

**First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 13-0395.01 Chuck Brackney x2295

SENATE BILL 13-032

SENATE SPONSORSHIP

Jahn, Tochtrop

HOUSE SPONSORSHIP

Williams,

Senate Committees
Business, Labor, & Technology

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE LIFE AND HEALTH INSURANCE PROTECTION**
102 **ASSOCIATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill amends the statutes governing the life and health insurance protection association (association) as follows:

Section 1 defines new terms such as "authorized assessment", "impaired insurer", and "principal place of business". **Section 2** provides that annuity contracts and certificates under group annuity contracts

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

include allocated funding agreements, structured settlement annuities, and any immediate or deferred annuity contracts. It also says that the association is not obligated to provide coverage for amounts in excess of \$5 million for an owner of multiple nongroup policies of life insurance and \$300,000 for long-term care insurance.

Section 3 requires a majority vote of the board to make meetings or records of the association open to the public. **Section 4** establishes that if a member insurer is an impaired insurer, the association may guarantee, assume, or reinsure or cause to be guaranteed, assumed, or reinsured any or all of the policies or contracts of the impaired insurer or provide such moneys, pledges, loans, notes, guarantees, or other means as proper to assure payment of the contractual obligations of the impaired insurer. The protection does not apply when any guaranty protection is provided to residents of this state by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer other than this state.

Section 5 provides that if 2 or more assessments are authorized in one calendar year with respect to insurers who become impaired or insolvent in different calendar years, the average annual premiums for purposes of the aggregate assessment percentage limitation is equal and limited to the highest of the 3-year average annual premiums for the applicable account. This section also contains procedures for the protesting of an assessment.

Section 6 requires the association's plan of operation to establish procedures whereby a director may be removed for cause, and a policy to address conflicts of interest. **Section 7** makes conforming amendments.

Section 8 allows the board of directors of the association to notify the commissioner of any information indicating that a member insurer may be impaired or insolvent. **Section 9** addresses record-keeping requirements and provides that the association is entitled to receive a disbursement of assets to reimburse it as a credit against contractual obligations.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 10-20-103, **amend**
3 (6), (9), (11), (12), (13), and (14); **add** (2.5), (3.5), (6.5), (6.7), (12.5),
4 (12.7), and (13.3) as follows:

5 **10-20-103. Definitions.** As used in this article, unless the context
6 otherwise requires:

7 (2.5) "AUTHORIZED ASSESSMENT" OR "AUTHORIZED" WHEN USED

1 IN THE CONTEXT OF ASSESSMENTS MEANS A RESOLUTION PASSED BY THE
2 BOARD IN WHICH AN ASSESSMENT WILL BE CALLED IMMEDIATELY OR IN
3 THE FUTURE FROM MEMBER INSURERS FOR A SPECIFIED AMOUNT. AN
4 ASSESSMENT IS AUTHORIZED WHEN THE RESOLUTION PERTAINING TO THE
5 ASSESSMENT IS PASSED.

6 (3.5) "CALLED ASSESSMENT" OR "CALLED" WHEN USED IN THE
7 CONTEXT OF ASSESSMENTS MEANS THAT A NOTICE HAS BEEN ISSUED BY
8 THE ASSOCIATION TO MEMBER INSURERS REQUIRING THAT AN AUTHORIZED
9 ASSESSMENT BE PAID BY THE DATE SET IN THE NOTICE. AN AUTHORIZED
10 ASSESSMENT BECOMES A CALLED ASSESSMENT WHEN NOTICE IS MAILED BY
11 THE ASSOCIATION TO MEMBER INSURERS.

12 (6) "Covered policy" means ~~any~~ A policy or contract, ~~within the~~
13 ~~scope of this article~~ OR A PORTION OF A POLICY OR CONTRACT, FOR WHICH
14 COVERAGE IS PROVIDED UNDER SECTION 10-20-104.

15 (6.5) "EXTRACTIONAL CLAIMS" INCLUDES CLAIMS RELATING
16 TO BAD FAITH IN THE PAYMENT OF CLAIMS, CLAIMS FOR PUNITIVE OR
17 EXEMPLARY DAMAGES, AND CLAIMS FOR ATTORNEY FEES AND COSTS.

18 (6.7) "IMPAIRED INSURER" MEANS A MEMBER INSURER THAT IS NOT
19 AN INSOLVENT INSURER AND IS PLACED UNDER AN ORDER OF
20 REHABILITATION OR CONSERVATION BY A COURT OF COMPETENT
21 JURISDICTION.

22 (9) "Moody's CORPORATE BOND YIELD average" means ~~Moody's~~
23 ~~corporate bond yield average~~ THE monthly average corporates as
24 published by Moody's Investors Service, Inc., or any successor thereto.

25 (11) "Person" means any individual, corporation, LIMITED
26 LIABILITY COMPANY, partnership, association, or voluntary organization.

27 (12) "Premiums" means amounts OF MONEY OR OTHER

1 CONSIDERATION, HOWEVER DESIGNATED, received on covered policies or
2 contracts less returned premiums, returned ~~considerations~~
3 CONSIDERATION, and returned deposits, and less dividends and experience
4 credits thereon. "Premiums" does not include any amounts OF MONEY OR
5 OTHER CONSIDERATION received for any policies or contracts or for the
6 portions of any policies or contracts for which coverage is not provided
7 under section 10-20-104 (2); except that assessable premiums shall not be
8 reduced on account of section 10-20-104 (2) (b) (III) relating to interest
9 limitations and section 10-20-104 (3) (b) relating to limitations with
10 respect to any one life. "PREMIUMS" DOES NOT INCLUDE:

11 (a) PREMIUMS ON AN UNALLOCATED ANNUITY CONTRACT; OR

12 (b) PREMIUMS IN EXCESS OF FIVE MILLION DOLLARS WITH RESPECT
13 TO MULTIPLE NONGROUP POLICIES OF LIFE INSURANCE OWNED BY ONE
14 OWNER, REGARDLESS OF:

15 (I) WHETHER THE POLICY OWNER IS AN INDIVIDUAL, FIRM,
16 CORPORATION, OR OTHER PERSON;

17 (II) WHETHER THE PERSONS INSURED ARE OFFICERS, MANAGERS,
18 EMPLOYEES, OR OTHER PERSONS; OR

19 (III) THE NUMBER OF POLICIES OR CONTRACTS HELD BY THE
20 OWNER.

21 (12.5) (a) "PRINCIPAL PLACE OF BUSINESS" OF A PERSON OTHER
22 THAN AN INDIVIDUAL MEANS THE SINGLE STATE IN WHICH THE
23 INDIVIDUALS WHO ESTABLISH POLICY FOR THE DIRECTION, CONTROL, AND
24 COORDINATION OF THE OPERATION OF THE ENTITY AS A WHOLE PRIMARILY
25 EXERCISE THAT FUNCTION, AS DETERMINED BY THE ASSOCIATION IN ITS
26 REASONABLE JUDGMENT BY CONSIDERING THE FOLLOWING FACTORS:

27 (I) THE STATE IN WHICH THE PRIMARY EXECUTIVE AND

1 ADMINISTRATIVE HEADQUARTERS OF THE ENTITY IS LOCATED;

2 (II) THE STATE IN WHICH THE PRINCIPAL OFFICE OF THE CHIEF
3 EXECUTIVE OFFICER OF THE ENTITY IS LOCATED;

4 (III) THE STATE IN WHICH THE BOARD OF DIRECTORS OR SIMILAR
5 GOVERNING PERSON OR PERSONS OF THE ENTITY CONDUCTS THE MAJORITY
6 OF ITS MEETINGS;

7 (IV) THE STATE IN WHICH THE EXECUTIVE OR MANAGEMENT
8 COMMITTEE OF THE BOARD OF DIRECTORS OR SIMILAR GOVERNING PERSON
9 OR PERSONS OF THE ENTITY CONDUCTS THE MAJORITY OF ITS MEETINGS;

10 AND

11 (V) THE STATE FROM WHICH THE OVERALL OPERATION OF THE
12 ENTITY IS DIRECTED.

13 (b) IN THE CASE OF PLAN SPONSORS, IF MORE THAN FIFTY PERCENT
14 OF THE PARTICIPANTS IN THE BENEFIT PLAN ARE EMPLOYED IN A SINGLE
15 STATE, THAT STATE IS THE PRINCIPAL PLACE OF BUSINESS FOR THE PLAN
16 SPONSOR.

17 (c) THE PRINCIPAL PLACE OF BUSINESS OF A PLAN SPONSOR OF A
18 BENEFIT PLAN IS THE PRINCIPAL PLACE OF BUSINESS OF THE ASSOCIATION,
19 COMMITTEE, JOINT BOARD OF TRUSTEES, OR SIMILAR GROUP OF
20 REPRESENTATIVES OF THE PARTIES WHO ESTABLISH OR MAINTAIN THE
21 BENEFIT PLAN THAT, IN LIEU OF A SPECIFIC OR CLEAR DESIGNATION OF A
22 PRINCIPAL PLACE OF BUSINESS, IS THE PRINCIPAL PLACE OF BUSINESS OF
23 THE EMPLOYER OR EMPLOYEE ORGANIZATION THAT HAS THE LARGEST
24 INVESTMENT IN THE BENEFIT PLAN.

