

1 SENATE BILL 47

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

3 INTRODUCED BY

4 Carroll H. Leavell

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10 AN ACT

11 RELATING TO INSURANCE; CHANGING THE NAME OF AND AMENDING THE
12 LIFE AND HEALTH INSURANCE GUARANTY LAW; CLARIFYING WHO IS A
13 CREDITOR IN REGARD TO SPECIAL DEPOSITS; CLARIFYING THE RELEASE
14 OF DEPOSITS; CLARIFYING THE RECOVERY OF ASSETS TO MEET THE
15 PURPOSES OF THE LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION
16 ACT; ADDING DEFINITIONS; EXPANDING THE COVERAGE AND LIMITATIONS
17 ON THE PAYMENT OF CLAIMS UNDER CERTAIN INSURANCE POLICIES;
18 EXPANDING THE POWERS AND DUTIES OF THE LIFE AND HEALTH
19 INSURANCE GUARANTY ASSOCIATION; AMENDING THE TYPES OF ACCOUNTS
20 AND ASSESSMENTS UNDER THE PURVIEW OF THAT ASSOCIATION;
21 AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

22
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

24 SECTION 1. Section 59A-5-19 NMSA 1978 (being Laws 1984,
25 Chapter 127, Section 86, as amended) is amended to read:

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1 "59A-5-19. SPECIAL DEPOSIT OR BOND.--

2 A. To qualify for and continue to hold a
3 certificate of authority to transact insurance in this state,
4 the insurer shall also make a special deposit in trust for the
5 benefit only of all its policyholders and creditors in this
6 state in applicable amount as shown in Schedule I of Section
7 59A-5-16 NMSA 1978. The deposit shall consist of assets
8 eligible therefor under Section 59A-10-3 NMSA 1978 and shall be
9 deposited with or through the superintendent or in a commercial
10 depository located in the state of New Mexico approved by the
11 superintendent subject to rules and regulations issued by the
12 superintendent.

13 B. In lieu of such deposit, the insurer may file
14 with the state treasurer of New Mexico through the
15 superintendent a surety bond issued by a surety insurer
16 authorized to transact such insurance in this state, in penal
17 sum not less than the aggregate special deposits required by
18 this section. The bond shall be in such form as may be
19 prescribed by the attorney general of New Mexico. The bond
20 shall not be subject to cancellation except upon not less than
21 sixty days advance written notice to the superintendent by the
22 insurer or surety; and the insurer shall promptly replace, not
23 later than fifteen days prior to expiration of the bond, with
24 another like bond, any bond so canceled or otherwise
25 terminated. The bond shall expressly provide that failure of

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1 the insurance company to replace a canceled or terminated bond
2 as provided in this section shall constitute a breach of the
3 condition upon which the bond is given, upon which occurrence
4 the superintendent may immediately recover from the surety the
5 penal sum of the bond to be held as a special deposit in the
6 manner described in Subsection A of this section.

7 C. The special deposit, or bond in lieu thereof,
8 shall remain on deposit or on file and in force for so long as
9 there may arise in this state any claim under any policy issued
10 by the insurer covering a subject located or a service to be
11 performed in this state or a claim arising out of the insurer's
12 operations in this state.

13 D. Whenever because of volume of business being
14 transacted by the insurer, methods of doing business,
15 regulatory practices of the domiciliary state or for other good
16 cause the superintendent deems advisable for protection of
17 policyholders and creditors, the superintendent may require an
18 insurer to make and maintain a special deposit in reasonable
19 amount greater than required under Schedule I of Section
20 59A-5-16 NMSA 1978, but no greater than one hundred fifteen
21 percent of its direct unpaid losses in New Mexico.

22 E. The special deposit shall be subject to the
23 applicable provisions of Chapter 59A, Article 10 NMSA 1978.

24 F. This section shall not apply [~~as~~] to domestic
25 Lloyds plan automobile insurers as identified in Chapter 59A,

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1 Article 38 NMSA 1978.

2 G. For purposes of this section, "creditors" shall
3 not include:

4 (1) shareholders or other owners of the
5 insurer regarding claims arising out of their capacity as
6 shareholders or other owners; or

7 (2) holders of bonds, surplus notes, capital
8 notes, contribution notes or similar obligations of the insurer
9 regarding claims arising out of their capacity as holders of
10 bonds, surplus notes, capital notes, contribution notes or
11 similar obligations of the insurer."

12 SECTION 2. Section 59A-10-9 NMSA 1978 (being Laws 1984,
13 Chapter 127, Section 169) is amended to read:

14 "59A-10-9. RELEASE OF DEPOSIT.--

15 A. All general and special deposits of an insurer
16 under the Insurance Code shall be released only as follows:

17 (1) upon extinguishment of all liabilities of
18 the insurer for the security of which the deposit is held, by
19 reinsurance contract or otherwise; [~~or~~]

20 (2) upon the insurer ceasing to transact
21 business in this state, and all of the liabilities for which
22 the deposit was security have been satisfied or terminated, or
23 assumed by another insurer authorized to transact insurance in
24 New Mexico; [~~or~~]

25 (3) if the insurer is subject to delinquency

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1 proceedings, upon proper order of a court of competent
2 jurisdiction the insurer's deposited assets shall be released
3 to the receiver, conservator, rehabilitator or liquidator of
4 the insurer; ~~[or]~~

5 (4) upon the entry of a final order of
6 liquidation or order approving a rehabilitation plan of a
7 member insurer, and upon request of the domiciliary receiver,
8 the deposit shall be released to the domiciliary receiver or to
9 the applicable New Mexico guaranty association; or

10 ~~[(4)]~~ (5) deposits held under Section ~~[166~~
11 ~~(excess deposits) of this article]~~ 59A-10-6 NMSA 1978 shall be
12 released in whole or in part to the insurer on the insurer's
13 request while the insurer is solvent and its general or special
14 deposit, as applicable, is otherwise in amount not less than
15 that required of the insurer under the Insurance Code.

16 B. If the deposited assets are held pursuant to
17 Section ~~[100 (reciprocity provision) of the Insurance Code]~~
18 59A-5-33 NMSA 1978, the deposit shall be released when the
19 basis for such reciprocity no longer exists as to the deposit.

20 C. Release of a deposit shall be made only on
21 application to and written order of the superintendent, made
22 upon proof satisfactory to the superintendent of the existence
23 of one or more of grounds for release stated in Subsection A
24 ~~[above]~~ of this section. The superintendent, before directing
25 release of deposited assets, may require such evidence as ~~[he]~~

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1 the superintendent deems satisfactory that the release of the
2 deposit, in whole or in part, should be made. [~~The~~
3 ~~superintendent shall have no personal liability for any release~~
4 ~~of a deposit or part thereof so made by him in good faith.~~] In
5 the case of special deposits, prior to release of the deposit
6 pursuant to Paragraphs (3) and (4) of Subsection A of this
7 section, the superintendent may require written assurances from
8 the domiciliary receiver that the deposit will be handled in
9 accordance with Section 59A-5-19 NMSA 1978 and applicable
10 federal law."

11 SECTION 3. A new section of the Insurers Conservation,
12 Rehabilitation and Liquidation Law is enacted to read:

13 "[NEW MATERIAL] RECOVERY FROM AFFILIATES.--The receiver
14 shall have a right to recover from an affiliate of the insurer
15 property of the insurer transferred to or for the benefit of
16 the affiliate within the five years preceding the initial
17 petition for receivership. No transfer is recoverable under
18 this section if the affiliate shows that, when the transfer was
19 made:

- 20 A. the insurer was solvent;
- 21 B. the transfer was lawful; and
- 22 C. neither the insurer nor the affiliate knew or
23 should have known that the transfer, under then-applicable
24 statutory accounting standards, would:

25 (1) place the insurer in violation of

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1 applicable capital or surplus requirements;

2 (2) place the insurer below the risk-based
3 capital level as defined in the Risk-Based Capital Act;

4 (3) cause the insurer's filed financial
5 statements not to present fairly the capital and surplus of the
6 insurer; or

7 (4) otherwise cause the insurer to be in a
8 hazardous financial condition."

9 SECTION 4. Section 59A-42-1 NMSA 1978 (being Laws 1984,
10 Chapter 127, Section 750) is amended to read:

11 "59A-42-1. SHORT TITLE.--~~[This article]~~ Chapter 59A,
12 Article 42 NMSA 1978 may be cited as the "Life and Health
13 Insurance Guaranty ~~[Law]~~ Association Act."

14 SECTION 5. Section 59A-42-2 NMSA 1978 (being Laws 1984,
15 Chapter 127, Section 751) is amended to read:

16 "59A-42-2. PURPOSE.--The purpose of ~~[this article]~~ the
17 Life and Health Insurance Guaranty Association Act is to
18 provide a mechanism to facilitate continuation of coverage and
19 the payment of covered claims under certain insurance policies,
20 to avoid excessive delay in payment and avoid financial loss to
21 claimants or policyholders because of insolvency of an insurer,
22 to assist in detection and prevention of insurer insolvencies
23 and to provide an association to assess the cost of such
24 protection among insurers."

