

1 SENATE BILL 34

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 Carroll H. Leavell

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7  
8 FOR THE ECONOMIC AND RURAL DEVELOPMENT COMMITTEE

9  
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:

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  
7 of the state of domicile of the insurer that issued the  
8 policies 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, including, in the case  
13 of a structured settlement annuity, any rights of the owner,  
14 beneficiary or payee of the annuity, to the extent of benefits  
15 received, against a person originally or by succession  
16 responsible for the losses arising from the personal injury  
17 relating to those benefits, except against a person responsible  
18 solely by reason of serving as an assignee in respect of a  
19 qualified assignment pursuant to Section 130 of the federal  
20 Internal Revenue Code of 1986;

21 (4) if Paragraph (1), (2) or (3) of this  
22 subsection is invalid or ineffective with respect to a person  
23 or claim for any reason, the amount payable by the association  
24 with respect to the related covered obligations shall be  
25 reduced by the amount realized by another person with respect

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1 to the person or claim that is attributable to the policies, or  
2 to the portion of the policies, covered by the association; and

3 (5) if the association has provided benefits  
4 with respect to a covered obligation and a person recovers  
5 amounts as to which the association has rights as described in  
6 this subsection, the person shall pay to the association the  
7 portion of the recovery attributable to the policies, or to the  
8 portion of the policies, covered by the association.

9 L. In addition to its other rights and powers, the  
10 association may:

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

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

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

23 (4) employ or retain those persons necessary  
24 or appropriate to handle the financial transactions of the  
25 association and to perform other functions as become necessary

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1 or proper;

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

4 (6) exercise, to the extent approved by the  
5 superintendent, the powers of a domestic life or health  
6 insurer, but in no case may the association issue insurance  
7 policies or annuity contracts other than those issued to  
8 perform its obligations pursuant to the Life and Health  
9 Insurance Guaranty Association Act;

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

12 (8) request information from a person seeking  
13 coverage from the association in order to aid the association  
14 in determining its obligations with respect to that person, and  
15 that person shall promptly comply with the request; and

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

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

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

25 (1) at any time within one hundred eighty

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

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

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

24 (b) notices of defaults under the  
25 reinsurance contracts or a known event or condition that with

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1 the passage of time could become a default under the  
2 reinsurance contracts;

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

5 (a) the association shall be responsible  
6 for all unpaid premiums due under the reinsurance contracts for  
7 periods both before and after the date of the order of  
8 liquidation and shall be responsible for the performance of all  
9 other obligations to be performed after the date of the order  
10 of liquidation, in each case that relate to policies or  
11 annuities covered, in whole or in part, by the association.

12 The association may charge policies or annuities covered in  
13 part by the association, through reasonable allocation methods,  
14 the costs for reinsurance in excess of the obligations of the  
15 association and shall provide notice and an accounting of these  
16 charges to the liquidator;

17 (b) the association shall be entitled to  
18 amounts payable by the reinsurer under the reinsurance  
19 contracts with respect to losses or events that occur in  
20 periods after the date of the order of liquidation and that  
21 relate to policies or annuities covered, in whole or in part,  
22 by the association, provided that, upon receipt of those  
23 amounts, the association shall be obliged to pay to the  
24 beneficiary under the policy or annuity on account of which the  
25 amounts were paid a portion of the amount equal to the lesser

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1 of: 1) the amount received by the association; and 2) the  
2 excess of the amount received by the association over the  
3 amount equal to the benefits paid by the association on account  
4 of the policy or annuity less the retention of the insurer  
5 applicable to the loss or event;

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

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1 this paragraph, the receiver shall remit those amounts to the  
2 association as promptly as practicable; and

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

16 (4) during the period from the date of the  
17 order of liquidation, until the election date or, if the  
18 election does not occur, until one hundred eighty days after  
19 the date of the order of liquidation, neither the association  
20 nor the reinsurer shall have rights or obligations pursuant to  
21 reinsurance contracts that the association has the right to  
22 assume pursuant to Paragraphs (1), (2) and (3) of this  
23 subsection, whether for periods prior to or after the date of  
24 the order of liquidation, and the reinsurer, the receiver and  
25 the association shall, to the extent practicable, provide each

