

1 **UTAH LIFE AND HEALTH INSURANCE**
2 **GUARANTY ASSOCIATION AMENDMENTS**

3 2010 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: James A. Dunnigan**

6 Senate Sponsor: Wayne L. Niederhauser

7
8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Utah Life and Health Insurance Guaranty Association Act to
11 make various amendments.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ addresses the coverage and limitations under the act;
- 15 ▶ modifies definition provisions and terminology;
- 16 ▶ directs the commissioner to appoint public members to the board of directors;
- 17 ▶ addresses provisions related to the powers and duties under the act;
- 18 ▶ adds additional requirements for a plan of operation;
- 19 ▶ modifies reporting requirements of the commissioner;
- 20 ▶ modifies time frames under the act; and
- 21 ▶ makes technical and conforming amendments.

22 **Monies Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 AMENDS:

28 **31A-28-103**, as last amended by Laws of Utah 2001, Chapters 116 and 161

29 **31A-28-105**, as last amended by Laws of Utah 2001, Chapter 161

- 30 **31A-28-107**, as last amended by Laws of Utah 2001, Chapter 161
- 31 **31A-28-108**, as last amended by Laws of Utah 2007, Chapter 309
- 32 **31A-28-109**, as last amended by Laws of Utah 2001, Chapters 116 and 161
- 33 **31A-28-110**, as last amended by Laws of Utah 2001, Chapter 161
- 34 **31A-28-111**, as last amended by Laws of Utah 2001, Chapter 161
- 35 **31A-28-112**, as last amended by Laws of Utah 2001, Chapter 161
- 36 **31A-28-114**, as last amended by Laws of Utah 2008, Chapter 250
- 37 **31A-28-118**, as repealed and reenacted by Laws of Utah 1991, Chapter 211
- 38 **31A-28-119**, as last amended by Laws of Utah 2001, Chapter 161
- 39 **31A-28-120**, as enacted by Laws of Utah 2001, Chapter 161

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

42 Section 1. Section **31A-28-103** is amended to read:

43 **31A-28-103. Coverage and limitations.**

44 (1) (a) This part provides coverage for [~~the policies and contracts~~] a policy or contract
 45 specified in Subsection (2) to a person who is:

46 (i) a beneficiary, assignee, or payee of a person covered by Subsection (1)(a)(ii)
 47 regardless of where that person resides, except for a nonresident certificate holder under a
 48 group policy or contract; or

49 (ii) an owner of or a certificate holder under a policy or contract, other than an
 50 unallocated annuity contract or structured settlement annuity, if the owner or certificate holder
 51 is:

52 (A) a resident of Utah; or

53 (B) not a resident of Utah, but only if:

54 (I) the insurer that issued the policy or contract is domiciled in this state;

55 (II) the state in which the person resides has an association similar to the association
 56 created by this part; and

57 (III) the person is not eligible for coverage by an association in any other state because

58 the insurer was not licensed in the state at the time specified in the state's guaranty
59 association's law.

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

61 (i) [~~Subsections (1)(a)(i) and (ii) do~~] Subsection (1)(a) does not apply; and

62 (ii) except as provided in Subsections (1)(d) and (1)(e), this part [~~shall provide~~]
63 provides coverage for the unallocated annuity contract specified in Subsection (2) to a person
64 who is:

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

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

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

71 (i) [~~Subsections (1)(a)(i) and (ii) do~~] Subsection (1)(a) does not apply; and

72 (ii) except as provided in Subsections (1)(d) and (1)(e), this part [~~shall provide~~]
73 provides coverage for the structured settlement annuity specified in Subsection (2) to a person
74 who is a payee under a structured settlement annuity, or beneficiary of a payee if the payee is
75 deceased, if the payee:

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

77 (B) is not a resident, but only if [~~the~~] one or more of the contract [owner] owners of
78 the structured settlement annuity is a resident, or [~~the~~] no contract owner of the structured
79 settlement annuity is [~~not~~] a resident, but:

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

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

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

85 (d) This part may not provide coverage for [~~the policies and contracts~~] a policy or

86 contract specified in Subsection (2) to:

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

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

91 (e) (i) This part provides coverage for a policy or contract specified in Subsection (2)
92 to a person who is a resident of this state and, in special circumstances, to a nonresident.

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

96 (iii) In determining the application of this Subsection (1)(e) [~~in situations where~~] when
97 a person could be covered by the association of more than one state, whether as an owner,
98 payee, beneficiary, or assignee, this part shall be construed in conjunction with other state
99 laws to result in coverage by only one association.

100 (2) (a) (i) Except as limited by this part, this part provides coverage to [~~the persons~~] a
101 person specified in Subsection (1) for:

102 (A) a direct, nongroup life, accident and health, or annuity policy or contract;

103 (B) a supplemental contract to a policy or contract described in Subsection

104 (2)(a)(i)(A);

105 (C) a certificate under a direct group policy or contract; and

106 (D) an unallocated annuity contract issued by a member insurer.

107 (ii) For purposes of Subsection (2)(a)(i), an annuity contract and a certificate under a
108 group annuity contract includes:

109 (A) a guaranteed investment contract;

110 (B) a deposit administration contract;

111 (C) an unallocated funding agreement;

112 (D) an allocated funding agreement;

113 [~~(D)~~] (E) a structured settlement annuity;

114 ~~(F)~~ (F) an annuity issued to or in connection with a government lottery; and
115 ~~(F)~~ (G) an immediate or deferred annuity contract.
116 (b) This part does not provide coverage for:
117 (i) a portion of a policy or contract:
118 (A) not guaranteed by the insurer; or
119 (B) under which the risk is borne by the policy or contract owner;
120 (ii) a policy or contract of reinsurance, unless:
121 (A) an assumption certificate is issued before the coverage date;
122 (B) the assumption certificate required by Subsection (2)(b)(ii)(A) is in effect pursuant
123 to the reinsurance policy or contract; and
124 (C) the reinsurance contract is approved by the appropriate regulatory authorities; ~~or~~
125 (iii) a portion of a policy or contract to the extent that the rate of interest on which it is
126 based or the interest rate, crediting rate, or similar factor determined by use of an index or
127 other external reference stated in the policy or contract employed in calculating returns or
128 changes in value, if the interest rate, crediting rate, or similar factor:
129 (A) is not excluded from coverage by Subsection (2)(b)~~(xii)~~(xi); ~~and~~
130 (B) averaged over the period of four years ~~prior to~~ before the date on which the
131 association becomes obligated with respect to the policy or contract, exceeds a rate of interest
132 determined by subtracting two percentage points from Moody's Corporate Bond Yield
133 Average averaged:
134 (I) for that same four-year period; or
135 (II) for the corresponding lesser period if the policy or contract was issued less than
136 four years before the association became obligated; and
137 (C) exceeds the rate of interest determined by subtracting three percentage points from
138 Moody's Corporate Bond Yield Average as most recently available as determined on or after
139 the earlier of the day on which the member insurer becomes:
140 (I) an impaired insurer under this part; or
141 (II) an insolvent insurer under this part;

- 142 (iv) a portion of a policy or contract issued to a plan or program of an employer,
143 association, or other person to provide life, accident and health, or annuity benefits to its
144 employees, members, or others, to the extent that the plan or program is self-funded or
145 uninsured, including benefits payable by an employer, association, or other person under:
- 146 (A) a multiple employer welfare arrangement as defined in 29 U.S.C. Sec. 1144;
 - 147 (B) a minimum premium group insurance plan;
 - 148 (C) a stop-loss group insurance plan; or
 - 149 (D) an administrative services only contract;
- 150 (v) a portion of a policy or contract to the extent that it provides:
- 151 (A) a dividend;
 - 152 (B) an experience rating credit;
 - 153 (C) voting rights; or
 - 154 (D) payment of a fee or allowance to any person, including the policy or contract
155 owner, in connection with the service to or administration of the policy or contract;
- 156 [~~(vi) a policy or contract issued in this state by a member insurer at a time when:~~]
157 [~~(A) it was not licensed; or~~]
158 [~~(B) did not have a certificate of authority to issue the policy or contract in this state;~~]
- 159 [~~(vii)~~] (vi) an unallocated annuity contract issued to or in connection with a benefit
160 plan protected under the federal Pension Benefit Guaranty Corporation, regardless of whether
161 the federal Pension Benefit Guaranty Corporation has yet become liable to make any payment
162 with respect to the benefit plan;
- 163 [~~(viii)~~] (vii) a portion of an unallocated annuity contract that is not issued to or in
164 connection with:
- 165 (A) a specific benefit plan of:
 - 166 (I) employees;
 - 167 (II) a union; or
 - 168 (III) an association of natural persons; or
 - 169 (B) a government lottery;

170 ~~[(ix)]~~ (viii) a portion of a policy or contract to the extent that the assessment required
171 by Section 31A-28-109 that applies to the policy or contract is preempted by federal or state
172 law;

173 ~~[(x)]~~ (ix) an obligation that does not arise under the express written terms of the policy
174 or contract issued by an insurer to the contract owner or policy owner, including:

- 175 (A) a claim based on marketing materials;
- 176 (B) a claim based on ~~[documents that are]~~ a side letter, rider, or other document that is
177 issued by the insurer without meeting applicable policy form filing or approval requirements;
- 178 (C) a misrepresentation regarding a policy benefit;
- 179 (D) an extra-contractual claim;
- 180 (E) a claim for penalties; or
- 181 (F) a claim for consequential or incidental damages;

182 ~~[(xi)]~~ (x) a contract that establishes the member insurer's obligations to provide a book
183 value accounting guaranty for defined contribution benefit plan participants by reference to a
184 portfolio of assets that is owned by a person that is:

- 185 (A) (I) the benefit plan; or
- 186 (II) the benefit plan's trustee; and
- 187 (B) not an affiliate of the member insurer; ~~[and]~~

188 ~~[(xii)]~~ (xi) a portion of a policy or contract to the extent it provides for interest or other
189 changes in value:

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

192 (B) (I) that have not been credited to the policy or contract; or
193 (II) as to which the policy or contract owner's rights are subject to forfeiture as of the
194 date the member insurer becomes an impaired or insolvent insurer under this part[-]; and

195 (xii) a policy providing hospital, medical, prescription drug, or other health care
196 benefit pursuant to United States Code, Title 42, Subchapter XVIII, Chapter 7, Part C or D, or
197 federal regulations issued under Part C or D.

