

1 **LIFE INSURANCE GUARANTY**

2 **ASSOCIATIONS**

3 2000 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Lowell A. Nelson**

6 AN ACT RELATING TO INSURANCE; ADDRESSING COVERAGE OF THE
7 ASSOCIATION; ADDRESSING RULES OF CONSTRUCTION; ADDRESSING
8 DEFINITIONS; ADDRESSING CLASSES OF ASSESSMENT OF THE ASSOCIATION;
9 ADDRESSING BOARD OF DIRECTORS; ADDRESSING POWERS AND DUTIES OF THE
10 ASSOCIATION; ADDRESSING ASSESSMENTS ON MEMBER INSURERS; ADDRESSING
11 PLAN OF OPERATION OF THE ASSOCIATION; ADDRESSING POWERS AND DUTIES OF
12 COMMISSIONER; ADDRESSING PREVENTION OF INSOLVENCIES; ADDRESSING
13 MISCELLANEOUS PROVISIONS; ADDRESSING REPORTS; ADDRESSING REQUIRED
14 SUMMARY DOCUMENTS; ADDRESSING PROSPECTIVE APPLICATION; AND MAKING
15 TECHNICAL CHANGES.

16 This act affects sections of Utah Code Annotated 1953 as follows:

17 AMENDS:

18 **31A-28-102**, as last amended by Chapter 316, Laws of Utah 1994

19 **31A-28-103**, as last amended by Chapter 316, Laws of Utah 1994

20 **31A-28-104**, as repealed and reenacted by Chapter 211, Laws of Utah 1991

21 **31A-28-105**, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session

22 **31A-28-106**, as enacted by Chapter 211, Laws of Utah 1991

23 **31A-28-107**, as last amended by Chapter 10, Laws of Utah 1997

24 **31A-28-108**, as last amended by Chapter 344, Laws of Utah 1995

25 **31A-28-109**, as enacted by Chapter 211, Laws of Utah 1991

26 **31A-28-110**, as enacted by Chapter 211, Laws of Utah 1991

27 **31A-28-111**, as enacted by Chapter 211, Laws of Utah 1991

28 31A-28-112, as enacted by Chapter 211, Laws of Utah 1991

29 31A-28-113, as enacted by Chapter 211, Laws of Utah 1991

30 31A-28-114, as last amended by Chapters 20 and 344, Laws of Utah 1995

31 31A-28-115, as enacted by Chapter 211, Laws of Utah 1991

32 31A-28-117, as enacted by Chapter 211, Laws of Utah 1991

33 31A-28-119, as enacted by Chapter 211, Laws of Utah 1991

34 ENACTS:

35 31A-28-120, Utah Code Annotated 1953

36 *Be it enacted by the Legislature of the state of Utah:*

37 Section 1. Section 31A-28-102 is amended to read:

38 **31A-28-102. Purpose.**

39 (1) The purpose of this part is to protect, subject to certain limitations, the persons
40 specified in Subsection 31A-28-103(1) against failure in the performance of contractual
41 obligations, under [the] life and disability insurance policies and annuity contracts specified in
42 Subsection 31A-28-103(2), because of the impairment or insolvency of the member insurer that
43 issued the policies or contracts.

44 (2) To provide the protection described in Subsection (1)[;]:

45 (a) the Utah Life and Disability Insurance Guaranty Association, which currently exists,
46 is continued [in order] to pay benefits and to continue coverages as limited [in] by this part[;]; and

47 (b) members of the association are subject to assessment to provide funds to carry out the
48 purpose of this part.

49 Section 2. Section 31A-28-103 is amended to read:

50 **31A-28-103. Coverage and limitations.**

51 (1) (a) This part provides coverage for the policies and contracts specified in Subsection
52 (2) to [persons] a person who [are] is:

53 [(a)] (i) [~~beneficiaries, assignees, or payees of the persons covered under Subsection~~
54 ~~(1)(b);~~] a beneficiary, assignee, or payee of a person covered by Subsection (1)(a)(ii) regardless
55 of where [~~they reside~~] that person resides, except for a nonresident certificate [holders] holder
56 under a group [policies] policy or [~~contracts~~] contract; or

57 [(b) owners] (ii) an owner of or a certificate [holders] holder under [~~such policies~~] a policy
58 or [~~contracts; or, in the case of~~] contract, other than an unallocated annuity [contracts] contract or

59 structured settlement annuity, [to the persons who are the contract holders, and who are] if the
 60 owner or certificate holder is:

61 ~~[(i) residents]~~ (A) a resident of Utah; or

62 ~~[(ii) (B) not [residents] a resident of Utah, but only [under the following conditions] if:~~

63 ~~[(A)] (I) the [insurers which] insurer that issued the [policies] policy or [contracts are]~~
 64 contract is domiciled in this state;

65 ~~[(B)] (II) [the insurers never held a license or certificate of authority in] the [states] state~~
 66 in which the [persons reside;] person resides has an association similar to the association created
 67 by this part; and

68 (III) the person is not eligible for coverage by an association in any other state because the
 69 insurer was not licensed in the state at the time specified in the state's guaranty association's law.

70 ~~[(C) the states have associations similar to the association created by this chapter; and]~~

71 ~~[(D) the persons are not eligible for coverage by the associations described in Subsection~~
 72 ~~(1)(b)(ii)(C).]~~

73 (b) For an unallocated annuity contract specified in Subsection (2):

74 (i) Subsections (1)(a)(i) and (ii) do not apply; and

75 (ii) except as provided in Subsections (1)(d) and (1)(e), this part shall provide coverage for
 76 the unallocated annuity contract specified in Subsection (2) to a person who is:

77 (A) the owner of the unallocated annuity contract if the contract is issued to or in
 78 connection with a specific benefit plan whose plan sponsor has its principal place of business in
 79 this state; and

80 (B) an owner of an unallocated annuity contract issued to or in connection with a
 81 government lottery if the owner is a resident.

82 (c) For a structured settlement annuity specified in Subsection (2):

83 (i) Subsection (1)(a)(i) and (ii) do not apply; and

84 (ii) except as provided in Subsections (1)(d) and (1)(e), this part shall provide coverage for
 85 the structured settlement annuity specified in Subsection (2) to a person who is a payee under a
 86 structured settlement annuity, or beneficiary of a payee if the payee is deceased, if the payee:

87 (A) is a resident, regardless of where the contract owner resides; or

88 (B) is not a resident, but only if the contract owner of the structured settlement annuity is
 89 a resident, or the contract owner of the structured settlement annuity is not a resident, but:

90 (I) the insurer that issued the structured settlement annuity is domiciled in this state;

91 (II) the state in which the contract owner resides has an association similar to the
92 association created by this part; and

93 (III) the payee, beneficiary, or the contract owner is not eligible for coverage by the
94 association of the state in which the payee or contract owner resides.

95 (d) This part may not provide coverage for the policies and contracts specified in
96 Subsection (2) to:

97 (i) a person who is a payee or beneficiary of a contract owner resident of this state, if the
98 payee or beneficiary is afforded any coverage by the association of another state; or

99 (ii) a person covered under Subsection (1)(b), if any coverage is provided by the
100 association of another state to the person.

101 (e) (i) This part provides coverage for the policies and contracts specified in Subsection
102 (2) to a person who is a resident of this state and, in special circumstances, to a nonresident.

103 (ii) To avoid duplicate coverage, if a person who would otherwise receive coverage under
104 this part is provided coverage under the laws of any other state, the person may not be provided
105 coverage under this part.

106 (iii) In determining the application of the provisions of this Subsection (1)(e) in situations
107 where a person could be covered by the association of more than one state, whether as an owner,
108 payee, beneficiary, or assignee, this part shall be construed in conjunction with other state laws to
109 result in coverage by only one association.

110 (2) (a) (i) Except as [otherwise] limited by this part, this part provides coverage to the
111 persons specified in Subsection (1) for:

112 (A) a direct, nongroup life, disability, annuity [and] policy or contract;

113 (B) a supplemental [~~policies or contracts, for certificates~~] ~~contract to a policy or contract~~
114 described in Subsection (2)(a)(i)(A);

115 (C) a certificate under a direct group [~~policies and contracts;~~] policy or contract; and [for]

116 (D) an unallocated annuity [~~contracts~~] ~~contract~~ issued by a member [~~insurers~~] ~~insurer~~.

117 [~~Annuity contracts~~]

118 (ii) For purposes of Subsection (2)(a)(i), an annuity contract and [~~certificates~~] a certificate
119 under a group annuity [~~contracts include~~] ~~contract includes~~:

120 (A) a guaranteed investment [~~contracts;~~] ~~contract~~;

- 121 (B) a deposit administration [contracts,] contract;
- 122 (C) an unallocated funding [agreements,] agreement;
- 123 (D) a structured settlement [agreements, lottery contracts,] annuity;
- 124 (E) an annuity issued to or in connection with a government lottery; and [any]
- 125 (F) an immediate or deferred annuity [contracts] contract.
- 126 (b) This part does not provide coverage for:
- 127 (i) [any] a portion of a policy or contract;
- 128 (A) not guaranteed by the insurer[.]; or
- 129 (B) under which the risk is borne by the policy or contract [holder] owner;
- 130 (ii) [any] a policy or contract of reinsurance, unless;
- 131 (A) an assumption [certificates have been] certificate is issued;
- 132 (B) the assumption certificate required by Subsection (2)(b)(ii)(A) is in effect pursuant to
- 133 the reinsurance policy or contract; and
- 134 (C) the reinsurance contract is approved by the appropriate regulatory authorities; or
- 135 (iii) [any] a portion of a policy or contract to the extent that the rate of interest on which
- 136 it is based[.] or the interest rate, crediting rate, or similar factor determined by use of an index or
- 137 other external reference stated in the policy or contract employed in calculating returns or changes
- 138 in value, if the interest rate, crediting rate, or similar factor is not excluded from coverage by
- 139 Subsection (2)(b)(xii), [(A)] averaged over the period of four years prior to the date on which the
- 140 association becomes obligated with respect to the policy or contract, exceeds a rate of interest
- 141 determined by subtracting two percentage points from Moody's Corporate Bond Yield Average
- 142 averaged for that same four-year period or for the corresponding lesser period if the policy or
- 143 contract was issued less than four years before the association became obligated; [and]
- 144 [(B) on or after the date on which the association becomes obligated with respect to the
- 145 policy or contract, exceeds the rate of interest determined by subtracting three percentage points
- 146 from Moody's Corporate Bond Yield Average as most recently available;]
- 147 (iv) [any] a portion of a policy or contract issued to a plan or program of an employer,
- 148 association, or [similar entity] other person to provide life, [disability] health, or annuity benefits
- 149 to its employees [or], members, or others, to the extent that the plan or program is self-funded or
- 150 uninsured, including benefits payable by an employer, association, or [similar entity] other person
- 151 under:

152 (A) a multiple employer welfare arrangement as defined in [Section 514 of the Employee
153 Retirement Income Security Act of 1974, as amended] 29 U.S.C. Sec. 1144;

154 (B) a minimum premium group insurance plan;

155 (C) a stop-loss group insurance plan; or

156 (D) an administrative services only contract;

157 (v) [any] a portion of a policy or contract to the extent that it provides [dividends or
158 experience rating credits, or provides that any fees or allowances be paid to any person, including
159 the policy or contract holder, in connection with the service to or administration of the policy or
160 contract];

161 (A) a dividend;

162 (B) an experience rating credit;

163 (C) voting rights; or

164 (D) payment of a fee or allowance to any person, including the policy or contract owner,
165 in connection with the service to or administration of the policy or contract;

166 (vi) [any] a policy or contract issued in this state by a member insurer at a time when;

167 (A) it was not licensed; or

168 (B) did not have a certificate of authority to issue the policy or contract in this state;