25 SECTION 6. Section 59A-42-3 NMSA 1978 (being Laws 1984,

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1 Chapter 127, Section 752, as amended) is repealed and a new
2 Section 59A-42-3 NMSA 1978 is enacted to read:

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

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

7 B. "association" means the life and health
8 insurance guaranty association created pursuant to Section
9 59A-42-5 NMSA 1978;

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

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

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

20 F. "called assessment", or the term "called" when
21 used in the context of assessments, means that a notice has
22 been issued by the association to member insurers requiring
23 that an authorized assessment be paid within the time frame set
24 forth within the notice. An authorized assessment becomes a
25 called assessment when notice is mailed by the association to

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1 member insurers;

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

6 H. "covered policy" means a policy or contract or
7 portion of a policy or contract for which coverage is provided
8 pursuant to Section 59A-42-4 NMSA 1978;

9 I. "domiciliary state" means the state in which an
10 insurer is incorporated or organized or, as to an alien
11 insurer, the state in which at commencement of delinquency
12 proceedings the larger amount of the insurer's assets are held
13 in trust or on deposit for the benefit of its policyholders and
14 creditors in the United States;

15 J. "extra-contractual claims" includes claims
16 relating to bad faith in the payment of claims, punitive or
17 exemplary damages or attorney fees and costs;

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

23 L. "insolvent insurer" means a member insurer that
24 after the effective date of the Life and Health Insurance
25 Guaranty Association Act, is placed under an order of

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1 liquidation by a court of competent jurisdiction with a finding
2 of insolvency;

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

- 10 (1) a hospital or medical service
11 organization, whether profit or nonprofit;
- 12 (2) a health maintenance organization;
- 13 (3) a fraternal benefit society;
- 14 (4) a mandatory state pooling plan;
- 15 (5) a mutual assessment company or other
16 person that operates on an assessment basis;
- 17 (6) an insurance exchange;
- 18 (7) a charitable organization that is in good
19 standing with the superintendent pursuant to Section 59A-1-16.1
20 NMSA 1978;
- 21 (8) any insurer that was insolvent or unable
22 to fulfill its contractual obligations as of April 9, 1975; or
- 23 (9) an entity similar to any of the above;

24 N. "Moody's corporate bond yield average" means the
25 monthly average corporates as published by Moody's investors

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1 service, incorporated, or its successor;

2 O. "owner" of a policy or contract, "policy owner"
3 and "contract owner" means the person who is identified as the
4 legal owner under the terms of the policy or contract or who is
5 otherwise vested with legal title to the policy or contract
6 through a valid assignment completed in accordance with the
7 terms of the policy or contract and properly recorded as the
8 owner on the books of the insurer. The terms "owner", "policy
9 owner" and "contract owner" do not include persons with a mere
10 beneficial interest in a policy or contract;

11 P. "plan sponsor" means:

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

14 (2) the employee organization in the case of a
15 benefit plan established or maintained by an employee
16 organization; or

17 (3) the association, committee, joint board of
18 trustees or other similar group of representatives of the
19 parties who establish or maintain the benefit plan in the case
20 of a benefit plan established or maintained by two or more
21 employers or jointly by one or more employers and one or more
22 employee organizations;

23 Q. "premiums" means amounts or considerations, by
24 whatever name used, received on covered policies or contracts
25 less returned premiums, considerations and deposits and less

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1 dividends and experience credits. "Premiums" does not include:

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

12 (2) premiums in excess of five million dollars
13 (\$5,000,000) on an unallocated annuity contract not issued
14 under a governmental retirement benefit plan, or its trustee,
15 established pursuant to Section 401, 403(b) or 457 of the
16 federal Internal Revenue Code of 1986; or

17 (3) with respect to multiple non-group
18 policies of life insurance owned by one owner, whether the
19 policy owner is an individual, firm, corporation or other
20 person, and whether the persons insured are officers, managers,
21 employees or other persons, premiums in excess of five million
22 dollars (\$5,000,000) with respect to these policies or
23 contracts, regardless of the number of policies or contracts
24 held by the owner;

25 R. "principal place of business" means:

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

8 (a) the state in which the primary
9 executive and administrative headquarters of the entity is
10 located;

11 (b) the state in which the principal
12 office of the chief executive officer of the entity is located;

13 (c) the state in which the board, or
14 similar governing person or persons, of the entity conducts the
15 majority of its meetings;

16 (d) the state in which the executive or
17 management committee of the board, or similar governing person
18 or persons, of the entity conducts the majority of its
19 meetings;

20 (e) the state from which the management
21 of the overall operations of the entity is directed; and

22 (f) in the case of a benefit plan
23 sponsored by affiliated companies comprising a consolidated
24 corporation, the state in which the holding company or
25 controlling affiliate has its principal place of business as

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1 determined using the factors in this subsection; but

2 (g) in the case of a plan sponsor, if
3 more than fifty percent of the participants in the benefit plan
4 are employed in a single state, that state shall be deemed to
5 be the principal place of business of the plan sponsor; and

6 (2) in the case of a plan sponsor of a benefit
7 plan described in Paragraph (3) of Subsection P of this
8 section, the principal place of business of the association,
9 committee, joint board of trustees or other similar group of
10 representatives of the parties that establish or maintain the
11 benefit plan that, in lieu of a specific or clear designation
12 of a principal place of business, shall be deemed to be the
13 principal place of business of the employer or employee
14 organization that has the largest investment in the benefit
15 plan in question;

16 S. "receivership court" means the court in the
17 insolvent or impaired insurer's domiciliary state having
18 jurisdiction over the conservation, rehabilitation or
19 liquidation of the insurer;

20 T. "resident" means a person to whom a contractual
21 obligation is owed and who resides in this state on the date of
22 entry of a court order that determines a member insurer to be
23 an impaired insurer or a court order that determines a member
24 insurer to be an insolvent insurer. A person may be a resident
25 of only one state, which, in the case of a person other than a

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1 natural person, shall be its principal place of business.
2 Citizens of the United States that are either residents of
3 foreign countries or residents of United States possessions,
4 territories or protectorates that do not have an association
5 similar to the association created by the Life and Health
6 Insurance Guaranty Association Act shall be deemed residents of
7 the state of domicile of the insurer that issued the policies
8 or contracts;

9 U. "structured settlement annuity" means an annuity
10 purchased in order to fund periodic payments for a plaintiff or
11 other claimant in payment for or with respect to personal
12 injury suffered by the plaintiff or other claimant;

13 V. "supplemental contract" means a written
14 agreement entered into for the distribution of proceeds under a
15 life, health or annuity policy or contract; and

16 W. "unallocated annuity contract" means an annuity
17 contract or group annuity certificate that is not issued to and
18 owned by an individual, except to the extent of annuity
19 benefits guaranteed to an individual by an insurer under the
20 contract or certificate."

21 SECTION 7. Section 59A-42-4 NMSA 1978 (being Laws 1984,
22 Chapter 127, Section 753, as amended) is repealed and a new
23 Section 59A-42-4 NMSA 1978 is enacted to read:

24 "59A-42-4. [NEW MATERIAL] COVERAGE--LIMITATIONS.--

25 A. Coverage shall be provided for the policies and

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1 contracts specified in Subsection D of this section:

2 (1) to persons who, regardless of where they
3 reside, except for nonresident certificate holders under group
4 policies or contracts, are the beneficiaries, assignees or
5 payees of the persons covered pursuant to Paragraph (2) of this
6 subsection;

7 (2) to persons who are owners of or
8 certificate holders under the policies or contracts, other than
9 unallocated annuity contracts and structured settlement
10 annuities, and in each case who:

11 (a) are residents; or

12 (b) are not residents, but only under
13 the following conditions: 1) the insurer that issued the
14 policies or contracts is domiciled in this state; 2) the states
15 in which the persons reside have associations similar to this
16 state's association; and 3) the persons are not eligible for
17 coverage by an association in another state due to the fact
18 that the insurer was not licensed in that state at the time
19 specified in that state's guaranty association law;

20 (3) for unallocated annuity contracts
21 specified in Subsection D of this section, to which Paragraphs
22 (1) and (2) of this subsection shall not apply, and except as
23 provided in Subsections B and C of this section:

24 (a) to persons who are the owners of the
25 unallocated annuity contracts if the contracts are issued to or

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1 in connection with a specific benefit plan whose plan sponsor
2 has its principal place of business in this state; and

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

6 (4) for structured settlement annuities
7 specified in Subsection D of this section, to which Paragraphs
8 (1) and (2) of this subsection shall not apply, and except as
9 provided in Subsections B and C of this section, to a person
10 who is a payee under a structured settlement annuity, or a
11 beneficiary of a payee if the payee is deceased, if the payee:

12 (a) is a resident, regardless of where
13 the contract owner resides; or

14 (b) is not a resident, but only under
15 the following conditions: 1) the contract owner of the
16 structured settlement annuity is a resident or is not a
17 resident, but the insurer that issued the structured settlement
18 annuity is domiciled in this state and the state in which the
19 contract owner resides has an association similar to this
20 state's association; and 2) neither the payee, the payee's
21 beneficiary or the contract owner is eligible for coverage by
22 the association of the state in which the payee or contract
23 owner resides.