198 (3) Subject to Subsection (4), the benefits for which the association may become liable
199 may not exceed the lesser of:

200 (a) the contractual obligations for which the insurer is liable or would have been liable
201 if it were not an impaired or insolvent insurer;

202 (b) with respect to one life, regardless of the number of policies or contracts:

203 (i) for a life insurance policy:

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

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

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

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

212 (iii) for an accident and health policy:

213 (A) classified as health insurance, \$500,000; or

214 (B) not classified as health insurance, the covered portion of each benefit provided
215 under the policy;

216 (c) for an individual, or a beneficiary of that individual if the individual is deceased,
217 participating in a governmental retirement plan established under Section 401, 403(b), or 457,
218 Internal Revenue Code, covered by an unallocated annuity contract, in the aggregate,
219 [~~\$200,000~~] \$250,000 in present value of annuity benefits, including:

220 (i) net cash surrender; and

221 (ii) net cash withdrawal values; or

222 (d) for a payee of a structured settlement annuity or a beneficiary of the payee if the
223 payee is deceased, the limits set forth in Subsection (3)(b).

224 (4) Notwithstanding Subsections (3)(a) through (d), the association may not be
225 obligated to cover more than:

- 226 (a) an aggregate of \$500,000 in benefits for any one life under:
- 227 (i) Subsection (3)(b)(i)(A);
- 228 (ii) Subsection (3)(b)(i)(B);
- 229 (iii) Subsection (3)(b)(ii); [~~or~~] and
- 230 (iv) Subsection (3)(b)(iii)(B);
- 231 (b) \$5,000,000 in benefits for one owner of multiple nongroup policies of life
- 232 insurance:
- 233 (i) whether the policy owner is an individual, firm, corporation, or other person;
- 234 (ii) whether the persons insured are officers, managers, employees, or other persons;
- 235 and
- 236 (iii) regardless of the number of policies and contracts held by the owner; and
- 237 (c) \$5,000,000 in benefits, regardless of the number of contracts held by the contract
- 238 owner or plan sponsor, for:
- 239 (i) one contract owner provided coverage under Subsection (1)(b)(ii)(B); or
- 240 (ii) one plan sponsor whose plans own, directly or in trust, one or more unallocated
- 241 annuity contracts not included in Subsection (3)(b)(ii).
- 242 (5) (a) Notwithstanding Subsection (4)(c) and except as provided in Subsection (5)(b),
- 243 the association shall provide coverage if one or more unallocated annuity contracts are:
- 244 (i) covered contracts under this part;
- 245 (ii) owned by a trust or other entity for the benefit of two or more plan sponsors; and
- 246 (iii) the largest interest in the trust or entity owning the contract or contracts is held by
- 247 a plan sponsor whose principal place of business is in the state.
- 248 (b) Notwithstanding Subsection (5)(a) the association may not be obligated to cover
- 249 more than \$5,000,000 in benefits with respect to [~~an~~] the unallocated contracts described in
- 250 Subsection (5)(a).
- 251 (6) (a) The limitations set forth in Subsections (3) and (4) are limitations on the
- 252 benefits for which the association is obligated before taking into account:
- 253 (i) the association's subrogation and assignment rights; or

254 (ii) the extent to which those benefits could be provided out of the assets of the
255 impaired or insolvent insurer attributable to covered policies.

256 (b) The costs of the association's obligations under this part may be met by the use of
257 assets:

258 (i) attributable to covered policies, as described in Subsection 31A-28-114(3)(c); or

259 (ii) reimbursed to the association pursuant to the association's subrogation and
260 assignment rights.

261 (c) On and after the date on which the association becomes obligated for ~~[any]~~ a
262 covered policy, the association may not be obligated to provide benefits to the extent that the
263 benefits are based on an interest rate, crediting rate, or similar factor determined by use of an
264 index or other external reference stated in the policy or contract employed in calculating
265 returns or changes in value if the interest rate, crediting rate, or similar factor exceeds the rate
266 of interest determined by subtracting three percentage points from Moody's Corporate Bond
267 Yield Average as most recently available on each date on which interest is credited or
268 attributed to the covered policy.

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

274 Section 2. Section **31A-28-105** is amended to read:

275 **31A-28-105. Definitions.**

276 As used in this part:

277 (1) "Association" means the Utah Life and Health Insurance Guaranty Association
278 continued under Section 31A-28-106.

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

282 resolution.

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

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

285 (a) employees;

286 (b) a union; or

287 (c) an association of natural persons.

288 (4) (a) "Called assessment" or "called," when used in the context of assessments,
289 means that the association issued a notice to member insurers requiring that an authorized
290 assessment be paid within the time frame set forth in the notice.

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

293 (5) "Cash surrender value" means the cash surrender value without reduction for an
294 outstanding policy loan or surrender charge.

295 [~~(5)~~] (6) "Contractual obligation" means an obligation under any of the following for
296 which coverage is provided under Section 31A-28-103:

297 (a) a policy or contract;

298 (b) a certificate under a group policy or contract; or

299 (c) a portion of a policy or contract.

300 [~~(6)~~] (7) "Coverage date" means the date on which the association becomes
301 responsible for the obligations of a member insurer.

302 [~~(7)~~] (8) "Covered policy" means any of the following for which coverage is provided
303 in Section 31A-28-103:

304 (a) a policy or contract; or

305 (b) a portion of a policy or contract.

306 [~~(8)~~] (9) (a) "Covered portion" means:

307 (i) for [~~any~~] a covered policy that has a cash surrender value, a fraction [~~obtained by~~
308 ~~dividing~~] calculated with:

309 (A) the numerator being the lesser of:

310 (I) (Aa) \$200,000 for a life insurance policy; and
311 (Bb) \$250,000 for a covered policy that is not a life insurance policy; or
312 (II) the cash surrender value of the policy; ~~[by]~~ and
313 (B) the denominator being the cash surrender value of the policy; and
314 (ii) for ~~[any]~~ a covered policy that does not have a cash surrender value, a fraction
315 ~~[obtained by dividing]~~ calculated with:
316 (A) the numerator being the lesser of:
317 (I) (Aa) \$200,000 for a life insurance policy; or
318 (Bb) \$250,000 for a covered policy that is not a life insurance policy; or
319 (II) the policy's minimum statutory reserve; ~~[by]~~ and
320 (B) the denominator being the policy's minimum statutory reserve.
321 (b) The cash surrender value and the minimum statutory reserve are determined as of
322 the coverage date in accordance with the exclusions in Subsection 31A-28-103(2)(b)(iii).
323 ~~[(9)]~~ (10) "Extra-contractual claim" includes a claim relating to:
324 (a) bad faith in the payment of a claim;
325 (b) punitive or exemplary damages; or
326 (c) ~~[attorneys']~~ attorney fees and costs.
327 ~~[(10)]~~ (11) "Impaired insurer" means a member insurer that is not an insolvent insurer
328 and:
329 (a) is considered by the commissioner to be hazardous pursuant to this title; or
330 (b) is placed under an order of rehabilitation or conservation by a court of competent
331 jurisdiction.
332 ~~[(11)]~~ (12) "Insolvent insurer" means a member insurer that is placed under an order
333 of liquidation by a court of competent jurisdiction with a finding of insolvency.
334 ~~[(12)]~~ (13) (a) "Member insurer" means ~~[a person that: (i) is an insurer; and (ii)]~~ an
335 insurer that holds a certificate of authority to transact in this state any kind of insurance for
336 which coverage is provided under Section 31A-28-103.
337 (b) "Member insurer" includes an insurer whose license or certificate of authority in

338 this state may have been:

339 (i) suspended;

340 (ii) revoked;

341 (iii) not renewed; or

342 (iv) voluntarily withdrawn.

343 (c) "Member insurer" does not include:

344 (i) a for-profit or nonprofit:

345 (A) hospital;

346 (B) hospital service organization; or

347 (C) medical service organization;

348 ~~[(†)]~~ (ii) a health maintenance organization;

349 ~~[(††)]~~ (iii) a fraternal benefit society;

350 ~~[(†††)]~~ (vi) a mandatory state pooling plan;

351 ~~[(††††)]~~ (v) a mutual assessment company or other person that operates on an assessment
352 basis;

353 ~~[(†††††)]~~ (vi) an insurance exchange; [or]

354 (vii) an organization described in Subsection 31A-22-1305(2); or

355 ~~[(††††††)]~~ (viii) an entity similar to an entity described in Subsections ~~[(††2)]~~ (13)(c)(i)
356 through ~~[(†††)]~~ (vii).

357 ~~[(††3)]~~ (14) "Moody's Corporate Bond Yield Average" means the Monthly Average
358 Corporates as published by Moody's Investors Service, Inc., or any successor to Moody's
359 Investors Service, Inc.

