seeking recovery from the Association. (NRS 687A.100)

Section 15 of this bill revises the duties and authority of the Board of Directors of the Association. (NRS 687A.110) **Section 16** of this bill revises the immunity from liability for the Board of Directors, the Association itself and the Commissioner, and for certain persons working for the Association or the Commissioner, with regard to activities relating to the Association and insolvent insurers. (NRS 687A.150)

Section 17 of this bill revises provisions governing court proceedings involving an insolvent insurer, and authorizes the Association and its representatives to access the records of an insolvent insurer. (NRS 687A.160)

Sections 1 and 18 of this bill add and delete internal references in existing law to account for revisions made by **sections 9 and 15**. (NRS 239.010, 686B.230)

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 686B.230 is hereby amended to read as follows:

686B.230 1. The Nevada Essential Insurance Association has, for purposes of this section and to the extent approved by the Commissioner, the general powers and authority granted under the laws of this state to carriers licensed to transact the kinds of insurance defined in NRS 681A.020 to 681A.080, inclusive.

2. The Association may take any necessary action to make available necessary insurance, including but not limited to, the following:

(a) Assess participating insurers amounts necessary to pay the obligations of the Association, administration expenses, the cost of examinations ~~conducted pursuant to NRS 687A.110~~ and other expenses authorized by this chapter. The assessment of each member insurer for the kind or kinds of insurance designated in the plan must be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year bear to the net direct written premiums of all member insurers for the preceding calendar year. A member insurer may not be assessed in any year an amount greater than 5 percent of his or her net direct written premiums for the preceding calendar year. Each member insurer must be allowed a premium tax credit at the rate of 20 percent per year for 5 successive years beginning on the first day of the calendar year after the calendar year in which the insurer pays the assessment pursuant to this subsection.

(b) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this section.

(c) Sue or be sued, including taking any legal action necessary to recover any assessments for, on behalf of or against participating carriers.

(d) Investigate claims brought against the fund and adjust, compromise, settle and pay covered claims to the extent of the Association's obligation and deny all

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

(e) Classify risks as may be applicable and equitable.

(f) Establish appropriate rates, rate classifications and rating adjustments and file those rates with the Commissioner in accordance with this chapter.

(g) Administer any type of reinsurance program for or on behalf of the Association or any participating carriers.

(h) Pool risks among participating carriers.

(i) Issue and market, through agents, policies of insurance providing the coverage required by this section in its own name or on behalf of participating carriers.

(j) Administer separate pools, separate accounts or other plans as may be deemed appropriate for separate carriers or groups of carriers.

(k) Invest, reinvest and administer all funds and moneys held by the Association.

(l) Borrow funds needed by the Association to carry out the purposes of this section.

(m) Develop, effectuate and promulgate any loss-prevention programs aimed at the best interests of the Association and the insuring public.

(n) Operate and administer any combination of plans, pools, reinsurance arrangements or other mechanisms as deemed appropriate to best accomplish the fair and equitable operation of the Association for the purposes of making available essential insurance coverage.

3. In providing for the recoupment of a deficit of the Association, an option must be offered to an insured each policy year to pay a capital stabilization charge which must not exceed 100 percent of the premium charged to the insured in that year. The Board of Directors shall determine the amount of the charge from appropriate factors of loss experience and risk associated with the Association and the insured. An insured who pays the stabilization charge must not be required to pay any assessment to recoup a deficit of the Association incurred in any policy year for which the charge is paid. The Association's plan of operation must provide for the return to the insured of so much of the insured's payment as remains after all actual or potential liabilities under the policy have been discharged.

Sec. 2. Chapter 687A of NRS is hereby amended by adding thereto the provisions set forth as sections 3, 4 and 5 of this act.

Sec. 3. *"Person" means any individual or legal entity, including, without limitation, a governmental entity.*

Sec. 4. *"Self-insurer" 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.*

Sec. 5. *With regard to a claim for an amount described in paragraph (d) of subsection 2 of NRS 687A.033, no such claim for any amount due any reinsurer, insurer, insurance pool, underwriting association, health maintenance organization, hospital plan corporation, professional health service corporation or self-insurer may be asserted against a person insured under a policy issued by an insolvent insurer other than to the extent such claim exceeds the Association obligation limitations set forth in NRS 687A.060.*

Sec. 6. NRS 687A.020 is hereby amended to read as follows:

687A.020 Except as otherwise provided in subsection 5 of NRS 695E.200, this chapter applies to all direct insurance, except:

1. Life, annuity, health or disability insurance;
2. Mortgage guaranty, financial guaranty or other forms of insurance offering protection against investment risks;
3. Fidelity or surety bonds or any other bonding obligations;
4. Credit insurance as defined in NRS 690A.015 ~~[(1)],~~ *vendors' single interest insurance, collateral protection insurance or any similar insurance protecting the interests of a creditor arising out of a creditor-debtor transaction;*
5. Insurance of warranties or service contracts ~~[(1)],~~ *including, without limitation, insurance that provides:*
 - (a) For the repair, replacement or service of goods or property;*
 - (b) Indemnification for the repair, replacement or service of goods or property;*
 - (c) Indemnification for the operational or structural failure of goods or property due to a defect in materials, workmanship or normal wear and tear; or*
 - (d) Reimbursement for the liability incurred by the issuer of agreements or service contracts which provide any benefits described in this subsection;*
6. Title insurance;
7. Ocean marine insurance;
8. Any transaction or combination of transactions between a person, including affiliates of the person, and an insurer, including affiliates of the insurer, which involves the transfer of investment or credit risk unaccompanied by the transfer of insurance risk; or
9. Any insurance provided by or guaranteed by a governmental entity.

