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AN ACT
RELATING TO INSURANCE; AMENDING THE LIFE AND HEALTH INSURANCE
GUARANTY ASSOCIATION ACT TO INCLUDE HEALTH MAINTENANCE
ORGANIZATIONS AS MEMBERS OF THE LIFE AND HEALTH INSURANCE
GUARANTY ASSOCIATION; REPEALING SECTION 59A-46-15 NMSA 1978
(BEING LAWS 1993, CHAPTER 266, SECTION 15).

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 59A-42-3 NMSA 1978 (being Laws 2012,
Chapter 9, Section 6, as amended) is amended to read:

"59A-42-3. DEFINITIONS.--As used in the Life and Health
Insurance Guaranty Association Act:

A. "account" means either of the two accounts
maintained pursuant to Section 59A-42-5 NMSA 1978;

B. "association" means the life and health
insurance guaranty association created pursuant to Section
59A-42-5 NMSA 1978;

C. "authorized assessment", or the term
"authorized" when used in the context of assessments, means
that a resolution by the board has been passed whereby an
assessment will be called immediately or in the future from
member insurers for a specified amount. An assessment is
authorized when the resolution is passed;

D. "benefit plan" means a specific employee, a
union or an association of natural persons benefit plan;

1 E. "board" means the board of directors organized
2 pursuant to Section 59A-42-6 NMSA 1978;

3 F. "called assessment", or the term "called" when
4 used in the context of assessments, means that a notice has
5 been issued by the association to member insurers requiring
6 that an authorized assessment be paid within the time frame
7 set forth within the notice. An authorized assessment
8 becomes a called assessment when notice is mailed by the
9 association to member insurers;

10 G. "contractual obligation" means an obligation
11 under a policy or contract or a certificate under a group
12 policy or contract, or portion thereof, for which coverage is
13 provided pursuant to Section 59A-42-4 NMSA 1978;

14 H. "covered policy" and "covered contract" means a
15 policy or contract or portion of a policy or contract for
16 which coverage is provided pursuant to Section 59A-42-4 NMSA
17 1978;

18 I. "domiciliary state" means the state in which an
19 insurer is incorporated or organized or, as to an alien
20 insurer, the state in which at commencement of delinquency
21 proceedings the larger amount of the insurer's assets are
22 held in trust or on deposit for the benefit of its
23 policyholders and creditors in the United States;

24 J. "extra-contractual claims" includes claims
25 relating to bad faith in the payment of claims, punitive or

1 exemplary damages or attorney fees and costs;

2 K. "health benefit plan" means any hospital or
3 medical expense policy or certificate or health maintenance
4 organization subscriber contract or any other similar health
5 contract. "Health benefit plan" does not include:

6 (1) accident-only insurance;

7 (2) credit insurance;

8 (3) dental-only insurance;

9 (4) vision-only insurance;

10 (5) medicare supplement insurance;

11 (6) benefits for long-term care, home health
12 care, community-based care or any combination thereof;

13 (7) disability income insurance;

14 (8) coverage for on-site medical clinics; or

15 (9) specified disease, hospital confinement
16 indemnity or limited benefit health insurance if the health
17 benefit plans do not provide coordination of benefits and are
18 provided under separate policies or contracts;

19 L. "impaired insurer" means a member insurer that,
20 after the effective date of the Life and Health Insurance
21 Guaranty Association Act, is not an insolvent insurer and is
22 placed under an order of rehabilitation or conservation by a
23 court of competent jurisdiction;

24 M. "insolvent insurer" means a member insurer
25 that, after the effective date of the Life and Health

1 Insurance Guaranty Association Act, is placed under an order
2 of liquidation by a court of competent jurisdiction with a
3 finding of insolvency;

4 N. "member insurer" means an insurer or health
5 maintenance organization that is licensed or that holds a
6 certificate of authority to transact in this state any kind
7 of insurance or health maintenance organization business for
8 which coverage is provided pursuant to Section 59A-42-4 NMSA
9 1978 and includes an insurer or health maintenance
10 organization whose license or certificate of authority in
11 this state may have been suspended, revoked, not renewed or
12 voluntarily withdrawn, but does not include:

13 (1) a health care plan, whether profit or
14 nonprofit;

15 (2) a prepaid dental plan;

16 (3) a fraternal benefit society;

17 (4) a mandatory state pooling plan;

18 (5) a mutual assessment company or other
19 person that operates on an assessment basis;

20 (6) an insurance exchange;

21 (7) a charitable organization that is in
22 good standing with the superintendent pursuant to Section
23 59A-1-16.1 NMSA 1978;

24 (8) any insurer that was insolvent or unable
25 to fulfill its contractual obligations as of April 9, 1975;

1 or

2 (9) an entity similar to any of the above;

3 O. "Moody's corporate bond yield average" means
4 the monthly average corporates as published by Moody's
5 investors service, incorporated, or its successor;

6 P. "owner" of a policy or contract, "policy
7 owner", "policy holder" and "contract owner" means the person
8 who is identified as the legal owner under the terms of the
9 policy or contract or who is otherwise vested with legal
10 title to the policy or contract through a valid assignment
11 completed in accordance with the terms of the policy or
12 contract and properly recorded as the owner on the books of
13 the member insurer. The terms "owner", "policy owner",
14 "policy holder" and "contract owner" do not include persons
15 with a mere beneficial interest in a policy or contract;

16 Q. "plan sponsor" means:

17 (1) the employer in the case of a benefit
18 plan established or maintained by a single employer;

19 (2) the employee organization in the case of
20 a benefit plan established or maintained by an employee
21 organization; or

22 (3) the association, committee, joint board
23 of trustees or other similar group of representatives of the
24 parties who establish or maintain the benefit plan in the
25 case of a benefit plan established or maintained by two or

1 more employers or jointly by one or more employers and one or
2 more employee organizations;

3 R. "premiums" means amounts or considerations, by
4 whatever name used, received on covered policies or contracts
5 less returned premiums, considerations and deposits and less
6 dividends and experience credits. "Premiums" does not
7 include:

8 (1) amounts or considerations received for
9 policies or contracts or for the portions of policies or
10 contracts for which coverage is not provided pursuant to
11 Subsection E of Section 59A-42-4 NMSA 1978, except that
12 assessable premiums shall not be reduced on account of
13 Paragraph (3) of Subsection E of Section 59A-42-4 NMSA 1978,
14 relating to interest limitations, or Paragraph (2) of
15 Subsection F of Section 59A-42-4 NMSA 1978, relating to
16 limitations, with respect to one individual, one participant,
17 one policy holder or one contract owner;

18 (2) premiums in excess of five million
19 dollars (\$5,000,000) on an unallocated annuity contract not
20 issued under a governmental retirement benefit plan, or its
21 trustee, established pursuant to Section 401, 403(b) or 457
22 of the federal Internal Revenue Code of 1986; or

23 (3) with respect to multiple non-group
24 policies of life insurance owned by one owner, whether the
25 policy holder or contract owner is an individual, firm,

1 corporation or other person, and whether the persons insured
2 are officers, managers, employees or other persons, premiums
3 in excess of five million dollars (\$5,000,000) with respect
4 to these policies or contracts, regardless of the number of
5 policies or contracts held by the owner;

6 S. "principal place of business" means:

7 (1) in the case of a plan sponsor or a
8 person other than a natural person, the single state in which
9 the natural person who establishes a policy for the
10 direction, control and coordination of the operations of the
11 entity as a whole primarily exercises that function, as
12 determined by the association in its reasonable judgment by
13 considering the following factors:

14 (a) the state in which the primary
15 executive and administrative headquarters of the entity is
16 located;

17 (b) the state in which the principal
18 office of the chief executive officer of the entity is
19 located;

20 (c) the state in which the board, or
21 similar governing person or persons, of the entity conducts
22 the majority of its meetings;

23 (d) the state in which the executive or
24 management committee of the board, or similar governing
25 person or persons, of the entity conducts the majority of its

1 meetings;

2 (e) the state from which the management
3 of the overall operations of the entity is directed;

4 (f) in the case of a benefit plan
5 sponsored by affiliated companies comprising a consolidated
6 corporation, the state in which the holding company or
7 controlling affiliate has its principal place of business as
8 determined using the factors in this subsection; and

9 (g) in the case of a plan sponsor, if
10 more than fifty percent of the participants in the benefit
11 plan are employed in a single state, that state shall be
12 deemed to be the principal place of business of the plan
13 sponsor; and

14 (2) in the case of a plan sponsor of a
15 benefit plan described in Paragraph (3) of Subsection Q of
16 this section, the principal place of business of the
17 association, committee, joint board of trustees or other
18 similar group of representatives of the parties that
19 establish or maintain the benefit plan that, in lieu of a
20 specific or clear designation of a principal place of
21 business, shall be deemed to be the principal place of
22 business of the employer or employee organization that has
23 the largest investment in the benefit plan in question;