360 ~~[(††4)]~~ (15) (a) "Owner" of a policy or contract, "policy owner," or "contract owner"
361 means ~~[the]~~ a person who:

362 (i) is identified as the legal owner under the terms of the policy or contract; or

363 (ii) is otherwise vested with legal title to the policy or contract through a valid
364 assignment:

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

- 366 (B) properly recorded as the owner on the books of the insurer.
- 367 (b) "Owner," "policy owner," or "contract owner" does not include a person with only
- 368 a beneficial interest in a policy or contract.
- 369 [~~(15)~~] (16) "Person" means ~~[any]~~:
- 370 (a) an individual;
- 371 (b) a corporation;
- 372 (c) a limited liability company;
- 373 (d) a partnership;
- 374 (e) an association;
- 375 (f) a governmental body or entity; ~~[or]~~
- 376 (g) a trust; or
- 377 ~~[(g)]~~ (h) a voluntary organization.
- 378 [~~(16)~~] (17) "Plan sponsor" means:
- 379 (a) the employer, in the case of a benefit plan established or maintained by a single
- 380 employer;
- 381 (b) the employee organization, in the case of a benefit plan established or maintained
- 382 by an employee organization; or
- 383 (c) the association, committee, joint board of trustees, or other similar group of
- 384 representatives of the parties who establish or maintain a benefit plan, in the case of a benefit
- 385 plan established or maintained by:
- 386 (i) two or more employers; or
- 387 (ii) jointly by:
- 388 (A) one or more employers; and
- 389 (B) one or more employee organizations.
- 390 [~~(17)~~] (18) (a) "Premiums" means an amount or consideration received on covered
- 391 policies or contracts, less:
- 392 (i) returned:
- 393 (A) premiums;

394 (B) considerations; and
395 (C) deposits; and
396 (ii) dividends and experience credits.
397 (b) (i) "Premiums" does not include an amount or consideration received for:
398 (A) a policy or contract for which coverage is not provided under Subsection
399 31A-28-103(2); or
400 (B) the portion of a policy or contract for which coverage is not provided under
401 Subsection 31A-28-103(2).
402 (ii) Notwithstanding Subsection [~~17~~] (18)(b)(i), an assessable premium may not be
403 reduced on account of:
404 (A) Subsection 31A-28-103(2)(b)(iii) relating to interest limitations; and
405 (B) Subsection 31A-28-103(3) relating to limitations for:
406 (I) one individual;
407 (II) any one participant; and
408 (III) any one contract owner.
409 (c) "Premiums" [~~may~~] does not include [~~any~~] premiums in excess of \$5,000,000:
410 (i) on [~~any~~] an unallocated annuity contract not issued under a governmental
411 retirement plan established under Section 401, 403(b), or 457, Internal Revenue Code; or
412 (ii) for multiple nongroup policies of life insurance owned by one owner:
413 (A) whether the policy owner is an individual, firm, corporation, or other person;
414 (B) whether the persons insured are officers, managers, employees, or other persons;
415 and
416 (C) regardless of the number of policies or contracts held by the owner.
417 [~~18~~] (19) (a) Except as provided in Subsection [~~18~~] (19)(b), "principal place of
418 business" of a plan sponsor or a person other than a natural person means the single state:
419 (i) in which the natural persons who establish policy for the direction, control, and
420 coordination of the operations of the entity as a whole primarily exercise the function; and
421 (ii) determined by the association in its reasonable judgment by considering the

422 following factors:

423 (A) the state in which the primary executive and administrative headquarters of the
424 entity are located;

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

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

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

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

433 (F) in the case of a benefit plan sponsored by affiliated companies comprising a
434 consolidated corporation, the state in which the holding company or controlling affiliate has
435 its principal place of business as determined using the factors described in Subsections [~~(18)~~]
436 (19)(a)(ii)(A) through (E).

437 (b) Notwithstanding Subsection [~~(18)~~] (19)(a), in the case of a plan sponsor, if more
438 than 50% of the participants in the benefit plan are employed in a single state, the state where
439 more than 50% of the participants are employed is considered to be the principal place of
440 business of the plan sponsor.

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

445 (ii) If for a benefit plan described in Subsection (3) there is not a specific or clear
446 designation of a principal place of business under Subsection [~~(18)~~] (19)(c)(i), the principal
447 place of business is considered to be the principal place of business of the employer or
448 employee organization that has the largest investment in the benefit plan.

449 (20) "Receiver" means, as the context requires:

450 (a) a rehabilitator;

451 (b) a liquidator;

452 (c) an ancillary receiver; or

453 (d) a conservator.

454 [~~(19)~~] (21) "Receivership court" means the court in the insolvent or impaired insurer's
455 state having jurisdiction over the conservation, rehabilitation, or liquidation of the insurer.

456 [~~(20)~~] (22) (a) "Resident" means a person:

457 (i) to whom a contractual obligation is owed; and

458 (ii) who resides in this state on the earlier of the date a member insurer is an:

459 (A) impaired insurer; or

460 (B) insolvent insurer.

461 (b) A person may be a resident of only one state, which in the case of a person other
462 than a natural person ~~[shall be]~~ is where its principal place of business is located.

463 (c) A citizen of the United States that is either a resident of a foreign country or a
464 resident of a United States possession, territory, or protectorate that does not have an
465 association similar to the association created by this part, is considered a resident of the state
466 of domicile of the insurer that issued the policy or contract.

467 [~~(21)~~] (23) "State" means:

468 (a) a state;

469 (b) the District of Columbia;

470 (c) Puerto Rico; and

471 (d) a United States possession, territory, or protectorate.

472 [~~(22)~~] (24) "Structured settlement annuity" means an annuity purchased to fund
473 periodic payments for a plaintiff or other claimant in payment for personal injury suffered by
474 the plaintiff or other claimant.

475 [~~(23)~~] (25) "Supplemental contract" means a written agreement entered into for the
476 distribution of proceeds under a policy or contract for:

477 (a) life;

478 (b) accident and health; or

479 (c) annuity.

480 ~~[(24)]~~ (26) "Unallocated annuity contract" means an annuity contract or group annuity
481 certificate that is not issued to and owned by an individual, except to the extent of any annuity
482 benefits guaranteed to an individual by an insurer under the contract or certificate.

483 Section 3. Section 31A-28-107 is amended to read:

484 **31A-28-107. Board of directors.**

485 (1) (a) The board of directors of the association shall consist of:

486 (i) at least five but not more than nine member insurers ~~[serving]~~ who:

487 (A) subject to Subsection (1)(e), serve terms as established in the plan of operation[-];

488 and

489 ~~[(b) (i) The members of the board of directors shall be]~~

490 (B) are selected by member insurers, subject to the approval of the commissioner[-];

491 and

492 (ii) two public representatives appointed by the commissioner.

493 (b) (i) The commissioner shall make the appointment of a public representative
494 coincide with the association's annual meeting at which the association's board of directors is
495 elected.

496 (ii) A public representative may not be:

497 (A) an officer, director, or employee of an insurer; or

498 (B) a person engaged in the business of insurance.

499 (iii) Subject to Subsection (1)(e), a public representative shall serve a term of three
500 years.

501 ~~[(ii)]~~ (c) When a vacancy occurs in the membership of the board of directors for any
502 reason[-];

503 (i) if the vacancy is of a member insurer, a replacement may be elected for the
504 unexpired term by a majority vote of the remaining board members, subject to the approval of
505 the commissioner[-]; and

506 (ii) if the vacancy is of a public representative, the commissioner shall appoint a
507 replacement for the unexpired term.

508 [~~(c)~~] (d) In approving [~~selections~~] a selection or in appointing [~~members~~] a member to
509 the board of directors, the commissioner shall consider, among other things, whether all
510 member insurers are fairly represented.

511 [~~(d)~~] (e) Notwithstanding [~~Subsection (1)(a)~~] Subsections (1)(a) and (b), the
512 commissioner shall, at the time of election [~~or~~], reelection, appointment, or reappointment
513 adjust the length of terms to ensure that the terms of board members are staggered so that
514 approximately half of the board of directors is selected during any two-year period.

515 (2) (a) A member of the board of directors may be reimbursed from the assets of the
516 association for expenses incurred by the member as a member of the board of directors.

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

519 Section 4. Section **31A-28-108** is amended to read:

520 **31A-28-108. Powers and duties of the association.**

521 (1) (a) If a member insurer is an impaired insurer, subject to any conditions imposed
522 by the association that do not impair the contractual obligations of the impaired insurer, the
523 association may [~~elect to~~] provide the protections provided by this part [~~to the policyholders of~~
524 ~~the impaired insurer~~].

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

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

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

532 (a) (i) (A) guaranty, assume, or reinsure, or cause to be guaranteed, assumed, or
533 reinsured, the policies or contracts of the insurer; or

534 (B) assure payment of the contractual obligations of the insolvent insurer; and
535 (ii) provide [~~such monies~~] the money, pledges, guarantees, or other means as are
536 reasonably necessary to discharge such duties; or
537 (b) provide benefits and coverages in accordance with Subsection (4).
538 (4) (a) In accordance with Subsection (3)(b), the association may:
539 (i) assure payment of benefits for premiums identical to the premiums and benefits,
540 except for terms of conversion and renewability, that would have been payable under the
541 policies or contracts of the insurer, for claims incurred:
542 (A) with respect to group policies:
543 (I) not later than the earlier of the next renewal date under the policies or contracts or
544 45 days after the coverage date; and
545 (II) in no event less than 30 days after the coverage date; or
546 (B) with respect to nongroup policies or contracts:
547 (I) not later than the earlier of the next renewal date, if any, under the policies or
548 contracts or one year from the coverage date; and
549 (II) in no event less than 30 days from the coverage date;
550 (ii) make diligent efforts to [~~provide 30 days' notice of~~] notify the following 30 days
551 before any termination of the benefits that are provided [to] under a policy or contract of the
552 insurer:
553 (A) [~~all~~] the known insureds or annuitants for nongroup policies and contracts; [or]
554 (B) owners if other than an insured or annuitant; or
555 [~~(B)~~] (C) group policy owners for group policies and contracts; and
556 (iii) with respect to nongroup life and accident and health insurance policies and
557 annuities, make available substitute coverage on an individual basis, in accordance with
558 Subsection (4)(b), to each known insured, annuitant, or owner and to each individual formerly
559 insured or formerly an annuitant under a group policy who is not eligible for replacement
560 group coverage on an individual basis in accordance with Subsection (4)(b), if the insured or
561 annuitant had a right under law or the terminated policy or annuity contract to:

562 (A) convert coverage to individual coverage; or
563 (B) continue an individual policy in force until a specified age or for a specified time
564 during which the insurer had:
565 (I) no right unilaterally to make changes in any provision of the policy; or
566 (II) a right only to make changes in premium by class.
567 (b) (i) In providing the substitute coverage required under Subsection (4)(a)(iii), the
568 association may offer to:
569 (A) reissue the terminated coverage; or
570 (B) issue an alternative policy.
571 (ii) An alternative or reissued policy under Subsection (4)(b)(i):
572 (A) shall be offered without requiring evidence of insurability; and
573 (B) may not provide for any waiting period or exclusion that would not have applied
574 under the terminated policy.
575 (iii) The association may reinsure ~~any~~ an alternative or reissued policy.
576 (c) (i) An alternative policy adopted by the association ~~shall be~~ is subject to the
577 approval of the commissioner.
578 (ii) The association may adopt alternative policies of various types for future issuance
579 without regard to any particular impairment or insolvency.
580 (iii) An alternative policy:
581 (A) shall contain at least the minimum statutory provisions required in this state; and
582 (B) provide benefits that are not unreasonable in relation to the premium charged.
583 (iv) The association shall set the premium for an alternative policy in accordance with
584 a table of rates that the association adopts. The premium shall reflect:
585 (A) the amount of insurance to be provided; and
586 (B) the age and class of risk of each insured.
587 (v) For an alternative policy issued under an individual policy of the impaired or
588 insolvent insurer:
589 (A) age shall be determined in accordance with the original policy provisions; and

590 (B) class of risk [~~shall be~~] is the class of risk under the original policy.

591 (vi) For an alternative policy issued to individuals insured under a group policy:

592 (A) age and class of risk shall be determined by the association in accordance with the
593 alternative policy provisions and risk classification standards approved by the commissioner;
594 and

595 (B) the premium may not reflect any changes in the health of the insured after the
596 original policy was last underwritten.

597 (vii) [~~Any~~] An alternative policy issued by the association shall provide coverage of a
598 type similar to that of the policy issued by the impaired or insolvent insurer, as determined by
599 the association.

600 (d) If the association elects to reissue terminated coverage at a premium rate different
601 from that charged under the terminated policy, the association shall set the premium [~~shall be~~
602 ~~set by the association~~] in accordance with the amount of insurance provided and the age and
603 class of risk, subject to the approval of the commissioner or by a court of competent
604 jurisdiction.

605 (e) The association's obligations with respect to coverage under any policy of the
606 impaired or insolvent insurer or under any reissued or alternative policy [~~shall cease~~] ceases on
607 the date the coverage or policy is replaced by another similar policy by:

608 (i) the [~~policyholder~~] owner;

609 (ii) the insured; or

610 (iii) the association.

611 (f) (i) With respect to a claim unpaid as of the coverage date and a claim incurred
612 during the period defined in Subsection (4)(a)(i), a provider of health care services, by
613 accepting a payment from the association upon a claim of the provider against an insured
614 whose health care insurer is an insolvent member insurer, agrees to forgive the insured of 20%
615 of the debt which otherwise would be paid by the insurer had it not been insolvent, subject to a
616 maximum of \$8,000 being required to be forgiven by any one provider as to each claimant.

617 (ii) The obligations of a solvent insurer to pay all or part of the covered claim are not

618 diminished by the forgiveness provided for in this section.

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

622 (6) Nonpayment of premiums within 31 days after the date required under the terms of
623 any guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage
624 ~~[shall terminate]~~ terminates the association's obligations under the policy or coverage under
625 this part with respect to the policy or coverage, except with respect to any claims incurred or
626 any net cash surrender value that may be due in accordance with this part.

627 (7) (a) ~~[Premiums]~~ Premium due after the coverage date with respect to the covered
628 portion of a policy or contract of an impaired or insolvent insurer ~~[shall belong to and be]~~
629 belongs to and is payable at the direction of the association. If a liquidator of an insolvent
630 insurer requests the report, the association shall report to the liquidator the premium collected
631 by the association.

632 (b) The association is liable to ~~[the]~~ a policy or contract ~~[owners]~~ owner for unearned
633 premiums due to the policy or contract ~~[owners]~~ owner arising after the coverage date with
634 respect to the covered portion of the policy or contract.

635 (8) The protection provided by this part does not apply if any guaranty protection is
636 provided to residents of this state by laws of the domiciliary state or jurisdiction of the
637 impaired or insolvent insurer other than this state.

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

640 (a) impose permanent policy or contract liens in connection with a guarantee,
641 assumption, or reinsurance agreement, if the association finds that:

642 (i) the amounts that can be assessed under this part are less than the amounts needed
643 to assure full and prompt performance of the association's duties under this part; or

644 (ii) the economic or financial conditions as they affect member insurers are
645 sufficiently adverse to render the imposition of the permanent policy or contract liens to be in

646 the public interest;

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

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

656 (i) established by the [~~liquidator or rehabilitator~~] receiver; and

657 (ii) approved by the receivership court.

658 (10) (a) A special deposit in this state held pursuant to law or required by the
659 commissioner for the benefit of creditors, including policy owners, that is not turned over to
660 the domiciliary [~~liquidator~~] receiver upon the entry of a final order of liquidation or order
661 approving a rehabilitation plan of an insurer domiciled in any state shall be promptly paid to
662 the association.

663 (b) Any amount paid under Subsection (10)(a) to the association less the amount
664 retained by the association shall be treated as a distribution of estate assets pursuant to
665 Sections 31A-27a-601, 31A-27a-602, and [~~31A-27a-702~~] 31A-27a-701.

666 (11) If the association fails to act within a reasonable period of time as provided in this
667 section, the commissioner [~~shall have~~] has the powers and duties of the association under this
668 part with respect to an impaired or insolvent insurer.

669 (12) The association may [~~render assistance and advice to~~] assist or advise the
670 commissioner, upon the commissioner's request, concerning:

671 (a) rehabilitation;

672 (b) payment of claims;

673 (c) continuance of coverage; or

674 (d) the performance of other contractual obligations of any impaired or insolvent
675 insurer.

676 (13) (a) The association has standing to appear or intervene before a court or agency in
677 this state with jurisdiction over:

678 (i) an impaired or insolvent insurer concerning which the association is or may
679 become obligated under this part; or

680 (ii) any person or property against which the association may have rights through
681 subrogation or otherwise.

682 (b) The standing referred to in Subsection (13)(a) extends to all matters germane to the
683 powers and duties of the association, including:

684 (i) proposals for reinsuring, modifying, or guaranteeing the policies or contracts of the
685 impaired or insolvent insurer; and

686 (ii) the determination of the policies or contracts and contractual obligations.

687 (c) The association has the right to appear or intervene before a court in another state
688 with jurisdiction over:

689 (i) an impaired or insolvent insurer for which the association is or may become
690 obligated; or

691 (ii) any person or property against which the association may have rights through
692 subrogation of the insurer's [~~policyholders~~] policyowners.

693 (14) (a) [~~Any~~] A person receiving benefits under this part [~~shall be~~] is considered to
694 have assigned the rights under, and any causes of action against any person for losses arising
695 under, resulting from, or otherwise relating to the covered policy or contract to the association
696 to the extent of the benefits received because of this part, whether the benefits are payments of,
697 or on account of:

698 (i) contractual obligations;

699 (ii) continuation of coverage; or

700 (iii) provision of substitute or alternative coverages.

701 (b) As a condition precedent to the receipt of any right or benefits conferred by this

702 part upon that person, the association may require an assignment to it of the rights and causes
703 of action described in Subsection (14)(a) by any:

- 704 (i) payee;
- 705 (ii) policy or contract owner;
- 706 (iii) beneficiary;
- 707 (iv) insured; or
- 708 (v) annuitant.

709 (c) The subrogation rights obtained by the association under this Subsection (14)
710 [~~shall~~] have the same priority against the assets of the impaired or insolvent insurer as that
711 possessed by the person entitled to receive benefits under this part.

712 (d) In addition to Subsections (14)(a) through (c), the association has [~~an~~] the
713 common law rights of subrogation and any other equitable or legal remedy that would have
714 been available to the impaired or insolvent insurer or owner, beneficiary, or payee of a policy
715 or contract with respect to the policy or contract, including in the case of a structured
716 settlement annuity any rights of the owner, beneficiary, or payee of the annuity to the extent of
717 benefits received pursuant to this part against a person originally or by succession responsible
718 for the losses arising from the personal injury relating to the annuity or payment of the
719 annuity.

720 (e) If a provision of this Subsection (14) is invalid or ineffective with respect to [~~any~~]
721 a person or claim for any reason, the amount payable by the association with respect to the
722 related covered obligations shall be reduced by the amount realized by any other person with
723 respect to the person or claim that is attributable to the policies, or portion of the policies,
724 covered by the association.

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

729 (15) (a) In addition to the rights and powers elsewhere in this part, the association

730 may:

731 (i) enter into [~~contracts that are~~] a contract that is necessary or proper to carry out the
732 provisions and purposes of this part;

733 (ii) sue or be sued, including taking any legal actions necessary or proper to:

734 (A) recover any unpaid assessments under Section 31A-28-109; and

735 (B) settle claims or potential claims against the association;

736 (iii) borrow money to effect the purposes of this part;

737 (iv) employ or retain the persons necessary or the appropriate staff members to:

738 (A) handle the financial transactions of the association; and

739 (B) perform other functions as become necessary or proper under this part;

740 (v) take necessary or appropriate legal action to avoid or recover payment of improper
741 claims;

742 (vi) exercise, for the purposes of this part and to the extent approved by the
743 commissioner, the powers of a domestic life or health insurer, but in no case may the
744 association issue insurance policies or annuity contracts other than those issued to perform its
745 obligation under this part;

746 (vii) request information from a person seeking coverage from the association to aid
747 the association in determining the association's obligations under this part with respect to the
748 person;

749 (viii) take other necessary or appropriate action to discharge the association's duties
750 and obligations under this part or to exercise the association's powers under this part; and

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

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

754 (i) is a legal investment for a domestic insurer; and

755 (ii) may be carried as admitted assets.