Sec. 7. NRS 687A.030 is hereby amended to read as follows:

687A.030 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 687A.031 to 687A.039, inclusive, *and sections 3 and 4 of this act* have the meanings ascribed to them in those sections.

Sec. 8. NRS 687A.033 is hereby amended to read as follows:

687A.033 1. "Covered claim" means an unpaid claim or judgment, including a claim for unearned premiums, which arises out of and is within the coverage of an insurance policy to which this chapter applies if the insurer becomes an insolvent insurer, the policy was issued by the insurer or assumed by the insurer in an assumed claims transaction, and one of the following conditions exists:

(a) The claimant or insured, if a natural person, is a resident of this State at the time of the insured event.

(b) The claimant or insured, if other than a natural person, maintains its principal place of business in this State at the time of the insured event.

(c) The property from which the first party property damage claim arises is permanently located in this State.

~~[(d) The claim is not a covered claim pursuant to the laws of any other state and the premium tax imposed on the insurance policy is payable in this State pursuant to NRS 680B.027.]~~

2. The term does not include:

(a) An amount ~~[that is directly or indirectly due a reinsurer, insurer, insurance pool or underwriting association, as recovered by subrogation, indemnity or contribution, or otherwise.~~

~~—(b) That part of a loss which would not be payable because of a provision for a deductible or a self-insured retention specified in the policy.~~

~~—(c) Awarded as punitive or exemplary damages.~~

(b) A fine or penalty paid to a governmental authority.

(c) An amount sought as a return of premium under any retrospective rating plan.

1 (d) *An amount due any reinsurer, insurer, insurance pool, underwriting*
2 *association, health maintenance organization, hospital plan corporation,*
3 *professional health service corporation or self-insurer as subrogation recoveries,*
4 *reinsurance recoveries, contribution, indemnification or otherwise.*

5 (e) Except as otherwise provided in this paragraph, any claim filed with the
6 Association:

7 (1) More than ~~18~~ 25 months after the date of the order of liquidation; or

8 (2) After the final date set by the court for the filing of claims against the
9 liquidator or receiver of the insolvent insurer,

10 ➤ whichever is earlier. The provisions of this paragraph do not apply to a claim for
11 workers' compensation that is reopened pursuant to the provisions of NRS
12 616C.390 or 616C.392.

13 ~~[(d)]~~ (f) A claim filed with the Association for a loss that is incurred but is not
14 reported to the Association before the expiration of the period specified in
15 subparagraph (1) or (2) of paragraph ~~[(e)]~~ (e).

16 ~~[(e)] An obligation to make a supplementary payment for adjustment or~~
17 ~~attorney's fees and expenses, court costs or interest and bond premiums incurred by~~
18 ~~the insolvent insurer before the appointment of a liquidator, unless the expenses~~
19 ~~would also be a valid claim against the insured.~~

20 ~~— (f) A first party or third party claim brought by or against an insured, if the~~
21 ~~aggregate net worth of the insured and any affiliate of the insured, as determined on~~
22 ~~a consolidated basis, is more than \$25,000,000 on December 31 of the year~~
23 ~~immediately preceding the date the insurer becomes an insolvent insurer.]~~

24 (g) *A first-party claim by an insured whose net worth exceeds \$10,000,000 on*
25 *December 31 of the year immediately preceding the date the insurer becomes an*
26 *insolvent insurer.*

27 (h) *A third-party claim relating to a policy of an insured whose net worth*
28 *exceeds \$25,000,000 on December 31 of the year immediately preceding the date*
29 *the insurer becomes an insolvent insurer.*

30 (i) *A claim that would otherwise be a covered claim, but is an obligation to or*
31 *on behalf of a person who has a net worth greater than that allowed by the*
32 *insurance guaranty association law of the state of residence of the claimant at the*
33 *time specified by such law, and which association has denied coverage to that*
34 *claimant on that basis.*

35 (j) *A first-party claim by an insured which is an affiliate of the insolvent*
36 *insurer.*

37 (k) *A fee or other amount relating to goods or services sought by or on behalf*
38 *of any attorney or other provider of goods or services retained by the insolvent*
39 *insurer or an insured before the date the insurer was determined to be insolvent.*

40 (l) *A fee or other amount sought by or on behalf of any attorney or other*
41 *provider of goods or services retained by any insured or claimant in connection*
42 *with the assertion or prosecution of any claim, covered or otherwise, against the*
43 *Association.*

44 (m) *A claim for interest.*

45 3. *For the purposes of paragraphs (g) and (h) of subsection 2, an insured's*
46 *net worth on the applicable date shall be deemed to include the aggregate net*
47 *worth of the insured and all of the insured's subsidiaries and affiliates as*
48 *calculated on a consolidated basis.*

49 4. The provisions of ~~[(this paragraph)]~~ paragraphs (g) and (h) of subsection 2
50 do not apply to a claim for workers' compensation.