169 (vii) [any] an unallocated annuity contract issued to [an employee] or in connection with
170 a benefit plan protected under the federal Pension Benefit Guaranty Corporation, regardless of
171 whether the federal Pension Benefit Guaranty Corporation has yet become liable to make any
172 payment with respect to the benefit plan; [and]

173 (viii) [any] a portion of [any] an unallocated annuity contract [which] that is not issued to
174 or in connection with;

175 (A) a specific [employee,] benefit plan of:

176 (I) employees;

177 (II) a union[;]; or

178 (III) an association of natural persons [benefit plan]; or

179 (B) a government lottery[;];

180 (ix) a portion of a policy or contract to the extent that the assessment required by Section
181 31A-28-109 with respect to the policy or contract is preempted by federal or state law;

182 (x) an obligation that does not arise under the express written terms of the policy or

183 contract issued by an insurer to the contract owner or policy owner, including:

184 (A) a claim based on marketing materials;

185 (B) a claim based on documents that are issued by the insurer without meeting applicable
186 policy form filing or approval requirements;

187 (C) a misrepresentation regarding a policy benefit;

188 (D) an extra-contractual claim;

189 (E) a claim for penalties; or

190 (F) a claim for consequential or incidental damages;

191 (xi) a contract that establishes the member insurer's obligations to provide a book value
192 accounting guaranty for defined contribution benefit plan participants by reference to a portfolio
193 of assets that is owned by a person that is:

194 (A) (I) the benefit plan; or

195 (II) the benefit plan's trustee; and

196 (B) not an affiliate of the member insurer; and

197 (xii) a portion of a policy or contract to the extent it provides for interest or other changes
198 in value:

199 (A) to be determined by the use of an index or other external reference stated in the policy
200 or contract; and

201 (B) (I) that have not been credited to the policy or contract; or

202 (II) as to which the policy or contract owner's rights are subject to forfeiture as of the date
203 the member insurer becomes an impaired or insolvent insurer under this part.

204 ~~[(c) The]~~ (3) Subject to Subsection (4), the benefits for which the association may become
205 liable [shall in no event] may not exceed the lesser of:

206 ~~[(i)]~~ (a) the contractual obligations for which the insurer is liable or would have been liable
207 if it were not an impaired or insolvent insurer; [or]

208 ~~[(ii) (A)]~~ (b) with respect to [any] one life, regardless of the number of policies or
209 contracts:

210 ~~[(i) \$300,000 in life insurance death benefits, but not more than \$100,000 in net cash~~
211 ~~surrender and net cash withdrawal values for life insurance;]~~

212 ~~[(ii) \$100,000 in disability insurance benefits, including any net cash surrender and net~~
213 ~~cash withdrawal values;]~~

214 ~~[(H)] \$100,000 in the present value of annuity benefits, including net cash surrender and~~
 215 ~~net cash withdrawal values;]~~

216 (i) for a life insurance policy:

217 (A) if the insured died before the coverage date, \$500,000 of the death benefit;

218 (B) if the insurer received a valid request for cash surrender before the coverage date but
 219 has not paid the cash surrender value before the coverage date, \$200,000 of cash surrender
 220 benefits; or

221 (C) if neither Subsection (3)(b)(i)(A) nor (B) apply, the covered portion of each benefit
 222 provided under the policy;

223 (ii) for an annuity contract, the covered portion of each benefit provided under the contract;

224 (iii) for a disability policy:

225 (A) classified as basic hospital and medical or major medical, \$500,000; or

226 (B) not classified as basic hospital and medical or major medical, the covered portion of
 227 each benefit provided under the policy;

228 ~~[(B)] (c) with respect to [each] an individual, or a beneficiary of that individual if the~~
 229 ~~individual is deceased, participating in a governmental retirement plan established under Section~~
 230 ~~[401(k)] 401, 403(b), or 457 [of the], Internal Revenue Code, covered by an unallocated annuity~~
 231 ~~contract [or the beneficiaries of each such individual if deceased], in the aggregate[~~, \$100,000]~~~~
 232 ~~\$200,000 in present value of annuity benefits, including:~~

233 ~~(i) net cash surrender; and~~

234 ~~(ii) net cash withdrawal values; or~~

235 ~~(d) with respect to a payee of a structured settlement annuity or a beneficiary of the payee~~
 236 ~~if the payee is deceased, the limits set forth in Subsection (3)(b).~~

237 ~~[(C)] (4) [however, in no event shall] Notwithstanding Subsections (3)(a) through (d), the~~
 238 ~~association [be liable to expend more than \$300,000 in the aggregate with respect to any one~~
 239 ~~individual under Subsections (2)(c)(ii)(A) and (ii)(B);] may not be obligated to cover more than:~~

240 ~~[(iii) with respect to any one contract holder covered by any unallocated annuity contract~~
 241 ~~not included in Subsection (2)(c)(ii)(B), \$5,000,000 in benefits, irrespective of the number of~~
 242 ~~contracts held by that contract holder.]~~

243 ~~(a) an aggregate of \$500,000 in benefits with respect to any one life under:~~

244 ~~(i) Subsection (3)(b)(i)(A);~~

245 (ii) Subsection (3)(b)(i)(B);
246 (iii) Subsection (3)(b)(ii); or
247 (iv) Subsection (3)(b)(iii);
248 (b) \$5,000,000 in benefits with respect to one owner of multiple nongroup policies of life
249 insurance:
250 (i) whether the policy owner is an individual, firm, corporation, or other person;
251 (ii) whether the persons insured are officers, managers, employees, or other persons; and
252 (iii) regardless of the number of policies and contracts held by the owner; and
253 (c) \$5,000,000 in benefits, irrespective of the number of contracts with respect to the
254 contract owner or plan sponsor, with respect to:
255 (i) one contract owner provided coverage under Subsection (1)(b)(ii)(B); or
256 (ii) one plan sponsor whose plans own, directly or in trust, one or more unallocated annuity
257 contracts not included in Subsection (3)(b)(ii).
258 (5) (a) Notwithstanding Subsection (4)(c) and except as provided in Subsection (5)(b), the
259 association shall provide coverage if one or more unallocated annuity contracts are:
260 (i) covered contracts under this part; and
261 (ii) owned by a trust or other entity for the benefit of two or more plan sponsors; and
262 (iii) the largest interest in the trust or entity owning the contract or contracts is held by a
263 plan sponsor whose principal place of business is in the state.
264 (b) Notwithstanding Subsection (5)(a) the association may not be obligated to cover more
265 than \$5,000,000 in benefits with respect to all unallocated contracts described in Subsection (5)(a).
266 (6) (a) The limitations set forth in Subsections (3) and (4) are limitations on the benefits
267 for which the association is obligated before taking into account:
268 (i) the association's subrogation and assignment rights; or
269 (ii) the extent to which those benefits could be provided out of the assets of the impaired
270 or insolvent insurer attributable to covered policies.
271 (b) The costs of the association's obligations under this part may be met by the use of
272 assets:
273 (i) attributable to covered policies; or
274 (ii) reimbursed to the association pursuant to the association's subrogation and assignment
275 rights.

276 (c) On and after the date on which the association becomes obligated with respect to any
277 covered policy, the association may not be obligated to provide benefits to the extent that the
278 benefits are based on an interest rate, crediting rate, or similar factor determined by use of an index
279 or other external reference stated in the policy or contract employed in calculating returns or
280 changes in value which exceeds the rate of interest determined by subtracting three percentage
281 points from Moody's Corporate Bond Yield Average as most recently available on each date on
282 which interest is credited or attributed to the covered policy.

283 (d) In performing its obligations to provide coverage under Section 31A-28-108, the
284 association may not be required to guarantee, assume, reinsure, or perform, or cause to be
285 guaranteed, assumed, reinsured, or performed a contractual obligation of the insolvent or impaired
286 insurer under a covered policy or contract that does not materially affect the economic values or
287 economic benefits of the covered policy or contract.

288 Section 3. Section **31A-28-104** is amended to read:

289 **31A-28-104. Construction.**

290 This part shall be [liberally] construed to effect the purposes under Section 31A-28-102
291 [constituting an aid and guide to interpretation of this part].

292 Section 4. Section **31A-28-105** is amended to read:

293 **31A-28-105. Definitions.**

294 As used in this [chapter] part:

295 [~~(1) "Account" means any of the two accounts created under Section 31A-28-106.~~]

296 [~~(2)~~] (1) "Association" means the Utah Life and Disability Insurance Guaranty Association
297 continued under Section 31A-28-106.

298 (2) (a) "Authorized assessment" or "authorized," when used in the context of assessments,
299 means that the board of directors passed a resolution whereby an assessment will be called
300 immediately or in the future from member insurers for an amount as set forth in the resolution.

301 (b) An assessment is authorized when the resolution is passed.

302 (3) "Benefit plan" means a specific benefit plan of:

303 (a) employees;

304 (b) a union; or

305 (c) an association of natural persons.

306 (4) (a) "Called assessment" or "called," when used in the context of assessments, means

307 that the association issued a notice to member insurers requiring that an authorized assessment be
308 paid within the time frame set forth within the notice.

309 (b) All or part of an authorized assessment becomes a called assessment when notice is
310 mailed by the association to member insurers.

311 ~~[(3)]~~ (5) "Contractual obligation" means an obligation under any [obligation-under] of the
312 following for which coverage is provided under Section 31A-28-103:

313 (a) a policy or contract[,-or];

314 (b) a certificate under a group policy or contract[-]; or

315 (c) a portion of [the] a policy or contract [for which coverage is provided under Section
316 31A-28-103].

317 (6) "Coverage date" means the date on which the association becomes responsible for the
318 obligations of a member insurer.

319 ~~[(4)]~~ (7) "Covered policy" means any of the following for which coverage is provided in
320 Section 31A-28-103:

321 (a) a policy or contract [within the scope of this chapter under Section 31A-28-103]; or

322 (b) portion of a policy or contract.

323 (8) (a) "Covered portion" means:

324 (i) for any covered policy that has a cash surrender value, a fraction obtained by dividing:

325 (A) the lesser of:

326 (I) \$200,000; and

327 (II) the cash surrender value of the policy; by

328 (B) the cash surrender value of the policy; and

329 (ii) for any covered policy that does not have a cash surrender value, a fraction obtained
330 by dividing:

331 (A) the lesser of:

332 (I) \$200,000; and

333 (II) the policy's minimum statutory reserve; by

334 (B) the policy's minimum statutory reserve.

335 (b) The cash surrender value and the minimum statutory reserve is determined as of the
336 coverage date in accordance with the exclusions in Subsection 31A-28-103(2)(b)(iii).

337 (9) "Extra-contractual claim" includes a claim relating to:

338 (a) bad faith in the payment of a claim;

339 (b) punitive or exemplary damages; or

340 (c) attorneys' fees and costs.

341 ~~[(5)]~~ (10) "Impaired insurer" means a member insurer that is not an insolvent insurer and:

342 (a) is considered by the commissioner to be hazardous pursuant to this title; or

343 (b) is placed under an order of rehabilitation or conservation by a court of competent
344 jurisdiction.

345 ~~[(6)]~~ (11) "Insolvent insurer" means a member insurer ~~[which]~~ that is placed under an
346 order of liquidation by a court of competent jurisdiction with a finding of insolvency.

347 ~~[(7)]~~ (12) (a) "Member insurer" means a person that:

348 (i) (A) is an insurer; or

349 (B) a licensed [or holding] hospital or medical service organization, whether profit or
350 nonprofit; and

351 (ii) that holds a certificate of authority to transact in this state any kind of insurance for
352 which coverage is provided under ~~[Sections]~~ Section 31A-28-103 ~~[and 31A-28-202]~~. ~~[The term]~~

353 (b) "Member insurer" includes an insurer whose license or certificate of authority in this
354 state may have been:

355 (i) suspended[;];

356 (ii) revoked[;];

357 (iii) not renewed[;]; or

358 (iv) voluntarily withdrawn.