24 B. Coverage shall not be provided to:

25 (1) a person who is a payee or beneficiary of

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1 a contract owner resident of this state, if the payee or
2 beneficiary is afforded coverage by the association of another
3 state; or

4 (2) a person covered pursuant to Paragraph (3)
5 of Subsection A of this section, if coverage is provided by the
6 association of another state to that person.

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

20 D. Coverage shall be provided to the persons
21 specified in Subsection A of this section for direct, non-group
22 life, health or annuity policies or contracts and supplemental
23 contracts to any of these, for certificates under direct group
24 policies and contracts and supplemental contracts to these and
25 for unallocated annuity contracts issued by member insurers,

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

9 E. Coverage shall not be provided for:

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

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

16 (3) a portion of a policy or contract to the
17 extent that the rate of interest on which it is based, or the
18 interest rate, crediting rate or similar factor determined by
19 use of an index or other external reference stated in the
20 policy or contract employed in calculating returns or changes
21 in value:

22 (a) averaged over the period of four
23 years prior to the date on which the member insurer becomes an
24 impaired or insolvent insurer pursuant to the Life and Health
25 Insurance Guaranty Association Act, whichever is earlier,

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

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

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

21 (a) a multiple employer welfare
22 arrangement;

23 (b) a minimum premium group insurance
24 plan;

25 (c) a stop-loss group insurance plan; or

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1 (d) an administrative services only
2 contract;

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

5 (a) dividends or experience rating
6 credits;

7 (b) voting rights; or

8 (c) payment of fees or allowances to a
9 person, including the policy or contract owner, in connection
10 with the service to or administration of the policy or
11 contract;

12 (6) a policy or contract issued in this state
13 by a member insurer at a time when it was not licensed or did
14 not have a certificate of authority to issue the policy or
15 contract in this state;

16 (7) an unallocated annuity contract issued to
17 or in connection with a benefit plan protected under the
18 federal pension benefit guaranty corporation, regardless of
19 whether that corporation has yet become liable to make payments
20 with respect to the benefit plan;

21 (8) a portion of an unallocated annuity
22 contract that is not issued to or in connection with a specific
23 employee, union or association of natural persons benefit plan
24 or a government lottery;

25 (9) a portion of a policy or contract to the

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1 extent that the assessments required by Section 59-42-8 NMSA
2 1978 with respect to the policy or contract are preempted by
3 federal or state law;

4 (10) an obligation that does not arise under
5 the express written terms of the policy or contract issued by
6 the insurer to the contract owner or policy owner, including
7 without limitation:

8 (a) claims based on marketing materials;

9 (b) claims based on side letters, riders
10 or other documents that were issued by the insurer without
11 meeting applicable policy form filing or approval requirements;

12 (c) misrepresentations of or regarding
13 policy benefits;

14 (d) extra-contractual claims; or

15 (e) a claim for penalties or
16 consequential or incidental damages;

17 (11) a contractual agreement that establishes
18 the member insurer's obligations to provide a book value
19 accounting guaranty for defined contribution benefit plan
20 participants by reference to a portfolio of assets that is
21 owned by the benefit plan or its trustee, which in each case is
22 not an affiliate of the member insurer;

23 (12) a portion of a policy or contract to the
24 extent that it provides for interest or other changes in value
25 to be determined by the use of an index or other external

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

16 (13) a policy or contract providing hospital,
17 medical, prescription drug or other health care benefits
18 pursuant to Part C or Part D of Subchapter 18 of Chapter 7 of
19 Title 42 of the United States Code or regulations promulgated
20 pursuant to Part C or Part D.

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

23 (1) the contractual obligations for which the
24 insurer is liable or would have been liable if it were not an
25 impaired or insolvent insurer; or

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

3 (a) for life insurance death benefits,
4 three hundred thousand dollars (\$300,000) but not more than one
5 hundred thousand dollars (\$100,000) in net cash surrender and
6 net cash withdrawal values;

7 (b) for health insurance benefits: 1)
8 one hundred thousand dollars (\$100,000) for coverages not
9 constituting disability insurance or basic hospital, medical
10 and surgical insurance or major medical insurance or long-term
11 care insurance, including net cash surrender and net cash
12 withdrawal values; 2) three hundred thousand dollars (\$300,000)
13 for disability insurance; 3) three hundred thousand dollars
14 (\$300,000) for long-term care insurance as defined in Section
15 59A-23A-4 NMSA 1978; and 4) five hundred thousand dollars
16 (\$500,000) for basic hospital, medical and surgical insurance
17 or major medical insurance; or

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

21 (3) with respect to each individual
22 participating in a governmental retirement benefit plan
23 established pursuant to Section 401, 403(b) or 457 of the
24 federal Internal Revenue Code of 1986 covered by an unallocated
25 annuity contract or the beneficiaries of each such individual

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1 if deceased, in the aggregate, two hundred fifty thousand
2 dollars (\$250,000) in present value annuity benefits, including
3 net cash surrender and net cash withdrawal values; or

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

10 G. In no event shall the association be obligated
11 to cover:

12 (1) more than an aggregate of three hundred
13 thousand dollars (\$300,000) in benefits with respect to one
14 person's life pursuant to Paragraphs (2), (3) and (4) of
15 Subsection F of this section, except with respect to benefits
16 for basic hospital, medical and surgical insurance and major
17 medical insurance pursuant to Subparagraph (b) of Paragraph (2)
18 of Subsection F of this section, in which case the aggregate
19 liability of the association shall not exceed five hundred
20 thousand dollars (\$500,000) with respect to one person's life;
21 or

22 (2) with respect to one owner of multiple
23 non-group policies of life insurance, whether the policy owner
24 is an individual, firm, corporation or other person, and
25 whether the persons insured are officers, managers, employees

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1 or other persons, more than five million dollars (\$5,000,000)
2 in benefits, regardless of the number of policies and contracts
3 held by the owner.

4 H. With respect to either one contract owner
5 provided coverage pursuant to Subparagraph (b) of Paragraph (3)
6 of Subsection A of this section or one plan sponsor whose plans
7 own directly or in trust one or more unallocated annuity
8 contracts not included in Paragraph (3) of Subsection F of this
9 section, the benefits the association may become obligated to
10 cover shall not exceed five million dollars (\$5,000,000)
11 irrespective of the number of contracts with respect to the
12 contract owner or plan sponsor. However, in the case where one
13 or more unallocated annuity contracts are covered contracts
14 pursuant to the Life and Health Insurance Guaranty Association
15 Act and are owned by a trust or other entity for the benefit of
16 two or more plan sponsors, coverage shall be afforded by the
17 association if the largest interest in the trust or entity
18 owning the contract or contracts is held by a plan sponsor
19 whose principal place of business is in this state. In no
20 event shall the association be obligated to cover more than
21 five million dollars (\$5,000,000) in benefits with respect to
22 all of these unallocated contracts.

23 I. The limitations set forth in Subsections F, G
24 and H of this section are limitations on the benefits for which
25 the association is obligated before taking into account either

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1 its subrogation and assignment rights or the extent to which
2 those benefits could be provided out of the assets of the
3 impaired or insolvent insurer attributable to covered policies.
4 The costs of the association's obligations may be met by the
5 use of assets attributable to covered policies or reimbursed to
6 the association pursuant to its subrogation and assignment
7 rights.

8 J. In performing its obligations to provide
9 coverage pursuant to Sections 59A-42-4 and 59A-42-7 NMSA 1978,
10 the association shall not be required to guarantee, assume,
11 reinsure or perform, or cause to be guaranteed, assumed,
12 reinsured or performed, the contractual obligations of the
13 insolvent or impaired insurer under a covered policy or
14 contract that do not materially affect the economic values or
15 economic benefits of the covered policy or contract."

16 SECTION 8. Section 59A-42-5 NMSA 1978 (being Laws 1984,
17 Chapter 127, Section 754) is amended to read:

18 "59A-42-5. ORGANIZATION OF ASSOCIATION--PARTICIPATION.--

19 A. All insurers shall organize and remain members
20 of the association as a condition of their authority to
21 transact insurance business covered by Section [~~752 of this~~
22 ~~article~~] 59A-42-4 NMSA 1978. The association may take any
23 appropriate form of legal entity available under the laws of
24 this state and approved by the superintendent. The association
25 shall perform its functions under the plan of operation

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1 established and approved pursuant to [~~this article~~] Section
2 59A-42-9 NMSA 1978 and shall exercise its powers through [~~a~~]
3 the board [~~of directors~~]. For purposes of assessment and
4 administration, the association shall maintain [~~three (3)~~] two
5 accounts:

- 6 ~~A. the health insurance account;~~
- 7 ~~B. the life insurance account; and~~
- 8 ~~C. the annuity account]~~

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

- 11 (a) a life insurance account;
- 12 (b) an annuity account, which includes
13 annuity contracts owned by a governmental retirement benefit
14 plan, or its trustee, established pursuant to Section 401,
15 403(b) or 457 of the federal Internal Revenue Code of 1986, but
16 otherwise excludes unallocated annuities; and

17 (c) an unallocated annuity account,
18 which excludes contracts owned by a governmental retirement
19 benefit plan, or its trustee, established pursuant to Section
20 401, 403(b) or 457 of the federal Internal Revenue Code of
21 1986; and

22 (2) the health insurance account.