51 5. *The provisions of paragraph (h) of subsection 2 do not apply to third-*
52 *party claims against the insured where the insured has applied for or consented*
53 *to the appointment of a receiver, trustee or liquidator for all or a substantial part*

1 *of the insured's assets, filed a voluntary petition in bankruptcy, filed a petition or*
2 *an answer seeking a reorganization or arrangement with creditors or to take*
3 *advantage of any insolvency law, or if an order, judgment or decree is entered by*
4 *a court of competent jurisdiction, on the application of a creditor, adjudicating*
5 *the insured bankrupt or insolvent or approving a petition seeking reorganization*
6 *of the insured or of all or substantial part of its assets.*

7 6. As used in this ~~[paragraph]~~ section, "affiliate" means a person who
8 directly or indirectly owns or controls, is owned or controlled by, or is under
9 common ownership or control with, another person. For the purpose of this
10 definition, the terms "owns," "is owned" and "ownership" mean ownership of an
11 equity interest, or the equivalent thereof, of 10 percent or more.

12 **Sec. 9.** NRS 687A.060 is hereby amended to read as follows:

13 687A.060 1. The Association:

14 (a) ~~It~~ *Except as otherwise provided in paragraph (b), is* obligated to the
15 extent of the covered claims existing before the determination of insolvency and
16 arising within 30 days after the determination of insolvency, or before the
17 expiration date of the policy if that date is less than 30 days after the determination,
18 or before the insured replaces the policy or on request cancels the policy if the
19 insured does so within 30 days after the determination. The obligation of the
20 Association to pay a covered claim is limited to the payment of:

21 (1) The entire amount of the claim, if the claim is for workers'
22 compensation pursuant to the provisions of chapters 616A to 616D, inclusive, or
23 chapter 617 of NRS;

24 (2) Not more than ~~[\$300,000]~~ *\$10,000* for each policy if the claim is for the
25 return of unearned premiums; or

26 (3) The limit specified in a policy or \$300,000, whichever is less, for each
27 occurrence for any covered claim other than a covered claim specified in
28 subparagraph (1) or (2).

29 (b) *Is not obligated to pay a claimant an amount in excess of the obligation*
30 *of the insolvent insurer under the policy or coverage from which the claim arises.*
31 *Any obligation of the Association to defend an insured on a covered claim ceases*
32 *upon the Association's:*

33 (1) *Payment, by settlement releasing the insured or on a judgment, of an*
34 *amount equal to the lesser of the Association's covered claim obligation limit or*
35 *the applicable policy limit; or*

36 (2) *Tender of the amount described in subparagraph (1).*

37 *↪ If the Association determines that there may be more than one claimant*
38 *having a covered claim or allowed claim against the Association, or against any*
39 *associations similar to the Association in other states, under the policy or policies*
40 *of any one insolvent insurer, the Association may establish a plan to allocate*
41 *amounts payable by the Association in such a manner as the Association in its*
42 *discretion deems equitable.*

43 (c) Shall be deemed the insurer to the extent of its obligations on the covered
44 claims and to that extent has any rights, duties and obligations of the insolvent
45 insurer as if the insurer had not become insolvent. The rights include, without
46 limitation, the right to seek and obtain any recoverable salvage and to subrogate a
47 covered claim, to the extent that the Association has paid its obligation under the
48 claim. *The Association shall not be deemed to be the insolvent insurer for any*
49 *purpose relating to the issue of whether the Association is amenable to the*
50 *personal jurisdiction of the courts of any state.*

51 ~~It~~ (d) Shall assess member insurers amounts necessary to pay the obligations
52 of the Association pursuant to paragraph (a) after an insolvency, the expenses of
53 handling covered claims subsequent to an insolvency ~~[, the cost of examinations]~~

~~pursuant to NRS 687A.110~~ and other expenses authorized by this chapter. The assessment of each member insurer must be in the proportion that the net direct written premiums of the member insurer for the calendar year preceding the assessment bear to the net direct written premiums of all member insurers for the same calendar year. Each member insurer must be notified of the assessment not later than 30 days before it is due. No member insurer may be assessed in any year an amount greater than 2 percent of the net direct written premiums of that member insurer for the calendar year preceding the assessment. If the maximum assessment, together with the other assets of the Association, does not provide in any 1 year an amount sufficient to make all necessary payments, the money available may be prorated and the unpaid portion must be paid as soon as money becomes available. The Association may pay claims in any order, including the order in which the claims are received or in groups or categories. The Association may exempt or defer, in whole or in part, the assessment of any member insurer if the assessment would cause the financial statement of the member insurer 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. During the period of deferment, no dividends may be paid to shareholders or policyholders. Deferred assessments must be paid when payment will not reduce capital or surplus below required minimums. Payments must be refunded to those companies receiving larger assessments because of deferment, or, in the discretion of the company, credited against future assessments. Each member insurer must be allowed a premium tax credit for any amounts paid pursuant to the provisions of this chapter ~~[-~~

~~— (1) For assessments made before January 1, 1993, at the rate of 10 percent per year for 10 successive years beginning March 1, 1996; or~~

~~— (2) For assessments made on or after January 1, 1993,] at the rate of 20 percent per year for 5 successive years beginning with the calendar year following the calendar year in which the assessments are paid.~~