359 ~~[(b)]~~ (c) "Member insurer" does not include:

360 ~~[(i)]~~ (i) a limited health plan;

361 ~~[(ii)]~~ (i) a health maintenance organization;

362 ~~[(iii)]~~ (ii) a fraternal benefit society;

363 ~~[(iv)]~~ (iii) a mandatory state pooling plan;

364 ~~[(v)]~~ (iv) a mutual assessment company or ~~[any entity]~~ other person that operates on an
365 assessment basis; ~~[or]~~

366 (v) an insurance exchange; or

367 (vi) [any] an entity similar to [any of the above] an entity described in Subsections

368 (12)(c)(i) through (v).

369 [(8)] (13) "Moody's Corporate Bond Yield Average" means the Monthly Average
370 Corporates as published by Moody's [Investment] Investors Service, Inc., or any successor
371 [thereto] to Moody's Investors Service, Inc.

372 (14) (a) "Owner" of a policy or contract, "policy owner," or "contract owner" means the
373 person who:

374 (i) is identified as the legal owner under the terms of the policy or contract; or
375 (ii) is otherwise vested with legal title to the policy or contract through a valid assignment:

376 (A) completed in accordance with the terms of the policy or contract; and

377 (B) properly recorded as the owner on the books of the insurer.

378 (b) "Owner," "policy owner," or "contract owner" does not include a person with only a
379 beneficial interest in a policy or contract.

380 [(9)] (15) "Person" means any:

381 (a) individual[-];

382 (b) corporation[-];

383 (c) limited liability company;

384 (d) partnership[-];

385 (e) association[-];

386 (f) governmental body or entity; or

387 (g) voluntary organization.

388 (16) "Plan sponsor" means:

389 (a) the employer, in the case of a benefit plan established or maintained by a single
390 employer;

391 (b) the employee organization, in the case of a benefit plan established or maintained by
392 an employee organization; or

393 (c) the association, committee, joint board of trustees, or other similar group of
394 representatives of the parties who establish or maintain a benefit plan, in the case of a benefit plan
395 established or maintained by:

396 (i) two or more employers; or

397 (ii) jointly by:

398 (A) one or more employers; and

399 (B) one or more employee organizations.

400 ~~[(10)]~~ (17) (a) "Premiums" means ~~[amounts]~~ an amount or consideration received ~~[in any~~
401 ~~calendar year]~~ on covered policies or contracts, less:

402 (i) returned:

403 (A) premiums[;];

404 (B) considerations[;] and

405 (C) deposits [returned]; and

406 (ii) dividends and experience credits [on the amounts].

407 (b) (i) "Premiums" does not include ~~[any amounts]~~ an amount or consideration received
408 for ~~[any policies or contracts or for];~~

409 (A) a policy or contract for which coverage is not provided under Subsection
410 31A-28-103(2); or

411 (B) the [portions] portion of [any] [policies or contracts] a policy or contract for which
412 coverage is not provided under Subsection 31A-28-103(2)~~[, except that assessable premiums].~~

413 (ii) Notwithstanding Subsection (17)(b)(i), an assessable premium may not be reduced on
414 account of:

415 (A) Subsection 31A-28-103(2)(b)(iii) relating to interest limitations; and

416 (B) Subsection 31A-28-103~~[(2)(c)]~~(3) relating to limitations with respect to [any];

417 (I) one individual[;];

418 (II) any one participant[;]; and

419 (III) any one contract [holder] owner.

420 (c) "Premiums" may not include any premiums in excess of \$5,000,000:

421 (i) on any unallocated annuity contract not issued under a governmental retirement plan
422 established under Section ~~[401(k)]~~ 401, 403(b), or 457 [of the], Internal Revenue Code[;]; or

423 (ii) with respect to multiple nongroup policies of life insurance owned by one owner:

424 (A) whether the policy owner is an individual, firm, corporation, or other person;

425 (B) whether the persons insured are officers, managers, employees, or other persons; and

426 (C) regardless of the number of policies or contracts held by the owner.

427 (18) (a) Except as provided in Subsection (18)(b), "principal place of business" of a plan
428 sponsor or a person other than a natural person means the single state:

429 (i) in which the natural persons who establish policy for the direction, control, and
430 coordination of the operations of the entity as a whole primarily exercise the function; and

431 (ii) determined by the association in its reasonable judgment by considering the following
432 factors:

433 (A) the state in which the primary executive and administrative headquarters of the entity
434 is located;

435 (B) the state in which the principal office of the chief executive officer of the entity is
436 located;

437 (C) the state in which the board of directors, or similar governing person or persons, of the
438 entity conducts the majority of its meetings;

439 (D) the state in which the executive or management committee of the board of directors,
440 or similar governing person, of the entity conducts the majority of its meetings;

441 (E) the state from which the management of the overall operations of the entity is directed;
442 and

443 (F) in the case of a benefit plan sponsored by affiliated companies comprising a
444 consolidated corporation, the state in which the holding company or controlling affiliate has its
445 principal place of business as determined using the factors described in Subsections (18)(a)(ii)(A)
446 through (E).

447 (b) Notwithstanding Subsection (18)(a), in the case of a plan sponsor, if more than 50%
448 of the participants in the benefit plan are employed in a single state, the state where more than 50%
449 of the participants are employed is considered to be the principal place of business of the plan
450 sponsor.

451 (c) (i) The principal place of business of a plan sponsor of a benefit plan described in
452 Subsection (3) is considered to be the principal place of business of the association, committee,
453 joint board of trustees, or other similar group of representatives of the parties who establish or
454 maintain the benefit plan.

455 (ii) If for a benefit plan described in Subsection (3) there is not a specific or clear
456 designation of a principal place of business under Subsection (18)(c)(i), the principal place of
457 business is considered to be the principal place of business of the employer or employee
458 organization that has the largest investment in the benefit plan.

459 (19) "Receivership court" means the court in the insolvent or impaired insurer's state
460 having jurisdiction over the conservation, rehabilitation, or liquidation of the insurer.

461 [(H)] (20) (a) "Resident" means [any] a person;

- 462 (i) to whom a contractual obligation is owed; and
463 (ii) who resides in this state [at the time] on the earlier of the date a member insurer is
464 [determined to be] an;
- 465 (A) impaired insurer; or
466 (B) insolvent insurer [and to whom a contractual obligation is owed].
- 467 (b) A person may be a resident of only one state, which in the case of a person other than
468 a natural person shall be [the state in which] its principal place of business [is located].
- 469 (c) A citizen of the United States that is either a resident of a foreign country or a resident
470 of United States possession, territory, or protectorate that does not have an association similar to
471 the association created by this part, is considered a resident of the state of domicile of the insurer
472 that issued the policy or contract.
- 473 (21) "State" means:
- 474 (a) a state;
475 (b) the District of Columbia;
476 (c) Puerto Rico; and
477 (d) a United States possession, territory, or protectorate.
- 478 (22) "Structured settlement annuity" means an annuity purchased to fund periodic
479 payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered
480 by the plaintiff or other claimant.
- 481 ~~[(12)]~~ (23) "Supplemental contract" means [any] a written agreement entered into for the
482 distribution of [policy or contract] proceeds under a policy or contract for:
- 483 (a) life;
484 (b) health; or
485 (c) annuity.
- 486 ~~[(13)]~~ (24) "Unallocated annuity contract" means [any] an annuity contract or group
487 annuity certificate [which] that is not issued to and owned by an individual, except to the extent
488 of any annuity benefits guaranteed to an individual by an insurer under [such] the contract or
489 certificate.
- 490 Section 5. Section **31A-28-106** is amended to read:
491 **31A-28-106. Continuation of the association.**
492 (1) (a) There is continued under this [chapter] part the nonprofit legal entity known as the

493 Utah Life and Disability Insurance Guaranty Association created under former provisions of this
494 title.

495 (b) All member insurers shall be and remain members of the association as a condition of
496 their authority to transact [~~business~~] insurance in this state.

497 (c) The association shall:

498 (i) perform its functions under the plan of operation established and approved under
499 Section 31A-28-110; and [~~shall~~]

500 (ii) exercise its powers through a board of directors established under [~~the provisions of~~]
501 Section 31A-28-107. [~~For purposes of administration and assessment the~~]

502 (d) The association shall [~~maintain two accounts~~] allocate assessments among the
503 following classes or subclasses:

504 [(a)] (i) the life insurance and annuity [~~account~~] class, which includes the following
505 [~~subaccounts~~] subclasses:

506 [(i)] (A) the life insurance [~~Account~~] subclass;

507 [(ii)] (B) the annuity [~~Account~~] subclass:

508 (I) which includes annuity contracts owned by a governmental retirement plan, or its
509 trustee, established under Section 401, 403(b), or 457, United States Internal Revenue Code; and

510 (II) otherwise excludes unallocated annuities; and

511 [(iii)] (C) the unallocated annuity [~~account~~] subclass, which [~~includes~~] excludes contracts
512 [~~qualified~~] owned by a governmental retirement benefit plan, or its trustee, established under

513 Sections [~~401(k)~~] 401, 403(b), or 457 [~~of the~~], Internal Revenue Code; and

514 [(b)] (ii) the disability insurance [~~account~~] class.

515 (2) (a) The association shall:

516 (i) come under the immediate supervision of the commissioner; and [~~shall~~]

517 (ii) be subject to the applicable provisions of the insurance laws of this state.

518 (b) Meetings or records of the association may be opened to the public upon majority vote
519 of the board of directors of the association.

520 Section 6. Section **31A-28-107** is amended to read:

521 **31A-28-107. Board of directors.**

522 (1) (a) The board of directors of the association shall consist of at least five but not more
523 than nine member insurers serving terms [~~of four years each~~] as established in the plan of

524 operation.

525 (b) (i) The members of the board of directors shall be selected by member insurers, subject
526 to the approval of the commissioner.

527 (ii) When a vacancy occurs in the membership of the board of directors for any reason,
528 [the] a replacement [shall] may be elected for the unexpired term by a majority vote of the
529 remaining board members, subject to the approval of the commissioner.

530 (c) In approving selections or in appointing members to the board of directors, the
531 commissioner shall consider, among other things, whether all member insurers are fairly
532 represented.

533 (d) Notwithstanding [~~the requirements of~~] Subsection (1)(a), the commissioner shall, at
534 the time of election or reelection, adjust the length of terms to ensure that the terms of board
535 members are staggered so that approximately half of the board of directors is selected [every two
536 years] during any two-year period.

537 (2) (a) [~~Members shall receive no compensation or benefits for their services, but may~~
538 ~~receive per diem and expenses incurred in the performance of the member's official duties at the~~
539 ~~rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107 from the~~
540 ~~assets of the association]~~ A member of the board of directors may be reimbursed from the assets
541 of the association for expenses incurred by the member as a member of the board of directors.

542 (b) Except as provided in Subsection (2)(a), a member of the board of directors may not
543 be compensated by the association for the member's services.

544 [~~(b) Members may decline to receive per diem and expenses for their service.]~~

545 Section 7. Section **31A-28-108** is amended to read:

546 **31A-28-108. Powers and duties of the association.**

547 (1) (a) If a member insurer is an impaired [~~domestic~~] insurer, [~~the association in its~~
548 ~~discretion and~~] subject to any conditions imposed by the association that do not impair the
549 contractual obligations of the impaired insurer [~~that are approved by the commissioner, and also~~
550 ~~by the impaired insurer, except in cases of court-ordered conservation or rehabilitation, may:], the
551 association may elect to provide the protections provided by this part to the policyholders of the
552 impaired insurer.~~

553 (b) If the association makes the election described in Subsection (1)(a), the association
554 may proceed under one or more of the options described in Subsection (3).