23 B. The association shall be supervised by the
24 superintendent and shall be subject to the applicable
25 provisions of the insurance laws of New Mexico. Meetings or

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1 records of the association may be opened to the public upon
2 majority vote of the board of the association."

3 SECTION 9. Section 59A-42-6 NMSA 1978 (being Laws 1984,
4 Chapter 127, Section 755, as amended) is amended to read:

5 "59A-42-6. BOARD OF DIRECTORS.--

6 A. The board of directors of the association shall
7 consist of not less than five nor more than nine persons
8 serving terms as established in the plan of operation. The
9 insurer members of the board shall be selected by member
10 insurers subject to the approval of the superintendent. In
11 addition, two persons who are public representatives shall be
12 appointed by the superintendent to the board. A public
13 representative shall not be an officer, director or employee of
14 an insurance company or a person engaged in the business of
15 insurance. Vacancies on the board shall be filled for the
16 remaining period of the term by a majority vote of the
17 remaining board members for member insurers, subject to
18 approval of the superintendent, and by the superintendent for
19 public representatives.

20 B. In approving insurer member selections, the
21 superintendent shall consider among other things whether all
22 member insurers are fairly represented.

23 C. Members of the board may be reimbursed from the
24 assets of the association for [~~any~~] reasonable and necessary
25 expenses incurred by them as members of the board [~~of~~

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1 ~~directors~~], but the amount of [~~such~~] that reimbursement shall
2 not exceed the guidelines provided by the approved plan of
3 operation."

4 SECTION 10. Section 59A-42-7 NMSA 1978 (being Laws 1984,
5 Chapter 127, Section 756) is repealed and a new Section
6 59A-42-7 NMSA 1978 is enacted to read:

7 "59A-42-7. [NEW MATERIAL] POWERS AND DUTIES OF THE
8 ASSOCIATION.--

9 A. If a member insurer is an impaired insurer, the
10 association may, in its discretion, and subject to conditions
11 imposed by the association that do not impair the contractual
12 obligations of the impaired insurer and that are approved by
13 the superintendent:

14 (1) guarantee, assume or reinsure, or cause to
15 be guaranteed, assumed or reinsured, any or all of the policies
16 or contracts of the impaired insurer; and

17 (2) provide such money, pledges, loans, notes,
18 guarantees or other means as are proper to effectuate Paragraph
19 (1) of this subsection and assure payment of the contractual
20 obligations of the impaired insurer pending action pursuant to
21 Paragraph (1) of this subsection.

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

24 (1) guarantee, assume or reinsure, or cause to
25 be guaranteed, assumed or reinsured, the policies or contracts

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1 of the insolvent insurer, or assure payment of the contractual
2 obligations of the insolvent insurer, and provide money,
3 pledges, loans, notes, guarantees or other means reasonably
4 necessary to discharge the association's duties; or

5 (2) provide benefits and coverages in
6 accordance with the following provisions:

7 (a) with respect to life and health
8 insurance policies and annuities, assure payment of benefits
9 for premiums identical to the premiums and benefits, except for
10 terms of conversion and renewability, that would have been
11 payable under the policies or contracts of the insolvent
12 insurer, for claims incurred: 1) with respect to group
13 policies and contracts, not later than the earlier of the next
14 renewal date under those policies or contracts or forty-five
15 days, but in no event less than thirty days, from the date on
16 which the association becomes obligated with respect to the
17 policies and contracts; and 2) with respect to non-group
18 policies, contracts and annuities, not later than the earlier
19 of the next renewal date, if any, under the policies or
20 contracts or one year, but in no event less than thirty days,
21 from the date on which the association becomes obligated with
22 respect to the policies or contracts;

23 (b) make diligent efforts to provide all
24 known insureds or annuitants, for non-group policies and
25 contracts, or group policy owners with respect to group

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1 policies and contracts, thirty days' notice of the termination,
2 pursuant to Subparagraph (a) of this paragraph, of the benefits
3 provided;

4 (c) with respect to non-group life and
5 health insurance policies and annuities covered by the
6 association, and with respect to an individual formerly insured
7 or formerly an annuitant under a group policy who is not
8 eligible for replacement group coverage, make available to each
9 known insured or annuitant, or owner if other than the insured
10 or annuitant, substitute coverage on an individual basis in
11 accordance with the provisions of Subparagraph (d) of this
12 paragraph if the insureds or annuitants had a right under law
13 or the terminated policy or annuity to convert coverage to
14 individual coverage or to continue an individual policy or
15 annuity in force until a specified age or for a specified time,
16 during which the insurer had no right unilaterally to make
17 changes in any provision of the policy or annuity or had a
18 right only to make changes in premium by class;

19 (d) in providing the substitute coverage
20 required pursuant to Subparagraph (c) of this paragraph, the
21 association may offer either to reissue the terminated coverage
22 or to issue an alternative policy. Alternative or reissued
23 policies shall be offered without requiring evidence of
24 insurability and shall not provide for a waiting period or
25 exclusion that would not have applied under the terminated

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1 policy. The association may reinsure an alternative or
2 reissued policy;

3 (e) alternative policies adopted by the
4 association shall be subject to the approval of the domiciliary
5 insurance superintendent and the receivership court. The
6 association may adopt alternative policies of various types for
7 future issuance without regard to a particular impairment or
8 insolvency. Alternative policies shall contain at least the
9 minimum statutory provisions required in this state and provide
10 benefits that shall not be unreasonable in relation to the
11 premium charged. The association shall set the premium in
12 accordance with a table of rates that it shall adopt. The
13 premium shall reflect the amount of insurance to be provided
14 and the age and class of risk of each insured but shall not
15 reflect changes in the health of the insured after the original
16 policy was last underwritten. An alternative policy issued by
17 the association shall provide coverage of a type similar to
18 that of the policy issued by the impaired or insolvent insurer,
19 as determined by the association;

20 (f) if the association elects to reissue
21 terminated coverage at a premium rate different from that
22 charged under the terminated policy, the premium shall be set
23 by the association in accordance with the amount of insurance
24 provided and the age and class of risk, subject to the approval
25 of the domiciliary insurance superintendent and the

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1 receivership court;

2 (g) the association's obligations with
3 respect to coverage under a policy of the impaired or insolvent
4 insurer or under a reissued or alternative policy shall cease
5 on the date the coverage or policy is replaced by another
6 similar policy by the policy owner, the insured or the
7 association; and

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

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

22 D. Premiums due for coverage after entry of an
23 order of liquidation of an insolvent insurer shall belong to
24 and be payable at the direction of the association. If the
25 liquidator of an insolvent insurer requests, the association

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1 shall provide a report to the liquidator regarding such premium
2 collected by the association. The association shall be liable
3 for unearned premiums due to policy or contract owners arising
4 after the entry of the order.

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

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

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

22 (2) subject to approval by a court in this
23 state, impose temporary moratoriums or liens on payments of
24 cash values and policy loans, or another right to withdraw
25 funds held in conjunction with policies or contracts, in

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

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

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1 owners' claims in this state related to that insolvency and
2 shall remit to the domiciliary receiver the amount so paid to
3 the association less the amount retained pursuant to this
4 subsection. An amount paid to the association and retained by
5 it shall be treated as a distribution of estate assets pursuant
6 to the Insurers Conservation, Rehabilitation and Liquidation
7 Law or similar provision of the state of domicile of the
8 impaired or insolvent insurer.

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

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

19 J. The association shall have standing to appear or
20 intervene before a court or agency in this state with
21 jurisdiction over an impaired or insolvent insurer concerning
22 which the association is or may become obligated pursuant to
23 the Life and Health Insurance Guaranty Association Act or with
24 jurisdiction over a person or property against which the
25 association may have rights through subrogation or otherwise.