~~[(d)]~~ (e) Shall investigate claims brought against the fund and adjust, compromise, settle and pay covered claims to the extent of the obligation of the Association and deny any other claims. *The Association has the right to appoint and to direct legal counsel retained under liability insurance policies for the defense of covered claims.*

~~[(e)]~~ (f) *Is not bound by a [settlement,] release, compromise, waiver, unfunded settlement or judgment executed or entered within 12 months before an order of liquidation and has the right to assert all defenses available to the Association, including, without limitation, defenses applicable to determining and enforcing its statutory rights and obligations to an applicable claim. The Association is bound by a [settlement,] release, compromise, waiver, settlement or judgment executed or entered into more than 1 year before an order of liquidation if an applicable claim is a covered claim and such settlement or judgment was not a result of fraud, collusion, default or failure to defend. With regard to a covered claim arising from a judgment under a decision, verdict or finding based on the default of the insolvent insurer or the insurer's failure to defend, the Association, either on its own behalf or on behalf of an 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 must be permitted to defend such claim on the merits.*

(g) Shall notify such persons as the Commissioner directs pursuant to paragraph (a) of subsection 2 of NRS 687A.080.

~~[(h)]~~ (h) Shall act on claims through its employees or through one or more member insurers or other persons designated as servicing facilities. Designation of

1 a servicing facility is subject to the approval of the Commissioner, but the
2 designation may be declined by a member insurer.

3 ~~(e)~~ (i) Shall reimburse each servicing facility for obligations of the
4 Association paid by the facility and for expenses incurred by the facility while
5 handling claims on behalf of the Association and pay the other expenses of the
6 Association authorized by this chapter.

7 2. The Association may:

8 (a) Appear in, defend and appeal any action on a claim brought against the
9 Association.

10 (b) Employ or retain persons necessary to handle claims and perform other
11 duties of the Association.

12 (c) Borrow money necessary to carry out the purposes of this chapter in
13 accordance with the plan of operation.

14 (d) Sue or be sued. *Such power to sue includes, without limitation, the power*
15 *and right to intervene as a party before any court in this State that has*
16 *jurisdiction over an insolvent insurer.*

17 (e) Negotiate and become a party to contracts necessary to carry out the
18 purposes of this chapter.

19 (f) *Establish procedures for requesting financial information from insureds*
20 *and claimants on a confidential basis for the purposes of applying sections*
21 *concerning the net worth of first-party and third-party claimants, subject to such*
22 *information being shared with any other association similar to the Association*
23 *and the liquidator for the insolvent insurer on the same confidential basis. If the*
24 *insured or claimant refuses to provide the requested financial information and an*
25 *auditor's certification of the same where requested and available, the Association*
26 *may deem the net worth of the insured or claimant to be in excess of \$10,000,000*
27 *or \$25,000,000, as applicable, at the relevant time.*

28 (g) *Bring an action against any third-party administrator, agent, attorney or*
29 *other representative of the insolvent insurer to obtain custody and control of all*
30 *files, records and electronic data related to an insolvent insurer that are*
31 *appropriate or necessary for the Association, or a similar association in other*
32 *states, to carry out its duties under this chapter. In such an action, the*
33 *Association has the absolute right through emergency equitable relief to obtain*
34 *custody and control of all such files, records and electronic data in the custody or*
35 *control of such third-party administrator, agent, attorney or other representative*
36 *of the insolvent insurer, regardless of where such files, records and electronic*
37 *data may be physically located. In bringing such an action, the Association is not*
38 *subject to any defense, possessory lien or other lien or other legal or equitable*
39 *ground whatsoever for refusal to surrender such files, records and electronic data*
40 *that might be asserted against the liquidator of the insolvent insurer. To the*
41 *extent that litigation is required for the Association to obtain custody of the files,*
42 *records and electronic data requested and such litigation results in the*
43 *relinquishment of files, records and electronic data to the Association after*
44 *refusal to provide the same in response to a written demand, the court shall*
45 *award the Association its costs, expenses and reasonable attorney's fees incurred*
46 *in bringing the action. The provisions of this paragraph have no effect on the*
47 *rights and remedies the custodian of such files, records and electronic data may*
48 *have against the insolvent insurer, so long as such rights and remedies do not*
49 *conflict with the rights of the Association to custody and control of the files,*
50 *records and electronic data.*

51 (h) Perform other acts necessary or proper to effectuate the purposes of this
52 chapter.

~~[(e)]~~ (i) Perform any administrative acts requested by the Commissioner in furtherance of the purposes of this title and, if the cost of the action is not paid for by the Association or its member insurers, the Nevada Industrial Insurance Act.

~~[(h)]~~ (j) If, at the end of any calendar year, the Board of Directors of the Association finds that the assets of the Association exceed its liabilities as estimated by the Board of Directors for the coming year, refund to the member insurers in proportion to the contribution of each that amount by which the assets of the Association exceed the liabilities.