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1 other data and records reasonably requested; provided that once  
2 the association has elected to assume a reinsurance contract,  
3 the parties' rights and obligations shall be governed by  
4 Paragraphs (1), (2) and (3) of this subsection;

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

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

17 (a) unless the reinsurer and the  
18 assuming insurer agree otherwise, the reinsurance contract  
19 transferred shall not cover new policies of insurance or  
20 annuities in addition to those transferred;

21 (b) the obligations described in  
22 Paragraphs (1), (2) and (3) of this subsection shall no longer  
23 apply with respect to matters arising after the effective date  
24 of the transfer; and

25 (c) notice shall be given in writing,

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1 return receipt requested, by the transferring party to the  
2 affected reinsurer not less than thirty days prior to the  
3 effective date of the transfer;

4 (7) the provisions of this subsection shall  
5 supersede the provisions of a law or of an affected reinsurance  
6 contract that provides for or requires a payment of reinsurance  
7 proceeds, on account of losses or events that occur in periods  
8 after the date of the order of liquidation, to the receiver of  
9 the insolvent insurer or another person. The receiver shall  
10 remain entitled to amounts payable by the reinsurer under the  
11 reinsurance contracts with respect to losses or events that  
12 occur in periods prior to the date of the order of liquidation,  
13 subject to applicable setoff provisions; and

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

16 (a) alter or modify the terms and  
17 conditions of a reinsurance contract;

18 (b) abrogate or limit the rights of a  
19 reinsurer to claim that it is entitled to rescind a reinsurance  
20 contract;

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

24 (d) limit or affect the association's  
25 rights as a creditor of the estate against the assets of the

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1 estate; or

2 (e) apply to reinsurance contracts  
3 covering property or casualty risks.

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

8 P. Where the association has arranged or offered to  
9 provide benefits to a covered person under a plan or  
10 arrangement that fulfills the association's obligations, the  
11 person shall not be entitled to benefits from the association  
12 in addition to or other than those provided under the plan or  
13 arrangement.

14 Q. Venue in a suit against the association arising  
15 pursuant to the Life and Health Insurance Guaranty Association  
16 Act shall be in Santa Fe county. The association shall not be  
17 required to give an appeal bond in an appeal that relates to a  
18 cause of action arising pursuant to the Life and Health  
19 Insurance Guaranty Association Act.

20 R. In carrying out its duties in connection with  
21 guaranteeing, assuming or reinsuring policies or contracts  
22 pursuant to Subsection A or B of this section, the association  
23 may, subject to approval of the receivership court, issue  
24 substitute coverage for a policy or contract that provides an  
25 interest rate, crediting rate or similar factor determined by

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1 use of an index or other external reference stated in the  
2 policy or contract employed in calculating returns or changes  
3 in value by issuing an alternative policy or contract in  
4 accordance with the following provisions:

5 (1) in lieu of the index or other external  
6 reference provided for in the original policy or contract, the  
7 alternative policy or contract provides for a fixed interest  
8 rate, payment of dividends with minimum guarantees or a  
9 different method for calculating interest or changes in value;

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

13 (3) the alternative policy or contract is  
14 substantially similar to the replaced policy or contract in all  
15 other material terms."

16 SECTION 11. Section 59A-42-8 NMSA 1978 (being Laws 1984,  
17 Chapter 127, Section 757) is repealed and a new Section  
18 59A-42-8 NMSA 1978 is enacted to read:

19 "59A-42-8. [NEW MATERIAL] ASSESSMENTS.--

20 A. For the purpose of providing the funds necessary  
21 to carry out the powers and duties of the association, the  
22 board shall assess the member insurers, separately for each  
23 account, at a time and for amounts as the board finds  
24 necessary. Assessments shall be due not less than thirty days  
25 after prior written notice to the member insurers and shall

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1 accrue interest at six percent a year on and after the due  
2 date.

3 B. There shall be two classes of assessments as  
4 follows:

5 (1) class A assessments shall be authorized  
6 and called for the purpose of meeting administrative and legal  
7 costs and other expenses. Class A assessments may be  
8 authorized and called whether or not related to a particular  
9 impaired or insolvent insurer; and

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

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

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1 fair and reasonable under the circumstances.