555 ~~[(a) guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, any~~
556 ~~or all of the policies or contracts of the impaired insurer;]~~

557 ~~[(b) provide the necessary monies, pledges, notes, guarantees or other means to effectuate~~
558 ~~Subsection (1)(a) and assure payment of the contractual obligations of the impaired insurer~~

559 ~~pending action under Subsection (1)(a); or]~~

560 ~~[(c) loan money to the impaired insurer:]~~

561 ~~[(2) (a) If a member insurer is an impaired insurer, whether domestic, foreign, or alien, and~~
562 ~~the insurer is not paying claims timely, the association shall in its discretion and subject to the~~

563 ~~preconditions specified in Subsection (2)(b), either:]~~

564 ~~[(i) take any of the actions specified in Subsection (1), subject to the conditions specified~~
565 ~~in Subsection (1); or]~~

566 ~~[(ii) provide substitute benefits in lieu of the contractual obligations of the impaired insurer~~
567 ~~solely for disability claims, periodic annuity benefit payments, death benefits, supplemental~~
568 ~~benefits, and cash withdrawals for policy or contract owners who petition for such benefits under~~
569 ~~claims of emergency or hardship in accordance with the standards proposed by the association and~~
570 ~~approved by the commissioner.]~~

571 ~~[(b) The association is subject to the requirements of Subsection (2)(a) only if:]~~

572 ~~[(i) the laws of the impaired insurer's state of domicile provide that until all payments of,~~
573 ~~or an account of, the impaired insurer's contractual obligations by all guaranty associations, along~~
574 ~~with all expenses of the obligation and interest on all such payments and expenses, have been~~
575 ~~repaid to the guaranty associations or a plan of repayment by the impaired insurer has been~~
576 ~~approved by the guaranty associations:]~~

577 ~~[(A) the delinquency proceeding shall not be dismissed;]~~

578 ~~[(B) neither the impaired insurer nor its assets shall be returned to the control of its~~
579 ~~shareholders or private management;]~~

580 ~~[(C) it shall not be permitted to solicit or accept new business or have any suspended or~~
581 ~~revoked license restored; and]~~

582 ~~[(ii) (A) if the impaired insurer is a domestic insurer, it has been placed under an order of~~
583 ~~rehabilitation by a court of competent jurisdiction in this state; or]~~

584 ~~[(B) if the impaired insurer is a foreign or alien insurer:]~~

585 ~~[(I) it has been prohibited from soliciting or accepting new business in this state;]~~

586 ~~[(H) its certificate of authority has been suspended or revoked in this state; and]~~

587 ~~[(H) a petition for rehabilitation or liquidation has been filed in a court of competent~~
 588 ~~jurisdiction in its state of domicile by the commissioner of the state.]~~

589 ~~[(3)]~~ (2) If a member insurer is an insolvent insurer, the association ~~[in its discretion]~~ shall
 590 ~~[either:]~~ provide the protections provided by this part to the policyholders of the insolvent insurer
 591 by electing in its discretion to proceed under one or more of the options in Subsection (3).

592 (3) With respect to the covered portions of covered policies of an impaired or insolvent
 593 insurer, the association may:

594 (a) (i) (A) guaranty, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured,
 595 the policies or contracts of the ~~[insolvent]~~ insurer; or

596 ~~[(ii)]~~ (B) assure payment of the contractual obligations of the insolvent insurer; and

597 ~~[(iii)]~~ (ii) provide such monies, pledges, guarantees, or other means as are reasonably
 598 necessary to discharge such duties; or

599 ~~[(b) with respect only to disability insurance policies, provide benefits and coverages in~~
 600 ~~accordance with Subsection (4).]~~

601 ~~[(4) When proceeding under Subsections (2)(a)(ii) or (3)(b), with respect only to disability~~
 602 ~~insurance policies, the association shall:]~~

603 (b) provide benefits and coverages in accordance with Subsection (4).

604 (4) (a) In accordance with Subsection (3)(b), the association may:

605 (i) assure payment of benefits for premiums identical to the premiums and benefits, except
 606 for terms of conversion and renewability, that would have been payable under the policies or
 607 contracts of the ~~[insolvent]~~ insurer, for claims incurred:

608 ~~[(i)]~~ (A) with respect to group policies~~[-]~~:

609 (I) not later than the earlier of the next renewal date under the policies or contracts or 45
 610 days~~[-but]~~ after the coverage date; and

611 (II) in no event less than 30 days~~[-]~~ after the coverage date ~~[on which the association~~
 612 ~~becomes obligated with respect to the policies];~~ or

613 ~~[(ii)]~~ (B) with respect to ~~[individual]~~ nongroup policies~~[-]~~ or contracts:

614 (I) not later than the earlier of the next renewal date, if any, under the policies or contracts
 615 or one year[-but] from the coverage date; and

616 (II) in no event less than 30 days~~[-]~~ from the coverage date ~~[on which the association~~

617 becomes obligated with respect to the policies];

618 ~~[(b)]~~ (ii) make diligent efforts to provide 30 days' notice of ~~[the]~~ any termination of the
619 benefits provided to;

620 (A) all known insureds~~;~~ or annuitants for nongroup policies and contracts; or

621 (B) group ~~[policyholders with respect to]~~ policy owners for group policies and contracts;

622 and

623 ~~[(c)]~~ (iii) with respect to nongroup life and health insurance policies and annuities, make
624 available substitute coverage on an individual basis, in accordance with ~~[the provisions of]~~

625 Subsection (4)~~[(d)]~~ (b), to each known insured, annuitant, or owner ~~[under an individual policy;]~~

626 and to each individual formerly insured or formerly an annuitant under a group policy who is not

627 eligible for replacement group coverage on an individual basis in accordance with Subsection

628 (4)(b), if the insured or annuitant had a right under law or the terminated policy or annuity contract

629 to;

630 (A) convert coverage to individual coverage; or ~~[to]~~

631 (B) continue an individual policy in force until a specified age or for a specified time

632 during which the insurer;

633 (I) had no right unilaterally to make changes in any provision of the policy; or

634 (II) had a right only to make changes in premium by class.

635 ~~[(d)-(i)]~~ (b) (i) In providing the substitute coverage required under Subsection

636 (4)~~[(c)]~~(a)(iii), the association may offer ~~[either]~~ to;

637 (A) reissue the terminated coverage; or ~~[to]~~

638 (B) issue an alternative policy.

639 (ii) ~~[Alternate]~~ An alternative or reissued ~~[policies]~~ policy under Subsection (4)(b)(i):

640 (A) shall be offered without requiring evidence of insurability~~;~~; and ~~[shall]~~

641 (B) may not provide for any waiting period or exclusion that would not have applied under
642 the terminated policy.

643 (iii) The association may reinsure any alternative or reissued policy.

644 ~~[(c)]~~ (c) (i) ~~[Alternative policies]~~ An alternative policy adopted by the association shall be
645 subject to the approval of the commissioner.

646 (ii) The association may adopt alternative policies of various types for future issuance
647 without regard to any particular impairment or insolvency.

648 ~~[(ii) Alternative policies]~~
649 (iii) An alternative policy:
650 (A) shall contain at least the minimum statutory provisions required in this state; and
651 (B) provide benefits that are not unreasonable in relation to the premium charged.
652 (iv) The association shall set the premium for an alternative policy in accordance with [its]
653 a table of ~~[adopted]~~ rates that it adopts. The premium shall reflect:
654 (A) the amount of insurance to be provided; and
655 (B) the age and class of risk of each insured.
656 (v) For an alternative ~~[policies]~~ policy issued ~~[to insureds]~~ under an individual ~~[policies]~~
657 policy of the impaired or insolvent insurer~~[-]~~;
658 (A) age shall be determined in accordance with the original policy provisions; and
659 (B) class of risk shall be the class of risk under the original policy.
660 (vi) For an alternative ~~[policies]~~ policy issued to individuals insured under a group
661 policy~~[-]~~;
662 (A) age and class of risk shall be determined by the association in accordance with the
663 alternative policy provisions and risk classification standards approved by the commissioner~~[-~~
664 However;-]; and
665 (B) the premium may not reflect any changes in the health of the insured after the original
666 policy was last underwritten.
667 ~~[(iii)]~~ (vii) Any alternative policy issued by the association shall provide coverage of a type
668 similar to that of the policy issued by the impaired or insolvent insurer, as determined by the
669 association.
670 ~~[(f)]~~ (d) If the association elects to reissue terminated coverage at a premium rate different
671 from that charged under the terminated policy, the premium shall be set by the association in
672 accordance with the amount of insurance provided and the age and class of risk, subject to the
673 approval of the commissioner or by a court of competent jurisdiction.
674 ~~[(g)]~~ (e) The association's obligations with respect to coverage under any policy of the
675 impaired or insolvent insurer or under any reissued or alternative policy shall cease on the date the
676 coverage or policy is replaced by another similar policy by:
677 (i) the policyholder~~[-]~~;
678 (ii) the insured~~[-]~~; or

679 (iii) the association.

680 ~~[(ht)]~~ (f) (i) With respect to ~~[claims]~~ a claim unpaid as of the coverage date ~~[of insolvency]~~
681 and ~~[claims]~~ a claim incurred during the period defined in Subsection (4)(a)(i), a provider of health
682 care services, by accepting a payment from the association upon a claim of the provider against
683 an insured whose health care insurer is an insolvent member insurer, agrees to forgive the insured
684 of 20% of the debt which otherwise would be paid by the insurer had it not been insolvent, subject
685 to a maximum of ~~[\$4,000]~~ \$8,000 being required to be forgiven by any one provider as to each
686 claimant.

687 (ii) The obligations of a solvent ~~[insurers]~~ insurer to pay all or part of the covered claim
688 are not diminished by the forgiveness provided for in this section.

689 (5) When proceeding under Subsection ~~[(2)(a)(ii) or]~~ (3)(b) with respect to any policy or
690 contract carrying guaranteed minimum interest rates, the association shall assure the payment or
691 crediting of a rate of interest consistent with Subsection 31A-28-103(2)(b)(iii).

692 (6) Nonpayment of premiums within 31 days after the date required under the terms of any
693 guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage shall
694 terminate the association's obligations under the policy or coverage under this ~~[chapter]~~ part with
695 respect to the policy or coverage, except with respect to any claims incurred or any net cash
696 surrender value ~~[which]~~ that may be due in accordance with ~~[the provisions of]~~ this ~~[chapter]~~ part.

697 (7) (a) Premiums due ~~[for coverage after entry of an order of liquidation of an]~~ after the
698 coverage date with respect to the covered portion of a policy or contract of an impaired or
699 insolvent insurer shall belong to and be payable at the direction of the association~~[, and the]~~.

700 (b) The association ~~[shall be]~~ is liable to the policy or contract owners for unearned
701 premiums due to policy or contract owners ~~[of the insurer after the entry of the order]~~ arising after
702 the coverage date with respect to the covered portion of the policy or contract.

703 (8) The protection provided by this ~~[chapter]~~ part does not apply if any guaranty protection
704 is provided to residents of this state by laws of the domiciliary state or jurisdiction of the impaired
705 or insolvent insurer other than this state.