24 T. "receivership court" means the court in the
25 insolvent or impaired insurer's domiciliary state having

1 jurisdiction over the conservation, rehabilitation or
2 liquidation of the member insurer;

3 U. "resident" means a person to whom a contractual
4 obligation is owed and who resides in this state on the date
5 of entry of a court order that determines a member insurer to
6 be an impaired insurer or a court order that determines a
7 member insurer to be an insolvent insurer. A person may be a
8 resident of only one state, which, in the case of a person
9 other than a natural person, shall be its principal place of
10 business. Citizens of the United States that are either
11 residents of foreign countries or residents of United States
12 possessions, territories or protectorates that do not have an
13 association similar to the association created by the Life
14 and Health Insurance Guaranty Association Act shall be deemed
15 residents of the state of domicile of the member insurer that
16 issued the policies or contracts;

17 V. "structured settlement annuity" means an
18 annuity purchased in order to fund periodic payments for a
19 plaintiff or other claimant in payment for or with respect to
20 personal injury suffered by the plaintiff or other claimant;

21 W. "structured settlement factoring transaction"
22 means a transfer of structured settlement payment rights,
23 including portions of structured settlement payments made for
24 consideration by means of sale, assignment, pledge or other
25 form of encumbrance or alienation;

1 X. "supplemental contract" means a written
2 agreement entered into for the distribution of proceeds under
3 a life, health or annuity policy or contract; and

4 Y. "unallocated annuity contract" means an annuity
5 contract or group annuity certificate that is not issued to
6 and owned by an individual, except to the extent of annuity
7 benefits guaranteed to an individual by an insurer under the
8 contract or certificate."

9 SECTION 2. Section 59A-42-4 NMSA 1978 (being Laws 2012,
10 Chapter 9, Section 7) is amended to read:

11 "59A-42-4. COVERAGE--LIMITATIONS.--

12 A. Coverage shall be provided for the policies and
13 contracts specified in Subsection D of this section:

14 (1) to persons who, regardless of where they
15 reside, except for nonresident certificate holders under
16 group policies or contracts, are the beneficiaries, assignees
17 or payees, including health care providers rendering services
18 covered under health insurance policies or certificates, of
19 the persons covered pursuant to Paragraph (2) of this
20 subsection;

21 (2) to persons who are owners of, enrollees
22 or certificate holders under the policies or contracts, other
23 than unallocated annuity contracts and structured settlement
24 annuities, and in each case who:

25 (a) are residents; or

1 (b) are not residents, but only under
2 the following conditions: 1) the member insurer that issued
3 the policies or contracts is domiciled in this state; 2) the
4 states in which the persons reside have associations similar
5 to this state's association; and 3) the persons are not
6 eligible for coverage by an association in another state due
7 to the fact that the member insurer or the health maintenance
8 organization was not licensed in that state at the time
9 specified in that state's guaranty association law;

10 (3) for unallocated annuity contracts
11 specified in Subsection D of this section, to which
12 Paragraphs (1) and (2) of this subsection shall not apply,
13 and except as provided in Subsections B and C of this
14 section:

15 (a) to persons who are the owners of
16 the unallocated annuity contracts if the contracts are issued
17 to or in connection with a specific benefit plan whose plan
18 sponsor has its principal place of business in this state;
19 and

20 (b) to persons who are the owners of
21 unallocated annuity contracts issued to or in connection with
22 government lotteries if the owners are residents; and

23 (4) for structured settlement annuities
24 specified in Subsection D of this section, to which
25 Paragraphs (1) and (2) of this subsection shall not apply,

1 and except as provided in Subsections B and C of this
2 section, to a person who is a payee under a structured
3 settlement annuity, or a beneficiary of a payee if the payee
4 is deceased, if the payee:

5 (a) is a resident, regardless of where
6 the contract owner resides; or

7 (b) is not a resident, but only under
8 the following conditions: 1) the contract owner of the
9 structured settlement annuity is a resident or is not a
10 resident, but the insurer that issued the structured
11 settlement annuity is domiciled in this state and the state
12 in which the contract owner resides has an association
13 similar to this state's association; and 2) neither the
14 payee, the payee's beneficiary or the contract owner is
15 eligible for coverage by the association of the state in
16 which the payee or contract owner resides.

17 B. Coverage shall not be provided to:

18 (1) a person who is a payee or beneficiary
19 of a contract owner resident of this state, if the payee or
20 beneficiary is afforded coverage by the association of
21 another state;

22 (2) a person covered pursuant to Paragraph
23 (3) of Subsection A of this section, if coverage is provided
24 by the association of another state to that person; or

25 (3) a person who acquires rights to receive

1 payments through a structured settlement factoring
2 transaction.

3 C. Coverage is intended to be provided to a person
4 who is a resident of this state and, in special
5 circumstances, to a nonresident. In order to avoid duplicate
6 coverage, if a person who would otherwise receive coverage
7 pursuant to the Life and Health Insurance Guaranty
8 Association Act is provided coverage under the laws of
9 another state, the person shall not be provided coverage in
10 this state. In determining the application of the provisions
11 of this subsection in situations where a person could be
12 covered by the association of more than one state, whether as
13 an owner, payee, enrollee, beneficiary or assignee, the Life
14 and Health Insurance Guaranty Association Act shall be
15 construed in conjunction with other state laws to result in
16 coverage by only one association.

17 D. Coverage shall be provided to the persons
18 specified in Subsection A of this section for policies or
19 contracts of direct, non-group life insurance, health
20 insurance, which for the purposes of the Life and Health
21 Insurance Guaranty Association Act includes health
22 maintenance organization subscriber contracts and
23 certificates, or annuities and supplemental contracts to any
24 of these, for certificates under direct group policies and
25 contracts and supplemental contracts to these and for

1 unallocated annuity contracts issued by member insurers,
2 except as limited by the Life and Health Insurance Guaranty
3 Association Act. Annuity contracts and certificates under
4 group annuity contracts include guaranteed investment
5 contracts, deposit administration contracts, unallocated
6 funding agreements, allocated funding agreements, structured
7 settlement annuities, annuities issued to or in connection
8 with government lotteries and immediate or deferred annuity
9 contracts.

10 E. Coverage shall not be provided for:

11 (1) a portion of a policy or contract not
12 guaranteed by the member insurer or under which the risk is
13 borne by the policy or contract owner;

14 (2) a policy or contract of reinsurance,
15 unless assumption certificates have been issued pursuant to
16 the reinsurance policy or contract;

17 (3) a portion of a policy or contract,
18 except for any portion of a policy or contract, including a
19 rider, that provides long-term care or any other health
20 insurance benefit, to the extent that the rate of interest on
21 which it is based, or the interest rate, crediting rate or
22 similar factor determined by use of an index or other
23 external reference stated in the policy or contract employed
24 in calculating returns or changes in value:

25 (a) averaged over the period of four

1 years prior to the date on which the member insurer becomes
2 an impaired or insolvent insurer pursuant to the Life and
3 Health Insurance Guaranty Association Act, whichever is
4 earlier, exceeds the rate of interest determined by
5 subtracting two percentage points from Moody's corporate bond
6 yield average averaged for that same four-year period or for
7 such lesser period if the policy or contract was issued less
8 than four years before the member insurer becomes an impaired
9 or insolvent insurer under the Life and Health Insurance
10 Guaranty Association Act, whichever is earlier; and

11 (b) on and after the date on which the
12 member insurer becomes an impaired or insolvent insurer
13 pursuant to the Life and Health Insurance Guaranty
14 Association Act, whichever is earlier, exceeds the rate of
15 interest determined by subtracting three percentage points
16 from Moody's corporate bond yield average as most recently
17 available;

18 (4) a portion of a policy or contract issued
19 to a plan or program of an employer, association or other
20 person to provide life, health or annuity benefits to its
21 employees, members or others, to the extent that the plan or
22 program is self-funded or uninsured, including but not
23 limited to benefits payable by an employer, association or
24 other person under:

25 (a) a multiple employer welfare

1 arrangement;

2 (b) a minimum premium group insurance
3 plan;

4 (c) a stop-loss group insurance plan;

5 or

6 (d) an administrative services only
7 contract;

8 (5) a portion of a policy or contract to the
9 extent that it provides for:

10 (a) dividends or experience rating
11 credits;

12 (b) voting rights; or

13 (c) payment of fees or allowances to a
14 person, including the policy or contract owner, in connection
15 with the service to or administration of the policy or
16 contract;

17 (6) a policy or contract issued in this
18 state by a member insurer at a time when it was not licensed
19 or did not have a certificate of authority to issue the
20 policy or contract in this state;

21 (7) an unallocated annuity contract issued
22 to or in connection with a benefit plan protected under the
23 federal pension benefit guaranty corporation, regardless of
24 whether that corporation has yet become liable to make
25 payments with respect to the benefit plan;

1 (8) a portion of an unallocated annuity
2 contract that is not issued to or in connection with a
3 specific employee, union or association of natural persons
4 benefit plan or a government lottery;

5 (9) a portion of a policy or contract to the
6 extent that the assessments required by Section 59A-42-8 NMSA
7 1978 with respect to the policy or contract are preempted by
8 federal or state law;

9 (10) an obligation that does not arise under
10 the express written terms of the policy or contract issued by
11 the member insurer to the enrollee, certificate holder,
12 contract owner or policy owner, including without limitation:

13 (a) claims based on marketing
14 materials;

15 (b) claims based on side letters,
16 riders or other documents that were issued by the member
17 insurer without meeting applicable policy or contract form
18 filing or approval requirements;

19 (c) misrepresentations of or regarding
20 policy or contract benefits;

21 (d) extra-contractual claims; or

22 (e) a claim for penalties or
23 consequential or incidental damages;

24 (11) a contractual agreement that
25 establishes the member insurer's obligations to provide a

1 book value accounting guaranty for defined contribution
2 benefit plan participants by reference to a portfolio of
3 assets that is owned by the benefit plan or its trustee,
4 which in each case is not an affiliate of the member insurer;

5 (12) a portion of a policy or contract to
6 the extent that it provides for interest or other changes in
7 value to be determined by the use of an index or other
8 external reference stated in the policy or contract, but
9 which have not been credited to the policy or contract, or as
10 to which the policy or contract owner's rights are subject to
11 forfeiture, as of the date the member insurer becomes an
12 impaired or insolvent insurer pursuant to the Life and Health
13 Insurance Guaranty Association Act, whichever is earlier. If
14 a policy or contract's interest or changes in value are
15 credited less frequently than annually, then for purposes of
16 determining the values that have been credited and that are
17 not subject to forfeiture pursuant to this paragraph, the
18 interest or change in value determined by using the
19 procedures defined in the policy or contract will be credited
20 as if the contractual date of crediting interest or changing
21 values were the date of impairment or insolvency, whichever
22 is earlier, and will not be subject to forfeiture;

23 (13) a policy or contract providing
24 hospital, medical, prescription drug or other health care
25 benefits pursuant to Part C or Part D of Subchapter 18 of

1 Chapter 7 of Title 42 of the United States Code, commonly
2 known as medicare Parts C and D, or Subchapter 19 of Chapter
3 7 of Title 42 of the United States Code, commonly known as
4 medicaid, or any regulations promulgated pursuant to those
5 acts; or

6 (14) structured settlement annuity benefits
7 to which a payee or beneficiary has transferred the payee's
8 or beneficiary's rights in a structured settlement factoring
9 transaction.

10 F. The benefits that the association may become
11 obligated to cover shall in no event exceed the lesser of:

12 (1) the contractual obligations for which
13 the member insurer is liable or would have been liable if it
14 were not an impaired or insolvent insurer;

15 (2) with respect to one person's life,
16 regardless of the number of policies or contracts:

17 (a) for life insurance death benefits,
18 three hundred thousand dollars (\$300,000) but not more than
19 one hundred thousand dollars (\$100,000) in net cash surrender
20 and net cash withdrawal values;

21 (b) for health insurance benefits: 1)
22 one hundred thousand dollars (\$100,000) for coverages not
23 constituting disability income insurance, health benefit
24 plans or long-term care insurance, including net cash
25 surrender and net cash withdrawal values; 2) three hundred

1 thousand dollars (\$300,000) for disability income insurance;
2 3) three hundred thousand dollars (\$300,000) for long-term
3 care insurance as defined in Section 59A-23A-4 NMSA 1978; and
4 4) five hundred thousand dollars (\$500,000) for health
5 benefit plans; or

6 (c) for annuity benefits, two hundred
7 fifty thousand dollars (\$250,000) in present value, including
8 net cash surrender and net cash withdrawal values;

9 (3) with respect to each individual
10 participating in a governmental retirement benefit plan
11 established pursuant to Section 401, 403(b) or 457 of the
12 federal Internal Revenue Code of 1986 covered by an
13 unallocated annuity contract or the beneficiaries of each
14 such individual if deceased, in the aggregate, two hundred
15 fifty thousand dollars (\$250,000) in present value annuity
16 benefits, including net cash surrender and net cash
17 withdrawal values; or

18 (4) with respect to each payee of a
19 structured settlement annuity, or beneficiary or
20 beneficiaries of the payee if the payee is deceased, two
21 hundred fifty thousand dollars (\$250,000) in present value
22 annuity benefits, in the aggregate, including net cash
23 surrender and net cash withdrawal values, if any.

24 G. In no event shall the association be obligated
25 to cover:

1 (1) more than an aggregate of three hundred
2 thousand dollars (\$300,000) in benefits with respect to one
3 person's life pursuant to Paragraphs (2), (3) and (4) of
4 Subsection F of this section, except with respect to benefits
5 for health benefit plans pursuant to Subparagraph (b) of
6 Paragraph (2) of Subsection F of this section, in which case
7 the aggregate liability of the association shall not exceed
8 five hundred thousand dollars (\$500,000) with respect to one
9 person's life; or

10 (2) with respect to one owner of multiple
11 non-group policies of life insurance, whether the policy
12 holder or contract owner is an individual, firm, corporation
13 or other person, and whether the persons insured are
14 officers, managers, employees or other persons, more than
15 five million dollars (\$5,000,000) in benefits, regardless of
16 the number of policies and contracts held by the owner.

17 H. With respect to either one contract owner
18 provided coverage pursuant to Subparagraph (b) of Paragraph
19 (3) of Subsection A of this section or one plan sponsor whose
20 plans own directly or in trust one or more unallocated
21 annuity contracts not included in Paragraph (3) of Subsection
22 F of this section, the benefits the association may become
23 obligated to cover shall not exceed five million dollars
24 (\$5,000,000) irrespective of the number of contracts with
25 respect to the contract owner or plan sponsor. However, in

1 the case where one or more unallocated annuity contracts are
2 covered contracts pursuant to the Life and Health Insurance
3 Guaranty Association Act and are owned by a trust or other
4 entity for the benefit of two or more plan sponsors, coverage
5 shall be afforded by the association if the largest interest
6 in the trust or entity owning the contract or contracts is
7 held by a plan sponsor whose principal place of business is
8 in this state. In no event shall the association be
9 obligated to cover more than five million dollars
10 (\$5,000,000) in benefits with respect to all of these
11 unallocated contracts.

12 I. The limitations set forth in Subsections F, G
13 and H of this section are limitations on the benefits for
14 which the association is obligated before taking into account
15 either its subrogation and assignment rights or the extent to
16 which those benefits could be provided out of the assets of
17 the impaired or insolvent insurer attributable to covered
18 policies. The costs of the association's obligations may be
19 met by the use of assets attributable to covered policies or
20 reimbursed to the association pursuant to its subrogation and
21 assignment rights.

22 J. For purposes of the Life and Health Insurance
23 Guaranty Association Act, benefits provided by a long-term
24 care rider to a life insurance policy or annuity contract
25 shall be considered the same type of benefit as the base life

1 insurance policy or annuity contract to which it relates.

2 K. In performing its obligations to provide
3 coverage pursuant to this section and Section 59A-42-7 NMSA
4 1978, the association shall not be required to guarantee,
5 assume, reinsure, reissue or perform, or cause to be
6 guaranteed, assumed, reinsured, reissued or performed, the
7 contractual obligations of the insolvent or impaired insurer
8 under a covered policy or contract that do not materially
9 affect the economic values or economic benefits of the
10 covered policy or contract."

11 SECTION 3. Section 59A-42-5 NMSA 1978 (being Laws 1984,
12 Chapter 127, Section 754, as amended) is amended to read:

13 "59A-42-5. ORGANIZATION OF ASSOCIATION--PARTICIPATION.-

14 -

15 A. All insurers shall organize and remain members
16 of the association as a condition of their authority to
17 transact insurance or a health maintenance organization
18 business covered by Section 59A-42-4 NMSA 1978. The
19 association may take any appropriate form of legal entity
20 available under the laws of this state and approved by the
21 superintendent. The association shall perform its functions
22 under the plan of operation established and approved pursuant
23 to Section 59A-42-9 NMSA 1978 and shall exercise its powers
24 through the board. For purposes of assessment and
25 administration, the association shall maintain two accounts:

1 (1) the life insurance and annuity account,
2 which includes the following subaccounts:

3 (a) a life insurance account;

4 (b) an annuity account, which includes
5 annuity contracts owned by a governmental retirement benefit
6 plan, or its trustee, established pursuant to Section 401,
7 403(b) or 457 of the federal Internal Revenue Code of 1986,
8 but otherwise excludes unallocated annuities; and

9 (c) an unallocated annuity account,
10 which excludes contracts owned by a governmental retirement
11 benefit plan, or its trustee, established pursuant to Section
12 401, 403(b) or 457 of the federal Internal Revenue Code of
13 1986; and

14 (2) the health account.

15 B. The association shall be supervised by the
16 superintendent and shall be subject to the applicable
17 provisions of the insurance laws of New Mexico. Meetings or
18 records of the association may be opened to the public upon
19 majority vote of the board of the association."

20 **SECTION 4.** Section 59A-42-6 NMSA 1978 (being Laws 1984,
21 Chapter 127, Section 755, as amended) is amended to read:

22 "59A-42-6. BOARD OF DIRECTORS.--

23 A. The board of directors of the association shall
24 consist of not less than seven nor more than eleven member
25 insurers serving terms as established in the plan of

1 operation. The insurer members of the board shall be
2 selected by member insurers subject to the approval of the
3 superintendent. In addition, two persons who are public
4 representatives shall be appointed by the superintendent to
5 the board. A public representative shall not be an officer,
6 director or employee of an insurance company or a health
7 maintenance organization or a person engaged in the business
8 of insurance. Vacancies on the board shall be filled for the
9 remaining period of the term by a majority vote of the
10 remaining board members for member insurers, subject to
11 approval of the superintendent, and by the superintendent for
12 public representatives.

13 B. In approving insurer member selections, the
14 superintendent shall consider among other things whether all
15 member insurers are fairly represented.

16 C. Members of the board may be reimbursed from the
17 assets of the association for reasonable and necessary
18 expenses incurred by them as members of the board, but the
19 amount of that reimbursement shall not exceed the guidelines
20 provided by the approved plan of operation."

21 **SECTION 5.** Section 59A-42-7 NMSA 1978 (being Laws 2012,
22 Chapter 9, Section 10) is amended to read:

23 "59A-42-7. POWERS AND DUTIES OF THE ASSOCIATION.--

24 A. If a member insurer is an impaired insurer, the
25 association may, in its discretion, and subject to conditions

1 imposed by the association that do not impair the contractual
2 obligations of the impaired insurer and that are approved by
3 the superintendent:

4 (1) guarantee, assume, reissue or reinsure,
5 or cause to be guaranteed, assumed, reissued or reinsured,
6 any or all of the policies or contracts of the impaired
7 insurer; and

8 (2) provide such money, pledges, loans,
9 notes, guarantees or other means as are proper to effectuate
10 Paragraph (1) of this subsection and assure payment of the
11 contractual obligations of the impaired insurer pending
12 action pursuant to Paragraph (1) of this subsection.

13 B. If a member insurer is an insolvent insurer,
14 the association shall, in its discretion, either:

15 (1) guarantee, assume, reissue or reinsure,
16 or cause to be guaranteed, assumed, reissued or reinsured,
17 the policies or contracts of the insolvent insurer, or assure
18 payment of the contractual obligations of the insolvent
19 insurer, and provide money, pledges, loans, notes, guarantees
20 or other means reasonably necessary to discharge the
21 association's duties; or

22 (2) provide benefits and coverages in
23 accordance with the following provisions:

24 (a) with respect to policies and
25 contracts, assure payment of benefits that would have been

1 payable under the policies or contracts of the insolvent
2 insurer, for claims incurred: 1) with respect to group
3 policies and contracts, not later than the earlier of the
4 next renewal date under those policies or contracts or
5 forty-five days, but in no event less than thirty days, from
6 the date on which the association becomes obligated with
7 respect to the policies and contracts; and 2) with respect to
8 non-group policies, contracts and annuities, not later than
9 the earlier of the next renewal date, if any, under the
10 policies or contracts or one year, but in no event less than
11 thirty days, from the date on which the association becomes
12 obligated with respect to the policies or contracts;

13 (b) make diligent efforts to provide
14 all known insureds, enrollees or annuitants, for non-group
15 policies and contracts, or group policy holders or contract
16 owners with respect to group policies and contracts, thirty
17 days' notice of the termination, pursuant to Subparagraph (a)
18 of this paragraph, of the benefits provided;

19 (c) with respect to non-group policies
20 or contracts covered by the association, and with respect to
21 an individual formerly insured, enrolled or formerly an
22 annuitant under a group policy or contract who is not
23 eligible for replacement group coverage, make available to
24 each known insured, enrollee or annuitant, or owner if other
25 than the insured, enrollee or annuitant, substitute coverage

1 on an individual basis in accordance with the provisions of
2 Subparagraph (d) of this paragraph if the insureds, enrollees
3 or annuitants had a right under law or the terminated policy,
4 contract or annuity to convert coverage to individual
5 coverage or to continue an individual policy, contract or
6 annuity in force until a specified age or for a specified
7 time, during which the insurer or health maintenance
8 organization had no right unilaterally to make changes in any
9 provision of the policy, contract or annuity or had a right
10 only to make changes in premium by class;

11 (d) in providing the substitute
12 coverage required pursuant to Subparagraph (c) of this
13 paragraph, the association may offer either to reissue the
14 terminated coverage or to issue an alternative policy or
15 contract at actuarially justified rates. Alternative or
16 reissued policies or contracts shall be offered without
17 requiring evidence of insurability and shall not provide for
18 a waiting period or exclusion that would not have applied
19 under the terminated policy or contract. The association may
20 reinsure an alternative or reissued policy or contract;

21 (e) alternative policies or contracts
22 adopted by the association shall be subject to the approval
23 of the superintendent. The association may adopt alternative
24 policies or contracts of various types for future issuance
25 without regard to a particular impairment or insolvency.

1 Alternative policies or contracts shall contain at least the
2 minimum statutory provisions required in this state and
3 provide benefits that shall not be unreasonable in relation
4 to the premium charged. The association shall set the
5 premium in accordance with a table of rates that it shall
6 adopt. The premium shall reflect the amount of insurance to
7 be provided and the age and class of risk of each insured but
8 shall not reflect changes in the health of the insured after
9 the original policy or contract was last underwritten. An
10 alternative policy or contract issued by the association
11 shall provide coverage of a type similar to that of the
12 policy or contract issued by the impaired or insolvent
13 insurer, as determined by the association;

14 (f) if the association elects to
15 reissue terminated coverage at a premium rate different from
16 that charged under the terminated policy or contract, the
17 premium shall be actuarially justified and set by the
18 association in accordance with the amount of insurance
19 provided and the age and class of risk, subject to the
20 approval of the superintendent;

21 (g) the association's obligations with
22 respect to coverage under a policy or contract of the
23 impaired or insolvent insurer or under a reissued or
24 alternative policy or contract shall cease on the date the
25 coverage or policy is replaced by another similar policy by

1 the policy owner, contract owner, enrollee, the insured or
2 the association; and

3 (h) when proceeding under this
4 subsection with respect to a policy or contract carrying
5 guaranteed minimum interest rates, the association shall
6 assure the payment or crediting of a rate of interest
7 consistent with Paragraph (3) of Subsection E of Section 59A-
8 42-4 NMSA 1978.

9 C. Nonpayment of premiums within thirty-one days
10 after the date required under the terms of a guaranteed,
11 assumed, alternative or reissued policy or contract or
12 substitute coverage shall terminate the association's
13 obligations under the policy, contract or coverage pursuant
14 to the Life and Health Insurance Guaranty Association Act
15 with respect to the policy, contract or coverage, except with
16 respect to claims incurred or net cash surrender value that
17 may be due in accordance with the provisions of that act.

18 D. Premiums due for coverage after entry of an
19 order of liquidation of an insolvent insurer shall belong to
20 and be payable at the direction of the association. If the
21 liquidator of an insolvent insurer requests, the association
22 shall provide a report to the liquidator regarding such
23 premium collected by the association. The association shall
24 be liable for unearned premiums due to policy or contract
25 owners arising after the entry of the order.

1 E. The protection provided by the Life and Health
2 Insurance Guaranty Association Act shall not apply where
3 guaranty protection is provided to residents of this state by
4 the laws of the domiciliary state or jurisdiction of the
5 impaired or insolvent insurer other than this state.

6 F. In carrying out its duties pursuant to
7 Subsection B of this section, the association may:

8 (1) subject to approval by a court in this
9 state, impose permanent policy or contract liens in
10 connection with a guaranty, assumption or reinsurance
11 agreement if the association finds that the amounts that can
12 be assessed are less than the amounts needed to assure full
13 and prompt performance of the association's duties, or if it
14 finds that the economic or financial conditions as they
15 affect member insurers are sufficiently adverse to render the
16 imposition of such permanent policy or contract liens to be
17 in the public interest; or

18 (2) subject to approval by a court in this
19 state, impose temporary moratoriums or liens on payments of
20 cash values and policy loans, or another right to withdraw
21 funds held in conjunction with policies or contracts, in
22 addition to contractual provisions for deferral of cash or
23 policy loan value. In addition, in the event of a temporary
24 moratorium or moratorium charge imposed by the receivership
25 court on payment of cash values or policy loans, or on

1 another right to withdraw funds held in conjunction with
2 policies or contracts, out of the assets of the impaired or
3 insolvent insurer, the association may defer the payment of
4 cash values, policy loans or other rights by the association
5 for the period of the moratorium or moratorium charge imposed
6 by the receivership court, except for claims covered by the
7 association to be paid in accordance with a hardship
8 procedure established by the liquidator or rehabilitator and
9 approved by the receivership court.

10 G. A deposit in this state, held pursuant to law
11 or required by the superintendent for the benefit of
12 creditors, including policy or contract owners, not turned
13 over to the domiciliary liquidator upon the entry of a final
14 order of liquidation or order approving a rehabilitation plan
15 of a member insurer domiciled in this state or in a
16 reciprocal state, pursuant to Chapter 59A, Article 10 NMSA
17 1978, shall be promptly paid to the association. The
18 association is entitled to retain a portion of an amount paid
19 to it equal to the percentage determined by dividing the
20 aggregate amount of policy or contract owners' claims related
21 to that insolvency for which the association has provided
22 statutory benefits by the aggregate amount of all policy or
23 contract owners' claims in this state related to that
24 insolvency and shall remit to the domiciliary receiver the
25 amount so paid to the association less the amount retained

1 pursuant to this subsection. An amount paid to the
2 association and retained by it shall be treated as a
3 distribution of estate assets pursuant to the Insurers
4 Conservation, Rehabilitation and Liquidation Law or similar
5 provision of the state of domicile of the impaired or
6 insolvent insurer.

7 H. If the association fails to act within a
8 reasonable period of time with respect to an insolvent
9 insurer, as provided in Subsection B of this section, the
10 superintendent shall have the powers and duties of the
11 association with respect to the insolvent insurer.

12 I. The association may render assistance and
13 advice to the superintendent, upon the superintendent's
14 request, concerning rehabilitation, payment of claims,
15 continuance of coverage or the performance of other
16 contractual obligations of an impaired or insolvent insurer.

17 J. The association shall have standing to appear
18 or intervene before a court or agency in this state with
19 jurisdiction over an impaired or insolvent insurer concerning
20 which the association is or may become obligated pursuant to
21 the Life and Health Insurance Guaranty Association Act or
22 with jurisdiction over a person or property against which the
23 association may have rights through subrogation or otherwise.
24 Standing shall extend to all matters germane to the powers
25 and duties of the association, including proposals for

1 reinsuring, reissuing, modifying or guaranteeing the policies
2 or contracts of the impaired or insolvent insurer and the
3 determination of the policies or contracts and contractual
4 obligations. The association shall also have the right to
5 appear or intervene before a court or agency in another state
6 with jurisdiction over an impaired or insolvent insurer for
7 which the association is or may become obligated or with
8 jurisdiction over a person or property against whom the
9 association may have rights through subrogation or otherwise.

10 K. The association shall have subrogation rights
11 under the Life and Health Insurance Guaranty Association Act
12 as follows:

13 (1) a person receiving benefits pursuant to
14 the Life and Health Insurance Guaranty Association Act shall
15 be deemed to have assigned the rights under, and any causes
16 of action against any person for losses arising pursuant to,
17 resulting from or otherwise relating to, the covered policy
18 or contract to the association to the extent of the benefits
19 received, whether the benefits are payments of or on account
20 of contractual obligations, continuation of coverage or
21 provision of substitute or alternative policies, contracts or
22 coverages. The association may require an assignment to it
23 of those rights and causes of action by an enrollee, payee,
24 policy or contract owner, beneficiary, insured or annuitant
25 as a condition precedent to the receipt of a right or benefit

1 conferred upon the person;

2 (2) the subrogation rights of the
3 association pursuant to this subsection shall have the same
4 priority against the assets of the impaired or insolvent
5 insurer as that possessed by the person entitled to receive
6 benefits;

7 (3) in addition to Paragraphs (1) and (2) of
8 this subsection, the association shall have all common law
9 rights of subrogation and any other equitable or legal remedy
10 that would have been available to the impaired or insolvent
11 insurer or owner, beneficiary, enrollee or payee of a policy
12 or contract with respect to the policy or contracts;

13 (4) if Paragraph (1), (2) or (3) of this
14 subsection is invalid or ineffective with respect to a person
15 or claim for any reason, the amount payable by the
16 association with respect to the related covered obligations
17 shall be reduced by the amount realized by another person
18 with respect to the person or claim that is attributable to
19 the policies or contracts, or to the portion of the policies
20 or contracts, covered by the association; and

21 (5) if the association has provided benefits
22 with respect to a covered obligation and a person recovers
23 amounts as to which the association has rights as described
24 in this subsection, the person shall pay to the association
25 the portion of the recovery attributable to the policies or

1 contracts, or to the portion of the policies or contracts,
2 covered by the association.

3 L. In addition to its other rights and powers, the
4 association may:

5 (1) enter into contracts that are necessary
6 or proper to carry out the provisions and purposes of the
7 Life and Health Insurance Guaranty Association Act;

8 (2) sue or be sued, including taking legal
9 actions necessary or proper to recover unpaid assessments
10 pursuant to Section 59A-42-8 NMSA 1978 and to settle claims
11 or potential claims against it;

12 (3) borrow money to effect the purposes of
13 the Life and Health Insurance Guaranty Association Act.

14 Notes or other evidence of indebtedness of the association
15 not in default shall be legal investments for domestic member
16 insurers and may be carried as admitted assets;

17 (4) employ or retain those persons necessary
18 or appropriate to handle the financial transactions of the
19 association and to perform other functions as become
20 necessary or proper;

21 (5) take legal action that may be necessary
22 or appropriate to avoid or recover payment of improper
23 claims;

24 (6) exercise, to the extent approved by the
25 superintendent, the powers of a domestic life insurer, health

1 maintenance organization or health insurer, but in no case
2 may the association issue policies or contracts other than
3 those issued to perform its obligations pursuant to the Life
4 and Health Insurance Guaranty Association Act;

5 (7) organize itself as a corporation or in
6 other legal form permitted by the laws of this state;

7 (8) request information from a person
8 seeking coverage from the association in order to aid the
9 association in determining its obligations with respect to
10 that person, and that person shall promptly comply with the
11 request;

12 (9) unless prohibited by law, in accordance
13 with the terms and conditions of the policy or contract, file
14 for an actuarially justified rate or premium increase for a
15 policy or contract for which it provides coverage under the
16 Life and Health Insurance Guaranty Association Act; and

17 (10) take other necessary or appropriate
18 action to discharge its duties and obligations or to exercise
19 its powers.

20 M. The association may join an organization of one
21 or more other state associations with similar purposes to
22 further the purposes and administer the powers and duties of
23 the association.

24 N. The association may succeed to the rights and
25 obligations of an insolvent insurer as follows:

1 (1) at any time within one hundred eighty
2 days of the date of the order of liquidation, the association
3 may elect to succeed to the rights and obligations of the
4 ceding member insurer that relate to policies, contracts or
5 annuities covered, in whole or in part, by the association,
6 in each case under one or more reinsurance contracts entered
7 into by the insolvent insurer and its reinsurers and selected
8 by the association. The assumption shall be effective as of
9 the date of the order of liquidation. The election shall be
10 effected by the association or the national organization of
11 life and health insurance guaranty associations on its behalf
12 sending written notice, return receipt requested, to the
13 affected reinsurers;

14 (2) to facilitate the earliest practicable
15 decision about whether to assume any of the contracts of
16 reinsurance, and in order to protect the financial position
17 of the estate, the receiver and each reinsurer of the ceding
18 member insurer shall make available, upon request, to the
19 association or to the national organization of life and
20 health insurance guaranty associations on its behalf, as soon
21 as possible after commencement of formal delinquency
22 proceedings:

23 (a) copies of in-force contracts of
24 reinsurance and all related files and records relevant to the
25 determination of whether those contracts should be assumed;

1 and

2 (b) notices of defaults under the
3 reinsurance contracts or a known event or condition that with
4 the passage of time could become a default under the
5 reinsurance contracts;

6 (3) the following shall apply to reinsurance
7 contracts assumed by the association:

8 (a) the association shall be
9 responsible for all unpaid premiums due under the reinsurance
10 contracts for periods both before and after the date of the
11 order of liquidation and shall be responsible for the
12 performance of all other obligations to be performed after
13 the date of the order of liquidation, in each case that
14 relate to policies, contracts or annuities covered, in whole
15 or in part, by the association. The association may charge
16 policies, contracts or annuities covered in part by the
17 association, through reasonable allocation methods, the costs
18 for reinsurance in excess of the obligations of the
19 association and shall provide notice and an accounting of
20 these charges to the liquidator;

21 (b) the association shall be entitled
22 to amounts payable by the reinsurer under the reinsurance
23 contracts with respect to losses or events that occur in
24 periods after the date of the order of liquidation and that
25 relate to policies, contracts or annuities covered, in whole

1 or in part, by the association, provided that, upon receipt
2 of those amounts, the association shall be obliged to pay to
3 the beneficiary under the policy, contract or annuity on
4 account of which the amounts were paid a portion of the
5 amount equal to the lesser of: 1) the amount received by the
6 association; and 2) the excess of the amount received by the
7 association over the amount equal to the benefits paid by the
8 association on account of the policy, contract or annuity
9 less the retention of the insurer applicable to the loss or
10 event;

11 (c) within thirty days following the
12 association's election, the association and each reinsurer
13 under contracts assumed by the association shall calculate
14 the net balance due to or from the association under each
15 reinsurance contract as of the date of election with respect
16 to policies, contracts or annuities covered, in whole or in
17 part, by the association, which calculation shall give full
18 credit to all items paid by either the member insurer or its
19 receiver or the reinsurer prior to the election date. The
20 reinsurer shall pay the receiver amounts due for losses or
21 events prior to the date of the order of liquidation, subject
22 to a setoff for premiums unpaid for periods prior to that
23 date, and the association or reinsurer shall pay any
24 remaining balance due the other, in each case within five
25 days of the completion of the calculation described in this

1 subparagraph. A dispute over the amounts due to either the
2 association or the reinsurer shall be resolved by arbitration
3 pursuant to the terms of the affected reinsurance contracts
4 or, if the contract contains no arbitration clause, as
5 otherwise provided by law. If the receiver has received
6 amounts due the association pursuant to Subparagraph (b) of
7 this paragraph, the receiver shall remit those amounts to the
8 association as promptly as practicable; and

9 (d) if the association or receiver, on
10 the association's behalf, within sixty days of the election
11 described in Subparagraph (c) of this paragraph, pays the
12 unpaid premiums due for periods both before and after the
13 date of election that relate to policies, contracts or
14 annuities covered, in whole or in part, by the association,
15 the reinsurer shall not be entitled to terminate the
16 reinsurance contracts for failure to pay premiums insofar as
17 the reinsurance contracts relate to policies, contracts or
18 annuities covered, in whole or in part, by the association,
19 and the reinsurer shall not be entitled to set off unpaid
20 amounts due under other contracts, or unpaid amounts due from
21 parties other than the association, against amounts due the
22 association;

23 (4) during the period from the date of the
24 order of liquidation, until the election date or, if the
25 election does not occur, until one hundred eighty days after

1 the date of the order of liquidation, neither the association
2 nor the reinsurer shall have rights or obligations pursuant
3 to reinsurance contracts that the association has the right
4 to assume pursuant to Paragraphs (1), (2) and (3) of this
5 subsection, whether for periods prior to or after the date of
6 the order of liquidation, and the reinsurer, the receiver and
7 the association shall, to the extent practicable, provide
8 each other data and records reasonably requested; provided
9 that once the association has elected to assume a reinsurance
10 contract, the parties' rights and obligations shall be
11 governed by Paragraphs (1), (2) and (3) of this subsection;

12 (5) if the association does not elect to
13 assume a reinsurance contract by the election date pursuant
14 to Paragraphs (1), (2) and (3) of this subsection, the
15 association shall have no rights or obligations, in each case
16 for periods both before and after the date of the order of
17 liquidation, with respect to the reinsurance contract;

18 (6) when policies, contracts or annuities,
19 or covered obligations with respect to those policies,
20 contracts or annuities, are transferred to an assuming
21 insurer, reinsurance on the policies or annuities may also be
22 transferred by the association, in the case of contracts
23 assumed pursuant to Paragraphs (1), (2) and (3) of this
24 subsection, subject to the following:

25 (a) unless the reinsurer and the

1 assuming insurer agree otherwise, the reinsurance contract
2 transferred shall not cover new policies of insurance,
3 contracts or annuities in addition to those transferred;

4 (b) the obligations described in
5 Paragraphs (1), (2) and (3) of this subsection shall no
6 longer apply with respect to matters arising after the
7 effective date of the transfer; and

8 (c) notice shall be given in writing,
9 return receipt requested, by the transferring party to the
10 affected reinsurer not less than thirty days prior to the
11 effective date of the transfer;

12 (7) the provisions of this subsection shall
13 supersede the provisions of a state law or of an affected
14 reinsurance contract that provides for or requires a payment
15 of reinsurance proceeds, on account of losses or events that
16 occur in periods after the date of the order of liquidation,
17 to the receiver of the insolvent insurer or another person.
18 The receiver shall remain entitled to amounts payable by the
19 reinsurer under the reinsurance contracts with respect to
20 losses or events that occur in periods prior to the date of
21 the order of liquidation, subject to applicable setoff
22 provisions; and

23 (8) except as otherwise provided in this
24 subsection, the provisions of this subsection shall not:

25 (a) alter or modify the terms and

1 conditions of a reinsurance contract;

2 (b) abrogate or limit the rights of a
3 reinsurer to claim that it is entitled to rescind a
4 reinsurance contract;

5 (c) give a policyholder, contract
6 owner, enrollee, certificate holder or beneficiary an
7 independent cause of action against a reinsurer that is not
8 otherwise set forth in the reinsurance contract;

9 (d) limit or affect the association's
10 rights as a creditor of the estate against the assets of the
11 estate; or

12 (e) apply to reinsurance contracts
13 covering property or casualty risks.

14 O. The board may exercise reasonable business
15 judgment to determine the means by which the association is
16 to provide the benefits of the Life and Health Insurance
17 Guaranty Association Act in an economical and efficient
18 manner.

19 P. Where the association has arranged or offered
20 to provide benefits to a covered person under a plan or
21 arrangement that fulfills the association's obligations, the
22 person shall not be entitled to benefits from the association
23 in addition to or other than those provided under the plan or
24 arrangement.

25 Q. Venue in a suit against the association arising HB 181
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1 pursuant to the Life and Health Insurance Guaranty
2 Association Act shall be in Santa Fe county. The association
3 shall not be required to give an appeal bond in an appeal
4 that relates to a cause of action arising pursuant to the
5 Life and Health Insurance Guaranty Association Act.

6 R. In carrying out its duties in connection with
7 guaranteeing, assuming, reissuing or reinsuring policies or
8 contracts pursuant to Subsection A or B of this section, the
9 association may issue substitute coverage for a policy or
10 contract that provides an interest rate, crediting rate or
11 similar factor determined by use of an index or other
12 external reference stated in the policy or contract employed
13 in calculating returns or changes in value by issuing an
14 alternative policy or contract in accordance with the
15 following provisions:

16 (1) in lieu of the index or other external
17 reference provided for in the original policy or contract,
18 the alternative policy or contract provides for a fixed
19 interest rate, payment of dividends with minimum guarantees
20 or a different method for calculating interest or changes in
21 value;

22 (2) there is no requirement for evidence of
23 insurability, waiting period or other exclusion that would
24 not have applied under the replaced policy or contract; and

25 (3) the alternative policy or contract is

1 substantially similar to the replaced policy or contract in
2 all other material terms."

3 SECTION 6. Section 59A-42-8 NMSA 1978 (being Laws 2012,
4 Chapter 9, Section 11) is amended to read:

5 "59A-42-8. ASSESSMENTS.--

6 A. For the purpose of providing the funds
7 necessary to carry out the powers and duties of the
8 association, the board shall assess the member insurers,
9 separately for each account, at a time and for amounts as the
10 board finds necessary. Assessments shall be due not less
11 than thirty days after prior written notice to the member
12 insurers and shall accrue interest at six percent a year on
13 and after the due date.

14 B. There shall be two classes of assessments as
15 follows:

16 (1) class A assessments shall be authorized
17 and called for the purpose of meeting administrative and
18 legal costs and other expenses. Class A assessments may be
19 authorized and called whether or not related to a particular
20 impaired or insolvent insurer; and

21 (2) class B assessments shall be authorized
22 and called to the extent necessary to carry out the powers
23 and duties of the association with regard to an impaired or
24 an insolvent insurer.

25 C. The amount of a class A assessment shall be

1 determined by the board and may be authorized and called on a
2 pro rata or non-pro rata basis. If the class A assessment is
3 authorized and called on a pro rata basis, the board may
4 provide that it be credited against future class B
5 assessments. The amount of a class B assessment, except for
6 assessments related to long-term care insurance, shall be
7 allocated for assessment purposes between the accounts and
8 among the subaccounts of the life insurance and annuity
9 account pursuant to an allocation formula that may be based
10 on the premiums or reserves of the impaired or insolvent
11 insurer or another standard deemed by the board in its sole
12 discretion as being fair and reasonable under the
13 circumstances.

14 D. The amount of the class B assessment for long-
15 term care insurance written by the impaired or insolvent
16 insurer shall be allocated according to a methodology
17 included in the plan of operation and approved by the
18 superintendent. The methodology shall provide for fifty
19 percent of the assessment to be allocated to accident and
20 health member insurers and fifty percent to be allocated to
21 life and annuity member insurers.

22 E. Class B assessments against member insurers for
23 each account and subaccount shall be in the proportion that
24 the premiums received on business in this state by each
25 assessed member insurer on policies or contracts covered by

1 each account for the three most recent calendar years for
2 which information is available preceding the year in which
3 the member insurer became insolvent or, in the case of an
4 assessment with respect to an impaired insurer, the three
5 most recent calendar years for which information is available
6 preceding the year in which the member insurer became
7 impaired, bears to premiums received on business in this
8 state for those calendar years by all assessed member
9 insurers.

10 F. Assessments for funds to meet the requirements
11 of the association with respect to an impaired or insolvent
12 insurer shall not be authorized or called until necessary to
13 implement the purposes of the Life and Health Insurance
14 Guaranty Association Act. Classification of assessments
15 pursuant to Subsection B of this section and computation of
16 assessments pursuant to Subsections C and E of this section
17 shall be made with a reasonable degree of accuracy,
18 recognizing that exact determinations may not always be
19 possible. The association shall notify each member insurer
20 of its anticipated pro rata share of an authorized assessment
21 not yet called within one hundred eighty days after the
22 assessment is authorized.

23 G. The association may abate or defer, in whole or
24 in part, the assessment of a member insurer if, in the
25 opinion of the board, payment of the assessment would

1 endanger the ability of the member insurer to fulfill its
2 contractual obligations. In the event an assessment against
3 a member insurer is abated, or deferred in whole or in part,
4 the amount by which the assessment is abated or deferred may
5 be assessed against the other member insurers in a manner
6 consistent with the basis for assessments set forth in this
7 section. Once the conditions that caused a deferral have
8 been removed or rectified, the member insurer shall pay all
9 assessments that were deferred pursuant to a repayment plan
10 approved by the association.

11 H. Subject to the provisions of Subsection I of
12 this section, the total of all assessments authorized by the
13 association with respect to a member insurer for each
14 subaccount of the life insurance and annuity account and for
15 the health insurance account shall not in one calendar year
16 exceed two percent of that member insurer's average annual
17 premiums received in this state on the policies and contracts
18 covered by the subaccount or account during the three
19 calendar years preceding the year in which the member insurer
20 became an impaired or insolvent insurer.

21 I. If two or more assessments are authorized in
22 one calendar year with respect to member insurers that become
23 impaired or insolvent in different calendar years, the
24 average annual premiums for purposes of the aggregate
25 assessment percentage limitation referenced in Subsection H

1 of this section shall be equal and limited to the higher of
2 the three-year average annual premiums for the applicable
3 subaccount or account as calculated pursuant to this section.

4 J. If the maximum assessment, together with the
5 other assets of the association in an account, does not
6 provide in one year in either account an amount sufficient to
7 carry out the responsibilities of the association, the
8 necessary additional funds shall be assessed as soon
9 thereafter as permitted by the Life and Health Insurance
10 Guaranty Association Act.

11 K. The board may provide in the plan of operation
12 a method of allocating funds among claims, whether relating
13 to one or more impaired or insolvent insurers, when the
14 maximum assessment will be insufficient to cover anticipated
15 claims.

16 L. If the maximum assessment for a subaccount of
17 the life and annuity account in one year does not provide an
18 amount sufficient to carry out the responsibilities of the
19 association, then pursuant to Subsection E of this section,
20 the board shall access the other subaccounts of the life
21 insurance and annuity account for the necessary additional
22 amount, subject to the maximum stated in Subsections H, I and
23 J of this section.

24 M. The board may, by an equitable method as
25 established in the plan of operation, refund to member

1 insurers, in proportion to the contribution of each member
2 insurer to that account, the amount by which the assets of
3 the account exceed the amount the board finds is necessary to
4 carry out during the coming year the obligations of the
5 association with regard to that account, including assets
6 accruing from assignment, subrogation, net realized gains and
7 income from investments. A reasonable amount may be retained
8 in an account to provide funds for the continuing expenses of
9 the association and for a future losses claim.

10 N. It shall be proper for a member insurer, in
11 determining its premium rates and policyowner dividends as to
12 any kind of insurance or health maintenance organization
13 business within the scope of the Life and Health Insurance
14 Guaranty Association Act, to consider the amount reasonably
15 necessary to meet its assessment obligations under that act.

16 O. The association shall issue to each member
17 insurer paying an assessment, other than a class A
18 assessment, a certificate of contribution, in a form
19 prescribed by the superintendent, for the amount of the
20 assessment paid. All outstanding certificates shall be of
21 equal dignity and priority without reference to amounts or
22 dates of issue. A certificate of contribution may be shown
23 by the member insurer in its financial statement as an asset
24 in that form and for that amount, if any, and period of time
25 as the superintendent may approve.

1 P. A protest to an assessment shall occur as
2 follows:

3 (1) a member insurer that wishes to protest
4 all or part of an assessment shall pay when due the full
5 amount of the assessment as set forth in the notice provided
6 by the association. The payment shall be available to meet
7 association obligations during the pendency of the protest or
8 a subsequent appeal. Payment shall be accompanied by a
9 statement in writing that the payment is made under protest
10 and setting forth a brief statement of the grounds for the
11 protest;

12 (2) within sixty days following the payment
13 of an assessment under protest by a member insurer, the
14 association shall notify the member insurer in writing of its
15 determination with respect to the protest unless the
16 association notifies the member insurer that additional time
17 is required to resolve the issues raised by the protest;

18 (3) within thirty days after a final
19 decision has been made, the association shall notify the
20 protesting member insurer in writing of that final decision.
21 Within sixty days of receipt of notice of the final decision,
22 the protesting member insurer may appeal that final action to
23 the superintendent;

24 (4) in the alternative to rendering a final
25 decision with respect to a protest based on a question

1 regarding the assessment base, the association may refer
2 protests to the superintendent for a final decision, with or
3 without a recommendation from the association; and

4 (5) if the protest or appeal on the
5 assessment is upheld, the amount paid in error or excess
6 shall be returned to the member insurer. Interest on a
7 refund due a protesting member insurer shall be paid at the
8 rate actually earned by the association.

9 Q. The association may request information of
10 member insurers in order to aid in the exercise of its power
11 pursuant to this section, and member insurers shall promptly
12 comply with a request."

13 SECTION 7. Section 59A-42-10 NMSA 1978 (being Laws
14 1984, Chapter 127, Section 759, as amended) is amended to
15 read:

16 "59A-42-10. DUTIES AND POWERS OF THE SUPERINTENDENT.--

17 A. The superintendent shall:

18 (1) notify the association of the existence
19 of an insolvent insurer not later than three days after the
20 superintendent receives notice of the determination of the
21 insolvency;

22 (2) upon request of the board, provide the
23 association with a statement of the premiums in this or
24 another state of each member insurer; and

25 (3) when an impairment is declared and the

1 amount of the impairment is determined, serve a demand upon
2 the impaired insurer to make good the impairment within a
3 reasonable time. Notice to the impaired insurer shall
4 constitute notice to its shareholders, if any. The failure
5 of the impaired insurer to promptly comply with the demand
6 shall not excuse the association from the performance of its
7 powers and duties pursuant to the Life and Health Insurance
8 Guaranty Association Act.

9 B. The superintendent may:

10 (1) suspend or revoke, after notice and
11 hearing, the certificate of authority to transact business in
12 this state of a member insurer that fails to pay an
13 assessment when due or that fails to comply with the plan of
14 operation. As an alternative, the superintendent may levy a
15 fine on a member insurer that fails to pay an assessment when
16 due. The fine shall not exceed five percent of the unpaid
17 assessment a month, except that no fine shall be less than
18 one hundred dollars (\$100) a month; and

19 (2) revoke the designation of a servicing
20 facility if the superintendent finds that claims are being
21 handled unsatisfactorily."

22 SECTION 8. Section 59A-42-11 NMSA 1978 (being Laws
23 1984, Chapter 127, Section 760, as amended) is amended to
24 read:

25 "59A-42-11. PREVENTION OF INSOLVENCIES.--To aid in the

1 detection and prevention of insurance insolvencies:

2 A. the superintendent shall:

3 (1) notify the superintendents in other
4 states, within thirty days following the action taken or the
5 date the action occurs, when the superintendent takes any of
6 the following actions against a member insurer:

7 (a) revokes a license;

8 (b) suspends a license; or

9 (c) makes a formal order that the
10 member insurer restrict its premium writing, obtain
11 additional contributions to surplus, withdraw from the state,
12 reinsure all or a part of its business or increase capital,
13 surplus or another account for the security of policy owners,
14 contract owners, certificate holders or creditors;

15 (2) report to the board when the
16 superintendent has taken an action set forth in Paragraph (1)
17 of this subsection or has received a report from another
18 superintendent indicating that an action has been taken in
19 another state. The report to the board shall contain all
20 significant details of the action taken or of the report
21 received from another superintendent;

22 (3) report to the board when the
23 superintendent has reasonable cause to believe from an
24 examination, whether completed or in process, of a member
25 insurer that the member insurer may be an impaired or

1 insolvent insurer; and

2 (4) furnish to the board the national
3 association of insurance commissioners' insurance regulatory
4 information system ratios and listings of companies not
5 included in the ratios developed by the national association
6 of insurance commissioners. The board may use that
7 information in carrying out its duties and responsibilities
8 pursuant to this section. The report shall be kept
9 confidential by the board until it is made public by the
10 superintendent or other lawful authority;

11 B. the superintendent may seek the advice and
12 recommendations of the board concerning a matter affecting
13 the duties and responsibilities of the superintendent
14 regarding the financial condition of member insurers or
15 health maintenance organizations seeking admission to
16 transact business in this state; and

17 C. the board may, upon majority vote:

18 (1) notify the superintendent of information
19 indicating that a member insurer may be an impaired or
20 insolvent insurer;

21 (2) make reports and recommendations to the
22 superintendent upon any matter germane to the solvency,
23 liquidation, rehabilitation or conservation of a member
24 insurer or germane to the solvency of an insurer or health
25 maintenance organization seeking to do business in this

1 state. The reports and recommendations are not public
2 documents; and

3 (3) make recommendations to the
4 superintendent for the detection and prevention of member
5 insurers' insolvencies."

6 SECTION 9. Section 59A-42-13 NMSA 1978 (being Laws
7 1984, Chapter 127, Section 762, as amended) is amended to
8 read:

9 "59A-42-13. MISCELLANEOUS PROVISIONS.--

10 A. The Life and Health Insurance Guaranty
11 Association Act shall not be construed to reduce the
12 liability for unpaid assessments of the insureds of an
13 impaired or insolvent insurer operating under a plan with
14 assessment liability.

15 B. Records shall be kept of all meetings of the
16 board to discuss the activities of the association in
17 carrying out its powers and duties. Records of the meetings
18 with respect to an impaired or insolvent insurer shall be
19 made public only upon the termination of a liquidation,
20 rehabilitation or conservation proceeding involving the
21 impaired or insolvent insurer, upon the termination of the
22 insolvency of the member insurer or upon the order of a court
23 of competent jurisdiction. Nothing in this subsection limits
24 the duty of the association to render the reports required by
25 Section 59A-42-14 NMSA 1978.

1 C. For the purpose of carrying out its
2 obligations, the association shall be deemed to be a creditor
3 of the impaired or insolvent insurer to the extent of assets
4 attributable to covered policies or contracts reduced by
5 amounts to which the association is entitled as a subrogee
6 pursuant to Subsection K of Section 59A-42-7 NMSA 1978.
7 Assets of the impaired or insolvent insurer attributable to
8 covered policies or contracts shall be used to continue all
9 covered policies or contracts and pay all contractual
10 obligations of the impaired or insolvent insurer. Assets
11 attributable to covered policies or contracts, as used in
12 this subsection, are that proportion of the assets that the
13 reserves that should have been established for those policies
14 or contracts bear to the reserves that should have been
15 established for all policies of insurance or health benefit
16 plans written by the impaired or insolvent insurer.

17 D. As a creditor of the impaired or insolvent
18 insurer and consistent with the Insurers Conservation,
19 Rehabilitation and Liquidation Law, the association and other
20 similar associations shall be entitled to receive a
21 disbursement of assets out of the marshaled assets, from time
22 to time as the assets become available to reimburse it, as a
23 credit against contractual obligations pursuant to the Life
24 and Health Insurance Guaranty Association Act. If the
25 liquidator has not, within one hundred twenty days of a final

1 determination of insolvency of a member insurer by the
2 receivership court, made an application to the court for the
3 approval of a proposal to disburse assets out of marshaled
4 assets to guaranty associations having obligations because of
5 the insolvency, the association shall be entitled to make
6 application to the receivership court for approval of its own
7 proposal to disburse these assets.

8 E. Prior to the termination of a liquidation,
9 rehabilitation or conservation proceeding, the court may take
10 into consideration the contributions of the respective
11 parties, including the association, the shareholders,
12 contract owners, certificate holders, enrollees and policy
13 owners of the insolvent insurer and any other party with a
14 bona fide interest, in making an equitable distribution of
15 the ownership rights of the insolvent insurer. In such a
16 determination, consideration shall be given to the welfare of
17 the policy owners, contract owners, certificate holders and
18 enrollees of the continuing or successor member insurer.

19 F. No distribution to stockholders, if any, of an
20 impaired or insolvent insurer shall be made until and unless
21 the total amount of valid claims of the association with
22 interest thereon for funds expended in carrying out its
23 powers and duties with respect to the member insurer has been
24 fully recovered by the association."

25 SECTION 10. Section 59A-42-17 NMSA 1978 (being Laws

1 2012, Chapter 9, Section 20) is amended to read:

2 "59A-42-17. PROHIBITED ADVERTISEMENT--NOTICE TO POLICY
3 OWNERS.--

4 A. No person, including a member insurer, agent or
5 affiliate of a member insurer, shall make, publish,
6 disseminate, circulate or place before the public, or cause
7 directly or indirectly to be made, published, disseminated,
8 circulated or placed before the public, in a newspaper,
9 magazine or other publication, or in the form of a notice,
10 circular, pamphlet, letter or poster, or over a radio station
11 or television station, or in any other way, an advertisement,
12 announcement or statement, written or oral, that uses the
13 existence of the association for the purpose of sales,
14 solicitation or inducement to purchase insurance or other
15 coverage covered by the Life and Health Insurance Guaranty
16 Association Act. However, this subsection shall not apply to
17 the association or any other entity that does not sell or
18 solicit insurance or coverage by a health maintenance
19 organization.

20 B. Within one hundred eighty days of the effective
21 date of this act, the association shall prepare a summary
22 document describing the general purposes and current
23 limitations of that act and complying with Subsection C of
24 this section. The document shall be submitted to the
25 superintendent for approval. At the expiration of the

1 sixtieth day after the date on which the superintendent
2 approves the document, a member insurer shall not deliver a
3 policy or contract to a policy owner, contract owner,
4 certificate holder or enrollee unless the summary document is
5 delivered to the policy owner, contract owner, certificate
6 holder or enrollee at the time of delivery of the policy or
7 contract. The document shall also be available upon request
8 by a policy owner, contract owner, certificate holder or
9 enrollee. The distribution, delivery or contents or
10 interpretation of this document does not guarantee that
11 either the policy or the contract or the policy owner,
12 contract owner, certificate holder or enrollee is covered in
13 the event of the impairment or insolvency of a member
14 insurer. The description document shall be revised by the
15 association as amendments to the Life and Health Insurance
16 Guaranty Association Act may require. Failure to receive
17 this document does not give the policy owner, contract owner,
18 certificate holder or insured greater rights than those
19 stated in the Life and Health Insurance Guaranty Association
20 Act.

21 C. The document prepared pursuant to Subsection B
22 of this section shall contain a clear and conspicuous
23 disclaimer on its face. The superintendent shall establish
24 the form and content of the disclaimer. The disclaimer
25 shall:

1 (1) state the name and address of the
2 association and insurance department;

3 (2) prominently warn the policy owner,
4 contract owner, certificate holder or enrollee that the
5 association may not cover the policy or contract, if coverage
6 is available, that it will be subject to substantial
7 limitations and exclusions and conditioned on continued
8 residence in this state;

9 (3) state the types of policies or contracts
10 for which guaranty funds will provide coverage;

11 (4) state that the member insurer and its
12 agents are prohibited by law from using the existence of the
13 association for the purpose of sales, solicitation or
14 inducement to purchase any form of insurance or health
15 maintenance organization coverage;

16 (5) state that the policy owner, contract
17 owner, certificate holder or enrollee should not rely on
18 coverage pursuant to the Life and Health Insurance Guaranty
19 Association Act when selecting an insurer or health
20 maintenance organization;

21 (6) explain rights available and procedures
22 for filing a complaint to allege a violation of the
23 provisions of the Life and Health Insurance Guaranty
24 Association Act; and

25 (7) provide other information as directed by

1 the superintendent, including sources for information about
2 the financial condition of insurers, provided that the
3 information is not proprietary and is subject to disclosure
4 pursuant to the Inspection of Public Records Act.

5 D. A member insurer shall retain evidence of
6 compliance with Subsection B of this section for as long as
7 the policy or contract for which the notice is given remains
8 in effect."

9 SECTION 11. REPEAL.--Section 59A-46-15 NMSA 1978 (being
10 Laws 1993, Chapter 266, Section 15) is repealed.

11 SECTION 12. APPLICABILITY.--This act shall not apply to
12 any member insurer that was insolvent or unable to fulfill
13 the member insurer's contractual obligations prior to January
14 1, 2025.

15 SECTION 13. EFFECTIVE DATE.--The effective date of the
16 provisions of this act is January 1, 2025. _____