25 (12.7) "RECEIVERSHIP COURT" MEANS THE COURT IN AN IMPAIRED
26 OR INSOLVENT INSURER'S STATE HAVING JURISDICTION OVER THE
27 CONSERVATION, REHABILITATION, OR LIQUIDATION OF THE INSURER.

1 (13) "Resident" means any person to whom a contractual
2 obligation is owed and who resides in this state on the date of entry of A
3 COURT ORDER THAT DETERMINES A MEMBER INSURER TO BE AN IMPAIRED
4 INSURER OR a court order that determines a member insurer to be an
5 insolvent insurer. A person may be a resident of only one state, which in
6 the case of a person other than a natural person shall be its principal place
7 of business. Citizens of the United States who are residents of a foreign
8 country, United States possession, United States territory, or United States
9 protectorate, which country, possession, territory, or protectorate does not
10 have an association similar to the association created by this article, shall
11 be deemed residents of the state of domicile of the insurer that issued the
12 policies or contracts.

13 (13.3) "STATE" MEANS A STATE, THE DISTRICT OF COLUMBIA,
14 PUERTO RICO, OR A POSSESSION, TERRITORY, OR PROTECTORATE OF THE
15 UNITED STATES.

16 (14) "Supplemental contract" means any WRITTEN agreement
17 entered into for the distribution of ~~policy or contract~~ proceeds UNDER A
18 LIFE, HEALTH, OR ANNUITY POLICY OR A LIFE, HEALTH, OR ANNUITY
19 CONTRACT.

20 **SECTION 2.** In Colorado Revised Statutes, 10-20-104, **amend**
21 (2) (a), (2) (b) introductory portion, (2) (b) (I), (2) (b) (II), (2) (b) (III), (2)
22 (b) (IV) introductory portion, (2) (b) (IV) (A), (2) (b) (V), (2) (b) (XIV),
23 (3), and (4); **repeal** (2) (b) (XI), (2) (b) (XIII), and (2) (b) (XV); and **add**
24 (2) (b) (XVI), (2) (b) (XVII), (2) (b) (XVIII), and (2) (b) (XIX) as
25 follows:

26 **10-20-104. Coverage and limitations - coordination of**
27 **benefits.** (2) (a) This article ~~shall provide~~ PROVIDES coverage to the

1 persons specified in ~~subsection~~ SUBSECTIONS (1) AND (1.3) of this section
2 for direct, nongroup life, health, annuity, and supplemental policies or
3 contracts and for certificates under direct group life, health, annuity
4 POLICIES OR CONTRACTS, and supplemental ~~policies and~~ contracts TO ANY
5 OF THESE issued by member insurers pursuant to articles 7 and 8 and parts
6 1 and 2 of article 16 of this title, except as limited by this article.
7 ANNUITY CONTRACTS AND CERTIFICATES UNDER GROUP ANNUITY
8 CONTRACTS INCLUDE ALLOCATED FUNDING AGREEMENTS, STRUCTURED
9 SETTLEMENT ANNUITIES, AND ANY IMMEDIATE OR DEFERRED ANNUITY
10 CONTRACTS.

11 (b) This article ~~shall~~ DOES not provide coverage for:

12 (I) Any portion of a policy or contract not guaranteed by the
13 member insurer, or under which the risk is borne by the policy or contract
14 ~~holder~~ OWNER;

15 (II) Any policy or contract of reinsurance, unless assumption
16 certificates have been issued UNDER THE REINSURANCE POLICY OR
17 CONTRACT;

18 (III) Any portion of a policy or contract to the extent that the rate
19 of interest on which it is based, or the interest rate, crediting rate, or other
20 factor ~~employed in calculating returns or changes in value which may~~
21 ~~include, without limitation,~~ DETERMINED BY USE OF an index or other
22 external reference stated in the policy or contract EMPLOYED IN
23 CALCULATING RETURNS AND CHANGES IN VALUE:

24 (A) When averaged over the period of four years prior to the date
25 ~~that the member insurer becomes an insolvent insurer under this article,~~
26 ON WHICH THE ASSOCIATION BECAME OBLIGATED WITH RESPECT TO THE
27 POLICY OR CONTRACT, exceeds a rate of interest determined by

1 subtracting two percentage points from Moody's CORPORATE BOND YIELD
2 average, averaged for that same four-year period, or for such lesser
3 period if the policy or contract was issued less than four years before ~~the~~
4 ~~member insurer becomes an insolvent insurer under this article~~ THE
5 ASSOCIATION BECAME OBLIGATED; and

6 (B) On and after the date ~~that the member insurer becomes an~~
7 ~~insolvent insurer under this article~~, ON WHICH THE ASSOCIATION BECAME
8 OBLIGATED WITH RESPECT TO THE POLICY OR CONTRACT exceeds the rate
9 of interest determined by subtracting three percentage points from
10 Moody's CORPORATE BOND YIELD average as most recently available;

11 (IV) Any PORTION OF A POLICY, CONTRACT, plan or program of an
12 employer, association, or ~~similar entity~~ OTHER PERSON to provide life,
13 health, or annuity benefits to its employees, ~~or~~ members, OR OTHERS, to
14 the extent that such plan or program is self-funded or uninsured,
15 including but not limited to benefits payable by an employer, association,
16 or ~~similar entity~~ OTHER PERSON under:

17 (A) A multiple employer welfare arrangement, as defined in
18 ~~section 514 of the federal "Employee Retirement Income Security Act of~~
19 ~~1974"~~, as amended SECTION 1002 OF TITLE 29 OF THE UNITED STATES
20 CODE;

21 (V) Any portion of a policy or contract to the extent that it
22 provides dividends or experience rating credits, VOTING RIGHTS, or
23 provides that any fees or allowances be paid to any person, including the
24 policy or contract holder, in connection with the service to or
25 administration of such policy or contract;

26 (XI) ~~Any unallocated annuity contract issued to an employee~~
27 ~~benefit plan protected under the federal pension benefit guaranty~~

1 corporation;

2 (XIII) ~~Any policy or contract covering persons who are not~~
3 ~~citizens of the United States;~~

4 (XIV) Any portion of a policy or contract to the extent it provides
5 for interest or other changes in value to be determined by the use of an
6 index or other external reference stated in the policy or contract but such
7 changes have not been credited to the policy or contract, or to the extent
8 the policy or contract owner's rights are subject to forfeiture, as of the
9 date the member insurer becomes an IMPAIRED OR insolvent insurer under
10 ~~to~~ this article. If a policy's or contract's interest or changes in value are
11 credited less frequently than annually, then for purposes of determining
12 the values that have been credited and are not subject to forfeiture under
13 this section, the interest or change in value determined by using the
14 procedures defined in the policy or contract shall be credited as if the
15 contractual date of crediting interest or changing values was the date of
16 insolvency, and such interest or changes shall not be subject to forfeiture.

17 (XV) ~~Any kind of insurance or annuity, the benefits of which are~~
18 ~~exclusively payable or determined by a separate account required by the~~
19 ~~terms of such insurance policy to be maintained by the insurer or a~~
20 ~~separate entity.~~

21 (XVI) ANY POLICY OR CONTRACT PROVIDING HOSPITAL, MEDICAL,
22 PRESCRIPTION DRUG, OR OTHER HEALTH CARE BENEFITS UNDER PART C OR
23 PART D OF SUBCHAPTER XVIII, CHAPTER 7 OF TITLE 42, UNITED STATES
24 CODE, OR ANY REGULATION ISSUED UNDER THESE PARTS;

25 (XVII) ANY PORTION OF A POLICY OR CONTRACT TO THE EXTENT
26 THAT THE ASSESSMENT REQUIRED BY THIS ARTICLE WITH RESPECT TO THE
27 POLICY OR CONTRACT ARE PREEMPTED OR OTHERWISE NOT ALLOWED BY

1 FEDERAL OR STATE LAW;

2 (XVIII) ANY OBLIGATION THAT DOES NOT ARISE UNDER THE
3 EXPRESSED WRITTEN TERMS OF THE POLICY OR CONTRACT ISSUED BY THE
4 INSURER TO THE CONTRACT OWNER OR TO THE POLICY OWNER, INCLUDING
5 AND WITHOUT LIMITATION:

6 (A) CLAIMS BASED ON MARKETING MATERIALS, BROCHURES,
7 ILLUSTRATIONS, ADVERTISEMENTS, OR ORAL STATEMENTS BY AGENTS,
8 BROKERS, OR OTHERS USED OR MADE IN CONNECTION WITH THE SALE OF
9 COVERED POLICIES AND CONTRACTS;

10 (B) CLAIMS BASED ON SIDE LETTERS, RIDERS, OR OTHER
11 DOCUMENTS THAT WERE ISSUED BY THE INSURER WITHOUT MEETING
12 APPLICABLE POLICY FORM FILING OR APPROVAL REQUIREMENTS;

13 (C) MISREPRESENTATIONS OF, OR REGARDING, POLICY BENEFITS;

14 (D) EXTRACTIONAL CLAIMS; AND

15 (E) CLAIMS FOR PENALTIES, INTEREST, OR CONSEQUENTIAL OR
16 INCIDENTAL DAMAGES;

17 (XIX) ANY CONTRACTUAL AGREEMENT THAT ESTABLISHES THE
18 MEMBER INSURER'S OBLIGATIONS TO PROVIDE A BOOK VALUE
19 ACCOUNTING GUARANTY FOR DEFINED CONTRIBUTION BENEFIT PLAN
20 PARTICIPANTS BY REFERENCE TO A PORTFOLIO OF ASSETS THAT IS OWNED
21 BY A BENEFIT PLAN OR TRUSTEE, THAT NOT AN AFFILIATE OF THE MEMBER
22 INSURER.