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

758 (16) The association may join an organization of one or more other state associations
759 of similar purposes to further the purposes and administer the powers and duties of the
760 association.

761 (17) (a) ~~[Except as provided in Subsection (17)(b), at]~~ At any time within ~~[one year]~~
762 180 days after the coverage date, the association may elect to succeed to the rights and
763 obligations of the member insurer that:

764 (i) accrue on or after the coverage date; and

765 (ii) relate to covered policies under any one or more indemnity reinsurance
766 agreements;

767 (A) entered into by the member insurer as a ceding insurer and its reinsurer; and

768 (B) selected by the association.

769 ~~[(b) Notwithstanding Subsection (17)(a), the association may not exercise an election~~
770 ~~with respect to a reinsurance agreement if the receiver, rehabilitator, or liquidator of the~~
771 ~~member insurer has previously and expressly disaffirmed the reinsurance agreement.]~~

772 ~~[(c) The election described in Subsection (17)(a) shall be effected by a notice to:]~~

773 ~~[(i) (A) the receiver;]~~

774 ~~[(B) rehabilitator; or]~~

775 ~~[(C) liquidator; and]~~

776 ~~[(ii) the affected reinsurers.]~~

777 (b) An election made pursuant to Subsection (17)(a) is effective as of the date of the
778 order of liquidation.

779 (c) The association may make an election described in Subsection (17)(a) by notifying
780 an affected reinsurer in writing, with verification of receipt, through:

781 (i) the association; or

782 (ii) a nationally recognized association representing state guaranty associations that is
783 approved by the commissioner, that provides notice on behalf of the association.

784 (d) The association shall provide a copy of the notice described in Subsection (17)(c)
785 to the receiver.

786 (e) (i) The receiver of an insolvent insurer and each reinsurer of the ceding member
787 insurers shall make available as soon as possible after commencement of formal delinquency
788 proceedings the information described in Subsection (17)(e)(ii) to:

- 789 (A) the association; or
- 790 (B) a nationally recognized association representing state guaranty associations that is
791 approved by the commissioner, on behalf of the association.

792 (ii) This Subsection (17)(e) applies to:

- 793 (A) copies of in-force contracts of reinsurance and the related records relevant to the
794 determination of whether the in-force contracts of reinsurance should be assumed;
- 795 (B) notices of any default under a reinsurance contract; or
- 796 (C) any known event or condition that with the passage of time could become a
797 default under a reinsurance contract.

798 ~~[(d)]~~ (f) If the association makes an election under Subsection (17)(a), the association
799 shall comply with Subsections (17)~~[(d)]~~(f)(i) through ~~[(vi)]~~ (vii) with respect to the agreements
800 selected by the association.

801 (i) For ~~[contracts]~~ a contract covered, in whole or in part, by the association, the
802 association ~~[shall be]~~ is responsible for:

- 803 (A) ~~[all]~~ the unpaid premiums due under the agreements for periods both before and
804 after the coverage date; and
- 805 (B) the performance of ~~[all]~~ the other obligations to be performed after the coverage
806 date.

807 (ii) The association may charge ~~[contracts]~~ a contract covered in part by the
808 association the costs for reinsurance in excess of the obligations of the association, through
809 reasonable allocation methods.

810 (iii) The association shall provide notice and an accounting to the receiver of a charge
811 made pursuant to Subsection (17)(f)(ii).

812 ~~[(iii)]~~ (iv) The association is entitled to any amounts payable by the reinsurer under
813 the agreements with respect to ~~[losses or events]~~ a loss or event that:

814 (A) ~~[occur in periods]~~ occurs after the coverage date; and

815 (B) ~~[relate to contracts]~~ relates to a contract covered by the association, in whole or in
816 part.

817 ~~[(iv)]~~ (v) On receipt of any amounts under Subsection (17)~~[(d)(iii)]~~(f)(iv), the
818 association shall pay to the beneficiary under the policy or contract on account of which the
819 amounts were paid an amount equal to the ~~[excess]~~ lesser of:

820 (A) the amount received by the association; and

821 (B) the excess of the amount received by the association over the benefits paid or
822 payable by the association on account of the policy or contract less the retention of the insurer
823 applicable to the loss or event.

824 ~~[(v)]~~ (vi) (A) Within 30 days following the association's election, the association and
825 each indemnity reinsurer shall calculate the net balance due to or from the association under
826 each reinsurance agreement as of the date of the association's election, giving full credit to
827 ~~[all]~~ the items paid by either the member insurer, ~~[or]~~ its receiver, ~~[rehabilitator, or liquidator,]~~
828 or the indemnity reinsurer ~~[during the period between the coverage date and]~~ before the date of
829 the association's election.

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

832 (B) Within five days of the completion of the calculation under Subsection
833 (17)(f)(vi)(A):

834 (I) the reinsurer shall pay the receiver the amounts due for a loss or event before the
835 coverage date, subject to any set-off for premiums unpaid for a period before the coverage
836 date; and

837 (II) the association or the reinsurer shall pay any remaining balance due the other.

838 (C) A dispute over an amount due to either party shall be resolved:

839 (I) by arbitration pursuant to the terms of the affected reinsurance contract; or

840 (II) if the reinsurance contract contains no arbitration clause, as otherwise provided by
841 law.

842 ~~[(C)]~~ (D) If the receiver~~[-, rehabilitator, or liquidator has received any amounts]~~
 843 receives an amount due the association pursuant to Subsection (17)~~[(d)(iii)]~~(f)(iv), the
 844 receiver~~[-, rehabilitator, or liquidator]~~ shall remit ~~[the same]~~ that amount to the association as
 845 promptly as practicable.

846 ~~[(vi)]~~ (vii) If the association, or the receiver on behalf of the association, within 60
 847 days of the election, pays the premiums due for periods both before and after the coverage date
 848 that relate to contracts covered by the association, in whole or in part, the reinsurer may not:

849 (A) terminate the reinsurance ~~[agreements]~~ agreement for failure to pay premium, to
 850 the extent the ~~[agreements relate to contracts]~~ reinsurance agreement relates to a policy or
 851 contract covered by the association, in whole or in part; and

852 (B) set off ~~[any unpaid premium due for periods prior to the coverage date]~~ against
 853 amounts due the association~~[-]~~ an amount due:

854 (I) under another contract; or

855 (II) as an unpaid amount due from a person other than the association.

856 (g) (i) This Subsection (17)(g) applies during the period that:

857 (A) begins on the coverage date; and

858 (B) ends:

859 (I) on the election date; or

860 (II) if no election date occurs, 180 days after the coverage date.

861 (ii) During the period described in Subsection (17)(g)(i):

862 (A) neither the association nor the reinsurer have a right or obligation under a
 863 reinsurance contract that the association may assume under Subsection (17)(a), whether for a
 864 period before or after the coverage date; and

865 (B) the reinsurer, the receiver, and the association, to the extent practicable, shall
 866 provide each other data and records reasonably requested.

867 (iii) Notwithstanding Subsection (17)(g)(ii), once the association elects to assume a
 868 reinsurance contract, the parties' rights and obligations are governed by Subsections (17)(f)(i)
 869 through (vi).

870 (h) If the association does not elect to assume a reinsurance contract by the election
 871 date pursuant to Subsection (17)(a), the association has no right or obligation with respect to
 872 the reinsurance contract, whether for a period before or after the coverage date.

873 ~~[(e)]~~ (i) An insurer other than the association ~~[shall succeed]~~ succeeds to the rights and
 874 obligations of the association under Subsections (17)(a) through ~~[(d)]~~ (f) effective as of the
 875 date agreed upon by the association and the other insurer and regardless of whether the
 876 association has made the election referred to in Subsections (17)(a) through ~~[(d)]~~ (f) provided
 877 that:

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

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

880 (iii) the indemnity reinsurance agreements automatically terminate for new

881 reinsurance unless the indemnity reinsurer and the other insurer agree to the contrary;

882 (iv) the obligations described in Subsection (17)~~[(d)(iv)]~~(f)(v) may not apply on and

883 after the date the indemnity reinsurance agreement is transferred to the third party insurer;

884 ~~[and]~~

885 (v) the transferring party shall give notice in writing, with verification of receipt, to the
 886 affected reinsurer not less than 30 days before the effective date of the transfer; and

887 ~~[(v)]~~ (vi) this Subsection (17)~~[(e)]~~(i) may not apply if the association has previously
 888 expressly determined in writing that the association will not exercise the election referred to in
 889 Subsections (17)(a) through ~~[(d)]~~ (f).

890 ~~[(f)]~~ (j) (i) This Subsection (17) supersedes the provisions of any law of this state or of
 891 any affected reinsurance agreement that provides for or requires any payment of reinsurance
 892 proceeds on account of losses or events that occur in periods after the coverage date, to:

893 (A) the receiver~~[-, liquidator, or rehabilitator]~~ of an insolvent member insurer~~[-]; or~~

894 (B) another person.

895 (ii) The receiver~~[-, rehabilitator, or liquidator shall remain]~~ is entitled to any amounts
 896 payable by the reinsurer under the reinsurance agreement with respect to ~~[losses or events that~~
 897 ~~occur in periods prior to]~~ a loss or event that occurs before the coverage date, subject to

898 applicable setoff provisions.

899 ~~[(g)]~~ (k) Except as otherwise expressly provided in Subsections (17)(a) through ~~[(f)]~~
 900 (j), this Subsection (17) does not:

901 (i) alter or modify the terms and conditions of ~~[the indemnity]~~ a reinsurance
 902 ~~[agreements]~~ agreement of the insolvent member insurer;

903 (ii) abrogate or limit ~~[any rights of]~~ a right any reinsurer to claim that it is entitled to
 904 rescind a reinsurance agreement; ~~[or]~~

905 (iii) give a policy owner or beneficiary an independent cause of action against ~~[an~~
 906 ~~indemnity]~~ a reinsurer that is not otherwise set forth in the ~~[indemnity]~~ reinsurance
 907 agreement~~[-]~~;

908 (iv) limit or affect the association's rights as a creditor of the estate of an insolvent
 909 insurer against the assets of the estate; or

910 (v) apply to a reinsurance agreement that covers property or casualty risks.