2 D. Class B assessments against member insurers for  
3 each account and subaccount shall be in the proportion that the  
4 premiums received on business in this state by each assessed  
5 member insurer on policies or contracts covered by each account  
6 for the three most recent calendar years for which information  
7 is available preceding the year in which the insurer became  
8 insolvent or, in the case of an assessment with respect to an  
9 impaired insurer, the three most recent calendar years for  
10 which information is available preceding the year in which the  
11 insurer became impaired, bears to premiums received on  
12 business in this state for those calendar years by all assessed  
13 member insurers.

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

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1 authorized.

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

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

25 H. If two or more assessments are authorized in one

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1 calendar year with respect to insurers that become impaired or  
2 insolvent in different calendar years, the average annual  
3 premiums for purposes of the aggregate assessment percentage  
4 limitation referenced in Subsection G of this section shall be  
5 equal and limited to the higher of the three-year average  
6 annual premiums for the applicable subaccount or account as  
7 calculated pursuant to this section.

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

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

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

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1 section.

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

13 M. It shall be proper for a member insurer, in  
14 determining its premium rates and policyowner dividends as to  
15 any kind of insurance within the scope of the Life and Health  
16 Insurance Guaranty Association Act, to consider the amount  
17 reasonably necessary to meet its assessment obligations under  
18 that act.

19 N. The association shall issue to each insurer  
20 paying an assessment, other than a class A assessment, a  
21 certificate of contribution, in a form prescribed by the  
22 superintendent, for the amount of the assessment paid. All  
23 outstanding certificates shall be of equal dignity and priority  
24 without reference to amounts or dates of issue. A certificate  
25 of contribution may be shown by the insurer in its financial

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1 statement as an asset in that form and for that amount, if any,  
2 and period of time as the superintendent may approve.

3 0. A protest to an assessment shall occur as  
4 follows:

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

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

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

25 (4) in the alternative to rendering a final

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

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

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

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

16 "59A-42-9. PLAN OF OPERATION.--

17 A. The association shall submit to the  
18 superintendent a plan of operation [~~and any~~] or amendments  
19 [~~thereto~~] to the plan necessary or suitable to assure the fair,  
20 reasonable and equitable administration of the association.  
21 The plan of operation [~~and any~~] or amendments [~~thereto~~] to the  
22 plan shall become effective upon approval in writing by the  
23 superintendent or on the thirty-first day after submission to  
24 the superintendent if it has not been disapproved within that  
25 time.

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1           B. If the association [~~at any time~~] fails to submit  
2 suitable amendments to the plan, the superintendent shall,  
3 after notice and hearing, [~~adopt and~~] promulgate reasonable  
4 rules necessary or advisable to effectuate the provisions of  
5 [~~this article~~] the Life and Health Insurance Guaranty  
6 Association Act. The rules shall continue in force until  
7 modified by the superintendent or superseded by amendments  
8 submitted by the association and approved by the  
9 superintendent.

10           C. All member insurers shall comply with the plan  
11 of operation.

12           D. The plan of operation [~~among other things~~] shall  
13 [~~establish all procedures for conducting the business of the~~  
14 ~~association, for handling its assets, for the receiving of~~  
15 ~~claims, for the keeping of records and for the conduct of other~~  
16 ~~activities necessary for the execution of the powers and duties~~  
17 ~~of the association]~~ include:

18                   (1) procedures for handling the assets of the  
19 association;

20                   (2) the amount and method of reimbursement for  
21 members of the board;

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

24                   (4) procedures for records to be kept of all  
25 financial transactions of the association, its agents and the

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1 board;

2 (5) procedures for selecting members of the  
3 board and submitting those selections for approval to the  
4 superintendent;

5 (6) additional procedures for assessments;

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

8 (8) procedures to remove a director for cause,  
9 including the case where a member insurer director becomes an  
10 impaired or insolvent insurer; and

11 (9) policies and procedures for addressing  
12 conflicts of interest.