23 (3) The benefits for which the association may become liable
24 shall not exceed the lesser of:

25 (a) The contractual obligations for which the insurer is liable or
26 would have been liable if it were not an IMPAIRED OR insolvent insurer;

27 or

1 (b) (I) With respect to any one life, regardless of the number of
2 policies or contracts with that insurer:

3 (A) Three hundred thousand dollars in net life insurance death
4 benefits, and no more than one hundred thousand dollars in net cash
5 surrender and net cash withdrawal values for life insurance;

6 (B) For health insurance benefits: One hundred thousand dollars
7 for coverages not defined as disability, basic hospital, medical and
8 surgical, or major medical insurance OR LONG-TERM CARE INSURANCE,
9 including any net cash surrender and net cash withdrawal values; three
10 hundred thousand dollars for disability insurance; THREE HUNDRED
11 THOUSAND DOLLARS FOR LONG-TERM CARE INSURANCE; or five hundred
12 thousand dollars for basic hospital, medical and surgical, or major
13 medical insurance;

14 (C) Two hundred fifty thousand dollars in the present value of
15 annuity benefits, including net cash surrender and net cash withdrawal
16 values; OR

17 (D) With respect to each payee of a structured settlement annuity,
18 two hundred fifty thousand dollars in present-value annuity benefits, in
19 the aggregate, including net cash surrender and net cash withdrawal
20 values. ~~or~~

21 ~~(E) Three hundred thousand dollars for long-term care benefits.~~

22 (II) The association ~~shall~~ IS not be liable to expend OBLIGATED TO
23 COVER:

24 (A) More than three hundred thousand dollars IN BENEFITS, in the
25 aggregate, with respect to any one life under sub-subparagraphs (A) to
26 ~~(E)~~ (D) of subparagraph (I) of this paragraph (b); except that, with
27 respect to benefits for basic hospital, medical and surgical, and major

1 medical insurance under sub-subparagraph (B) of subparagraph (I) of this
2 paragraph (b), the aggregate liability of the association shall not exceed
3 five hundred thousand dollars with respect to any one individual; OR

4 (B) MORE THAN FIVE MILLION DOLLARS IN BENEFITS WITH
5 RESPECT TO AN OWNER OF MULTIPLE NONGROUP POLICIES OF LIFE
6 INSURANCE, REGARDLESS OF WHETHER THE POLICY OWNER IS AN
7 INDIVIDUAL, FIRM, CORPORATION, OR OTHER PERSON; WHETHER THE
8 PERSONS INSURED ARE OFFICERS, MANAGERS, EMPLOYEES, OR OTHER
9 PERSONS; OR THE NUMBER OF POLICIES AND CONTRACTS HELD BY THE
10 OWNER.

11 (c) THE LIMITATIONS SET FORTH IN THIS SUBSECTION (3) ARE
12 LIMITATIONS ON THE BENEFITS FOR WHICH THE ASSOCIATION IS
13 OBLIGATED BEFORE TAKING INTO ACCOUNT EITHER ITS SUBROGATION AND
14 ASSIGNMENT RIGHTS OR THE EXTENT TO WHICH THOSE BENEFITS COULD
15 BE PROVIDED OUT OF THE ASSETS OF THE IMPAIRED OR INSOLVENT
16 INSURER ATTRIBUTABLE TO COVERED POLICIES. THE COSTS OF THE
17 ASSOCIATION'S OBLIGATIONS UNDER THIS SUBSECTION (3) MAY BE MET BY
18 THE USE OF ASSETS ATTRIBUTABLE TO COVERED POLICIES OR REIMBURSED
19 TO THE ASSOCIATION UNDER ITS SUBROGATION AND ASSIGNMENT RIGHTS.

20 (4) ~~The liability of the association is strictly limited by the express~~
21 ~~terms of such covered policies and contracts and by the provisions of this~~
22 ~~article and is not affected by the contents of any brochures, illustrations,~~
23 ~~advertisements, or oral statements by agents, brokers, or others, used or~~
24 ~~made in connection with the sale of such covered policies and contracts.~~
25 ~~The association is not liable for any extracontractual, exemplary, or~~
26 ~~punitive damages, attorney fees, or interest other than as provided for by~~
27 ~~the terms of such covered policies or contracts~~ IN PERFORMING ITS

1 OBLIGATIONS TO PROVIDE COVERAGE UNDER SECTION 10-20-108, THE
2 ASSOCIATION IS NOT REQUIRED TO GUARANTEE, ASSUME, REINSURE, OR
3 PERFORM, OR CAUSE TO BE GUARANTEED, ASSUMED, REINSURED, OR
4 PERFORMED, THE CONTRACTUAL OBLIGATIONS OF THE IMPAIRED OR
5 INSOLVENT INSURER UNDER A COVERED POLICY OR CONTRACT THAT DO
6 NOT MATERIALLY AFFECT THE ECONOMIC VALUES OR ECONOMIC BENEFITS
7 OF THE COVERED POLICY OR CONTRACT.

8 **SECTION 3.** In Colorado Revised Statutes, 10-20-106, **amend**
9 (2) as follows:

10 **10-20-106. Creation of the association.** (2) The association is
11 under the supervision of the commissioner and is subject to the applicable
12 provisions of the insurance laws of this state. Meetings or records of the
13 association may be opened to the public consistent with the provisions of
14 the insurance laws of Colorado UPON MAJORITY VOTE OF THE BOARD.

15 **SECTION 4.** In Colorado Revised Statutes, 10-20-108, **amend**
16 (1), (2), (7) introductory portion, (7) (b), (8), (9), (10), (12) (b), (12) (c),
17 (13) (e), (15), (16), (17), and (19); **repeal** (3) and (4); and **add** (6.5),
18 (12) (d), (12) (e), (23), and (24) as follows:

19 **10-20-108. Powers and duties of the association.** (1) ~~In~~
20 ~~addition to any other powers and duties provided for in this article, the~~
21 ~~association has the following powers and duties~~ IF A MEMBER INSURER IS
22 AN IMPAIRED INSURER, THE ASSOCIATION MAY, IN ITS DISCRETION AND
23 SUBJECT TO ANY CONDITIONS IMPOSED BY THE ASSOCIATION THAT DO NOT
24 IMPAIR THE CONTRACTUAL OBLIGATIONS OF THE IMPAIRED INSURER AND
25 THAT ARE APPROVED BY THE COMMISSIONER:

26 (a) ~~If a domestic insurer is an insolvent insurer, the association~~
27 ~~shall, subject to the limitations of this article and subject to the approval~~

1 ~~of the commissioner~~ GUARANTEE, ASSUME, OR REINSURE OR CAUSE TO BE
2 GUARANTEED, ASSUMED, OR REINSURED ANY OR ALL OF THE POLICIES OR
3 CONTRACTS OF THE IMPAIRED INSURER; OR

4 ~~(I) Guarantee, assume, or reinsure or cause to be guaranteed,~~
5 ~~assumed, or reinsured the covered policies of the insolvent insurer;~~

6 ~~(H) Assure payment of the contractual obligations of the insolvent~~
7 ~~insurer; and~~

8 ~~(HH) Provide such moneys, pledges, notes, guarantees, or other~~
9 ~~means as are reasonably necessary to discharge such duties; or~~

10 (b) ~~With respect to only life and health insurance policies provide~~
11 ~~benefits and coverages in accordance with subsection (3) of this section~~

12 PROVIDE SUCH MONEYS, PLEDGES, LOANS, NOTES, GUARANTEES, OR
13 OTHER MEANS AS PROPER TO EFFECTUATE PARAGRAPH (a) OF THIS
14 SUBSECTION (1) AND ASSURE PAYMENT OF THE CONTRACTUAL
15 OBLIGATIONS OF THE IMPAIRED INSURER PENDING ACTION UNDER
16 PARAGRAPH (a).