911 (18) The board of directors of the association ~~[shall have]~~ has discretion and may
 912 exercise reasonable business judgment to determine the means by which the association is to
 913 provide the benefits of this part in an economical and efficient manner.

914 (19) If the association ~~[has arranged or offered]~~ arranges or offers to provide the
 915 benefits of this part to a covered person under a plan or arrangement that fulfills the
 916 association's obligations under this part, the person is not entitled to benefits from the
 917 association in addition to or other than those provided under the plan or arrangement.

918 (20) (a) Venue in a suit against the association arising under this part ~~[shall be in]~~ is
 919 Salt Lake County.

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

922 Section 5. Section **31A-28-109** is amended to read:

923 **31A-28-109. Assessments.**

924 (1) (a) For the purpose of providing the funds necessary to carry out the powers and
 925 duties of the association, the board of directors shall assess the member insurers, separately for

926 each class or subclass, at the time and for the amounts that the board of directors finds
927 necessary.

928 (b) Member insurer liability for an assessment is established as of the coverage date.

929 (c) Subject to Subsection (1)(d), a called assessment:

930 (i) is due not less than 30 days after prior written notice to the member insurer; and

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

932 (d) Notwithstanding Subsection (1)(c), the association may:

933 (i) assess the association's members as of the coverage date; and

934 (ii) defer the collection of the assessment described in Subsection (1)(d)(i).

935 (e) An assessment:

936 (i) has the force and effect of a judgment lien against the member insurer; and

937 (ii) may not be extinguished until paid.

938 (2) The two classes of assessment are described in Subsections (2)(a) and (2)(b).

939 (a) A Class A assessment shall be authorized and called for the purpose of meeting
940 administrative and legal costs and other expenses. A Class A assessment may be authorized
941 and called whether or not related to a particular impaired or insolvent insurer.

942 (b) A Class B assessment shall be authorized and called to the extent necessary to
943 carry out the powers and duties of the association under Section 31A-28-108 with regard to an
944 impaired or an insolvent insurer.

945 (3) (a) (i) The amount of a Class A assessment:

946 (A) shall be determined by the board of directors; and

947 (B) may be authorized and called on a pro rata or non-pro rata basis.

948 (ii) If the Class A assessment is pro rata, the board of directors may credit the
949 assessment against future Class B assessments.

950 (iii) The total of ~~at~~ the non-pro rata assessments may not exceed \$300 per member
951 insurer in any one calendar year.

952 (b) The amount of a Class B assessment shall be allocated for assessment purposes
953 among subclasses pursuant to an allocation formula that may be based on:

- 954 (i) the premiums or reserves of the impaired or insolvent insurer; or
955 (ii) any other standard determined by the board of directors in the board of directors'
956 sole discretion as being fair and reasonable under the circumstances.
- 957 (c) (i) A Class B assessment against a member insurer for the life insurance subclass,
958 the annuity subclass, and the unallocated annuity subclass shall be in the proportion that the
959 premiums received on business in this state by the member insurer on policies or contracts
960 included in the subclass for the three most recent calendar years for which information is
961 available preceding the year which includes the coverage date bears to the premiums received
962 on business in this state for the same period by ~~aH~~ the assessed member insurers.
- 963 (ii) A Class B assessment against a member insurer for an accident and health
964 insurance subclass shall be in the proportion that the premiums received on business in this
965 state by each assessed member insurer on policies or contracts included in the subclass for the
966 most recent calendar year for which information is available preceding the year in which the
967 assessment is made bears to the premiums received on business in this state on policies or
968 contracts included in the subclass for that calendar year by ~~aH~~ the assessed member insurers.
- 969 (d) Assessments for funds to meet the requirements of the association with respect to
970 an impaired or insolvent insurer may not be authorized or called until necessary to implement
971 the purposes of this part.
- 972 (e) Classification of assessments and premiums under Subsection (3)(b) and
973 computation of assessments under this Subsection (3) shall be made with a reasonable degree
974 of accuracy, recognizing that exact determinations may not always be possible.
- 975 (f) The association shall notify each member insurer of its anticipated pro rata share of
976 an authorized assessment not yet called within 180 days after the day on which the assessment
977 is authorized.
- 978 (4) (a) The association may abate or defer, in whole or in part, the assessment of a
979 member insurer if, in the opinion of the board of directors, payment of the assessment would
980 endanger the ability of the member insurer to fulfill its contractual obligations.
- 981 (b) If an assessment against a member insurer is abated or deferred in whole or in part

982 under Subsection (4)(a), the amount by which the assessment is abated or deferred may be
983 assessed against the other member insurers in a manner consistent with the basis for
984 assessments set forth in this section.

985 (c) Once a condition that caused a deferral is removed or rectified, the member insurer
986 shall pay ~~an~~ the assessments that were deferred pursuant to a repayment plan approved by
987 the association.

988 (5) (a) (i) Subject to Subsection (5)(b), the total of ~~an~~ the assessments authorized by
989 the association on a member insurer for each subclass may not in any one calendar year exceed
990 2% of that member's total average annual assessable premium in that subclass as defined in
991 Subsection (3).

992 (ii) If two or more assessments are authorized in one calendar year with respect to one
993 or more insurers that become impaired or insolvent in different calendar years, the average
994 annual premiums for purposes of the aggregate assessment percentage limitation in Subsection
995 (5)(a)(i) shall be equal and limited to the highest of the total average annual assessable
996 premiums of the different calendar year periods involved in the assessment or assessments.

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

1000 (b) The board of directors may provide in the plan of operation a method of allocating
1001 funds among claims, whether relating to one or more impaired or insolvent insurers, when the
1002 maximum assessment will be insufficient to cover anticipated claims.

1003 (c) If the maximum assessment for the life insurance or annuity subclass in any one
1004 year does not provide an amount sufficient to carry out the responsibilities of the association,
1005 the board of directors shall assess the other of the subclasses of the life insurance and annuity
1006 class for the necessary additional amount:

1007 (i) pursuant to Subsection (3)(b); and

1008 (ii) subject to the maximum stated in Subsection (5)(a).

1009 (6) (a) The board of directors may, by an equitable method established in the plan of

1010 operation, refund to member insurers in proportion to the contribution of each insurer to that
1011 subclass the amount by which the assets of the subclass exceed the amount the board of
1012 directors finds is necessary to carry out the obligations of the association with regard to that
1013 subclass, including assets accruing from:

- 1014 (i) assignment;
- 1015 (ii) subrogation;
- 1016 (iii) net realized gains; and
- 1017 (iv) income from investments.

1018 (b) Notwithstanding Subsection (6)(a), a reasonable amount may be retained to
1019 provide funds for the continuing expenses of the association and for future losses.

1020 (7) A member insurer, in determining its premium rates and policyowner dividends as
1021 to any kind of insurance within the scope of this part, may consider the amount reasonably
1022 necessary to meet its assessment obligations under this part.

1023 (8) (a) The association shall issue to each insurer paying an assessment under this part,
1024 other than a Class A assessment, a certificate of contribution, in a form approved by the
1025 commissioner, for the amount of the assessment paid.

1026 (b) ~~[AH]~~ The outstanding certificates described in Subsection (8)(a) shall be of equal
1027 dignity and priority without reference to amounts or dates of issue.

1028 (c) (i) A certificate of contribution described in Subsection (8)(a) may be shown by the
1029 insurer in its financial statement as an asset in the amount of the certificate of contribution less
1030 the amount by which the insurer's premium taxes have already been reduced with respect to
1031 the certificate.

1032 (ii) For good cause shown, the commissioner may order the insurer to show a different
1033 amount in its financial statement than the amount under Subsection (8)(c)(i).

1034 (9) (a) The association may request information from a member insurer to aid in the
1035 exercise of the association's power under this part.

1036 (b) A member insurer shall comply promptly with a request of the association under
1037 this Subsection (9).

1038 Section 6. Section **31A-28-110** is amended to read:

1039 **31A-28-110. Plan of operation.**

1040 (1) (a) The association shall submit to the commissioner a plan of operation and any
1041 amendments to the plan necessary or suitable to assure the fair, reasonable, and equitable
1042 administration of the association.

1043 (b) The plan of operation and any amendments become effective:

1044 (i) upon the commissioner's written approval; or

1045 (ii) after 30 days from the date the plan of operation or amendment is submitted to the
1046 commissioner if the commissioner has not disapproved the plan or amendment.

1047 (c) (i) If the association fails to submit a suitable amendment to the plan, the
1048 commissioner, after notice and hearing, shall adopt reasonable rules that are necessary or
1049 advisable to effectuate the provisions of this part.

1050 (ii) The rules described in Subsection (1)(c)(i) [~~shall~~] continue in force until:

1051 (A) modified by the commissioner; or

1052 (B) superseded by an amendment to the plan:

1053 (I) submitted by the association; and

1054 (II) approved by the commissioner.

1055 (2) [~~All member insurers~~] A member insurer shall comply with the plan of operation.