~~[(k)]~~ (k) *Subject to approval by the Commissioner, provide claims handling services to any run-off insurer if the Association's expenses related thereto are fully reimbursed. There is no liability on the part of, and no cause of action of any nature may arise against, any member insurer, the Association or its agents or employees, the Board of Directors of the Association, or any person serving as a representative of any director for any action taken or any failure to act by them in the performance of their activities under this paragraph. As used in this paragraph, "run-off insurer" means a property and casualty insurer that has, as determined pursuant to NRS 681B.550 and regulations adopted pursuant thereto:*

(1) Total adjusted capital under risk-based capital requirements in an amount less than the authorized control level of risk-based capital as of the end of the preceding year and that has indicated that it will cease writing new insurance policies, either as part of its corrective action plan or pursuant to being placed under regulatory control; or

(2) Total adjusted capital under risk-based capital requirements in an amount less than the mandatory control level of risk-based capital as of the end of the preceding year and that has not been placed into liquidation.

(l) Assess each member insurer equally not more than ~~[\$100]~~ \$1,000 per year for administrative expenses not related to the insolvency of any insurer.

3. With regard to an action involving the Association:

(a) *Except for an action by a member insurer aggrieved by a final action or decision of the Association pursuant to paragraph (d) of subsection 1, an action relating to or arising out of this chapter against the Association must be brought in a district court of the State of Nevada. The courts of the State of Nevada have exclusive jurisdiction over all actions relating to or arising out of this chapter against the Association.*

(b) *Exclusive venue in an action by or against the Association is in the courts of the State of Nevada. The Association may, at the option of the Association, waive such venue as to a specific action.*

(c) *In any action contesting the applicability of paragraph (g) or (h) of subsection 2 of NRS 687A.033 in which the insured or claimant has declined to provide financial information under the procedure provided in the plan of operation submitted pursuant to NRS 687A.070, the insured or claimant bears the burden of proof concerning its net worth at the relevant time. If the insured or claimant fails to prove that its net worth at the relevant time was less than the applicable amount, the court shall award the Association its full costs, expenses and reasonable attorney's fees in contesting the claim.*

Sec. 10. NRS 687A.070 is hereby amended to read as follows:

687A.070 1. The Association shall submit a plan of operation to the Commissioner, together with any amendments necessary or suitable to assure the fair, reasonable and equitable administration of the Association. The plan of operation and any amendments become effective upon approval in writing by the Commissioner. If the Association ~~[fails to submit a suitable plan of operation within 90 days following May 5, 1971, or if at any time thereafter the Association]~~ fails to submit suitable amendments to the plan ~~[]~~ *as needed*, the Commissioner

shall adopt reasonable regulations necessary or advisable to effectuate the provisions of this chapter. The regulations continue in force until modified by the Commissioner or superseded by a plan, *or by amendments to a plan, which are* submitted by the Association and approved by the Commissioner.

2. ~~[Add]~~ *The Association and all* member insurers shall comply with the plan of operation.

3. The plan of operation must:

(a) Establish the procedures for performance of all the duties and powers of the Association under NRS 687A.060.

(b) Establish procedures for managing assets of the Association.

(c) ~~[Establish]~~ *Mandate that the Association establish procedures to designate* the amount and method of reimbursing members of the Board of Directors under NRS 687A.050.

(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 those claims must 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]~~ *Mandate that the Association establish* procedures for keeping records of all financial transactions of the Association, its agent 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 procedures for submission to the Commissioner of selections for the Board of Directors.

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

4. The plan of operation may provide that any or all duties and powers of the Association, except those under paragraph ~~(c)~~ (d) of subsection 1 and paragraph (c) of subsection 2 of NRS 687A.060, are delegated to a person who performs or will perform functions similar to those of this Association in two or more states. This person must be reimbursed as a servicing facility and must be paid for performance of any other functions of the Association. A delegation under this subsection takes effect only with the approval of both the Board of Directors and the Commissioner, and may be made only to a person who extends protection not substantially less favorable and effective than that provided by this chapter.

Sec. 11. NRS 687A.080 is hereby amended to read as follows:

687A.080 1. The Commissioner shall:

(a) Notify the Association of the existence of an insolvent insurer not later than 3 days after the Commissioner receives notice of the determination of insolvency by a court or makes a determination of insolvency pursuant to NRS 687A.107, whichever is earlier.

(b) *Provide the Association with a copy of any complaint seeking an order of liquidation with a finding of insolvency against a member insurer when such a complaint is filed or received by the Commissioner.*

(c) Upon request of the Board of Directors of the Association, 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 chapter. Such notification must be by mail at their last known address, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation is sufficient.

(b) Suspend or revoke, after notice and opportunity for 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. The fine must not exceed 5 percent of the unpaid assessment per month, except that no fine may be less than \$100 per month.

(c) Revoke the designation of any servicing facility if the Commissioner finds claims are being acted upon unsatisfactorily.

(d) Request the Association to perform any acts specified in paragraph ~~(e)~~ (i) of subsection 2 of NRS 687A.060.

Sec. 12. NRS 687A.090 is hereby amended to read as follows:

687A.090 1. Any person recovering under this chapter shall be deemed to have assigned his or her rights under the policy to the Association to the extent of the person's recovery from the Association. Every insured or claimant seeking the protection of this chapter shall cooperate with the Association to the same extent as the person would have been required to cooperate with the insolvent insurer. Except ~~as~~:

(a) As otherwise provided in subsection 2 ~~(1)~~; and

(b) *For a cause of action which the insolvent insurer would have had if such sums had been paid by the insolvent insurer,*

the Association does not have a cause of action against the insured of the insolvent insurer for any sums it has paid out.