17 (2) ~~(a)~~ If a ~~foreign or alien~~ MEMBER insurer is an insolvent
18 insurer, the association shall, ~~subject to the approval of the commissioner~~
19 IN ITS DISCRETION, EITHER:

20 ~~(H)~~ (a) Guarantee, assume, or reinsure or cause to be guaranteed,
21 assumed, or reinsured the covered policies of ~~residents~~ THE INSOLVENT
22 INSURER AND PROVIDE SUCH MONEYS, PLEDGES, NOTES GUARANTEES, OR
23 OTHER MEANS AS ARE REASONABLY NECESSARY TO DISCHARGE THOSE
24 DUTIES; OR

25 ~~(HH)~~ (b) Assure payment of the contractual obligations of the
26 insolvent insurer to the residents AND PROVIDE SUCH MONEYS, PLEDGES,
27 NOTES, GUARANTEES, OR OTHER MEANS AS ARE REASONABLY NECESSARY

1 TO DISCHARGE THOSE DUTIES; OR

2 ~~(HH) Provide such moneys, pledges, notes, guarantees, or other~~
3 ~~means as are reasonably necessary to discharge those duties; or~~

4 ~~(IV) With respect to only life and health insurance policies,~~
5 ~~provide benefits and coverages in accordance with subsection (3) of this~~
6 ~~section.~~

7 (b) (c) This subsection (2) shall not apply if the commissioner has
8 determined that the foreign or alien insurer's domiciliary jurisdiction or
9 state of entry provides, by statute, protection substantially similar to that
10 provided by this article for residents of the state. PROVIDE BENEFITS AND
11 COVERAGES IN ACCORDANCE WITH THE FOLLOWING PROVISIONS:

12 (I) WITH RESPECT ONLY TO LIFE AND HEALTH INSURANCE POLICIES
13 AND ANNUITIES, ASSURE PAYMENT OF BENEFITS FOR PREMIUMS IDENTICAL
14 TO THE PREMIUMS AND BENEFITS, EXCEPT FOR TERMS OF CONVERSION AND
15 RENEWABILITY, THAT WOULD HAVE BEEN PAYABLE UNDER THE POLICIES
16 OF THE INSOLVENT INSURER FOR CLAIMS INCURRED:

17 (A) WITH RESPECT TO GROUP POLICIES AND CONTRACTS, NOT
18 LATER THAN THE EARLIER OF THE NEXT RENEWAL DATE UNDER SUCH
19 POLICIES OR CONTRACTS OR FORTY-FIVE DAYS, BUT IN NO EVENT LESS
20 THAN THIRTY DAYS, AFTER THE DATE ON WHICH THE ASSOCIATION
21 BECOMES OBLIGATED WITH RESPECT TO SUCH POLICIES OR CONTRACTS;

22 (B) WITH RESPECT TO NONGROUP POLICIES, CONTRACTS, AND
23 ANNUITIES, NOT LATER THAN THE EARLIER OF THE NEXT RENEWAL DATE,
24 IF ANY, UNDER SUCH POLICIES OR CONTRACTS, OR ONE YEAR, BUT IN NO
25 EVENT LESS THAN THIRTY DAYS, AFTER THE DATE ON WHICH THE
26 ASSOCIATION BECOMES OBLIGATED WITH RESPECT TO SUCH POLICIES OR
27 CONTRACTS.

1 (II) MAKE DILIGENT EFFORTS TO PROVIDE TO ALL KNOWN
2 INSURED OR ANNUITANTS FOR NONGROUP POLICIES AND CONTRACTS, OR
3 TO GROUP POLICY OWNERS WITH RESPECT TO GROUP POLICIES AND
4 CONTRACTS, THIRTY DAYS' NOTICE OF THE TERMINATION UNDER
5 SUBPARAGRAPH (I) OF THIS PARAGRAPH (c) OF THE BENEFITS PROVIDED.

6 (III) WITH RESPECT TO NONGROUP LIFE AND HEALTH INSURANCE
7 POLICIES AND ANNUITIES COVERED BY THE ASSOCIATION, MAKE
8 AVAILABLE TO EACH KNOWN INSURED OR ANNUITANT, OR OWNER IF
9 OTHER THAN THE INSURED OR ANNUITANT, AND WITH RESPECT TO AN
10 INDIVIDUAL FORMERLY INSURED OR FORMERLY AN ANNUITANT UNDER A
11 GROUP POLICY WHO IS NOT ELIGIBLE FOR REPLACEMENT GROUP
12 COVERAGE, SUBSTITUTE COVERAGE ON AN INDIVIDUAL BASIS IN
13 ACCORDANCE WITH THE PROVISIONS OF SUBPARAGRAPH (IV) OF
14 PARAGRAPH (c) OF THIS SUBSECTION (2), IF THE INSURED OR ANNUITANTS
15 HAD A RIGHT UNDER LAW OR THE TERMINATED POLICY OR ANNUITY TO
16 CONVERT COVERAGE TO INDIVIDUAL COVERAGE OR TO CONTINUE AN
17 INDIVIDUAL POLICY OR ANNUITY IN FORCE UNTIL A SPECIFIED AGE OR FOR
18 A SPECIFIED TIME, DURING WHICH THE INSURER HAD NO RIGHT TO
19 UNILATERALLY MAKE CHANGES IN ANY PROVISIONS OF THE POLICY OR
20 ANNUITY OR HAD A RIGHT ONLY TO MAKE CHANGES IN PREMIUM BY
21 CLASS.

22 (IV) (A) IN PROVIDING THE SUBSTITUTE COVERAGE REQUIRED
23 UNDER SUBPARAGRAPH (III) OF PARAGRAPH (c) OF THIS SUBSECTION (2),
24 THE ASSOCIATION MAY OFFER EITHER TO REISSUE THE TERMINATED
25 COVERAGE OR TO ISSUE AN ALTERNATIVE POLICY.

26 (B) THE ASSOCIATION SHALL OFFER ALTERNATIVE OR REISSUED
27 POLICIES WITHOUT REQUIRING EVIDENCE OF INSURABILITY, AND THE

1 POLICIES MUST NOT PROVIDE FOR ANY WAITING PERIOD OR EXCLUSION
2 THAT WOULD NOT HAVE APPLIED UNDER THE TERMINATED POLICY.

3 (C) THE ASSOCIATION MAY REINSURE ANY ALTERNATIVE OR
4 REISSUED POLICY.

5 (V) (A) ALTERNATIVE POLICIES ADOPTED BY THE ASSOCIATION
6 ARE SUBJECT TO THE APPROVAL OF THE DOMICILIARY COMMISSIONER AND
7 THE RECEIVERSHIP COURT. THE ASSOCIATION MAY ADOPT ALTERNATIVE
8 POLICIES OF VARIOUS TYPES FOR FUTURE ISSUANCE WITHOUT REGARD TO
9 ANY PARTICULAR IMPAIRMENT OR INSOLVENCY.

10 (B) ALTERNATIVE POLICIES MUST CONTAIN AT LEAST THE
11 MINIMUM STATUTORY PROVISIONS REQUIRED IN THIS STATE AND PROVIDE
12 BENEFITS REASONABLY RELATED TO THE PREMIUM CHARGED. THE
13 ASSOCIATION SHALL SET THE PREMIUM IN ACCORDANCE WITH A TABLE OF
14 RATES WHICH IT SHALL ADOPT. THE PREMIUM MUST REFLECT THE AMOUNT
15 OF INSURANCE TO BE PROVIDED AND THE AGE AND CLASS OF RISK OF EACH
16 INSURED, BUT SHALL NOT REFLECT ANY CHANGES IN THE HEALTH OF THE
17 INSURED AFTER THE ORIGINAL POLICY WAS LAST UNDERWRITTEN.

18 (C) ANY ALTERNATIVE POLICY ISSUED BY THE ASSOCIATION MUST
19 PROVIDE COVERAGE OF A TYPE SIMILAR TO THAT OF THE POLICY ISSUED BY
20 THE IMPAIRED OR INSOLVENT INSURER, AS DETERMINED BY THE
21 ASSOCIATION.

22 (VI) IF THE ASSOCIATION ELECTS TO REISSUE TERMINATED
23 COVERAGE AT A PREMIUM RATE DIFFERENT FROM THAT CHARGED UNDER
24 THE TERMINATED POLICY, THE ASSOCIATION SHALL SET THE PREMIUM IN
25 ACCORDANCE WITH THE AMOUNT OF INSURANCE PROVIDED AND THE AGE
26 AND CLASS OF RISK, SUBJECT TO APPROVAL BY THE COMMISSIONER OR BY
27 A COURT OF COMPETENT JURISDICTION.