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

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

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

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1 insured or annuitant as a condition precedent to the receipt of
2 a right or benefit conferred upon the person;

3 (2) the subrogation rights of the association
4 pursuant to this subsection shall have the same priority
5 against the assets of the impaired or insolvent insurer as that
6 possessed by the person entitled to receive 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 or payee of a policy or contract
12 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 association
16 with respect to the related covered obligations shall be
17 reduced by the amount realized by another person with respect
18 to the person or claim that is attributable to the policies, or
19 to the portion of the policies, covered by the association; and

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

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1 L. In addition to its other rights and powers, the
2 association may:

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

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

10 (3) borrow money to effect the purposes of the
11 Life and Health Insurance Guaranty Association Act. Notes or
12 other evidence of indebtedness of the association not in
13 default shall be legal investments for domestic insurers and
14 may be carried as admitted assets;

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

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

21 (6) exercise, to the extent approved by the
22 superintendent, the powers of a domestic life or health
23 insurer, but in no case may the association issue insurance
24 policies or annuity contracts other than those issued to
25 perform its obligations pursuant to the Life and Health

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1 Insurance Guaranty Association Act;

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

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

8 (9) take other necessary or appropriate action
9 to discharge its duties and obligations or to exercise its
10 powers.

11 M. The association may join an organization of one
12 or more other state associations with similar purposes to
13 further the purposes and administer the powers and duties of
14 the association.

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

17 (1) at any time within one hundred eighty
18 days of the date of the order of liquidation, the association
19 may elect to succeed to the rights and obligations of the
20 ceding member insurer that relate to policies or annuities
21 covered, in whole or in part, by the association, in each case
22 under one or more reinsurance contracts entered into by the
23 insolvent insurer and its reinsurers and selected by the
24 association. The assumption shall be effective as of the date
25 of the order of liquidation. The election shall be effected by

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1 the association or the national organization of life and
2 health insurance guaranty associations on its behalf sending
3 written notice, return receipt requested, to the affected
4 reinsurers;

5 (2) to facilitate the earliest practicable
6 decision about whether to assume any of the contracts of
7 reinsurance, and in order to protect the financial position of
8 the estate, the receiver and each reinsurer of the ceding
9 member insurer shall make available, upon request, to the
10 association or to the national organization of life and health
11 insurance guaranty associations on its behalf, as soon as
12 possible after commencement of formal delinquency proceedings:

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

16 (b) notices of defaults under the
17 reinsurance contracts or a known event or condition that with
18 the passage of time could become a default under the
19 reinsurance contracts;

20 (3) the following shall apply to reinsurance
21 contracts assumed by the association:

22 (a) the association shall be responsible
23 for all unpaid premiums due under the reinsurance contracts for
24 periods both before and after the date of the order of
25 liquidation and shall be responsible for the performance of all

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1 other obligations to be performed after the date of the order
2 of liquidation, in each case that relate to policies or
3 annuities covered, in whole or in part, by the association.
4 The association may charge policies or annuities covered in
5 part by the association, through reasonable allocation methods,
6 the costs for reinsurance in excess of the obligations of the
7 association and shall provide notice and an accounting of these
8 charges to the liquidator;

9 (b) the association shall be entitled to
10 amounts payable by the reinsurer under the reinsurance
11 contracts with respect to losses or events that occur in
12 periods after the date of the order of liquidation and that
13 relate to policies or annuities covered, in whole or in part,
14 by the association, provided that, upon receipt of those
15 amounts, the association shall be obliged to pay to the
16 beneficiary under the policy or annuity on account of which the
17 amounts were paid a portion of the amount equal to the lesser
18 of: 1) the amount received by the association; and 2) the
19 excess of the amount received by the association over the
20 amount equal to the benefits paid by the association on account
21 of the policy or annuity less the retention of the insurer
22 applicable to the loss or event;

23 (c) within thirty days following the
24 association's election, the association and each reinsurer
25 under contracts assumed by the association shall calculate the

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1 net balance due to or from the association under each
2 reinsurance contract as of the date of election with respect to
3 policies or annuities covered, in whole or in part, by the
4 association, which calculation shall give full credit to all
5 items paid by either the insurer or its receiver or the
6 reinsurer prior to the election date. The reinsurer shall pay
7 the receiver amounts due for losses or events prior to the date
8 of the order of liquidation, subject to a setoff for premiums
9 unpaid for periods prior to that date, and the association or
10 reinsurer shall pay any remaining balance due the other, in
11 each case within five days of the completion of the calculation
12 described in this subparagraph. A dispute over the amounts due
13 to either the association or the reinsurer shall be resolved by
14 arbitration pursuant to the terms of the affected reinsurance
15 contracts or, if the contract contains no arbitration clause,
16 as otherwise provided by law. If the receiver has received
17 amounts due the association pursuant to Subparagraph (b) of
18 this paragraph, the receiver shall remit those amounts to the
19 association as promptly as practicable; and

20 (d) if the association or receiver, on
21 the association's behalf, within sixty days of the election
22 described in Subparagraph (c) of this paragraph, pays the
23 unpaid premiums due for periods both before and after the date
24 of election that relate to policies or annuities covered, in
25 whole or in part, by the association, the reinsurer shall not

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1 be entitled to terminate the reinsurance contracts for failure
2 to pay premiums insofar as the reinsurance contracts relate to
3 policies or annuities covered, in whole or in part, by the
4 association, and the reinsurer shall not be entitled to set off
5 unpaid amounts due under other contracts, or unpaid amounts due
6 from parties other than the association, against amounts due
7 the association;

8 (4) during the period from the date of the
9 order of liquidation, until the election date or, if the
10 election does not occur, until one hundred eighty days after
11 the date of the order of liquidation, neither the association
12 nor the reinsurer shall have rights or obligations pursuant to
13 reinsurance contracts that the association has the right to
14 assume pursuant to Paragraphs (1), (2) and (3) of this
15 subsection, whether for periods prior to or after the date of
16 the order of liquidation, and the reinsurer, the receiver and
17 the association shall, to the extent practicable, provide each
18 other data and records reasonably requested; provided that once
19 the association has elected to assume a reinsurance contract,
20 the parties' rights and obligations shall be governed by
21 Paragraphs (1), (2) and (3) of this subsection;

22 (5) if the association does not elect to
23 assume a reinsurance contract by the election date pursuant to
24 Paragraphs (1), (2) and (3) of this subsection, the association
25 shall have no rights or obligations, in each case for periods

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1 both before and after the date of the order of liquidation,
2 with respect to the reinsurance contract;

3 (6) when policies or annuities, or covered
4 obligations with respect to those policies or annuities, are
5 transferred to an assuming insurer, reinsurance on the policies
6 or annuities may also be transferred by the association, in the
7 case of contracts assumed pursuant to Paragraphs (1), (2) and
8 (3) of this subsection, subject to the following:

9 (a) unless the reinsurer and the
10 assuming insurer agree otherwise, the reinsurance contract
11 transferred shall not cover new policies of insurance or
12 annuities in addition to those transferred;

13 (b) the obligations described in
14 Paragraphs (1), (2) and (3) of this subsection shall no longer
15 apply with respect to matters arising after the effective date
16 of the transfer; and

17 (c) notice shall be given in writing,
18 return receipt requested, by the transferring party to the
19 affected reinsurer not less than thirty days prior to the
20 effective date of the transfer;

21 (7) the provisions of this subsection shall
22 supersede the provisions of a law or of an affected reinsurance
23 contract that provides for or requires a payment of reinsurance
24 proceeds, on account of losses or events that occur in periods
25 after the date of the order of liquidation, to the receiver of

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1 the insolvent insurer or another person. The receiver shall
2 remain entitled to amounts payable by the reinsurer under the
3 reinsurance contracts with respect to losses or events that
4 occur in periods prior to the date of the order of liquidation,
5 subject to applicable setoff provisions; and

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

8 (a) alter or modify the terms and
9 conditions of a reinsurance contract;

10 (b) abrogate or limit the rights of a
11 reinsurer to claim that it is entitled to rescind a reinsurance
12 contract;

13 (c) give a policyholder or beneficiary
14 an independent cause of action against a reinsurer that is not
15 otherwise set forth in the reinsurance contract;

16 (d) limit or affect the association's
17 rights as a creditor of the estate against the assets of the
18 estate; or

19 (e) apply to reinsurance contracts
20 covering property or casualty risks.

21 O. The board may exercise reasonable business
22 judgment to determine the means by which the association is to
23 provide the benefits of the Life and Health Insurance Guaranty
24 Association Act in an economical and efficient manner.

25 P. Where the association has arranged or offered to

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1 provide benefits to a covered person under a plan or
2 arrangement that fulfills the association's obligations, the
3 person shall not be entitled to benefits from the association
4 in addition to or other than those provided under the plan or
5 arrangement.

6 Q. Venue in a suit against the association arising
7 pursuant to the Life and Health Insurance Guaranty Association
8 Act shall be in Santa Fe county. The association shall not be
9 required to give an appeal bond in an appeal that relates to a
10 cause of action arising pursuant to the Life and Health
11 Insurance Guaranty Association Act.