2. The Association may recover the amount of money paid ~~(a)~~:

(a) To or on behalf of an insured of an insolvent insurer:

~~(a)~~ (1) If the aggregate net worth of the insured and any affiliate of the insured, as determined on a consolidated basis, is more than ~~[\$25,000,000]~~ **\$10,000,000** on December 31 of the year immediately preceding the date the insurer becomes an insolvent insurer; or

~~(b)~~ (2) If the Association paid the money in error.

(b) *To any person who is an affiliate of the insolvent insurer.*

3. *The Association and any association similar to the Association in another state must be recognized as claimants in the liquidation of an insolvent insurer for any amounts paid by them on obligations relating to covered claims as determined under this chapter or similar laws in other states and must receive dividends and any other distributions at the priority set forth in the final order of liquidation.* The receiver, liquidator or statutory successor of an insolvent insurer is bound by *determinations of eligibility of covered claims under this chapter and by* any settlements of covered claims by the Association or a similar organization in another state. The court having jurisdiction shall grant those claims priority equal to that to which the claimant would have been entitled in the absence of this chapter against the assets of the insolvent insurer. The expenses of the Association or similar organization in handling claims must 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 statements shall preserve the rights of the Association against the assets of the insolvent insurer.

5. As used in this section, "affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For the purpose of this definition, the

terms “owns,” “is owned” and “ownership” mean ownership of an equity interest, or the equivalent thereof, of 10 percent or more.

Sec. 13. NRS 687A.095 is hereby amended to read as follows:

687A.095 A claim asserted against a person insured by an insurer which has become insolvent which, if it were not a claim by or for the benefit of a reinsurer, insurer, insurance pool, ~~for~~ underwriting association, *health maintenance organization, hospital plan corporation, professional health service corporation or self-insurer*, would be a covered claim, may be filed directly with the receiver of the insolvent insurer. These claims may not be asserted in any action against the insured of the insolvent insurer.

Sec. 14. NRS 687A.100 is hereby amended to read as follows:

687A.100 1. Any person having a claim ~~against his or her insurer, including, but not limited to, a claim for damages caused by an uninsured motorist, under any provision in the person's insurance policy, which is also a covered claim shall first exhaust his or her right under the policy. Any amount payable on a covered claim under this chapter must be reduced by the amount of the applicable limit under the claimant's insurance policy, regardless of whether the claimant recovers the full amount payable under that policy or exhausts only a lesser amount.~~ *under an insurance policy, whether or not the insurance policy is a policy issued by a member insurer, and the claim under such other policy arises from the same facts, injury or loss that gave rise to the covered claim against the Association, is required first to exhaust all coverage provided by any such policy, including, without limitation, the right to a defense under the other policy. Any amount payable on a covered claim under this chapter must be reduced by the full applicable limits stated in such other insurance policy and the Association must receive a full credit for such stated limits, or, where there are no applicable stated limits, the claim must be reduced by the total recovery. Notwithstanding the foregoing, a person is not required to exhaust any right under the policy of an insolvent insurer.*

2. *For the purposes of subsection 1, a claim under an insurance policy:*

(a) Which provides liability coverage to a person who may be jointly and severally liable with or a joint tortfeasor with the person covered under the policy of the insolvent insurer that gives rise to the covered claim shall be deemed to be a claim arising from the same facts, injury or loss that gave rise to the covered claim against the Association.

(b) Includes, without limitation:

(1) A claim against a health maintenance organization, a hospital plan corporation or a professional health service corporation; and

(2) Any amount payable by or on behalf of a self-insurer.

3. *To the extent that the Association's obligation is reduced by the application of subsections 1 and 2, the liability of the person insured by the insolvent insurer's policy for the claim must be reduced in the same amount.*

4. Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured. However, if the claim is a first party claim for damage to property with a permanent location, recovery must first be sought from the association of the location of the property. If the claim is a workers' compensation claim, recovery must first be sought from the association of the residence of the claimant. Any recovery under this chapter must be reduced by the amount of the recovery from any other insurance guaranty association or its equivalent.

Sec. 15. NRS 687A.110 is hereby amended to read as follows:

687A.110 To aid in the detection and prevention of insurer insolvencies:

1. ~~[The Board of Directors shall, upon majority vote, 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.~~

~~—2. 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 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. Except as permitted by paragraph (c) of subsection 1 of NRS 687A.115, the Commissioner shall not release an examination report to the Board of Directors prior to its release to the public. 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.~~

~~—3.] The Board of Directors may, upon majority vote, make [reports and] recommendations to the Commissioner upon any matter [germane to the] **generally related to improving or enhancing regulation for** solvency . ~~[, liquidation, rehabilitation or conservation of any member insurer. Such reports and recommendations are not public documents.~~~~

~~—4.] 2. The Board of Directors may, upon majority vote, make recommendations to the Commissioner for the detection and prevention of insurer insolvencies.~~

~~[5.] 3. The Board of Directors [shall,] **may**, at the conclusion of any [insurer] insolvency **of a domestic insurer** 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.~~

Sec. 16. NRS 687A.150 is hereby amended to read as follows:

687A.150 There is no liability, and no cause of action of any nature shall arise against any member insurer, the Association, its agents or employees, the Board of Directors, the Commissioner or the representatives of the Commissioner, for any reasonable action taken , **or any failure to act**, by them in the performance of their duties and powers under this chapter.

