

Plan 2 Deposits

A security deposit requirement for Plan No. 2 insurers existed from 1915 until 1997. The security deposit was amended out in a DLI "housekeeping" bill (SB 349) in 1997. "It was amended to eliminate security deposits for Plan 2 insurers. Testimony- (Jacqueline Lenmark)(based on the fact that this particular section of code was enacted before there was an Insurance Commissioner and before there was a Property and Casualty Guarantee Fund). Testimony- (Jacqueline Lenmark) (Under the current law those deposits are simply turned over to the Guaranty Fund." It is a redundant deposit because the Guaranty Fund fully secures and guarantees all benefits to injured workers of an insolvent company that 39-71-2215 is simply duplication of the backstop that is already in place to protect IWs).

The Plan No. 2 security deposit requirement was amended back in in 2007, also via what appears to be a DLI "housekeeping" bill (SB 108). In 2007 the bill referenced language about "insolvent insurers" and captive reciprocal insurers (which are not members of the Guaranty Fund). Evidently there were some claims when Valor Insurance Company became insolvent around 2005 that were not transferred expediently to the Western Guaranty Fund.

In 2019 the Department received an Legislative audit. It identified 7 insurers that had more than \$250,000 on deposit and required the department to require the insurer to lower their deposit. The Department had identified these insurers before, had made contact, and the insurer indicated it was easier just to leave in rather than go through the process to cancel a security and reissue a new one. Also, based on statute the Department does an annual analysis based on premium to increase deposits as insures premiums increase.

Both the Department and Western Guaranty Fund would follow the same process when an insurer becomes insolvent. Both are notified by the Insurance Commissioner as soon as they are determined to be insolvent by the court. The Western Guaranty Fund is set up following the notification to make contact with the insurer's representative, sign a post liquidation agreement, pay indemnity benefits for 8 weeks, and then receive claim files so medical payments can be made.

The Department is notified of the insolvency and takes action to cash the security. The department is not designed to handle claims. The only role the Department plays is to hold funds and keep the bankruptcy courts from including the funds in the insurers liquidation for creditors.

From 1984 to 2006 there were 54 companies that went insolvent. From 2007 to 2020 there have been 27 insolvencies. Of those insolvent insureds the Department has cashed security deposits for six insolvent insureds since 2008 but has never released funds immediately to the Western Guaranty Fund for payment of any claims. The most recent was Guarantee Insurance out of Florida that went insolvent. The Department received several calls from claimants immediately after the insolvency and those calls were referred on to the Western Guaranty Fund and those claimants were taken care of.

After reviewing the Insurance Guaranty Association Act and the requirements of the Guaranty Association through their agent, the Western Guaranty Fund, it is clear that the Guaranty Association is legally charged with absorbing the insolvent insurers responsibility to pay claims. It is a redundant deposit because the Guaranty Fund fully secures and guarantees all benefits to injured workers of an

insolvent company. If the Guaranty Fund does fall short of funding the claims they have the ability by statute to assess all insurers to cover the deficiency.

The Montana Insurers Guaranty Association agrees that it is a duplication. In 2020 the department sent \$157,279.43 to the Western Guaranty Fund for four insolvent companies that the Western Guaranty Fund has paid all claims in full on and the company is no longer in existence. The Guaranty Fund already has mechanisms in place to assess Plan 2 insurers if more funds are needed.

In 2008 there were 153 insurers with security deposits of \$8,901,000 and has grown has grown to 280 insurers and \$24,656,500 over the past twelve years and the monies just sit there. Because of the changes in technology and the structure of the Guaranty Fund we feel the need for deposits for Plan 2 insurers is obsolete. The Guaranty fund has the mechanisms in place to handle the urgency of the continuation of benefits for workers whose insurance company has become insolvent.

Specifically, the Act says in 33-10-105 (1) (a) (ii) (B) that the association shall pay the full amount of any covered claim arising out of a workers' compensation policy. It goes on to say the association is considered the insurer to the extent of its obligation on the covered claims and the Act covers notifications to DLI and notifications for occupational disease claims.