1056 (3) The plan of operation shall, in addition to any other requirement in this part:

1057 (a) establish procedures for handling the assets of the association;

1058 (b) establish the amount and method of reimbursing members of the board of directors
1059 under Section 31A-28-107;

1060 (c) establish regular places and times for meetings of the board of directors, including
1061 telephone conference calls;

1062 (d) establish procedures for records to be kept of [~~all~~] the financial transactions of:

1063 (i) the association;

1064 (ii) the association's agents; and

1065 (iii) the board of directors;

- 1066 (e) subject to Section 31A-28-107, establish the procedures to be followed for:
- 1067 (i) selecting members to the board of directors; and
- 1068 (ii) submitting the selected members to the commissioner for approval;
- 1069 (f) establish any additional procedures for assessments under Section 31A-28-109;

1070 [~~and~~]

1071 (g) establish procedures under which a member insurer may be removed from the
1072 board of directors for cause, including when the member insurer becomes an impaired or
1073 insolvent insurer;

1074 (h) require the board of directors to establish policies and procedures that address
1075 conflicts of interests; and

1076 [~~(g)~~] (i) contain additional provisions necessary or proper for the execution of the
1077 powers and duties of the association.

1078 (4) (a) The plan of operation may provide that any or all powers and duties of the
1079 association, except those under Subsection 31A-28-108(14)(d) and Section 31A-28-109, are
1080 delegated to a corporation, association, or other organization that will perform functions
1081 similar to those of the association, or its equivalent, in two or more states.

1082 (b) A corporation, association, or organization described in Subsection (4)(a) shall be:

- 1083 (i) reimbursed for any payments made on behalf of the association; and
- 1084 (ii) paid for its performance of any function of the association.

1085 (c) A delegation under this Subsection (4):

1086 (i) [~~shall take~~] takes effect only with the approval of:

1087 (A) the board of directors; and

1088 (B) the commissioner; and

1089 (ii) may be made only to a corporation, association, or organization that extends
1090 protection not substantially less favorable and effective than that provided by this part.

1091 Section 7. Section **31A-28-111** is amended to read:

1092 **31A-28-111. Duties and powers under this part.**

1093 In addition to the duties and powers enumerated elsewhere in this part, the persons

1094 [~~listed~~] described in this section have the duties and powers described in Subsections (1)
1095 through (6).

1096 (1) The commissioner shall:

1097 (a) upon request of the board of directors, provide the association with a statement of
1098 the premiums for each member insurer:

1099 (i) in this state; and

1100 (ii) any other appropriate state; and

1101 (b) if an impairment is declared and the amount of the impairment is determined,
1102 serve a demand upon the impaired insurer to make good the impairment within a reasonable
1103 time[~~; and~~].

1104 [~~(c) in a liquidation or rehabilitation proceeding involving a domestic insurer, be~~
1105 ~~appointed as the liquidator or rehabilitator.~~]

1106 (2) Notice to the impaired insurer under Subsection (1)(b) [~~shall constitute~~] constitutes
1107 notice to the shareholders of the impaired insurer if the impaired insurer has shareholders.

1108 (3) The failure of the insurer to promptly comply with the commissioner's demand
1109 under Subsection (1)(b) does not excuse the association from the performance of its powers
1110 and duties under this part.

1111 (4) (a) After notice and hearing, the commissioner may suspend or revoke the
1112 certificate of authority to transact insurance in this state of [~~any~~] a member insurer not
1113 domiciled in this state that fails to:

1114 (i) pay an assessment when due; or

1115 (ii) comply with the plan of operation.

1116 (b) (i) As an alternative to suspending or revoking a certificate of authority under
1117 Subsection (4)(a), the commissioner may levy a forfeiture on any member insurer that fails to
1118 pay an assessment when due.

1119 (ii) A forfeiture described in Subsection (4)(b)(i):

1120 (A) may not exceed 5% of the unpaid assessment per month; and

1121 (B) may not be less than \$100 per month.

1122 (5) (a) A final action of the board of directors or the association may be appealed to the
 1123 commissioner by any member insurer if appeal is taken within 60 days of the date the member
 1124 insurer received notice of the final action being appealed.

1125 (b) If a member insurer is appealing an assessment, the amount assessed shall be:

1126 (i) paid to the association; and

1127 (ii) made available to meet association obligations during the pendency of an appeal.

1128 (c) If the appeal on the assessment described in Subsection (5)(b) is upheld, the
 1129 amount paid in error or excess shall be returned to the member insurer.

1130 (d) Any final action or order of the commissioner [~~shall be~~] is subject to judicial
 1131 review in a court of competent jurisdiction in accordance with the laws of this state that apply
 1132 to the actions or orders of the commissioner.

1133 (6) The [~~liquidator, rehabilitator, or conservator of any~~] receiver of an impaired insurer
 1134 shall notify [~~all~~] the interested persons of the effect of this part.

1135 Section 8. Section **31A-28-112** is amended to read:

1136 **31A-28-112. Reports.**

1137 [~~(1) The purpose of this section is to aid in the detection and prevention of insurer~~
 1138 ~~insolvencies or impairments.]~~

1139 [~~(2)~~] (1) The commissioner shall:

1140 [~~(a) notify the commissioner of every state within 30 days following the action taken or~~
 1141 ~~the date the action occurs, when the commissioner takes the following actions against a~~
 1142 ~~member insurer:]~~

1143 [~~(i) revokes its license;]~~

1144 [~~(ii) suspends its license; or]~~

1145 [~~(iii) makes a formal order that the member insurer:]~~

1146 [~~(A) restrict its premium writing;]~~

1147 [~~(B) obtain additional contributions to surplus;]~~

1148 [~~(C) withdraw from the state;]~~

1149 [~~(D) reinsure all or any part of its business; or]~~

1150 ~~[(E) increase capital, surplus, or any other account for the security of policy owners or~~
 1151 ~~creditors;]~~

1152 ~~[(b)]~~ (a) report to the board of directors when ~~[the commissioner has]:~~

1153 ~~[(i) taken any of the actions set forth in Subsection (2)(a); or]~~

1154 (i) the commissioner takes an action set forth in Section 31A-27a-201;

1155 (ii) an event described in Section 31A-17-603, 31A-17-604, or 31A-17-605 occurs; or

1156 ~~[(ii) received]~~ (iii) the commissioner receives a report from any other commissioner

1157 indicating that an action described in Subsection ~~[(2)(a)]~~ (1)(a)(i) has been taken in another

1158 state;

1159 ~~[(e)]~~ (b) include in the report to the board of directors required by Subsection ~~[(2)(b)]~~

1160 (1)(a):

1161 (i) ~~[a]]~~ the significant details of the action taken; ~~[or]~~

1162 (ii) the significant details of an event described in Subsection (1)(a)(ii); or

1163 ~~[(ii)]~~ (iii) the report received from another commissioner;

1164 ~~[(d)]~~ (c) promptly report to the board of directors when the commissioner has

1165 reasonable cause to believe from an examination of any member insurer, whether completed or

1166 in process, that the insurer may be an impaired or insolvent insurer; and

1167 ~~[(e)]~~ (d) furnish to the board of directors the National Association of Insurance

1168 Commissioners Insurance Regulatory Information System ratios and listings of companies not

1169 included in the ratios developed by the National Association of Insurance Commissioners.

1170 ~~[(3)]~~ (2) (a) The board of directors may use the information contained in the ratios and

1171 listings described in Subsection ~~[(2)(e)]~~ (1)(d) in carrying out the board of directors' duties and

1172 responsibilities under this ~~[section]~~ part.

1173 (b) The board of directors shall keep the report and the information contained in the

1174 ratios and listings ~~[shall be kept]~~ confidential ~~[by the board of directors]~~ until the

1175 commissioner or other lawful authority publishes the information.

1176 ~~[(4)]~~ (3) The commissioner may seek the advice and recommendations of the board of

1177 directors concerning any matter affecting the commissioner's duties and responsibilities

1178 regarding the financial condition of member insurers and companies seeking admission to
1179 transact insurance business in this state.

1180 ~~[(5)]~~ (4) (a) The board of directors may make reports and recommendations to the
1181 commissioner upon any matter germane to:

1182 (i) the solvency, liquidation, rehabilitation, or conservation of any member insurer; or

1183 (ii) the solvency of any company seeking to do an insurance business in this state.

1184 (b) The reports and recommendations of the board of directors described in

1185 ~~[Subsection (5)(a) may not be considered]~~ Subsection (4)(a) are not public documents.

1186 ~~[(6)]~~ (5) The board of directors may, upon majority vote, notify the commissioner of
1187 any information indicating a member insurer may be an impaired or insolvent insurer.

1188 ~~[(7)]~~ (6) The board of directors may make recommendations to the commissioner for
1189 the detection and prevention of insurer insolvencies.

1190 ~~[(8)]~~ (7) (a) At the conclusion of any insurer insolvency in which the association was
1191 obligated to pay covered claims, the board of directors shall prepare a report to the
1192 commissioner containing the information the board of directors has in its possession bearing
1193 on the history and causes of the insolvency.

1194 (b) In preparing a report on the history and causes of insolvency of a particular insurer,
1195 the board of directors may cooperate with:

1196 (i) the board of directors of a guaranty association in another state; or

1197 (ii) an organization described in Subsection 31A-28-108(16).

1198 (c) The board of directors may adopt by reference any report prepared by:

1199 (i) a guaranty association in another state; or

1200 (ii) an organization described in Subsection 31A-28-108(16).

1201 Section 9. Section **31A-28-114** is amended to read:

1202 **31A-28-114. Miscellaneous provisions.**

1203 (1) Nothing in this part shall be construed to reduce the liability for unpaid
1204 assessments of the insureds of an impaired or insolvent insurer operating under a plan with
1205 assessment liability.

1206 (2) (a) [~~Records shall be kept of all meetings of the~~] The board of directors shall keep
1207 a record of a meeting of the board of directors to discuss the activities of the association in
1208 carrying out its powers and duties under Section 31A-28-108.

1209 (b) [~~Records~~] A record of the association with respect to an impaired or insolvent
1210 insurer may not be disclosed before the earlier of:

1211 (i) the termination of a liquidation, rehabilitation, or conservation proceeding
1212 involving the impaired or insolvent insurer;

1213 (ii) the termination of the impairment or insolvency of the insurer; or

1214 (iii) upon the order of a court of competent jurisdiction.

1215 (c) Nothing in this Subsection (2) [~~shall limit~~] limits the duty of the association to
1216 render a report of its activities under Section 31A-28-115.

1217 (3) (a) For the purpose of carrying out its obligations under this part, the association
1218 [~~shall be~~] is considered to be a creditor of an impaired or insolvent insurer to the extent of
1219 assets attributable to covered policies reduced by any amounts to which the association is
1220 entitled as subrogee pursuant to Subsection 31A-28-108(14).

1221 (b) Assets of the impaired or insolvent insurer attributable to covered policies shall be
1222 used to continue [~~aff~~] the covered policies and pay [~~aff~~] the contractual obligations of the
1223 impaired or insolvent insurer as required by this part.

1224 (c) As used in this Subsection (3), assets attributable to covered policies are that
1225 proportion of the assets which the reserves that should have been established for covered
1226 policies bear to the reserves that should have been established for all policies of insurance
1227 written by the impaired or insolvent insurer.

1228 (4) (a) As a creditor of the impaired or insolvent insurer under Subsection (3) and
1229 consistent with Section 31A-27a-701, the association and any other similar association are
1230 entitled to receive a disbursement of assets out of the marshaled assets, from time to time as
1231 the assets become available to reimburse the association and any other similar association.

1232 (b) If, within [~~120~~] 180 days of a final determination of insolvency of an insurer by the
1233 receivership court, the [~~liquidator~~] receiver has not made an application to the court for the

1234 approval of a proposal to disburse assets out of marshaled assets to ~~[all]~~ the guaranty
1235 associations having obligations because of the insolvency, the association is entitled to make
1236 application to the receivership court for approval of the association's proposal for
1237 disbursement of these assets.

1238 (5) (a) ~~[Prior to]~~ Before the termination of ~~[any]~~ a liquidation, rehabilitation, or
1239 conservation proceeding, the court may take into consideration the contributions of the
1240 respective parties, including:

- 1241 (i) the association;
1242 (ii) the shareholders;
1243 (iii) policyowners of the insolvent insurer; and
1244 (iv) any other party with a bona fide interest in making an equitable distribution of the
1245 ownership rights of the insolvent insurer.

1246 (b) In making a determination under Subsection (5)(a), the court shall consider the
1247 welfare of the ~~[policyholders]~~ policyowners of the continuing or successor insurer.

1248 (c) A distribution to any stockholder of an impaired or insolvent insurer may not be
1249 made until and unless the total amount of valid claims of the association with interest has been
1250 fully recovered by the association for funds expended in carrying out its powers and duties
1251 under Section 31A-28-108 with respect to the insurer.

1252 ~~[(6) (a) If an order for liquidation or rehabilitation of an insurer domiciled in this state
1253 has been entered, the receiver appointed under the order shall have a right to recover on behalf
1254 of the insurer, from any affiliate that controlled the insurer, the amount of distributions, other
1255 than stock dividends paid by the insurer on its capital stock, made at any time during the five
1256 years preceding the petition for liquidation or rehabilitation subject to the limitations of
1257 Subsections (6)(b) through (d).]~~

1258 ~~[(b) A distribution described in Subsection (6)(a) may not be recovered if the insurer
1259 shows that:]~~

1260 ~~[(i) when paid the distribution was lawful and reasonable; and]~~

1261 ~~[(ii) the insurer did not know and could not reasonably have known that the~~

1262 ~~distribution might adversely affect the ability of the insurer to fulfill its contractual~~
1263 ~~obligations.]~~

1264 ~~[(c) (i) A person that was an affiliate that controlled the insurer at the time the~~
1265 ~~distributions were paid shall be liable up to the amount of distributions received.]~~

1266 ~~[(ii) A person that was an affiliate that controlled the insurer at the time the~~
1267 ~~distributions were declared shall be liable up to the amount of distributions that would have~~
1268 ~~been received if they had been paid immediately.]~~

1269 ~~[(iii) If two or more persons are liable with respect to the same distributions, they shall~~
1270 ~~be jointly and severally liable.]~~

1271 ~~[(d) The maximum amount recoverable under this Subsection (6) shall be the amount~~
1272 ~~needed in excess of all other available assets of the insolvent insurer to pay the contractual~~
1273 ~~obligations of the insolvent insurer.]~~

1274 ~~[(e) If any person liable under Subsection (6)(c) is insolvent, all of its affiliates that~~
1275 ~~controlled it at the time the distribution was paid shall be jointly and severally liable for any~~
1276 ~~resulting deficiency in the amount recovered from the insolvent affiliate.]~~

1277 Section 10. Section **31A-28-118** is amended to read:

1278 **31A-28-118. Stay of proceedings -- Reopening default judgments.**

1279 ~~[All proceedings]~~ (1) A proceeding in which the insolvent insurer is a party in any
1280 court in this state shall be stayed ~~[60]~~ 180 days from the date an order of liquidation,
1281 rehabilitation, or conservation is final to permit proper legal action by the association on any
1282 matters germane to its powers or duties.

1283 (2) The association may apply to have a judgment under any decision, order, verdict,
1284 or finding based on default set aside by the same court that made the judgment. The
1285 association shall be permitted to defend against the suit on the merits.

1286 Section 11. Section **31A-28-119** is amended to read:

1287 **31A-28-119. Prohibited advertisement of the association -- Notice to owners of**
1288 **policies and contracts.**

1289 (1) (a) Except as provided in Subsection (1)(b), a person, including an insurer, agent,

1290 or affiliate of an insurer may not make, publish, disseminate, circulate, or place before the
1291 public, or cause directly or indirectly to be made, published, disseminated, circulated, or
1292 placed before the public, in ~~[any]~~ a newspaper, magazine, or other publication, or in the form
1293 of a notice, circular, pamphlet, letter, or poster, or over ~~[any]~~ a radio station or television
1294 station, or in any other way, any advertisement, announcement, or statement written or oral,
1295 ~~[which]~~ that uses the existence of the association for the purpose of sales, solicitation, or
1296 inducement to purchase any form of insurance.

1297 (b) Notwithstanding Subsection (1)(a), this section does not apply to:

1298 (i) the association; or

1299 (ii) ~~[any other]~~ another entity that does not sell or solicit insurance.

1300 (2) (a) ~~[Prior to January 1, 2002, the]~~ The association shall:

1301 (i) ~~[prepare]~~ have a summary document describing the general purposes and current
1302 limitations of this part that complies with Subsection (3); and

1303 (ii) submit the summary document described in Subsection (2)(a)(i) to the
1304 commissioner for approval.

1305 (b) ~~[Sixty days after the day on which the commissioner approves the summary~~
1306 ~~document described in Subsection (2)(a), an]~~ An insurer may not deliver a policy or contract
1307 to a policy or contract owner unless the summary document is also delivered to the policy or
1308 contract owner ~~[prior to]~~ before, or at the time of, delivery of the policy or contract.

1309 (c) The summary document shall be available upon request by a policy owner.

1310 (d) The distribution, delivery, or contents or interpretation of the summary document
1311 does not guarantee that:

1312 (i) the policy or the contract is covered in the event of the impairment or insolvency of
1313 a member insurer; or

1314 (ii) the owner of the policy or contract is covered in the event of the impairment or
1315 insolvency of a member insurer.

1316 (e) The summary document shall be revised by the association as amendments to this
1317 part may require.

1318 (f) Failure to receive the summary document as required in Subsection (2)(b) does not
1319 give the [~~policyholder, contract holder~~] owner of a policy or contract, certificate holder, or
1320 insured any greater rights than those stated in this part.

1321 (3) (a) The summary document [~~prepared under~~] described in Subsection (2) shall
1322 contain a clear and conspicuous disclaimer on its face.

1323 (b) The commissioner shall, by rule, establish the form and content of the disclaimer
1324 described in Subsection (3)(a), except that the disclaimer shall:

1325 (i) state the name and address of:

1326 (A) the association; and

1327 (B) the [~~insurance~~] department;

1328 (ii) prominently warn [~~the~~] a policy or contract owner that:

1329 (A) the association may not cover the policy or contract; or

1330 (B) if coverage is available, it is:

1331 (I) subject to substantial limitations and exclusions; and

1332 (II) conditioned on continued residence in the state;

1333 (iii) state the types of policies or contracts for which the association will provide
1334 coverage;

1335 (iv) state that the insurer and its agents are prohibited by law from using the existence
1336 of the association for the purpose of sales, solicitation, or inducement to purchase any form of
1337 insurance;

1338 (v) state that the policy or contract owner should not rely on coverage under the
1339 association when selecting an insurer;

1340 (vi) explain the rights available and procedures for filing a complaint to allege a
1341 violation of this part; and

1342 (vii) provide other information as directed by the commissioner including sources for
1343 information about the financial condition of insurers provided that the information:

1344 (A) is not proprietary; and

1345 (B) is subject to disclosure under public records laws.

1346 (4) (a) An insurer or agent may not deliver a policy or contract described in Subsection
1347 31A-28-103(2)(a) and wholly excluded under Subsection 31A-28-103(2)(b)(i) from coverage
1348 under this part unless the insurer or agent, prior to or at the time of delivery, gives the policy
1349 or contract holder a separate written notice that clearly and conspicuously discloses that the
1350 policy or contract is not covered by the association.

1351 (b) The commissioner shall by rule specify the form and content of the notice required
1352 by Subsection (4)(a).

1353 (5) A member insurer shall retain evidence of compliance with Subsection (2) for the
1354 later of:

1355 (a) three years; or

1356 (b) until the conclusion of the next market conduct examination by the department of
1357 insurance where the member insurer is domiciled.

1358 Section 12. Section **31A-28-120** is amended to read:

1359 **31A-28-120. Prospective application.**

1360 Notwithstanding any prior or subsequent law, the provisions of this part that are in
1361 effect on the date on which the association first becomes obligated for the policies or contracts
1362 of an insolvent or impaired member [~~shall~~] govern the association's rights and obligations to
1363 the [~~policyholders~~] policyowners of the insolvent or impaired member.