13 E. The plan of operation may provide that [~~any or~~  
14 ~~all~~] the powers and duties of the association, except those  
15 [~~under Subsections A and B of Section 756 of this article, are~~]  
16 provided in Paragraph (3) of Subsection L of Section 59A-42-7  
17 NMSA 1978 and in Section 59A-42-8 NMSA 1978, may be delegated  
18 to a corporation, association or other organization [which]  
19 that performs or will perform functions similar to those of  
20 [~~this~~] the association, or its equivalent, in two [~~(2)~~] or more  
21 states. [~~Such a~~] That corporation, association or organization  
22 shall be reimbursed as a servicing facility would be reimbursed  
23 and shall be paid for its performance of [~~any~~] other functions  
24 of the association. A delegation [~~under~~] pursuant to this  
25 subsection shall take effect only with the approval of both the

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1 board [~~of directors~~] and the superintendent, and may be made  
2 only to a corporation, association or organization [~~which~~] that  
3 extends protection not substantially less favorable and  
4 effective than that provided by [~~this article~~] the Life and  
5 Health Insurance Guaranty Association Act."

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

8 "59A-42-10. DUTIES AND POWERS OF THE SUPERINTENDENT.--

9 A. The superintendent shall:

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

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

18 (3) when an impairment is declared and the  
19 amount of the impairment is determined, serve a demand upon the  
20 impaired insurer to make good the impairment within a  
21 reasonable time. Notice to the impaired insurer shall  
22 constitute notice to its shareholders, if any. The failure of  
23 the insurer to promptly comply with the demand shall not excuse  
24 the association from the performance of its powers and duties  
25 pursuant to the Life and Health Insurance Guaranty Association

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1 Act.

2 B. The superintendent may:

3 [~~(1)~~] ~~require that the association notify the~~  
4 ~~insureds of the insolvent insurer and any other interested~~  
5 ~~parties of the determination of insolvency and of their rights~~  
6 ~~under this article. The notification shall be by mail at their~~  
7 ~~last known address, where available, but if sufficient~~  
8 ~~information for notification by mail is not available, notice~~  
9 ~~by publication in a newspaper of general circulation shall be~~  
10 ~~sufficient;~~

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

20 [~~(3)]~~ (2) revoke the designation of [~~any~~] a  
21 servicing facility if [~~he~~] the superintendent finds that claims  
22 are being handled unsatisfactorily."

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

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

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1 detection and prevention of insurance insolvencies:

2 A. the superintendent shall:

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

7 (a) revokes a license;

8 (b) suspends a license; or

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

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

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

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

10                   B. the superintendent may seek the advice and  
11 recommendations of the board concerning a matter affecting the  
12 duties and responsibilities of the superintendent regarding the  
13 financial condition of member insurers and companies seeking  
14 admission to transact insurance business in this state; and

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

17                   (1) notify the superintendent of [any]  
18 information indicating [any] that a member insurer may be  
19 ~~[insolvent or in a financial condition where it will be unable~~  
20 ~~to fulfill its contractual obligations and hazardous to the~~  
21 ~~policyholders or the public;~~

22                   ~~B. the board of directors may, upon majority vote,~~  
23 ~~request that the superintendent order an examination of any~~  
24 ~~member insurer which the board in good faith believes may be in~~  
25 ~~such financial condition. Within thirty (30) days of the~~

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1 ~~receipt of the request, the superintendent shall begin the~~  
2 ~~examination. The examination may be conducted as a national~~  
3 ~~association of insurance commissioners examination or may be~~  
4 ~~conducted by persons the superintendent designates. The cost~~  
5 ~~of examination shall be paid by the association and the~~  
6 ~~examination report shall be treated as other examination~~  
7 ~~reports. In no event shall the examination report be released~~  
8 ~~to the board of directors prior to its release to the public,~~  
9 ~~but this shall not preclude the superintendent from complying~~  
10 ~~with Subsection C of this section. The superintendent shall~~  
11 ~~notify the board of directors when the examination is~~  
12 ~~completed. The request for an examination shall be kept on~~  
13 ~~file by the superintendent, but it shall not be open to public~~  
14 ~~inspection prior to the release of the examination report to~~  
15 ~~the public;~~

16 ~~C. the superintendent shall report to the board of~~  
17 ~~directors when he has reasonable cause to believe that any~~  
18 ~~member insurer examined or being examined at the request of the~~  
19 ~~board of directors may be insolvent, potentially insolvent or~~  
20 ~~in a financial condition hazardous to the policy holders or the~~  
21 ~~public;~~

22 ~~D. the board of directors may, upon majority vote]~~  
23 ~~an impaired or insolvent insurer;~~

24 (2) make reports and recommendations to the  
25 superintendent upon any matter germane to the solvency,

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1 liquidation, rehabilitation or conservation of ~~[any]~~ a member  
2 insurer or germane to the solvency of a company seeking to do  
3 insurance business in this state. The reports and  
4 recommendations ~~[shall not be considered]~~ are not public  
5 documents;

6 ~~[E. the board of directors may, upon majority vote]~~  
7 and

8 (3) make recommendations to the superintendent  
9 for the detection and prevention of insurers' insolvencies ~~[and~~

10 ~~F. the board of directors shall, at the conclusion of~~  
11 ~~any insurance insolvency in which the association was obligated~~  
12 ~~to pay covered contractual obligations or claims, prepare a~~  
13 ~~report on the history and causes of the insolvency based on~~  
14 ~~information available to the association and submit the report~~  
15 ~~to the superintendent]."~~

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

18 "59A-42-12. APPEALS.--

19 A. A member insurer may appeal to the superintendent  
20 from an action of the board ~~[of directors of the association]~~  
21 by filing with the superintendent a notice of appeal within  
22 thirty days after ~~[the]~~ that action ~~[appealed from]~~.

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

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

3           "59A-42-13. MISCELLANEOUS PROVISIONS.--

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

9           B. Records shall be kept of all ~~[negotiations and]~~  
10 meetings ~~[in which the association or its representatives are~~  
11 ~~involved]~~ of the board to discuss the activities of the  
12 association in carrying out its powers and duties. Records of  
13 the ~~[negotiations or]~~ meetings with respect to an impaired or  
14 insolvent insurer shall be made public only upon the  
15 termination of a liquidation, rehabilitation or conservation  
16 proceeding involving the impaired or insolvent insurer, upon  
17 the termination of the insolvency of the insurer or upon the  
18 order of a court of competent jurisdiction. Nothing in this  
19 subsection limits the duty of the association to render [~~a~~  
20 ~~report of its activities under]~~ the reports required by Section  
21 [763 of this article] 59A-42-14 NMSA 1978.

22           C. For the purpose of carrying out its obligations,  
23 the association shall be deemed to be a creditor of the  
24 impaired or insolvent insurer to the extent of assets  
25 attributable to covered policies reduced by amounts to which

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1 the association is entitled as a subrogee pursuant to  
2 Subsection K of Section 59A-42-7 NMSA 1978. Assets of the  
3 impaired or insolvent insurer attributable to covered policies  
4 shall be used to continue all covered policies and pay all  
5 contractual obligations of the impaired or insolvent insurer.  
6 Assets attributable to covered policies, as used in this  
7 subsection, are that proportion of the assets that the reserves  
8 that should have been established for those policies bear to  
9 the reserves that should have been established for all policies  
10 of insurance written by the impaired or insolvent insurer.

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

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1 these assets.

2 [G.] E. Prior to the termination of [~~any~~] a  
3 liquidation, rehabilitation or conservation proceeding, the  
4 court may take into consideration the contributions of the  
5 respective parties, including the association, the shareholders  
6 and [~~policyowners~~] policy owners of the insolvent insurer and  
7 any other party with a bona fide interest, in making an  
8 equitable distribution of the ownership rights of the insolvent  
9 insurer. In such a determination, consideration shall be given  
10 to the welfare of the [~~policyholders~~] policy owners of the  
11 continuing or successor insurer.

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

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

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

23 "59A-42-14. EXAMINATION OF ASSOCIATION--ANNUAL REPORT.--  
24 The association is subject to examination and regulation by the  
25 superintendent. The board [~~of directors~~] shall submit to the

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1 superintendent, not later than May 1 each year, a financial  
2 report for the preceding calendar year in form approved by the  
3 superintendent and a report of its activities during the  
4 preceding calendar year. Upon the request of a member insurer,  
5 the association shall provide the member insurer with a copy of  
6 the report."

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

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

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

23 "59A-42-16. STAY OF PROCEEDINGS--REOPENING DEFAULT  
24 JUDGMENTS.--~~[All proceedings]~~ A proceeding in which [~~the~~] an  
25 insolvent insurer is a party in [~~any~~] a court in this state

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1 shall be stayed [~~sixty (60)~~] one hundred eighty days from the  
2 date an order of liquidation, rehabilitation or conservation is  
3 final to permit proper legal action by the association on [~~any~~]  
4 matters germane to its powers or duties. As to a judgment  
5 under [~~any~~] a decision, order, verdict or finding based on  
6 [~~the~~] default, the association may apply to have the judgment  
7 set aside by the same court that made the judgment and shall be  
8 permitted to defend against the suit on the merits."

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

11 "[NEW MATERIAL] PROHIBITED ADVERTISEMENT--NOTICE TO POLICY  
12 OWNERS.--

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

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1 does not sell or solicit insurance.

2 B. Within one hundred eighty days of the effective  
3 date of the Life and Health Insurance Guaranty Association Act,  
4 the association shall prepare a summary document describing the  
5 general purposes and current limitations of that act and  
6 complying with Subsection C of this section. The document  
7 shall be submitted to the superintendent for approval. At the  
8 expiration of the sixtieth day after the date on which the  
9 superintendent approves the document, an insurer shall not  
10 deliver a policy or contract to a policy or contract owner  
11 unless the summary document is delivered to the policy or  
12 contract owner at the time of delivery of the policy or  
13 contract. The document shall also be available upon request by  
14 a policy owner. The distribution, delivery or contents or  
15 interpretation of this document does not guarantee that either  
16 the policy or the contract or the owner of the policy or  
17 contract is covered in the event of the impairment or  
18 insolvency of a member insurer. The description document shall  
19 be revised by the association as amendments to the Life and  
20 Health Insurance Guaranty Association Act may require. Failure  
21 to receive this document does not give the policy owner,  
22 contract owner, certificate holder or insured greater rights  
23 than those stated in the Life and Health Insurance Guaranty  
24 Association Act.

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

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

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

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

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

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

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

23 (7) provide other information as directed by the  
24 superintendent, including sources for information about the  
25 financial condition of insurers, provided that the information

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1 is not proprietary and is subject to disclosure pursuant to the  
2 Inspection of Public Records Act.

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

7 SECTION 21. TEMPORARY PROVISION--CONTINUATION OF  
8 ACCOUNTS, ASSOCIATION, BOARD, PLAN OF OPERATION AND  
9 ACTIVITIES.--

10 A. The accounts maintained pursuant to the Life and  
11 Health Insurance Guaranty Law and in effect on July 1, 2011  
12 shall continue in full force as the accounts maintained  
13 pursuant to the Life and Health Insurance Guaranty Association  
14 Act, modified as necessary to comply with that act.

15 B. The life insurance guaranty association existing  
16 pursuant to the Life and Health Insurance Guaranty Law on July  
17 1, 2011 is the life and health insurance guaranty association  
18 organized pursuant to the Life and Health Insurance Guaranty  
19 Association Act, subject to the provisions of that act.

20 C. The insurer members of the board of directors of  
21 the life insurance guaranty association serving pursuant to the  
22 Life and Health Insurance Guaranty Law on July 1, 2011 shall  
23 serve as the insurer members of the board of directors of the  
24 life and health insurance guaranty association pursuant to the  
25 provisions of the Life and Health Insurance Guaranty

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1 Association Act.

2 D. The plan of operation in effect pursuant to the  
3 Life and Health Insurance Guaranty Law on July 1, 2011 shall  
4 serve as the plan of operation required pursuant to the Life  
5 and Health Insurance Guaranty Association Act, modified as  
6 necessary to comply with that act.

7 E. An action, including an assessment, or an  
8 obligation of the life insurance guaranty association, board of  
9 directors of the life insurance guaranty association or  
10 superintendent of insurance initiated or created but not  
11 completed pursuant to the Life and Health Insurance Guaranty  
12 Law prior to July 1, 2011, shall continue until completed  
13 pursuant to the provisions of the Life and Health Insurance  
14 Guaranty Law.

15 SECTION 22. APPLICABILITY.--The provisions of Section 7  
16 of this act apply only to coverage that the life and health  
17 insurance guaranty association provides in connection with any  
18 member insurer that is placed under an order of liquidation  
19 with a finding of insolvency after July 1, 2011.

20 SECTION 23. EFFECTIVE DATE.--The effective date of the  
21 provisions of this act is July 1, 2011.