Sec. 17. NRS 687A.160 is hereby amended to read as follows:

687A.160 1. ~~[Upon the application of the Association or insured and upon cause shown.] **Subject to waiver by the Association in specific cases involving covered claims**, all proceedings in which the insolvent insurer is a party, or is obligated to defend a party, in any court in this State must be stayed [for 3 months and any] **until the last day fixed by the court for the filing of claims and for such additional** time thereafter [ordered] **as may be determined** by the court [after] 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 Association of all pending causes of action. [Cause may be established by affidavit showing the unavailability of the insolvent insurer's files or records which are reasonably necessary for the Association to confirm coverage and adjust the claim.]~~

2. ~~[If an insolvent insurer has failed to defend an insured in any action, the Association may apply on its own behalf or on behalf of the insured to have any judgment or order in the action set aside and the Association may defend against the action on its merits.] **The liquidator, receiver or statutory successor of an insolvent insurer governed by this chapter shall permit access by the Association**~~

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

Sec. 18. NRS 239.010 is hereby amended to read as follows:

239.010 1. Except as otherwise provided in this section and NRS 1.4683, 1.4687, 1A.110, 3.2203, 41.071, 49.095, 49.293, 62D.420, 62D.440, 62E.516, 62E.620, 62H.025, 62H.030, 62H.170, 62H.220, 62H.320, 75A.100, 75A.150, 76.160, 78.152, 80.113, 81.850, 82.183, 86.246, 86.54615, 87.515, 87.5413, 87A.200, 87A.580, 87A.640, 88.3355, 88.5927, 88.6067, 88A.345, 88A.7345, 89.045, 89.251, 90.730, 91.160, 116.757, 116A.270, 116B.880, 118B.026, 119.260, 119.265, 119.267, 119.280, 119A.280, 119A.653, 119A.677, 119B.370, 119B.382, 120A.690, 125.130, 125B.140, 126.141, 126.161, 126.163, 126.730, 127.007, 127.057, 127.130, 127.140, 127.2817, 128.090, 130.312, 130.712, 136.050, 159.044, 159A.044, 172.075, 172.245, 176.01249, 176.015, 176.0625, 176.09129, 176.156, 176A.630, 178.39801, 178.4715, 178.5691, 179.495, 179A.070, 179A.165, 179D.160, 200.3771, 200.3772, 200.5095, 200.604, 202.3662, 205.4651, 209.392, 209.3923, 209.3925, 209.419, 209.429, 209.521, 211A.140, 213.010, 213.040, 213.095, 213.131, 217.105, 217.110, 217.464, 217.475, 218A.350, 218E.625, 218F.150, 218G.130, 218G.240, 218G.350, 226.382, 228.270, 228.450, 228.495, 228.570, 231.069, 231.1473, 233.190, 237.300, 239.0105, 239.0113, 239.014, 239B.030, 239B.040, 239B.050, 239C.140, 239C.210, 239C.230, 239C.250, 239C.270, 239C.420, 240.007, 241.020, 241.030, 241.039, 242.105, 244.264, 244.335, 247.540, 247.550, 247.560, 250.087, 250.130, 250.140, 250.150, 268.095, 268.0978, 268.490, 268.910, 269.174, 271A.105, 281.195, 281.805, 281A.350, 281A.680, 281A.685, 281A.750, 281A.755, 281A.780, 284.4068, 286.110, 286.118, 287.0438, 289.025, 289.080, 289.387, 289.830, 293.4855, 293.5002, 293.503, 293.504, 293.558, 293.5757, 293.870, 293.906, 293.908, 293.910, 293B.135, 293D.510, 331.110, 332.061, 332.351, 333.333, 333.335, 338.070, 338.1379, 338.1593, 338.1725, 338.1727, 348.420, 349.597, 349.775, 353.205, 353A.049, 353A.085, 353A.100, 353C.240, 360.240, 360.247, 360.255, 360.755, 361.044, 361.2242, 361.610, 365.138, 366.160, 368A.180, 370.257, 370.327, 372A.080, 378.290, 378.300, 379.0075, 379.008, 379.1495, 385A.830, 385B.100, 387.626, 387.631, 388.1455, 388.259, 388.501, 388.503, 388.513, 388.750, 388A.247, 388A.249, 391.033, 391.035, 391.0365, 391.120, 391.925, 392.029, 392.147, 392.264, 392.271, 392.315, 392.317, 392.325, 392.327, 392.335, 392.850, 393.045, 394.167, 394.16975, 394.1698, 394.447, 394.460, 394.465, 396.3295, 396.405, 396.525, 396.535, 396.9685, 398A.115, 408.3885, 408.3886, 408.3888, 408.5484, 412.153, 414.280, 416.070, 422.2749, 422.305, 422A.342, 422A.350, 425.400, 427A.1236, 427A.872, 432.028, 432.205, 432B.175, 432B.280, 432B.290, 432B.407, 432B.430, 432B.560, 432B.5902, 432C.140, 432C.150, 433.534, 433A.360, 437.145, 437.207, 439.4941, 439.840, 439.914, 439B.420, 439B.754, 439B.760, 440.170, 441A.195, 441A.220, 441A.230, 442.330, 442.395, 442.735, 442.774, 445A.665, 445B.570, 445B.7773, 447.345, 449.209, 449.245, 449.4315, 449A.112, 450.140, 450B.188, 453.164, 453.720, 453A.610, 453A.700, 458.055, 458.280, 459.050, 459.3866, 459.555, 459.7056, 459.846, 463.120, 463.15993, 463.240, 463.3403, 463.3407, 463.790, 467.1005, 480.535, 480.545, 480.935, 480.940, 481.063, 481.091, 481.093, 482.170, 482.5536, 483.340, 483.363, 483.575, 483.659, 483.800, 484A.469, 484E.070, 485.316, 501.344, 503.452, 522.040, 534A.031, 561.285, 571.160, 584.655, 587.877, 598.0964, 598.098, 598A.110, 599B.090, 603.070, 603A.210, 604A.303, 604A.710, 612.265, 616B.012, 616B.015, 616B.315, 616B.350,

