

**RCW 48.32.060 Powers and duties of the association.** (1) The association shall:

(a) (i) For other than covered claims involving the longshore and harbor workers' compensation act, be obligated to the extent of the covered claims existing prior to the order of liquidation and arising within thirty days after the order of liquidation, or before the policy expiration date if less than thirty days after the order of liquidation, or before the insured replaces the policy or on request effects cancellation, if he or she does so within thirty days of the order of liquidation, but such an obligation includes only that amount of each covered claim which is in excess of one hundred dollars and is less than three hundred thousand dollars. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the face amount of the policy from which the claim arises.

(ii) For covered claims involving longshore and harbor workers' compensation act insurance, be obligated to the extent of covered claims for insolvencies occurring after April 20, 2005. This obligation is for the statutory obligations established under the longshore and harbor workers' compensation act. However, the insured employer shall reimburse the association for any deductibles that are owed as part of the insured's obligations.

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

(c) (i) Allocate claims paid and expenses incurred among the three accounts enumerated in RCW 48.32.040 separately, and assess member insurers separately for each account amounts necessary to pay the obligations of the association under (a) of this subsection subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examinations under RCW 48.32.110, and other expenses authorized by this chapter. Except as provided for in this subsection for member insurers who write longshore and harbor workers' compensation act insurance, 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 on the kinds of insurance in the account bears to the net direct written premiums of all member insurers for the calendar year preceding the assessment on the kinds of insurance in the account. Each member insurer shall be notified 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 two percent of that member insurer's net direct written premiums for the calendar year preceding the assessment on the kinds of insurance in the account. If the maximum assessment, together with the other assets of the association in any account, does not provide in any one year in any account an amount sufficient to make all necessary payments from that account, the funds available may be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The association shall pay claims in any order which it may deem reasonable, including the payment of claims in the order such claims are received from claimants or in groups or categories of claims, or otherwise. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to

transact insurance. Each member insurer 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 if they are chargeable to the account for which the assessment is made.

(ii) For member insurers who write longshore and harbor workers' compensation act insurance, (c)(i) of this subsection applies except as modified by the following:

(A) Beginning July 1, 2005, and prior to an insolvency, each member insurer who writes longshore and harbor workers' compensation act insurance in this state, whether on a primary or excess coverage basis, shall be assessed at a rate to be determined by the association, but not more than an annual rate of three percent of the net direct written premium for the calendar year preceding the assessment on this kind of insurance. Insurer assessments prior to an insolvency shall continue until a fund is established that equals four percent of the aggregate net direct premium for the calendar year preceding the assessment on all insurers authorized to write this kind of insurance;

(B) Subsequent to an insolvency, each member insurer who writes longshore and harbor workers' compensation act insurance in this state, whether on a primary or excess coverage basis, shall be assessed at a rate to be determined by the association, but not more than an annual rate of three percent of the net direct written premium for the calendar year preceding the assessment on this kind of insurance. Insurer assessments subsequent to an insolvency shall continue until a fund is established that the association deems sufficient to meet all claim and loan obligations of the fund, provided that the net fund balance may not at any time exceed four percent of the aggregate net direct premium for the calendar year preceding the assessment on all insurers authorized to write this kind of insurance; and

(C) If any insurer fails to provide its net direct written premium data in an accurate and timely manner upon request by the association, the association may, at its discretion, substitute that insurer's direct written premiums for workers' compensation reported or reportable in its statutory annual statement page fourteen data for the state of Washington.

(d) 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.

(e) Notify such persons as the commissioner directs under RCW 48.32.080(2)(a).

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

(g) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this chapter.

(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 chapter in accord with the plan of operation. If such a loan is related to the account for longshore and harbor workers' compensation act insurance, the association may seek such a loan from the Washington longshore and harbor workers' compensation act insurance assigned risk plan under RCW 48.22.070 or from other interested parties.

(d) Sue or be sued.

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

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

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

(3) The association shall not access any funds from the automobile insurance account or the account for all other insurance to which this chapter applies to cover the cost of claims or administration arising under the account for longshore and harbor workers' compensation act insurance. [2005 c 100 s 6; 1975-'76 2nd ex.s. c 109 s 6; 1971 ex.s. c 265 s 6.]