1 (VII) THE OBLIGATIONS OF THE ASSOCIATION, WITH RESPECT TO
2 COVERAGE UNDER ANY POLICY OF THE IMPAIRED OR INSOLVENT INSURER
3 OR UNDER ANY REISSUED OR ALTERNATIVE POLICY, CEASE ON THE DATE
4 SUCH COVERAGE OR POLICY IS REPLACED BY ANOTHER SIMILAR POLICY BY
5 THE POLICY OWNER, THE INSURED, OR THE ASSOCIATION.

6 (VIII) WHEN PROCEEDING UNDER THIS PARAGRAPH (c), WITH
7 RESPECT TO ANY POLICY OR CONTRACT CARRYING GUARANTEED MINIMUM
8 INTEREST RATES, THE ASSOCIATION SHALL ASSURE THE PAYMENT OR
9 CREDITING OF A RATE OF INTEREST CONSISTENT WITH SECTION 10-20-104
10 (2) (b) (III).

11 ~~(3) (a) When proceeding under paragraph (b) of subsection (1) or~~
12 ~~subparagraph (IV) of paragraph (a) of subsection (2) of this section, the~~
13 ~~association shall, with respect to only life and health insurance policies:~~

14 ~~(I) Assure payment of benefits for premiums identical to the~~
15 ~~premiums and benefits, except for terms of conversion and renewability,~~
16 ~~that would have been payable under the policies of the insolvent insurer~~
17 ~~for claims incurred:~~

18 ~~(A) With respect to group policies, not later than the earlier of the~~
19 ~~next renewal date under such policies or contracts or forty-five days, but~~
20 ~~in no event less than thirty days, after the date on which the association~~
21 ~~becomes obligated with respect to such policies;~~

22 ~~(B) With respect to individual policies, not later than the earlier~~
23 ~~of the next renewal date, if any, under such policies or one year, but in no~~
24 ~~event less than thirty days, after the date on which the association~~
25 ~~becomes obligated with respect to such policies;~~

26 ~~(H) Make diligent efforts to provide all known insureds, or group~~
27 ~~policyholders with respect to group policies, thirty days notice of the~~

1 termination of the benefits provided;

2 ~~(HH) With respect to individual policies, make available to each~~
3 ~~known insured or owner if other than the insured, and with respect to~~
4 ~~group policies, make available to each individual formerly insured who~~
5 ~~is not eligible for replacement group coverage, substitute coverage on an~~
6 ~~individual basis in accordance with the provisions of paragraph (b) of this~~
7 ~~subsection (3), if the insureds had a right under law or the terminated~~
8 ~~policy to convert coverage to individual coverage or to continue an~~
9 ~~individual policy in force until a specified age or for a specified time,~~
10 ~~during which the insurer had no right unilaterally to make changes in any~~
11 ~~provisions of the policy or had a right only to make changes in premium~~
12 ~~by class.~~

13 ~~(b) (I) In providing the substitute coverage required under~~
14 ~~subparagraph (HH) of paragraph (a) of this subsection (3), the association~~
15 ~~may offer either to reissue the terminated coverage or to issue an~~
16 ~~alternative policy.~~

17 ~~(H) Alternative or reissued policies shall be offered without~~
18 ~~requiring evidence of insurability and shall not provide for any waiting~~
19 ~~period or exclusion that would not have applied under the terminated~~
20 ~~policy.~~

21 ~~(HH) The association may reinsure any alternative or reissued~~
22 ~~policy.~~

23 ~~(c) (I) Alternative policies adopted by the association shall be~~
24 ~~subject to the approval of the commissioner. The association may adopt~~
25 ~~alternative policies of various types for future issuance without regard to~~
26 ~~any particular insolvency.~~

27 ~~(H) Alternative policies shall contain at least the minimum~~

1 statutory provisions required in this state and provide benefits that shall
2 be reasonably related to the premium charged. The association shall set
3 the premium in accordance with a table of rates which it shall adopt as
4 approved by the commissioner. The premium shall reflect the amount of
5 insurance to be provided and the age and class of risk of each insured but
6 shall not reflect any changes in the health of the insured after the original
7 policy was last underwritten.

8 (HH) Any alternative policy issued by the association shall provide
9 coverage of a type similar to that of the policy issued by the insolvent
10 insurer, as determined by the association.

11 (d) If the association elects to reissue terminated coverage at a
12 premium rate different from that charged under the terminated policy, the
13 premium shall be set by the association in accordance with the amount of
14 insurance provided and the age and class of risk, subject to approval of
15 the commissioner or by a court of competent jurisdiction.

16 (e) The obligations of the association, with respect to coverage
17 under any policy of the insolvent insurer or under any reissued or
18 alternative policy, shall cease on the date such coverage or policy is
19 replaced by another similar policy by the policyholder, the insured, or the
20 association.

21 (4) When proceeding pursuant to subsection (2) (a) (H) or (2) (b)
22 of this section, with respect to any policy or contract carrying guaranteed
23 minimum interest rates, the association shall assure the payment or
24 crediting of a rate of interest consistent with section 10-20-104 (2) (b)
25 (HH) (A) and (2) (b) (HH) (B).

26 (6.5) THE PROTECTION PROVIDED BY THIS ARTICLE DOES NOT
27 APPLY WHEN GUARANTY PROTECTION IS PROVIDED TO RESIDENTS OF THIS

1 STATE BY THE LAWS OF THE DOMICILIARY STATE OR JURISDICTION OF THE
2 IMPAIRED OR INSOLVENT INSURER OTHER THAN THIS STATE.

3 (7) In carrying out its duties under ~~subsections (1) and~~
4 SUBSECTION (2) of this section, the association may, subject to approval
5 by ~~the~~ A court OF COMPETENT JURISDICTION:

6 (b) Impose temporary moratoriums or liens on payments of cash
7 values and policy loans, or any other right to withdraw funds held in
8 conjunction with policies or contracts, in addition to any contractual
9 provisions for deferral of cash or policy loan value. IN ADDITION, IN THE
10 EVENT OF A TEMPORARY MORATORIUM OR MORATORIUM CHARGE
11 IMPOSED BY THE RECEIVERSHIP COURT ON PAYMENT OF CASH VALUES OR
12 POLICY LOANS OR ON ANY OTHER RIGHT TO WITHDRAW FUNDS HELD IN
13 CONJUNCTION WITH POLICIES OR CONTRACTS OUT OF THE ASSETS OF THE
14 IMPAIRED OR INSOLVENT INSURER, THE ASSOCIATION MAY DEFER ITS
15 PAYMENT OF CASH VALUES, POLICY LOANS, OR OTHER RIGHTS OF THE
16 ASSOCIATION FOR THE PERIOD OF THE MORATORIUM OR MORATORIUM
17 CHARGE BY THE RECEIVERSHIP COURT, EXCEPT FOR CLAIMS COVERED BY
18 THE ASSOCIATION TO BE PAID IN ACCORDANCE WITH A HARDSHIP
19 PROCEDURE ESTABLISHED BY THE LIQUIDATOR OR REHABILITATOR AND
20 APPROVED BY THE RECEIVERSHIP COURT.

21 (8) If the association fails to act within a reasonable period of
22 time as provided in ~~subsections (1), (2), and (3)~~ SUBSECTION (2) of this
23 section, the commissioner shall have the powers and duties of the
24 association under this article with respect to insolvent insurers.

25 (9) There shall be no liability on the part of, and no cause of
26 action shall arise against, the association, or ~~against~~ any transferee from
27 the association in connection with the transfer by reinsurance or

1 otherwise of all or any part of an IMPAIRED OR insolvent insurer's
2 business by reason of any action taken or any failure to take any action
3 by the IMPAIRED OR insolvent insurer at any time.

4 (10) The association may render assistance and advice to the
5 commissioner, upon the commissioner's request, concerning
6 REHABILITATION, payment of claims, continuance of coverage, OR the
7 performance of other contractual obligations of any IMPAIRED OR
8 insolvent insurer. ~~or any member insurer's performance of its contractual~~
9 ~~obligations.~~

10 (12) (b) The subrogation rights of the association under this
11 subsection (12) shall have the same priority against the assets of the
12 IMPAIRED OR insolvent insurer as that possessed by the person entitled to
13 receive benefits under this article.

14 (c) In addition to paragraphs (a) and (b) of this subsection (12),
15 the association shall have all common-law rights of subrogation and any
16 other equitable or legal remedy which would have been available to the
17 IMPAIRED OR insolvent insurer, owner, beneficiary, or payee of a policy
18 or contract. ~~with respect to such policy or contract, including without~~
19 ~~limitation, in the case of a structured settlement annuity, any rights of the~~
20 ~~owner, beneficiary, or payee of the annuity, to the extent the benefits~~
21 ~~received pursuant to this article against a person originally or by~~
22 ~~succession responsible for the losses arising from the personal injury~~
23 ~~relating to the annuity or payment therefor, excepting any such person~~
24 ~~responsible solely by reason of serving as an assignee in respect of a~~
25 ~~qualified assignment under section 130 of the federal "Internal Revenue~~
26 ~~Code of 1986", as amended.~~

27 (d) IF ANY PROVISION OF PARAGRAPH (a), (b), OR (c) OF THIS

1 SUBSECTION (12) IS INVALID OR INEFFECTIVE WITH RESPECT TO ANY
2 PERSON OR CLAIM FOR ANY REASON, THE AMOUNT PAYABLE BY THE
3 ASSOCIATION WITH RESPECT TO THE RELATED COVERED OBLIGATIONS IS
4 REDUCED BY THE AMOUNT REALIZED BY ANY OTHER PERSON WITH
5 RESPECT TO THE PERSON OR CLAIM THAT IS ATTRIBUTABLE TO THE
6 POLICIES OR PORTIONS OF THE POLICIES COVERED BY THE ASSOCIATION.

7 (e) IF THE ASSOCIATION HAS PROVIDED BENEFITS WITH RESPECT TO
8 A COVERED OBLIGATION AND A PERSON RECOVERS AMOUNTS AS TO WHICH
9 THE ASSOCIATION HAS RIGHTS AS DESCRIBED IN PARAGRAPHS (a) TO (d)
10 OF THIS SUBSECTION (12), THE PERSON SHALL PAY TO THE ASSOCIATION
11 THE PORTION OF THE RECOVERY ATTRIBUTABLE TO THE POLICIES, OR
12 PORTIONS OF POLICIES, COVERED BY THE ASSOCIATION.

13 (13) The association may:

14 (e) Take such legal action as ~~may be~~ necessary to avoid payment
15 of improper claims OR RECOVER PAYMENT OF IMPROPER CLAIMS;

16 ==

17 (15) Every insured or claimant seeking the protection of this
18 article shall cooperate with the association to the same extent the person
19 or entity would have been required to cooperate with the IMPAIRED OR
20 insolvent insurer. The association has no cause of action against the
21 insured of the IMPAIRED OR insolvent insurer for any sums the association
22 has paid out except those causes of action the IMPAIRED OR insolvent
23 insurer would have had if the sums had been paid by the IMPAIRED OR
24 insolvent insurer. If an IMPAIRED OR insolvent insurer operates on a plan
25 with assessment liability, payments of claims by the association do not
26 reduce the liability of the insured to the receiver, liquidator,
27 REHABILITATOR, CONSERVATOR, or statutory successor for unpaid

1 assessments.

2 (16) The receiver, liquidator, REHABILITATOR, CONSERVATOR, or
3 statutory successor of an IMPAIRED OR insolvent insurer is bound by
4 settlements of covered claims by the association or a similar organization
5 in another state. The association has a claim against the estate of the
6 IMPAIRED OR insolvent insurer to the extent of claims and expenses paid
7 by the association in connection with the duties of the association as to
8 the IMPAIRED OR insolvent insurer. The court having jurisdiction shall
9 grant these settled claims in the priority to which the claimant would have
10 been entitled in the absence of this article against the assets of the
11 IMPAIRED OR insolvent insurer. The expenses, including legal fees of the
12 association or similar organization in handling claims, shall be given the
13 same priority as the expenses of the liquidator, REHABILITATOR, OR
14 CONSERVATOR.

15 (17) The association shall periodically file with the liquidator,
16 REHABILITATOR, OR CONSERVATOR of the IMPAIRED OR insolvent insurer
17 statements of the covered claims and associated expenses paid by the
18 association and estimates of anticipated claims against the association.
19 This periodic filing preserves the rights of the association for claims
20 against the assets of the IMPAIRED OR insolvent insurer.

21 (19) A person who has a claim against an insurer pursuant to a
22 provision of an insurance policy, other than a policy of an IMPAIRED OR
23 insolvent insurer, that also is a contractual obligation under this article,
24 must first exhaust his OR HER right under that policy. The amount of an
25 approved claim under this article shall be reduced by the policy limits of,
26 or amount paid under, that insurance policy, whichever amount is greater.
27 If a claimant exhausts all rights under a policy other than a policy of an

1 IMPAIRED OR insolvent insurer, the insurer issuing that policy is not
2 entitled to sue or continue a suit against the insured of the IMPAIRED OR
3 insolvent insurer to recover an amount paid to the claimant under the
4 policy; except that a person having a contractual obligation, as defined
5 by this article, under a life insurance policy or an annuity contract issued
6 by an IMPAIRED OR insolvent insurer is not required to exhaust other
7 coverage for that claim, and the amount of an approved claim under a life
8 insurance policy or annuity contract issued by an IMPAIRED OR insolvent
9 insurer may not be reduced because of that duplicate coverage.

10 (23) THE BOARD HAS DISCRETION AND MAY EXERCISE
11 REASONABLE BUSINESS JUDGMENT TO DETERMINE THE MEANS BY WHICH
12 THE ASSOCIATION IS TO PROVIDE THE BENEFITS OF THIS ARTICLE IN AN
13 ECONOMICAL AND EFFICIENT MANNER.

14 (24) IN CARRYING OUT ITS DUTIES IN CONNECTION WITH
15 GUARANTEEING, ASSUMING, OR REINSURING POLICIES OR CONTRACTS
16 UNDER SUBSECTION (1) OR (2) OF THIS SECTION, THE ASSOCIATION MAY,
17 SUBJECT TO APPROVAL BY THE RECEIVERSHIP COURT, ISSUE SUBSTITUTE
18 COVERAGE FOR A POLICY OR CONTRACT THAT PROVIDES AN INTEREST
19 RATE, CREDITING RATE, OR SIMILAR FACTOR, DETERMINED BY USE OF AN
20 INDEX OR OTHER EXTERNAL REFERENCE STATED IN THE POLICY OR
21 CONTRACT, EMPLOYED IN CALCULATING RETURNS OR CHANGES IN VALUE
22 BY ISSUING AN ALTERNATIVE POLICY OR CONTRACT IN ACCORDANCE WITH
23 THE FOLLOWING PROVISIONS:

24 (a) IN LIEU OF THE INDEX OR OTHER EXTERNAL REFERENCE
25 PROVIDED FOR IN THE ORIGINAL POLICY OR CONTRACT, THE ALTERNATIVE
26 POLICY OR CONTRACT PROVIDES FOR A FIXED INTEREST RATE, PAYMENT
27 OF DIVIDENDS WITH MINIMUM GUARANTEES, OR A DIFFERENT METHOD FOR

1 CALCULATING INTEREST OR CHANGES IN VALUE;

2 (b) THERE IS NO REQUIREMENT FOR EVIDENCE OF INSURABILITY,
3 WAITING PERIOD, OR OTHER EXCLUSION THAT WOULD NOT HAVE APPLIED
4 UNDER THE REPLACED POLICY OR CONTRACT; AND

5 (c) THE ALTERNATIVE POLICY OR CONTRACT IS SUBSTANTIALLY
6 SIMILAR TO THE REPLACED POLICY OR CONTRACT IN ALL OTHER MATERIAL
7 TERMS.

8 **SECTION 5.** In Colorado Revised Statutes, 10-20-109, **amend**
9 (2), (3), (5), and (10); and **add** (11) as follows:

10 **10-20-109. Assessments.** (2) There shall be two assessments, as
11 follows:

12 (a) Class A assessments ~~shall~~ MUST be ~~made~~ AUTHORIZED AND
13 CALLED for the purpose of meeting administrative and legal costs and
14 other expenses and examinations conducted under the authority of section
15 10-20-112 (5). Class A assessments may be ~~made~~ AUTHORIZED AND
16 CALLED whether or not related to a particular IMPAIRED OR insolvent
17 insurer.

18 (b) Class B assessments ~~shall~~ MUST be ~~made~~ AUTHORIZED AND
19 CALLED to the extent necessary to carry out the powers and duties of the
20 association under section 10-20-108 with regard to an IMPAIRED OR
21 insolvent insurer.

22 (3) (a) The amount of any class A assessment ~~shall~~ MUST be
23 determined by the board and may be ~~made~~ AUTHORIZED AND CALLED on
24 a non-pro rata basis. ~~A non-pro rata assessment shall not exceed one~~
25 ~~hundred fifty dollars per member insurer in any one calendar year.~~ The
26 amount of any class B assessment shall be allocated for assessment
27 purposes among the accounts pursuant to an allocation formula which

1 may be based on the premiums or reserves of the IMPAIRED OR insolvent
2 insurer or any other standard deemed by the board in its sole discretion
3 to be fair and reasonable under the circumstances.

4 (b) Class B assessments against member insurers for each account
5 shall be in the proportion that the premiums received on business in this
6 state by each assessed member insurer on policies or contracts covered
7 by each account for the three most recent calendar years for which
8 information is available preceding the year in which the insurer became
9 IMPAIRED OR insolvent, bear to such premiums received on business in
10 this state for such calendar years by all assessed member insurers.

11 (c) Assessments for funds to meet the requirements of the
12 association with respect to an IMPAIRED OR insolvent insurer ~~shall~~ MUST
13 not be ~~made~~ AUTHORIZED OR CALLED until necessary to implement the
14 purposes of this article. Classification of assessments under subsection
15 (2) of this section and computation of assessments under this subsection
16 (3) shall be made with a reasonable degree of accuracy, recognizing that
17 exact determinations may not always be possible. THE ASSOCIATION
18 SHALL NOTIFY EACH MEMBER INSURER OF ITS ANTICIPATED PRO RATA
19 SHARE OF AN AUTHORIZED ASSESSMENT NOT YET CALLED WITHIN ONE
20 HUNDRED EIGHTY DAYS AFTER THE ASSESSMENT IS AUTHORIZED.

21 (5) (a) ~~The~~ SUBJECT TO PARAGRAPH (b) OF THIS SUBSECTION (5),
22 THE total of all assessments ~~upon~~ AUTHORIZED BY THE ASSOCIATION WITH
23 RESPECT TO a member insurer for each account ~~shall~~ MUST not EXCEED
24 in any one calendar year, ~~exceed one~~ TWO percent of the average
25 premiums received by ~~such~~ THE insurer in this state on the policies and
26 contracts covered by the account during the three calendar years
27 preceding the year in which the insurer became IMPAIRED OR insolvent.

1 (b) IF TWO OR MORE ASSESSMENTS ARE AUTHORIZED IN ONE
2 CALENDAR YEAR WITH RESPECT TO INSURERS WHO BECOME IMPAIRED OR
3 INSOLVENT IN DIFFERENT CALENDAR YEARS, THE AVERAGE ANNUAL
4 PREMIUMS FOR PURPOSES OF THE AGGREGATE ASSESSMENT PERCENTAGE
5 LIMITATION REFERENCED IN PARAGRAPH (a) OF THIS SUBSECTION (5) IS
6 EQUAL AND LIMITED TO THE HIGHEST OF THE THREE-YEAR AVERAGE
7 ANNUAL PREMIUMS FOR THE APPLICABLE ACCOUNT AS CALCULATED
8 UNDER THIS SECTION.

9 (c) If the maximum assessment, together with the other assets of
10 the association in any account, does not provide in any one year in any of
11 the accounts an amount sufficient to carry out the responsibilities of the
12 association, the necessary additional funds shall be assessed as soon
13 thereafter as permitted by this article.

14 (d) The board shall provide in the plan of operation a method of
15 allocating funds among claims, whether relating to one or more IMPAIRED
16 OR insolvent insurers, when the maximum assessment will be insufficient
17 to cover anticipated claims.

18 (10) ~~(a) An assessment is deemed to occur on the date upon which~~
19 ~~the board votes such assessment. The board may defer calling the~~
20 ~~payment of the assessment or may call for payment in one or more~~
21 ~~installments~~ A MEMBER INSURER THAT INTENDS TO PROTEST ALL OR PART
22 OF AN ASSESSMENT SHALL PAY, WHEN DUE, THE FULL AMOUNT OF THE
23 ASSESSMENT IN THE NOTICE PROVIDED BY THE ASSOCIATION. THE
24 PAYMENT MUST BE AVAILABLE TO MEET ASSOCIATION OBLIGATIONS
25 DURING THE PENDENCY OF THE PROTEST OR ANY SUBSEQUENT APPEAL.
26 PAYMENTS MUST BE ACCOMPANIED BY A STATEMENT IN WRITING THAT
27 THE PAYMENT IS MADE UNDER PROTEST AND A BRIEF STATEMENT OF THE

1 GROUND FOR THE PROTEST.

2 (b) WITHIN SIXTY DAYS FOLLOWING THE PAYMENT OF AN
3 ASSESSMENT UNDER PROTEST BY A MEMBER INSURER, THE ASSOCIATION
4 SHALL NOTIFY THE MEMBER INSURER IN WRITING OF ITS DETERMINATION
5 WITH RESPECT TO THE PROTEST UNLESS THE ASSOCIATION NOTIFIES THE
6 MEMBER INSURER THAT ADDITIONAL TIME IS REQUIRED TO RESOLVE THE
7 ISSUES RAISED BY THE PROTEST.

8 (c) WITHIN THIRTY DAYS AFTER A FINAL DECISION, THE
9 ASSOCIATION SHALL NOTIFY THE PROTESTING MEMBER INSURER IN
10 WRITING OF THE FINAL DECISION. WITHIN SIXTY DAYS AFTER RECEIVING
11 NOTICE OF THE FINAL DECISION, THE PROTESTING MEMBER INSURER MAY
12 APPEAL THE FINAL DECISION TO THE COMMISSIONER.

13 (d) IN ALTERNATIVE TO RENDERING A FINAL DECISION WITH
14 RESPECT TO A PROTEST BASED ON A QUESTION REGARDING THE
15 ASSESSMENT BASE, THE ASSOCIATION MAY REFER PROTESTS DIRECTLY TO
16 THE COMMISSIONER FOR A FINAL DECISION, WITH OR WITHOUT A
17 RECOMMENDATION FROM THE ASSOCIATION.

18 (e) IF THE PROTEST OR APPEAL ON THE ASSESSMENT IS UPHELD,
19 THE ASSOCIATION MUST RETURN THE AMOUNT PAID IN ERROR OR EXCESS
20 TO THE MEMBER INSURER. INTEREST ON A REFUND DUE TO A PROTESTING
21 MEMBER INSURER MUST BE PAID AT THE RATE ACTUALLY EARNED BY THE
22 ASSOCIATION.

23 (11) THE ASSOCIATION MAY REQUEST INFORMATION OF MEMBER
24 INSURERS IN ORDER TO AID IN THE EXERCISE OF ITS POWER UNDER THIS
25 SECTION. MEMBER INSURERS SHALL PROMPTLY REPLY TO ANY REQUEST
26 FOR INFORMATION FROM THE ASSOCIATION.

27 **SECTION 6.** In Colorado Revised Statutes, 10-20-110, **amend**

1 (3) introductory portion; **repeal** (5); and **add** (3) (h) and (3) (i) as
2 follows:

3 **10-20-110. Plan of operation.** (3) The plan of operation shall
4 MUST, in addition to any other provisions specified in this article:

5 (h) ESTABLISH PROCEDURES WHEREBY A DIRECTOR MAY BE
6 REMOVED FOR CAUSE, INCLUDING A DIRECTOR OR MEMBER INSURER THAT
7 BECOMES AN IMPAIRED OR INSOLVENT INSURER;

8 (i) REQUIRE THE BOARD OF DIRECTORS TO ESTABLISH A POLICY
9 AND PROCEDURES TO ADDRESS CONFLICTS OF INTEREST.

10 (5) ~~The plan of operation shall establish a procedure for protest~~
11 ~~by a member insurer of assessments made by the association pursuant to~~
12 ~~section 10-20-109. Such procedure shall require that:~~

13 (a) ~~Any member insurer that wishes to protest all or any part of~~
14 ~~an assessment for any year shall first pay the full amount of the~~
15 ~~assessment as set forth in the notice provided by the association. Such~~
16 ~~payments shall be accompanied by a statement in writing that the~~
17 ~~payment is made under protest, setting forth a brief statement of the~~
18 ~~ground for the protest. The association shall hold such payments in a~~
19 ~~separate interest-bearing account.~~

20 (b) ~~Within thirty days following the payment of an assessment~~
21 ~~under protest by any protesting member insurer, the association shall~~
22 ~~notify the member insurer in writing of its determination with respect to~~
23 ~~the protest unless the association notifies the member that additional time~~
24 ~~is required to resolve the issues raised by the protest.~~

25 (c) ~~In the event the association determines that the protesting~~
26 ~~member insurer is entitled to a refund, such refund shall be made within~~
27 ~~thirty days following the date upon which the association makes its~~

1 ~~determination.~~

2 ~~(d) In the alternative to rendering a decision with respect to any~~
3 ~~protest based on a question regarding the assessment base, the association~~
4 ~~may refer such protests to the commissioner for final decision, with or~~
5 ~~without a recommendation from the association.~~

6 ~~(e) Interest on any refund due a protesting member insurer shall~~
7 ~~be paid at the rate actually earned by the association.~~

8 **SECTION 7.** In Colorado Revised Statutes, 10-20-111, **amend**
9 (1) (b) and (3) as follows:

10 **10-20-111. Powers and duties of the commissioner.** (1) In
11 addition to any other powers and duties specified in this article, the
12 commissioner shall:

13 (b) Notify the board of the existence of an IMPAIRED OR insolvent
14 insurer not later than three days after a determination of IMPAIRMENT OR
15 insolvency is made by the commissioner, irrespective of limitations
16 imposed upon the commissioner in section 10-3-401;

17 (3) The CONSERVATOR, REHABILITATOR, OR liquidator of any
18 IMPAIRED OR insolvent insurer shall notify all interested persons of the
19 effect of this article.

20 **SECTION 8.** In Colorado Revised Statutes, 10-20-112, **amend**
21 (1) (c) and (4); and **repeal** (5) and (7) as follows:

22 **10-20-112. Prevention of insolvencies.** (1) To aid in the
23 detection and prevention of insurer insolvencies, it shall be the duty of
24 the commissioner:

25 (c) To report to the board when the commissioner has reasonable
26 cause to believe from an examination, whether completed or in process,
27 of a member company that such member company may be an IMPAIRED

1 OR insolvent insurer;

2 (4) ~~The board shall notify the commissioner when the board has~~
3 ~~actual knowledge that an insurer may be insolvent~~ THE BOARD OF
4 DIRECTORS MAY, UPON A MAJORITY VOTE, NOTIFY THE COMMISSIONER OF
5 ANY INFORMATION INDICATING THAT A MEMBER INSURER MAY BE
6 IMPAIRED OR INSOLVENT.

7 (5) ~~The board shall request that the commissioner order an~~
8 ~~examination of any member insurer which the board in good faith~~
9 ~~believes may be insolvent. Within thirty days after the receipt of such~~
10 ~~request, the commissioner shall begin such examination. The examination~~
11 ~~may be conducted as an NAIC examination or may be conducted by such~~
12 ~~persons as the commissioner designates. The cost of such examination~~
13 ~~shall be paid by the association, and the examination report shall be~~
14 ~~treated confidentially. In no event shall such examination report be~~
15 ~~released to the board prior to its release to the public, but this shall not~~
16 ~~preclude the commissioner from complying with subsection (1) of this~~
17 ~~section. The commissioner shall notify the board when the examination~~
18 ~~is completed. The request for an examination shall be kept on file by the~~
19 ~~commissioner, but it shall not be open to public inspection prior to the~~
20 ~~release of the examination report to the public. For purposes of this~~
21 ~~subsection (5), a "request" is not a report or recommendation.~~

22 (7) ~~The board may, at the conclusion of any insurer insolvency in~~
23 ~~which the association was obligated to pay covered claims, prepare a~~
24 ~~report to the commissioner containing such information as it may have in~~
25 ~~its possession bearing on the history and causes of such insolvency. The~~
26 ~~board may cooperate with the boards of directors of guaranty associations~~
27 ~~in other states in preparing a report on the history and causes of~~

1 insolvency of a particular insurer and may adopt by reference any report
2 prepared by such other associations.

3 **SECTION 9.** In Colorado Revised Statutes, 10-20-114, **amend**
4 (1), (2), (3), (4), (5) (a), and (5) (d); and **add** (3.5) as follows:

5 **10-20-114. Miscellaneous provisions.** (1) Nothing in this article
6 ~~shall be construed to reduce~~ REDUCES the liability for unpaid assessments
7 of the insureds of an IMPAIRED OR insolvent insurer operating under a
8 plan with assessment liability.

9 (2) ~~Records shall be kept of all negotiations and meetings in~~
10 ~~which the association or its representatives are involved~~ THE
11 ASSOCIATION MUST KEEP RECORDS OF ALL MEETINGS OF THE BOARD OF
12 DIRECTORS to discuss the activities of the association in carrying out its
13 powers and duties pursuant to section 10-20-108. Records of such
14 ~~negotiations or meetings shall~~ MAY be made public only upon the
15 termination of a liquidation, REHABILITATION, OR CONSERVATION
16 proceeding involving the IMPAIRED OR insolvent insurer, upon the
17 termination of the IMPAIRMENT OR insolvency of the insurer, or upon the
18 order of a court of competent jurisdiction. Nothing in this subsection (2)
19 ~~shall limit~~ LIMITS the duty of the association to render a report of its
20 activities under section 10-20-115.

21 (3) For the purpose of carrying out its obligations under this
22 article, the association ~~shall be~~ IS deemed to be a creditor of the IMPAIRED
23 OR insolvent insurer to the extent of assets attributable to covered policies
24 reduced by any amounts to which the association is entitled as assignee
25 or subrogee pursuant to section 10-20-108 ~~(H)~~ (12). Assets of the
26 IMPAIRED OR insolvent insurer attributable to covered policies shall be
27 used to continue all covered policies and pay all contractual obligations

1 of the IMPAIRED OR insolvent insurer as required by this article. "Assets
2 attributable to covered policies", as used in this subsection (3), are that
3 proportion of the assets which the reserves that should have been
4 established for such policies bear to the reserves that should have been
5 established for all policies of insurance written by the IMPAIRED OR
6 insolvent insurer.

7 (3.5) AS A CREDITOR OF AN IMPAIRED OR INSOLVENT INSURER AS
8 ESTABLISHED IN THIS SECTION AND CONSISTENT WITH SECTION 10-3-533,
9 THE ASSOCIATION AND OTHER SIMILAR ASSOCIATIONS ARE ENTITLED TO
10 RECEIVE A DISBURSEMENT OF ASSETS OUT OF THE MARSHALED ASSETS
11 FROM TIME TO TIME AS THE ASSETS BECOME AVAILABLE TO REIMBURSE
12 THE ASSOCIATION, AS A CREDIT AGAINST CONTRACTUAL OBLIGATIONS
13 UNDER THIS ARTICLE. IF THE LIQUIDATOR HAS NOT MADE AN APPLICATION
14 TO THE RECEIVERSHIP COURT FOR APPROVAL OF A PROPOSAL TO DISBURSE
15 ASSETS OUT OF MARSHALED ASSETS TO GUARANTY ASSOCIATIONS HAVING
16 OBLIGATIONS BECAUSE OF THE INSOLVENCY WITHIN ONE HUNDRED
17 TWENTY DAYS AFTER A FINAL DETERMINATION OF INSOLVENCY OF AN
18 INSURER BY THE RECEIVERSHIP COURT, THE ASSOCIATION MAY APPLY TO
19 THE RECEIVERSHIP COURT FOR APPROVAL OF ITS OWN PROPOSAL TO
20 DISBURSE THESE ASSETS.

21 (4) (a) Prior to the termination of any REHABILITATION,
22 CONSERVATION, OR liquidation proceeding, the court may take into
23 consideration the contributions of the respective parties, including the
24 association, the shareholders, and policyholders of the IMPAIRED OR
25 insolvent insurer, and any other party with a bona fide interest, in making
26 an equitable distribution of the ownership rights of ~~such~~ THE insolvent
27 insurer. In such a determination, consideration shall be given to the

1 welfare of the policyholders of the continuing or successor insurer.

2 (b) No distribution to stockholders, if any, of an IMPAIRED OR
3 insolvent insurer shall be made until and unless the total amount of valid
4 claims of the association with interest thereon for funds expended in
5 carrying out its powers and duties pursuant to section 10-20-108 with
6 respect to ~~such~~ THE insurer have been fully recovered by the association.

7 (5) (a) If an order for REHABILITATION OR liquidation of an insurer
8 domiciled in this state has been entered, the receiver appointed under
9 such order shall have a right to recover on behalf of the insurer, from any
10 affiliate that controlled it, the amount of distributions, other than stock
11 dividends paid by the insurer on its capital stock, made at any time during
12 the five years preceding the petition for liquidation subject to the
13 limitations of paragraphs (b) to (d) of this subsection (5).

14 (d) The maximum amount recoverable under this subsection (5)
15 ~~shall be~~ IS the amount needed, in excess of all other available assets of
16 the IMPAIRED OR insolvent insurer, to pay the contractual obligations of
17 the IMPAIRED OR insolvent insurer.

18 **SECTION 10.** In Colorado Revised Statutes, **amend** 10-20-118
19 as follows:

20 **10-20-118. Stay of proceedings - reopening default judgments.**

21 All proceedings in which the IMPAIRED OR insolvent insurer is a party in
22 any court in this state shall be stayed for ~~sixty~~ ONE HUNDRED EIGHTY days
23 after the date an order of CONSERVATION, REHABILITATION, OR liquidation
24 is final to permit proper legal action by the association on any matters
25 germane to its powers or duties. As to judgment under any decision,
26 order, verdict, or finding based on default, the association may apply to
27 have ~~such~~ THE judgment set aside by the same court that issued ~~such~~ THE

1 judgment and shall be permitted to defend against such suit on the merits.

2 **SECTION 11. Applicability.** This act applies to any member
3 insurer that has been placed under an order of liquidation with a finding
4 of insolvency after the effective date of this act and any impairment of a
5 member insurer existing on the effective date of this act.

6 **SECTION 12. Safety clause.** The general assembly hereby finds,
7 determines, and declares that this act is necessary for the immediate
8 preservation of the public peace, health, and safety.