706 (9) In carrying out its duties under ~~[this subsection and]~~ Subsections ~~[(2)]~~ (1) and ~~[(3)]~~ (2),
707 and subject to approval by ~~[the]~~ a court in this state, the association may:

708 (a) impose permanent policy or contract liens in connection with ~~[any]~~ a guarantee,
709 assumption, or reinsurance agreement, if the association finds that:

710 (i) the amounts [~~which~~] that can be assessed under this [~~chapter~~] part are less than the
711 amounts needed to assure full and prompt performance of the association's duties under this
712 [~~chapter;~~] part; or [~~that~~]

713 (ii) the economic or financial conditions as they affect member insurers are sufficiently
714 adverse to render the imposition of the permanent policy or contract liens to be in the public
715 interest;

716 (b) impose temporary moratoriums or liens on payments of cash values and policy loans,
717 or any other right to withdraw funds held in conjunction with policies or contracts, in addition to
718 any contractual provisions for deferral of cash or policy loan value[-]; and

719 (c) if the receivership court imposes a temporary moratorium or moratorium charge on
720 payment of cash values or policy loans, or on any other right to withdraw funds held in conjunction
721 with policies or contracts, out of the assets of the impaired or insolvent insurer, defer the payment
722 of cash values, policy loans, or other rights by the association for the period of the moratorium or
723 moratorium charge imposed by the receivership court, except for claims covered by the association
724 to be paid in accordance with a hardship procedure:

725 (i) established by the liquidator or rehabilitator; and

726 (ii) approved by the receivership court.

727 (10) (a) A deposit in this state held pursuant to law or required by the commissioner for
728 the benefit of creditors, including policy owners, that is not turned over to the domiciliary
729 liquidator upon the entry of a final order of liquidation or order approving a rehabilitation plan of
730 an insurer domiciled in this state or in a reciprocal state, pursuant to Subsection 31A-27-102(1)(p),
731 shall be promptly paid to the association.

732 (b) Any amount paid under Subsection (10)(a) to the association less the amount retained
733 by it shall be treated as a distribution of estate assets pursuant to Subsection 31A-27-337(2).

734 [(10)] (11) If the association fails to act within a reasonable period of time as provided in
735 [~~Subsections (2)(a)(ii), (3), and (4)] this section, the commissioner shall have the powers and
736 duties of the association under this [~~chapter~~] part with respect to an impaired or insolvent
737 [~~insurers~~] insurer.~~

738 [(11)] (12) The association may render assistance and advice to the commissioner, upon
739 [~~his~~] the commissioner's request, concerning:

740 (a) rehabilitation[-];

741 (b) payment of claims[;];
742 (c) continuance of coverage[;]; or
743 (d) the performance of other contractual obligations of any impaired or insolvent insurer.
744 [(12)] (13) (a) The association has standing to appear or intervene before [any] a court or
745 agency in this state with jurisdiction over:
746 (i) an impaired or insolvent insurer concerning which the association is or may become
747 obligated under this [chapter] part; or
748 (ii) any person or property against which the association may have rights through
749 subrogation or otherwise. [Standing]
750 (b) The standing referred to in Subsection (13)(a) extends to all matters germane to the
751 powers and duties of the association, including:
752 (i) proposals for reinsuring, modifying, or guaranteeing the policies or contracts of the
753 impaired or insolvent insurer; and
754 (ii) the determination of the policies or contracts and contractual obligations.
755 (c) The association [also] has the right to appear or intervene before a court in another state
756 with jurisdiction over:
757 (i) an impaired or insolvent insurer for which the association is or may become obligated;
758 or [with jurisdiction over a third party]
759 (ii) any person or property against [whom] which the association may have rights through
760 subrogation of the insurer's policyholders.
761 [(13)] (14) (a) Any person receiving benefits under this [chapter] part shall be considered
762 to have assigned the rights under, and any causes of action against any person for losses arising
763 under, resulting from, or otherwise relating to the covered policy or contract to the association to
764 the extent of the benefits received because of this [chapter] part, whether the benefits are payments
765 of, or on account of[;];
766 (i) contractual obligations[;];
767 (ii) continuation of coverage[;]; or
768 (iii) provision of substitute or alternative coverages. [The]
769 (b) As a condition precedent to the receipt of any right or benefits conferred by this part
770 upon that person, the association may require an assignment to it of [these] the rights and causes
771 of action described in Subsection (14)(a) by any;

772 (i) payee[-];
 773 (ii) policy or contract owner[-];
 774 (iii) beneficiary[-];
 775 (iv) insured[-]; or
 776 (v) annuitant [as a condition precedent to the receipt of any right or benefits conferred by
 777 this chapter upon that person].

778 [(b)] (c) The subrogation rights obtained by the association under this [subsection become
 779 third class claims under Section 31A-27-335] Subsection (14) shall have the same priority against
 780 the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive
 781 benefits under this part.

782 [(e)] (d) In addition to Subsections [(13)] (14)(a) [and (b)] through (c), the association has
 783 all common law rights of subrogation and any other equitable or legal remedy [which] that would
 784 have been available to the impaired or insolvent insurer or [holder] owner, beneficiary, or payee
 785 of a policy or contract with respect to the policy or contract, including in the case of a structured
 786 settlement annuity any rights of the owner, beneficiary, or payee of the annuity to the extent of
 787 benefits received pursuant to this part against a person originally or by succession responsible for
 788 the losses arising from the personal injury relating to the annuity or payment of the annuity.

789 (e) If a provision of this Subsection (14) is invalid or ineffective with respect to any person
 790 or claim for any reason, the amount payable by the association with respect to the related covered
 791 obligations shall be reduced by the amount realized by any other person with respect to the person
 792 or claim that is attributable to the policies, or portion of the policies, covered by the association.

793 (f) If the association has provided benefits with respect to a covered policy and a person
 794 recovers amounts as to which the association has rights as described in this Subsection (14), the
 795 person shall pay to the association the portion of the recovery attributable to the covered policies.

796 [(14)] (15) (a) [(The)] In addition to the rights and powers elsewhere in this part, the
 797 association may:

798 [(a)] (i) enter into contracts [which] that are necessary or proper to carry out the provisions
 799 and purposes of this [chapter] part;

800 [(b)] (ii) sue or be sued, including taking any legal actions necessary or proper to:

801 (A) recover any unpaid assessments under Section 31A-28-109; and [to]

802 (B) settle claims or potential claims against [it] the association;

803 ~~[(e)]~~ (iii) borrow money to effect the purposes of this [chapter, and any notes or other
804 evidence or indebtedness of the association not in default shall be legal investments for domestic
805 insurers and may be carried as admitted assets] part;

806 ~~[(d)]~~ (iv) employ or retain such persons as are necessary or appropriate staff members to:
807 (A) handle the financial transactions of the association[;]; and [to]
808 (B) perform other functions as become necessary or proper under this [chapter] part;
809 ~~[(e)]~~ (v) take necessary or appropriate legal action to avoid or recover payment of improper
810 claims;

811 ~~[(f)]~~ (vi) exercise, for the purposes of this [chapter] part and to the extent approved by the
812 commissioner, the powers of a domestic life or health insurer, but in no case may the association
813 issue insurance policies or annuity contracts other than those issued to perform its obligation under
814 this [chapter] part; [or]

815 (vii) request information from a person seeking coverage from the association to aid the
816 association in determining its obligations under this part with respect to the person;

817 (viii) take other necessary or appropriate action to discharge its duties and obligations
818 under this part or to exercise its powers under this part; and

819 ~~[(g)]~~ (ix) act as a special deputy liquidator if appointed by the commissioner.

820 (b) Any note or other evidence of indebtedness of the association under Subsection
821 (15)(a)(iii) that is not in default:

822 (i) is a legal investment for a domestic insurer; and
823 (ii) may be carried as admitted assets.

824 (c) A person seeking coverage from the association shall promptly comply with a request
825 for information by the association under Subsection (15)(a)(vii).

826 ~~[(15)]~~ (16) The association may join an organization of one or more other state
827 associations of similar purposes to further the purposes and administer the powers and duties of
828 the association.

829 (17) (a) Except as provided in Subsection (17)(b), at any time within one year after the
830 coverage date, the association may elect to succeed to the rights and obligations of the member
831 insurer that:

832 (i) accrue on or after the coverage date; and
833 (ii) relate to covered policies under any one or more indemnity reinsurance agreements

834 entered into by the member insurer as a ceding insurer and selected by the association.

835 (b) Notwithstanding Subsection (17)(a), the association may not exercise an election with
836 respect to a reinsurance agreement if the receiver, rehabilitator, or liquidator of the member insurer
837 has previously and expressly disaffirmed the reinsurance agreement.

838 (c) The election described in Subsection (17)(a) shall be effected by a notice to:

839 (i) (A) the receiver;

840 (B) rehabilitator; or

841 (C) liquidator; and

842 (ii) the affected reinsurers.

843 (d) If the association makes an election under Subsection (17)(a), the association shall
844 comply with Subsections (17)(d)(i) through (vi) with respect to the agreements selected by the
845 association:

846 (i) For contracts covered, in whole or in part, by the association, the association shall be
847 responsible for:

848 (A) all unpaid premiums due under the agreements for periods both before and after the
849 coverage date; and

850 (B) the performance of all other obligations to be performed after the coverage date.

851 (ii) The association may charge contracts covered in part by the association the costs for
852 reinsurance in excess of the obligations of the association, through reasonable allocation methods.

853 (iii) The association is entitled to any amounts payable by the reinsurer under the
854 agreements with respect to losses or events that:

855 (A) occur in periods after the coverage date; and

856 (B) relate to contracts covered by the association, in whole or in part.

857 (iv) On receipt of any amounts under Subsection (17)(d)(iii), the association shall pay to
858 the beneficiary under the policy or contract on account of which the amounts were paid an amount
859 equal to the excess of the amount received by the association over the benefits paid or payable by
860 the association on account of the policy or contract.

861 (v) (A) Within 30 days following the association's election, the association and each
862 indemnity reinsurer shall calculate the net balance due to or from the association under each
863 reinsurance agreement as of the date of the association's election, giving full credit to all items paid
864 by either the member insurer, or its receiver, rehabilitator, or liquidator, or the indemnity reinsurer

865 during the period between the coverage date and the date of the association's election.

866 (B) Either the association or indemnity reinsurer shall pay the net balance due the other
867 within five days of the completion of the calculation under Subsection (17)(d)(v)(A).

868 (C) If the receiver, rehabilitator, or liquidator has received any amounts due the association
869 pursuant to Subsection (17)(d)(iii), the receiver, rehabilitator, or liquidator shall remit the same to
870 the association as promptly as practicable.

871 (vi) If the association, within 60 days of the election, pays the premiums due for periods
872 both before and after the coverage date that relate to contracts covered by the association, in whole
873 or in part, the reinsurer is not entitled to:

874 (A) terminate the reinsurance agreements, insofar as the agreements relate to contracts
875 covered by the association, in whole or in part; and

876 (B) set off any unpaid premium due for periods prior to the coverage date against amounts
877 due the association.

878 (e) An insurer other than the association shall succeed to the rights and obligations of the
879 association under Subsections (17)(a) through (d) effective as of the date agreed upon by the
880 association and the other insurer and regardless of whether the association has made the election
881 referred to in Subsections (17)(a) through (d) provided that:

882 (i) the association transfers its obligations to the other insurer;

883 (ii) the association and the other insurer agree to the transfer;

884 (iii) the indemnity reinsurance agreements automatically terminate for new reinsurance
885 unless the indemnity reinsurer and the other insurer agree to the contrary;

886 (iv) the obligations described in Subsection (17)(c)(iv) may not apply on and after the date
887 the indemnity reinsurance agreement is transferred to the third party insurer; and

888 (v) this Subsection (17)(e) may not apply if the association has previously expressly
889 determined in writing that it will not exercise the election referred to in Subsections (17)(a)
890 through (d).

891 (f) (i) This Subsection (17) supersedes the provisions of any law of this state or of any
892 affected reinsurance agreement that provides for or requires any payment of reinsurance proceeds
893 on account of losses or events that occur in periods after the coverage date, to the receiver,
894 liquidator, or rehabilitator of an insolvent member insurer.