618.341, 618.425, 622.238, 622.310, 623.131, 623A.137, 624.110, 624.265,
624.327, 625.425, 625A.185, 628.418, 628B.230, 628B.760, 629.047, 629.069,
630.133, 630.2673, 630.30665, 630.336, 630A.555, 631.368, 632.121, 632.125,
632.3415, 632.405, 633.283, 633.301, 633.4715, 633.524, 634.055, 634.214,
634A.185, 635.158, 636.107, 637.085, 637B.288, 638.087, 638.089, 639.2485,
639.570, 640.075, 640A.220, 640B.730, 640C.580, 640C.600, 640C.620,
640C.745, 640C.760, 640D.190, 640E.340, 641.090, 641.221, 641.325, 641A.191,
641A.262, 641A.289, 641B.170, 641B.282, 641B.460, 641C.760, 641C.800,
642.524, 643.189, 644A.870, 645.180, 645.625, 645A.050, 645A.082, 646.370,
645B.092, 645C.220, 645C.225, 645D.130, 645D.135, 645G.510, 645H.320,
645H.330, 647.0945, 647.0947, 648.033, 648.197, 649.065, 649.067, 652.228,
653.900, 654.110, 656.105, 657A.510, 661.115, 665.130, 665.133, 669.275,
669.285, 669A.310, 671.170, 673.450, 673.480, 675.380, 676A.340, 676A.370,
677.243, 678A.470, 678C.710, 678C.800, 679B.122, 679B.124, 679B.152,
679B.159, 679B.190, 679B.285, 679B.690, 680A.270, 681A.440, 681B.260,
681B.410, 681B.540, 683A.0873, 685A.077, 686A.289, 686B.170, 686C.306,
~~687A.110;~~ 687A.060, 687A.115, 687C.010, 688C.230, 688C.480, 688C.490,
689A.696, 692A.117, 692C.190, 692C.3507, 692C.3536, 692C.3538, 692C.354,
692C.420, 693A.480, 693A.615, 696B.550, 696C.120, 703.196, 704B.325,
706.1725, 706A.230, 710.159, 711.600, sections 35, 38 and 41 of chapter 478,
Statutes of Nevada 2011 and section 2 of chapter 391, Statutes of Nevada 2013 and
unless otherwise declared by law to be confidential, all public books and public
records of a governmental entity must be open at all times during office hours to
inspection by any person, and may be fully copied or an abstract or memorandum
may be prepared from those public books and public records. Any such copies,
abstracts or memoranda may be used to supply the general public with copies,
abstracts or memoranda of the records or may be used in any other way to the
advantage of the governmental entity or of the general public. This section does not
supersede or in any manner affect the federal laws governing copyrights or enlarge,
diminish or affect in any other manner the rights of a person in any written book or
record which is copyrighted pursuant to federal law.

2. A governmental entity may not reject a book or record which is
copyrighted solely because it is copyrighted.

3. A governmental entity that has legal custody or control of a public book or
record shall not deny a request made pursuant to subsection 1 to inspect or copy or
receive a copy of a public book or record on the basis that the requested public
book or record contains information that is confidential if the governmental entity
can redact, delete, conceal or separate, including, without limitation, electronically,
the confidential information from the information included in the public book or
record that is not otherwise confidential.

4. If requested, a governmental entity shall provide a copy of a public record
in an electronic format by means of an electronic medium. Nothing in this
subsection requires a governmental entity to provide a copy of a public record in an
electronic format or by means of an electronic medium if:

(a) The public record:

(1) Was not created or prepared in an electronic format; and

(2) Is not available in an electronic format; or

(b) Providing the public record in an electronic format or by means of an
electronic medium would:

(1) Give access to proprietary software; or

(2) Require the production of information that is confidential and that
cannot be redacted, deleted, concealed or separated from information that is not
otherwise confidential.

1 5. An officer, employee or agent of a governmental entity who has legal
2 custody or control of a public record:

3 (a) Shall not refuse to provide a copy of that public record in the medium that
4 is requested because the officer, employee or agent has already prepared or would
5 prefer to provide the copy in a different medium.

6 (b) Except as otherwise provided in NRS 239.030, shall, upon request, prepare
7 the copy of the public record and shall not require the person who has requested the
8 copy to prepare the copy himself or herself.