12 R. In carrying out its duties in connection with
13 guaranteeing, assuming or reinsuring policies or contracts
14 pursuant to Subsection A or B of this section, the association
15 may, subject to approval of the receivership court, issue
16 substitute coverage for a policy or contract that provides an
17 interest rate, crediting rate or similar factor determined by
18 use of an index or other external reference stated in the
19 policy or contract employed in calculating returns or changes
20 in value by issuing an alternative policy or contract in
21 accordance with the following provisions:

22 (1) in lieu of the index or other external
23 reference provided for in the original policy or contract, the
24 alternative policy or contract provides for a fixed interest
25 rate, payment of dividends with minimum guarantees or a

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1 different method for calculating interest or changes in value;

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

5 (3) the alternative policy or contract is
6 substantially similar to the replaced policy or contract in all
7 other material terms."

8 SECTION 11. Section 59A-42-8 NMSA 1978 (being Laws 1984,
9 Chapter 127, Section 757) is repealed and a new Section
10 59A-42-8 NMSA 1978 is enacted to read:

11 "59A-42-8. [NEW MATERIAL] ASSESSMENTS.--

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

20 B. There shall be two classes of assessments as
21 follows:

22 (1) class A assessments shall be authorized
23 and called for the purpose of meeting administrative and legal
24 costs and other expenses. Class A assessments may be
25 authorized and called whether or not related to a particular

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1 impaired or insolvent insurer; and

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

6 C. The amount of a class A assessment shall be
7 determined by the board and may be authorized and called on a
8 pro rata or non-pro rata basis. If the class A assessment is
9 authorized and called on a pro rata basis, the board may
10 provide that it be credited against future class B assessments.
11 The total of all non-pro rata assessments shall not exceed
12 three hundred dollars (\$300) per member insurer in one calendar
13 year. The amount of a class B assessment shall be allocated
14 for assessment purposes among the accounts pursuant to an
15 allocation formula that may be based on the premiums or
16 reserves of the impaired or insolvent insurer or another
17 standard deemed by the board in its sole discretion as being
18 fair and reasonable under the circumstances.

19 D. Class B assessments against member insurers for
20 each account and subaccount shall be in the proportion that the
21 premiums received on business in this state by each assessed
22 member insurer on policies or contracts covered by each account
23 for the three most recent calendar years for which information
24 is available preceding the year in which the insurer became
25 insolvent or, in the case of an assessment with respect to an

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1 impaired insurer, the three most recent calendar years for
2 which information is available preceding the year in which the
3 insurer became impaired, bears to premiums received on
4 business in this state for those calendar years by all assessed
5 member insurers.

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

19 F. The association may abate or defer, in whole or
20 in part, the assessment of a member insurer if, in the opinion
21 of the board, payment of the assessment would endanger the
22 ability of the member insurer to fulfill its contractual
23 obligations. In the event an assessment against a member
24 insurer is abated, or deferred in whole or in part, the amount
25 by which the assessment is abated or deferred may be assessed

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1 against the other member insurers in a manner consistent with
2 the basis for assessments set forth in this section. Once the
3 conditions that caused a deferral have been removed or
4 rectified, the member insurer shall pay all assessments that
5 were deferred pursuant to a repayment plan approved by the
6 association.

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

17 H. If two or more assessments are authorized in one
18 calendar year with respect to insurers that become impaired or
19 insolvent in different calendar years, the average annual
20 premiums for purposes of the aggregate assessment percentage
21 limitation referenced in Subsection G of this section shall be
22 equal and limited to the higher of the three-year average
23 annual premiums for the applicable subaccount or account as
24 calculated pursuant to this section.

25 I. If the maximum assessment, together with the

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1 other assets of the association in an account, does not provide
2 in one year in either account an amount sufficient to carry out
3 the responsibilities of the association, the necessary
4 additional funds shall be assessed as soon thereafter as
5 permitted by the Life and Health Insurance Guaranty Association
6 Act.

7 J. The board may provide in the plan of operation a
8 method of allocating funds among claims, whether relating to
9 one or more impaired or insolvent insurers, when the maximum
10 assessment will be insufficient to cover anticipated claims.

11 K. If the maximum assessment for a subaccount of
12 the life and annuity account in one year does not provide an
13 amount sufficient to carry out the responsibilities of the
14 association, then pursuant to Subsection D of this section, the
15 board shall access the other subaccounts of the life insurance
16 and annuity account for the necessary additional amount,
17 subject to the maximum stated in Subsections G, H and I of this
18 section.

19 L. The board may, by an equitable method as
20 established in the plan of operation, refund to member
21 insurers, in proportion to the contribution of each insurer to
22 that account, the amount by which the assets of the account
23 exceed the amount the board finds is necessary to carry out
24 during the coming year the obligations of the association with
25 regard to that account, including assets accruing from

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1 assignment, subrogation, net realized gains and income from
2 investments. A reasonable amount may be retained in an account
3 to provide funds for the continuing expenses of the association
4 and for a future losses claim.

5 M. It shall be proper for a member insurer, in
6 determining its premium rates and policyowner dividends as to
7 any kind of insurance within the scope of the Life and Health
8 Insurance Guaranty Association Act, to consider the amount
9 reasonably necessary to meet its assessment obligations under
10 that act.

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

20 O. A protest to an assessment shall occur as
21 follows:

22 (1) a member insurer that wishes to protest
23 all or part of an assessment shall pay when due the full amount
24 of the assessment as set forth in the notice provided by the
25 association. The payment shall be available to meet

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1 association obligations during the pendency of the protest or a
2 subsequent appeal. Payment shall be accompanied by a statement
3 in writing that the payment is made under protest and setting
4 forth a brief statement of the grounds for the protest;

5 (2) within sixty days following the payment of
6 an assessment under protest by a member insurer, the
7 association shall notify the member insurer in writing of its
8 determination with respect to the protest unless the
9 association notifies the member insurer that additional time is
10 required to resolve the issues raised by the protest;

11 (3) within thirty days after a final decision
12 has been made, the association shall notify the protesting
13 member insurer in writing of that final decision. Within sixty
14 days of receipt of notice of the final decision, the protesting
15 member insurer may appeal that final action to the
16 superintendent;

17 (4) in the alternative to rendering a final
18 decision with respect to a protest based on a question
19 regarding the assessment base, the association may refer
20 protests to the superintendent for a final decision, with or
21 without a recommendation from the association; and

22 (5) if the protest or appeal on the assessment
23 is upheld, the amount paid in error or excess shall be returned
24 to the member company. Interest on a refund due a protesting
25 member shall be paid at the rate actually earned by the

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1 association.

2 P. The association may request information of
3 member insurers in order to aid in the exercise of its power
4 pursuant to this section, and member insurers shall promptly
5 comply with a request."

6 SECTION 12. Section 59A-42-9 NMSA 1978 (being Laws 1984,
7 Chapter 127, Section 758) is amended to read:

8 "59A-42-9. PLAN OF OPERATION.--

9 A. The association shall submit to the
10 superintendent a plan of operation [~~and any~~] or amendments
11 [~~thereto~~] to the plan necessary or suitable to assure the fair,
12 reasonable and equitable administration of the association.
13 The plan of operation [~~and any~~] or amendments [~~thereto~~] to the
14 plan shall become effective upon approval in writing by the
15 superintendent or on the thirty-first day after submission to
16 the superintendent if it has not been disapproved within that
17 time.

18 B. If the association [~~at any time~~] fails to submit
19 suitable amendments to the plan, the superintendent shall,
20 after notice and hearing, [~~adopt and~~] promulgate reasonable
21 rules necessary or advisable to effectuate the provisions of
22 [~~this article~~] the Life and Health Insurance Guaranty
23 Association Act. The rules shall continue in force until
24 modified by the superintendent or superseded by amendments
25 submitted by the association and approved by the

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1 superintendent.

2 C. All member insurers shall comply with the plan
3 of operation.

4 D. The plan of operation [~~among other things~~] shall
5 [~~establish all procedures for conducting the business of the~~
6 ~~association, for handling its assets, for the receiving of~~
7 ~~claims, for the keeping of records and for the conduct of other~~
8 ~~activities necessary for the execution of the powers and duties~~
9 ~~of the association]~~ include:

10 (1) procedures for handling the assets of the
11 association;

12 (2) the amount and method of reimbursement for
13 members of the board;

14 (3) the regular places and times for meetings,
15 including telephone conference calls of the board;

16 (4) procedures for records to be kept of all
17 financial transactions of the association, its agents and the
18 board;

19 (5) procedures for selecting members of the
20 board and submitting those selections for approval to the
21 superintendent;

22 (6) additional procedures for assessments;

23 (7) additional provisions necessary or proper
24 for the execution of the powers and duties of the association;

25 (8) procedures to remove a director for cause,

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1 including the case where a member insurer director becomes an
2 impaired or insolvent insurer; and

3 (9) policies and procedures for addressing
4 conflicts of interest.