895 (ii) The receiver, rehabilitator, or liquidator shall remain entitled to any amounts payable

896 by the reinsurer under the reinsurance agreement with respect to losses or events that occur in
897 periods prior to the coverage date, subject to applicable setoff provisions.

898 (g) Except as otherwise expressly provided in Subsections (17)(a) through (f), this
899 Subsection (17) does not:

900 (i) alter or modify the terms and conditions of the indemnity reinsurance agreements of
901 the insolvent member insurer;

902 (ii) abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a
903 reinsurance agreement; or

904 (iii) give a policy owner or beneficiary an independent cause of action against an indemnity
905 reinsurer that is not otherwise set forth in the indemnity reinsurance agreement.

906 (18) The board of directors of the association shall have discretion and may exercise
907 reasonable business judgment to determine the means by which the association is to provide the
908 benefits of this part in an economical and efficient manner.

909 (19) If the association has arranged or offered to provide the benefits of this part to a
910 covered person under a plan or arrangement that fulfills the association's obligations under this
911 part, the person is not entitled to benefits from the association in addition to or other than those
912 provided under the plan or arrangement.

913 (20) (a) Venue in a suit against the association arising under this part shall be in Salt Lake
914 County.

915 (b) The association may not be required to give an appeal bond in an appeal that relates
916 to a cause of action arising under this part.

917 Section 8. Section **31A-28-109** is amended to read:

918 **31A-28-109. Assessments.**

919 (1) (a) For the purpose of providing the funds necessary to carry out the powers and duties
920 of the association, the board of directors shall assess the member insurers, separately for each
921 [account] class or subclass, at the time and for the amounts that the board of directors finds
922 necessary. [~~Assessments are]~~

923 (b) A called assessment:

924 (i) is due not less than 30 days after prior written notice to the member [insurers. Class
925 B assessments, described in Subsection (2)(b),] insurer; and

926 (ii) shall accrue interest at 10% per annum on and after the due date.

927 (2) ~~[There are]~~ The two classes of assessment[:] are described in Subsections (2)(a) and
 928 (2)(b).

929 (a) A Class A [assessments] assessment shall be ~~[made]~~ authorized and called for the
 930 purpose of meeting administrative and legal costs and other expenses ~~[and examinations conducted~~
 931 ~~under the authority of Subsection 31A-28-112 (5)].~~ A Class A [assessments] assessment may be
 932 ~~[made]~~ authorized and called whether or not related to a particular impaired or insolvent insurer.

933 (b) A Class B [assessments] assessment shall be ~~[made]~~ authorized and called to the extent
 934 necessary to carry out the powers and duties of the association under Section 31A-28-108 with
 935 regard to an impaired or an insolvent insurer.

936 (3) (a) (i) The amount of ~~[any]~~ a Class A assessment shall be determined by the board of of
 937 directors and may be ~~[made]~~ authorized and called on a pro rata or non-pro rata basis.

938 (ii) If the Class A assessment is pro rata, the board of directors may credit the assessment
 939 against future Class B assessments. ~~[A]~~

940 (iii) The total of all non-pro rata [assessment] assessments may not exceed ~~[\$150]~~ \$300
 941 per member insurer in any one calendar year.

942 (b) The amount of ~~[any]~~ a Class B assessment shall be allocated for assessment purposes
 943 among the ~~[accounts]~~ classes pursuant to an allocation formula ~~[which]~~ that may be based on:

944 (i) the premiums or reserves of the impaired or insolvent insurer; or ~~[based on]~~

945 (ii) any other standard determined by the board of directors in its sole discretion ~~[to be]~~
 946 as being fair and reasonable under the circumstances.

947 (c) (i) A Class B [assessments] assessment against a member [insurers] insurer for each
 948 ~~[account and subaccount]~~ life insurance and annuity subclass shall be in the proportion that the
 949 premiums received on business in this state by ~~[each assessed]~~ the member insurer on policies or
 950 contracts included in the subclass for the three most recent calendar years for which information
 951 is available preceding the year which includes the coverage date bears to the premiums received
 952 on business in this state for the same ~~[calendar years]~~ period by all assessed member insurers.

953 (ii) ~~["Premiums received" is based]~~ A Class B assessment against a member insurer for
 954 a disability insurance class shall be in the proportion that the premiums received on business in this
 955 state by each assessed member insurer on policies or contracts included in the class for the most
 956 recent calendar year for which information is available preceding the year in which the assessment
 957 is made bears to the premiums received on business in this state on policies or contracts ~~[covered]~~

958 ~~by each account] included in the class for [the three most recent calendar years for which~~
959 ~~information is available, which precede the year in which the insurer became impaired or~~
960 ~~insolvent] that calendar year by all assessed member insurers.~~

961 (d) Assessments for funds to meet the requirements of the association with respect to an
962 impaired or insolvent insurer may not be [~~made~~] authorized or called until necessary to implement
963 the purposes of this [~~chapter~~] part.

964 (e) Classification of assessments and premiums under Subsection (3)(b) and computation
965 of assessments under this Subsection (3) shall be made with a reasonable degree of accuracy,
966 recognizing that exact determinations may not always be possible.

967 (4) (a) The association may abate or defer, in whole or in part, the assessment of a member
968 insurer if, in the opinion of the board of directors, payment of the assessment would endanger the
969 ability of the member insurer to fulfill its contractual obligations. [~~In the event~~]

970 (b) If an assessment against a member insurer is abated or deferred in whole or in part
971 under Subsection (4)(a), the amount by which the assessment is abated or deferred may be assessed
972 against the other member insurers in a manner consistent with the basis for assessments set forth
973 in this section.

974 (c) Once a condition that caused a deferral is removed or rectified, the member insurer
975 shall pay all assessments that were deferred pursuant to a repayment plan approved by the
976 association.

977 (5) (a) (i) [~~The~~] Subject to Subsection (5)(b), the total of all assessments [upon] authorized
978 by the association on a member insurer for the life insurance and annuity [account] subclasses, and
979 for [each subaccount, may not in any one calendar year exceed 2% and] the disability [account]
980 insurance class may not in any one calendar year exceed 2% [of the insurer's yearly average
981 premiums received in this state on the policies and contracts covered by the account during the
982 three calendar years preceding the year in which the insurer became an impaired or insolvent
983 insurer. If the maximum assessment, together with the other assets of the association in any
984 account, does not provide in any one year in either account an amount sufficient to carry out the
985 responsibilities of the association, the necessary additional funds shall be assessed as soon as
986 permitted by this chapter] of that member's total average annual assessable premium as defined
987 in Subsection (3).

988 (ii) If two or more assessments are authorized in one calendar year with respect to one or

989 more insurers that become impaired or insolvent in different calendar years, the average annual
 990 premiums for purposes of the aggregate assessment percentage limitation in Subsection (5)(a)(i)
 991 shall be equal and limited to the highest of the total average annual assessable premiums of the
 992 different calendar year periods involved in the assessment or assessments.

993 (iii) If the maximum assessment together with the other assets of the association do not
 994 provide in one year an amount sufficient to carry out the responsibilities of the association, the
 995 necessary additional funds shall be assessed as soon after as permitted by this part.

996 (b) The board of directors may provide in the plan of operation a method of allocating
 997 funds among claims, whether relating to one or more impaired or insolvent insurers, when the
 998 maximum assessment will be insufficient to cover anticipated claims.

999 (c) If [~~a 1%~~] the maximum assessment for [~~any subaccount~~] a subclass of the life insurance
 1000 and annuity [~~account~~] class in any one year does not provide an amount sufficient to carry out the
 1001 responsibilities of the association, the board of directors shall assess [~~all subaccounts~~] the other
 1002 subclasses of the life insurance and annuity [~~account~~] class for the necessary additional amount:

1003 (i) pursuant to Subsection (3)(b)[~~;~~]; and

1004 (ii) subject to the maximum stated in Subsection (5)(a).

1005 (6) (a) The board of directors may, by an equitable method established in the plan of
 1006 operation, refund to member insurers in proportion to the contribution of each insurer to that
 1007 [~~account~~] class the amount by which the assets of the [~~account~~] class exceed the amount the board
 1008 of directors finds is necessary to carry out [~~during the coming year~~] the obligations of the
 1009 association with regard to that [~~account~~] class, including assets accruing from:

1010 (i) assignment[~~;~~];

1011 (ii) subrogation[~~;~~];

1012 (iii) net realized gains[~~;~~]; and

1013 (iv) income from investments. [~~A~~]

1014 (b) Notwithstanding Subsection (6)(a), a reasonable amount may be retained [in any
 1015 account] to provide funds for the continuing expenses of the association and for future losses.

1016 (7) [~~It shall be proper for any~~] A member insurer, in determining its premium rates and
 1017 policyowner dividends as to any kind of insurance within the scope of this [~~chapter~~] part, [~~to~~] may
 1018 consider the amount reasonably necessary to meet its assessment obligations under this [~~chapter~~]
 1019 part.

1020 (8) (a) The association shall issue to each insurer paying an assessment under this [chapter]
1021 part, other than a Class A assessment, a certificate of contribution, in a form approved by the
1022 commissioner, for the amount of the assessment [so] paid.

1023 (b) All outstanding certificates described in Subsection (8)(a) shall be of equal dignity and
1024 priority without reference to amounts or dates of issue.

1025 (c) (i) A certificate of contribution described in Subsection (8)(a) may be shown by the
1026 insurer in its financial statement as an asset [~~in such form and for such amount, if any, and period~~
1027 ~~of time as the commissioner may approve]~~ in the amount of the certificate of contribution less the
1028 amount by which the insurer's premium taxes have already been reduced with respect to the
1029 certificate.

1030 (ii) For good cause shown, the commissioner may order the insurer to show a different
1031 amount in its financial statement than the amount under Subsection (8)(c)(i).

1032 Section 9. Section **31A-28-110** is amended to read:

1033 **31A-28-110. Plan of operation.**

1034 (1) (a) The association shall submit to the commissioner a plan of operation and any
1035 amendments to the plan necessary or suitable to assure the fair, reasonable, and equitable
1036 administration of the association.

1037 (b) The plan of operation and any amendments become effective:

1038 (i) upon the commissioner's written approval; or

1039 (ii) after 30 days from the date the plan of operation or amendment is submitted to the
1040 commissioner if [he] the commissioner has not disapproved [it] the plan or amendment.

1041 [~~(b)~~] (c) (i) If the association fails to submit a suitable amendment to the plan [of operation
1042 prior to November 1, 1991, or if at any time after November 1, 1991, the association fails to submit
1043 suitable amendments to the plan], the commissioner, after notice and hearing, shall adopt
1044 reasonable rules [~~which~~] that are necessary or advisable to effectuate the provisions of this part.
1045 [~~These~~]

1046 (ii) The rules described in Subsection (1)(c)(i) shall continue in force until:

1047 (A) modified by the commissioner; or

1048 (B) superseded by [a] an amendment to the plan;

1049 (I) submitted by the association; and

1050 (II) approved by the commissioner.