5 E. The plan of operation may provide that [~~any or~~
6 ~~all~~] the powers and duties of the association, except those
7 [~~under Subsections A and B of Section 756 of this article, are~~]
8 provided in Paragraph (3) of Subsection L of Section 59A-42-7
9 NMSA 1978 and in Section 59A-42-8 NMSA 1978, may be delegated
10 to a corporation, association or other organization [which]
11 that performs or will perform functions similar to those of
12 [~~this~~] the association, or its equivalent, in two [~~(2)~~] or more
13 states. [~~Such a~~] That corporation, association or organization
14 shall be reimbursed as a servicing facility would be reimbursed
15 and shall be paid for its performance of [~~any~~] other functions
16 of the association. A delegation [~~under~~] pursuant to this
17 subsection shall take effect only with the approval of both the
18 board [~~of directors~~] and the superintendent, and may be made
19 only to a corporation, association or organization [~~which~~] that
20 extends protection not substantially less favorable and
21 effective than that provided by [~~this article~~] the Life and
22 Health Insurance Guaranty Association Act."

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

25 "59A-42-10. DUTIES AND POWERS OF THE SUPERINTENDENT.--

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1 A. The superintendent shall:

2 (1) notify the association of the existence of
3 an insolvent insurer not later than three [~~3~~] days after [~~he~~]
4 the superintendent receives notice of the determination of the
5 insolvency; [~~and~~]

6 (2) upon request of the board [~~of directors~~],
7 provide the association with a statement of the [~~net direct~~
8 ~~written~~] premiums in this or another state of each member
9 insurer; and

10 (3) when an impairment is declared and the
11 amount of the impairment is determined, serve a demand upon the
12 impaired insurer to make good the impairment within a
13 reasonable time. Notice to the impaired insurer shall
14 constitute notice to its shareholders, if any. The failure of
15 the insurer to promptly comply with the demand shall not excuse
16 the association from the performance of its powers and duties
17 pursuant to the Life and Health Insurance Guaranty Association
18 Act.

19 B. The superintendent may:

20 ~~[(1) require that the association notify the~~
21 ~~insureds of the insolvent insurer and any other interested~~
22 ~~parties of the determination of insolvency and of their rights~~
23 ~~under this article. The notification shall be by mail at their~~
24 ~~last known address, where available, but if sufficient~~
25 ~~information for notification by mail is not available, notice~~

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1 by ~~publication in a newspaper of general circulation shall be~~
2 ~~sufficient;~~

3 ~~(2)]~~ (1) suspend or revoke, after notice and
4 hearing, the certificate of authority to transact insurance in
5 this state of ~~[any]~~ a member insurer ~~[which]~~ that fails to pay
6 an assessment when due or that fails to comply with the plan of
7 operation. As an alternative, the superintendent may levy a
8 fine on ~~[any]~~ a member insurer ~~[which]~~ that fails to pay an
9 assessment when due. ~~[Such]~~ The fine shall not exceed five
10 percent of the unpaid assessment ~~[per]~~ a month, except that no
11 fine shall be less than one hundred dollars (\$100) a month; and

12 ~~(3)]~~ (2) revoke the designation of ~~[any]~~ a
13 servicing facility if ~~[he]~~ the superintendent finds that claims
14 are being handled unsatisfactorily."

15 SECTION 14. Section 59A-42-11 NMSA 1978 (being Laws 1984,
16 Chapter 127, Section 760) is amended to read:

17 "59A-42-11. PREVENTION OF INSOLVENCIES.--To aid in the
18 detection and prevention of insurance insolvencies:

19 A. the superintendent shall:

20 (1) notify the superintendents in other
21 states, within thirty days following the action taken or the
22 date the action occurs, when the superintendent takes any of
23 the following actions against a member insurer:

24 (a) revokes a license;

25 (b) suspends a license; or

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1 (c) makes a formal order that the
2 company restrict its premium writing, obtain additional
3 contributions to surplus, withdraw from the state, reinsure all
4 or a part of its business or increase capital, surplus or
5 another account for the security of policy owners or creditors;

6 (2) report to the board when the
7 superintendent has taken an action set forth in Paragraph (1)
8 of this subsection or has received a report from another
9 superintendent indicating that an action has been taken in
10 another state. The report to the board shall contain all
11 significant details of the action taken or of the report
12 received from another superintendent;

13 (3) report to the board when the
14 superintendent has reasonable cause to believe from an
15 examination, whether completed or in process, of a member
16 insurer that the insurer may be an impaired or insolvent
17 insurer; and

18 (4) furnish to the board the national
19 association of insurance commissioners' insurance regulatory
20 information system ratios and listings of companies not
21 included in the ratios developed by the national association of
22 insurance commissioners. The board may use that information in
23 carrying out its duties and responsibilities pursuant to this
24 section. The report shall be kept confidential by the board
25 until it is made public by the superintendent or other lawful

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1 authority;

2 B. the superintendent may seek the advice and
3 recommendations of the board concerning a matter affecting the
4 duties and responsibilities of the superintendent regarding the
5 financial condition of member insurers and companies seeking
6 admission to transact insurance business in this state; and

7 ~~[A.]~~ C. the board ~~[of directors shall]~~ may, upon
8 majority vote:

9 (1) notify the superintendent of ~~[any]~~
10 information indicating ~~[any]~~ that a member insurer may be
11 ~~[insolvent or in a financial condition where it will be unable~~
12 ~~to fulfill its contractual obligations and hazardous to the~~
13 ~~policyholders or the public;~~

14 ~~B. the board of directors may, upon majority vote,~~
15 ~~request that the superintendent order an examination of any~~
16 ~~member insurer which the board in good faith believes may be in~~
17 ~~such financial condition. Within thirty (30) days of the~~
18 ~~receipt of the request, the superintendent shall begin the~~
19 ~~examination. The examination may be conducted as a national~~
20 ~~association of insurance commissioners examination or may be~~
21 ~~conducted by persons the superintendent designates. The cost~~
22 ~~of examination shall be paid by the association and the~~
23 ~~examination report shall be treated as other examination~~
24 ~~reports. In no event shall the examination report be released~~
25 ~~to the board of directors prior to its release to the public,~~

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1 but this shall not preclude the superintendent from complying
2 with Subsection C of this section. The superintendent shall
3 notify the board of directors when the examination is
4 completed. The request for an examination shall be kept on
5 file by the superintendent, but it shall not be open to public
6 inspection prior to the release of the examination report to
7 the public;

8 G. the superintendent shall report to the board of
9 directors when he has reasonable cause to believe that any
10 member insurer examined or being examined at the request of the
11 board of directors may be insolvent, potentially insolvent or
12 in a financial condition hazardous to the policy holders or the
13 public;

14 D. the board of directors may, upon majority vote]
15 an impaired or insolvent insurer;

16 (2) make reports and recommendations to the
17 superintendent upon any matter germane to the solvency,
18 liquidation, rehabilitation or conservation of [~~any~~] a member
19 insurer or germane to the solvency of a company seeking to do
20 insurance business in this state. The reports and
21 recommendations [~~shall not be considered~~] are not public
22 documents;

23 [E. the board of directors may, upon majority vote]
24 and

25 (3) make recommendations to the superintendent

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1 for the detection and prevention of insurers' insolvencies [and
2 F. ~~the board of directors shall, at the conclusion of~~
3 ~~any insurance insolvency in which the association was obligated~~
4 ~~to pay covered contractual obligations or claims, prepare a~~
5 ~~report on the history and causes of the insolvency based on~~
6 ~~information available to the association and submit the report~~
7 ~~to the superintendent]."~~

8 SECTION 15. Section 59A-42-12 NMSA 1978 (being Laws 1984,
9 Chapter 127, Section 761, as amended) is amended to read:

10 "59A-42-12. APPEALS.--

11 A. A member insurer may appeal to the superintendent
12 from an action of the board [~~of directors of the association~~]
13 by filing with the superintendent a notice of appeal within
14 thirty days after [~~the~~] that action [~~appealed from~~].

15 B. A final order of the superintendent on appeal is
16 subject to judicial review by an action in the district court
17 pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

18 SECTION 16. Section 59A-42-13 NMSA 1978 (being Laws 1984,
19 Chapter 127, Section 762) is amended to read:

20 "59A-42-13. MISCELLANEOUS PROVISIONS.--

21 A. [~~Nothing in this article~~] The Life and Health
22 Insurance Guaranty Association Act shall not be construed to
23 reduce the liability for unpaid assessments of the insureds of
24 an impaired or insolvent insurer operating under a plan with
25 assessment liability.

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1 B. Records shall be kept of all [~~negotiations and~~
2 meetings [~~in which the association or its representatives are~~
3 ~~involved~~] of the board to discuss the activities of the
4 association in carrying out its powers and duties. Records of
5 the [~~negotiations or~~] meetings with respect to an impaired or
6 insolvent insurer shall be made public only upon the
7 termination of a liquidation, rehabilitation or conservation
8 proceeding involving the impaired or insolvent insurer, upon
9 the termination of the insolvency of the insurer or upon the
10 order of a court of competent jurisdiction. Nothing in this
11 subsection limits the duty of the association to render [~~a~~
12 ~~report of its activities under~~] the reports required by Section
13 [763 of this article] 59A-42-14 NMSA 1978.

14 C. For the purpose of carrying out its obligations,
15 the association shall be deemed to be a creditor of the
16 impaired or insolvent insurer to the extent of assets
17 attributable to covered policies reduced by amounts to which
18 the association is entitled as a subrogee pursuant to
19 Subsection K of Section 59A-42-7 NMSA 1978. Assets of the
20 impaired or insolvent insurer attributable to covered policies
21 shall be used to continue all covered policies and pay all
22 contractual obligations of the impaired or insolvent insurer.
23 Assets attributable to covered policies, as used in this
24 subsection, are that proportion of the assets that the reserves
25 that should have been established for those policies bear to

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1 the reserves that should have been established for all policies
2 of insurance written by the impaired or insolvent insurer.

3 D. As a creditor of the impaired or insolvent insurer
4 and consistent with the Insurers Conservation, Rehabilitation
5 and Liquidation Law, the association and other similar
6 associations shall be entitled to receive a disbursement of
7 assets out of the marshaled assets, from time to time as the
8 assets become available to reimburse it, as a credit against
9 contractual obligations pursuant to the Life and Health
10 Insurance Guaranty Association Act. If the liquidator has not,
11 within one hundred twenty days of a final determination of
12 insolvency of an insurer by the receivership court, made an
13 application to the court for the approval of a proposal to
14 disburse assets out of marshaled assets to guaranty
15 associations having obligations because of the insolvency, the
16 association shall be entitled to make application to the
17 receivership court for approval of its own proposal to disburse
18 these assets.

19 [~~G.~~] E. Prior to the termination of [~~any~~] a
20 liquidation, rehabilitation or conservation proceeding, the
21 court may take into consideration the contributions of the
22 respective parties, including the association, the shareholders
23 and [~~policyowners~~] policy owners of the insolvent insurer and
24 any other party with a bona fide interest, in making an
25 equitable distribution of the ownership rights of the insolvent

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1 insurer. In such a determination, consideration shall be given
2 to the welfare of the [~~policyholders~~] policy owners of the
3 continuing or successor insurer.

4 [~~D.~~] F. No distribution to stockholders, if any, of
5 an impaired or insolvent insurer shall be made until and unless
6 the total amount of [~~assessments levied by~~] valid claims of the
7 association with interest thereon for funds expended in
8 carrying out its powers and duties with respect to the insurer
9 has been fully recovered by the association.

10 [~~E. It is a prohibited unfair trade practice for any~~
11 ~~person to make use in any manner of the protection afforded by~~
12 ~~this article in the sale of insurance.]"~~

13 SECTION 17. Section 59A-42-14 NMSA 1978 (being Laws 1984,
14 Chapter 127, Section 763) is amended to read:

15 "59A-42-14. EXAMINATION OF ASSOCIATION--ANNUAL REPORT.--
16 The association is subject to examination and regulation by the
17 superintendent. The board [~~of directors~~] shall submit to the
18 superintendent, not later than May 1 each year, a financial
19 report for the preceding calendar year in form approved by the
20 superintendent and a report of its activities during the
21 preceding calendar year. Upon the request of a member insurer,
22 the association shall provide the member insurer with a copy of
23 the report."

24 SECTION 18. Section 59A-42-15 NMSA 1978 (being Laws 1984,
25 Chapter 127, Section 764) is amended to read:

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underscored material = new
[bracketed material] = delete

1 "59A-42-15. IMMUNITY.--There shall be no liability on the
2 part of, and no cause of action [~~of any nature~~] shall arise
3 against, [~~any~~] a member insurer or its agents or employees, the
4 association or its agents or employees, members of the board
5 [~~of directors~~] or the superintendent or [~~his~~] the
6 superintendent's representatives for [~~any action taken~~] an act
7 or omission by them in the performance of their powers and
8 duties [~~under this article~~] pursuant to the Life and Health
9 Insurance Guaranty Association Act. This immunity shall extend
10 to the participation in an organization of one or more other
11 state associations with similar purposes and to that
12 organization and its agents or employees."

13 SECTION 19. Section 59A-42-16 NMSA 1978 (being Laws 1984,
14 Chapter 127, Section 765) is amended to read:

15 "59A-42-16. STAY OF PROCEEDINGS--REOPENING DEFAULT
16 JUDGMENTS.--~~[All proceedings]~~ A proceeding in which [~~the~~] an
17 insolvent insurer is a party in [~~any~~] a court in this state
18 shall be stayed [~~sixty (60)~~] one hundred eighty days from the
19 date an order of liquidation, rehabilitation or conservation is
20 final to permit proper legal action by the association on [~~any~~]
21 matters germane to its powers or duties. As to a judgment
22 under [~~any~~] a decision, order, verdict or finding based on
23 [~~the~~] default, the association may apply to have the judgment
24 set aside by the same court that made the judgment and shall be
25 permitted to defend against the suit on the merits."

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underscored material = new
[bracketed material] = delete

1 SECTION 20. A new section of the Life and Health
2 Insurance Guaranty Association Act is enacted to read:

3 "[NEW MATERIAL] PROHIBITED ADVERTISEMENT--NOTICE TO POLICY
4 OWNERS.--

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

19 B. Within one hundred eighty days of the effective
20 date of this 2012 act, the association shall prepare a summary
21 document describing the general purposes and current
22 limitations of that act and complying with Subsection C of this
23 section. The document shall be submitted to the superintendent
24 for approval. At the expiration of the sixtieth day after the
25 date on which the superintendent approves the document, an

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~~[bracketed material]~~ = delete

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

16 C. The document prepared pursuant to Subsection B of
17 this section shall contain a clear and conspicuous disclaimer
18 on its face. The superintendent shall establish the form and
19 content of the disclaimer. The disclaimer shall:

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

22 (2) prominently warn the policy or contract
23 owner that the association may not cover the policy or, if
24 coverage is available, that it will be subject to substantial
25 limitations and exclusions and conditioned on continued

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1 residence in this state;

2 (3) state the types of policies for which
3 guaranty funds will provide coverage;

4 (4) state that the insurer and its agents are
5 prohibited by law from using the existence of the association
6 for the purpose of sales, solicitation or inducement to
7 purchase any form of insurance;

8 (5) state that the policy or contract owner
9 should not rely on coverage pursuant to the Life and Health
10 Insurance Guaranty Association Act when selecting an insurer;

11 (6) explain rights available and procedures for
12 filing a complaint to allege a violation of the provisions of
13 the Life and Health Insurance Guaranty Association Act; and

14 (7) provide other information as directed by the
15 superintendent, including sources for information about the
16 financial condition of insurers, provided that the information
17 is not proprietary and is subject to disclosure pursuant to the
18 Inspection of Public Records Act.

19 D. A member insurer shall retain evidence of
20 compliance with Subsection B of this section for as long as the
21 policy or contract for which the notice is given remains in
22 effect."

23 SECTION 21. TEMPORARY PROVISION--CONTINUATION OF
24 ACCOUNTS, ASSOCIATION, BOARD, PLAN OF OPERATION AND
25 ACTIVITIES.--

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1 A. The accounts maintained pursuant to the Life and
2 Health Insurance Guaranty Law and in effect on July 1, 2012
3 shall continue in full force as the accounts maintained
4 pursuant to the Life and Health Insurance Guaranty Association
5 Act, modified as necessary to comply with that act.

6 B. The life insurance guaranty association existing
7 pursuant to the Life and Health Insurance Guaranty Law on July
8 1, 2012 is the life and health insurance guaranty association
9 organized pursuant to the Life and Health Insurance Guaranty
10 Association Act, subject to the provisions of that act.

11 C. The insurer members of the board of directors of
12 the life insurance guaranty association serving pursuant to the
13 Life and Health Insurance Guaranty Law on July 1, 2012 shall
14 serve as the insurer members of the board of directors of the
15 life and health insurance guaranty association pursuant to the
16 provisions of the Life and Health Insurance Guaranty
17 Association Act.

18 D. The plan of operation in effect pursuant to the
19 Life and Health Insurance Guaranty Law on July 1, 2012 shall
20 serve as the plan of operation required pursuant to the Life
21 and Health Insurance Guaranty Association Act, modified as
22 necessary to comply with that act.

23 E. An action, including an assessment, or an
24 obligation of the life insurance guaranty association, board of
25 directors of the life insurance guaranty association or

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underscoring material = new
~~[bracketed material] = delete~~

1 superintendent of insurance initiated or created but not
2 completed pursuant to the Life and Health Insurance Guaranty
3 Law prior to July 1, 2012, shall continue until completed
4 pursuant to the provisions of the Life and Health Insurance
5 Guaranty Law.

6 SECTION 22. APPLICABILITY.--The provisions of Section 7
7 of this act apply only to coverage that the life and health
8 insurance guaranty association provides in connection with any
9 member insurer that is placed under an order of liquidation
10 with a finding of insolvency after July 1, 2012.

11 SECTION 23. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2012.