- 1051 (2) All member insurers shall comply with the plan of operation.
- 1052 (3) The plan of operation shall, in addition to ~~[requirements enumerated elsewhere]~~ any
- 1053 other requirement in this part:
- 1054 (a) establish procedures for handling the assets of the association;
- 1055 (b) establish the amount and method of reimbursing members of the board of directors
- 1056 under Section 31A-28-107;
- 1057 (c) establish regular places and times for meetings of the board of directors, including
- 1058 telephone conference calls;
- 1059 (d) establish procedures for records to be kept of all financial transactions of:
- 1060 (i) the association~~[-its]~~;
- 1061 (ii) the association's agents~~[-]~~; and
- 1062 (iii) the board of directors;
- 1063 (e) establish the procedures ~~[whereby selections]~~ to be followed for ~~[the]~~ selecting
- 1064 members to the board of directors ~~[will be made]~~ and ~~[submitted]~~ submitting them to the
- 1065 commissioner;
- 1066 (f) establish any additional procedures for assessments under Section 31A-28-109; and
- 1067 (g) contain additional provisions necessary or proper for the execution of the powers and
- 1068 duties of the association.
- 1069 (4) (a) The plan of operation may provide that any or all powers and duties of the
- 1070 association, except those under Subsection 31A-28-108~~[(13)(c)]~~(14)(d) and Section 31A-28-109,
- 1071 are delegated to a corporation, association, or other organization ~~[which]~~ that will perform
- 1072 functions similar to those of the association, or its equivalent, in two or more states. ~~[Such a]~~
- 1073 (b) A corporation, association, or organization described in Subsection (4)(a) shall be:
- 1074 (i) reimbursed for any payments made on behalf of the association; and ~~[shall be]~~
- 1075 (ii) paid for its performance of any function of the association.
- 1076 (c) A delegation under this Subsection (4):
- 1077 (i) shall take effect only with the approval of ~~[both]~~;
- 1078 (A) the board of directors; and
- 1079 (B) the commissioner~~[-]~~; and
- 1080 (ii) may be made only to a corporation, association, or organization ~~[which]~~ that extends
- 1081 protection not substantially less favorable and effective than that provided by this ~~[chapter]~~ part.

1082 Section 10. Section **31A-28-111** is amended to read:

1083 **31A-28-111. Duties and powers of the commissioner.**

1084 In addition to the duties and powers enumerated elsewhere in this [chapter] part:

1085 (1) The commissioner shall:

1086 (a) upon request of the board of directors, provide the association with a statement of the
1087 premiums [~~in this state~~] for each member insurer [~~upon request of the board of directors~~];

1088 (i) in this state; and

1089 (ii) any other appropriate state;

1090 (b) if an impairment is declared and the amount of the impairment is determined, serve a
1091 demand upon the impaired insurer to make good the impairment within a reasonable time [~~after~~
1092 ~~an impairment is declared and the amount of the impairment is determined~~]; and

1093 [~~(i) notice to the impaired insurer shall constitute notice to its shareholders, if any;~~]

1094 [~~(ii) the failure of the insurer to promptly comply with the commissioner's demand does~~
1095 ~~not excuse the association from the performance of its powers and duties under this part~~];

1096 (c) in a liquidation or rehabilitation proceeding involving a domestic insurer, be appointed
1097 as the liquidator or rehabilitator [~~in any liquidation or rehabilitation proceeding involving a~~
1098 ~~domestic insurer~~].

1099 (2) Notice to the impaired insurer under Subsection (1)(b) shall constitute notice to the
1100 shareholders of the impaired insurer if the impaired insurer has shareholders.

1101 (3) The failure of the insurer to promptly comply with the commissioner's demand under
1102 Subsection (1)(b) does not excuse the association from the performance of its powers and duties
1103 under this part; and

1104 [(2)] (4) (a) After notice and hearing, the commissioner may suspend or revoke the
1105 certificate of authority to transact insurance in this state of any member insurer [~~which~~] that fails
1106 to:

1107 (i) pay an assessment when due; or [~~which fails to~~]

1108 (ii) comply with the plan of operation.

1109 (b) (i) As an alternative to suspending or revoking a certificate of authority under
1110 Subsection (4)(a), the commissioner may levy a forfeiture on any member insurer [~~which~~] that fails
1111 to pay an assessment when due.

1112 (ii) A forfeiture described in Subsection (4)(b)(i):

1113 (A) may not exceed 5% of the unpaid assessment per month~~[- However, no forfeiture~~
 1114 ~~shall]; and~~

1115 (B) may not be less than \$100 per month.

1116 ~~[(3)] (5) (a) [Any]~~ A final action of the board of directors or the association may be
 1117 appealed to the commissioner by any member insurer if appeal is taken within 60 days of the date
 1118 the member insurer received notice of the final action being appealed.

1119 (b) If a member ~~[company]~~ insurer is appealing an assessment, the amount assessed shall
 1120 be:

1121 (i) paid to the association; and ~~[shall be]~~

1122 (ii) made available to meet association obligations during the pendency of an appeal.

1123 (c) If the appeal on the assessment described in Subsection (5)(b) is upheld, the amount
 1124 paid in error or excess shall be returned to the member ~~[company]~~ insurer.

1125 (d) Any final action or order of the commissioner shall be subject to judicial review in a
 1126 court of competent jurisdiction in accordance with the laws of this state that apply to the actions
 1127 or orders of the commissioner.

1128 ~~[(4)] (6)~~ The liquidator, rehabilitator, or conservator of any impaired insurer shall notify
 1129 all interested persons of the effect of this ~~[chapter]~~ part.

1130 Section 11. Section **31A-28-112** is amended to read:

1131 **31A-28-112. Prevention of insolvencies.**

1132 To aid in the detection and prevention of insurer insolvencies or impairments:

1133 (1) It is the duty of the commissioner:

1134 (a) to notify the ~~[commissioners]~~ commissioner of every state~~[- the territories of the United~~
 1135 ~~States, and the District of Columbia]~~ within 30 days following the action taken or the date the
 1136 action occurs, when ~~[he]~~ the commissioner takes ~~[either of]~~ the following actions against a member
 1137 insurer:

1138 (i) revokes its license; ~~[or]~~

1139 (ii) suspends its license~~[-];~~ or

1140 ~~[(b) Such notice shall be mailed to all commissioners within 30 days following the action~~
 1141 ~~taken or the date on which the action occurs.]~~

1142 (iii) makes a formal order that the member insurer:

1143 (A) restrict its premium writing;

1144 (B) obtain additional contributions to surplus;
1145 (C) withdraw from the state;
1146 (D) reinsure all or any part of its business; or
1147 (E) increase capital, surplus, or any other account for the security of policy owners or
1148 creditors.

1149 ~~[(c) To]~~ (b) to report to the board of directors when ~~[he]~~ the commissioner has;
1150 (i) taken any of the actions set forth in Subsection (1)(a); or [has]
1151 (ii) received a report from any other commissioner indicating that [any such] an action
1152 described in Subsection (1)(a) has been taken in another state[. The];

1153 (c) to include in the report to the board of directors [shall contain] required by Subsection
1154 (1)(b):

1155 (i) all significant details of the action taken; or
1156 (ii) the report received from another commissioner[.];

1157 ~~[(d) To]~~ to promptly report to the board of directors when ~~[he]~~ the commissioner has
1158 reasonable cause to believe from ~~[any] an~~ examination of any member ~~[company] insurer, whether~~
1159 completed or in process, that the [company] insurer may be an impaired or insolvent insurer[.]; and

1160 ~~[(e) To]~~ to furnish to the board of directors the National Association of Insurance
1161 Commissioners ~~[(NAIC)]~~ Insurance Regulatory Information System ~~[(IRIS)]~~ ratios and listings of
1162 companies not included in the ratios developed by ~~[NAIC] the National Association of Insurance~~
1163 Commissioners.

1164 (2) (a) The board of directors may use the information contained [therein] in the ratios and
1165 listings described in Subsection (1)(e) in carrying out its duties and responsibilities under this
1166 section. [Such]

1167 (b) The report and the information contained in the ratios and listings shall be kept
1168 confidential by the board of directors until the commissioner or other lawful authority publishes
1169 the information.

1170 ~~[(2)]~~ (3) The commissioner may seek the advice and recommendations of the board of
1171 directors concerning any matter affecting ~~[his]~~ the commissioner's duties and responsibilities
1172 regarding the financial condition of member insurers and companies seeking admission to transact
1173 insurance business in this state.

1174 ~~[(3)]~~ (4) (a) The board of directors may~~[, upon majority vote,]~~ make reports and

1175 recommendations to the commissioner upon any matter germane to:

1176 (i) the solvency, liquidation, rehabilitation, or conservation of any member insurer; or

1177 [germane to]

1178 (ii) the solvency of any company seeking to do an insurance business in this state.

1179 (b) The reports and recommendations of the board of directors described in Subsection

1180 (4)(a) may not be considered public documents.

1181 [~~(4) It is the duty of the~~]

1182 (5) The board of directors may, upon majority vote, [~~to~~] notify the commissioner of any

1183 information indicating [any] a member insurer may be an impaired or insolvent insurer.

1184 [~~(5)(a) (6) The board of directors may, upon majority vote, request that the~~

1185 commissioner order an examination of any member insurer which the board in good faith believes

1186 may be an impaired or insolvent insurer. Within 30 days of the receipt of the request the

1187 commissioner shall begin the examination. The examination may be conducted as a NAIC

1188 examination or may be conducted by any person designated by the commissioner. The cost of the

1189 examination shall be paid by the association. The examination report shall be treated as are other

1190 examination reports. Subject to the commissioner's compliance with Subsection (1), the

1191 examination report may not be released to the board of directors prior to its release to the public]

1192 make recommendations to the commissioner for the detection and prevention of insurer

1193 insolvencies.

1194 [~~(b) The commissioner shall notify the board of directors when the examination is~~

1195 completed. The request for an examination shall be kept on file by the commissioner and may not

1196 be open to public inspection prior to the release of the examination report to the public.]

1197 [~~(6) The board of directors may, upon majority vote, make recommendations to the~~

1198 commissioner for the detection and prevention of insurer insolvencies.]

1199 (7) (a) At the conclusion of any insurer insolvency in which the association was obligated

1200 to pay covered claims, the board of directors shall prepare a report to the commissioner containing

1201 the information the board of directors has in its possession bearing on the history and causes of the

1202 insolvency.

1203 (b) The board of directors shall cooperate with the [~~boards~~] board of directors of a guaranty

1204 [~~associations~~] association in [~~other states~~] another state in preparing a report on the history and

1205 causes of insolvency of a particular insurer[~~, and~~].

1206 (c) The board of directors may adopt by reference any report prepared by ~~[other]~~ another
1207 state ~~[associations]~~ association.

1208 Section 12. Section **31A-28-113** is amended to read:

1209 **31A-28-113. Credit for assessments paid.**

1210 (1) (a) A member insurer may offset against its premium tax liability to this state an
1211 assessment described in Subsection 31A-28-109(2)(b) to the extent of 20% of the amount of the
1212 assessment for each of the five calendar years following the year in which the assessment was paid.

1213 (b) To the extent ~~[these]~~ that the offsets described in Subsection (1)(a) exceed premium
1214 tax liability, ~~[they]~~ the offsets may be carried forward and used to offset premium tax liability in
1215 future years. ~~[In the event]~~

1216 (c) If a member insurer ceases doing business, all uncredited assessments may be credited
1217 against its premium tax liability for the year it ceases doing business.

1218 (2) (a) Any sums ~~[which]~~ that are acquired by refund ~~[from the association by member~~
1219 ~~insurers under]~~ in accordance with Subsection 31A-28-109(6) from the association by member
1220 insurers, and ~~[which]~~ that have been offset against premium taxes as provided in Subsection (1),
1221 shall be paid by the insurers to the state in a manner required by the State Tax Commission.

1222 (b) The association shall notify the commissioner that the refunds described in Subsection
1223 (2)(a) have been made.

1224 Section 13. Section **31A-28-114** is amended to read:

1225 **31A-28-114. Miscellaneous provisions.**

1226 (1) Nothing in this ~~[chapter]~~ part shall be construed to reduce the liability for unpaid
1227 assessments of the insureds of an impaired or insolvent insurer operating under a plan with
1228 assessment liability.

1229 (2) (a) Records shall be kept of all ~~[negotiations and]~~ meetings ~~[in which the association~~
1230 ~~or its representatives are involved]~~ of the board of directors to discuss the activities of the
1231 association in carrying out its powers and duties under Section 31A-28-108.

1232 (b) Records of ~~[such negotiations or meetings shall be made public only upon the~~
1233 ~~termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or~~
1234 ~~insolvent insurer, upon the termination of]~~ the association with respect to an impaired or insolvent
1235 insurer may not be disclosed before the earlier of:

1236 (i) the termination of a liquidation, rehabilitation, or conservation proceeding involving

1237 the impaired or insolvent insurer:

1238 (ii) the termination of the impairment or insolvency of the insurer[,]; or

1239 (iii) upon the order of a court of competent jurisdiction.

1240 (c) Nothing in this Subsection (2) shall limit the duty of the association to render a report
1241 of its activities under Section 31A-28-115.

1242 (3) (a) For the purpose of carrying out its obligations under this [chapter] part, the
1243 association shall be considered to be a creditor of [~~the~~] an impaired or insolvent insurer to the
1244 extent of assets attributable to covered policies reduced by any amounts to which the association
1245 is entitled as subrogee pursuant to Subsection 31A-28-108[~~(13)~~](14).

1246 (b) Assets of the impaired or insolvent insurer attributable to covered policies shall be used
1247 to continue all covered policies and pay all contractual obligations of the impaired or insolvent
1248 insurer as required by this [chapter] part.

1249 [~~(b)~~] (c) As used in this Subsection (3), assets attributable to covered policies are that
1250 proportion of the assets which the reserves that should have been established for covered policies
1251 bear to the reserves that should have been established for all policies of insurance written by the
1252 impaired or insolvent insurer.

1253 [~~(c)~~] ~~The creditor status obtained by the association under Subsection (3)(a) entitles it to~~
1254 ~~file a third class claim under Section 31A-27-335.]~~

1255 (4) (a) As a creditor of the impaired or insolvent insurer under Subsection (3) and
1256 consistent with Section 31A-27-335, the association and any other similar association are entitled
1257 to receive a disbursement of assets out of the marshaled assets, from time to time as the assets
1258 become available to reimburse it.

1259 (b) If, within 120 days of a final determination of insolvency of an insurer by the
1260 receivership court, the liquidator has not made an application to the court for the approval of a
1261 proposal to disburse assets out of marshaled assets to all guaranty associations having obligations
1262 because of the insolvency, the association is entitled to make application to the receivership court
1263 for approval of the association's proposal for disbursement of these assets.

1264 [~~(4)~~] (5) (a) Prior to the termination of any liquidation, rehabilitation, or conservation
1265 proceeding, the court may take into consideration the contributions of the respective parties,
1266 including:

1267 (i) the association[,];

1268 (ii) the shareholders[;];
1269 (iii) policyowners of the insolvent insurer[;]; and
1270 (iv) any other party with a bona fide interest in making an equitable distribution of the
1271 ownership rights of the insolvent insurer.

1272 (b) In making [such] a determination[~~;~~ ~~consideration shall be given to~~] under Subsection
1273 (5)(a), the court shall consider the welfare of the policyholders of the continuing or successor
1274 insurer.

1275 [~~(b)~~] (c) A distribution to any stockholder of an impaired or insolvent insurer may not be
1276 made until and unless the total amount of valid claims of the association with interest has been
1277 fully recovered by the association for funds expended in carrying out its powers and duties under
1278 Section 31A-28-108 with respect to the insurer.

1279 (6) (a) If an order for liquidation or rehabilitation of an insurer domiciled in this state has
1280 been entered, the receiver appointed under the order shall have a right to recover on behalf of the
1281 insurer, from any affiliate that controlled the insurer, the amount of distributions, other than stock
1282 dividends paid by the insurer on its capital stock, made at any time during the five years preceding
1283 the petition for liquidation or rehabilitation subject to the limitations of Subsections (6)(b) through
1284 (d).

1285 (b) A distribution described in Subsection (6)(a) may not be recovered if the insurer shows
1286 that:

1287 (i) when paid the distribution was lawful and reasonable; and

1288 (ii) the insurer did not know and could not reasonably have known that the distribution
1289 might adversely affect the ability of the insurer to fulfill its contractual obligations.

1290 (c) (i) A person that was an affiliate that controlled the insurer at the time the distributions
1291 were paid shall be liable up to the amount of distributions received.

1292 (ii) A person that was an affiliate that controlled the insurer at the time the distributions
1293 were declared, shall be liable up to the amount of distributions that would have been received if
1294 they had been paid immediately.

1295 (iii) If two or more persons are liable with respect to the same distributions, they shall be
1296 jointly and severally liable.

1297 (d) The maximum amount recoverable under this Subsection (6) shall be the amount
1298 needed in excess of all other available assets of the insolvent insurer to pay the contractual

1299 obligations of the insolvent insurer.

1300 (e) If any person liable under Subsection (6)(c) is insolvent, all of its affiliates that
 1301 controlled it at the time the distribution was paid shall be jointly and severally liable for any
 1302 resulting deficiency in the amount recovered from the insolvent affiliate.

1303 Section 14. Section **31A-28-115** is amended to read:

1304 **31A-28-115. Examination of the association -- Annual report.**

1305 (1) The association shall be subject to examination and regulation by the commissioner.

1306 (2) The board of directors shall submit to the commissioner each year, not later than 120
 1307 days after the association's fiscal year[;]:

1308 (a) a financial report in a form approved by the commissioner; and

1309 (b) a report of its activities during the preceding fiscal year.

1310 (3) At the request of a member insurer, the association shall provide the member insurer
 1311 with a copy of a report submitted under Subsection (2).

1312 Section 15. Section **31A-28-117** is amended to read:

1313 **31A-28-117. Immunity.**

1314 (1) ~~[There shall be]~~ For any action or omission committed in the performance of their
 1315 powers and duties under this part, there is no liability on the part of, and no cause of action of any
 1316 nature shall arise against[;]:

1317 (a) any member insurer [or its];

1318 (b) a member insurer's agents or employees[;];

1319 (c) the association [or its];

1320 (d) the association's:

1321 (i) agents or employees[;]; or

1322 (ii) members of the board of directors [or their];

1323 (e) representatives[; or] of persons described in Subsections (1)(a) through (e);

1324 (f) the commissioner; or [his]

1325 (g) the commissioner's representatives [for any action or omission committed in the
 1326 performance of their powers and duties under this chapter. This].

1327 (2) The immunity described in Subsection (1) extends to:

1328 (a) the participation in any organization of one or more other state associations of similar
 1329 purposes; and [to]

1330 (b) any [such] organization described in Subsection (2)(a) and its agents or employees.

1331 Section 16. Section **31A-28-119** is amended to read:

1332 **31A-28-119. Prohibited advertisement of Insurance Guaranty Association Act in**
1333 **Insurance Sales -- Notice to policyholders.**

1334 (1) (a) [A] Except as provided in Subsection (1)(b), a person, including an insurer, agent,
1335 or affiliate of an insurer may not make, publish, disseminate, circulate, or place before the public,
1336 or cause directly or indirectly to be made, published, disseminated, circulated, or placed before the
1337 public, in any newspaper, magazine, or other publication, or in the form of a notice, circular,
1338 pamphlet, letter, or poster, or over any radio station or television station, or in any other way, any
1339 advertisement, announcement, or statement written or oral, which uses the existence of the
1340 association for the purpose of sales, solicitation, or inducement to purchase any form of insurance
1341 [covered by the association under this chapter. However,].

1342 (b) Notwithstanding Subsection (1)(a), this section does not apply to:

1343 (i) the association; or

1344 (ii) any other entity [which] that does not sell or solicit insurance.

1345 (2) (a) Prior to January 1, [~~1992~~] 2001, the association shall:

1346 (i) prepare a summary document describing the general purposes and current limitations
1347 of this [chapter] part that complies with Subsection (3)[~~The summary shall be submitted~~]; and

1348 (ii) submit the summary document described in Subsection (2)(a)(i) to the commissioner
1349 for approval.

1350 (b) Sixty days after [receiving] the [commissioner's approval] day on which the
1351 commissioner approves the summary document described in Subsection (2)(a), [no] an insurer may
1352 not deliver a policy or contract [described in Subsection 31A-28-103 (2)(a)] to a policy or contract
1353 [holder] owner unless the summary document is also delivered to the policy or contract [holder]
1354 owner prior to, or at the time of, delivery of the policy or contract[~~, except as provided in~~
1355 Subsection (4)].

1356 (c) The summary document shall [also] be available upon request by a [policyholder]
1357 policy owner.

1358 [(c)] (d) The distribution, delivery, or contents or interpretation of the summary [may not
1359 state] document does not guarantee that either the policy or the contract or the [holder] owner of
1360 the policy or contract [~~would be~~] is covered in the event of the impairment or insolvency of a

1361 member insurer.

1362 ~~[(d)]~~ (e) The summary document shall be revised by the association as amendments to this
1363 part may require.

1364 ~~[(e)]~~ (f) Failure to receive the summary document as required in Subsection (2)(b) does
1365 not give the policyholder, contract holder, certificate holder, or insured any greater rights than
1366 those stated in this part.

1367 (3) (a) The summary document prepared under Subsection (2) shall contain a clear and
1368 conspicuous disclaimer on its face.

1369 (b) The commissioner shall, by rule, establish the form and content of the disclaimer~~[-~~
1370 The] described in Subsection (3)(a), except that the disclaimer shall:

1371 ~~[(a)]~~ (i) state the name and address of:

1372 (A) the association; and

1373 (B) the insurance department;

1374 ~~[(b)]~~ (ii) prominently warn the policy or contract [~~holder~~] owner that:

1375 (A) the association may not cover the policy; or~~[-~~

1376 (B) if coverage is available, [~~that~~] it [~~may be~~] is:

1377 (I) subject to substantial limitations [~~or~~] and exclusions; and

1378 (II) conditioned on continued residence in the state;

1379 (iii) state the types of policies for which the association will provide coverage;

1380 ~~[(c)]~~ (iv) state that the insurer and its agents are prohibited by law from using the existence
1381 of the association for the purpose of sales, solicitation, or inducement to purchase any form of
1382 insurance;

1383 ~~[(d) emphasize]~~ (v) state that the policy or contract [~~holder~~] owner should not rely on
1384 coverage under the association when selecting an insurer; [~~and~~]

1385 (vi) explain the rights available and procedures for filing a complaint to allege a violation
1386 of this part; and

1387 ~~[(e)]~~ (vii) provide other information as directed by the commissioner including sources for
1388 information about the financial condition of insurers provided that the information:

1389 (A) is not proprietary; and

1390 (B) is subject to disclosure under public records laws.

1391 (4) [~~No~~] An insurer or agent may not deliver a policy or contract described in Subsection

1392 31A-28-103(2)(a) and excluded under Subsection 31A-28-103(2)(b)(i) from coverage under this
1393 [chapter] part unless the insurer or agent, prior to or at the time of delivery, gives the policy or
1394 contract holder a separate written notice [which] that clearly and conspicuously discloses that the
1395 policy or contract is not covered by the association.

1396 (b) The commissioner shall by rule specify the form and content of the notice required by
1397 Subsection (4)(a).

1398 (5) A member insurer shall retain evidence of compliance with Subsection (2) for as long
1399 as the policy or contract for which the notice is given remains in effect.

1400 Section 17. Section **31A-28-120** is enacted to read:

1401 **31A-28-120. Prospective application.**

1402 Notwithstanding any prior or subsequent law, the provisions of this part that are in effect
1403 on the date on which the association first becomes obligated for the policies or contracts of an
1404 insolvent or impaired member shall govern the association's rights and obligations with respect to
1405 the policyholders of the insolvent or impaired member.

Legislative Review Note

as of 2-3-00 1:04 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel